



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Modernising the Companies Act 1993 and Making Other Improvements for Business	Date to be published	15 August 2024

List of documents that have been proactively released

Date	Title	Author
31 July 2024	Modernising the Companies Act 1993 and Making Other Improvements for Business	Office of the Minister for Commerce and Consumer Affairs
31 July 2024	Modernising the Companies Act 1993 and Making Other Improvements for Business ECO-24-MIN-0149 Minute	Cabinet Office
31 July 2024	Appendix 1: Proposals in the Companies Act, Limited Partnerships Act, and Insolvency Act with a Regulatory Impact Analysis Exemption	MBIE
31 July 2024	Appendix 2: Amendments to RSB 3 proposals	MBIE
31 July 2024	Appendix 3: Regulatory Impact Statement: Companies Act 1993 Modernisation and Simplification Changes	MBIE
31 July 2024	Appendix 4: Regulatory Impact Statement: Making it easier for government agencies to require an NZBN	MBIE
31 July 2024	Appendix 5: Better Visibility of Individuals Who Control Companies and Limited Partnerships CAB-21-MIN-0539.01 Minute	Cabinet Office
31 July 2024	Appendix 6: NZBN legislative proposals – additional detail	MBIE
31 July 2024	Appendix 7: Business registers and associated legislation in scope for NZBN changes	MBIE

Information redacted

YES / NO (please select)

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of Confidential advice to Government.

Appendix 2: Table of amendments to RSB3 proposals (rescindments, amendments and additions)

Item	Section	Location of original Cabinet decision in DEV-21-SUB-0088	Effect of proposed amendment	Recommendation
Companies Act 1993				
1	Section 140: Disclosure of interest	Annex 1, page 5, line 9	Remove the requirement to keep an interest register if all shareholders are also directors of the company.	Rescind decision. The way in which this section interacts with s141 renders this change undesirable .
2	Section 203: Recognition of overseas financial reporting systems Section 207A: Audit must be carried out in accordance with auditing and assurance standards	Annex 2, page 7, line 13	Give the Registrar the ability to notify on its website the countries it will accept audit reports and financial statements from.	Rescind decision. A power to identify acceptable countries should not be exercised through a website.
3	Section 207S: Auditor's fees and expenses	Annex 2, page 8, line 14	Clarify that the procedure for fixing auditor fees is not necessary where the auditor has been automatically reappointed.	Rescind decision. This proposed amendment would add complexity to the Companies Act for minimal benefit.
4	Section 208: Obligations to prepare annual report	Annex 1, page 6, line 12	Amend the section so that all companies, rather than just large companies, are not required to prepare an annual report if the company does not have to prepare financial statements and shareholders agree.	Rescind decision. Further analysis suggests that there are good reasons for limiting this provision to large companies.
5	Section 209: Obligation to make annual report available to shareholders	Annex 2, page 8, line 15	Create an option for some entities to make their annual report available online and send a one-off notice to shareholders asking if and how they would like to receive it	Rescind decision. The provisions relating to how annual reports are made available are already complex. Adding in an alternative option adds more complexity without a sufficient corresponding benefit.

Item	Section	Location of original Cabinet decision in DEV-21-SUB-0088	Effect of proposed amendment	Recommendation
6	Sections 239AEH and 310B: Application of set off under netting agreement	Annex 2, page 9, line 18	Amend the legislation to be clearer that the netting provisions are intended to apply where a security interest is created after a netting agreement is entered into or the holder of an existing security interest agrees to the netting agreement being entered into.	Rescind decision. After further consideration, the initial rationale for this proposal is no longer considered persuasive.
7	Schedule 1, Clause 5(1)	Annex 1, page 8, line 17	Clarify that voting by a poll at shareholders meetings is a default option.	Rescind decision. The Chair of a meeting already has the ability to call for a poll so this change is no longer considered necessary.
8	Schedule 7, Clause 3: index-linked change to priority payments	Annex 2, page 12, line 24	Clause 3 specifies the maximum amount former employees of a company in liquidation can receive as a preferential payment. Subclause 2 sets out a mandatory formula for adjusting this figure via Order in Council. As there is no discretion in setting the figure, the amendment would provide for automatic adjustment of priority payments by publishing the amount in the Gazette and on an MBIE internet site rather than using the Order in Council process.	Rescind decision. Changes to clause 3 could lead to a lack of legal transparency and create potential flow on impacts on business certainty.
9	New section	Annex 2, page 11, line 22	Cabinet agreed that a company must notify the Registrar when a compromise with creditors is terminated. As part of creating a new statutory requirement such as this, it is normal to create a corresponding offence and penalty provision (otherwise the requirement is effectively meaningless). The Companies Act already has a tier of penalties, and the penalty for failure to comply with the proposed new requirement would be aligned with other similar offences in the Act (i.e. a maximum \$10,000 fine). Justice has been consulted about this.	Create a new offence with a maximum fine of \$10,000 if a person fails to notify the Registrar when a compromise with creditors is terminated.

Item	Section	Location of original Cabinet decision in DEV-21-SUB-0088	Effect of proposed amendment	Recommendation
Companies Act 1993 Regulations 1994				
10	Section 10: Australia prescribed for purposes of prohibition orders that disqualify person from being director	Annex 1, page 6, line 10	Ensure that persons who are prohibited from being general partners in certain overseas countries are also prohibited from being directors of companies in New Zealand.	Rescind decision. Regulations are only amended through primary legislation where the amendment is consequential on that primary legislation. That is not the case with this proposal, so it is not suitable to be included within this Bill.
Insolvency Act 2006				
11	Section 46: Debtor must first file statement of affairs Section 69: Time for filing statement of affairs Section 290: Automatic discharge three years after the bankrupt files a statement of affairs	Annex 2, page 25, line 53	Clarify that a statement of affairs is filed when it has been accepted by the Official Assignee. (Section 290 states that a bankrupt is automatically discharged from bankruptcy 3 years after he or she files their statement of affairs.)	Rescind decision. After further consideration, it has been determined that legislation is not needed here. The Official Assignee can simply record the date that each statement is received.
12	Section 71: Assignee must call meeting of creditors	Annex 2, page 21, line 43	Change requirement from “must” to “may” call a meeting.	Rescind decision. Any change to section 71 would require a rethink of sections 72-75 (which are also concerned with the meeting of creditors). In this context, given that section 73 permits the Official Assignee to dispense with the first creditor’s meeting if certain procedures are followed, and most meetings are dispensed with under s 73, the Official Assignee will continue to take this approach and not progress the proposed amendment.

Item	Section	Location of original Cabinet decision in DEV-21-SUB-0088	Effect of proposed amendment	Recommendation
13	Section 90: Number of persons for valid meeting	Annex 2, page 21, line 44	Clarify inconsistencies between s83 and s90 about validity of a meeting if the Official Assignee is not present.	Rescind decision. It has been determined that s83 and s90 are not in conflict.
14	Section 123: Assignee cannot claim interest in land if bankrupt remains in possession until discharge	Annex 2, page 21, line 45	Confirm that any land will automatically re-vest in the bankrupt upon discharge, if the bankrupt has been making payments between adjudication and discharge.	Rescind decision. It has been determined that other provisions of the Act taken together do mean that such land re-vests in the bankrupt.
15	Section 256: Application of set off under netting agreement	Annex 2, page 22, line 48	Reflect changes to related provisions in the Companies Act.	Rescind decision. After further consideration, the initial rationale for this proposal is no longer considered persuasive.
16	Section 276: Index-linked change to priority payments	Annex 2, page 24, lines 51 and 52	Provide for automatic adjustment of priority payments.	Rescind decision. Changes to s276 could lead to a lack of legal transparency and create potential flow on impacts on business certainty.
17	Section 295: When bankrupt must be examined concerning discharge	Annex 2, page 25, line 54	Allow the Official Assignee to challenge a discharge earlier in the process.	Rescind decision. The complexity of designing this amendment in a way that works (e.g. any pre-conditions that the Assignee must meet) outweighs the potential benefit of the amendment.
18	New section in Part 5, subpart 4	Annex 2, page 26, line 57	Give creditors the right to inspect certain documents in respect to “no asset procedures”.	Rescind decision. This proposal would likely introduce inconsistencies with the other alternatives to bankruptcy adjudication e.g. debt payment orders.

Item	Section	Location of original Cabinet decision in DEV-21-SUB-0088	Effect of proposed amendment	Recommendation
Limited Partnerships Act 2008				
19	Section 98A: Deregistration by Registrar	Annex 1, page 16, line 35	Cabinet agreed that liquidators would give public notice of the removal of a limited partnership from the register, to mirror a similar provision in the Companies Act. However, the corresponding provision in the Companies Act is being amended to shift the responsibility from liquidators to the Registrar, the Limited Partnerships Act needs to be amended accordingly.	Amend the Limited Partnerships Act so that the Registrar, rather than the liquidator, gives public notice of the removal of a limited partnership from the register.
20	Section 96 and 98A: Deregistering a limited partnership	New decision	As with the amendment above, this proposal is for consistency of the deregistration provisions with the equivalent provisions in the Companies.	Delete section 96 and clarify in section 98A that the Registrar must deregister a limited partnership if the liquidator sends the Registrar the relevant documents or the limited partnership has been put into liquidation and either no liquidator is acting or the relevant documents have not been sent to the Registrar. This ensures consistency in approach between the Companies Act and Limited Partnerships Act.