



BARRISTERS AND SOLICITORS

By email

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Overseas Investment Act – Comparison of the Investor Qualification Test with other laws

1. Introduction

1.1 This memorandum considers and reports on the primary qualitative differences between:

(a) the protections afforded by the tests in section 14A of the Overseas Investment Act 1973 (the **Act**) (the **Investor Qualification Test**); and

(b) those contained in principal New Zealand business and other laws.

1.2 In connection with your current review of the Act, you are interested in determining whether, in the absence of the Investor Qualification Test, other New Zealand laws would restrict the conduct of business and making of investments in New Zealand in a similar manner. The Investor Qualification Test addresses business acumen and experience, financial commitment, good character, and certain threats to the public.

1.3 You have asked us to analyse and compare the Investor Qualification Test as though it were an ongoing test applicable to persons who conduct, or seek to conduct, business or investment in New Zealand. For this purpose we are to ignore the pre-conditional or qualificatory nature of the Investor Qualification Test.

1.4 We have not been asked to comment, and we make no comment, on whether the Investor Qualification Test is desirable as a matter of public policy.

2. Conclusion

2.1 There are a number of existing New Zealand business and other laws that provide protections similar to one or more of the four limbs of the Investor Qualification Test – generally, business acumen, financial commitment, good character, and certain threats to the public. However, in our view, the scope and standards set by the Investor Qualification Test go significantly beyond existing New Zealand business and other laws. The practical significance of this “gap” is something that you will consider in your review.

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2.2 The following is a summary of the similarities and “gaps” between the protections intended to be provided by New Zealand business and other laws and those intended to be provided by the four limbs of the Investor Qualification Test:

- (a) The Business Category under the Immigration Act subjects those who apply for New Zealand residence under the Business Category to criteria which are very similar to those contained in the Investor Qualification Test.

However, a “gap” exists because the Business Category only applies to the very limited class of persons who seek residence in New Zealand under the Business Category. It does not apply to all persons who seek residence in New Zealand, nor to persons who do not apply for residence in connection with the conduct of their business or investment in New Zealand.

- (b) The disqualifying provisions and directors duties provisions in the Companies Act subject persons who conduct business as directors or managers of New Zealand registered companies to similar criteria as those in the Investor Qualification Test.

However, “gaps” exist because:

- the Companies Act does not address financial commitment or good character directly and, for these reasons and in other respects, the standards imposed by the Companies Act fall short of those required by the Investor Qualification Test; and
- persons may conduct business or make investments in New Zealand without being a director or manager of a New Zealand registered company, for example by doing so through a New Zealand or overseas unincorporated body or as an individual.

- (c) Various professional groups and investment advisers and investment brokers are subject to special rules that touch on aspects of one or more of the four limbs of the Investor Qualification Test in that they restrict the ability of persons to conduct business as a member of those professions or as an investment adviser or investment broker.

However, these special rules apply only to the relevant individuals and do not regulate persons conducting business or investing outside the ambit of these professions.

- (d) Various legislation sets legal standards of conduct for businesses and individuals or generally seek to protect creditors, shareholders, consumers and/or the New Zealand public from those who conduct business or investment in New Zealand.

However, “gaps” exist because:

- New Zealand laws generally do not seek to regulate *who* may conduct business or investment in New Zealand in the way that the Investor Qualification Test does, but instead regulate *how* business is conducted;

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- New Zealand laws generally do not require persons to have business experience and acumen or to positively establish their financial commitment or good character before conducting business or investment; and
- mere compliance with these pieces of legislation and other general laws (being a law abiding citizen) does not necessarily qualify a person as being of “good character” (though a person who regularly flouts criminal laws is not of “good character”). “Good character” seems to require something more than this.

3. The Investor Qualification Test

3.1 The Act and the Overseas Investment Regulations (the **Regulations**) provide for the supervision and control of overseas investment in New Zealand. The Act establishes the Overseas Investment Commission to administer the Regulations.

3.2 The Regulations require every “overseas person”¹ to obtain the approval of the relevant Minister(s) under the Regulations before acquiring or taking control of 25 per cent or more of certain significant assets in New Zealand, including businesses or business property worth in excess of NZ\$50 million.

3.3 Applications under the Act may be approved only where they meet the criteria for consent set out in Sections 14A or 14B of the Act. Sections 14A(2)(a)-(c) of the Act set out the criteria against which an overseas person is measured before an “overseas investment” by that person in New Zealand may be approved. We refer to the criteria in these provisions of the Act as the Investor Qualification Test.² The four principal components of the Investor Qualification Test are:

- relevant business experience and acumen (the **Business Acumen Limb**);
- financial commitment to the investment (the **Financial Commitment Limb**);
- “good character” (the **Good Character Limb**); and
- not within section 7(1) of the Immigration Act (the **Threat to the Public Limb**)³.

¹ An “overseas person” is defined in the Act as: a person who is not a New Zealand Citizen and who is not normally resident in New Zealand; any company or body corporate incorporated outside New Zealand or subsidiary thereof; any company in which 25% or more of its shares are held or controlled by an overseas person or persons; any nominee of an overseas person.

² The focus of our inquiry is on section 14A of the Act rather than section 14B. Section 14B of the Act includes an additional criteria that the overseas investment be in the “national interest”.

³ The subparts of section 7(1) of the Immigration Act are essentially aimed at preventing persons who are likely to constitute a threat to the public from obtaining residence in New Zealand. Consequently, we refer to the section 7(1) limb of the Investor Qualification Test as the “Threat to the Public Limb”. Section 7(1) is included as **Schedule 1** to this memorandum.

4. **New Zealand laws that are most similar in scope to all four limbs of the Investor Qualification Test.**

4.1 We identify below specific pieces of New Zealand legislation that touch on various aspects of all four limbs of the Investor Qualification Test in terms of the public protections they provide: the Immigration Act, the Companies Act and the Investment Advisers Act.

The Business Category of the Immigration Act

4.2 Overseas persons applying for residence under the Business Category in the Immigration Act must satisfy the Threat to the Public Limb, plus the additional criteria of:

- (a) age (there is a preference for younger applicants);
- (b) business experience (there is a preference for more experience); and
- (c) investment funds (there is a preference for significant financial investment).

4.3 Applicants under the Business Category are scored on a points system with the minimum requirements for points being investment funds of at least NZ\$1 million (maximum points awarded for funds in excess of NZ\$6 million) and business experience of at least 2 years (maximum points awarded for experience in excess of 10 years).

4.4 Persons who successfully apply for residence in New Zealand under the Business Category are therefore likely to possess business experience and acumen, investment funds, and “good character” to a standard very close to those the Investor Qualification Test requires.

4.5 However, significant “gaps” exist between the Investor Qualification Test and the Business Category in that:

- (a) the Business Category applies only to the limited class of persons who apply for residence in New Zealand under that category. Applications may be made under one or more of a number of different categories; and
- (b) not all persons seeking to conduct business or investment in New Zealand need to apply for residence in order to do so. Some may already be residents or citizens. Others may not need to be physically resident in New Zealand in order to conduct business or invest.

The Companies Act 1993

4.6 The Companies Act 1993 (the **Companies Act**) contains four distinct provisions which disqualify or prohibit certain persons from being appointed or holding office as

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a manager or director of a New Zealand registered company⁴: sections 151, 382, 383 and 385 of the Companies Act (the **Disqualifying Provisions**).⁵

- 4.7 There are essentially three classes of persons at whom the Disqualifying Provisions are aimed: those who are dishonest; those who have failed to comply with New Zealand companies and securities laws; and those whose prior participation in failed business(es) or personal financial failure might tend to demonstrate a lack business or financial competence.
- 4.8 The main areas of overlap are with the Good Character Limb and the Threat to the Public Limb, because the Disqualifying Provisions prevent those who have previously committed offences of dishonesty or fraud, from being a director or manager. There is also some, but much less, overlap with the Business Acumen Limb in that the Disqualifying Provisions prohibit persons who are undischarged bankrupts or have generally been incompetent, reckless or unsuccessful (in the sense of the company being wound up or otherwise being unable to pay its creditors) in their prior business activities, from being a manager or director of a company. Of course, not all people who are not disqualified from managing or directing a company have good character or business acumen.
- 4.9 The Companies Act also subjects directors of New Zealand companies to a number of duties in relation to the company, its shareholders and those who deal with the company. These include duties to:
- act in good faith and in the best interests of the company;
 - not agree, cause or allow the business of the company to be carried on in a manner likely to create a risk of serious loss to shareholders;
 - not agree to the company incurring an obligation without believing on reasonable grounds that the company will be able to perform that obligation when required to do so; and
 - exercise the care, diligence and skill that a reasonable director would exercise when conducting the business and affairs of the company. Note that this duty holds a director to the standards of a “reasonable director” regardless of his or her actual acumen.
- 4.10 These directors’ duties overlap with the Business Acumen Limb to the extent that they go to the skill and judgement of those conducting business a director of a company vehicle and, in the case of the duty of care, hold the director to an objective standard. The duty provisions overlap with the Good Character Limb in that they require directors to act in good faith and the company’s best interests. They also mimic the general tenor and effect of the Investor Qualification Test in that the duties ultimately seek to protect shareholders and creditors of companies.

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⁴ With the exception of section 151 of the Companies Act, this includes “overseas companies” (body corporates incorporated outside New Zealand) carrying on business in New Zealand.

⁵ Summaries of the Disqualifying Provisions are included as **Schedule 2** to this memorandum.

4.11 As will be apparent from the above, there is some overlap between the Investor Qualification Test and matters addressed by the Companies Act. However, “gaps” exists in that:

- the Companies Act does not address the Financial Commitment Limb or Good Character Limb directly and, in these and other respects, the standards required of a director or manager under the Companies Act fall short of those required by the Investor Qualification Test;
- the Disqualifying Provisions only apply to New Zealand or overseas corporate bodies registered under the Companies Act. Unincorporated entities and natural persons carrying on business in New Zealand are not subject to the Companies Act; and
- the directors duties provisions do not apply to unincorporated bodies or to overseas incorporated or unincorporated bodies or individuals.

Investment Advisers (Disclosure) Act 1996

4.12 The Investment Advisers (Disclosure Act) 1996 (the **Investment Advisers Act**) empowers the Court to prohibit a person from conducting business as an investment adviser or broker who has previously been convicted of an offence of dishonesty under the Crimes Act or an offence against the Investment Advisers Act.

4.13 The Investment Advisers Act also requires disclosure by investment advisers and brokers of any prior conviction of an offence of dishonesty, prior adjudication of bankruptcy, or any prohibition under any act or by any court from taking part in the management of a company or business. These disclosures would arguably affect the ability of persons with these historical black marks to carry on business as an investment adviser or broker.

4.14 The main area of overlap between the Investment Advisers Act and the Investor Qualification Test is with the Good Character Limb and Threat to the Public Limb, because the Investment Advisers Act prohibits those with convictions for offences of dishonesty from conducting business as an investment adviser or broker.

4.15 There is clearly a “gap” in scope between the Investment Advisers Act and the Investor Qualification Test because the Investment Advisers Act only regulates the limited class of persons who conduct or seek to conduct business as an “investment adviser” or “investment broker”. Further “gaps” exist in that these provisions in no way replicate fully the criteria in the Investor Qualification Test.

5. **New Zealand laws that are most similar to the Business Acumen Limb of the Investor Qualification Test.**

5.1 In our view, the Business Acumen Limb of the Investor Qualification Test is not sufficiently covered by existing New Zealand business and other laws and therefore a “gap” exists around this limb of the Test. New Zealand laws do not generally require persons to have sound business acumen and experience when they conduct business or make investments in New Zealand. (although positively misrepresenting a level of experience or the availability of funds to contractual counterparties and the public would be likely to expose the persons to liability under a variety of statute and common law).

5.2 The law does attempt to protect creditors, shareholders, consumers and the public generally from the harmful consequences that may result when people lacking business acumen and experience conduct business or investments. However, the effect of these laws is often limited by the corporate veil protecting shareholders and directors of companies and the rules relating to insolvency and bankruptcy, which may mean that creditors of persons lacking in business acumen or experience may be unable to avoid the consequences when businesses conducted by such persons fail.

6. **New Zealand laws that are most similar to the Financial Commitment Limb of the Investor Qualification Test.**

6.1 The Financial Commitment Limb has no close peer in New Zealand law and, therefore, in our view, a “gap” exists in relation to this limb of the Investor Qualification Test. There are very few New Zealand business or other laws that require persons to positively establish their financial commitment to a business venture or investment in the way that the Investor Qualification Test does.

6.2 The closest (but still distant) analogy is provided by various enactments, such as the Law Practitioners Act 1982, Real Estate Agents Act 1976, Auctioneers Act 1928, and the Friendly Societies and Credit Unions Act 1982 that require persons involved in certain spheres of business activity to lodge bonds with administrative authorities, usually for quasi-insurance purposes, in order to guarantee the fidelity of those who participate in that sphere of business.

7. **New Zealand laws that are most similar to the Good Character Limb of the Investor Qualification Test.**

7.1 In addition to those enactments already identified that overlap to some extent with the Good Character Limb, there exist various self-regulatory professional enactments that provide similar protections to that Limb.

7.2 Enactments such as the Law Practitioners Act 1981, the Medical Practitioners Act 1995, the Nurses Act 1977, and the Pharmacy Act 1970, are analogous to the Good Character Limb in that regulate who may conduct business in the professions governed by those enactments based on whether applicants are of “good character” or “fit and proper persons” to be admitted.

7.3 There is clearly a “gap” between these Acts and the Investor Qualification Test because their application is limited to those who conduct or seek to conduct business as a member of one of these regulated professions.

8. **New Zealand laws that are most similar to the Threat to the Public Limb of the Investor Qualification Test.**

8.1 In addition to the specific pieces of legislation identified above that provide similar protections to those contained in the Threat to the Public Limb, we have identified a number of other pieces of legislation that overlap with the scope of the that Limb.

Terrorism Suppression Act 2002

8.2 The Terrorism Suppression Act 2002 (the **Terrorism Suppression Act**) contains, among other things, broad prohibitions on:

- terrorist acts;
 - the provision of property or financial services to terrorist or associated entities; and
 - any dealings with the property of terrorist or associated entities or property deriving from such property.⁶
- 8.3 The Terrorism Suppression Act also empowers the Prime Minister to designate an entity as a terrorist or associated entity⁷ and, as a consequence of such designation, property of a designated entity may be placed under the control of the Official Assignee or, alternatively, forfeited to the Crown.
- 8.4 By creating prohibitions on the provision of property or financial services to, or dealing with the property of, terrorist or associated entities, and providing for the confiscation of property of such entities, the Terrorism Suppression Act effectively prevents terrorists or those associated with terrorists from conducting business or investment in New Zealand.
- 8.5 To that extent, the provisions of the Terrorism Suppression Act are analogous with the terrorism-related subparts of the Threat to the Public Limb of the Investor Qualification Test. In creating offences for the commission of terrorist acts, the Terrorism Suppression Act also protects the public from one of the same mischiefs at which the Threat to the Public Limb is aimed. Therefore, the Terrorism Suppression Act fills the “gap” that would be left by the removal of the Investor Qualification Test in as far as the Investor Qualification Test relates to terrorism.
- 8.6 The obvious “gap” here is that terrorism is only one small subpart of the Threat to the Public Limb and the Terrorism Suppression Act has no bearing on the other subparts of that limb.

Crimes Act 1961

- 8.7 The Crimes Act 1961 (the **Crimes Act**) contains a variety of offences of dishonesty, including, among others, corruption, bribery, fraudulent behaviour and money laundering. It also contains many other offences that prohibit and penalise persons who act in a way that breaches certain normalised standards of conduct expected by members of a civilised society.
- 8.8 The likelihood of conviction of an offence under the Crimes Act is one of the subparts of the Threat to the Public Limb of the Investor Qualification Test and, therefore, the Crimes Act fills the “gap” that would be left by the removal of that subpart of the Threat to the Public Limb.
- 8.9 Further, many of the sorts of behaviour prohibited by the Crimes Act are indicators of “bad” character and, therefore, the Crimes Act also overlaps with the Good Character Limb to that extent. However, it must be remembered that compliance

⁶ “Property” is defined as “real or personal property of any description, whether situated in New Zealand or elsewhere, whether tangible or intangible”.

⁷ An “entity” is defined as “a person, group, trust, partnership, fund, or unincorporated association or organisation” and need not be a New Zealand entity.

with the legal standards of conduct set down by the Crimes Act is unlikely to be enough to establish “good character” and something further would be required.

- 8.10 The “gap” in scope here between the Crimes Act and the Threat to the Public Limb is *not* significant in terms of the public protections they provide. This is because crime related criteria form the majority of the subparts of the Threat to the Public Limb.

Misuse of Drugs Act 1975

- 8.11 The Misuse of Drugs Act 1975 (the **Misuse of Drugs Act**) prohibits, among other things, dealing in, or use, possession or cultivation of, controlled drugs.
- 8.12 The Misuse of Drugs Act overlaps with the Investor Qualification Test to the extent that it creates drug offences, which are one of the criteria in the Threat to the Public Limb.
- 8.13 The commission of drug offences is also an indicator of “bad” character, and, therefore, the Misuse of Drugs Act also has some overlap with the Good Character Limb.

Financial Transactions (Reporting) Act 1996

- 8.14 The Financial Transactions (Reporting) Act 1996 (the **Financial Reporting Act**) targets money laundering and those who deal with the proceeds of crime. It requires any “financial institution” to verify the identity of any person who has an account or enters into an arrangement with that financial institution and to report any suspicious “transaction” to the Commissioner of Police.⁸ A transaction is required to be reported if the financial institution has reasonable grounds to suspect that the transaction is, or may be, relevant to the investigation or prosecution of any person for a money laundering offence or to the enforcement of the Proceeds of Crime Act 1991.
- 8.15 The Financial Reporting Act therefore attempts to identify, for law enforcement purposes, suspicious transactions conducted through the New Zealand financial system and suspicious persons who attempt to conduct such dealings, with the ultimate purpose of preventing access to financial services in New Zealand by those with criminal connections.
- 8.16 Therefore, the scope of the Financial Reporting Act overlaps to some extent with the subparts in the Threat to the Public Limb that purport to deal with criminal offences and criminal organisations and groups. It also overlaps with the Good Character Limb in that it seeks to prevent access to financial services by those with criminal connections and therefore “bad” character.

⁸ A “financial institution” is defined as any person whose business has a principal part of that business which consists of: borrowing or lending or investing money; or administering or managing funds on behalf of other persons; or acting as trustee in respect of funds of other persons, or dealing in life insurance policies; or providing financial services that involve the transfer or exchange of funds; or receiving funds in course of business as a lawyer or accountant. A “transaction” is defined as any “deposit, withdrawal, exchange or transfer of funds (in whatever currency denominated) whether – (i) in cash; or (ii) by cheque, payment order, or other instrument; or (iii) by electronic or other non-physical means.”

Threat to the Public Limb covered by existing law in terms of protections provided

8.17 Between them, the Crimes Act, Terrorism Suppression Act and the Misuse of Drugs Act cover all subparts of the Threat to the Public Limb except the two relating to deportation or removal orders (which would often be prefaced on criminal activities by the deportee in any event). Therefore, ignoring the pre-conditional or qualificatory nature of the Investor Qualification Test and the fact that it regulates *who* may conduct *business or investments* in New Zealand, the Threat to the Public Limb would be sufficiently covered by existing laws in the absence of that limb in terms of the public protections provided.

9. **Other New Zealand business legislation and general laws**

9.1 The Commerce Act 1986 (the **Commerce Act**), the Consumer Guarantees Act 1993 (the **Consumer Guarantees Act**), the Proceeds of Crime Act 1991 (the **Proceeds of Crime Act**), the Securities Act 1978 (the **Securities Act**), the Securities Markets Act 1988 (the **Securities Markets Act**) and the Fair Trading Act 1986 (the **Fair Trading Act**) all impose standards of business or personal conduct that protect consumers, investors or the public generally and are therefore analogous to some extent with the general tenor and effect of the Investor Qualification Test.

9.2 For example, the Commerce Act business acquisition rules prohibit persons from acquiring any business where the acquisition would lead to a substantial reduction in competition in the relevant market. These rules are aimed at preventing economically inefficient monopoly or near monopoly situations from arising in a market for the ultimate purpose of protecting consumers and small business.

9.3 The Consumer Guarantees Act protects consumers in relation to, among other things, the quality, price, timeliness of delivery and fitness for purpose of goods and services they purchase, by implying mandatory guarantees in relation to these matters.

9.4 The Securities Act seeks to protect investors by ensuring full and timely disclosure of information relevant to their investments in public issuers; and the Proceeds of Crime Act helps protect persons from serious criminal offending by allowing for the confiscation of the proceeds of such offending.

9.5 The Securities Markets Act contains provisions that prohibit insider trading in the shares of New Zealand listed companies. It also requires disclosure by listed companies to the market of material share price sensitive information relating to the company and of "relevant interests" held by directors and officers of the company for the purposes of discouraging insider trading and facilitating the flow of valuable information to the market.

9.6 The Fair Trading Act seeks to protect consumers by prohibiting, among other things, "misleading and deceptive conduct" and misrepresentations in "trade" by any person.⁹ Persons to whom good character, financial resources and business acumen is important might, in trade, be expected to require comfort on these matters from their contractual counterparties. The Fair Trading Act will give these

⁹ "Trade" is defined as "any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the acquisition of goods and services or the disposition or acquisition of an interest in land".

people an action against someone who misrepresents themselves in these circumstances.

- 9.7 In addition to the foregoing, companies, unincorporated bodies and natural persons are all required by the general laws of debt and contract and various specific pieces of legislation to pay debts that they owe and not to enter obligations if they do not expect to be able to meet those obligations.
- 9.8 In combination, these and other laws have an ultimate effect that is consistent to some extent with the tenor and purpose of the Business Acumen Limb of the Investor Qualification Test in that they protect those who deal with those who conduct business in New Zealand.
- 9.9 However, “gaps” exist because:
- with limited exceptions (such as those contained in the Business Category of the Immigration Act, the Companies Act, and the Investment Advisers Act), New Zealand laws generally do not seek to regulate *who* may conduct business or investment in New Zealand in the way that the Investor Qualification Test does, but instead regulate *how* business is conducted;
 - with limited exceptions, New Zealand laws generally do not require persons to have business experience and acumen or to positively establish their financial commitment before conducting business or investment;
 - there is no definition of what constitutes “good character” in the Act or Regulations. The concept is a nebulous one, but it is clear that mere compliance with the specific and general laws discussed in this memorandum (being a law abiding citizen) will not necessarily be sufficient to establish “good character”; and
 - although there are some enactments that overlap in scope with a particular limb or limbs of the Investor Qualification Test, or are generally similar in terms of tenor and effect as the Test as a whole, in general the standards imposed fall short of those imposed by the Investor Qualification Test.

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Schedule 1: Section 7(1) of the Immigration Act

7 Certain persons not eligible for exemption or permit

- (1) Subject to subsection (3) of this section, no exemption shall apply, and no permit shall be granted, to any person—
- (a) Who, at any time (whether before or after the commencement of this Act), has been convicted of any offence for which that person has been sentenced to imprisonment for a term of 5 years or more, or for an indeterminate period capable of running for 5 years or more; or
 - (b) Who, at any time within the preceding 10 years (whether before or after the commencement of this Act), has been convicted of any offence for which that person has been sentenced to imprisonment for a term of 12 months or more, or for an indeterminate period capable of running for 12 months or more; or
 - (c) Against whom a removal [order] is in force; or
 - (d) Who has been deported—
 - (i) From New Zealand, at any time, under this Act; or
 - [(ii) Repealed
 - (iii) From New Zealand at any time, pursuant to an order for deportation made under section 22 of the Immigration Act 1964; or]
 - (iv) From New Zealand, at any time (whether before or after the commencement of this Act), pursuant to any other enactment, except section 158 of the Shipping and Seamen Act 1952 (as repealed by section 151(1) of this Act); or
 - (v) From any other country, at any time (whether before or after the commencement of this Act); or
 - (e) Who the Minister has reason to believe—
 - (i) Has engaged in, or claimed responsibility for, an act of terrorism in New Zealand; or
 - (ii) Is a member of or adheres to any organisation or group of people that has engaged in, or has claimed responsibility for, an act of terrorism in New Zealand; or
 - (f) Who the Minister has reason to believe—
 - (i) Has engaged in, or claimed responsibility for, an act of terrorism outside New Zealand; or

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- (ii) Is a member of or adheres to any organisation or group of people that has engaged in, or has claimed responsibility for, an act of terrorism outside New Zealand—
- and whose presence in New Zealand would, for that reason or for any other reason, constitute, in the opinion of the Minister, a threat to public safety; or
- (g) Who the Minister has reason to believe is likely—
- (i) To engage in, or facilitate the commission of, any act of terrorism; or
- (ii) To commit an offence against the Crimes Act 1961 or the Misuse of Drugs Act 1975[; or]
- [(h) Who the Minister has reason to believe, in light of any international circumstances, is likely to constitute a danger to the security or public order of New Zealand; or
- (i) Who the Minister has reason to believe is a member of or adheres to any organisation or group of people which has criminal objectives or which has engaged in criminal activities, and whose presence in New Zealand would, for that reason or any other reason, constitute, in the opinion of the Minister, a threat to the public interest or public order.]

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Schedule 2: Summary of Disqualifying Provisions

Disqualification from being appointed or holding office as director (section 151)

Section 151 of the Companies Act disqualifies from being appointed or holding office as a director of a company every person who:

- is under 18 years of age; or
- is an undischarged bankrupt; or
- has been convicted on indictment of any offence in connection with the promotion, formation, or management of a New Zealand registered company; or
- has been convicted of any crime involving dishonesty; or
- against whom a judgment has been obtained under Part 1 of the Securities Amendment Act 1988 as an insider; or
- has persistently failed to comply with the Companies Act or the Securities Act 1978; or
- been guilty of any fraud in relation to the company or of any breach of his duty to the company; or
- acted in a reckless or incompetent manner in the performance of his duties as an officer of the company; or
- a person who the Registrar of Companies is satisfied has been, within certain time limits, an officer of, or concerned in the management of, a company:
 - 1) that has been wound or ceased to carry on business up due to inability to pay its debts as and when they became due; or
 - 2) in respect of the property of which a receiver has been appointed; or
 - 3) that has entered into a compromise or arrangement with its creditors. or
- is subject to an order under the Protection of Personal Property Rights Act 1988 as a result of being deemed to lack the competence to manage his or her own affairs in relation to his or her property.

Prohibition from being a director or manager (section 382)

Section 382 of the Companies Act prohibits from being a director of or managing a company persons who:

- have been convicted on indictment of any offence in connection with the promotion, formation, or management of a New Zealand registered company; or

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- have been convicted of an offence under any of sections 377 to 380 of the Companies Act¹⁰ or of any crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or
- judgment has been obtained against as an insider in an action under Part 1 of the Securities Markets Act 1988.

Disqualification by the Court from being a director or manager (section 383)

Section 383 of the Companies Act empowers the Court to disqualify from being a director of or managing a company any person who:

- has been convicted on indictment of an offence in connection with the promotion, formation, or management of a New Zealand registered company, or has been convicted of a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or
- has committed an offence for which the person is liable (whether convicted or not) under Part XXI of the Companies Act¹¹; or
- has, while a director of a company and whether convicted or not,—
 - (i) Persistently failed to comply with the Act or the Securities Act 1978 or, where the company has failed to so comply, persistently failed to take all reasonable steps to obtain such compliance; or
 - (ii) Been guilty of fraud in relation to the company or of a breach of duty to the company or a shareholder; or
 - (iii) Acted in a reckless or incompetent manner in the performance of his or her duties as director; or
- A judgment has been obtained in an action under Part 1 of the Securities Markets Act 1988 against him or her as an insider (within the meaning of that Part of that Act); or
- has become of unsound mind.

Prohibition by the Registrar from being a director or manager (section 383)

Section 385 of the Companies Act empowers the Registrar of Companies to prohibit any person who was a director of, or has been concerned in or has taken part in the management of, a company to which section 385 applies. Section 385 applies to any company:

¹⁰ Sections 377 – 380 of the Companies Act relate to false statement with respect to documents required by the Act, fraudulent use or destruction of property, falsification of records, and carrying on of the business in a fraudulent manner. Includes failing to register as an overseas company under section 336.

¹¹ Part XXI provides for 108 offences for various failures attributed to the company or directors of the company to comply with the Act.

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- that has been put into liquidation or ceased to carry on business as a result of an inability to pay its debts; or
 - in respect of which execution is returned unsatisfied in whole or in part; or
 - in respect of the property of which a receiver or manager has been appointed; or
 - that has entered a compromise or arrangement with creditors.

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