

# *APPRAISAL REPORT*

**File/Document/ID:****Client Name:** Ministry of Economic Development, Companies Office**Contact:** [name removed], Companies Office**Author:** [name removed], Consultant**Disposal Type** One-off Appraisal**Agency Coverage:** Companies Office**Scope:** Closed series of physical company files

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## **1 Executive Summary**

The Companies Office would like to offer this one-off appraisal report to supersede Part 1 of the precedent schedule identified as AT 98/9. This report covers the physical record set comprising of registered company records that were closed in 2000 as a result of the introduction of the electronic filing system.

This report recommends replacing the disposal action to be applied to company registration records (paper) class from: “to be transferred to National Archives 10 years after removal from register” to: “transfer to Archives NZ 10 years after closure of file”. The reasons for this change are:

- a) Paper records are no longer actively accessed after 10 years.
- b) The records held by the Companies Office in effect are a duplicate of the records required to be held by the company.
- c) The paper company registration files were closed in 2000, when electronic records were introduced. Back scanning has commenced for all non digitised records from 2000 to 2002.

All records in the Companies registration series are recommended for retention by Archives as approved in schedule AT98/9.

## **2 Appraisal Circumstances**

In 1998, the Companies Office, at that time within the Ministry of Commerce, received approval for a disposal schedule for registered companies and other registries identified as AT 98/9.

The introduction of electronic company registration and digitisation in 2000 has seen the paper files for all listed companies closed and replaced with a new electronic records system. These closed files have been transferred to external storage at the DISC storage facility in Toop Street, Seaview, Wellington.

The Companies Office would like to supersede Part 1 of schedule AT98/9 to allow for closed company records to be transferred to Archives NZ. The records covered by the remaining parts of the schedule have already been transferred to Archives NZ.

### 3 Agency Information

The records in this appraisal were created by the Companies Office, originally within the Ministry of Commerce before it changed its name to the Ministry of Economic Development in 2000.

<i>Agency code</i>	Wellington and Dunedin agency code – AATJ Auckland agency code – BAYT and BBNZ Christchurch agency code - CBAT
<i>Agency name:</i>	Companies Office, Ministry of Commerce ( transferred from Dept of Justice September 1995) Companies Office, Ministry of Economic Development (from 2000)
<i>Year established:</i>	1973 - 1988 Department of Trade and Industry 1988 – 2000 changed name to Ministry of Commerce. 2000 – changed name to Ministry of Economic Development, current name
<i>Year dis-established:</i>	N/A

### 4 Methodology

This is a one-off appraisal limited to records of company registrations. The reason this is a one-off appraisal and not a schedule, is that the paper files referenced are a closed series, which will not be added to.

The introduction of electronic company registration and digitisation in 2000 has seen the paper files for the nominated record series closed and replaced with a new electronic records system. These closed files have been transferred to external storage and are referred to infrequently to answer public queries.

The Companies Office wishes to supersede Part 1 of schedule AT98/9 by replacing the disposal action to be applied to the company registration records (paper) class from: “to be transferred to National Archives 10 years after removal from register” to: “transfer to Archives NZ 10 years after closure of file”. The reasons for this change are:

- a) Paper records are no longer actively accessed after 10 years.
- b) Under section 189 of the Companies Act 1993 a company must keep company records at its registered office for 7 years. The records held by the Companies Office are a duplicate of the records required to be held by the company.
- c) The paper company registration files were closed in 2000, when the electronic records were introduced. Back scanning has commenced for all non digitised records from 2000 to 2002.
- d) Relevant Precedent

#### **The Department of Corrections, head office, disposal schedule OP00/0066**

This schedule was taken as a relevant precedent because of the way disposal action was applied. Although Department of Corrections schedule is about inmates, a similarity applies because inmate files (like registered company files) may exist for a very long period of time, in some cases the life of the inmate.

As approved, the schedule allowed for files on inmates sentenced to 3 years or more to “transfer to Archives New Zealand 10 years after closure of file”. In effect disposal is not related to the inmates release but to the date of file closure. This allows for closed files about long term inmates to be transferred to Archives NZ.

Listed company records could be considered in the same fashion, with disposal linked to the date of file closure as opposed to the date of de-registration, allowing closed files about listed companies that are no longer actively used to be transferred.

## 5.1 Previous Disposal Authorities

Records Disposal Schedule AT98/9.

## 5 Disposal Criteria

The disposal action approved in the AT98/9 schedule of retaining all incorporation records will remain unchanged. See Appendix 1 for a discussion of the value of incorporation records, taken from AT98/9

## 6 Series or Class Information

### 7.1 Closed series of company files

**Series Description:** The company file contains three district registry functions, the registration of all corporate bodies, the maintenance of amendments to the register and the dissolution and removal of extinct entities from the register. Records are held for:

- companies (under Companies Act 1993)
- building societies
- individual and provident societies
- charitable trusts (under Charitable Trusts Act 1957)
- co-operative companies
- overseas companies operating in New Zealand
- unit trusts
- incorporated societies
- non-corporate issuers of securities
- trade unions
- friendly societies and credit unions

**Series start year:** 1994-1997 (Section 3 of the Companies Re-registration Act 1993 required every existing company to re-register between 1 July 1994 and 30 June 1997. At re-registration the company files were closed and classed "obsolete". New registered company files were opened to capture the records for the re-registered companies).

**Series end year:** 2000

**Total Quantity:** 208,052 files (Estimate: fit approx 10 files per London box)

**Physical format:** Paper

**Physical description:** Bound volumes

**System of** Numeric

**Arrangement:**

*Quantity to retain:* 208,052 files  
*Quantity to destroy:* 0

Recommended for Retention

All records in this series are recommended for retention as approved in schedule AT98/9.

**Access Recommendations**

[removed]

**Transfer Arrangements**

[removed]

## Appendix 1: Value Statement from AT98/9

The retention of all incorporations was the option favoured by most people we approached. This practice was in fact what some offices of National Archives had been applying already.

Discussions with Australian Archives revealed that the Australian Archives had three current disposal authorities (ie schedules) for the Australian Securities Commission, the body that administers the Australian Corporations Law. Before 1991 the administration of corporations laws was shared between the Commonwealth (National Companies and Securities Commission) and the States and Territories. The disposal authorities most relevant to post 1991 Company registrations prescribe permanent retention in electronic form of the Australian Securities Commission national corporate database known as ASCOT. (Australian Securities Commission On Time). Information submitted to the Australian Securities Commission since 1991 is imaged into the DOCIMAGE Computer System consequently the schedule specifies paper versions of documents (including any documents held on magnetic media) may be destroyed but only after transfer to optical disc or equivalent storage media. It would seem all pre 1991 records were retained also. For details as to what is on ASCOT see Appendix 1

Written comments from legal search agents accessing company records suggested they required access to dead companies that had been struck off for many years. [Name removed], for example, were able to cite a number of examples of recent searches where the companies were still in existence but they had been struck off the register for over 10 years. One example was:

“A small company but a successful family business that had been struck off (for not filing annual returns). It had been removed for 13 years, but the owners (company) did not know they no longer existed as a legal entity. Property had been brought in the company name using its common seal. This company needed to be reinstated as soon as possible or the land purchased could have reverted to the Crown under 'bona vacantia' clauses in the Land Transfer Act. It is also through these 'bona vacantia' clauses that a company can be reinstated to the register. One reason for maintaining archival records.”

[Name removed] is a frequent visitor of National Archives Dunedin and advised [Dunedin Regional Archivist] that when searching files of defunct companies at National Archives, she normally requires the following information:

- last annual return
- last return of directors and company secretary
- last notice registered office location
- details of why, how and when the company is struck off.

It was generally agreed the REGIS system does not provide all the details required. Furthermore the computerisation of the Central Registry did not take place until 1983 and the completeness (and accuracy) of early records may vary as initially information captured was limited to incorporation name, number, type of incorporation and status. The current system REGIS was not introduced until 1989 according to [name removed].

[Name removed] asked a few solicitors for their opinion. Their main concern was “that a company can be restored to the register. There is no time limit as long as you have a valid reason for restoration. In this instance, we do not believe you can destroy the files... it is our opinion that

unless a file could be stored completely on microfiche or the like, the physical file could not be destroyed in case it was required for restoration”.

Other legal searchers contracted included [name removed] and [name removed]. All the firms indicated that they are required for various reasons to make historical searches for companies that have been struck off, whether it be because the company has been struck off for not filing an annual return, gone into receivership, liquidated etc. In sum, the reason for the searches varied and the information sought also varied, some needing to see the actual constitution and articles of association and others were interested in the correspondence. The type of company searched varied as did the period after which the company was struck off. In view of these variables, it was argued a sample would not meet their requirements and they urged all records be permanently retained.

In addition to legal searchers, a number of people who had written business histories or used business records were approached for their views.

They included:  
[names removed]

Their written comments are in Appendix 2 [of AT 98/9] but some comments are paraphrased below:

- “It is not only historians who can make use of such archives, it is possible to use them for strategic review purposes by firms themselves or their successors, as well as being of interest to a range of people concerned with the analysis of policy issues and development.”
- Company records are fairly central in any business history: “there is a particular importance in being able to track the ownership of a particular company.”
- “The files of the Registrar of companies are the key source of basic facts on which history can be built.”
- “The registration of charges is on a par with the registration of mortgages in the Land Transfer Office, the registration of a ship mortgage against a ship register...”
- “Every company is unique - it has its own sector of trade, its own directors and staff, produces and sells its type of goods and services and creates its own sense of identity. Sampling for companies would be as short-sighted as sampling, say birth, deaths and marriages.”
- “The initial registration as notified in the Mercantile Gazette record only the subscribers to the Memorandum nothing further. In addition, I suspect that very few libraries retain the Mercantile Gazette.”

Comment: A bibliographic search revealed few libraries in fact do maintain the Mercantile Gazette and those that hold them have incomplete sets. For details of information appearing in the Mercantile Gazette see Appendix 3 [of AT 98/9].

- “In short, the records are unique, not duplicated elsewhere in the government system. have considerable legal significance and MUST be preserved.”
- “The Company files are also used by genealogists to locate information concerning the interest of their forebears in various companies whether it be as owner, director or shareholder.”

In conclusion there is a reasonably large “community of interest” in preserving the company files albeit for different purposes. It is also noteworthy that Australian Archives have deemed records of incorporations sufficiently valuable to warrant their retention particularly given their strong emphasis maintaining records for ‘evidential’ rather than ‘informational’ reasons. Whilst it is acknowledged the amount of records generated is large, this is not sufficient justification in itself to warrant their destruction, consequently, in view of the legal, evidential and information values attached to incorporations, it is recommended they all be preserved as archives.