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Ref: DOIA 2223-1328

C. A. of the family Mattheiss

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Tēnā koe C. A. of the family Mattheiss

Thank you for your email of 16 December 2022 to the Ministry of Business, Innovation and Employment (MBIE) requesting information under the Official Information Act 1982 (the OIA). Your email contains a number of requests for information, which will be dealt with by setting out your questions in italics and our response below that.

At the outset, I would like to clarify and explain certain matters which overlap in your queries below.

MBIE's role in relation to Companies, Charitable Trust Boards and Incorporated Societies

The Companies Office, which is a business unit of MBIE, operates statutory registers, which include the registers of companies, charitable trust boards and incorporated societies. Each register is administered in accordance with its own legislative requirements which are set out in the Companies Act 1993 (the CA), the Incorporated Societies Act 1908 and the Charitable Trusts Act 1957 (the CTA).

For clarity, we will assume that your reference to profiles in the various questions below refers to an entity's information contained on the various registers maintained by the Companies Office.

Role of the Registrar in relation to Charitable Trust Boards

The role of the Registrar of Incorporated Societies under the CTA is restricted to registering charitable trust board applications, amendments to trust deeds, changes of registered office addresses and dissolutions of boards. He has no power under the CTA to inquire into a Board's activities or operations.

Section 58 of the CTA gives the Attorney-General the power to examine and inquire into the condition and management of all or any charities in New Zealand. The Attorney-General can be contacted at the Crown Law Office in Wellington.

Charitable Trust Board Register v Charities Register

The CTA permits a charitable trust board to be established by individuals (trustees as a board) or by an unincorporated society (society as a board).

The charities register is a different register which is overseen by Charities Services (part of the Department of Internal Affairs). The entities registered on it include companies, incorporated charitable trust boards, incorporated societies, unincorporated private trusts and other institutions or unincorporated entities that are considered to be charitable under the Charities Act 2005 (the Charities Act). The role of Charities Services, amongst other things, is to maintain and monitor charitable organisations in New Zealand,

promote public trust in charitable organisations, encourage best practice in governance and use of resources, and provide advice on matters relating to charities.

Being a board incorporated under the CTA is not the same as being registered under the Charities Act. Entities registered under the Charities Act have “charitable status” which makes them eligible for exemptions from income tax on all or some of their income. If a charitable trust board is not registered with Charities Services, it does not mean that it ceases to function or is no longer active – it just means that it is carrying out its charitable activities without being a registered charitable entity under the Charities Act.

Responses to your questions

1. *I have used your Companies' website (...) search menu to find that many companies/trust registered in New Zealand advertise using different names publicly, which is not the same as their registered company/trust name. Please inform me of who regulates these companies/trust under your ministry to be sure that they are following the Fair Trading Act 1986 and other related laws of New Zealand and internationally, to hold current and valid information on their company/trust profiles to be correct?*

The Companies Office is not responsible for ensuring that companies/trusts comply with the Fair Trading Act 1986. This falls within the jurisdiction of the Commerce Commission. The responsibility of ensuring that current and valid information is held on the companies register and/or the charitable trusts register falls on the director(s) and/or trustee(s) of the particular entity.

In relation to a company, the directors have a duty to update the companies register with regard to information such as the registered office and address for service, the details of the directors and shareholders, the company's constitution (if it has one), the issue of shares and changes in shareholding, the filing of the annual return, and applications for the removal of the company. If non-compliance comes to the attention of the Registrar, then it is investigated by the Compliance Team and/or the Integrity and Enforcement Team within the Companies Office.

In relation to a charitable trust board, the trustees have a duty under the CTA to keep certain information up to date, including the trust board's registered office address, changes to the trust board's name and any changes to the trust board's trust deed or rules.

2. *I have recently experienced incorporated societies (3) being removed from your New Zealand Companies' website but other incorporated societies remaining on there even when removed for a very long time still today- why would these incorporated societies history be completely removed from your Companies' website? The three incorporated societies include the following- the Upper Clutha River Guardians, Alpine Community Link and the Clutha Mata-Au River Parkway Group, Incorporated Society, also known as the Clutha River Parkway Steering Group. The Upper Clutha River Guardians and the Clutha Mata-Au River Parkway Group, Incorporated Society, were deregistered by Charities Services.*

Please be advised that information is not removed from the incorporated societies register where the incorporated societies or charitable trust boards are dissolved. Some historical information and information prior to computerisation of the incorporated societies register in the early 2000s may be held at Archives New Zealand.

In relation to the two incorporated societies, *Upper Clutha River Guardians Incorporated - 2279511* and *Clutha Mata-Au River Parkway Group Incorporated - 1469066*, as advised above, deregistration from Charities Services does not mean that the incorporated society or charitable trust board has ceased to operate. It means that it is no longer a registered charitable entity. The incorporated societies register

indicates that *Upper Clutha River Guardians Incorporated* was dissolved and removed from that register on 27 February 2013. *Clutha Mata-Au River Parkway Group Incorporated* is currently registered on the incorporated societies register and you can access documents for this incorporated society on the register.

We cannot locate any information for an incorporated society or charitable trust board called *Alpine Community Link*.

3. *By law, how long are you required to keep up incorporated societies on your New Zealand Companies' website? When an incorporated society is deregistered by Charities Services, and then you are to deregister them, how long does it take you to show their de-registration status? How long are you required by law to keep the incorporated society listed as removed or deregistered?*

Details about dissolved incorporated societies remain on the incorporated societies register after dissolution. Records for incorporated societies that were dissolved before the early 2000s may be available at Archives New Zealand. This information is retained there under the relevant Public Records legislation.

Charities Services sends lists of incorporated societies that they have deregistered from their register to the Companies Office. Deregistration from the charities register does not necessarily mean the incorporated society can be dissolved by the Registrar. It may continue to operate. Before dissolving an incorporated society, the Registrar must be satisfied that the society is no longer carrying on its operations.

The details of an incorporated society that has been dissolved by the Registrar will remain on the register. It is always possible that a dissolved society may apply to the Registrar to have their dissolution revoked at any time in the future.

4. *I have seen registered companies/trusts on your Companies website (...), whether they be charitable or not, to have outdated information on them and not to include actual signatories on their company's/trust's profile who are supposed to be active members. Can you please inform me of who the person is at your ministry who oversees this sort of information? In other words, who monitors your website to be sure that companies/trusts registered in New Zealand are following the New Zealand Acts, Laws and Bills, to actually exist as a valid registered company/trust under your ministry?*

The Registrar of Companies and the Registrar of Incorporated Societies oversee the information that is on the respective companies and charitable trust board registers. As stated above, it is the directors and trustees who have a duty to ensure the information on the relevant register is accurate. In relation to the holding of signatories – if there is no requirement in the relevant Act, then there is no need for such information to be held on the register. Directors and shareholders in companies only provide their signatures on consent forms when a company is first registered or when a new director is appointed and on statutory documents that are required to be signed by directors and/or shareholders, such as constitutions and financial statements.

Where company information may be inaccurate or out-of-date, and the Registrar is advised of this, the company will be contacted to update its information on the register. The Registrar's Integrity and Enforcement Team may also make enquiries of companies and directors to ensure that information provided to the Registrar is accurate.

There is no obligation under the CTA for charitable trust boards to advise the Registrar of the names and addresses of their trustees on an ongoing basis. The Registrar permits trust boards to do this online on a voluntary basis, so this is why you may see that some trust boards have the names of their trustees recorded on the register and others do not.

5. *I have seen legal persons place their name on a company/trust profile on your website but not include their signatory information of when they actually became a confirmed member to be able to verify their actual legal involvement. Who is in-charge of monitoring this information at your ministry?*

Whether or not signatory information is available on the respective registers is dependent on whether the relevant Act requires this. Please see the response above for who monitors information provided to the Companies Office.

6. *I have witnessed legal persons of company/trust profiles remove old documents on your website to potentially hide factual or historical data of their members on their company/trust profile. Who monitors this information on your website (...) to be sure that companies/trusts are not making errors or miscarriages or potentially committing acts of fraud or deceit to members of the public on their company's/trust's profile?*

Information uploaded on the respective registers cannot be removed by people, including members of the public, unilaterally.

The CA permits the Registrar to correct or rectify the companies register but public advertising of intended corrections or rectifications in the *New Zealand Gazette* must occur first. The Registrar must also be satisfied that particular information has been wrongly entered in, or omitted from the register, before he can undertake a correction or rectification.

If non-compliance occurs or allegations of fraud are made or comes to the attention of the relevant Registrar, then it is investigated by the Compliance Team and/or the Integrity and Enforcement Team in the Companies Office. You should note that fraud is a criminal offence so this activity is likely to be referred to the New Zealand Police.

Please refer to the role of the Attorney-General set out earlier in this response to their role in examining and enquiring into the condition and management of charities (including registered charitable trust boards).

7. *Please inform me of how the Ministry of Economic Development monitors company/trust profiles on your website? Who is in charge of this?*

The Ministry of Economic Development no longer exists as it was merged with various other Ministries to form the Ministry of Business, Innovation and Employment.

How the registers operate in terms of the collection and monitoring of information has already been set out above in response to question 4.

8. *Where can a member of the public request information for companies/trusts who have removed information from their company/trust profile that can be evidenced as being on their profile before removal? Who monitors this information at your ministry, please?*

Please see the earlier response under question 6 about the correction and rectification process under section 360A of the CA.

9. *Please inform me of who the person is at your ministry who monitors inactive companies/trusts on your website. I see some companies/trusts on your website remaining inactive for a number of years and still being allowed to remain current on your website despite this. Who monitors these inactive companies/trusts at your ministry on your website?*

Details of removed companies and dissolved charitable trust boards will remain on their respective registers. As a result of their removal or dissolution, they no longer exist as registered bodies corporate. Please note that removed companies can be restored to the companies register, and dissolved charitable trust boards can have their dissolutions revoked so that they can resume carrying on business or carrying on their operations, as the case may be.

10. *When a charity has been deregistered on the Charities Services website, how long does it take your ministry to receive this information and deregister them from your Companies' website (...)? In the past, I have witnessed charities that have been deregistered from the Charities Services website and then fairly quickly removed from your Companies' website (...). However, a charity in particular which I am unable to mention in this request has still not been deregistered from your Companies' website for nearly one year, although it has been deregistered from Charities Services. Can you please refer me to the person at your ministry who is in-charge of investigating these types of matters when their is potentially charity fraud involved as an indication of their de-registration?*

Please see the response to question three above and to question eleven below.

11. *For acts of charity fraud by charitable trusts registered on your website, which government branches does your ministry involve itself with for these sorts of investigations to take place?*

The Companies Office is not involved in investigations of charity fraud. As fraud is a criminal offence, investigations are likely to be conducted by the New Zealand Police and possibly by the Serious Fraud Office, if necessary. If a charitable trust or a charitable trust board is registered with Charities Services, that office may look at fraudulent activity in conjunction with the New Zealand Police and the Serious Fraud Office. Under the CTA, the Attorney-General may also inquire into the condition and management of a charity.

12. *Please inform me of how your ministry regulates the names of persons being claimed as members of charitable trusts. Does your ministry require legal names of persons to be used who make-up a company/trust or do you accept non-legal names to register a company/trust?*

The Companies Office does not undertake the verification of names of people at the time companies and charitable trust boards are incorporated. While the CA and the CTA require legal names and addresses to be provided at incorporation, there is no requirement in the legislation that these be verified. For companies, section 365 of the CA permits the Registrar to require a person to confirm that information provided to the Registrar is correct and if it is not, to require the person to correct it. If a correction is not made, the Registrar may commence action to remove the company from the companies register. There is no such power in the CTA.

13. *I know of a case where a nonlegal name was used and your ministry actually induced false representation by legally validating their contracts using a non-legal name. Please inform me of who is in-charge at your ministry of the legality of contracts and persons name used on contracts to be legally valid when provided to your ministry to be processed for approval to obtain donor status and benefits for charitable purposes in New Zealand?*

Obtaining donor status and benefits for charitable purposes is not something that is monitored by the Companies Office.

14. *Does your ministry require legal identifications to be used for these companies or trusts when they submit their applications to you?*

Please see the response to question 12 above.

15. *After 2012, your ministry for some reason stopped requiring charitable trusts to obtain charity status through your agency before obtaining this status through Charities Services, which was a common practice in the past. Can you please inform me of when this change was made by law and reference the act in which this change has been confirmed by the New Zealand Government as effective?*

As explained at the outset of this response, the Companies Office maintains the charitable trust board register, which is completely separate from Charities Services. There is no requirement for charitable trust boards registered under the CTA to be registered under the Charities Act.

16. *Please inform me of when a lawyer/barrister initially signs for company/trust under your ministry and that lawyer/barrister stops being active within that company/trust, does your ministry allow them to remain inactive? If so, how long?*

The CA and the CTA do not require the Companies Office to undertake this type of monitoring.

17. *Is there a time period of a lawyer's inactivity for a company./trust that would prevent the lawyer who initially signed-off on a company/trust to be unable to claim property for that company/trust in the future? If so, please reference this period or law under your ministry and the act in which it was decided by the New Zealand Government.*

We have interpreted part of your question to be whether there is a defined period of time in which a lawyer can act for a company or a charitable trust board. This would be something between the lawyer and the company or charitable trust board as their client. When a company is wound up and removed from the companies register, its property would be dealt with during the winding up process. If the company was not wound up but simply removed from the register, its property would vest in the Crown automatically under the CA by operation of law. If the company was later restored to the register, the property could re-vest in the company. When a charitable trust board is wound up and dissolved, its property would be dealt with in accordance with the provisions in its trust deed or rules. The property of a charitable trust board may also be dealt with by way of schemes under Parts 3 and 4 of the CTA, but these are not administered by the Companies Office and must be laid before the Attorney-General. A lawyer may assist a company or a charitable trust board during the winding up process.

18. *Who at your ministry is in-charge of monitoring lawyers/barristers who initially sign for companies/trusts to remain active members or not?*

Please see the response to question 16.

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact OIA@mbie.govt.nz.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, nā



James Betton
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