



Thank you for the opportunity to respond to the Ministry’s consultation document on regulations for the Incorporated Societies Act 2022. The Institute of Directors (IoD) is committed to raising governance standards in all areas of New Zealand business and society and we welcome efforts to modernise the legal framework for incorporated societies and the obligations of those who run them.

Our comments are limited to three key areas, namely physical addresses, definition of officers and prescribing jurisdictions.

Provision of Addresses

- 9(a) – Information to be included in incorporation application
- 109(2) – Information that must be contained in a society’s annual return
- Sch 3 cl (3)(d) – Information that must be included in a re-registration (conversion) application
- 233 – Contents of register
- 5(3)(a) – Information to accompany a reregistration application

There are three inter-connected elements we wish to raise in relation to these clauses. First, there are inconsistencies between the above clauses. 9(a) and Sch 3 cl (3)(d) requires a contact address; whereas 109(2) requires a physical address. The reregistration information required under 5(3)(a) is “the same as the information to be provided by new societies when they register (see section 2.2.1 above)” of the Consultation Document. There needs to be consistency throughout the regulations.

The second aspect is a mechanism to identify people. In December 2021, Cabinet agreed that the Companies Office should establish a [unique identifier](#) for individuals who are directors of companies, general partners of limited partnerships, or beneficial owners of either of these entities. In addition to providing consistency with the Companies Act 1993, the unique identifier would address concerns on whether residential addresses should be made publicly available.

The third aspect, it is noted in 233(1)(h) that the register must contain the financial statements and annual returns of the society, the latter includes the physical address of all officers as per 109(2). While it is noted that this does not have to be their residential address, it may be for a large proportion of officers.

Definition of officer

The [Incorporated Societies Act 2022](#) definition 5(1)(a):

- a)** means, in relation to a society,—
 - i. a natural person who is a member of the committee; or
 - ii. a natural person occupying a position in the society that allows the person to exercise significant influence over the management or administration of the society (for example, a treasurer or a chief executive); and
- b)** includes any class or classes of natural persons that are declared by regulations to be officers for the purposes of this Act; and
- c)** excludes any class or classes of natural persons that are declared by regulations not to be officers for the purposes of this Act

The definition within the Incorporated Societies Act aligns with the Charities Act 2005 definition of an officer 4(1)(b):

means, in relation to any other entity,—

- (i)** a member of the board or governing body of the entity if it has a board or governing body; and
- (ii)** a person occupying a position in the entity that allows the person to exercise significant influence over the management or administration of the entity (for example, a treasurer or a chief executive);

It is noted that there is a fundamental difference between the two, namely use of the word ‘or’ for the Incorporated Societies Act between sub-sections (i) and (ii) as opposed to ‘and’ in the Charities Act. While use of the word ‘or’ means that the Chief Executive could be classified as an officer, the open-ended nature of this sub-section means that an influential donor or sponsor, or even a contract manager from a government agency could also be classified as an officer unless specifically excluded under 5(1)(c).

The Charities Act Amendment Bill 2022 definition of an officer 4(1):

officer, in relation to a charitable society,—

- a)** means a person who is able to exercise significant influence over the management or administration of the entity:
- b)** includes, but is not limited to,—
 - i. in relation to the trustees of a trust, any of those trustees:
 - ii. in relation to any other entity, a member of the board or governing body of the entity if it has a board or governing body:
- c)** excludes any class or classes of persons that are declared by regulations not to be officers for the purposes of this Act

The proposed definition within the Charities Act Amendment Bill expands the definition further, and could potentially include Mayors and government Ministers.

The Companies Act 1993 acknowledges that a shareholder could have significant influence on a company, and in those instances if they are seen to exert too much influence and act to control a company, they are deemed to be a director with all the obligations that come with that (Section 126).

Where possible, consistency between key legislation is prudent and in setting these provisions, the primary reasons for doing so needs to be clear, in particular, accountability obligations for those involved in the administration of incorporated societies.

Prescribing jurisdictions

In accordance with our original submission of 27 May 2021, we consider that the disqualification of officers 47(3)(g) should apply to any country other than New Zealand from which an officer has, in all material respects, an order that is substantially similar to an order referred to in 43(3)(f).

Conclusion

We encourage, where possible, consistency between key legislation that enables and supports governors to exercise best practice governance.

Ngā mihi nui

