

31 January 2012

Geoff Connor
Chief Advisor
Corporate Law and Governance
Ministry of Economic Development
33 Bowen Street
WELLINGTON

Dear Geoff

Re: Audit Firm Incorporation

I am writing to you in regard to the discussion document that the Ministry of Economic Development (MED) released entitled *Audit Firm Incorporation*.

First, on behalf of BusinessNZ we wish to thank the Ministry for the initial discussions on this issue, as well as providing the document directly to us to comment on.

While the document has asked a series of questions, BusinessNZ wishes to briefly outline three views going forward.

Audit firm ability to incorporate

First, BusinessNZ fundamentally agrees that audit firms should be allowed to incorporate under the Companies Act 1993. It seems to us that there is inconsistency as to why they should be treated differently, so allowing this is a step in the right direction.

Protecting auditor independence

Second, regarding the approaches to protecting auditor independence, we would favour qualified persons having a simple majority. While the document points out that a majority of 75% or more may be required (as is the case in other countries), we believe this is not required here, with a simple majority of over 50% being sufficient. The primary reason for recommending over 50% is that there does not appear to be any evidence within the document that stricter restrictions are required.

Personal Indemnity Insurance

Last, the document asks a series of questions relating to personal indemnity (PI) insurance, including the best option going forward from options discussed in paragraphs 24 and 25. Paragraph 25 in particular highlights the fact that no clear

option has been identified, which indicates to us the fundamental question of whether any significant change is needed in the first place.

We also note that paragraph 26 of the document proposes that the Financial Markets Authority (FMA) would set the PI insurance requirements for incorporated practices that carry out one or more issuer audits. As MED would be aware, PI insurance requirements are examined through the indemnity insurance section of the FMA's consultation paper entitled *Licensing of Auditors and Registration of Audit Firms*. Overall, we believe that if any form of change is to take place in this area, MED should consider more developed thinking around ways forward as highlighted by the work of the FMA.

Alignment with other countries

One last point that we wish to raise is that throughout the document there are various references to offshore approaches and rules that New Zealand might partly implement or look to align with. While we fully understand the need to look at offshore practices to ascertain whether domestic changes need to be made, we also urge caution in simply trying to replicate offshore practices without taking into account the New Zealand context, particularly around issues where there is scant evidence to show there is a substantial problem warranting government intervention. In other words, a significant degree of market failure needs to be found.

We acknowledge the document is generally open ended in terms of asking submitters for their views. However, we would encourage MED to ensure that any recommendations going forward best balance New Zealand's position in the global market with regulatory changes that are clearly necessary. Also, if there is to be overseas alignment, general day-to-day business interactions indicates that closer alignment to Australia would most likely be the preferred model to first examine - while still ensuring the requirements work for New Zealand.

Thank you for the opportunity to comment, and we look forward to hearing from you.

Kind regards,

A handwritten signature in black ink, appearing to be 'P. O'Reilly', written in a cursive style.

Phil O'Reilly
Chief Executive
BusinessNZ