

Companies (Levies) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Companies Act 1993 to create a new regulation-making power that will enable regulations to be made that impose levies on certain users of the registers administered by the New Zealand Companies Office. The regulation-making power will expressly provide that the money collected in levies can be used to fund the registry system as a whole, rather than on a register-by-register basis.

The New Zealand Companies Office, a business unit of the Ministry of Business, Innovation and Employment (**MBIE**), administers the corporate registry system. There are 16 different registers including entity registers (eg, the Companies Register), occupational licensing registers (eg, the register of licensed insolvency practitioners), and disclosure registers (eg, the register of Personal Property Securities). The Companies Office also supports other statutory functions of the various registrars responsible for these registers.

Each register was established under separate legislation. The legislation requires each register to be independently funded from fees charged to the users of the relevant register. This funding model was predicated on each register being operated separately.

Over time the Companies Office has moved towards providing shared services to the registers. A unified approach to the registers has allowed the Companies Office to—

- establish an organisational structure and operating model that produces economies of scale in the delivery of registry services; and
- leverage technological developments enabling registry services to be centralised and shared across registers.

These changes have contributed to reduced cost to users. However, it has also made it increasingly difficult to distinguish between the cost of providing services for each register. In addition, the fees charged on some smaller registers have not kept up with

the costs of operating them. This shortfall has been met from surpluses that have been generated from fees collected under legislation governing other registers. This practice is not authorised by the legislation.

The Companies Office's unauthorised funding practices have been addressed by the Companies Office Registers Funding Validation Act 2022 (the **Validation Act**) by retrospectively validating the Companies Office's charging and expenditure practices.

This Bill, which forms a package with the Validation Act, supports the Companies Office's approach to running the corporate registry system by moving away from it being entirely funded on a register-by-register basis, as it is now. The Bill achieves this by amending the Companies Act 1993 to allow for regulations to be made for the Companies Office to charge its users levies as well as fees. The money collected in levies will be able to be used across the different registers to fund the shared registry system.

The Bill provides that the levies will be set by regulations, following consultation. It also sets out the purpose of the levy-making power, which the Minister must have regard to when recommending to the Governor-General that regulations should be made by Order in Council.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=133>

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 3 November 2021 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://mbie.govt.nz/document-library>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill, once enacted, 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**).

Part 1

Amendment to allow levies to be imposed in relation to certain persons using services of certain registers

Clause 4 inserts *new sections 404 to 408* into the principal Act.

New section 404 sets out the purpose of levies imposed by regulations under *new section 405*. The purpose, in summary, relates to the need to operate all the different registers listed in *new Schedule 14* as a single system of registers for financial purposes, rather than as individual registers. The purpose provision goes on to state that all of those registers should be funded through a levy imposed on users of each registry, in a manner that is equitable, efficient, and justified. Applying the principles of equity, justification, and efficiency should be undertaken having regard to the cost of running the whole system of registers, not on the basis of the costs of running individual registers. Accordingly, money collected from users of 1 register can legitimately be used to meet the costs of operating any or all of these registers. Using money collected from registry users in that way is the most efficient way of financing the registers.

New section 405 provides that every person included in a class of persons listed in *new Schedule 15* must pay a levy prescribed by regulations. *New section 405(3) to (6)* sets out the details of what may be included in a levy.

New section 406 provides that a Registrar of a register may refuse to perform or exercise a function, power, or duty until the prescribed levy is paid. It also deals with the position where a person is in 2 or more classes of levy payer, and provides that a levy may be recovered in a court of competent jurisdiction.

New section 407 sets out the matters to which the Minister of Commerce and Consumer Affairs (the **Minister**) must have regard before recommending the making of regulations setting the levies.

New section 408 requires the Minister to consult persons who the Minister considers able to represent the views of levy payers before recommending the making of regulations, as well as representatives of the person the Minister considers will be significantly affected by the proposed regulations.

Part 2

New Schedules 14 and 15 inserted

Clause 5 and the Schedule insert *new Schedules 14 and 15* into the principal Act.

New Schedule 14 sets out the relevant Acts and registers.

New Schedule 15 (in *Part 1*) sets out the classes of persons that may be subject to a levy, and (in *Part 2*) a list of persons registering documents that may be subject to a levy.

Hon Dr David Clark

Companies (Levies) Amendment Bill

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Part 1

Amendment to allow levies to be imposed in relation to certain persons using services of certain registers

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Part 2

New Schedules 14 and 15 inserted

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Schedule

New Schedules 14 and 15 inserted

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Companies (Levies) Amendment Act **2022**.

2 Commencement

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

3 Principal Act

This Act amends the Companies Act 1993.

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Part 1

Amendment to allow levies to be imposed in relation to certain persons using services of certain registers

4 New sections 404 to 408 inserted

After section 403, insert:

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404 Purpose of imposing levies

(1) The purpose of imposing levies by regulations under **section 405** is to recognise that—

(a) the different registers listed in **Schedule 14** operate financially as a single system of registers and not as separate registers; and

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(b) all those registers should be funded, in part, through a levy imposed on specified users of each registry, in a manner that is equitable, efficient, and justified; and

(c) applying the principles of equity, efficiency, and justification is properly undertaken having regard to the cost of administering the whole system of registers, not on the basis of the costs of administering individual registers; and

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(d) money collected from specified users of 1 register can legitimately be used to meet the costs of operating any or all of these registers; and

(e) using money collected from specified users of 1 or more registers in the way provided in **paragraph (d)** is the most efficient way of financing the registers.

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(2) In **subclause (1)**, **specified users** means persons in a class of persons listed in **Schedule 15** that are liable to pay a levy.

405 Regulations relating to levies

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(1) Every person that is included in a prescribed class of persons listed in **Schedule 15 (Schedule 15 persons)** must pay to the Crown, or a prescribed person on behalf of the Crown, a levy prescribed by regulations that applies to that class of persons.

(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levies.

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- (3) Levies must be prescribed on the basis that the following costs should be met fully out of the levies:
- (a) a portion of the costs of a Registrar in performing or exercising the Registrar's functions, powers, and duties under this Act, or any of the Acts listed in **Schedule 14**, where the size of the portion to be met by levies under this Act is determined by the Minister; and 5
 - (b) the costs of collecting the levy money.
- (4) Levies may be prescribed on the basis that any actual cost that could have been, but has not been, recovered as a levy shortfall for a year may be recovered (along with any financing charge) over any period of up to 5 years. 10
- (5) The regulations may—
- (a) specify the class or classes of persons that are required to pay a levy:
 - (b) specify the amount of levies, or the method of calculating or ascertaining the amount of levies:
 - (c) include in levies, or provide for the inclusion in levies of, any shortfall in recovering the actual costs: 15
 - (d) refund, or provide for refunds of, any over-recovery of the actual costs:
 - (e) provide for the payment and collection of levies:
 - (f) provide different levies for different classes of persons:
 - (g) specify the financial year or part of a financial year to which a levy applies, and apply that levy to that financial year or part of a financial year and each subsequent financial year until the levy is revoked or replaced: 20
 - (h) require payment of a levy for a financial year or part of a financial year, irrespective of the fact that the regulations may be made after that financial year has commenced: 25
 - (i) provide for waivers or refunds of the whole or any part of a levy for any case or class of cases:
 - (j) specify the timing or circumstances of the requirement to pay levies (including at different times or in different circumstances for the payment of levies for different classes of registered persons): 30
 - (k) specify penalty payments for the late payment of a levy:
 - (l) require the payment of interest on overdue levies.
- (6) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 35
- 406 Implementation of levies**
- (1) A Registrar may refuse to perform or exercise a function, power, or duty until the prescribed levy is paid.

- (2) If a person is in 2 or more classes of **Schedule 15** persons in respect of which different levies have been prescribed, the person must pay each of those levies (unless regulations provide otherwise).
- (3) The amount of any unpaid levy is recoverable from a **Schedule 15** person in any court of competent jurisdiction as a debt due to the relevant Registrar, or to any other person prescribed for the purposes of this subsection, on behalf of the Crown. 5
- 407 Matters to which Minister must have regard**
- Before recommending the making of regulations under **section 405**, the Minister must have regard to the following matters: 10
- (a) the purpose of imposing levies set out in **section 404**;
- (b) levies should be set at a level to recover no more than—
- (i) the costs of operating the registers under the Acts listed in **Schedule 14**; and
- (ii) the portion of additional costs set by the Minister under **section 405(3)** in relation to the costs of a Registrar performing or exercising their functions, duties, and powers under any of those Acts; and 15
- (iii) the costs of recovering the levy moneys.
- 408 Minister must consult** 20
- (1) Before recommending the making of regulations under **section 405**, the Minister must consult—
- (a) the persons that the Minister considers are able to represent the views of **Schedule 15** persons that will be liable to pay a levy under the proposed regulations; and 25
- (b) any other representatives of persons who the Minister believes will be significantly affected by the proposed regulations.
- (2) Regulations made under **section 405** are not invalid on the grounds that—
- (a) **subsection (1)** was not complied with before the Minister recommended the making of the regulations; or 30
- (b) the consultation carried out was about a specific rate or amount of a fee, charge, or levy, or a method of calculating or ascertaining those things, that differs from the rate, charge, or amount, or the method of calculating or ascertaining those things, set out in the regulations.

Part 2
New Schedules 14 and 15 inserted

5 New Schedules 14 and 15 inserted

After Schedule 13, insert the **Schedules 14 and 15** set out in the **Schedule** of this Act.

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Schedule New Schedules 14 and 15 inserted

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Schedule 14 List of relevant Acts and registers

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List of Acts**List of registers**

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|---------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) Companies Act 1993: | (a) New Zealand register and overseas register: |
| (b) New Zealand Business Number Act 2016: | (b) New Zealand Business Number Register: |
| (c) Incorporated Societies Act 1908 and Incorporated Societies Act 2022: | (c) Register of Incorporated Societies: |
| (d) Insolvency Practitioners Regulation Act 2019: | (d) Register of licensed insolvency practitioners: |
| (e) Limited Partnerships Act 2008: | (e) Registers of limited partnerships and overseas limited partnerships: |
| (f) Friendly Societies and Credit Unions Act 1982: | (f) Register maintained by the Registrar of Friendly Societies and Credit Unions: |
| (g) Retirement Villages Act 2003: | (g) Register of retirement villages: |
| (h) Financial Markets Conduct Act 2013: | (h) Registers kept under Schedule 2 of that Act (otherwise known as the Disclose Register (encompassing a register of offers of financial products and a register of managed investment schemes)): |
| (i) Financial Reporting Act 2013: | (i) Registers kept under section 36N of that Act which relate to Approved Overseas Auditors and Associations of Accountants: |
| (j) Financial Service Providers (Registration and Dispute Resolution) Act 2008: | (j) Register of Financial Service Providers: |
| (k) Personal Property Securities Act 1999: | (k) Register of Personal Property Securities: |
| (l) Auditor Regulation Act 2011: | (l) Register of licensed auditors and registered audit firms: |
| (m) Industrial and Provident Societies Act 1908: | (m) Registers kept under section 3D of the Industrial and Provident Societies Act 1908: |
| (n) Building Societies Act 1965: | (n) Register of Building Societies: |
| (o) Securities Act 1978 (as preserved in part for certain purposes). | (o) Contributory Mortgage Brokers Register. |

Schedule 15

Registered persons that may be subject to levy

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Part 1

Classes of persons that may be subject to levy

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The following classes of persons may be subject to a levy:

- (a) licensed auditors (within the meaning of section 6(1) of the Auditor Regulation Act 2011):
- (b) building societies (within the meaning of section 2(1) of the Building Societies Act 1965): 10
- (c) NZBN entities (within the meaning of section 5 of the New Zealand Business Number Act 2016):
- (d) companies (within the meaning of section 2(1) of the Companies Act 1993):
- (e) financial service providers (within the meaning of section 4 of the Financial Service Providers (Registration and Dispute Resolution Act) 2008): 15
- (f) approved associations (within the meaning of section 5 of the Financial Reporting Act 2013):
- (g) credit unions (within the meaning of section 2 of the Friendly Societies and Credit Unions Act 1982):
- (h) registered societies or branches (within the meaning of section 2 of the Friendly Societies and Credit Unions Act 1982): 20
- (i) societies (within the meaning of section 3 of the Incorporated Societies Act 1908 or section 5(1) of the Incorporated Societies Act 2022):
- (j) registered societies (within the meaning of section 2 of the Industrial and Provident Societies Act 1908): 25
- (k) licensed insolvency practitioners (within the meaning of section 5(1) of the Insolvency Practitioners Regulation Act 2019):
- (l) limited partnerships (within the meaning of section 6 of the Limited Partnerships Act 2008):
- (m) operator (within the meaning of section 5 of the Retirement Villages Act 2003): 30
- (n) contributory mortgage brokers (within the meaning of section 2(1) of the Securities Act 1978 (as preserved in part for certain purposes)).

Part 2

Persons registering documents who may be subject to levy

The following classes of persons may be subject to a levy: 35

- (a) issuers (within the meaning of section 11 of the Financial Markets Conduct Act 2013):
- (b) managers (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013):
- (c) supervisors (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013): 5
- (d) persons who register a financing statement or a financing change statement under section 144 of the Personal Property Securities Act 1999 or renew the registration of that statement under section 154 of that Act.