

Companies (Annual Report Notice Requirements) Amendment Bill

Member's Bill

Explanatory note

General policy statement

The purpose of this Bill is to amend the Companies Act 1993 to reduce costs on companies by removing the requirement to provide a written notice of the annual report to shareholders. Currently section 209 of the Act requires companies to send a hard copy of their annual report or a notice (“**s 209 Notice**”) asking if shareholders would like to receive a hard copy of the annual report.

Section 209 was originally intended to ensure shareholders have access to information contained in a company's annual report. Now, digital communication has become the primary means by which investors in listed companies obtain information about a company. Digital communication allows for much more information to be conveyed, more quickly, cost effectively and with little environmental footprints.

Recent changes to legislation have removed the requirement to record the names of substantial holders on the s 209 Notice, further diminishing its purpose. Section 209 should be amended so that the requirement to send a s 209 Notice or hard copy of the annual report is removed, provided listed and other issuers are required to maintain a copy of the annual report on their websites and send a hard copy on request.

The requirement to send a s 209 Notice is redundant in the digital age. It imposes costs on companies which provide little or no benefit to shareholders and represents a significant environmental burden.

Nothing about these changes will remove the ability for companies to continue voluntarily sending notices similar in nature to a s 209 Notice, nor will it prevent companies from voluntarily sending hard copies to shareholders. Companies will also now be required to make annual reports available electronically and must at least once directly notify each member in writing that they have a choice to receive annual reports by printed copy or electronically.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Companies Act 1993 (the **principal Act**).

Clauses 4 and 5 amend section 209 and replace sections 209A and 209B to remove the written notice requirement and to make it mandatory to make electronic copies of annual reports available at most times and physical copies available on request.

Clauses 6 and 7 make amend sections 212 and 374 in accordance with the amendments made by *clauses 4 and 5*.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Companies (Annual Report Notice Requirements) Amendment Act **2016**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

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3 Principal Act

This Act amends the Companies Act 1993 (the **principal Act**).

4 Section 209 amended (Obligation to make annual report available to shareholders)

- (1) Replace section 209(1) with: 5
- (1) The board of a company must, not less than 20 working days before the date fixed for holding the annual meeting of shareholders,—
- (a) send to every shareholder of the company, free of charge, a printed copy of the annual report; or
- (b) make available to every shareholder of the company, free of charge, a copy of the annual report. 10
- (2) Replace section 209(3) with:
- (3) The board of a company must, on at least 1 occasion, directly notify each shareholder in writing that—
- (a) the shareholder may elect to receive, free of charge, in each financial year— 15
- (i) a printed copy of the annual report for the financial year, or a printed copy of the concise annual report for the financial year (if the board of the company has prepared that report for the financial year); or 20
- (ii) an electronic copy of either the annual report or the concise annual report (if one has been prepared) for the financial year; and
- (b) if the shareholder makes no election in response to the notice, the shareholder— 25
- (i) will not receive a printed or electronic copy of the annual report or the concise annual report (if one has been prepared); and
- (ii) may access a copy of the annual report and the concise annual report (if one has been prepared), free of charge, by electronic means specified in the notice, in accordance with **section 209B**.
- (3A) The notice referred to in **subsection (3)** may be accompanied by any additional information or documentation that the board of the company thinks fit. 30
- (3) Replace section 209(4) with:
- (4) An election made under **subsection (3)** is a standing election for each later financial year until the shareholder changes the election. 35

5 Sections 209A and 209B replaced

Replace sections 209A and 209B with:

209A Board must send copy of annual report or concise annual report on request

- (1) If a shareholder makes a request to the company to receive a printed copy of the annual report, the board of the company must, as soon as practicable, send to the shareholder, free of charge, a printed copy of the report. 5
- (2) If a shareholder makes a request under **subsection (1)**,—
 - (a) the request must be treated as an election by the shareholder under **section 209(3)(a)(i)** to send to the shareholder each year a printed copy of the annual report; and
 - (b) the board of the company must send to the shareholder each year a printed copy of the annual report, as if the shareholder had made an election under **section 209(3)(a)(i)** to receive the report, until the shareholder revokes the request by notice to the company. 10
- (3) **Subsection (2)** does not require a company to send a printed copy of an annual report on the affairs of the company during a particular accounting period if the board of the company is not required to comply with section 208 in respect of that period. 15
- (4) **Subsection (5)** applies if—
 - (a) the board of a company has prepared a concise annual report; and
 - (b) a shareholder makes a request to the company to receive a printed copy of the concise annual report. 20
- (5) The board of the company—
 - (a) must send to the shareholder a printed copy of the concise annual report, free of charge, as soon as practicable after receiving the request; but
 - (b) need not treat the request as an election by the shareholder to send to the shareholder each year a printed copy of the annual report or the concise annual report under **section 209(3)(a)(i)**. 25
- (6) If the board of a company fails to comply with this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2). 30

209B Annual report and concise annual report made available by electronic means

- (1) The board of a company must ensure that—
 - (a) a copy of the annual report and of the concise annual report (if one has been prepared) is available by electronic means (for example, from a specified website address) at all reasonable times during the period beginning not less than 20 working days before the date fixed for holding the annual meeting of shareholders and ending on the date the board acts under **section 209(1)** in relation to the next accounting period; and 35

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- (b) the electronic means allows a copy of the report, or reports, to be readily accessible so as to be usable for subsequent reference.
- (2) If the board of a company fails to comply with this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2). 5
- 6 Section 212 amended (Shareholders may elect not to receive documents)**
Repeal section 212(2) and (3).
- 7 Section 374 amended (Penalties that may be imposed on directors in cases of failure by board or company to comply with Act)**
- (1) In section 374(2)(22), replace “section 209A(5)” with “**section 209A(6)**”. 10
- (2) In section 374(2)(22A), replace section 209B(3) with “**section 209B(2)**”.