



Listed Companies Association
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AMENDMENTS TO SECURITIES MARKETS ACT 1988

By way of background, the Listed Companies Association Inc. is an independent, voluntary, non-profit organisation of New Zealand Exchange listed organisations. Its main purposes are:

- to help each listed company further the long term interests of its shareholders by working for a fair, adequate and efficient regulatory system;
- to assist those responsible for listed companies to maximise the benefits of listing and to make the requirements that come with that status appropriate and reasonable to comply with; and
- to promote confidence in and growth of business and capital markets in New Zealand.

The Listed Companies Association supports the concerns expressed by Bell Gully in its letter to you of 15 February 2008.

Whilst we generally support the new laws as a good step forward in underpinning confidence in New Zealand's capital markets, we agree with Bell Gully that the problems require urgent rectification.

We are particularly concerned about the unintended reach of Sections 8D and 8E of the Act (tipping to hold), and the potential personal liability this imposes on Company officers. We do not intend to repeat the statutory interpretation work undertaken by Bell Gully, but simply note that we agree with that analysis.

We take little comfort from any view that there is little chance of being prosecuted for breaches of law in these circumstances due to the potential application of the Act being unintentional.

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It is not appropriate or good corporate governance for our members to be put in a position of having to undertake an analysis of the risks of being caught prior to undertaking an action, based on an assumption that the subjective view of a regulator or the Courts is that the law did not intend to catch that action. That is clearly undesirable and is simply placing too much onus on our members.

It is also very important to ensure that Parliament gets it absolutely right in the area of personal and potentially criminal liability for managers. It is not an easy conversation to have with a manager when you are simply asking him or her to do their job, but that there is a "technical" or "theoretical" risk that they could have such severe personal consequences. A "she'll be right" culture is not one we support among our membership.

In addition, we note that New Zealand is (to our knowledge) the only jurisdiction in the world to introduce a "tipping to hold" regime. We suspect that this is because of the potential for the unintended consequences referred to above and because it is practically impossible to distinguish between the "rights and wrongs" of that situation. It is somewhat ironic, therefore, that the global credibility we are striving to gain as a result of these amendments are undermined by one poorly crafted provision, with absurd outcomes.

We therefore ask that you seriously consider the remedial action recommended by Bell Gully.

If you would like to discuss any of the points raised in our letter or have any queries, please do not hesitate to contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Linda Cox', with a stylized flourish at the end.

Linda Cox
Chairperson