Regulatory Impact Statement

Corporate law amendments to reduce Compliance Costs

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Economic Development.

It provides an analysis of options to address several small issues that have been raised on the operation of business law provisions which impose unnecessary or excessive compliance costs.

The analysis focussed on how to deal with specific concerns raised in ways which do not change the overall policy of the Companies Act 1993 or the Unit Trusts Act 1960, but address unnecessary or superfluous requirements and gaps that create uncertainty for business.

These amendments are not likely to cause any effects that the government will require a strong case before regulation is considered. The amendments are proposed in order to contribute to the government's commitment in the *Government Statement on Regulation: Better Regulation, Less Regulation* to remove or simplify unnecessary, ineffective or excessively costly requirements in primary legislation.

The Ministry of Economic Development confirms that the proposal will have the effect of reducing the compliance burden upon business and certifies that the proposal is consistent with the Government Statement on Regulation.

Bronwyn Turley

Manager, Corporate Law and Governance Team,

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Status quo and problem definition

Officials are currently aware of a range of legislative provisions where amendments could be made to remove or simplify unnecessary, ineffective or excessively costly requirements and reduce compliance costs for business. These provisions include:

The Companies Act prescribes procedural rules that apply where a company wishes to acquire its own shares. Pursuant to section 65(2A) of the Act, a listed company that is acquiring its own shares on a stock exchange must send to each shareholder a notice containing prescribed particulars. However, this appears to impose an unnecessary compliance cost as listing rules already require a company to advise the stock exchange of an on-market buyback.

Section 112B of the Companies Act provides that minority buy-outs that do not go to arbitration still need to get an arbitrator to determine an interest rate, if interest is applicable to the payment for the minority shareholder's shares. This appears to be an unnecessary administration cost for the parties involved.

It is important that persons dealing with a company in voluntary administration are aware of whether or not the company is operating pursuant to the terms of a deed of company arrangement. Section 239ADC of the Companies Act provides three ways in which a deed of company arrangement may be terminated. While the Companies Act provides that notice is given to the Registrar when a deed of company arrangement is terminated by creditors, Section 239ADC of the Act does not provide for notice to be given to the Registrar when a deed of company arrangement is terminated in one of the other two ways; by the Court or coming to an end in accordance with its terms.

Section 292 of the Companies Act provides that in a liquidation, insolvent transactions, including those entered into by a receiver, may be challenged by the liquidator (and made void). However, transactions for which the receiver is personally liable under s 32(1) of the receiverships Act 1993 or under a contract made by the receiver under the Receiverships Act 1993 are exempt from being voidable. Exempting these transactions gives certainty to the business community that commitments entered into by receivers in carrying out their obligations under the Receiverships Act will be honoured. The policy intent behind exempting these transactions applies equally to the payment by the receiver of rent and other payments under pre-receivership leases and hiring agreements for which the receiver is personally liable under section 32(5) of the Receiverships Act 1993. However, this class of receiver's obligation has not been exempted, resulting in uncertainty for the receiver and the firms which are parties to rental and lease agreements.

Section 11 of the Unit Trusts Act currently requires accounts or financial statements to be sent to unit holders annually, and does not provide for them to be distributed electronically. This results in managers of unit trusts incurring additional costs in sending copies of information by post to all unit holders.

In the absence of any further government action, the unnecessary or excessively costly compliance costs will continue to be an issue for business.

Objectives
The proposed Companies Act amendments have been assessed against the aims of the Companies Act, in particular:

- To encourage efficient and responsible management of companies by allowing directors a wide discretion in matters of business judgment while at the same time providing protection for shareholders and creditors against the abuse of management power.

The proposed amendment to the Unit Trusts Act 1960 is considered against the objective of efficient and effective regulation of unit trusts.

Regulatory Impact Analysis
The proposed policy changes are designed to amend current legislative provisions to remove requirements that are unnecessary, ineffective or excessively costly.

Regulatory improvements (preferred option)

The proposed course of action is to make amendments to the Companies Act 1993 and the Unit Trusts Act 1960.

Specifically, the preferred option will:

Repeal the requirement in section 65(2A) of the Companies Act for a listed company to send a notice to each shareholder of an on-market buy-back of shares. This will provide administrative, printing and postage cost savings to listed companies (by definition, companies with a broad shareholder base) of which there are about 180;

Enable the establishment of an interest rate under section 112B of the Companies Act, without the costs of an arbitrator, where interest is applicable to a payment for a minority shareholder's shares in a minority buy-out, and the price of the shares in the buy-out has not been subject to arbitration. This will save companies that are required to purchase shares from a minority shareholder the cost of employing an arbitrator solely for the purpose of setting an interest rate;

Improve the effectiveness of the voluntary administration regime by providing that the termination of a deed of company arrangement for a company in voluntary administration is notified to the Registrar of Companies (where the deed is terminated by the Court or comes to an end in accordance with its terms). This will enable a time saving for persons dealing with a company in voluntary administration, as they will be able to check on the Companies Act website whether or not a deed of company arrangement is still in place. The notification will be made electronically on the Companies Office website by the deed administrator in the same way as he/she files other reports and notifications;

Amend the exceptions to the insolvent transaction that can be made void in the Companies Act to include the receiver's obligation for rent and other payments under pre-receivership leases and hiring agreements. This will give the business community, in particular landlords and business which lease equipment, certainty when entering into such transactions with receivers.

Provide the flexibility for managers of unit trusts to distribute accounts/financial statements electronically, rather than sending a hard copy to each unit holder, enabling cost reductions. This will impact on the 423 registered unit trusts, resulting in cost savings for printing and postage.

Consultation

These issues were brought to the Ministry's attention by stakeholders. As these proposals involve technical amendments to individual provisions for the specific purpose of reducing the compliance burden upon business or clarifying the intent of a provision, no additional stakeholder consultation process has been undertaken. Consultation has taken place with the Companies Office, which undertakes registry, operational and enforcement functions. Departmental consultation will occur as part of the process of finalising the Cabinet paper.

Conclusions and Recommendations

Officials recommend the proposed option of making amendments to the Companies Act 1993 and the Unit Trusts Act 1960.

This option will reduce costs on business.

Implementation

These amendments are proposed to be included in the Regulatory Reform Bill. The Bill is expected to be passed by December 2010. Officials will support and monitor the progress of the bill to ensure the amendments are implemented. The amendments do not require any form of substantial transitional arrangements. It is expected that the amendments will be able to be brought into force once enacted.

Monitoring, Evaluation and Review

The stakeholders who identified the problems will be consulted to ensure that the amendments are delivering the anticipated benefits. The Registrar of Companies will monitor the impact of the amendment to section 239ADC of the Companies Act requiring that the termination of a deed of company arrangement for a company in voluntary administration is notified to the Registrar.

Where the proposal relates to the removal of a legislative requirement impacting on the interaction between a company and its shareholders or a unit trust and its unitholders there is no obvious mechanism to measure the effectiveness of the regulatory change.