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Committee Secretariat
Commerce Committee
Parliament Buildings
Wellington

By email: commerce@parliament.govt.nz

Submission on the Regulatory Systems (Commercial Matters) Amendment Bill

The Institute of Directors (IoD) appreciates the opportunity to provide comment on the Regulatory Systems (Commercial Matters) Amendment Bill (the **Bill**).

The Bill was introduced into Parliament with the intention of amending the Companies Act 1993, the Takeovers Act 1993 and other commercial legislation. Our submission focuses on specific governance and director-related amendments.

About the Institute of Directors

The IoD is a non-partisan voluntary membership organisation committed to driving excellence in governance in all areas of business and society in New Zealand. We represent a diverse membership of around 8,000 members drawn from NZX-listed corporations, private companies, small to medium enterprises, public sector organisations, not-for-profits and charities.

Our chartered membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good corporate governance.

General comment

We generally support the Bill and its objective to maintain the effectiveness and efficiency of regulatory systems in New Zealand. The Bill introduces a number of measures which aim to remove unnecessary compliance costs and costs of doing business.

Companies Act 1993 amendments

The purpose of the amendments is to ensure the requirements of the Companies Act can be more efficiently and effectively achieved with minimum necessary compliance costs.

Overseas directors

Since 2015, all New Zealand registered companies have been required under the Companies Act to have at least one director that must live in New Zealand **or** live in an enforcement country (currently Australia) and be a director of a registered company in that enforcement country.

The Bill amends this requirement in relation to overseas directors clarifying that such directors must be a director of a body corporate that is incorporated under a law equivalent to the Companies Act in an enforcement country (rather than just a director of a *registered company* in an enforcement country). The Bill also clarifies that where no directors of a proposed company live in New Zealand, information for only one of the directors needs to be provided to satisfy the director residence requirement. We support these amendments.

Annual meeting exception

There is a general requirement under the Companies Act for companies to hold an annual meeting of shareholders. However, there is an exception to the requirement if everything required to be done at that meeting is done by shareholders' resolution. The Bill adds to this exception and provides that an annual meeting is not required if:

- there is nothing required to be done at the meeting
- the board resolves that it is in the interests of the company not to hold the meeting (having regard to whether there is any particular issue that the shareholders should be given an opportunity to discuss, comment on, or ask questions about) and
- the constitution of the company does not require the shareholders' meeting to be called or held.

Annual meetings of shareholders provide a forum for discussions and debate on company matters and can be valuable to shareholders.

From a governance perspective, we are comfortable with the new exception given that:

- sometimes there will be nothing to be done at an annual meeting (for some inactive companies and subsidiaries for example)
- the board is required to have regard to shareholders in considering the interests of the company
- the company constitution may provide that an annual meeting be held (preventing the board from relying on the exception)
- special meetings of shareholders can still be called under the Companies Act.

Other key changes we support

Under the Bill, subsidiaries (which have no subsidiaries of their own) of New Zealand and overseas companies are not required to prepare and register financial statements and specifically:

- a subsidiary is not required to prepare financial statements if financial statements for the *group* are prepared
- a subsidiary is not required to prepare *group* financial statements if such statements have been prepared by the *group*
- a subsidiary is not required to register financial statements if financial statements for the *group* of companies are registered.

The Bill also provides that the board of a large company (as defined in the Companies Act) is not required to prepare an annual report if:

- it is not required to prepare financial statements and
- shareholders who together hold at least 95% of the voting shares agree the annual report does not need to be prepared.

Takeovers Panel and reimbursement of takeover-related expenses

The Takeovers Code enables target companies to recover from the offeror takeover-related expenses as a debt due where the offer has failed. This is to discourage vexatious or ill-conceived bids (especially in the light of the disruptive effect that a hostile takeover offer can have on the target company).

Takeover-related expense disputes are currently heard before the High Court. The Bill provides the Takeovers Panel with jurisdiction to adjudicate these expense claims and for there to be an appeal

process to the High Court. The Takeovers Panel is the expert quasi-judicial body in this area and the transfer of jurisdiction should reduce the cost and time of resolving expense disputes. We support this amendment.

We appreciate the opportunity to comment on behalf of our members.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Felicity Caird', written in a cursive style.

Felicity Caird
Manager, Governance Leadership Centre
Institute of Directors