



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HIKINA WHAKATUTUKI



# Consultation Document

---

Consultation on proposed exemptions to the  
Companies Act 1993 and Limited Partnerships Act 2008  
under the COVID-19 Response (Requirements For  
Entities – Modifications and Exemptions) Act 2020

March 2022

## Permission to reproduce



Crown Copyright ©

This work is licensed under the Creative Commons Attribution 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by/4.0/>.

## Important notice

The opinions contained in this document are those of the Ministry of Business, Innovation and Employment and do not reflect official Government policy. Readers are advised to seek specific legal advice from a qualified professional person before undertaking any action in reliance on the contents of this publication. The contents of this discussion paper must not be construed as legal advice. The Ministry does not accept any responsibility or liability whatsoever whether in contract, tort, equity or otherwise for any action taken as a result of reading, or reliance placed on the Ministry because of having read, any part, or all, of the information in this discussion paper or for any error, inadequacy, deficiency, flaw in or omission from the discussion paper.

ISBN 978-1-99-102259-2 (online)

# How to Have Your Say

---

## Submissions Process

The Ministry of Business, Innovation and Employment (**MBIE**) seeks written submissions on the proposed exemptions discussed in this document by **5pm on Friday 1 April 2022**.

To make a submission, please send your response as a Microsoft Word document to [fra@companies.govt.nz](mailto:fra@companies.govt.nz). You must include your name and, if applicable, your organisation in your submission and your contact details in the accompanying e-mail.

Your submission may respond to any or all of the proposed exemptions in this document. Where possible, please include evidence to support your views.

If you have questions in relation to the submissions process contact [fra@companies.govt.nz](mailto:fra@companies.govt.nz).

## Use of Information

The information provided in submissions will be used to inform advice to the Registrar of Companies on exemptions to procedural and administrative requirements in the Companies Act 1993 and Limited Partnerships Act 2008. It may also be used to inform MBIE's policy development in relation to exemption powers.

MBIE may contact submitters directly if clarification of any matters in submissions is required.

## Release of Information

MBIE intends to upload PDF copies of submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). By making a submission, MBIE will consider you to have consented to it being uploaded and made publicly available unless you have clearly specified otherwise in your submission.

### *Objections to the Release of Information*

If your submission contains any information that is confidential, or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text; and
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding that information.

MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

### *Private Information*

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

# Contents

- How to Have Your Say ..... 3**
  - Submissions Process ..... 3
  - Use of Information ..... 3
  - Release of Information..... 4
- Background Information..... 6**
  - Introduction ..... 6
  - Exemption Powers ..... 6
  - Previous Exemptions ..... 7
  - Proposed Exemptions ..... 7
  - Consultation Requirement..... 7
- Proposed Exemption Period ..... 8**
  - Available Period to Grant Exemptions ..... 8
  - Proposed Period for the Exemptions ..... 8
- Proposed Notification Requirements ..... 9**
  - Proposed Requirements..... 9
  - Effect of Requirements ..... 9
- Exemption Proposal 1: Time Frame Requirements in Relation to Holding Annual Meetings under the Companies Act ..... 10**
  - Relevant Legislation ..... 10
  - Proposed Exemption ..... 10
  - Effect of Exemption..... 11
- Exemption Proposal 2: Time Frame Requirements for Financial Reporting Duties under the Companies Act and Limited Partnerships Act ..... 12**
  - Relevant Legislation ..... 12
  - Proposed Exemptions ..... 12
  - Effect of Exemption..... 13
- Exemption Proposal 3: Time Frame Requirements for Annual Reports under the Companies Act.. 14**
  - Relevant Legislation ..... 14
  - Proposed Exemption ..... 14
  - Effect of Exemption..... 14

# Background Information

## Introduction

The Ministry of Business, Innovation and Employment (**MBIE**) is consulting on behalf of the Registrar of Companies (the **Registrar**) on proposed exemptions from requirements under the Companies Act 1993 (the **Companies Act**) and Limited Partnerships Act 2008 (the **Limited Partnerships Act**).

The proposals are the result of the Registrar believing it necessary or desirable to provide for exemptions where compliance with certain matters in these statutes is and/or was:

- unduly onerous or burdensome because of the effects of COVID-19; or
- not reasonably capable of being complied with, or complied with fully, because of the effects of COVID-19.

The Registrar also believes the proposed exemptions are not broader than is reasonably necessary to address the matters that gave rise to them and are the most appropriate way of addressing those matters at this time.

## Exemption Powers

The Registrar has powers to grant exemptions under section 26A of the COVID-19 Response (Requirements For Entities—Modifications and Exemptions) Act 2020 (the **2020 Act**).

These powers were originally available under section 26 of the 2020 Act, but that section was repealed by section 43 on 1 April 2021. In November 2021, these powers were reinstated by section 21 of the COVID-19 Response (Management Measures) Legislation Act 2021 (the **2021 Act**), which inserted section 26A into the 2020 Act. The reinstated powers are in force until 30 April 2022, with the possibility of being extended for up to a further six months.

Section 26A of the 2020 Act allows a responsible Registrar or Minister to exempt classes of persons from compliance with provisions of a specified Act, or specified enactment made under the Act, that relates to any matter described in section 29(1), including:

- calling or holding meetings (including procedures at meetings);
- giving or receiving information; and
- auditing, assurance, or financial reporting or review requirements.

The term ‘specified Act’, as defined in section 5 of the 2020 Act, includes the Companies Act and the Limited Partnerships Act. The ‘responsible registrar’ for both the Companies Act and the Limited Partnerships Act, is the Registrar of Companies.<sup>1</sup>

Under section 31 of the 2020 Act, exemptions can apply retrospectively to acts and omissions, but no exemption may relate to an act or omission that occurred before the 2020 Act’s amendment date of 3 November 2021.

---

<sup>1</sup> ‘Registrar’ is defined in section 4 of the Limited Partnerships Act and section 2 of the Companies Act.

## Previous Exemptions

The COVID-19 Response (Requirements For Entities—Modifications and Exemptions) (Exemptions from Companies Act 1993) Notice 2021 (the **2021 Notice**) came into force on 29 January 2021 and was revoked on 31 March 2021.

The effect of the 2021 Notice was to modify or relax the requirements for affected persons to comply with the following procedural and administrative matters in the Companies Act:

- time frame requirements in relation to holding annual meetings (section 120);
- time frame requirements for financial reporting duties (sections 201, 202, 204 and 207E);
- time frame requirements for annual reports (sections 208 and 209); and
- various procedural and administrative matters (Part 15A).

## Proposed Exemptions

Although the Registrar is proposing to reinstate most of the exemptions under the 2021 Notice, the proposed notice would differ from this by:

- the addition of extending time frame requirements for financial reporting duties under sections 75 and 75C of the Limited Partnerships Act;
- not including exemptions to the various procedural and administrative matters in Part 15A of the Companies Act.

The proposed extension to time frame requirements for the Limited Partnerships Act reflects that both limited partnerships, as well as companies, may have difficulty meeting financial reporting obligations due to the continued effects of COVID-19 and this may have flow on effects for meeting other obligations under the Acts. The pandemic continues to disrupt entities' operations generally and the Registrar is aware that various restrictions have contributed to a national auditor shortage, which has delayed entities meeting reporting requirements ahead of their annual meetings.

The Registrar considers that the exemptions under Part 15A are no longer necessary as entities have not expressed concerns about meeting these requirements.

## Consultation Requirement

Section 28(1)(a) of the 2020 Act requires the Registrar to consult on the proposed exemptions with either the public generally or with the persons or representatives of persons that they consider appropriate given the proposed effect of the exemptions. As the proposed exemptions may be of interest to a number of companies and limited partnerships, public consultation is considered to be the most appropriate avenue to allow for all interested parties to provide feedback.

Accordingly, the Registrar invites comment from the public generally on the proposed exemptions and exemption notification requirements detailed in this consultation document. The Registrar also invites comments on the length of the proposed notice, including why the length is appropriate given the effects of COVID-19 on compliance with the relevant legislation.

# Proposed Exemption Period

## Available Period to Grant Exemptions

Under section 25 of the 2020 Act, powers to grant exemptions may only be exercised:

- during the ‘initial 2021/22 period’ of 3 November 2021 to 30 April 2022; and
- during the ‘further period’ of 1 May 2022 to no later than the close of 30 October 2022 if the power is extended by an Order in Council made under section 42B of the 2020 Act.<sup>2</sup>

Under section 42B, the exemption powers can only be extended by an Order in Council made by the Governor-General on the recommendation of the Minister of Finance and Minister of Commerce and Consumer Affairs acting jointly (the **Joint Ministers**), who must be satisfied that:

- the order is necessary or desirable to address the effects of COVID-19; and
- the period of the extension or each extension recommended for that order is no longer than is reasonably necessary to address the matters that gave rise to it.

Section 33 provides that if an exemption is granted in, and in force immediately before the end of, the ‘initial 2021/22 period’ and an Order in Council is made for a ‘further period’ in relation to section 26A and the Act to which the exemption relates, the exemption is not revoked and continues in force until the end of the ‘further period’ (unless it is revoked sooner or expires). This does not apply if the exemption expressly states that it will not apply in the ‘further period’.

An exemption granted in the ‘further period’ may continue in force until the end of that period, at which point it must be treated as having been revoked (unless it is revoked sooner or expires).

## Proposed Period for the Exemptions

If the exemption powers are extended under section 42B of the 2020 Act, the Registrar proposes that the exemption period in the notice be extended in line with the 2020 Act. This means the proposed exemptions would apply from 3 November 2021 and expire at either the end of 30 April 2022 or, if applicable, the end of the ‘further period’ (no later than 30 October 2022).

The ‘further period’ will only apply to the notice if the Joint Ministers make a recommendation to the Governor-General that the powers under section 26A be extended and an extension is made by Order in Council. If this does not happen, the notice will expire on 30 April 2022.

The Registrar considers this approach is appropriate because, if the exemption powers in the 2020 Act are extended, an extended time frame for the notice is likely to be reasonably necessary given the current COVID-19 landscape. However, the Registrar will keep this position under review, and is able to vary or revoke the notice under section 40 of the 2020 Act if appropriate.

---

<sup>2</sup> For the definitions of ‘initial 2021/22 period’ and ‘further period’ see section 7 of the 2020 Act.



# Proposed Notification Requirements

## Proposed Requirements

The Registrar considers that, in order to use any of the proposed exemptions, a company, overseas company or limited partnership should have to meet certain notification requirements. Therefore, it is proposed that a written or electronic notice must be provided to the Registrar and that notice:

- must be lodged with the Registrar as soon as practicable after the company, overseas company or limited partnership decides to rely on an exemption or exemptions;<sup>3</sup>
- cannot be lodged after the end of 30 April 2022 or, if applicable, the end of the ‘further period’;
- must identify each provision in respect of which the company, overseas company or limited partnership is relying on for an exemption;
- must state why the company, overseas company or limited partnership qualifies for each exemption, because:
  - complying with the provision is unduly onerous or burdensome because of the effects of COVID-19; and/or
  - the provision is not reasonably capable of being complied with because of the effects of COVID-19.
- must be signed by a majority of the company or overseas company’s directors or be signed by a majority of the limited partnership’s general partners.

## Effect of Requirements

The impact of these proposed requirements is that:

- the Registrar is notified that the company, overseas company or limited partnership is using the exemption and will not enforce the breaches of the relevant provision to the extent that the breaches fall within the scope of the proposed exemptions; and
- a company, overseas company or limited partnership will not be liable for breaches of the Companies Act or the Limited Partnerships Act to the extent that the breaches fall within the scope of the proposed exemptions.

These requirements will also discourage misuse of the exemptions by those who failed to comply with the legislative requirements, but would be reasonably capable of complying and were not so affected by COVID-19 that it would be unduly onerous for them to comply.

---

<sup>3</sup> For notices that apply to acts or omissions occurring prior to the commencement of the proposed notice, the time of deciding to rely on the exemption is when the entity decided to rely on the exemption and not at the time of failing to meet the relevant requirement in the Companies Act or Limited Partnerships Act.

# Exemption Proposal 1: Time Frame Requirements in Relation to Holding Annual Meetings under the Companies Act

## Relevant Legislation

The Companies Act includes the following meeting obligations that may be difficult to comply with given the effects of COVID-19:

- Section 120 requires the board of directors to call an annual meeting to be held:

*For the first annual meeting of shareholders:*

- within 18 months after the company's registration.

*For any subsequent annual meetings:*

- not later than six months after the balance date of the company; and
- not later than 15 months after the previous annual meeting.

## Proposed Exemption

The proposed exemption provides an extension of time of up to six months to meet the requirements in section 120 of the Companies Act. The board of directors of a company would have to call, or have called, an annual meeting to be held:

- *For the first annual meeting of shareholders:*
  - within 24 months after the company's registration; and
  - not later than the end of **30 April 2022** or, if applicable, the end of the **further period**.
- *For any subsequent annual meetings:*
  - not later than 12 months after the balance date of the company; and
  - not later than 21 months after the previous annual meeting; and
  - not later than the end of **30 April 2022** or, if applicable, the end of the **further period**.

Before a company can rely on the exemption, the majority of their directors must believe, on reasonable grounds, that:

- compliance with the annual meeting time frame requirements in the Companies Act is unduly onerous or burdensome because of the effects of COVID-19; or
- the annual meeting time frame requirements in the Companies Act are not reasonably capable of being complied with, or complied with fully, because of the effects of COVID-19.

## Effect of Exemption

The impact of this exemption is to:

- extend the time limit for companies to hold their annual meetings;
- ensure that companies who held annual meetings late, but within the period of time allowed under these proposed exemptions, will not face proceedings seeking consequential relief under section 172 for their failure to hold the meeting within the prescribed period; and
- allow for an extension if COVID-19 restrictions or other related effects impacts the ability for companies to hold annual meetings.

# Exemption Proposal 2: Time Frame Requirements for Financial Reporting Duties under the Companies Act and Limited Partnerships Act

## Relevant Legislation

### *Companies Act*

The Companies Act includes the following financial reporting obligations that may be difficult to comply with given the effects of COVID-19:

- Section 201 - the preparation of financial statements;
- Section 202 - the preparation of group financial statements;
- Section 204(1) and (2) - the preparation of financial statements by overseas companies for large New Zealand businesses;
- Section 207E - the delivery of financial statements and the auditor's report for registration.

### *Limited Partnerships Act*

The Limited Partnerships Act includes the following financial reporting obligations for large limited partnerships or limited partnerships that have opted into compliance under section 75F that may be difficult to comply with given the effects of COVID-19:

- Section 75 - the preparation of financial statements;
- Section 75C - the delivery of financial statements and the auditor's report to each general partner and limited partner.

All of the above provisions must be complied with within five months of the entity's balance date.

## Proposed Exemptions

The proposed exemption allows entities to comply with the Companies Act or the Limited Partnerships Act requirements mentioned above as soon as practicable after the expiry of the five month period (whether that period expires before or after the notice comes into force) and no later than the end of **30 April 2022** or, if applicable, the end of the **further period**.

Before companies, overseas companies or limited partnerships can rely on the exemption, the majority of their directors or general partners must believe, on reasonable grounds, that:

- compliance with the financial reporting time frames in the Companies Act or the Limited Partnerships Act is unduly onerous or burdensome because of the effects of COVID-19; or
- the financial reporting time frames in the Companies Act or the Limited Partnerships Act are not reasonably capable of being complied with, or complied with fully, because of the effects of COVID-19.

## Effect of Exemption

The impact of this exemption is to:

- allow companies, overseas companies or limited partnerships extra time to meet financial reporting requirements; and
- remove sanctions for failing to meet financial reporting deadlines (including deadlines as early as 3 November 2021) as long as companies, overseas companies or general partners comply with the reporting requirements as soon as practicable after the five month deadline and no later than the end of **30 April 2022** or, if applicable, the end of the **further period**.

# Exemption Proposal 3: Time Frame Requirements for Annual Reports under the Companies Act

## Relevant Legislation

The Companies Act includes the following annual reporting obligations that may be difficult to comply with given the effects of COVID-19:

- Section 208 - the preparation of an annual report on the affairs of the company within five months after the balance date of the company;
- Section 209(1)(a) - the sending of a copy of the annual report to shareholders not less than 20 working days before the date fixed for holding the annual meeting of shareholders.

## Proposed Exemption

The Registrar has proposed an exemption to:

- Section 208 - to allow companies to prepare an annual report within 11 months after the balance date of the company and no later than the end of **30 April 2022** or, if applicable, the end of the **further period**;
- Section 209(1)(a) - to allow companies to send a copy of the annual report to shareholders not less than 10 working days before the date fixed for the annual meeting and not later than 10 working days before **30 April 2022** or, if applicable, 10 working days before the end of the **further period**.

Before a company can rely on the exemption, the majority of the directors must believe, on reasonable grounds, that:

- compliance with the annual reporting time frames in the Companies Act is unduly onerous or burdensome because of the effects of COVID-19; or
- the annual reporting time frames in the Companies Act are not reasonably capable of being complied with, or complied with fully, because of the effects of COVID-19.

## Effect of Exemption

The impact of this exemption is to:

- allow companies a greater period of time to prepare annual reports and to send out a copy of the annual report at a date closer to the annual meeting; and
- remove sanctions if companies fail, or have failed, to meet the annual reporting time frames in the Companies Act because of the effects of Covid-19.