

COMPANIES ACT REFORM – UPDATE FOR SPORT ORGANISATIONS

Overview

In August 2024, the Government announced a package of reforms to update and improve the Companies Act 1993, with a general intention of ensuring the rules are clear, workable and fit for purpose.

For now, most of the reforms are aimed at modernising and simplifying the Companies Act. The next phase of reforms, expected to be announced in 2025, will be aimed at clarifying the scope of director duties and directors' liability. This follows some recent case law in that area which has, anecdotally at least, led to some directors refusing to act because of the increased liability they face.

For sports organisations, it will be helpful to keep an eye on these reforms for a couple of reasons – first of all because your organisation may in fact be a company, or have one or more companies within its wider corporate group; and secondly, because changes to the Companies Act are generally an indication of the Government's thinking more broadly, and so there's a good chance that any changes made here will be rolled out more widely in time.

First phase of reforms – modernising and simplifying

The Companies Act is a significant piece of legislation – it governs how over 730,000 limited liability companies incorporated in New Zealand operate, and it has flow on effects to other legislation and areas of law.

The Act has not been meaningfully updated in 30 years, and so much of it is now outdated, no longer reflecting how businesses operate today. Phase 1 of the Government's proposed reforms addresses this by simplifying a number of company processes, and by fixing some specific issues encountered in practice. Phase 1 also advances some policy goals of the Government – for example, increasing NZBN usage, and recovering the costs of insolvency from the private sector, instead of those costs being borne by the Government.

The changes most relevant to sports organisations are summarised below.

Move to digital

A number of changes relate to removing the requirement to submit or keep paper records, instead allowing for digital copies. We expect this to be a trend across Government policy and now may be a timely reminder to consider your organisation's digital transition and ensure that you can keep electronic records.

Wider use of NZBN

The NZBN is a unique identifier that can be used by all corporate entities – companies, societies, sole traders, and so on. The purpose was to create a central repository (the NZBN Register) where all information about the entity would be stored, saving these entities from submitting the same information over and over to different Government organisations.

Uptake of the NZBN has been slower than the Government would like. The Government has therefore indicated that the updated Companies Act will include a number of changes to increase uptake – for example, by making it easier for agencies to require an NZBN from any entity the agency deals with.

For sports organisations, we expect that an NZBN will eventually be compulsory for any who receive Government funding or engage with a Government department. Most entities will already have an NZBN, but if not you can apply at: [Applying for an NZBN | New Zealand Business Number](#).

Director's information

At the moment, directors and shareholders can be recorded differently for different companies (e.g. "John A Smith", "J A Smith", "John Smith", etc.), making it difficult to track all of a person's shareholdings or directorships. Directors and shareholders of companies will now be issued with a unique identifier, which will make it easy to keep track of other entities that person may be related to.

Directors will also be able to elect to not have their home address publicly advertised, something which is available now but only where there is a serious risk, such as where a director has had a protection order granted to them.

ESG duties

In 2023 the director duties were amended to allow directors to consider matters "other than maximisation of profit". The example matters given in the Act were "environmental, social and governance matters".

The amendment is now being repealed, and we expect the impact of this to be very small. It was never clear how much the amendment could be relied on, or whether it even changed the law at all, and in practice most directors ignored it for that reason.

New levy

The Government is introducing a framework for a new levy, to be charged to all companies, to fund the functions of the Official Assignee (essentially, administering insolvencies and bankruptcies). The Official Assignee is currently able to recover its costs from the assets of the companies / individuals it administers, but for obvious reasons those assets are not always sufficient. The amount of the levy has not been set.