Annex 1: Table of amendments for Commercial Matters

Commerce and Consumer Affairs			
Building Societies Act 1965			
Section	*Reason for change*	*Status quo*	*Proposed change*
Section 124: Cancellation or suspension of the registration of a society.	Addressing regulatory duplication, gaps, errors and inconsistencies within legislation	The cancellation or suspension of the registration of a society requires the approval of the Minister and the grounds of non-compliance uses a subjective test of intent. This is inconsistent with requirements and tests for other corporate forms.	To amend section 124 to: • remove any requirement that the Minister must approve the enforcement actions of the Registrar • update the grounds for cancellation or suspension so they are consistent with similar provisions for other corporate forms.
Companies Act 1993			
Section	*Reason for change*	*Status quo*	*Proposed change*
Section 151: Disqualifying criterion for directors	Clarifying and updating statutory provisions to give effect to the purpose of the Act and its provisions	A person is prevented from being a liquidator if they are a discharged bankrupt, but they are not prevented from directly or indirectly being concerned, or taking part, in the management of any company after discharge.	Amend section 151 so that section 299(1)(c) of the Insolvency Act 2006 is added as a disqualifying criterion for directors, to prevent regulatory inconsistencies.
Section 360: Publication of directors' and shareholders' residential addresses	Keeping the regulatory system up to date and relevant. There are privacy and safety concerns relating to the publication of residential addresses	Once the registration requirements for incorporation are met, the Registrar of Companies must register and issue a certificate of incorporation. The registered documents are placed on the company record on the companies register. These include documents containing the residential addresses of directors and shareholders.	That current residential addresses of shareholders and directors be able to be removed from public display on the companies register provided an address for service is substituted. There may be consequential amendments to other sections. Note: See note in Cabinet paper
Sections 367 and 368: Application of the Official Information and Privacy Acts, confidentiality.	Addressing regulatory duplication, gaps, errors and inconsistencies within legislation	The provisions in sections 367 and 368 unnecessarily duplicate provisions in the Official Information Act 1982 and the Privacy Act 1993 in relation to the disclosure of information.	Repeal section 367 and section 368. The Privacy Commissioner highlighted this issue.

Section 382: People prohibited from managing companies.	Clarifying and updating statutory provisions to give effect to the purpose of the Act and its provisions	Section 382 is to prevent persons who have committed specified serious offences relating to dishonesty or fraud from entering into fiduciary relationships as a director of a company and/or managing money or otherwise having considerable potential influence on innocent third parties (including shareholders and creditors). There are some serious offences involving dishonesty or fraud that are not included in section 382.	Amend section 382 to add the following offences: • section 138A Companies Act (Offence for serious breach of director's duty to act in good faith and in best interests of the company) • section 143A(1)(d) Tax Administration Act 1994 (relating to knowledge offences) • section 143B(1)d Tax Administration Act 1994 (evasion or similar offence).
Section 390 and 391: Sending documents electronically	Removing unnecessary compliance costs and costs of doing business	Email is available for sending documents (that are not legal documents) to most persons. However, email is not available for sending documents to overseas companies and bodies corporate that are not companies.	Amend sections 390 and 391 so that sending documents (that are not legal documents) electronically to overseas companies and bodies corporate that are not companies is enabled.
Schedule 4: Number of shareholders.	Technical revision to increase efficiency	There is no easy and reliable way for the Takeovers Panel to identify code companies. The requirement in clause 4(j) for a company to self-identify as a 'code company' for the purposes of the Takeovers Act in its Annual Return is not actioned and in any case, would be unreliable. The Takeovers Panel is unable to assess and engage with the totality of its market so that shareholder protections are available to all code companies.	Add to the requirements of the Annual Return that the 'number of shareholders' should be required to be disclosed for companies with shares that are not quoted on a stock exchange. The current requirement to self-identify as a code company could then be removed.
Credit Contracts and Consumer Finance Act 2003 (CCCFA)			
Section	*Reason for change*	*Status quo*	*Proposed change*
Section 9C(2): Relevant insurance contracts	Clarifying and updating statutory provisions to give effect to the purpose of the Act and its provisions	The overarching lender responsibilities do not explicitly apply to "relevant insurance contracts". While it is arguable that they do apply because conduct by lenders in relation to relevant insurance contracts is closely linked to conduct by lenders in relation to credit contracts, it would be useful to clarify their application.	Specify "relevant insurance contracts" in the overarching lender responsibilities. Amend s9C(2)(a)(i)-(iii) and other necessary provisions to make explicit that overarching lender responsibility principles apply to "relevant insurance contracts". Note: 'Relevant insurance contact' is already

			defined by s9B.
Part 3A: Opting in to new repossession scheme	Keeping the regulatory system up to date and relevant	Currently there are two repossession schemes in operation. One for loans entered after the CCCFA was amended in June 2015, and one for loans entered before. This imposes two different administrative requirements for lenders to comply with.	Allow lenders to opt-in to the new repossession scheme for all loans which they administer. This will increase administrative efficiency for lenders, who will only have to comply with one set of notice requirements for repossession. Borrowers who are opted in to the new repossession scheme will receive the added protections of the new repossession scheme.
Sections 102A and 103(1): Updating offence provisions	Addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation	There are currently no offences for breaches of publication of standard form contract terms (s9J) and publication of costs of borrowing (s9K). This appears to be an oversight and is inconsistent with related provisions – breaches of other disclosure requirements are offences or infringement offences. Breaches of these obligations are not offences (s103), or infringement offences (s102A). The only possible claims are for loss (s93(aa)), which is unlikely, and for an injunction (s96(aa)).	Add breach of publication of standard form contract terms (s9J(3)) and publication of costs of borrowing (s9K(1)) to the list of other offences in s103(1). Also add that every lender subject to s9K, commits an infringement offence (under s102A) if they breach s9K(4) (where a creditor fails to provide a copy of costs of borrowing to any person who requests it) or s9K(6) (costs of borrowing information must contain the prescribed information and be in the prescribed form).
Section 5: Amend definition of security interest	Keeping the regulatory system up to date and relevant	Under the CCCFA, it is not explicit that the CCCFA repossession regime does not apply to credit contracts involving companies**,** however, it is clear that a company cannot be party to a "consumer credit contract" (as stated in s11). This can create confusion for creditors as to which repossession regime applies and could lead to a company arguing that they should receive all the notice provisions under the CCCFA repossession scheme. This is also inconsistent with the Credit Repossession Act which the CCCFA repossession	Amend definition of security interest so that it is clear that the CCCFA repossession regime does not apply to companies. This would be similar to the definition in previous equivalent legislation (Credit Repossession Act) which stated that its repossession regime did not apply to "any security interest created by a company".

		regime replaced – the Credit Repossession Act explicitly excluded companies from its provisions.	
Section 14: Repossession regime does not apply when business declaration is signed	Keeping the regulatory system up to date and relevant	The effect of a section 14 business declaration on repossession is unclear**.** Currently, the definition of 'consumer goods' focuses on how the goods were used, whereas the definition of a 'consumer credit contract' focuses on how the credit is to be used or is intended to be used'. This means that a lender cannot rely on a business declaration as proof that the goods were used for business purposes, and potentially puts a lenders security position at risk if they rely on this and do not apply the notice provisions of the CCCFA repossession regime.	Amend section 14 to make clear that if a business declaration is signed, the CCCFA repossession regime does not apply. This is beneficial as creditors could rely on the section 14 declaration when determining which repossession notice regime should apply. There are already provisions in section 14 which protect consumers from unknowingly signing a business declaration.
Fair Trading Act 1986			
Section	*Reason for change*	*Status quo*	*Proposed change*
Section 30(1): Product safety standard	Keeping the regulatory system up to date and relevant	Section 30(1) requires that a person comply with a product safety standard, rather than requiring the goods themselves to comply with the product safety standard. This is inconsistent with the rest of the Fair Trading Act.	Amend s30(1) so it applies to both the person and the goods. Amend s30(1) to say "if a product safety standard in respect of goods relates to a matter specified in s29(1), a person must not supply, or offer to supply, or advertise to supply those goods unless *that person and the goods comply* with the product safety standard".
Financial Reporting Act 2013			
Section	*Reason for change*	*Status Quo*	*Proposed change*
Section 12: Functions of the External Reporting Board	Removing legal uncertainty	Section 12 of the Financial Reporting Act 2013 empowers the External Reporting Board (**XRB**) to issue auditing and assurance standards. The issuance of these standards provides a standard against which the quality of audit and assurance may be judged. These standards help to promote	Amend the Financial Reporting Act to enable the XRB to issue standards on agreed-upon-procedures and, more generally, related audit and assurance services. This amendment would align the New Zealand

		confidence in the quality of New Zealand's financial reporting. An agreed-upon-procedure (AUP) is a well-established audit-type product. An AUP is an engagement which involves the carrying out of specified procedures to report on factual findings, but does not result in the provision of assurance (i.e. an opinion) by the service provider. However there is no New Zealand standard on AUPs and there is legal uncertainty whether an AUP falls within the definition of 'auditing and assurance standards'.	situation with Australia's position.
Insolvency Act 2006			
Section	*Reason for change*	*Status quo*	*Proposed change*
Section 67: Power to reject a statement of affairs if incorrect or incomplete	Legislative inconsistencies	The Official Assignee's power to reject an incorrect or incomplete statement of affairs differs depending on the adjudication pathway. There are two pathways for a debtor to be adjudicated bankrupt: on the application of the debtor or on the application from a creditor to the court. For debtor-initiated applications for adjudication, the Assignee has the power to reject a statement of affairs. For creditor-initiated applications, the Assignee does not have this power.	Amend section 67 to grant the Official Assignee the power to reject a statement of affairs that in the Assignee's opinion is incorrect or incomplete**.**
Section 149: Bankrupt must obtain consent from the court of the Official Assignee to work for a relative.	Clarifying and updating statutory provisions in each Act to give effect to the purpose of that Act	There have been incidents where high-skilled undischarged bankrupts have worked for relatives drawing no wage and therefore not being 'employed' and having to require consent from the Official Assignee or the court.	Amend section 149 so that a bankrupt who works for a relative for no consideration must obtain consent from the court or the Official Assignee.

	and its provisions	Undischarged bankrupts, without the consent of the court or the Assignee, must not be employed by a relative or by an entity that is controlled by a relative. These prohibitions are to prevent abuse – for example, where an undischarged bankrupt is employed by a relative but in a real sense is actually controlling and managing the entity including handling and controlling money. This practice circumvents the policy.. Therefore the mischief is not being addressed. The practice also allows an undischarged bankrupt to avoid taking employment elsewhere which may enable them to make contributions to their debts.	
Sections 158 and 159: Official Assignee can assess the maximum value of assets a bankrupt may retain.	Clarifying and updating statutory provisions in each Act to give effect to the purpose of that Act and its provisions	It is currently unclear whether the Official Assignee should be setting a maximum value for all bankruptcies or whether the Official Assignee can consider maximum values on a case-by-case basis. Section 158 prescribes which assets an undischarged bankrupt may retain. This includes necessary household furniture and necessary tools of trade, of which 'the maximum value is fixed in the Assignee's discretion'. Current practice by the Official Assignee has been to evaluate the maximum value on a case by case basis because each person's circumstances are different. We consider this to be appropriate. Section 159 provides that a bankrupt may retain necessary tools of trade and household furniture that are worth more than the maximum value, if creditors consent by ordinary resolution.	Amend section 158 so that a bankrupt may retain their necessary tools of trade and necessary household furniture at the Assignee's discretion. A consequential amendment would be needed for section 159 as the term 'maximum value' would no longer exist in section 158. I recommend repealing section 159. The proposal to repeal 159 may be controversial among some creditors. The policy intent behind section 159 is that if a bankrupt is able to hold assets above the maximum value, then it should only occur if creditors consent because in theory, the difference in value should go to creditors. However, given the current practice of Official Assignee of assessing the maximum value on a case-by-case basis, there doesn't exist a 'maximum value' so section 159 is largely ineffective. I am not aware of any judicial reviews of the Official

			Assignee with respect to its decisions on maximum value through section 159. On balance, I think this amendment is important to clarify that the Official Assignee can, and should be assessing the maximum value of assets a bankrupt may retain on a case-by-case basis. In practice, this amendment would have minimal effect on creditors.
Section 165 and 171: Official Assignee can require a person to provide information to the best of the person's ability	Keeping the regulatory system up to date and relevant	Section 165 and 171 of the Insolvency Act 2006 sets out that the Official Assignee may, by notice in writing, require documents in a person's possession or under that person's control relating to the bankrupt's property, conduct or dealings to be produced, surrendered and/or delivered. This power is exercised in the context of the power of the Assignee and the court to undertake an examination of the bankrupt and other persons about the bankrupt's property, conduct or dealings. While during an examination by the Assignee will obtain information that may be separate from or incidental to the documents relating to the bankrupt's property, conduct or dealings, unlike under the Companies Act (for the liquidators), this ability is not expressly set out.	Amend the Insolvency Act 2006 to set out that the Assignee may, in addition to requiring the production, surrender and delivery of documents, also require a person to provide information and to assist the Assignee to the best of the person's ability.
Section 178(2)(a): Record of examination to be read back at the court's discretion.	Keeping the regulatory system up to date and relevant	Upon the request of the Official Assignee or creditors, the court must hold a public examination. Section 178(2)(a) states the record of examination must be read back to the bankrupt. There is a potential for abuse of this section, potentially incurring significant court and legal	Amend section 178 so that the record of examination may be read back to the bankrupt, on application of the bankrupt to the court, at the court's discretion.

		courts where a bankrupt asks for the record of examination to be read back. Public examinations may take place over many days.	
Section 193: Extension of time periods in the case of insolvent transactions	Technical revision to improve legislative consistency	Section 193 of the Act extends the periods of time during which irregular transactions may be set aside by the time from the service of a creditor's petition on the bankrupt until the time of adjudication. This prevents the loss of potential recoveries due to delays in the court process, e.g. by repeated adjournments. It does so with respect to 2 year and 6 month periods but is silent on the 5 year period in section 205.	Amend section 193 to extend time periods in respect of 5 years, 2 years and 6 months periods.
Section 227: Remove the requirement for a prescribed form.	Keeping the regulatory system up to date and relevant	The Assignee must keep proper accounting records for each bankruptcy in a prescribed form. There is currently no prescribed form in the Act or the regulations.	Remove the requirement for the accounting records of a bankruptcy to be kept in a prescribed manner.
Section 233: Discretion to accept claims after the specified time.	Keeping the regulatory system up to date and relevant	In order for a creditor to be able to receive distributions (if any) from a bankrupt's estate, a creditor must submit a creditor's claim form to the Assignee within a specified time. The Act does not provide any discretion to the Official Assignee to admit claims after the specified time. This results in a creditor being barred from participating in any subsequent distributions if they file a 'late' claim. The status quo is inequitable as creditors may miss out on a distribution they are entitled to.	Amend the Insolvency Act so that creditors who file a claim after a dividend is declared remains entitled to a dividend from the balance of available funds. Earlier dividends are not to be disturbed.
Sections 282 and 358: Undistributed monies goes to the Public Trust	Keeping the regulatory system up to date and relevant	The Act makes no provision for the payment of monies that cannot be distributed for any reason under a Summary Instalment Order. For example, if a creditor cannot be found, or the creditor is a company which has been struck off the register of	Amend the Insolvency Act so that any undistributed monies from a Summary Instalment Order goes to the Public Trust. This is consistent with how undistributed monies are dealt with

		companies.	during a bankruptcy.
Section 290: Death before submitting a statement of affairs	Keeping the regulatory system up to date and relevant	Section 290, inter alia, sets out when a bankrupt is automatically discharged from a bankruptcy. In general this is 3 years after the filing of a statement of affairs. However, a debtor adjudicated bankrupt on a creditor's application who didn't file their statement of affairs before they died remains an undischarged bankrupt and accordingly remains indefinitely on the Insolvency Register.	Provide a mechanism for bankrupts who die before submitting a statement of affairs to be automatically discharged from bankruptcy three years after their death.
Part 5, subpart 3: Summary Instalment Orders	Keeping the regulatory system up to date and relevant.	The name 'Summary Instalment Order' (SIO) is antiquated. It is not particularly clear what the term means to debtors and is not helpful in communicating that it is essentially a debt repayment plan. Debtor's entering a SIO is a good public policy outcome as SIOs almost always result in a better return to creditors than alternative insolvency procedures.	Change the name of a 'Summary Instalment Order' to 'Debt Repayment Plan'. Changing the name will not affect the SIO procedure, but will provide greater clarity to debtors. The 'Debt Repayment Plan' will still involve the Assignee making an order.
Section 343: Debts that may be included in a Summary Instalment Order	Keeping the regulatory system up to date and relevant	In order to be accepted into a Summary Instalment Order, a debtor's total unsecured debts that would be provable in a debtor's bankruptcy must not be more than $47,000. While it is clear the student loan balance is excluded when calculating totals, it is not clear that it is not meant to be a part of an SIO. It is conceivable that a debtor may ask the Assignee to include their student loan debt in a SIO. The student loan balance is currently excluded from the SIO. This is because the IRD already has a process for collection of student loan debt. It is not	Amend the Insolvency Act to clarify the status quo (i.e. that student loan debt must not be included in a Summary Instalment Order).

		desirable that an insolvency process duplicates or encroaches on IRD policies and processes. Moreover, if a student loan was included in a debtor's SIO, upon discharge the balance of the student loan is cancelled so that the debtor is not liable to pay any part of the debt. This would be a poor public policy outcome.	
Section 351 and 358: Debts entered into fraudulently in a Summary Instalment Order	Clarifying and updating statutory provisions to give effect to the purpose of that Act and its provisions	With respect to Summary Instalment Orders there is currently no provision that debtors, upon discharge, are not released from debts incurred by fraud. This poses a risk to the integrity of the procedure. There already exist provisions for bankruptcy and the no asset procedure making it clear that debtors, upon discharge, are not released from debts incurred by fraud. These sections of the Act prevent a debtor from being rewarded for a fraudulent act or behaviour, and therefore does not affect any person's legitimate interest. It is a gap in the Act that there is no equivalent provision for Summary Instalment Orders.	Amend the Act so that under a Summary Instalment Order debts entered into fraudulently are not discharged. The effect of this is that creditors will be able to pursue the balance of their owed that wasn't paid through the order.
Section 364: Official Assignee discretion to deny admittance to "No Asset Procedure"	Addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation	Applicants for the "No Asset Procedure" (NAP) may abuse the process to escape debts if they know they will receive assets which are not recoverable in a NAP but might be realisable in a few years' time. If the debtor is adjudicated bankrupt their creditors may be able to recover some of these assets. The assignee does not have discretion to deny debtors entrance into the NAP in these	Include a clause in section 364 which gives the Assignee discretion to deny admittance to the NAP if the debtor's adjudication as a bankrupt would result in an outcome which is materially better for the creditor than if the debtor is admitted to the NAP. This change will ensure debtors will be unable to use the NAP process in order to retain assets which might be realisable in a few years' time. It

		circumstances. The intent of NAP is to provide a once in a lifetime opportunity for debtors, with no realisable assets or means of repayment, to make a fresh start. It is intended that creditors would not be worse off by the procedure. The NAP term is only 12 months and only assets that are held by the debtor during this period may be taken into consideration. However, there are some cases where certain assets are known but are not realisable during this period. These include inheritances or investments (such as a bond) which are due to realise in 12+months and voidable transactions. These assets are realisable under a bankruptcy and it may be clear that a creditor will be better off if the debtor went through the adjudicated bankruptcy process.	conforms with the policy intent of the NAP by not disadvantaging creditors and does not undermine the core intent of the NAP. While the circumstances where this clause will apply will be rare, where it does apply, the effect may be significant for creditors.
Section 374: Replace "terminated" with the phrase "has decided to terminate"	Technical amendment for efficiency	Section 374 requires the Assignee to terminate the NAP before applying for a preservation order. This means the debtor has warning and may disburse assets prior to the procurement of a preservation order. If a debtor was wrongly admitted to the NAP because they have concealed assets or misled the Assignee, the Assignee may terminate the NAP by notifying the debtor and may apply to the court for an order preserving the debtor's assets pending an application for the debtor's adjudication as a bankrupt.	Amend section 374(1) of the Insolvency Act to replace the word "terminated" with the phrase "has decided to terminate".
Section 377A: Align sections to sections	Keeping the regulatory system up to date and	A debtor's participation in the NAP is brought to an end when the Assignee terminates, the debtor is	Amend the Insolvency Act so, similar to sections 300, 301 and 302 applying to bankruptcy, the Court

300, 301 and 302.	relevant	discharged, or the debtor or a creditor applies for adjudication for bankruptcy. The Assignee may terminate a debtor's participation in the NAP if the debtor was wrongly admitted (for example because the debtor concealed assets or misled the Assignee). The effect of termination is that the debtor's debts become enforceable again. The debtor is generally discharged automatically 12 months after the date the debtor was admitted to the NAP. The effect of any discharge is that in general, the debtor's debts are cancelled. Unlike bankruptcy, there is presently no mechanism where a discharge from a NAP can be reversed where grounds for termination are discovered and the effect of a discharge continues to have effect.	can, up to 2 years after the discharge of a debtor from the NAP, on application of the Assignee or a creditor, reverse the debtor's discharge on grounds warranting a termination such that the debtor's debts become enforceable again.
Section 438: Remove the requirement for certification from a Crown Solicitor	Clarifying and updating statutory provisions to give effect to the purpose of that Act and its provisions	Section 438 of the Act requires a Crown Solicitor to certify that there are reasonable grounds for a prosecution against a person before the Official Assignee can file a charge. Certification gives the Official Assignee immunity from an action for malicious prosecution under section 439. The requirement for certification by a Crown Solicitor before charges are laid is out of step with other legislation. In practice the Crown Solicitors will often provide advice on potential prosecutions but that doesn't require a formal certification of charges.	Amend section 438 to remove the requirement for certification from a Crown Solicitor before charges are laid.
Section 449: Include the date of entry to	Keeping the regulatory system up to date and	Section 453(1)(e) sets out that the register may be searched by reference to a range of dates relating	Amend section 449(1) to include the date of entry to the summary instalment order and the date of

the summary instalment order and the date of discharge	relevant	to insolvency events. The date of entry to the summary instalment order or date of discharge from the summary instalment order are search criteria, but are not contained on the public registers. This could be useful information for creditors and so appears to be an oversight.	discharge from the summary instalment.
Section 449(1)(a): Show on public registers aliases and trading names of debtors	Keeping the regulatory system up to date and relevant	Section 449 of the Insolvency Act sets out the information that must be held in the public registers including a person's full name. The Assignee collects alternative name information in addition to that required to be shown. Advising the alternate names of the debtors will enable creditors to help identify a debtor in their own systems and to link different insolvency events.	Amend section 449 so that other, aliases and trading names of debtors are shown on the public registers.
Section 449(n): Change the requirement for a business postal address of supervisors being displayed on the public register to an email address	Keeping the regulatory system up to date and relevant.	A supervisor of a debtor subject to a current summary instalment order has their full name and business postal address on the Insolvency Register. The business postal address provides a point of contact for the supervisor. Supervisors have expressed concerns around their privacy. Supervisors are typically 'volunteers' (not businesses) and their business postal address is in reality their residential address.	Change the requirement for a business postal address being displayed on the public register to an email address. If a supervisor is uncontactable via email, the debtor or creditors can contact the Insolvency and Trustee Service. The role of the supervisor is to supervise the debtor's compliance with the terms of a Summary Instalment Order and any other orders made by the Assignee. If a creditor has concerns with the SIO and wants to vary or discharge the order, or object to a supervisor's treatment of a creditor's claim, this is done through the Assignee.
Limited Partnerships Act 2008			
Section	*Reason for change*	*Status Quo*	*Proposed change*
Section 19A: Align	Addressing regulatory	It is also proposed that a person is prevented from	Amend section 19A so that section 299(1)(c) of the

with section 299(1)c of the Insolvency Act 2006	duplication, gaps, errors and inconsistencies within and between different pieces of legislation	being a director of a company if they are a discharged bankrupt. The Limited Partnerships Act should be amended to prohibit a bankrupt from directly or indirectly being concerned, or taking part, in the management of a limited partnership after discharge to prevent regulatory arbitrage.	Insolvency Act 2006 is added as a disqualifying criterion for general partners.
Section 101: Align with section 328(3)(a) of the Companies Act 1993	Addressing regulatory duplication, gaps, errors and inconsistencies within and between different pieces of legislation	The process required to be undertaken by the Registrar to restore a limited partnership to the register excludes the requirement for public notification under grounds now relevant to limited partnerships under section 328(3)(a) of the Companies Act 1993 amended in 2014.	Amend section 101 so that section 328(3)(a) applies to the restoration to the register of limited partnerships with all necessary modifications.
Personal Property Securities Act 1999			
Section	*Reason for change*	*Status Quo*	*Proposed change*
Section 139: Align with Financial Markets Conduct Act 2013.	Addressing regulatory duplication, gaps, errors and inconsistencies within and between different pieces of legislation	The Personal Property Securities Act requires that the Personal Property Securities Register is kept in New Zealand. It is not clear what this requirement is providing for and the requirement limits technological solutions for the register.	To amend section 139 so that either it is not specified where the register may be kept, or allow the register to be kept anywhere the Registrar thinks fit. This wording would align with the Financial Markets Conduct Act 2013.
Sections 140, 142 and 172: Provision for the unique number assigned to the entity by the New Zealand Registrar	Keeping the regulatory system up to date and relevant	Section 140 sets out what is contained on the register. Section 142 sets out the data required to register a financing statement. Section 172 sets out corresponding search criteria. Overseas companies registered in New Zealand provide their unique number assigned on incorporation in their home jurisdiction. However, this number is not a search criterion in section 172. Section 172 also does not provide for searches on other entities such as incorporated societies and	Amend sections 140 and 142 so that the information that must be provided and contained on the register against a debtor who is an organisation that is incorporated is: • the unique number assigned to the entity by the New Zealand Registrar on the New Zealand entity register; or • if there is no such number, the unique number assigned to the entity on its incorporation in its home jurisdiction.

		charitable trusts. This produces unreliable search results, and some users may not know the number assigned in an overseas jurisdiction.	Make corresponding changes to the search criteria in section 172.
Section 172: Amend search criteria for the register	Keeping the regulatory system up to date and relevant	There are risks that searches including the name or job title, or the contact details of the person acting on behalf of a debtor organisation may create inaccurate search results.	Amend section 172 to remove the ability for the name or job title, or contact details of the person acting on behalf of a debtor organisation.
Takeovers Act 1993			
Section	*Reason for change*	*Status Quo*	*Proposed change*
Section 2A(2): Definition of a code company	Clarifying and updating statutory provisions to give effect to the purpose of the Act and its provisions	It is not clear when a code company ceases to be a code company if it ceases to meet the threshold in section 2A(1)(c) part way through a Code-regulated transaction or event. The Takeovers Panel published a statement in November 2013 to explain how section 2A(2) should be interpreted and will be interpreted by the Takeovers Panel.	To clarify that if, during a transaction, a code company drops below the "50 shareholders/50 share parcels" threshold in section 2A(1)(c), then the transaction still needs to be completed under the rules of the Code if there is a dominant owner of the company (that is, owning 90% or more of all the shares in the company). A corresponding amendment would need to be made to regulation 3A(2) of the Takeovers Code.
Trade Marks Act 2002			
Section	*Reason for change*	*Status Quo*	*Proposed change*
Section 14: Granting a standard trade mark registration.	Clarifying and updating statutory provisions in each Act amended to give effect to the purpose of that Act and its provisions;	The Act is silent on whether someone may be granted a standard trade mark registration if they already own a registered certification mark, yet it prohibits the reverse. IPONZ practice has been to object to the standard trade mark on the basis that it would make the earlier certification mark registration contrary to law. The policy intent of this section is to ensure consumers are not deceived into thinking a certification organisation	Include a specific provision that prohibits a standard trade mark to be registered when the owner already has a certification mark registered for the same or similar goods/services. This will provide legal certainty for IPONZ to be able to object to the registration and align with the policy intent. Also include clarification that a prior trade mark registration is considered "in-trade".

		is independent when it is trading in the goods/services. IPONZ has also been challenged on whether a prior trade mark registration is considered "in trade". Case law has now clarified that it is, however, legislative certainty is desirable.	
Section 53: Issuing a new certificate following a change to a registered trade mark.	Clarifying and updating statutory provisions in each Act amended to give effect to the purpose of that Act and its provisions;	It is unclear whether the commissioner may issue a new certificate following a change to a registered trade mark. Section 53 implies that they may reissue the original certificate, but not a new one. Only following an assignment does the Act specify that a new certificate may be issued in the name of the new owner.	Clarify the Act so that it is clear that the Commissioner may issue a new certificate at any time which is a reflection of the current state of the register. This would allow a new certificate to be registered following a rectification, assignment, merger, divisional or alteration.
Section 60: Keeping trade marks on the register until 6 months following the date of renewal.	Keeping the regulatory system up to date and relevant.	For a whole year following expiry, an expired trade mark must be taken into consideration in regards to the registrability of a later filed application for registration - "period of account". Once a registration has expired, it is removed from the register and does not have the same rights attached to it as a registered trade mark. This means that the owner of the later filed application for registration does not have the same mechanisms to overcome an objection. Expired registrations may also be restored to the register if the renewal fee is paid within a year following expiry. A year is a long period of time without certainty of whether an expired trade mark will be restored to the register. Ultimately the process creates unnecessary delays, and as a consequence costs, and uncertainty on the register.	Keep trade marks on the register until 6 months following the date of renewal. • Amend the Act so that a trade mark registration will remain on the register for 6 months following the date it was due to be renewed. • If the renewal fee is not paid within the 6 months the registration will be removed from the register. The date of removal will be backdated to the date the renewal fee was due. • Add a clause to clarify that an infringement action cannot be brought if the infringement occurred after the date of renewal but before the trade mark was renewed. • Update s60 to confirm that a trade mark which has not been renewed, but is within the six month period is considered a registered trade mark. These changes will provide certainty and clarity without providing unnecessary benefits for a

			failure to renew a trade mark registration. The change is in line with the Australian and International Registration approach.
Section 66: A trade mark registration 'must be' revoked if a ground of revocation is made out.	Clarifying and updating statutory provisions in each Act amended to give effect to the purpose of that Act and its provisions;	It is not explicit that a trade mark registration must be revoked if a ground for revocation is made out. Section 66 sets out grounds on which a trade mark registration "may be revoked", and possible defences to those grounds. The most common ground for revocation is 'non-use'. In a recent High Court case the Judge interpreted the words "may be revoked" to provide a residue discretion not to revoke a trade even though the trade mark had not been used and were there were no special circumstances to justify the non-use. This outcome runs counter to the general principle underpinning revocation of "use it or lose it". The purpose of revocation is to ensure the trade marks register is not cluttered with trade marks that are not being used or should no longer be registered.	Clarify that a trade mark registration "must be" revoked if a ground of revocation is made out. The change will be consistent with the intent of the clause and give more clarity and certainty to third parties.
Section 67	Keeping the regulatory system up to date and relevant	The Commissioner cannot require security for costs where there is reason to believe that a party will be unable to pay costs if they are unsuccessful in proceedings. Under s167 the Commissioner/the court may require security for costs only if the party does not reside in New Zealand. This creates uncertainty as a person may bring proceedings they are unlikely to win and know that they are unlikely to be able to cover the costs if they lose.	Include a provision that allows the commissioner or the courts to require security for costs in a proceeding where there is a concern that the party will be unable to pay. This will provide additional certainty to the proceedings and bring the Act in line with the High Court Rules and the Patents Act 2013.
Section 191	Addressing regulatory duplication, gaps,	Both section 191 of the Act and the Minors' Contract Act 1969 specify who may represent a	Delete section 191.

	errors, and inconsistencies within and between different pieces of legislation	minor. Section 191 is considered redundant as the matter is covered by the Minors' Contract Act 1969. There is a risk the two sections may become out of step with each other, creating regulatory uncertainty.	
Weights and Measures Act 1987			
Section	*Reason for change*	*Status Quo*	*Proposed change*
Section 32	Keeping the regulatory system up to date and relevant	Offences only relate to use or sale of weights and measures equipment, not hiring or leasing. At present, it is an offence to: • use, sell, or offer or expose for sale any weight, measure, or weighing or measuring instrument that contains any forged or unauthorised mark or stamp or has been altered or tampered with after it has been stamped or marked under this Act (s32(i)); • make or sell any weight, measure, or weighing or measuring instrument that is incorrect or that does not comply with the Act (s32(j)); and • use, sell, or offer or expose for sale any stamped weight or measure that has been increased or diminished (s32(k)). These provisions do not explicitly include weights and measures or instruments which are hired out or leased. This means they could be exempt from the provisions outlined above. This could give rise to operators exploiting this gap in the legislation to the detriment of consumers and other businesses.	Amend s32 of the Act to include the words lease or hire along the lines of: • 'uses, sells, offers or exposes for sale, or supplies for lease, hire, or hire purchase any weight, measure, or weighing or measuring instrument that contains any forged or unauthorised mark or stamp or has been altered or tampered with….' (s32(i)); • '… makes, sells, or supplies for lease, hire, or hire purchase any weight, measure, or weighing or measuring instrument that is incorrect...' (s32(j)); and • '… uses, sells, offers or exposes for sale, or supplies for lease, hire, or hire purchase any stamped weight or measure that has been increased or diminished' (s32(k)). This would remove uncertainty about the coverage of the Act.
Section 28(1)(h)	Keeping the regulatory system up to date and	Inspectors cannot request documentation for goods that have been sold.	Amend s28(1)(h) of the Weights and Measures Act to include the word 'sold'. It would now say "…any

	relevant	At present, s28(1)(h) of the Act provides that an inspector may, for the purposes of ensuring compliance with this Act and with any regulations made under this Act "require the production for examination by that Inspector, and take copies of, any book, record, contract, invoice, note, or other document in the possession of any person relating to: • any goods kept, displayed, offered, or exposed for sale; or • any weights, measures, or weighing or measuring instruments used for trade." The problem is that the Act does not currently explicitly allow inspectors to require the production and take copies of information relating to goods that have been sold, even though an inspector can require the production for examination, and take copies of, any invoice.	goods kept, displayed, offered, exposed for sale or sold…". Under this change, businesses would not need to hold on to any documentation for any longer than at present, just produce documentation relating to goods sold if they still held it.