Regulatory Impact Statement

Regulatory Systems Bill – Commerce and Consumer Affairs portfolio matters

Agency Disclosure Statement

This RIS has been prepared by the Ministry of Business, Innovation and Employment. It relates to proposals to amend Commerce portfolio legislation via a Regulatory Systems Bill. It will be an omnibus bill, which means that most of the proposed changes are minor or technical and, therefore, exempt from the RIS requirements. However, three of the proposed changes are sufficiently material to justify regulatory impact analysis.

Limitations on the analysis undertaken

General comment

The issues discussed in this paper will be implemented by way of the Regulatory Systems Bill, which will be an omnibus bill. Under Standing Orders, the proposed changes in omnibus bills must be simple and uncontroversial. In addition, omnibus bills cannot propose the enactment of new Acts. Nevertheless, the rules relating to omnibus bills have not been a barrier, in a real sense, to finding fully effective solutions.

Netting and trusts

It was difficult to obtain specifics on the extra amounts trusts are paying for derivatives than they otherwise might be if it was certain that netting agreements were enforceable. First, banks found it difficult to collate data on trusts as separate from capital costs in general. Second, banks were very sensitive about providing data as it reveals information about their pricing models. Therefore, we did not obtain as much detail as we might have. However, we were provided with reliable examples.

Sham trusts under the Insolvency Act 2006

The preferred option is to amend the Insolvency Act to widen the powers for the Official Assignee to challenge the validity of trusts. The effect will be to reverse a Court of Appeal decision in 2007. The main limitation on the analysis was that MBIE's Insolvency and Trustee Service (ITS) has no database for estimating the number of trusts that might be challenged. The ITS has not collected this information since 2008 because there has been no reason to investigate those validity issues. On a best estimate basis, the ITS has advised us that less than 20 trust structures would be challenged in any given year.

We are satisfied that this uncertainty does not have any bearing on which option should be preferred. Our conclusion would have been the same if the estimate had been one trust every 10 years.

Expense disputes under the Takeovers Act 1993

This issue relates to whether the courts should continue to decide on expense disputes arising out of failed offers made under the Takeovers Code, or whether jurisdiction should be transferred to the Takeovers Panel. We looked at three issues: effectiveness, efficiency and timeliness. One of the options was much worse from a timeliness perspective. It is very difficult to reliably estimate the indirect cost of lengthy delays (i.e. the costs of bringing the legal system into disrepute along with access to justice costs) and we did not attempt to do so.

This limitation did not have any impact on the overall assessment because:

- The analysis of efficiency impacts clearly favoured the option that was better from a timeliness perspective; and
- The arguments on effectiveness were evenly balanced.

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Date: 23 May 2014

Introduction

Regulatory Systems Bill

1 The Regulatory Systems Bill will be an omnibus bill to improve regulatory systems that operate under a collection of statutes that are administered by the Ministry of Business, Innovation and Employment. The amendments are relatively uncontroversial changes to deal with issues that inhibit the efficiency and effectiveness of regulatory systems. Although the changes to individual statutes do not warrant stand-alone bills, together the changes aim to make a significant difference.

The scope of this RIS

2 This RIS is limited to consideration of the inclusion of the following Commerce portfolio changes in the Regulatory Systems Bill:

A. Netting under the Companies Act 1993 and Insolvency Act 2006

B. Sham trusts under the Insolvency Act 2006

C. Disputes about expenses under the Takeovers Act 1993

3 As there are no policy connections between these issues, the discussion below includes the status quo, problem definition and objectives, regulatory impact analysis, consultation, and conclusions and recommendations for each issue one-by-one. The two remaining sections (i.e. implementation, and monitoring, evaluation and review) are discussed as a whole, not issue-by-issue.

4 We are recommending several other changes to Commerce portfolio legislation through the Regulatory Systems Bill. Those changes, which are outlined in Annex 1, are exempt from the regulatory impact analysis requirements under section 3.1 of the Treasury's *Regulatory Impact Analysis Handbook* (July 2013).

Issue A: Netting under the Companies Act 1993 and Insolvency Act 2006

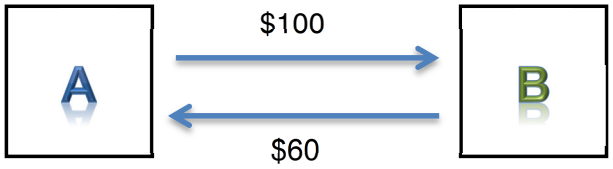
Status Quo and Problem Definition

5 The liquidation and voluntary administration systems in the Companies Act provide for transactions to be netted where there is a formal agreement between two or more parties. There are provisions to the same effect in relation to personal bankruptcy under the Insolvency Act. A netting agreement is a contract whereby each party agrees to 'set-off' amounts it owes against amounts owed to it. Figure 1 provides a simple example of a bilateral netting contract where A owes B $100 and B owes A $60.

6 The effect is to net the interparty transactions so that amounts payable by or to each party are the net debit or credit respectively. The net balance constitutes the amount that may be claimed or payable when the agreement ends which, for the purposes of this paper, is when an entity or individual that is a party to a netting agreement becomes insolvent i.e. placed into liquidation or administration, or bankruptcy.

7 Netting arrangements confer significant benefits for financial market participants because they reduce the amount of exposures between participants. This in turn reduces systemic risk because there is less likelihood that the failure of one participant will lead to the failure of another.

Figure 1: Bilateral netting



Without netting:

- A owes B $100
- B owes A $60 ⇒ Total Exposure: $160

With netting:

- A owes B $40
- B owes nothing ⇒ Total Exposure: $40

8 Netting arrangements are important for banks because they reduce the amount of capital required by the Reserve Bank to be held for prudential supervision purposes. The Companies Act provides certainty that the netting agreement is enforceable so that banks are able to use the net amount to meet the Reserve Bank's capital adequacy ratio requirements where the counterparty is a company. So does the Insolvency Act where the counterparty is an individual. However, there is no such certainty about the enforceability of a netting agreement for trusts under either Act. This means that the banks must hold capital in proportion to the gross rather than the net amount i.e. as if there was no netting agreement for the purposes of reporting to the Reserve Bank. The additional capital charges are passed on to the counterparties, thereby increasing the price of the underlying derivatives the netting agreement is hedging.

9 The uncertainty arises because the Companies Act and Insolvency Act require 'mutuality'. For that requirement to be met, the agreement must be between the same persons acting in the same capacity towards each other. The issue with trusts is that the obligations and rights are held in different capacities. The trustee is personally liable in relation to the obligations under the transactions but holds the rights on trust for the beneficiaries of the trust. Even if a trustee enters into all of its transactions in its capacity as trustee (and none in its personal capacity) it still is not certain the mutuality requirement will be met.

10 The cost to a bank of not being able to recognise netting in relation to trusts varies depending on the relative sizes of the trust client base. That range appears to be in the low millions from the information we have obtained. This cost is almost entirely passed on to customers in the form of higher pricing for their hedging arrangements.

11 In turn, the pricing effect on customers appears to vary depending on the nature of the underlying derivative. For interest rate swaps, it appears to be only a very few basis points while for cross currency it is much higher. To put this in context, if a derivative had a notional amount of about $10 million, the inability to apply netting adds $1,000-$3,000 per annum to the cost of an interest rate swap and $10,000-$15,000 per annum for a cross currency swap. As it is not uncommon for a customer to have derivatives with an aggregate notional amount of $100 million or more, the additional cost for a trust can be in the tens of thousands of dollars a year and sometimes in the hundreds of thousands. Therefore, trust clients face higher pricing despite their credit risk being no higher than for other clients. There are no costs associated with providing certainty of the enforceability of netting arrangements where the counterparty is a trust. There are additional potential benefits. If the price of derivatives is reduced, this will give also trust clients the option to collateralise the debt which will provide further benefits and price reductions.

Objective

12 The main purpose of netting agreements is to reduce counterparty risk. However, the law does not prohibit trusts from being parties to netting agreements, so that is not the main objective for the purposes of this RIS. The objective is to reduce the cost of derivatives for trusts by providing more certainty about the enforceability of netting agreements entered into by those trusts.

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Options

13 The two options are to retain the status quo or provide the enforcement certainty needed for trusts to take advantage of the netting systems under the Companies Act and Insolvency Act by deeming that the mutuality requirements in insolvency legislation are met in the case of trusts.

Analysis of options

14 The status quo does not achieve the objective as stated above. Banks are unable to obtain written and reasoned legal opinions that conclude with a high degree of certainty that, in the event of a legal challenge, their exposure under a netting agreement with a trust would be found to be the net amount. This is the requirement under the prudential supervision rules of the Reserve Bank. Therefore, the Reserve Bank does not recognise netting agreements involving trusts for prudential supervision purposes. This increases the amount of capital that banks must hold and, therefore, increases the cost of derivatives.

15 The change option will achieve the objective because the legal uncertainty associated with the status quo will be completely removed. It will mean that agreements with trusts will be deemed to meet the mutuality requirement and legal opinions that meet the Reserve Bank requirements will be able to be obtained. The change option will lead to benefits in the form of moderate savings to banks, which will be passed on to their customers. The savings are moderate for the reasons described in paragraph 11 above. The amounts saved are a small fraction of the notional amount of the derivative, ranging from one seven-hundredth to one ten-thousandth. However, because the notional amount can be $100 million or more for a trust, the savings are moderate, not small. It is clear that the preferred option would be better even if the benefits were considerably less than the benefits that are likely to be obtained.

Conclusions and recommendation

16 We prefer the change option for the reasons given in the Analysis of Options section above.

Consultation

17 Buddle Findlay drew our attention to the netting issue in mid-2013. We followed-up with them to test the issues and obtain information about the size of the problem. We also developed an issues paper and consulted with the New Zealand Financial Markets Association (NZFMA).

18 The NZFMA agrees that the option to clarify the Companies Act will address this particular issue for netting in New Zealand. The NZFMA also stated that it would prefer the enactment of a separate netting Act. It is concerned that having netting law in more than one Act creates uncertainty about how the statutes work together and the scope of any particular provision.

19 We note, however, that enacting a new Act is not an option in the current circumstances. Standing Orders 259 and 260 do not allow omnibus Bills to include proposals to enact new Acts. The real choice is between including a workable solution in the Regulatory Systems Bill now and waiting an indeterminate amount of time (probably many years) for the policy work to be completed and a stand-alone netting Bill to be justified.

20 In addition, we consider that the concerns about having provisions in more than one Act are more perceived than real. Apart from this one issue, the netting provisions have been working well since they were introduced.

Issue B: Sham trusts under the Insolvency Act 2006

The goals of insolvency law

21 In almost all cases of bankruptcy the debtor's remaining assets, if there are any, are insufficient to cover all of the debt. Modern insolvency law is founded on the idea that it is better for society as a whole to write off the difference between what is owed and what can reasonably be paid and provide debtors with a fresh start. This provides debtors with the opportunity to make a positive contribution to society, hopefully having learned from their mistakes. The bargain that insolvency law strikes for providing debtors with a fresh start is that, with limited exceptions, all the bankrupt's property vests in the Official Assignee (OA) to be realised and distributed to the bankrupt's creditors.

Claw back under the Insolvency Act

22 The Insolvency Act includes protections against transactions where the bankrupt has disposed of his property for inadequate or no consideration prior to bankruptcy. The OA is able to claw back gifts made up to five years prior to bankruptcy and recover the inadequacy of consideration in transactions up to two years prior to bankruptcy. Those provisions aim to protect creditors in two ways. First, they aim to discourage individuals from disposing of assets for less than full value in the lead up to their bankruptcy, particularly to family and friends, family trusts and other close associates or related entities Second, they provide a remedy where such payments and transfers have been made.

23 The OA's ability to claw back assets reflects the fact that individuals who enter bankruptcy almost always became insolvent in a real sense much earlier. The five and two year rules are a proxy for the period in which the individual may have been aware that they were insolvent or might soon become insolvent and might, therefore have attempted to move assets out of the reach of their creditors. The rules are also safe harbours. They provide certainty in relation to payments made prior to the deadlines.

The status quo and problem definition

24 A sham arises where a 'trust' is created and appears legitimate i.e. the assets are transferred by the settlor to the trustees to hold on trust for the beneficiaries. Instead the assets are in reality being held on trust for the settlor, who then enters bankruptcy.

25 There is no specific provision on sham trusts in the Insolvency Act. However, section 412 provides that 'in considering a transaction the court may look at its real nature, and it does not matter that the transaction appears to be, or is described by the parties to it as being, something different.'

26 In 2013, the Law Commission reported on the sham issue in *Review of the Law of Trusts*. It noted that prior to the Court of Appeal's decision in *Official Assignee v Wilson* in 2007, the commonly understood position was that the OA was able to allege sham structures whether or not the bankrupt could have done so. However, in *Wilson* the Court held that the OA could not challenge a trust structure if the bankrupt himself could not have challenged it. The Court stated that the bankrupt, having established the trust, could not in the future claim that they never intended to establish it. As the OA was standing in for the bankrupt, the OA could not challenge it either.

27 This decision has been criticised by several commentators, the New Zealand Law Society and the Law Commission. They argue that the position of the OA is not to be equated with the position of the bankrupt for all purposes. It ought to be open to the OA to claim that the trustees hold property on trust for the bankrupt estate where the trust is invalid or where a valid trust becomes invalid for want of intention to transfer the beneficial interest in the property. Therefore the OA should, like the creditors themselves, be permitted to apply to the court for relief, such as injunctions and orders to recover assets that were transferred to a trust.

28 It is generally accepted that the *Wilson* decision is not fact-specific. There is a consensus that the decision changed the law in a way that means that the Court of Appeal substantially narrowed the scope of the courts to consider the real nature of transactions under section 412 of the Insolvency Act.

Objective

29 The objective is to have an appropriate balance between the goals of trust law and insolvency law. That balance is achieved when the law does not compromise the core principles of either trust law or insolvency law.

30 The trust law goal is to maintain the benefits of the trust law system, which is a central piece of the legal infrastructure in New Zealand and other common law countries. Trusts provide an effective way to separate the ownership of property from those who are to benefit from that ownership. They also enable assets to be held collectively rather than individually.

31 The insolvency law objective is to protect creditors from the adverse effects of invalidly constituted trusts or from valid trusts used for invalid purposes.

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Options

32 The two options are to retain the status quo as established in *Wilson*; or legislate to permit the OA to apply to the court for relief in the interests of creditors.

Analysis of options

33 The status quo is unsatisfactory because it gives little if any weighting to the creditor protection goals of insolvency law. The test set by the Court of Appeal for a sham structure means that it is relatively easy to keep assets out of the reach of creditors. This means that the OA, whose task is to realise the bankrupt's property for the creditors, is unable to test whether certain assets are in fact the bankrupt's property.

34 The change option provides an appropriate balance between the goals of trust and insolvency law for the following reasons:

a. It brings insolvency law back into line with the policy intent, which is to allow the court to look into the real nature of all transactions, regardless of their form.

b. It does not have any adverse consequences for New Zealanders who wish to use trust structures for the purposes for which they are intended. Individuals will continue to be able to hold property in trust or use trusts to transfer property to others.

35 Under the change option, the amount that could potentially be clawed back for the benefit of creditors in any individual case could range from almost nothing to several million dollars. The decision whether or not to seek a claw back order would depend on the facts in each case. If there was no defence because the case was very clear cut the OA might seek an order when as little as $20-30,000 was available. In a complex case the OA might not choose to litigate unless at least $100,000 could be added to the pool for distribution to creditors.

36 The OA has not investigated issues of validity since 2008. Therefore any attempt to quantify the number of trusts that might be challenged during any given period is necessarily speculative. On a best estimate basis, the OA considers that less than 20 trust structures would be challenged in any given year. Reestablishment of the power to challenge trusts would likely result in settlement rather than litigation where the claim is strong.

Conclusions and recommendation

37 The lack of balance in the status quo between the goals of trust law and insolvency law means that only a small gain is needed to justify changing the law. We consider that this test is easily met. We support the Law Commission's recommendation. This change will not have any impact on the vast majority of trusts in New Zealand, of which there are hundreds of thousands.

Consultation

38 The Law Commission released six issues papers during the course of its review of trust law. The sham trust issue was discussed in general terms in the first and second papers in 2010 and the specific option of legislating to permit the OA to apply to the court for relief in the interests of creditors was expressly outlined in the sixth paper (R 130), which was published by the Commission in October 2012.

39 The Commission has advised us that it undertook extensive consultation on its proposals during the course of the review. This included a comprehensive programme of consultation with trust practitioners across New Zealand to 'road test' all of its proposals and draft reforms. The Commission's assessment was that overall there was significant support for the package of reforms in R 130.

40 Seven submitters commented on this particular proposal. Six submitters agreed with the Commission's proposal largely for the reasons that have been given in this RIS. One submitter opposed the proposal but gave no reasons.

41 We are satisfied that the Commission's consultation processes were fully effective and that there is no need for MBIE to carry out additional consultation.

Issue C: Disputes about expenses under the Takeovers Act

The status quo and problem definition

42 The Takeovers Act 1993 sets out the framework for takeovers regulation in New Zealand. The detailed rules appear in the Takeovers Code (the Code), which is enforced by the Takeovers Panel (the Panel). The Code governs takeover transactions affecting companies listed on a registered exchange or with 50 or more shareholders and share parcels. The purpose of the Code is to protect the rights of shareholders of the target company.

43 The Takeovers Act provides no right of appeal against Panel decisions about whether a takeover offer complies with the Code. The absence of appeal rights is largely driven by the overwhelming importance of the need for finality. If there was a right of appeal against substantive Panel decisions there would be considerable potential for takeover offers to be disrupted or withdrawn through delaying tactics regardless of whether the offer is Code compliant.

44 Rule 49 of the Code enables target companies to recover from the offeror their properly incurred takeover-related expenses as a debt due. The purpose of this rule is to discourage vexatious or ill-conceived bids due to the disruptive effect that a hostile takeover offer can sometimes have on the target company. The Panel previously thought that it had the power to adjudicate rule 49 disputes. However, in 2010 the High Court ruled that the necessary jurisdiction does not exist. This means that any such disputes must be taken to the High Court.

45 As pointed out by the Panel in a December 2010 consultation paper, since there is no commercial urgency it can take years to resolve an expense dispute through the court system. This is evidenced by the one rule 49 dispute to date that has gone close to being heard by the court. In that case an out-of-court settlement was not reached until five years after the takeover offer failed, just before the hearing was due to take place.

Objective

46 The objective is to have an effective, efficient and timely mechanism for resolving disputes over expenses incurred by target companies where unsuccessful offers have been made under the Code.

Regulatory Impact Analysis

Options

47 The options are:

A. to retain the status quo

B. amend the Takeovers Act to transfer the responsibility for expense dispute resolution from the courts to the Panel with a right of appeal to the court

C. as for option B, but with no right of appeal.

Analysis of options – High Court versus Panel

48 The regulatory impact will be small under all options because expense disputes are rare. There have only been two since the Code was brought into force in 2000.

49 The Takeovers Panel has stated that a claim made under rule 49 might be as little as $50,000 where the bidder gave a takeover notice but ultimately did not make a takeover offer. It might exceed $300,000 where an offer was made but did not succeed. These numbers have no bearing on the decision because they are the same under both options. The main issues that determine which option is better are effectiveness, efficiency and timeliness. The latter two are closely linked and are discussed together.

Assessment of institutional options in relation to the Takeovers Code

Option	Effectiveness	Efficiency	Timeliness
A. High Court	3rd –The High Court deals with complex issues by considering evidence given by expert witnesses and making judgements based on this evidence. This is a slightly removed process from having experts make the judgment themselves.	3rd – Costs are higher because there are more procedures (e.g. discovery) and expert witnesses are likely to be needed.	3rd – These are low priority cases for the courts because there is no commercial urgency.
B. Takeovers Panel with appeal right	1st – Panel members are experienced market participants with specialist knowledge of the procedural and commercial dynamics faced by Code companies. Having an appeal right adds the benefits of the courts having the expertise on matters of law.	2nd – The cost of an appeal would be less than the cost if the court was the decision-maker of first instance because the appeal would be a rehearing, not a fresh hearing.	2nd – There are risks that the courts will treat such appeals as a low priority. However, we would not expect every Panel decision would be appealed.
C. Takeovers Panel with no appeal right	2nd – Panel members are experienced market participants who understand the procedural and commercial dynamics faced by Code companies. There is an argument that no appeal right would unnecessarily restrict natural justice principles.	1st – Fewer procedures and no need for expert witnesses.	1st – The Panel is accustomed to making timely decisions. Their procedures are also less formal.

Discussion

50 As is clear from the table above, option A (the status quo) is worst against all three criteria. Allowing the Panel to undertake this function has clear advantages over the status quo. The Panel is the expert quasi-judicial specialist body with the power to regulate takeover transactions in New Zealand. The Panel's members are experienced market participants who understand the procedural and commercial dynamics faced by Code companies. The change option will provide for Panel members' specialist mergers and acquisition expertise to be incorporated into decisions.

51 The choice becomes between allowing an appeal right (option B) or not (option C). In essence, this is a trade-off between the effectiveness advantages of option B and the efficiency and timeliness advantages of option C. The Panel is accustomed to making timely and cost-effective decisions. It almost always needs to act quickly to avoid disrupting Code-compliant takeover offers.

52 However, the Legislation Advisory Committee Guidelines (the LAC Guidelines) state that when a public decision impacts on a citizen, legislation typically provides at least one tier of appeal. The reasons for providing an appeal are to correct errors and to supervise and improve decision-making. For example, an appellate decision can set precedents to guide future actions, both for the primary decision maker and for counsel advising clients.

53 We consider that both of these types of benefits are significant in these circumstances, particularly in relation to matters of law.

54 The LAC Guidelines also state that the value of having an appeal right must be balanced against cost, delay, significance of the subject matter, the competence and expertise of the decision-maker at first instance and the need for finality.

55 Legal process delays impose at least three costs. First, they impose deadweight costs on the economy by increasing the cost of litigation. Second, lengthy delays bring the justice system into disrepute. Third, they raise access to justice issues. In particular, they increase risks that the costs of delay, rather than the merits of the case, will lead to proceedings not being commenced, a party withdrawing from the proceedings or a party agreeing to an unfavourable out-of-court settlement.

56 The LAC Guidelines state that it will usually be appropriate to respond to concerns about cost and delay by limiting the scope of any right of appeal rather than denying it altogether. However, the Ministry of Justice advised us that there is often little to be gained by attempting to limit the scope of an appeal. We agree that because an appeal will only be rarely made, such a restriction is unlikely to be useful.

Conclusions and recommendations

57 It is clear that the two change options both reduce costs compared with the status quo. It is a matter of judgment as to whether an appeal right should be available. On balance, we favour Option B, which is to allow appeals. We do not think that there is a sufficiently strong case from an efficiency and timeliness perspective to depart from the principles outlined in the LAC Guidelines.

58 There should be a right of appeal on the grounds of law and fact by a way of rehearing.

Consultation

59 The Panel issued a consultation paper *The Code and Hostile Takeovers* in December 2010. Of the five submissions made on the Panel's consultation paper that discussed this issue, four stated that the Panel had the expertise required to consider all aspects of expense disputes. One disagreed. They stated that the Panel has the expertise to consider 'categorisation' issues, but only the High Court is qualified to adjudicate on whether an expense has been incurred, the amount of the expense and whether it was properly incurred.

60 The submitter stated that discovery and other court processes are needed to facilitate the fair determination of adversarial disputes of this nature. The other submissions did not comment on those issues. However, it is implicit that none of those submitters consider that the Panel's less formal and inquisitorial processes would have adverse impacts on the quality of their decisions.

Implementation

61 It is likely that the Regulatory Systems Bill will provide for most or all of the provisions to commence on dates appointed by the Governor-General under one or more Orders in Council. Our preliminary view is that the transitional issues relating to these three changes are relatively simple and that interested parties should be able to obtain the benefits of the changes sooner rather than later. Therefore, there should be early commencement dates. We will consider whether any of the changes might come into force the day after the Royal Assent.

Monitoring, Evaluation and Review

62 This is to be the first Regulatory Systems Bill. MBIE will issue discussion papers relating to the proposed content of future Regulatory Systems Bills. That will provide an opportunity to ask stakeholders whether any issues have arisen from changes made in this first Regulatory Systems Bill.

63 In addition, we have regular engagement with stakeholders on the range of our business law responsibilities. We will seek feedback from key stakeholders after implementation to test whether there is any need for further changes.

Annex 1: Proposed changes that are exempt under the Treasury's Regulatory Impact Analysis Handbook (July 2013)

No.	Issues	RIA exemption criteria
	Building Societies Act 1965	
1	Replace requirement for two directors to sign annual return with the more flexible requirement in the Companies Act (i.e. a director, or a solicitor or accountant designated for that purpose).	Minor impacts on businesses
2	Remove requirements to include information about share summaries, capital shareholders, share transfers and bonus ballots in annual return.	Minor impacts on businesses
	Commerce Act 1986	
3	Repeal a section that refers to the Evidence Amendment Act 1980. The references are incorrect due to the Trans-Tasman Proceedings Act 2010.	Repeals a redundant provision
4	Replace annual levy setting collection and wash-up cycle with a multi-year cycle. It will be consistent with a Cabinet decision to move the Commerce Commission to a multi-year appropriation structure.	Technical revision
5	Remove a contradiction between two sections about whether a lay member is necessary to constitute a sitting of the court in all or only some cases. Clarify that a lay member is only required in relation to appeals from Commerce Commission determinations.	Technical revision
	Companies Act 1993	
6	Provide Registrar with the power to remove a company from the overseas company register if it has ceased to carry on business in NZ.	Technical revision
7	The Act requires Registrar to be notified of variations to statutory compromises, but not variations of other compromises. Add a requirement to notify Registrar of variations to other compromises.	Minor impacts on businesses
8	As is already the case for a large company with one or more subsidiaries. Remove requirement for a large company with no subsidiaries to prepare entity financial statements if it is a subsidiary of a body corporate registered in New Zealand that is required to prepare group financial statements.	Minor impacts on business
9	Clarify various process uncertainties and anomalies relating to the netting provisions.	Technical revision
10	Replace the requirement for listed companies to notify shareholders about financial assistance given to shareholders to purchase shares with a requirement to notify the licensed market to which they belong.	Minor impacts on business
11	In relation to company liquidations, change the requirement for making an Order in Council that makes an index-linked change every three years to the maximum dollar employee priority payment from 3 to 4 months after the end of the adjustment period.	Technical revision
	Fair Trading Act 1986	
12	Align the definition of 'financial services' with the definition in the Financial Markets Conduct Act 2013.	Technical revision
	Financial Advisers Act 2008	
13	Clarify that where a person (A) acts on behalf of the business of another person (B), that while B has the liability for A's obligations,	Technical revision

No.	Issues	RIA exemption criteria
	A is still the person required to meet these obligations.	
14	Narrow the definition of 'acting on behalf of the business of another person' so that it does not transfer liability to a person who is arranging a service on a client's behalf.	Technical revision
15	Add a provision stating that fines are recoverable as a debt due to the High Court.	Technical revision
	Financial Markets Authority Act 2011	
16	Clarify that the FMA can investigate and enforce contraventions of the Secret Commissions Act 1910 by financial markets participants.	Technical revision
	Financial Markets Conduct Act 2013	
17	Minor changes to approximately 10 sections to (a) shift some matters currently dealt with in the regulations into the Act or vice versa, and (b) clarify the relationship between the Act and the regulations.	Technical revisions
18	Make the licensing test for applicants and their related bodies corporate fully consistent.	Technical revision
19	For registered schemes, require audited financial statements to be filed within four months of the scheme's balance date, not within four months of the scheme manager's balance date.	Technical revision
20	Grant the FMA powers to make exemptions to the restrictions on indemnity and insurance where they are inappropriate.	Minor impacts on business
	Friendly Societies and Credit Unions Act 1982	
21	Provide for credit unions and associations of credit unions to incorporate and have all the powers of a natural person.	Minor impacts on business
22	Provide for legal ownership to be transferred from the trustee to the incorporated credit union without having any tax implications.	Technical revision
23	Permit credit unions to make loans to SMEs that are related to members of that credit union.	Minor impacts on business
24	Reduce the minimum number of credit union members needed for an association of credit unions to be validly constituted from seven to two.	Minor impacts on business
25	Authorise the Minister for Economic Development and Minister of Commerce to make any minor consequential amendments to give full effect to items 21-24.	Technical revisions
	Insolvency Act 2006	
26	OA must send summary of assets and liabilities to creditors as soon as possible after an application for entry to no asset procedure is made. Delay that requirement until after the applicant is admitted when better information about creditors is available.	Minor impacts on businesses and individuals
27	Permit the OA to discharge the supervisor of a summary instalment order (SIO) who has subsequently been convicted of a dishonesty offence.	Minor impacts on businesses and individuals
28	Add a power for the OA to terminate an SIO.	Technical revision
29	Replace a requirement on the Official Assignee (OA) to publish in the *Gazette* and electronically the bankrupt's final statement of receipts and payments with a requirement to provide the statement to all creditors, and to provide copies to third parties on request.	Technical revision
30	Replace the requirement for the OA to apply to Court for release from all bankrupt estates with a provision that the OA may apply for release	Technical revision
	New Zealand Superannuation and Retirement Income Act 2001	
31	Expressly state that the Retirement Commissioner has an explicit	Technical revision

No.	Issues	RIA exemption criteria
	mandate to work in the financial literacy space.	
	Redundant legislation	
32	Repeal redundant enactments that are administered by MBIE, including moving unspent provisions to other enactments and providing for savings where appropriate.	Technical revision