



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Companies Office Registers Funding Validation Bill and Companies (Levies) Amendment Bill: Approval for Introduction	Date to be published	1 July 2022

List of documents that have been proactively released

Date	Title	Author
May 2022	Companies Office Registers Funding Validation Bill and Companies (Levies) Amendment Bill: Approval for Introduction	Office of the Minister of Commerce and Consumer Affairs
12 May 2022	Companies Office Registers Funding Validation Bill and Companies (Levies) Amendment Bill: Approval for Introduction LEG-22-MIN-0066 Minute	Cabinet Office

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of Legal professional privilege or Confidential advice to Government.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Legislation Committee

Companies Office Registers Funding Validation Bill and Companies (Levies) Amendment Bill: Approval for Introduction

Proposal

- 1 I am seeking approval to introduce to Parliament on Budget night:
- 2 the Companies Office Registers Funding Validation Bill (**the Validation Bill**), to pass through all stages under urgency on the night as previously agreed by Cabinet; and
- 3 the Companies (Levies) Amendment Bill (**the Levies Bill**), to be read a first time and referred to the Finance and Expenditure Committee for four months.

Policy

Modernising and consolidating Companies Office funding

- 4 The Companies Office, a business unit of the Ministry of Business, Innovation and Employment (**MBIE**), administers a range of corporate registers. These include entity registers (like the Companies Register), occupational licensing registers (like the Insolvency Practitioners Register), and disclosure registers (like the Personal Property Securities Register). The Companies Office also supports other statutory functions of the various registrars responsible for these registers.
- 5 The Validation Bill and the Levies Bill form a package to implement Cabinet's decisions to modernise and consolidate the way the Companies Office funds its corporate registry functions. They address historical cross-subsidisation issues within the Companies Office and provide an interim funding solution while longer-term reforms are put in place [DEV-21-MIN-0230 and CAB-21-MIN-0487].

Addressing historical issues to pave the way for the future

- 6 When each of the registers was established, the policy was that each should be independently funded from fees charged to the users of the relevant register or, in a small number of cases, by the Crown from general taxation. This funding model was predicated on each register being operated separately from the others.

- 7 Over time, the Companies Office has moved to providing shared services to the various registers, particularly information technology services. The approach of providing shared services has resulted in significant efficiencies and driven down the overall cost of providing registry services to end users. However, this has made it increasingly difficult to distinguish between the cost of providing services for each register.
- 8 In addition, over time, the fees charged on some smaller registers have not kept up with the costs of operating them. The shortfall on these smaller registers has varied over time but is currently forecast at about \$3.7 million per year. This shortfall has been met from surpluses that have been generated from fees collected under legislation governing other registers. These surpluses are accounted for in the appropriation's memorandum account.
- 9 As I have previously explained to Cabinet, Legal professional privilege
. Cabinet therefore agreed to short and long-term solutions to address it. Firstly, Cabinet agreed to between-budget contingency Crown funding of \$3.746 million in 2021/22 to cover the deficit financial position in the immediate term. Secondly, Cabinet agreed that legislation to address the issue would be introduced to:
- 9.1 retrospectively validate the Companies Office's charging and expenditure;
 - 9.2 amend relevant legislation (as set out at Annex A) to enable the historical surpluses collected by the Companies Office to be used to fund the functions of the Companies Office while a new unified funding regime is put in place; and
 - 9.3 establish a unified funding system across the entire corporate registries system, which will allow like-for-like charging for like-for-like service and will ensure that the Companies Office is empowered to use some of its resources more flexibly.

The Companies Office will be able to charge levies as well as fees, to be set by regulations

- 10 The key feature of the new funding system is that the Companies Office will be able to charge users of corporate registry services levies to fund corporate registry activities across the regulatory system. This will be an additional funding stream in addition to fees. However, the overall amount of money collected will not increase as a result, as some fees will be reduced commensurate with the new levies.
- 11 The new levy making power will enable the Companies Office to use the funds collected for the provision of services across the range of registers it administers. This will ensure that the Companies Office has the flexibility to respond to emerging needs as required.

Application to new Incorporated Societies Act 2022

- 12 The Incorporated Societies Register is one of the registers maintained by the Companies Office. The Incorporated Societies Act 2022 received Royal Assent on 5 April 2022. This Act will eventually replace the Incorporated Societies Act 1908, although both regimes will operate in parallel for a period of time. The Incorporated Societies Act 1908 was on the list of Acts that Cabinet agreed would be amended by both the Validation and Levies Bills but the Incorporated Societies Act 2022 has not. I therefore seek Cabinet's agreement to add the new 2022 Act to the list.

Regulations will be made after enactment of the Bills

- 13 After the two Bills have been enacted, the fees will be re-set and levies will be set by regulations.
- 14 The powers to make these regulations will be subject to a requirement to consult with those likely to be affected. This will involve disclosing, in a consultation document, details of proposed charges, the costs they are attributable to and the proposed allocative methodology, taking into account matters as set out in the Levies Bill.

Risks

- 15 I anticipate that there may be some controversy around retrospectively validating the collection and use of fees by the Companies Office via the Validation Bill under urgency on Budget night. However, this is needed in order to:
- 15.1 Legal professional privilege; and
- 15.2 ensure the Companies Office can spend existing surplus funds to fund registers where there are deficits while these funding reforms are put in place.
- 16 The Levies Bill might be interpreted as an indication that Companies Office charges are set to rise. I think this may be of particular concern to the not-for-profit sector. I plan to mitigate the impact of this misconception with a communications strategy that explains that these reforms are about better and more transparent collection and use of funds, rather than collecting additional money from Companies Office customers.

Impact analysis

- 17 A Regulatory Impact Assessment was prepared and submitted to the Cabinet Economic Development Committee [DEV-21-MIN-0230 and CAB-21-MIN-0487].
- 18 A Costs Recovery Impact Assessment will be prepared and provided to Cabinet as part of the process of setting new fees and levies.

Compliance

- 19 The Bill complies with each of the following:
- 19.1 the principles of the Treaty of Waitangi;
 - 19.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 19.3 the disclosure statement requirements - disclosure statements have been prepared and are attached to the paper;
 - 19.4 the principles and guidelines set out in the Privacy Act 2020; and
 - 19.5 relevant international standards and obligations.
- 20 The Legislation Design Advisory Committee's Guidelines on the Process and Content of Legislation (2021 edition), Chapter 12 states that "the starting point is that legislation should not have retrospective effect" and "it should not interfere with accrued rights and duties". legal professional privilege
- 21 While the circumstances that have led to the Validation Bill being needed do not clearly fall into the exceptions specified in the LDAC guidelines, I believe it is appropriate for it to have retrospective effect. The charging practice in question was undertaken in good faith to support corporate registry services that benefit all users, including not-for-profit entities such as incorporated societies. It has caused minimal disadvantage, in material terms, to users who have been over-charged and would likely have complied with the long-term funding model I am recommending. The retrospective effect will allow a line to be drawn under the historical issues and pave the way for the future system of corporate registry funding.

Consultation

- 22 MBIE officials have consulted with the Treasury.
- 23 The Ministry of Justice has been consulted in relation to consistency with the New Zealand Bill of Rights Act 1990.
- 24 The Parliamentary Counsel Office and Department of Prime Minister and Cabinet have been informed.
- 25 In line with the approach agreed by Cabinet, the policy proposals and the Bills have not been publicly consulted on due to the sensitive nature of the issues and the Legal professional privilege
- 26 Cabinet agreed that we should introduce the Levies Bill at the same time as the Validation Bill, so the Government can present a viable, long-term and transparent way to set charges for corporate registry services at the same

time as rectifying historical issues. Presenting the Bills to Parliament and the public in this manner has precluded consultation on the proposals in the Levies Bill, as well as those in the Validation Bill, because the proposals for the future cannot not be properly understood in isolation from the historical issues. However, the public will have an opportunity to provide input on the proposals during the select committee process and through the statutory consultation that will follow the Bill coming into law.

- 27 When the Levies Bill is in force, I plan to seek your agreement to launch a public consultation document which will set out proposals for the class or classes of entities that are required to pay a levy, the method of calculating or ascertaining the amount of levies and how much each levy will cost. It will also include the same information for the corresponding fees. I consider that this detailed information, which will allow users of the Companies Office to work out how much they will need to pay in total, will ensure a meaningful public consultation on the funding model and the level at which the fees and levies should be set.

Binding on the Crown

- 28 The changes proposed by the Bill will be binding on the Crown.

Allocation of decision-making powers

- 29 The Levies Bill allocates decision making powers to the Minister responsible for the administration of the Companies Act 1993. I will be required to consult with potential levy payers and others who may be significantly affected.

Associated regulations

- 30 Regulations will be needed to bring levies (and new fees) into effect. Those regulations will need to address the following substantive matters:

30.1 the class or classes of entities that are required to pay fees or levies;

30.2 the amount of the fees and levies, or the method of calculating or ascertaining the amount of fees and levies; and

30.3 the payment and collection of levies.

- 31 Regulations will also have to comply with the matters set out in the Levies Bill and be subject to a Costs Recovery Impact Assessment.

Other instruments

- 32 The Bills do not include provision to make other instruments that are deemed to be legislative instruments or disallowable instruments.

Commencement of legislation

- 33 Both the Validation Bill and the Levies Bill will come into force on the day after the date each receives the Royal Assent.

Parliamentary stages

- 34 I propose that the Validation Bill be introduced, and passed through all stages, under urgency on Budget night.
- 35 I propose that the Levies Bill be introduced and read a first time on Budget night and then referred to the Finance and Expenditure Committee for four months.

Proactive Release

- 36 We are intending to proactively release this Cabinet paper, within the 30 working day deadline of decisions being confirmed by Cabinet, subject to any redactions as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** that the Companies Office Registers Funding Validation Bill and Companies (Levies) Amendment Bill confidential advice to the government
- 2 **note** that after the two Bills have been enacted, the Companies Office fees will be re-set and levies will be set by regulations, following a public consultation process which will set out the details of proposed charges, the costs they are attributable to and the proposed allocative methodology, based on matters set out in the Companies (Levies) Amendment Bill;

Companies Office Registers Funding Validation Bill

- 3 **note** that the Companies Office Registers Funding Validation Bill will:
- 3.1 amend certain corporate governance legislation (as set out in **Annex A**) to enable the historical surpluses collected by the Companies Office to be used to fund the functions of the Companies Office while a longer term funding solution is implemented; and
- 3.2 retrospectively validate the Companies Office's (the Ministry of Business, Innovation and Employment's) charging and expenditure.
- 4 **agree** that the Companies Office Registers Funding Validation Bill will amend the Incorporated Societies Act 2022 (as well as the other Acts already agreed by Cabinet);
- 5 **approve** the Companies Office Registers Funding Validation Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 6 **agree** that the Companies Office Registers Funding Validation Bill be introduced on 19 May 2022 (Budget night) and passed through all stages under urgency;

Companies (Levies) Amendment Bill

- 7 **note** that the Companies (Levies) Amendment Bill will introduce a levy making power to partially fund the corporate registry system;
- 8 **agree** that the Companies (Levies) Amendment Bill will amend the Incorporated Societies Act 2022 (as well as the other Acts already agreed by Cabinet);
- 9 **approve** the Companies (Levies) Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives; and
- 10 **agree** that the Companies (Levies) Amendment Bill be introduced on 19 May 2022 (Budget night), read a first time and referred to the Finance and Expenditure Committee for four months and enacted confidential advice to the government

Authorised for lodgement

Dr David Clark

Minister of Commerce and Consumer Affairs

Annex A: Table of registers managed by the Companies Office

#	Register	Statute
1 ¹	Companies Register (for NZ and overseas companies)	<i>Companies Act 1993</i>
2	New Zealand Business Number (NZBN) Register	<i>New Zealand Business Number Act 2016</i>
3	Incorporated Societies Register	<i>Incorporated Societies Act 1908</i> <i>Incorporated Societies Act 2022</i>
4	Insolvency Practitioners Register	<i>Insolvency Practitioners Regulation Act 2019</i>
5	Limited Partnerships Register (for NZ and overseas limited partnerships)	<i>Limited Partnerships Act 2008</i>
6	Friendly Societies and Credit Unions Register	<i>Friendly Societies and Credit Unions Act 1982</i>
7	Retirement Villages Register	<i>Retirement Villages Act 2003</i>
8	Disclose Register (encompassing a register of offers of financial products and a register of managed investment schemes)	<i>Financial Markets Conduct Act 2013</i>
9	Financial Service Providers Register	<i>Financial Service Providers (Registration and Dispute Resolution) Act 2008</i>
10	Personal Property Securities Register	<i>Personal Property Securities Act 1999</i>
11	Auditor Register	<i>Auditor Regulation Act 2011</i>
12	Industrial and Provident Societies Register	<i>Industrial and Provident Societies Act 1908</i>
13	Approved Overseas Auditors and Associations of Accountants	<i>Financial Reporting Act 2013</i>
14	Building Societies Register	<i>Building Societies Act 1965</i>
15	Charitable Trusts Register	<i>Charitable Trusts Act 1957</i>
16	Contributory Mortgage Brokers Register	<i>Securities Act (Contributory Mortgage) Regulations 1988</i>

¹ Note that where registers are technically distinct, but experienced by users as a single register (e.g. for NZ and overseas companies), we have counted them only once.