

## **Companies Act 1993 Amendment Regulations 2007**

### **Preamble**

At Wellington this 14th day of May 2007

Pursuant to section 395 of the Companies Act 1993, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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**1 Title**

These regulations are the Companies Act 1993 Amendment Regulations 2007.

**2 Commencement**

- (1) Regulations 4 and 9 to 11 come into force on 1 September 2007.
- (2) The rest of these regulations come into force on 18 June 2007.

**3 Principal regulations amended**

These regulations amend the Companies Act 1993 Regulations 1994.

**4 New regulation 4A inserted**

The following regulation is inserted after regulation 4:

**“4A Prescribed matters relating to exemption for overseas companies from providing information, notice of information, or documents in certain circumstances**

- “(1) The Commonwealth of Australia is a prescribed country for the purposes of section 343A of the Act.
- “(2) The following classes of information or documents are prescribed for the purposes of section 343A of the Act:
  - “(a) in relation to an application for registration of an overseas company on the overseas register—
    - “(i) the full legal names and residential addresses of the directors of the overseas company:
    - “(ii) a copy of the instrument constituting or defining the constitution of the overseas company:
    - “(iii) documents that evidence the incorporation of the overseas company:
  - “(b) in any other case—
    - “(i) information and documents relating to an alteration to the instrument constituting or defining the constitution of an overseas company:
    - “(ii) information relating to a director of an overseas company ceasing to hold office or the appointment of a new director:

- “(iii) information relating to a change of name or residential address of a director of an overseas company:
  - “(iv) information relating to the names and residential addresses of the directors of an overseas company (whether in relation to form 17 or 18 in Schedule 1).
- “(3) Despite subclause (2), if a director signs a form, the director is still required to specify his or her full name under the signature.”

**5 New regulations 10 and 11 inserted**

The following regulations are inserted after regulation 9:

**“10 Australia prescribed for purposes of prohibition orders that disqualify person from being director**

The Commonwealth of Australia is a prescribed country for the purposes of section 151(2)(eb) of the Act.

**“11 Requirements for preparation of concise annual reports**

Every concise annual report for a company must, for the purposes of sections 209 to 209B of the Act,—

- “(a) be in writing; and
- “(b) be dated; and
- “(c) be signed on behalf of the board by 2 directors of the company or, if the company has only one director, by that director; and
- “(d) describe, so far as the board believes is material for the shareholders to have an appreciation of the state of the company’s affairs and will not be harmful to the business of the company or of any of its subsidiaries, any change during the accounting period in—
  - “(i) the nature of the business of the company or any of its subsidiaries; or
  - “(ii) the classes of business in which the company has an interest, whether as a shareholder of another company or otherwise; and
- “(e) comply with section 209(5) and (6) of the Act.”

**6 Form 2 amended**

Form 2 of Schedule 1 is amended by omitting “Registrar of Companies” and substituting “Registrar of Companies. It also includes people who have been prohibited from being a director or promoter of, or being concerned or taking part in the management of, an overseas company under an order made, or notice given, under the law of a prescribed overseas jurisdiction in accordance with section 151(2)(eb) of the Companies Act 1993”.

**7 Form 9 amended**

Form 9 of Schedule 1 is amended by omitting “Registrar of Companies” and substituting “Registrar of Companies. It also includes people who have been prohibited from being a director or promoter of, or being concerned or taking part in the management of, an overseas company under an order made, or notice given, under the law of a prescribed overseas jurisdiction in accordance with section 151(2)(eb) of the Companies Act 1993”.

**8 Form 13 amended**

Form 13 of Schedule 1 is amended by omitting “Registrar of Companies” and substituting “Registrar of Companies. It also includes people who have been prohibited from being a director or promoter of, or being concerned or taking part in the management of, an overseas company under an order made, or notice given, under the law of a prescribed overseas jurisdiction in accordance with section 151(2)(eb) of the Companies Act 1993”.

**9 Form 16 amended**

Form 16 of Schedule 1 is amended by inserting “*If the company is incorporated in Australia, see section 343A of the Act and regulation 4A.*” after “*prescribed format.*”

**10 Form 17 amended**

Form 17 of Schedule 1 is amended by inserting “*If the company is incorporated in Australia, see section 343A of the Act and regulation 4A.*” after “*prescribed format.*”

**11 Form 18 amended**

Form 18 of Schedule 1 is amended by inserting the following note after the table relating to directors:

“*[If the company is incorporated in Australia, see section 343A of the Act and regulation 4A.]*”

Diane Morcom,  
Clerk of the Executive Council.

**Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations amend the Companies Act 1993 Regulations 1994. Regulations 4 and 9 to 11 come into force on 1 September 2007. The rest of these regulations come into force on 18 June 2007.

New regulation 4A of the principal regulations (as inserted by regulation (4) prescribes Australia and certain classes of information and documents for the purposes of section 343A of the Companies Act 1993 (the **Act**). This means that an overseas company is not required to give information, notice of information, or a copy of a document under Part 18 of the Act (which relates to overseas companies) if—

- the company is incorporated in Australia; and
- the information or document is held by a Registrar in Australia; and
- the information or document is of a prescribed class (for example, the names and address of directors).

New regulation 10 of the principal regulations (as inserted by regulation (5) prescribes Australia for the purposes of section 151(2)(eb) of the Act. This means that a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an overseas company by an order made, or notice given, in Australia is disqualified from being a director of a New Zealand company.

New regulation 11 of the principal regulations (as inserted by regulation (5) prescribes requirements for the preparation of concise annual reports for the purposes of sections 209 to 209B of the Act. In addition to these requirements, section 209(5) of the Act requires every concise annual report to include either full financial statements or

summary financial statements. under section 209(6)(c) of the Act, if summary financial statements are included, they must—

- give a true and fair view of the matters to which they relate; and
- comply with generally accepted accounting practice (which basically requires compliance with financial reporting standards relating to summary financial statements).

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