



Listed Companies Association
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Commerce Committee Secretariat
Bowen House
Parliament Buildings
Wellington 6160

Attention: Catherine Corser

By email Catherine.Corser@parliament.govt.nz

1. **SUBMISSIONS ON REGULATORY REFORM BILL**

1.1 Introduction

- 1 The Listed Companies Association Inc (*LCA*) executive welcomes the opportunity to make submissions on the Regulatory Reform Bill.
- 2 The LCA is an independent and voluntary non-profit organisation established in 1981. Its members are NZSX, NZAX and NZDX listed companies. Its main purposes are:
 - 2.1 to help listed companies further the long-term interests of their shareholders by working for a fair, adequate and efficient regulatory system;
 - 2.2 to help listed companies maximise the benefits of listing and to make the requirements that come with that status appropriate and reasonable to comply with; and
 - 2.3 to promote confidence in and growth of business and capital markets in New Zealand.

Companies Act 1993 Amendments

- (a) Electronic Voting and Communications

Web www.listedcompanies.co.nz
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- 3 The LCA strongly supports the changes clarifying and confirming the lawfulness of electronic communication with shareholders and the provision for shareholder participation in meetings by way of audio, audio and visual or electronic means. The LCA is pleased that these changes should resolve any ambiguity as to whether electronic shareholder participation is permitted by the Companies Act 1993.
- 4 The LCA believes that the proposed amendments will have the following benefits:
 - 4.1 *Enable Shareholder Participation* – facilitating electronic shareholder participation is likely to lead to an overall increase in shareholder participation in decision making;
 - 4.2 *International Regulatory Consistency* – the use of electronic shareholder participation is widespread in overseas jurisdictions, and facilitation of electronic shareholder participation in New Zealand will better align New Zealand with overseas jurisdictions and will ensure that New Zealand is seen as being at the forefront of good governance practice;
 - 4.3 *Reduced Compliance Costs* – savings should be made by both companies (for example on reduced printing and postal costs) and shareholders (reduced travel costs). The LCA previously estimated savings of \$1.5 million per annum could be made by listed companies alone as a result of enhanced electronic shareholder participation;
 - 4.4 *Consistent commercial methodologies* – the use of the internet and email is the norm for most commercial transaction and facilitation of electronic participation will bring it in line with other commercial transactions.
- 5 We have the following drafting suggestions amend clause 48 of the Bill to make the intent of the legislation clearer:
 - 5.1 A number of shareholders hold shareholding interests through common bare trust nominees. For listed companies, New Zealand Central Securities Depository Limited commonly holds shares for a number of underlying holders. It would be desirable to amend clause 6 of Schedule 1 of the Companies Act 1993 to make it clear that nominees can appoint different persons as a proxy to vote at a meeting (whether by traditional vote at the meeting or through electronic means) in relation to distinct shares held by the underlying beneficial owner. Accordingly, we suggest that clause 48 of the Bill also insert a new clause 6(1A) to Schedule 1 of the Companies Act 1993 modelled on Section 324 of the UK Companies Act 2006, to read:

"6(1A) To avoid doubt, a shareholder may appoint more than one proxy in relation to a meeting, provided that each proxy is

appointed to exercise the rights attached to a different share or shares held by the shareholder."

- 5.2 We understand the amendment to be made by clause 48 of the Bill to clause 7(1) of Schedule 1 of the Companies Act 1993 is intended to put beyond doubt that postal votes can be recorded by electronic means. However it could be interpreted as limiting the ability to cast votes 'real time' electronically during the course of a meeting. If all electronic votes must be treated as postal votes (as the new clause 7(1) could be read as requiring) then, for example, clause 7(4) would require the votes to be cast no later than 48 hours before the meeting. The new clause 14 could be read as overriding this result, but it might be desirable to clarify the treatment. We suggest a new subclause 7(9):

"7(9) Nothing in this clause 7 applies to electronic votes cast in accordance with clause 14 during a meeting held under clause 3(b) or (c) of this Schedule."

- 5.3 The new clause 14 of schedule 1 should refer to "a shareholder or a shareholder's proxy *or representative*".
- (b) Repeal of requirement for listed companies to send notices advising it has acquired its own shares
- 6 The LCA supports the repeal of the requirement for listed companies to send each shareholder a notice advising that it has acquired its own shares on a stock exchange. Such notices are already required under the NZX listing rules.
- (c) Removal of requirement for arbitrator to set an interest rate
- 7 The LCA supports the removal of the requirement for an arbitrator to set an interest rate where a company is buying out a minority shareholder and the buyout does not require arbitration.

Takeovers Act 1993 Amendments

- 8 The LCA supports the amendments to the treatment of share parcels and to make it clear that the Code continues to apply until completion of a takeover offer and compulsory acquisition. We think the new section 2A(2) of the Takeovers Act should also apply to listed companies, since de-listing may occur prior to completion of compulsory acquisition. In such an event, section 2A(1)(b) of the definition of Code company would become redundant and should be omitted.

Further Information

- 9 The LCA wishes to be heard in support of our submission.. Please contact executive member Don Holborow of Simpson Grierson to arrange this (ph: (04) 924 3423).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Linda Cox'.

Linda Cox

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