

New residency and information requirements for directors

Some companies will need to change the composition of their board and provide additional information to the Companies Office to comply with the 2014 amendments to the Companies Act 1993¹.

The new requirements will apply from 1 May 2015. Existing companies have until 28 October 2015 to comply.

We identify the action points.

Residency requirements

Under the changes, every New Zealand incorporated company will need to have:

- a director who lives in New Zealand (no requirement to be a citizen), or
- a director who is also a director of a company incorporated in, and who also lives in, a country with which

New Zealand has reciprocal enforcement arrangements for low-level fines. Only Australia will qualify, at least initially.

This information will be collected at registration and updated when any subsequent director is appointed. Having an alternate director² (a person appointed to exercise some or all of a director's powers), resident in New Zealand will satisfy the requirement.

Non-compliance will be grounds for removal from the register.

These requirements do not apply to a company that is incorporated overseas, but registered in New Zealand.

Additional information requirements

- From 1 May 2015, in addition to the current requirement to provide his or her residential address, every director will need to, at the time of appointment, provide his or her date and place of birth at the time of registration³, or on a change of directors⁴. This will be held by the Registrar of Companies, but will not be publicly available. Existing companies will need to provide this additional information on any change to directors after 1 May 2015. This will also apply to any appointment of an alternate director⁵.
- On registration⁶ and within 20 working days of any change⁷, every company must disclose the name of any ultimate holding company, the country of its registration, the registration number or code (if any) and its registered office. These details will be publicly available. Existing companies will need to provide this information in the next annual return⁸ filed after 1 May 2015.
- Failure to comply will attract penalty provisions.
- The Registrar has been given new powers to obtain information on the beneficial ownership and control of companies in order to comply with New Zealand's obligations under the Financial Action Task Force on Money Laundering (*FATF*) recommendations. Compliance is required when the information is requested by the Registrar for law enforcement purposes. This information may be given by the Registrar to other government agencies, both in New Zealand and internationally.

An updated prescribed form⁹ of consent to act as a director will apply from 1 September 2014.

The Companies Office Registry Integrity Team has been requesting further identity information and proof of place of residency when applications are made to register a company's off shore shareholders and directors. We expect this trend to intensify.

Another amendment which may have practical effect for some companies is the enhanced powers given to the Registrar of Companies to remove a company from the register, or for the Court to order that a company be put into liquidation.

New grounds for deregistration are:

- where one or more of the directors or shareholders fail in a persistent or serious way to comply with duties under the Companies Act 1993 (or the Financial Reporting Act 1993, while it still applies), and
- failure to respond to a request for disclosure of controlling interests.

This makes a structured compliance programme (e.g. completing annual returns, making necessary filings, such as financial statements, on time) even more important.

Next steps

Most of the changes will come into force on 1 May 2015. However, as noted above, there will be a 180 day lead time (ending on 28 October 2015) to enable existing companies to comply with the new directors' residency requirements.

Footnotes

1. <http://www.legislation.govt.nz/act/public/1993/0105/latest/DLM319570.html>
2. <http://www.chapmantripp.com/publications/Pages/All-care-all-responsibility-duties-of-an-alternate-director.aspx>
3. <http://www.legislation.govt.nz/regulation/public/2014/0274/latest/DLM6226768.html>
4. <http://www.legislation.govt.nz/regulation/public/2014/0274/latest/DLM6226769.html>
5. <http://www.chapmantripp.com/publications/Pages/All-care-all-responsibility-duties-of-an-alternate-director.aspx>
6. <http://www.legislation.govt.nz/regulation/public/2014/0274/latest/DLM6226768.html>
7. <http://www.legislation.govt.nz/regulation/public/2014/0274/latest/DLM6226775.html>
8. <http://www.legislation.govt.nz/regulation/public/2014/0274/latest/DLM6226770.html>
9. <http://www.legislation.govt.nz/regulation/public/2014/0274/latest/DLM6226771.html>

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Barbara Lloyd
for writing this
Brief Counsel.



ROGER WALLIS – PARTNER

T: +64 9 357 9077
M: +64 27 478 3192
E: roger.wallis@chapmantripp.com



BRADLEY KIDD – PARTNER

T: +64 4 498 6356
M: +64 27 224 1271
E: bradley.kidd@chapmantripp.com



ALISTER MCDONALD – PARTNER

T: +64 3 353 0392
M: +64 21 477 935
E: alister.mcdonald@chapmantripp.com



**BARBARA LLOYD –
PROFESSIONAL SUPPORT LAWYER**

T: +64 9 357 9013
E: barbara.lloyd@chapmantripp.com

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AUCKLAND

23 Albert Street
PO Box 2206, Auckland 1140
New Zealand

T: +64 9 357 9000
F: +64 9 357 9099

WELLINGTON

10 Customhouse Quay
PO Box 993, Wellington 6140
New Zealand

T: +64 4 499 5999
F: +64 4 472 7111

CHRISTCHURCH

245 Blenheim Road
PO Box 2510, Christchurch 8140
New Zealand

T: +64 3 353 4130
F: +64 3 365 4587