



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Modernising the Companies Act 1993 and Making Other Improvements for Business	Date to be published	15 August 2024

List of documents that have been proactively released

Date	Title	Author
31 July 2024	Modernising the Companies Act 1993 and Making Other Improvements for Business	Office of the Minister for Commerce and Consumer Affairs
31 July 2024	Modernising the Companies Act 1993 and Making Other Improvements for Business ECO-24-MIN-0149 Minute	Cabinet Office
31 July 2024	Appendix 1: Proposals in the Companies Act, Limited Partnerships Act, and Insolvency Act with a Regulatory Impact Analysis Exemption	MBIE
31 July 2024	Appendix 2: Amendments to RSB 3 proposals	MBIE
31 July 2024	Appendix 3: Regulatory Impact Statement: Companies Act 1993 Modernisation and Simplification Changes	MBIE
31 July 2024	Appendix 4: Regulatory Impact Statement: Making it easier for government agencies to require an NZBN	MBIE
31 July 2024	Appendix 5: Better Visibility of Individuals Who Control Companies and Limited Partnerships CAB-21-MIN-0539.01 Minute	Cabinet Office
31 July 2024	Appendix 6: NZBN legislative proposals – additional detail	MBIE
31 July 2024	Appendix 7: Business registers and associated legislation in scope for NZBN changes	MBIE

Information redacted

YES / NO (please select)

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 Confidential advice to Government.

[In Confidence]

Office of the Minister of Commerce and Consumer Affairs
Office of the Minister for Small Business and Manufacturing

Cabinet Economic Policy Committee

Modernising the Companies Act 1993 and making other improvements for business

Proposal

1. I seek decisions to modernise, simplify and digitise the Companies Act 1993, and increase uptake of the New Zealand Business Number (NZBN), a unique global identifier available to every New Zealand business.
2. These proposals are part of a package of corporate governance reform to address problems I have identified that affect New Zealand companies' ability to do business efficiently. Problems include out-of-date legislation that hampers business growth and innovation, and poor business practices such as harmful phoenixing behaviour.
3. The main objective of the proposed corporate governance reforms is to reduce compliance costs and complexity through more efficient regulation.

Relation to government priorities

4. Key priorities of the coalition Government are to rebuild the economy and improve the quality of government spending and regulation. The company is the main corporate form used for conducting business in New Zealand. As at 30 June 2024, more than 731,000 companies were registered, the vast majority of which are smaller companies. Therefore, it is important for New Zealand's economic goals that the companies' regulatory system operates effectively and efficiently, addresses poor behaviour and keeps pace with technological developments.

Executive summary

5. I have been engaging with company law experts and stakeholders about the Companies Act and related matters. Through that engagement I have identified problems that I consider need addressing, including that:
 - 5.1. Some elements of the Companies Act are out-of-date, ambiguous or overly complex resulting in unnecessary compliance burdens for our companies (for example by not allowing them to make the most of modern technology). Other elements of the Companies Act need review, including the duties and liabilities we place on directors.
 - 5.2. Despite existing measures, some poor and illegal business practices, including phoenixing, are occurring which is causing financial harm and distress to other businesses and individuals.
 - 5.3. Directors' and shareholders' home addresses are publicly available giving rise to safety and privacy concerns.

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- 5.4. It is hard to identify all the companies a director is associated with, or follow their business activities, making it easier for people to engage in illegal activity and harder for the Registrar of Companies and the Courts to enforce the rules.
- 5.5. The NZBN – a globally unique identifier that is designed to make it easier for businesses to connect and transact – is not being used to its full potential by New Zealand’s businesses or government agencies.
6. I intend to take a phased approach to addressing these problems. This paper seeks your agreement to **phase one**, a package of legislative changes including:
 - 6.1. changes to modernise, simplify and digitise the Companies Act to better reflect the modern business environment, reduce compliance costs for companies and the regulator, and, where appropriate, use more modern language and move prescriptive detail into regulations
 - 6.2. introducing unique identifiers for directors and general partners, to help identify poor and illegal business practices including harmful phoenixing, to help with enforcement of the law and allow for directors’ and shareholders’ home addresses to be replaced with an address for service
 - 6.3. technical improvements to New Zealand’s insolvency law to make outcomes fairer for creditors, including extending the claw back period to four years for transactions with related parties prior to liquidation
 - 6.4. formalising a power to levy companies to help pay for the Official Assignee to wind up failed companies in an efficient and orderly manner in order to reduce the costs to the Crown
 - 6.5. measures to improve uptake and usage of the NZBN.
7. Policy decisions are required in relation to the Companies Act and NZBN changes. I have heard from stakeholders that it is very important to modernise the Companies Act and introduce unique identifiers. The proposed insolvency law changes are based on recommendations of insolvency law experts and stakeholders in a working group convened by the fifth National Government. The previous Government made policy decisions for unique identifiers and insolvency law but did not progress the necessary legislation.
8. In parallel to this phase one work, starting next year the Law Commission will carry out a review of directors’ duties, liability and enforcement, following the Minister of Justice referring my review proposal to them. I am also looking at non legislative ways to address the problems I have identified.

A package of improvements to New Zealand’s corporate governance legislation

9. I propose a package of reforms to address issues I have identified in New Zealand’s corporate governance legislation. These reforms will:
 - 9.1. modernise, simplify and digitise the Companies Act to better reflect the modern business environment;

- 9.2. help address poor and illegal business practices such as harmful phoenixing and allow directors and shareholders to suppress their residential addresses from the Companies Register and instead provide an address for service;
 - 9.3. make improvements to insolvency law to help make sure creditors get their fair share when a company fails;
 - 9.4. increase NZBN uptake to make it easier for businesses to connect, transact and make productivity gains;
 - 9.5. formalise a power to levy companies to help pay for the Official Assignee to wind up failed companies in an efficient and orderly manner.
10. A summary of my proposals – and the policy decisions I am seeking – are set out below.

Modernise, simplify and digitise the Companies Act

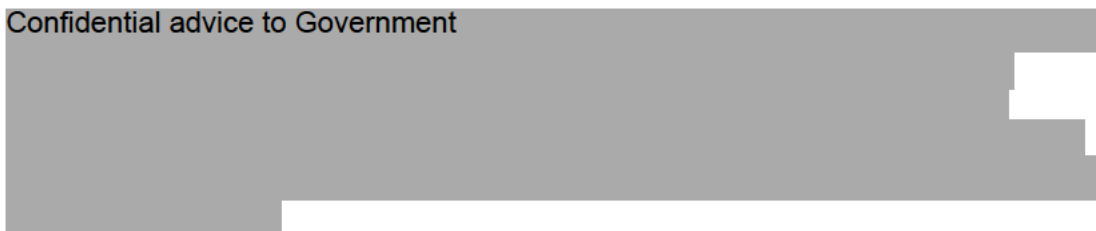
11. The Companies Act sets out the rules for how companies are established, operated and dissolved, and defines the relationships between companies and their directors, shareholders, and creditors. While the Act has been amended since it was introduced 30 years ago, it is evident that there are aspects that could be improved with relatively straightforward amendments.
12. For example, some elements of the Act do not adequately reflect how the modern business environment has changed in the last 30 years. Some provisions which, at the time the Act was introduced, were quite new to company law and so came with extra protections (such as share buybacks), are now considered to be uncontroversial. Nor has the Act been fully updated to make optimal use of digital technology.
13. I have put together a package of proposals which I have tested with a group of company and insolvency law experts and stakeholders (such as the Institute of Directors, the NZX Limited, and the New Zealand Shareholders Association).
14. The main objective of these changes is to reduce compliance costs and complexity through more efficient regulation. This will be achieved by, for example, addressing ambiguities and simplifying processes or prescription in the legislation, and facilitating the greater use of digital technologies in the administration of companies' affairs.
15. The following key changes are covered in the Regulatory Impact Statement (**Appendix 3**):
 - 15.1. *Introduce a simpler and cheaper process for a company to reduce its share capital* Currently, if a company wishes to reduce its share capital other than through a buy-back offer, it must seek the approval of the court, which is time-consuming and expensive. I propose to introduce a process modelled on Australian legislation that will avoid the time and expense of going to court, subject to a resolution of the board and the agreement of shareholders;
 - 15.2. *Amend the regime for major transactions to avoid duplication of processes and strengthen the current provisions so that the regime cannot be avoided* Any acquisition or disposition of assets amounting to more than half of the capital value of a company – a major transaction – must be approved by a special

resolution (a resolution approved by 75 per cent of shareholders). I am of the view that transactions that relate solely to the capital structure of the company (share issues, buybacks, dividends and redemptions), as opposed to the acquisition or disposition of major assets, should not be considered major transactions for the purposes of the Companies Act. Adequate processes and protections already exist for these elsewhere in the Companies Act. In addition, I propose to strengthen the current provisions so that the major transaction regime cannot be avoided by implementing a transaction through a related series of transactions (either by splitting the transaction into a series of smaller transactions, or executing the transaction through a subsidiary);

15.3. *Expand the circumstances under which processes for certain corporate actions can be simplified if there is unanimous assent from shareholders* There are some actions currently not covered by this simplified process that are of a nature such that it would be consistent for them to be covered in certain circumstances. These are: (i) issuing of options or convertible securities, (ii) crediting unpaid share capital, and (iii) acquisition of shares to be held as treasury stock;

15.4. *Address how unclaimed dividends are dealt with* Unless a company specifically provides for it in their constitution, there is currently no process in the Act to deal with unclaimed dividends when shareholders cannot be contacted. These then sit as a permanent liability on the company's balance sheet. I propose that, after a period of two years, and following reasonable endeavours to contact the shareholder, unclaimed distributions may be mingled with other money of the company and used in the same way as other funds. The shareholder's claim to the distribution will remain as a contingent liability of the company.

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17. I also propose changes which are exempt from Regulatory Impact Analysis requirements, and which are indicated in **Appendix 1**. They include measures to:

17.1. *Modernise the Act* Some elements of the Act could better reflect the modern business environment or be expressed in more modern language. For example, some actions (such as share buybacks and a company holding its own shares) which currently can only happen if provided for in a company's constitution are now considered uncontroversial. As only two in seven companies have a constitution, I consider these actions should be available by default (Item 30, Appendix 1);

17.2. *Simplify processes in the Act* A number of processes in the Act are unnecessarily complex, prescriptive, or not well aligned with similar, but newer, legislation (such as the Incorporated Societies Act 2022 and the Financial Markets Conduct Act 2013). The changes I propose will simplify these, saving time and money. Examples include the processes for the Registrar of

Companies to reserve company names (Item 4, Appendix 1), restore companies to the register (Item 24, Appendix 1) and correct mistakes on the register (Item 26, Appendix 1). The provisions around disclosure of interest and share dealing by directors could also be better aligned with similar provisions in the Financial Markets Conduct Act 2013 (Items 13 and 14, Appendix 1);

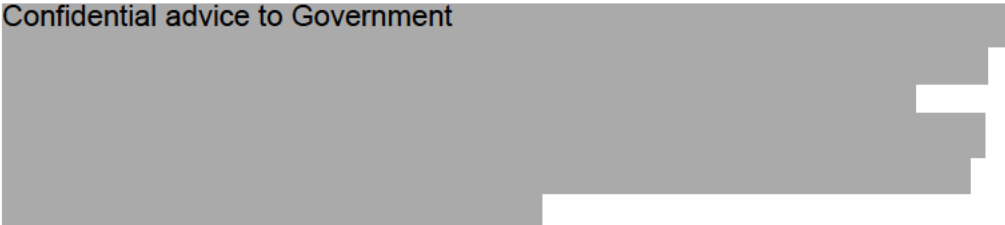
- 17.3. *Digitise the Act* The Act does not enable companies to make full use of modern digital technology. For example, I propose introducing a ‘notice of access’ regime (as has recently been introduced in the UK and Australia) to allow companies and liquidators to put certain information for shareholders and creditors (such as annual reports and AGM information) on a webpage and share the link with them rather than having to send out copies to every person (Item 27, Appendix 1). As a consequence, some existing provisions on the giving of notices, or providing documents, would be amended or repealed.
18. I also propose to repeal section 131(5) of the Companies Act, which was inserted by the *Companies (Director’s Duties) Amendment Act 2023* (which resulted from a member’s bill). This section added an avoidance of doubt provision stating that, when considering the best interests of the company, a director may consider matters other than the maximising of profit (for example, environmental, social and governance (ESG) matters). The law already allows directors to take into account ESG factors and this new subsection is therefore redundant.

Addressing harmful phoenixing, unique identifiers and directors’ addresses

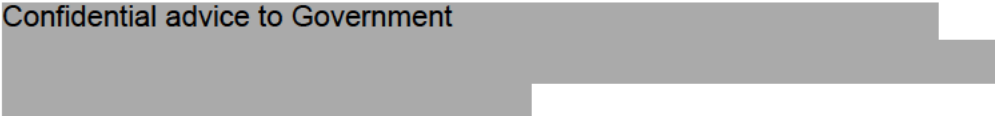
19. I am also looking at ways to address poor and illegal business practices such as phoenixing. This includes where company directors transfer the assets of a company to a new company at under market value, or simply leave the debts of the old company behind, with the intention of defeating the interests of creditors of the old company.
20. There are already legislative provisions in the Companies Act that address these types of activities, but phoenixing is still occurring. I consider that the following legislative and non-legislative measures will have a positive impact:

20.1. Introducing unique identifiers for directors to increase the integrity and transparency of directors’ identities and corporate histories for use by law enforcement, customers and creditors (further detail below in paragraphs 21 - 23;

20.2. Confidential advice to Government



20.3. Confidential advice to Government



20.4. Ensuring the reporting framework – both legislative and operational – for licensed insolvency practitioners is sufficiently robust to effectively and promptly identify serious problems with a company’s business practices when

these are encountered during the liquidation process. I have had initial meetings with insolvency practitioners on this issue and if further work identifies legislative improvements, I will report back to Cabinet on these.

21. Introducing unique identifiers legislation will also mean that directors' and shareholders' will have the option to have their home addresses suppressed from the Companies Register and replaced with an address for service. This addresses a significant safety and privacy concern held by directors for some time now. The approach I propose is more comprehensive than that provided by Hon Dr Deborah Russell's *Companies (Address Information) Amendment Bill* which is currently before Select Committee, and more flexible by enabling detail (such as appropriate types of address for service) to be prescribed in regulations. She has indicated that she will withdraw her bill if a more comprehensive solution is introduced.
22. In addition to unique identifiers for directors and measures to suppress directors' addresses from the Companies Register, the previous Government agreed that, in parallel, a central beneficial ownership register for companies and limited partnerships would be implemented (see CAB-21-MIN-0539.01 included in **Appendix 5**). Drafting of a bill covering all of these matters commenced but was not completed.
23. While I propose that unique identifiers for directors be progressed as part of this package of reforms, I do not propose to progress the beneficial ownership register in the package. The key policy objectives of the beneficial ownership register are to fight crime (eg money laundering, tax evasion and terrorism financing) and help meet our international obligations under the Financial Action Taskforce. The register would also add a compliance burden to companies (albeit a small one). As such, it does not fit well with the overall scheme of the package. In addition, its complexity would delay the finalisation and introduction of the other reforms. I will work with my Ministerial colleagues in the Justice sector to determine the best way forward for this work.

Improvements to New Zealand's insolvency law

24. The Insolvency Working Group was set up in 2015 by the fifth National Government to examine aspects of corporate insolvency law. The previous Government agreed to a number of measures to improve the fairness, predictability and efficiency of the insolvency framework in response to the group's recommendations (CAB-19-MIN-0491.01). Some of these have been implemented (such as the insolvency practitioners licensing regime). I propose that those measures which have not progressed to date be included in this package of reforms as they will improve the law in this area and fit well within it.
25. These measures include extending the claw back period to four years for transactions undertaken with related parties prior to liquidation.

Improving the uptake of the New Zealand Business Number

26. The NZBN makes business interactions faster and easier by enabling core business information on the NZBN register (eg legal and trading names, addresses and owners/directors' names) to be prepopulated. This reduces the time businesses need to spend on surveys and other forms. The NZBN also helps prevent scams and facilitate

trusted digital transactions, as it can be used to verify a business' identity. It also underpins eInvoicing (the automatic exchange of billing information between financial systems).

27. According to a recent study by the New Zealand Institute of Economic Research, full NZBN adoption could realise \$550 million per annum in productivity gains. For this to happen, the NZBN register needs to be used widely by government and businesses. But even though all companies and a significant number of sole traders have NZBNs, use of the NZBN register isn't yet at the level that would realise these benefits.
28. To address this situation, I propose several changes to the New Zealand Business Number Act 2016 (**NZBN Act**), which are described in more detail in **Appendix 6**:
 - 28.1. Make unincorporated entities' legal/trading names and owners/directors names public by default, and give the NZBN Registrar the power to suppress these in cases where publishing this information would risk the business owner's or their family's safety or privacy;
 - 28.2. Remove the Order in Council process for government agencies to require an NZBN as a condition of service, and replace this with a provision enabling agencies to require an NZBN as a condition of service, so long as this is consistent with the purposes of the NZBN Act and the legislation under which the agency is providing the service. The proposed change would increase use of the NZBN in business-to-government interactions, as agencies will be more likely to build NZBN functionality into their systems;
 - 28.3. Enable the NZBN to be used as an identifier for other business registers, and enable these registers to be updated using public NZBN data. This will allow better data integration and enable more businesses to provide information to government once only. I seek Cabinet's agreement to, where needed, amend the primary and secondary legislation that governs these registers (the registers and associated legislation are listed in **Appendix 7**). These changes will allow the NZBN to be used as an identifier for each business register and allow the relevant Registrar to update each register based on public information contained on the NZBN register;
 - 28.4. Add bank account names to the NZBN register, so they can be cross-checked against bank account numbers held on the register. This change will support business verification and help prevent scams;
 - 28.5. Introduce a Small Business Identifier – an NZBN data field enabling entities to identify themselves as a small business for the purpose of facilitating business-to-business interactions. This is to support the voluntary code on payment times being developed by Business NZ. Signatories to the code will be able to use the NZBN register to find out which of their suppliers should benefit from the commitment;
 - 28.6. Align the Māori Business Identifier with Statistic NZ's definition of a Māori business, so there is only one definition of Māori business used across government.

29. The NZBN has huge potential to reduce compliance. With 92.5 per cent of our businesses having zero employees, I intend to consider further how to incentivise sole traders to lift their uptake and use of the NZBN. I have asked MBIE to consider options to progress this. This is likely to involve a mix of further policy changes and operational improvements.

Insolvency and Trustee Service levy

30. The Insolvency and Trustee Service (**ITS**) is a business unit of MBIE and is responsible for performing the statutory functions of the Official Assignee. The Official Assignee is appointed to be the liquidator of a company by the Court when a private insolvency practitioner is not appointed.
31. The ITS can recover its staff time cost and direct expenses from the realisable assets of a company in liquidation. However, because the Official Assignee typically acts as a liquidator for companies with limited or no assets, the amounts recovered often fall well short of the costs involved and the Crown is therefore funding the majority of the cost of this service.
32. I propose to take this opportunity to expand the levy making powers in the Companies Act **Confidential advice to Government** to help fund the ITS for managing company liquidations. This is the best way of meeting all or some of this cost because it is in the interests of all companies that company failures are dealt with in an efficient and orderly manner, otherwise the Crown would need to continue to fund this.
33. If Cabinet agrees to implement this new levy making power, I will return to Cabinet to seek approval to the amount of the levy to be charged.

Regulatory Systems (Economic Development) Amendment Bill changes


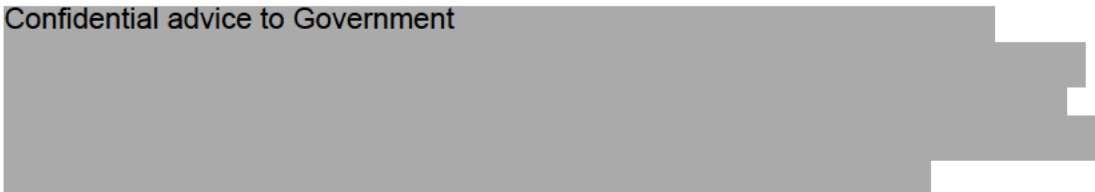
34. Cabinet recently agreed to progress some changes that were included in the Regulatory Systems (Economic Development) Amendment Bill (**RSB**) in other pieces of legislation on the 2024 programme (CBC-24-MIN-0037 and CAB-24-MIN-0168 refers). I propose that amendments to the Companies Act 1993, Insolvency Act 2006, Limited Partnerships Act 2008, NZBN Act 2016 and Receiverships Act 1993 are included in this package of reforms as they are consistent with other changes I am making.
35. The amendments to the Companies Act will modernise, simplify and digitise the Companies Act. For example, the amendments remove the requirement to sign an application for incorporation or an annual return as applications and returns are filed electronically and signatures are not necessary. This is because individuals are required to confirm they are authorised to make the application or send the annual return. Similar sorts of technical amendments will be made to the Insolvency Act, Limited Partnerships Act and Receiverships Act. For example, the Insolvency Act is being amended so that the method for calculating interest aligns with the method set out in the Companies Act.

- 36. The NZBN Act change that was going to be made in the RSB gives the NZBN Registrar the power to suppress certain information on the NZBN register if it poses privacy or safety risks. This is discussed above at paragraph 28.1 and in **Appendix 6**.
- 37. As the original Cabinet decisions taken were some time ago, I have been advised that some previous Cabinet decisions should now be either rescinded or amended. These changes and the reasons for them are set out in **Appendix 2**.


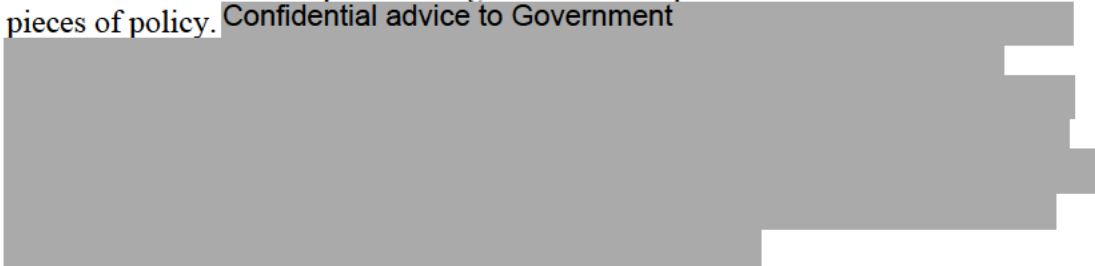
Cost-of-living Implications

- 38. These proposals are not anticipated to have notable cost of living implications.

Financial Implications

- 39. Confidential advice to Government

- 40. Confidential advice to Government


Legislative Implications

- 41. Confidential advice to Government

- 42. The Corporate Governance Amendment Bill is planned to be an omnibus bill amending the Companies Act 1993, Insolvency Act 2006, Limited Partnerships Act 2008, New Zealand Business Number Act 2016 and Receiverships Act 1993. In order to give effect to the policy proposal discussed in paragraph 27.3 (which allows other MBIE business registers to use the NZBN and source data from the NZBN register) the Bill also needs to amend the governing legislation for each of those registers. The registers and their associated legislation are listed in **Appendix 7**.
- 43. The Bill amends several pieces of legislation and implements a number of interrelated pieces of policy. Confidential advice to Government

- 44. The drafting to implement the unique identifier for directors and other corporate role-holders proposals may result in a new statute, which would be binding on the Crown.

Impact Analysis

Regulatory Impact Statement

45. MBIE has prepared a Regulatory Impact Statement (**RIS**) for the proposals to amend the Companies Act described in paragraphs 15.1 - 15.4 above. MBIE's Regulatory Impact Analysis Review Panel has reviewed the RIS and considers that it meets the quality assurance criteria. The RIS is attached as **Appendix 3**.
46. The Ministry for Regulation has determined that the proposals contained in **Appendix 1** (amendments to the Companies Act, Limited Partnerships Act and Insolvency Act), **Appendix 2** (amendments to RSB proposals) and the proposal to introduce a new levy making power are exempt from the requirement to provide a RIS or Cost Recovery Impact Statement on the grounds that there are no or only minor impacts on businesses, individuals, and not-for-profit entities.
47. MBIE has prepared a RIS for the proposal to amend section 29 of the NZBN Act. MBIE's RIS Panel considers that the information and analysis in the RIS meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper. The RIS is attached as **Appendix 4**.
48. The Ministry for Regulation has determined that the other NZBN-related proposals are exempt from the requirement to provide a RIS on the grounds that there are no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

49. The Climate Implications of Policy Assessment (**CIPA**) team has been consulted and confirms that the CIPA requirements do not apply to these proposals as the threshold for significance is not met.

Population Implications

50. There are no population implications from the proposals in this paper.

Human Rights

51. No human rights implications arise from the proposals in this paper.

Use of external Resources

52. Roger Wallis, a partner at the law firm Chapman Tripp, has acted as a specialist legal advisor on the Companies Act modernisation proposals in this paper.
53. Mr Wallis has provided 62 hours of legal advice to date in relation to the proposals to modernise, simplify and digitise the Companies Act. Mr Wallis was engaged to undertake this work due to his expertise in company law.

Consultation

54. The following departments and entities were consulted on this Cabinet paper: Te Puni Kōkiri, Statistics NZ, Treasury, Ministry of Justice, Department of Internal Affairs,

New Zealand Customs Service, Inland Revenue, New Zealand Police, Ministry of Justice (Policy Group), Ministry of Foreign Affairs and Trade, Ministry for Primary Industries, Financial Markets Authority, Reserve Bank of New Zealand, Land Information New Zealand, Department of the Prime Minister and Cabinet (National Security Group), Public Service Commission, New Zealand Security Intelligence Service, Government Communications Security Bureau, Serious Fraud Office, and OPC. The Department of the Prime Minister and Cabinet was informed.

55. The proposals to amend the Companies Act have not been consulted on publicly, but targeted consultation has taken place with a group of company and insolvency law experts and stakeholder organisations: Peter Watts KC and John Land from Bankside Chambers, Bell Gully, Russell McVeagh, Minter Ellison Rudd Watts, Price Waterhouse Coopers, Chartered Accountants Australia and New Zealand, New Zealand Law Society, NZX Limited, Institute of Directors, and the New Zealand Shareholders Association.
56. Whilst agencies are generally supportive of the introduction of a unique identifier, Ministry of Justice, New Zealand Police, Serious Fraud Office, New Zealand Customs Service, Ministry for Primary Industries, and the Public Service Commission expressed concerns about not including proposals for a beneficial ownership register as part of this package of reforms. They consider a delay in implementation has implications for law enforcement in combatting corruption, money laundering, terrorist financing, fisheries and trade-related crimes, and tax evasion and for better tracking beneficiaries of the proceeds of crime. They also highlighted the risk it creates in respect of the upcoming Financial Action Task Force Mutual Evaluation in 2029 as the lack of a beneficial ownership register was identified as an area of deficiency for New Zealand.

Communications

57. MBIE's website will be updated to provide details about this package of reforms. I intend to announce its progress in due course.

Proactive Release

58. I will direct officials to release this Cabinet paper with appropriate redactions.

Recommendations

The Minister of Commerce and Consumer affairs and the Minister for Small Business and Manufacturing recommend that the Committee:

Context

- 1 **note** that the Minister of Commerce and Consumer Affairs and the Minister for Small Business and Manufacturing intend to progress targeted legislative reform to improve the Companies Act 1993 and other corporate governance legislation;
- 2 **note** that the first phase of these reforms is to introduce a package of reforms that would:
 - 2.1 modernise, simplify and digitise the Companies Act 1993;

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- 2.2 introduce unique identifiers for directors and general partners;
 - 2.3 allow director and shareholder home addresses on the Companies Register to be replaced with an address for service;
 - 2.4 improve the effectiveness of corporate insolvency law;
 - 2.5 improve uptake of the New Zealand Business Number (NZBN);
 - 2.6 make technical changes that were proposed to be included in the Regulatory Systems (Economic Development) Amendment Bill; and
 - 2.7 introduce a levy making power to help fund the Insolvency and Trustee Service;
- 3 **note** that Cabinet has made some of the policy decisions required to progress the package of reforms and further decisions are being sought in this paper;

Modernising, simplifying and digitising the Companies Act

- 4 **agree** to amend the Companies Act 1993 to provide a new process to reduce the share capital of a company without court approval subject to a resolution of the board and agreement of shareholders (modelled on the similar provision in the Australian legislation);
- 5 **agree** to amend the Companies Act 1993 to clarify that the major transactions provisions do not apply to transactions relating solely to the capital structure of the company (share issues, buybacks, dividends and redemptions);
- 6 **agree** to amend the Companies Act 1993 to strengthen the major transactions provisions so that companies cannot avoid the protections of section 129 of the Companies Act by implementing the transaction through a related series of transactions;
- 7 **agree** to amend the Companies Act 1993 to permit the following actions other than by the usual processes set out in the Act if they have the unanimous assent of shareholders:
 - 7.1 issue of options or convertible securities;
 - 7.2 crediting unpaid share capital; and
 - 7.3 acquiring shares to be held as treasury stock;
- 8 **agree** to amend the Companies Act 1993 to provide that, after a period of two years, and after reasonable efforts to contact the shareholder, unclaimed dividends can be mingled with other company money and used by the company, while the shareholder's claim still remains;
- 9 **agree** to make further minor amendments to the Companies Act 1993 to:
 - 9.1 clarify Parliament's intent;

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- 9.2 reduce unnecessary compliance burdens for businesses and implementation costs for agencies;
 - 9.3 address regulatory duplication, gaps, errors, ambiguities and inconsistencies;
 - 9.4 respond to the modern environment, including by ensuring that legislation responds to changing technology;
- 10 **note** an indicative form of the changes referred to in recommendation 9 is outlined in **Appendix 1**, and that these include two related changes to the Limited Partnerships Act 2008 and Insolvency Act 2006;
- 11 **agree** that, where a change to the Companies Act may cast doubt on the interpretation of a similar provision in any other Act in the Commerce and Consumer Affairs or Small Business and Manufacturing portfolios, to make a substantially similar change to that other Act;

Unique identifiers and directors' addresses

- 12 **note** that Cabinet has previously agreed to introduce a unique identifier for directors and other corporate role-holders and a beneficial ownership register, and permit directors and shareholders to have their residential addresses removed from the Companies Register and replaced with an address for service (see CAB-21-MIN-0539.01 which is set out in **Appendix 5**);
- 13 **note** that, at this stage, the Minister of Commerce and Consumer Affairs proposes to progress the unique identifier for directors and general partners of limited partnerships and the provisions relating to directors' and shareholders' addresses, but not create a beneficial ownership register;

Improvement to New Zealand's insolvency law

- 14 **note** that Cabinet has agreed to improve aspects of insolvency law (CAB-19-MIN-0491.01) in response to the Insolvency Working Group recommendations;
- 15 **note** that the Minister of Commerce and Consumer Affairs proposes that the insolvency reforms that have not otherwise been progressed be progressed as part of this package of reforms;

Improve uptake of the New Zealand Business Number

- 16 **agree** that unincorporated entities' legal/trading names and owners/directors' names be made public by default via a direct amendment to the New Zealand Business Number Act 2016 (Cabinet previously noted that this change would proceed via an Order in Council, refer CAB-18-MIN-0466);
- 17 **note** that Cabinet agreed that the New Zealand Business Number (NZBN) Registrar would have the power to suppress this information if releasing it would risk someone's personal safety or privacy (CAB-19-MIN-0362) and the Minister for Small Business and Manufacturing intends to progress this change alongside that referred to in recommendation 16;

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- 18 **agree** to remove the Order in Council process for government agencies to require an NZBN as a condition of service and replace this with a provision enabling agencies to require an NZBN as a condition of service, so long as this is consistent with the purposes of the NZBN Act and the legislation under which the agency is providing the service;
- 19 **agree** to revoke the New Zealand Business Number (Authority to Require NZBN) Regulations 2020, as part of the change referred to in recommendation 18;
- 20 **agree** to introduce the NZBN as a permitted business identifier for the MBIE-administered registers listed in **Appendix 7**, and that publicly available core business information held on the NZBN register may be used to populate and/or update core business information on these registers;
- 21 **agree** that the Registrar of each register listed **Appendix 7** has sole discretion to decide what publicly available core business information will be accessed from the NZBN register, and when;
- 22 **agree** to amend the primary and secondary legislation listed in **Appendix 7**, where needed, to allow the NZBN to be used as an identifier for these business registers, and to allow the relevant Registrar to update each register with public information held on the NZBN register;
- 23 **note** that Cabinet agreed to add bank account numbers to the NZBN register in 2018 (CAB-18-MIN-0635), but MBIE has not yet implemented this change;
- 24 **agree** that Schedule 4 of the New Zealand Business Number Act 2016 also include a field for the name of the bank account, as banks are moving to be able to crosscheck account numbers with account names;
- 25 **agree** that Schedule 4 of the New Zealand Business Number Act 2016 include a field enabling businesses to identify themselves as a small business for the purpose of facilitating business-to-business interactions (“Small Business Identifier”);
- 26 **note** that the NZBN Registrar will provide guidance to help businesses decide whether to identify as a small business, and that this will reflect the provisions of the voluntary code on payment times currently being developed by Business NZ;
- 27 **note** that in 2020, Cabinet agreed to amend the NZBN register to allow for a Māori Business Identifier (LEG-20-MIN-0132), but since then Statistics New Zealand has introduced a different definition (“data standard”) for a Māori business;
- 28 **agree** to amend Schedule 4 of the New Zealand Business Number Act 2016 so that the eligibility criteria for the Māori Business Identifier aligns with the Statistics NZ data standard for a Māori business;
- 29 **note** that the Minister for Small Business and Manufacturing has considered the statutory criteria set out in section 22 of the New Zealand Business Number Act 2016 in respect of including in Schedule 4 of the Act the name of the bank account along with the bank account number, a Small Business Identifier, and a definition of a Māori business, and considers that the section 22 criteria is satisfied in all cases;

IN CONFIDENCE

30 **note** that recommendations 24, 25 and 28 will be progressed by Order in Council;

Regulatory Systems (Economic Development) Amendment Bill (No. 3)

31 **note** that Cabinet has recently confirmed that amendments to the Companies Act 1993, Insolvency Act 2006, Limited Partnerships Act 2008, New Zealand Business Number Act 2016 and Receiverships Act 1993 that were to proceed through the Regulatory Systems (Economic Development) Amendment Bill should instead be progressed through other Bills on the 2024 legislation programme (CBC-24-MIN-0037 and CAB-24-MIN-0168 refers);

32 **note** that the Minister of Commerce and Consumer Affairs, and the Minister for Small Business and Manufacturing propose that the amendments referred to in recommendation 31 be included in the current package of reforms;

33 **agree** that some of the policy decisions relating to the changes referred to in recommendation 31 be rescinded or amended as set out in **Appendix 2** (which also sets out the reasons for these changes);

Insolvency and Trustee Service Levy

34 **note** that although the Insolvency and Trustee Service is able to recover its costs for providing liquidation services, these are often insufficient because there are not enough assets left in the companies being liquidated;

35 **agree** to create a levy making power in the Companies Act in order for companies to contribute to the cost of the Official Assignee's liquidation services as performed by the Insolvency and Trustee Service;

36 **note** that in Budget 2024 Ministers agreed to reduce Crown revenue for the Insolvency and Trustee Service by \$1.560 million and offset this reduction by an increase to revenue other from FY 2025/26 if a levy could be introduced, and introducing a power to implement a levy gives effect to this decision;

37 **note** the financial implications of recommendation 35 above could include a reduction in Crown revenue of \$1.560 million offset by an increase to revenue other;

Drafting

38 **invite** the Minister of Commerce and Consumer Affairs and the Minister for Small Business and Manufacturing to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations in this paper;

39 Confidential advice to Government

40 **authorise** the Minister of Commerce and Consumer Affairs and the Minister for Small Business and Manufacturing to approve the release of an exposure draft of the legislation, if they consider it appropriate to do so; and

- 41 **authorise** the Minister of Commerce and Consumer Affairs and the Minister for Small Business and Manufacturing to further clarify and develop policy matters, and make decisions relating to the proposals in this Cabinet paper in a manner not inconsistent with the policy recommendations contained in the paper, including on any matters that might arise during the drafting process.

Authorised for lodgement

Hon Andrew Bayly

Minister for Commerce and Consumer Affairs
Minister for Small Business and Manufacturing

Appendix 1: Proposals in the Companies Act, Limited Partnerships Act and Insolvency Act with a Regulatory Impact Analysis Exemption

Attached as separate document

Appendix 2: Amendments to RSB3 proposals

Attached as separate document

Appendix 3: Regulatory Impact Statement – Companies Act amendments

Attached as separate document

Appendix 4: Regulatory Impact Statement – Making it easier for government agencies to require an NZBN

Attached as separate document

Appendix 5: Cabinet minute (Better Visibility of Individuals Who Control Companies and Limited Partnerships)

Attached as separate document

Appendix 6: NZBN legislative proposals – additional detail

Attached as separate document

**Appendix 7: Business registers and associated legislation in scope for change to allow:
1) the NZBN to be used as a business identifier, and 2) public information to be sourced
directly from the NZBN register**

Attached as separate document