



Regulatory System Assessment: Corporate

Summary of the Corporate Regulatory System Assessment

Context

1. The Ministry of Business Innovation and Employment has primary responsibility for designing and overseeing sixteen regulatory systems. A regulatory system includes the rules, institutions, skilled workforce, practices and understandings which combine to make regulation of an activity or sector effective.
2. The State Sector Act was amended in 2013 to make it clear that Departmental Chief Executives have regulatory stewardship responsibilities. Taking a stewardship approach requires Chief Executives to look beyond their direct statutory responsibilities to the capability and resilience of the regulatory system over time, including the other agencies which form part of the system as well as MBIE.
3. The principal reason that MBIE has developed a regulatory systems programme is to discharge these stewardship responsibilities well. MBIE carries out regulatory systems assessments to ensure that individual systems are performing well, and are able to respond to emerging issues and trends so that they remain fit-for-purpose. Looking systematically across different regulatory systems enables MBIE to transfer learning and innovation from one system to others more readily.
4. One of the tools MBIE is using to be an effective steward of its regulatory systems is a periodic assessment of each system. These assessments are a snapshot rather than an in depth analysis. The assessments check how the system is working now rather than what the rules should be (i.e. they're not policy reviews), and they look to identify the main areas which should be the focus of MBIE's attention in the short to medium term, rather than be more in depth analyses of the strengths and weaknesses of an institution (i.e. they're not Performance Improvement Framework reviews).

The Corporate Regulatory System

5. The review covered a broad range of activities relating to the establishment, life, and closure of (predominantly) corporate entities. The Companies Act 1993 formed the core of this regulatory review. In addition to the companies' regime, there are several other smaller-scale entity types that fall within the system. The key statutes underpinning the system are listed in Annex 1.



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6. At a high level the system's purpose is to enable better performing businesses and accountable entities, and market confidence, by setting rules and incentives for how these entities are **structured, managed and dissolved**.
 7. The corporate regulatory system is a foundational system in many ways. It provides the infrastructure for establishing business and corporate structures for the benefit of New Zealand's economy. A number of other regulatory systems then more specifically define and guide appropriate corporate behaviour around key functional or risk areas (e.g. the regulation of financial markets, or anti-money laundering regulation).

The Assessment Process

8. The assessment of the corporate regulatory system was commenced in late 2015 by a panel comprising Siobhan Routledge (Chair), Policy Director, Labour, Science and Enterprise Group; Louise Hornabrook, Senior Advisor, Market Services Group; and Nathan Spence, Analyst, The Treasury. Martien Duis, Solicitor, Corporate, Governance and Information Group, assisted with note taking and drafting aspects of the report. Peter Crabtree, General Manager, Labour, Science and Enterprise Group sponsored the review.
9. The panel conducted a series of interviews from February through to April 2016. Some follow up interviews were conducted in June and July. The scope of the corporate regulation system meant it was important to hear from those with experience of the different parts of the system. The panel interviewed 13 external parties, including system participants, regulated parties, and other associated regulators and professional bodies and advisors who observe the system closely. The panel also interviewed MBIE's policy team and the Business Integrity Services Branch, and other relevant units such as the Insolvency and Trustee Service and the Integrated Regulatory Enforcement Branch.
10. Discussions with all participants were free and frank, and the panel appreciated the willingness of participants to take the time to meet it. The panel was impressed with the breadth and depth of knowledge of the interviewees, and with their demonstrated ability to explore issues above and beyond their immediate sphere of operation. Many participants had clearly spent time preparing ahead of their discussions with the panel. The key findings of the assessment are based on themes that had broad agreement from a range of participants.

The Key Findings

11. The overall picture is of a well-functioning system which achieves good outcomes for New Zealand by setting rules and incentives for how corporate entities are structured, managed and dissolved. This in turn provides a sound foundation for business and not-for-profit organisations to achieve their aims, and ensures market and participant confidence.
12. The main strengths of the system are in the ongoing maintenance of the system, from both an operational and a policy perspective, and in the day-to-day delivery of services to users. Key regulators are operating effectively, and there is a strong embedded practice of reaching out to customers to understand and meet their needs.



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13. In the context of ever-present risks to New Zealand's reputation for maintaining a well-regulated corporate system, the main challenges facing the system are in articulating a commonly-understood set of system objectives, and in ensuring robust stewardship of the system.
 14. A commonly understood set of system objectives is important to create more cohesion across the system, and for all its parties to better understand how they contribute to the health of the system. The panel considered that a clearly allocated stewardship role would help to identify and manage system risks. This is particularly important to ensure that New Zealand's international reputation is preserved.
 15. More work could be undertaken to build understanding of what the corporate system comprises, and to organise further work around sensible focus areas. This work would involve confirming the scope of the system and clarifying important subsets of the system. This will assist with building buy-in and collective understanding for system participants.
 16. Both the policy and operational functions of MBIE are being delivered to a high standard, and are well respected by participants. The panel found that there is scope for policy development to be more proactive and to address key strategic questions. The Companies Office's enforcement strategies are not well understood, and there is an opportunity to better promote its compliance and enforcement work to provide a stronger deterrence effect.

Specific Findings

17. The panel also made the following specific findings:
 - Many participants questioned whether there should be more barriers or controls to entry into the system to address the risk of abuse of the corporate structure through practices such as the use of shell companies.
 - Some of the legislation in the system is out of date and of questionable fitness for purpose.
 - Some participants questioned whether thought has been given to the need for some of the various entity types (eg building societies).
 - Concerns were raised about the limited partnerships regime - whether it has achieved its objective of attracting venture capital to New Zealand, and whether it has been used for other objectives because of its tax flow-through features, and the anonymity it gives to limited partners.
 - Agencies in the regulation of charities and not-for-profit entities expressed frustration with the overlaps and differences in the regimes for charitable trusts, registered charities and incorporated societies.
 - It is difficult and time-consuming to make technical changes to statutory regimes.
 - There was concern about the aging IT platform and limited functionality of registers for non-company entities (known as "other registers"), although we note that this system is planned to be replaced, commencing in 2017.



Annex 1: Key statutes

- Auditor Regulation Act 2011
- Building Societies Act 1965
- Co-operative Companies Act 1996
- Companies Act 1993
- Corporations (Investigation and Management) Act 1989
- Financial Reporting Act 2013
- Friendly Societies and Credit Unions Act 1982
- Incorporated Societies Act 1908
- Industrial and Provident Societies Act 1908
- Insolvency Act 2006 (for corporate entities)
- Insolvency (Cross-border) Act 2006
- Limited Partnerships Act 2008
- New Zealand Institute of Chartered Accountants Act 1996
- Partnership Act 1908
- Personal Property Securities Act 1999 (for corporate entities)
- Receiverships Act 1993
- Takeovers Act 1993
- Trustee Companies Management Act 1975

