

The Companies (Directors' Duties) Amendment Bill has received Royal assent and has become law

Despite criticism from both opponents and supporters, the Companies (Directors' Duties) Amendment Bill (the Bill), introduced to the House in 2021, has received Royal assent and has become law.

What are the changes to the Companies Act 1993?

The Bill, which received Royal Assent on 3 August 2023 and has become the Companies (Directors' Duties) Amendment Act 2023 (the **Amendment Act**), amends section 131 of the Companies Act 1993 (the **Companies Act**). Section 131 of the Companies Act places a duty of company directors to act in good faith and in the best interest of their companies.

The Amendment Act seeks to clarify that directors may consider matters other than maximising profits, when determining what is in the best interest of a company. The Amendment Act provides examples of environmental, social and governance (**ESG**) matters as other matters which directors may consider.

Criticism of the Bill and amendments made

When introduced to the House, the Bill was proposed as a simple addition to the Companies Act to provide clarity to directors that they can take actions which consider matters other than the financial bottom line of a company. The substance of the Bill was criticised by both opponents and supporters.

Those in opposition to the Bill considered that the amendments were unnecessary and irrelevant, as the Companies Act, as it then stood, did not preclude directors from considering ESG factors when considering the best interest of the company. Consequently, parties who opposed the Bill suggested that many directors already considered ESG matters when exercising their duties.

Some parties in support of the Bill considered that the amendments did not go far enough, and the Bill should have placed a requirement on directors that they 'must' (rather than 'may') consider ESG factors when exercising their duty under section 131 of the Act.

The Bill was introduced as a member's bill and was read for the first time on 9 September 2021. The first iteration of the Bill provided a non-exhaustive list of five ESG matters directors may consider when determining the best interest of the company, and included matters such as recognising the principles of Te Tiriti o Waitangi, reducing adverse environmental impacts and upholding high standards of ethical behavior.

The Bill was amended to completely remove reference to the list of ESG factors on the basis that they could cause confusion, and instead to simply provide that, to avoid doubt, directors may consider matters other than 'the maximisation of profit' when determining the best interest of a company (and holding companies). Reference to ESG matters as matters directors can consider other than maximising profit was re-introduced to the Bill, but excluded providing a non-exhaustive list of such ESG matters.

Considerations for Directors

Despite significant opposition, including opposition from the New Zealand Law Society, the Ministry of Business and Innovation, the Institute of Directors and the Legislation Design and Advisory Committee, the Bill has become law. The Amendment Act will have minimal impact on directors, and is likely to act only to provide sign-posting to directors who are unsure of what matters they may consider in the best interests of their companies. While some directors may be concerned that the Amendment Act will create a greater litigation risk for them, the non-prescriptive nature of the Amendment Act is unlikely to cause real-world risk.

Want to know more?

If you have any questions about directors' duties, please contact our specialist [Litigation Team](#).