

Regulatory Systems (Commercial Matters) Amendment Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Regulatory Systems (Commercial Matters) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Regulatory Systems (Commercial Matters) Amendment Bill is one of a package of three omnibus bills proposing amendments to legislation administered by the Ministry of Business, Innovation and Employment.

This bill seeks to make amendments in the commerce, consumer affairs, communications, energy and resources, and building and housing areas.

The policy objective of each bill is to maintain the effectiveness and efficiency of the regulatory systems established by the Acts they would amend, and so reduce the chance of regulatory failure. The amendments would achieve this objective by:

- clarifying and updating statutory provisions in each Act to give effect to its purpose and provisions
- addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation
- keeping the regulatory system up to date and relevant
- removing unnecessary compliance costs and costs of doing business.

This commentary covers only the major amendments we propose. It does not cover minor or technical amendments.

Commencement of netting provisions

We recommend amending clause 2 (commencement), to insert new paragraph 2(aa). This would provide for the netting provisions to come into force on the day after the bill receives Royal assent.

Amendments to the Companies Act

Application of audit requirement

We recommend amending clause 21, which affects section 206 of the Companies Act 1993. This change would allow large overseas companies with small New Zealand businesses or group businesses not to be subject to an audit requirement if there is no audit requirement in the home country. We believe that this would have two benefits: removing excessive compliance costs, and promoting entity neutrality. We discuss these points further below.

Excessive compliance costs

Compliance costs can be disproportionate if an overseas company has only a small business presence in New Zealand.

If an overseas company is considered “large” and it has a branch in New Zealand, it is subject to certain audit requirements such as filing audited group financial statements that comply with GAAP (generally accepted accounting practice). We were told that if an overseas company is not required to have an audit in its home country, New Zealand’s financial reporting legislation imposes extra compliance costs. We heard an example of the cost to a Japanese company for an audit being estimated at 20–30 million yen (approximately NZ \$250,000–375,000). This is a significant cost for a company with a small presence in New Zealand.

Entity neutrality

The treatment of large overseas companies differs depending on whether its small New Zealand-based business is a branch of the overseas company or a New Zealand-registered subsidiary. This disparity may encourage overseas companies to establish a New Zealand subsidiary or restructure their New Zealand business. We consider this undesirable. Differences in financial reporting obligations should not drive or influence decisions about how overseas companies structure their businesses.

The alternative of imposing extra compliance on New Zealand subsidiaries

We explored the possibility of increasing the requirements on small subsidiaries to make them the same as for small branches. While this approach would address the entity-neutrality issue, it would not deal with concerns about compliance costs. We were advised that it would create an additional risk of discouraging overseas companies from establishing businesses in New Zealand. There is no evidence that there would be offsetting benefits for the users of the financial reports.

It would also amount to reversing one of the reforms arising from the enactment of the Financial Reporting Act 2013 and the Financial Reporting (Amendments to Other Enactments) Act 2013, which aimed to reduce compliance costs.

Timeframe for making an annual report available to shareholders

We recommend amending clause 25, which would amend section 209 of the Companies Act, regarding the obligation to make an annual report available to shareholders.

The amendment we propose would clarify the bill as introduced. It would change the specified timeframe within which an annual report must be made available, to 20 working days after the report is prepared, where there is no annual meeting of shareholders.

Preparing a concise annual report

We also recommend inserting new subclauses 25(3) to (5) which would amend subsection 209(3)(d), to remove the requirement to state whether a concise annual report was prepared.

Registrar may remove an overseas company from the register

We recommend amending new section 341(5) in clause 29 to provide that, where the Registrar is satisfied that an overseas company has dissolved or ceased to exist as a company, the Registrar can remove the company from the register without giving public notice.

Amendment to the Financial Markets Conduct Act

Extended time for disclosure for trustees, executors, and administrators

We recommend inserting clause 63C (and, consequentially, clauses 63A and 63B) to insert new section 303A in the Financial Markets Conduct Act 2013.

Section 288 of that Act allows an extended time for disclosure for substantial product holders who are trustees, executors, or administrators.

Our amendment would extend the effect of section 288 so that the extended time for disclosure would also apply when directors and senior managers become trustees, executors, or administrators, and are required to disclose relevant interests in listed issuers.

Amendment to the Takeovers Act

Clause 124 sets out the process for reimbursement of expenses in relation to a takeover offer or notice under the Takeovers Act 1993. New section 53 refers to the monetary jurisdictions for the District Court and High Court.

We recommend amending clause 124 to align the jurisdictions in the Takeovers Act with those in the District Court Act 2016.

Amendments to the Construction Contracts Act

We propose several changes in Part 4 of the bill, which deals with matters relating to building and housing. These changes would broaden the way in which payers can protect retention money, and are necessary to make clear how to comply with retention obligations.

We recommend inserting new clause 144 to insert new sections 18FA to 18FC in the Construction Contracts Act 2002 (the CCA). This would amend subpart 2A of Part 2 of the CCA. This new subpart (relating to retention money) is inserted in the CCA by the Construction Contracts Amendment Act 2015 (the CCAA).

From 31 March 2017, the CCAA will require retention money withheld under commercial construction contracts to be held on trust. Clause 138 of the bill would clarify that the trust obligations will only apply to contracts entered into or renewed on or after 31 March 2017. We are aware that, because of the date these provisions are due to come into force, the Regulatory Systems (Commercial Matters) Amendment Bill must also be enacted by 31 March 2017. This trust obligation would ensure that payers (such as developers and head contractors) protect retention money for the benefit of their payees (such as subcontractors), rather than using it as working capital. The amendments in the CCAA would better protect retention money owed to payees if the payer's business were to fail.

The CCAA will require payers to hold retention money on trust in the form of cash or other liquid assets that are readily converted into cash. We heard from some submitters that, in practice, most payers would need to hold any retention money in cash. This would be expensive and difficult for some payers, because it would generally require payers to obtain additional capital.

We understand that the policy intent of the CCAA is to allow payers the flexibility to protect retention money in ways other than holding cash. We believe that this will be best achieved by allowing an alternative arrangement to holding cash or other liquid assets on trust. Our proposed amendment would give payers two options if they choose to withhold retention money:

- the default option, of holding retention money on trust in the form of cash or other liquid assets readily converted into cash (as will be the case under amendments by the CCAA), or
- obtaining an instrument, such as insurance or a payment bond, to provide third-party protection of retention money.

Financial instruments would need to comply with the following strict requirements set out in our proposed new sections 18FB and 18FC:

- the issuer of the instrument must be a licensed insurer, a registered bank, or a person prescribed by regulations
- financial instruments must be issued in favour of payees
- issuers of financial instruments must pay retention money to payees if the payer has failed to pay it on the date it is due under the construction contract

- payees can enforce the promise to pay against the issuer of the financial instrument
- records of the financial instruments in which payees have an interest must be made readily available to payees and at no charge.

We believe that the inclusion of these requirements in legislation would help to ensure payment of retention money to payees.

This would enable payers to claim directly from the bank or insurer if developers or head contractors fail to pay retention money when it is due.

Transitional provisions

We recommend amendments to include several transitional provisions, in Schedules 1AA to 2. These amendments would clarify how some of the changes to be made by the bill would apply to existing circumstances, and when they would apply. In some instances, they would also allow the benefits of the new provisions to take effect as soon as possible.

Appendix

Committee process

The Regulatory Systems (Commercial Matters) Amendment Bill was referred to the committee on 18 October 2016. The closing date for submissions was 1 December 2016. We received and considered 13 submissions from interested groups and individuals. We heard oral evidence from three submitters.

We received advice from the Ministry of Business, Innovation and Employment. The Regulations Review Committee reported to us on the powers contained in clause 88.

Committee membership

Melissa Lee (Chairperson)

Kanwaljit Singh Bakshi

Ria Bond

Dr David Clark

Clare Curran

Kris Faafoi

Brett Hudson

Gareth Hughes

Hon Peseta Sam Lotu-liga

Simon O'Connor

Barry Coates replaced Gareth Hughes for this item of business.

**Regulatory Systems (Commercial Matters) Amendment
Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Bridges

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Regulatory Systems (Commercial Matters) Amendment Act **2016**.
- 2 Commencement** 5
 - (1) This Act comes into force immediately after the expiry of the 2-month period that starts on the date of Royal assent, except as set out in **subsections (2) to (6)**.
 - (2) The following provisions come into force on the day after the date of Royal assent: 10
 - (aa) **sections 10, 12, 27, 28, 32, 101, 101A, 103, and 112A:**
 - (a) **subpart 12 of Part 1:**
 - (b) **sections 133 and 134:**
 - (c) **~~Schedule 2~~Schedules 1 to 2.**
 - (3) **Part 4 Sections 137 and 138** comes into force on **31 March 2017**. 15

- (3A) **Sections 139 to 147** come into force immediately after section 18 of the Construction Contracts Amendment Act 2015 comes into force.
- (4) **Subpart 7 of Part 1** comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates. 5
- (5) However, any provision of **subpart 7 of Part 1** that is not already in force on the first anniversary of the date of Royal assent comes into force then.
- (6) **Section 8** comes into force on **1 July 2019**.

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Subpart 1—Building Societies Act 1965

3 Principal Act

This subpart amends the Building Societies Act 1965 (the **principal Act**).

3A **New section 2A inserted (Transitional, savings, and related provisions)**

After section 2, insert: 15

2A **Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

4 **Section 103 amended (Duty to make annual return)**

- (1) In section 103(2), delete “, and must be signed by 2 of the directors and by the manager or secretary of the society”. 20

- (2) After section 103(2), insert:

- (2A) The annual return must be signed by—

- (a) the manager or secretary of the society; and
- (b) a second person who is authorised to sign by the directors of the society and who is any of the following: 25
 - (i) a director of the society;
 - (ii) a qualified statutory accountant (as defined in section 5(1) of the Financial Reporting Act 2013):
 - (iii) a lawyer (as defined in section 6 of the Lawyers and Conveyancers Act 2006). 30

5 **Section 104 repealed (Annual return to disclose loans or other investments to certain officers or companies)**

Repeal section 104.

5A New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 1AA** of this Act as the first schedule to appear after the last section of the principal Act.

Subpart 2—Commerce Act 1986

- | | | |
|----------|--|----|
| 6 | Principal Act | 5 |
| | This subpart amends the Commerce Act 1986 (the principal Act). | |
| 7 | Section 6C repealed (Application of Evidence Amendment Act 1980) | |
| | Repeal section 6C. | |
| 8 | Section 53ZE amended (Levies) | |
| (1) | In section 53ZE(2)(a), after “costs”, insert “for an appropriation period”. | 10 |
| (2) | In section 53ZE(2)(e), replace “financial year” with “appropriation period” in each place. | |
| (3) | In section 53ZE(2)(g), replace “financial year” with “appropriation period”. | |
| (4) | In section 53ZE(2)(g)(i), replace “year” with “period”. | |
| (5) | In section 53ZE(2)(h), replace “a financial year or part financial year” with “an appropriation period or a part appropriation period”. | 15 |
| (6) | In section 53ZE(2)(h), replace “that financial year” with “that appropriation period”. | |
| (7) | After section 53ZE(2), insert: | |
| (2A) | In subsection (2), appropriation period , in relation to any estimated costs, means— | 20 |
| | (a) a financial year; or | |
| | (b) if the estimated costs will be incurred under the authority of a multi-year appropriation or of a multi-year appropriation proposed in any Estimates, the financial years to which the multi-year appropriation applies. | 25 |
| (2B) | In subsection (2A)(b) ,— | |
| | Estimates — | |
| | (a) has the meaning given in section 2(1) of the Public Finance Act 1989; and | |
| | (b) includes Supplementary Estimates as defined in section 2(1) of that Act | 30 |
| | multi-year appropriation means an appropriation authorised to apply for more than 1 financial year (<i>see</i> section 10 of the Public Finance Act 1989). | |
| 9 | Section 77 amended (Additional lay members of High Court for purposes of appellate jurisdiction in respect of Commission determinations) | |
| | Replace section 77(1) with: | 35 |

- (1) This section applies for the purposes of the exercise by the court of its jurisdiction and powers under sections 91 to 97.
- (1A) There are to be lay members of the court appointed from time to time by the Governor-General.

Subpart 3—Companies Act 1993 5

10 **Principal Act**

This subpart amends the Companies Act 1993 (the **principal Act**).

11 **Section 3 amended (Public notice)**

In section 3(3), after “328(3)(a),”, insert “**341(4)(b)**,”.

12 **New section 8A inserted (Transitional, savings, and related provisions)** 10

After section 8, insert:

8A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

13 **Section 10 amended (Essential requirements)** 15

Replace section 10(d)(ii) with:

- (ii) live in an enforcement country and be a director of a body corporate that is incorporated in that enforcement country under a law that is equivalent to this Act.

14 **Section 12 amended (Application for registration)** 20

- (1) Repeal section 12(2)(b)(iii).
- (2) After section 12(2), insert:
- (3) If no directors of the proposed company live in New Zealand, the application must, in relation to at least 1 director who lives in an enforcement country,—
 - (a) confirm that the director is a director of a body corporate that is incorporated in that enforcement country under a law that is equivalent to this Act; and
 - (b) include the prescribed information in respect of that body corporate.

15 **Section 80 amended (Financial assistance not exceeding 5% of shareholders’ funds)** 30

- (1) Replace section 80(1)(b) with:
 - (b) within 10 working days of providing the financial assistance, the company sends a notice containing the particulars set out in **subsection (1B)** to—

- (i) the licensed market operator of each licensed market on which the shares of the company are quoted; or
 - (ii) each shareholder of the company, if the shares of the company are not quoted on any licensed market.
- (2) After section 80(1A), insert: 5
- (1B) The particulars referred to in **subsection (1)(b)** are as follows:
 - (a) the class and number of shares in respect of which the financial assistance has been provided:
 - (b) the consideration paid or payable for the shares in respect of which the financial assistance has been provided: 10
 - (c) the identity of the person receiving the financial assistance and, if that person is not the beneficial owner of the shares in respect of which the financial assistance has been provided, the identity of that beneficial owner:
 - (d) the nature and, if quantifiable, the amount of the financial assistance. 15
- (1C) The licensed market operator must ensure that the notice under **subsection (1)(b)(i)** is notified in accordance with its arrangements for notifying disclosures made to it (*see* section 314 of the Financial Markets Conduct Act 2013).
- 16 Section 120 amended (Annual meeting of shareholders)**

After section 120(4), insert: 20

 - (5) However, it is not necessary for the board of a company to call, or for a company to hold, an annual meeting of shareholders under this section if—
 - (a) there is nothing required to be done at that meeting; and
 - (b) the board has resolved that it is in the interests of the company to rely on this subsection (having regard to whether there is any particular issue that the shareholders should be given an opportunity to discuss, comment on, or ask questions about); and 25
 - (c) the constitution of the company does not require the meeting to be called or held.
 - (6) ~~Subsection (2) is~~ Subsections (1) to (4) are subject to **subsection (5)**. 30
- 17 Section 122 amended (Resolution in lieu of meeting)**

Replace section 122(4) with:

 - (4) It is not necessary for the board of a company to call, or for a company to hold, an annual meeting of shareholders under section 120 if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subsections (2) and (3). 35
 - (4A) **Section 120(5)** does not limit **subsection (4)**.

18 Section 200 amended (Application of preparation provisions)

After section 200(2), insert:

- (3) Further, section 201 does not apply to a company or an overseas company (A) in relation to a balance date if,—
- (a) on the balance date, A has no subsidiaries but is a subsidiary of a body corporate (B) that is—
 - (i) incorporated in New Zealand; or
 - (ii) registered or deemed to be registered under Part 18; and
 - (b) group financial statements in relation to a group comprising B, A, and all other subsidiaries of B that comply with generally accepted accounting practice are completed in relation to the balance date under this Act or any other enactment; and
 - (c) ~~the company A~~ has not opted into compliance with section 201 as referred to in subsection (1)(e).

19 Section 202 amended (Group financial statements must be prepared)

Replace section 202(2) with:

- (2) Group financial statements are not required under subsection (1) in relation to a balance date if,—
- (a) on the balance date, A is a subsidiary of a body corporate (B) that is—
 - (i) incorporated in New Zealand; or
 - (ii) registered or deemed to be registered under Part 18; and
 - (b) group financial statements in relation to a group comprising B, A, and all other subsidiaries of B that comply with generally accepted accounting practice are completed in relation to that balance date under this Act or any other enactment; and
 - (c) A has not opted into compliance with this section as referred to in section 200(1)(e).

20 Section 203 amended (Recognition of financial reporting requirements of overseas countries)

In section 203(1) and (3), replace “a large” with “an”.

21 Section 206 amended (Application of audit requirement)

- (1) Replace section 206(1)(c) with:

(c) every large overseas company unless **subsection (3)** applies; and

- (2) Replace section 206(2) with:

- (2) Subsection (1)(a) does not apply to a large company (A) if A has opted out of compliance with section 207 in accordance with section 207J.

- (3) After section 206(2), insert:

- (3) **Subsection (1)(c)** does not apply to a large overseas company (**B**) in relation to a balance date if—
- (a) financial statements or group financial statements are prepared in respect of B under section 201 or 202 in relation to the balance date; and
 - (b) section 204 does not apply to B in relation to the balance date; and 5
 - (c) under the law in force in the country where B is incorporated or constituted,—
 - (i) qualifying financial statements are required to be prepared in respect of B in relation to the balance date; but
 - (ii) the qualifying financial statements so prepared are not required to be audited. 10
- (4) In **subsection (3)(c)**, **qualifying financial statements** means financial statements that are equivalent, or substantially equivalent, to the financial statements or group financial statements referred to in **subsection (3)(a)**.
- 22 Section 207D amended (Application of registration provisions)** 15
- Replace section 207D(2)(a) with:
- (a) A is a subsidiary of a body corporate (**B**) that is—
 - (i) incorporated in New Zealand; or
 - (ii) registered or deemed to be registered under Part 18; and
- 23 Section 207E amended (Financial statements must be registered)** 20
- In section 207E(1), after “204”, insert “(if any)”.
- 24 Section 208 amended (Obligation to prepare annual report)**
- After section 208(3), insert:
- (4) However, the board of a large company (within the meaning of section 198) is not required to prepare an annual report on the affairs of the company during an accounting period if— 25
- (a) the company is not required to prepare any financial statements or group financial statements for the accounting period under Part 11, Part 7 of the Financial Markets Conduct Act 2013, or any other enactment; and
 - (b) shareholders who together hold at least 95% of the voting shares (within the meaning of section 198) agree that the annual report need not be prepared for the accounting period. 30
- 25 Section 209 amended (Obligation to make annual report available to shareholders)**
- (1) ~~In section 209(1), replace “date fixed for holding the annual meeting of shareholders” with “relevant date”.~~ 35

- (1) In section 209(1), delete “, not less than 20 working days before the date fixed for holding the annual meeting of shareholders.”.
- (2) After section 209(1A) section 209(1), insert:
- (1B) In subsection (1), **relevant date** means—
 - (a) the date fixed for holding the annual meeting of shareholders; or 5
 - (b) if, under **section 120(5) or 122(4)**, it is not necessary to hold an annual meeting, the date that is 10 working days after the date on which the annual report is prepared.
- (1AA) The copy of the annual report or the notice referred to in subsection (1)(b) must be sent— 10
 - (a) not less than 20 working days before the date fixed for holding the annual meeting of shareholders; or
 - (b) if, under **section 120(5) or 122(4)**, it is not necessary to hold an annual meeting, within 20 working days after the date on which the annual report is prepared. 15
- (3) In section 209(3)(d), replace “a statement as to whether” with “if”.
- (4) In section 209(3)(d), replace “report and, if so,” with “report.”.
- (5) Before section 209(3)(d)(i), insert:
 - (iaaa) that the board of the company has prepared, in relation to the same accounting period as the annual report, a concise annual report; and 20
- 25A Section 209C amended (Alternative obligations for FMC reporting entities)**
- (1) In section 209C(1), replace “the way in which” with “when, to whom, or the manner in which”. 25
- (2) In section 209C(5), definition of **FMC regulations**, after “543(1)(e)”, insert “and **(ea)**”.
- (3) In section 209C(5), definition of **FMC regulations**, replace “the way in which” with “when, to whom, or the manner in which”.
- (4) In section 209C(6), after “543(1)(e)”, insert “and **(ea)**”. 30
- 26 Section 231 replaced (Variation of compromise)**
- Replace section 231 with:
- 231 Variation of compromise**
- (1) A compromise approved under section 230 may include a procedure for its variation. 35
- (2) If it does, any variation made in accordance with the procedure must be notified to the Registrar and can have no effect before that happens.

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(3)	A compromise approved under section 230 may also be varied by the approval of a variation in accordance with this Part, which, for that purpose, applies with any necessary modifications as if the proposed variation were a proposed compromise.	
(4)	The provisions of this Part apply to any compromise that is varied in accordance with a procedure for its variation permitted by subsection (1) or that is varied in accordance with subsection (3) .	5
26	Section 231 amended (Variation of compromise) After section 231(1), insert:	
(1A)	A variation made as referred to in subsection (1)(a) must be notified to the Registrar and can have no effect before that happens.	10
27	Section 239AEJ amended (Mutuality required for transactions under bilateral netting agreements) In section 239AEJ, insert as subsections (2) and (3):	
(2)	Subsection (3) applies for the purpose of determining under this section whether there are mutual credits, mutual debts, or other mutual dealings.	15
(3)	A debt or other liability incurred by a person (T) who holds property as a trustee is to be regarded as incurred by T in the same capacity as that in which T holds the property, if T incurs, and is authorised by the terms of the trust to incur, the debt or other liability acting as the trustee.	20
28	Section 310D amended (Mutuality required for transactions under bilateral netting agreements) In section 310D, insert as subsections (2) and (3):	
(2)	Subsection (3) applies for the purpose of determining under this section whether there are mutual credits, mutual debts, or other mutual dealings.	25
(3)	A debt or other liability incurred by a person (T) who holds property as a trustee is to be regarded as incurred by T in the same capacity as that in which T holds the property, if T incurs, and is authorised by the terms of the trust to incur, the debt or other liability acting as the trustee.	
29	Section 341 amended (Overseas company ceasing to carry on business in New Zealand) After section 341(2), insert:	30
(3)	The Registrar may (in any event) remove an overseas company from the overseas register if satisfied that it has ceased to carry on business in New Zealand.	
(4)	Before an overseas company can be removed from the overseas register under subsection (3) , the Registrar must— (a) give notice to the overseas company—	35

- (i) that the Registrar intends to remove the overseas company from the overseas register under **subsection (3)**; and
 - (ii) that the overseas company may, within 20 working days after the date of the notice, deliver to the Registrar an objection to its removal on the ground that it is still carrying on business in New Zealand; and
- (b) give public notice—
 - (i) that the Registrar intends to remove the overseas company from the overseas register under **subsection (3)**; and
 - (ii) that any person may, within 20 working days after the date of the public notice, deliver to the Registrar an objection to the overseas company's removal on the ground that the overseas company is still carrying on business in New Zealand.
- (5) **Subsection (4)(a)Subsection (4)** does not apply if the Registrar is satisfied that the overseas company has been dissolved, or has otherwise ceased to exist as a company, under or by virtue of the laws of any other country.
- (6) If any person objects to the removal of the overseas company as referred to in **subsection (4)(a)(ii) or (b)(ii)**, the Registrar must not proceed with the removal unless the Registrar is satisfied that—
 - (a) the objection has been withdrawn; or
 - (b) the facts on which the objection is based are not, or are no longer, correct; or
 - (c) the objection is frivolous or vexatious.
- 30 Section 342 amended (Liquidation of overseas company)**
 - (1) After section 342(2)(c), insert:
 - (ca) has objected as referred to in **section 341(4)(a)(ii)**; or
 - (2) After section 342(2), insert:
 - (3) An application may be made under subsection (1) whether or not the Registrar has acted under **section 341(3) to (6)**.
- 31 Section 395 amended (Regulations)**

In section 395(1)(bb), replace “12(2)(b)(iii)” with “**12(3)(b)**”.
- 32 New Schedule 1AA inserted**

Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.
- 33 Schedule 1 amended**
 - (1) In Schedule 1, after clause 6(5), insert:

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(6)	For the purposes of subclause (5), the constitution may provide for different matters for different kinds of proxies (for example, a different specified time for the production of a proxy by electronic means).	
(2)	In Schedule 1, after clause 7(4), insert:	
(4A)	Despite subclause (4),—	5
(a)	the constitution of a company may specify a time by which postal votes that are cast using electronic means must reach the person who is authorised to receive and count postal votes at the meeting; and	
(b)	that time may be less than 48 hours before the start of the meeting.	
34	Schedule 4 amended	10
(1)	In Schedule 4, replace paragraph (ga) with:	
(ga)	in relation to at least 1 director of the company who lives in an enforcement country, the prescribed information in respect of 1 body corporate that is incorporated in that enforcement country under a law that is equivalent to this Act and of which the director is a director (but this paragraph applies only if no directors of the company live in New Zealand):	15
(2)	In Schedule 4, replace paragraph (l) with:	
(l)	the date of the last annual meeting of the company held under this Act or, if the company is not required to hold an annual meeting, the date on which a resolution was passed under section 120(5)(b) or 122:	20
35	Schedule 7 amended	
	In Schedule 7, clause 3(2)(b), replace “3” with “4”.	
	Subpart 4—Fair Trading Act 1986	
36	Principal Act	25
	This subpart amends the Fair Trading Act 1986 (the principal Act).	
37	Section 15 amended (Limited application of sections 9 to 14 to news media)	
(1)	In section 15(2), replace “broadcasting body” with “broadcaster” in each place.	
(2)	Replace section 15(3)(a) with:	
(a)	broadcasting and broadcaster have the same meanings as in section 2(1) of the Broadcasting Act 1989:	30
38	Section 48P amended (Proceedings relating to financial products or financial services)	
	In section 48P(6), replace the definition of financial service with:	
	financial service—	35

- (a) has the same meaning as in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and
- (b) includes a market service within the meaning of section 6(1) of the Financial Markets Conduct Act 2013; but
- (c) does not include, in relation to any provision of sections 9 to 13, any class or classes of services declared by regulations made under section 548(1)(d)(ii) of the Financial Markets Conduct Act 2013 not to be financial services for the purposes of the provision of Part 2 of that Act that corresponds to that provision of this Act

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Subpart 5—Financial Advisers Act 2008

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39 Principal Act

This subpart amends the Financial Advisers Act 2008 (the **principal Act**).

40 Section 101 amended (Disciplinary committee may discipline authorised financial adviser for breach of code)

After section 101(4), insert:

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- (4A) A fine imposed under subsection (3)(g) is recoverable in any court as a debt due to the FMA.

Subpart 6—Financial Markets Authority Act 2011

41 Principal Act

This subpart amends the Financial Markets Authority Act 2011 (the **principal Act**). 20

42 Schedule 1 amended

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Secret Commissions Act 1910

Subpart 7—Financial Markets Conduct Act 2013

25

43 Principal Act

This subpart amends the Financial Markets Conduct Act 2013 (the **principal Act**).

44 Section 6 amended (Interpretation)

- (1) In section 6(1), definition of **disclosure document**, paragraph (b), replace “a disclosure document” with “a limited disclosure document”. 30
- (2) In section 6(1), insert in its appropriate alphabetical order:

- limited disclosure document** or **LDD**, in relation to an offer referred to in clause 26(1) of Schedule 1, means a limited disclosure document for the offer required by regulations made for the purposes of that clause
- (3) In section 6(1), replace the definition of **register entry** with:
- register entry**,—
- (a) in relation to a regulated offer, means the entry for the offer in the register of offers of financial products:
- (b) in relation to an offer referred to in clause 26(1) of Schedule 1, means the entry for the offer in the register of offers of financial products that is required by regulations made for the purposes of that clause
- 45 Section 13 amended (Miscellaneous interpretation provisions relating to statements and information)**
- In section 13(1), after “In this Act”, insert “and the regulations”.
- 46 Section 95 amended (Duty to notify changes to Registrar)**
- Replace section 95(1) and (2) with:
- (1) An issuer of regulated products must notify the Registrar of a prescribed change within the prescribed period.
- (2) In this section,—
- prescribed change**, in respect of regulated products,—
- (a) means a prescribed change that relates to the issuer, any offeror of those products, the regulated products, or any registered scheme to which those products relate; but
- (b) does not include a change in respect of which the FMA is required to notify the Registrar (for example, an order made under subpart 1 of Part 8)
- prescribed period**, in respect of a prescribed change, means—
- (a) the period (if any) that is prescribed in respect of the change; or
- (b) 5 working days after the issuer becomes aware of the change (if **paragraph (a)** does not apply).
- 47 Section 96 amended (Information to be made available to investors or other prescribed persons)**
- In the heading to section 96, after “investors”, insert “, FMA, Registrar,”.
- 48 Section 97 amended (Information to be made publicly available)**
- In section 97, insert as subsections (2) and (3):
- (2) An issuer commits an offence and is liable on conviction to a fine not exceeding \$50,000 if—

- | | | |
|--|---|---------------------|
| <p>(a)</p> <p>(b)</p> <p>(3)</p> | <p>the regulations made for the purposes of this section require the issuer to make information publicly available by lodging that information with the Registrar; and</p> <p>the issuer contravenes this section by failing to lodge that information with the Registrar in accordance with subsection (1).</p> <p>The offence in this section is an infringement offence (<i>see</i> subpart 5 of Part 8).</p> | <p>5</p> |
| <p>49 Section 101 amended (Part 3 offer provisions)</p> | | |
| <p>(1)</p> <p>(l)</p> <p>(2)</p> <p>(ga)</p> <p>(3)</p> | <p>Replace section 101(3)(l) with:</p> <p>any provision of regulations made for the purposes of clause 26 of Schedule 1 that is prescribed by the regulations to be a Part 3 offer provision and stated to give rise to civil liability under this subsection:</p> <p>After section 101(4)(g), insert:</p> <p>any provision of regulations made for the purposes of clause 26 of Schedule 1 that is prescribed by the regulations to be a Part 3 offer provision and stated to give rise to civil liability under this subsection:</p> <p>In section 101(4)(h), replace “deficiencies in disclosure document under clause 26” with “disclosure deficiencies”.</p> | <p>10</p> <p>15</p> |
| <p>50 Section 131 amended (Additional ongoing registration requirements for restricted schemes)</p> | | |
| | <p>In section 131(1)(a)(ii), replace “workplace scheme” with “workplace savings scheme”.</p> | <p>20</p> |
| <p>51 Section 134 amended (Changes to registration as particular type of registered scheme)</p> | | |
| | <p>In section 134(1)(b), replace “if the supervisor certifies, or the trustees of a restricted scheme certify,” with “if the supervisor certifies or, if there is no supervisor, the manager certifies”.</p> | <p>25</p> |
| <p>52 Section 147 amended (Duty of manager to provide reports to supervisor or FMA)</p> | | |
| | <p>In section 147, replace “in the case of a restricted scheme” with “if there is no supervisor”.</p> | <p>30</p> |
| <p>53 Section 149 amended (Duty of manager to report contravention or possible contravention of issuer obligations)</p> | | |
| | <p>In section 149(a) and (b), replace “in the case of a restricted scheme” with “if there is no supervisor”.</p> | |

- 54 Section 165 amended (Changes to statement of investment policy and objectives)**
In section 165(2), replace “to a restricted scheme” with “if the scheme does not have a supervisor”.
- 55 Section 168 amended (Action that must be taken on pricing errors and failure to comply with pricing methodologies)** 5
In section 168(1)(b)(i), replace “transferred” with “issued”.
- 56 Section 173 amended (General prohibition on transactions giving related party benefits)**
In section 173(4), replace “in the case of a restricted scheme” with “if the registered scheme does not have a supervisor”. 10
- 57 Section 178 amended (Application of scheme participant transfer rules)**
In section 178(1)(c), replace “only” with “only if”.
- 58 Section 195 amended (Cancellation of registration)**
In section 195(1)(c), replace “if the supervisor certifies, or the trustees of a restricted scheme certify,” with “if the supervisor certifies or, if there is no supervisor, the manager certifies”. 15
- 59 Section 212 amended (Initial steps in winding up of registered scheme)**
(1) In section 212(1), replace “the supervisor or (in the case of a restricted scheme) the trustees” with “the supervisor or (if there is no supervisor) the manager”. 20
(2) In section 212(3), replace “trustee” with “manager”.
- 60 Section 213 amended (Winding-up report)**
In section 213(1), replace “or, in the case of a restricted scheme, the persons who were the trustees” with “or, if there was no supervisor, the person who was the manager of the relevant registered scheme”. 25
- 61 Section 217 amended (Contents of registers)**
After section 217(1), insert:
(1A) However, a register is not required to contain the information specified in a paragraph in subsection (1) if the circumstances prescribed in respect of that paragraph apply. 30
- 62 Section 228 amended (Part 4 governance provisions)**
After section 228(4)(w), insert:
(wa) section 219 (auditor must advise if auditor considers that subpart is not being complied with):

- 63 Section 247 amended (Exception for disclosure in connection with preparing PDS or disclosure document)**
- (1) In the heading to section 247, replace “disclosure document” with “**limited disclosure document**”.
- (2) In section 247, replace “disclosure document under clause 26 of Schedule 1” with “limited disclosure document”. 5
- 63A Section 297 amended (Directors and senior managers of listed issuers must disclose relevant interests and dealings in relevant interests)**
- In section 297(4), replace “303” with “**303A**”.
- 63B Section 298 amended (Disclosure of relevant interests and dealings in relevant interests in relation to specified derivatives)** 10
- In section 298(4), replace “303” with “**303A**”.
- 63C New section 303A inserted (Extended time for disclosure for trustees, executors, and administrators)**
- After section 303, insert: 15
- 303A Extended time for disclosure for trustees, executors, and administrators**
- (1) This section applies if—
- (a) a person (A) is a director or senior manager of a listed issuer; and
- (b) A acquires a relevant interest in—
- (i) a quoted financial product of the listed issuer or a related body corporate; or
- (ii) a specified derivative; and
- (c) the relevant interest is acquired merely because A is the trustee of a testamentary trust or the executor or administrator of the estate of a deceased person. 20
- (2) The time limit for disclosure in section 297 or 298 in respect of the acquisition of the relevant interest does not apply and the disclosure must instead be given before the expiry of 14 days after the grant of administration under the Administration Act 1969. 25
- 64 Section 314 amended (General obligations in respect of licensed markets)** 30
- (1) Replace section 314(b)(i) with:
- (i) for notifying disclosures made to it under a disclosure obligation and for continuing to make those disclosures available; and
- (2) In section 314, insert as subsection (2):
- (2) In **subsection (1)(b)(i), disclosure obligation** means— 35

69 New section 426A inserted (Further prescribed information to be made available)

After section 426, insert:

426A Further prescribed information to be made available

- (1) A licensee or an authorised body that provides the service must,—5
 - (a) at the request of a prescribed person or at the prescribed times or on the occurrence of the prescribed events, make available to the prescribed person the information that is required to be made available under this section by the regulations; and
 - (b) at the prescribed times or on the occurrence of the prescribed events, make publicly available the information that is required to be made publicly available by the regulations.10
- (2) The information must be made available in the prescribed manner.15

70 Section 427 replaced (False or misleading statements and omissions)

Replace section 427 with:

427 False or misleading statements and omissions

- (1) **Subsections (2) to (4A)** apply if—15
 - (a) there is—20
 - (i) a statement in a disclosure statement that is false or misleading or is likely to mislead; or
 - (ii) an omission from a disclosure statement of information that is required to be contained in the disclosure statement by the regulations; and
 - (b) the statement or omission is materially adverse from the point of view of a retail investor.25
- (2) The licensee or authorised body must not provide the disclosure statement to a person under section 423.
- (3) If the disclosure statement has already been provided to a person (A), the licensee or authorised body must not continue to provide the service to A—30
 - (a) in the prescribed circumstances (if any); or
 - (b) if the licensee or authorised body fails to comply with any prescribed conditions.
- (4) If the licensee or authorised body continues to provide the service to A, the licensee or authorised body must, ~~in the prescribed manner,~~ provide to A a new disclosure statement that is not defective in terms of **subsection (1)(a) and (b)**.35

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(4A)	The new disclosure statement under subsection (4) must be provided in the prescribed manner (if any).	
(5)	A person must not make available to any person or the public any information under section 426A (the further disclosure) if—	
(a)	there is—	5
(i)	a statement in the further disclosure that is false or misleading or is likely to mislead; or	
(ii)	an omission from the further disclosure of information that is required to be contained in the further disclosure by this Act or the regulations; and	10
(b)	the statement or omission is materially adverse from the point of view of a retail investor.	
(6)	<i>See</i> section 511 (offence to knowingly or recklessly contravene subsection (2) or (5)).	
71	Section 428 replaced (Further prescribed information to be made available) Replace section 428 with:	15
428	Miscellaneous provisions relating to false or misleading statements and omissions	
(1)	For the purposes of section 427 , a statement about a future matter (including the doing of, or refusing to do, an act) must be taken to be misleading if the person making the statement does not have reasonable grounds for making it.	20
(2)	Subsection (1) does not limit the meaning of a reference to a misleading statement.	
(3)	Section 427 does not limit sections 423 to 426A .	25
72	Section 448 amended (Regulations regulating holding and application of investor funds and property by derivatives issuers) In section 448(1)(a), after “receipt of money and property from”, insert “, or on account of,”.	
73	Section 449 amended (Part 6 services provisions)	30
(1)	In section 449(3)(c), replace “427” with “ 427(2), (3), and (5) ”.	
(2)	In section 449(4)(g), replace “428” with “ 426A ”.	
(3)	After section 449(4)(g), insert: (ga) section 427(4) or (4A) (failure to provide a new disclosure statement):	

74	Section 461A amended (Financial statements for registered schemes and funds)	
	In section 461A(2) and (3), replace “balance date of the manager” with “balance date of the scheme”.	
75	Section 461H amended (Lodgement of financial statements)	5
(1)	In section 461H(1), replace “this subpart” with “any of sections 460, 461, and 461B”.	
(2)	After section 461H(1), insert:	
(1A)	Every manager of a registered scheme must ensure that, within 4 months after the balance date of the scheme, copies of the financial statements that are required to be prepared under section 461A, together with a copy of the auditor’s report on those statements, are delivered to the Registrar for lodgement.	10
76	Section 461K amended (FMA reporting entities considered to have higher level of public accountability)	
	In the heading to section 461K, replace “FMA” with “FMC”.	15
77	Section 462 amended (When FMA may make stop orders)	
	In section 462(1)(a), replace “disclosure document under clause 26 of Schedule 1” with “limited disclosure document”.	
78	Section 499 amended (General defences for person in contravention)	
	In section 499(3), replace “427” with “ 427(2) or (5) ”.	20
79	Section 500 amended (Disclosure defences for person in contravention)	
	In section 500(1) and (2), replace “427” with “ 427(2) or (5) ”.	
80	Section 501 amended (Additional disclosure or financial reporting defence for directors who are treated as contravening)	
	In section 501(3), replace “section 499(1)(a)” with “section 499”.	25
81	New section 501A inserted (Additional defence for licensees who are treated as contravening)	
	After section 501, insert:	
501A	Additional defence for licensees who are treated as contravening	
(1)	This section applies if—	30
(a)	an authorised body (A) contravenes any market services licensee obligation; and	
(b)	a person (B) is the licensee who is treated as being in contravention under section 400(3).	

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(2)	In any proceeding under this subpart against B, it is a defence if B proves that B took all reasonable and proper steps to ensure that A complied with the market services licensee obligation.	
(3)	Subsection (2) does not limit any defence that B may have under section 499 or 500 (as a person who is treated as contravening a market services licensee obligation).	5
82	Section 511 amended (Offence of knowingly or recklessly contravening other provisions relating to defective disclosure)	
(1)	In section 511(1) and (2), replace “section 99 or 427” with “section 99 or 427(2) or (5) ”.	10
(2)	In section 511(1)(a) and (2)(b)(i), replace “427(1)(a)(i)” with “ 427(1)(a)(i) or (5)(a)(i) ”.	
(3)	In section 511(1)(b) and (2)(b)(ii), replace “427(1)(a)(ii)” with “ 427(1)(a)(ii) or (5)(a)(ii) ”.	
(4)	Replace section 511(4)(b) and (c) with:	15
(b)	in relation to section 427(2) , the act of providing the disclosure statement to a person:	
(c)	in relation to section 427(5) , the act of providing or making available the further disclosure:	
(d)	in relation to clause 27 of Schedule 1, the act of providing the limited disclosure document to a person.	20
83	Section 534 amended (Directors treated as having contravened in case of defective disclosure or financial reporting contravention)	
	Replace section 534(1)(d) with:	
(d)	an entity that provided a limited disclosure document under clause 26 of Schedule 1 has contravened clause 27 of that schedule (defective disclosure).	25
84	Section 543 amended (Regulations for purposes of Part 3 (Disclosure of offers of financial products))	
(1)	In section 543(1)(c)(i) to (iii), replace “disclosure document” with “limited disclosure document” in each place.	30
(2)	After section 543(1)(c)(iii), insert:	
(iiia)	requirements relating to an entry for the offer in the register of offers of financial products:	
(iiib)	information that must be provided, the person or persons to whom it must be provided, and other matters relating to the manner in which it is provided:	35

- (iiic) limits or restrictions that apply in connection with an offer, financial products, or investors:
- (3) In section 543(1)(c)(vi), replace “(iv) and (v)” with “**(iiia)** to (v)”.
- (4) After section 543(1)(c)(vi), insert:
- (vii) matters for the purposes of **clause 26(6)** of Schedule 1 (including requirements, conditions, or other matters that an issuer must comply with or ensure are met):
- (viii) which provisions of the regulations made for the purposes of clause 26 of Schedule 1 (if any) are Part 3 offer provisions for the purposes of this Act and, if a provision is so prescribed, stating whether the provision gives rise to civil liability under section 101(3) or (4) (*see* Part 8, in which Part 3 offer provisions are specified to be civil liability provisions):
- (5) In section 543(1)(d), after “section 95”, insert “and a period or periods within which those changes must be notified”.
- (6) In section 543(1)(e), delete “the persons who may make a request under section 96, the persons to whom information must be made available under section 96,”.
- (7) After section 543(1)(e), insert:
- (ea) prescribing the persons who may make a request under section 96 and the persons to whom information must be made available under section 96 (for example, investors, a supervisor, the FMA, or the Registrar):
- (8) After section 543(2), insert:
- (3) A time or an event prescribed under subsection (1)(e) in respect of regulated products may be any time, or any event that occurs, on or after the time at which the products are first offered under a regulated offer or otherwise become regulated products (regardless of whether or not the products have been issued).
- 85 Section 544 amended (Regulations for purposes of Part 4 (governance of financial products))**
- (1) After section 544(1)(v)(vi), insert:
- (via) circumstances in which information specified in a paragraph in section 217(1) is not required to be contained in a register:
- (2) In section 544(3), after “(iv),”, insert “**(via)**,”.
- 86 Section 546 amended (Regulations for purposes of Part 6 (market services))**
- After section 546(1)(k), insert:
- (ka) prescribing the information that must be made available under **section 426A**, the times or events referred to in that section, the persons who

	may make a request, the persons to whom information must be made available, and the manner of making the information available (including prescribing the manner in which the information is to be presented, calculated, or prepared):	
(kb)	prescribing circumstances for the purposes of section 427(3)(a) :	5
(kc)	prescribing conditions for the purposes of section 427(3)(b) (for example, requiring a corrective statement or a warning notice to be provided to an investor or requiring some other specified action to be taken to avoid or mitigate any actual or potential adverse effects of making the defective disclosure as referred to in section 427(1)):	10
87	Section 550 amended (Procedural requirements for regulations relating to exemptions, exclusions, and definitions) In section 550(2)(b), after “(iv),”, insert “ (via) ,”.	
88	Section 556 amended (FMA may grant exemptions) In section 556(1)(a), after “Parts 2 to 7”, insert “, subpart 8 of Part 8,”.	15
89	Schedule 1 amended	
(1)	In Schedule 1, clause 8(1)(c), delete “to eligible persons”.	
(2)	In Schedule 1, clause 8(3), delete “to eligible persons”.	
(3)	In Schedule 1, replace clause 8(3)(a) with:	
(a)	does not require disclosure under Part 3 of this Act for any reason other than as a result of the application of this clause; or	20
(4)	In Schedule 1, clause 10(1)(b)(iv) and (v), after “issued”, insert “or transferred” in each place.	
(5)	In Schedule 1, after clause 19(1), insert:	
(1A)	An offer of options to acquire, by way of issue, financial products (and the offer of those option underlyings) does not require disclosure under Part 3 of this Act if—	25
(a)	the options and option underlyings are equity securities, debt securities, or managed investment products; and	
(b)	the option underlyings are of the same class as quoted financial products that have been quoted on a licensed market at all times during the 3-month period before the time of the offer; and	30
(c)	trading in those quoted financial products on the licensed market on which they are quoted was not suspended for more than a total of 5 trading days during the 3-month period referred to in paragraph (b) ; and	35
(d)	it is a term of the offer that the issuer will take any necessary steps to ensure that, immediately after the option underlyings are issued, the option underlyings are quoted; and	

- (e) the market rules of the licensed market on which the option underlyings are quoted contain continuous disclosure provisions.
- (1B) In this clause, **option underlyings**, in relation to an offer of options, means the underlying financial products to which the options relate.
- (6) In Schedule 1, replace clause 26(2)(a) with: 5
- (a) B or a prescribed person or both are provided with a limited disclosure document (an **LDD**) that complies with subclause (4); and
- (aa) the prescribed requirements (if any) relating to an entry for the offer in the register of offers of financial products (a **register entry**) are complied with; and 10
- (ab) B or a prescribed person or both are provided with any other prescribed information in the prescribed manner; and
- (ac) all prescribed limits or restrictions (if any) applying in connection with the offer, the financial products, or the investors are met; and
- (7) In Schedule 1, clause 26(4), replace “disclosure document under subclause (2)(a)” with “LDD”. 15
- (8) In Schedule 1, clause 26(5), replace “a disclosure document” with “an LDD”.
- (9) In Schedule 1, replace clause 26(6) with:
- (6) The following apply if A is not the issuer of the financial products:
- (a) the issuer must, if required by the regulations, ensure that a requirement, a condition, or any other matter of a kind referred to in any of **paragraphs (a) to (e)** of subclause (2) is complied with (and the issuer must perform that duty in the prescribed manner): 20
- (b) the regulations may provide for a requirement, a condition, or any other matter of a kind referred to in any of **paragraphs (a) to (e)** of subclause (2) to be complied with by A or the issuer or both (and, accordingly, A or the issuer or both must so comply). 25
- (7) A contravention of a requirement prescribed for the purposes of this clause does not prevent the exclusion referred to in subclause (1) from continuing to apply (but may give rise to consequences under Part 8 of this Act or an offence under **clause 28A**). 30
- (10) In Schedule 1, replace clause 27(1) with:
- (1) A person must not provide an LDD to a person if—
- (a) there is—
- (i) a statement in the LDD, any application form that accompanies the LDD, or the register entry that is false or misleading or is likely to mislead; or 35

- (ii) an omission from the LDD or the register entry of information that is required to be contained in the LDD or the register entry by this Act or the regulations; and
- (b) the matter referred to in **paragraph (a)** is materially adverse from the point of view of an investor. 5
- (11) In Schedule 1, heading to clause 28, replace “**disclosure document under clause 26**” with “**limited disclosure document**”.
- (12) In Schedule 1, replace clause 28(1)(a) and (b) with:
- (a) a material statement in the LDD or the register entry is false or misleading or is likely to mislead; or 10
- (b) there is a material omission from the LDD or the register entry of information that is required to be contained in the LDD or the register entry by this Act or the regulations.
- (13) In Schedule 1, replace clause 28(4) with:
- (4) In this clause, **application period** means the period in which applications for financial products under the LDD may be made. 15
- (14) In Schedule 1, after clause 28, insert:
- 28A Failure to lodge or give information to Registrar or FMA**
- (1) A person who fails to comply with a requirement under clause 26 to lodge or otherwise give any information or other document to the Registrar or the FMA commits an offence and is liable on conviction to a fine not exceeding \$50,000. 20
- (2) The offence in this clause is an infringement offence (*see* subpart 5 of Part 8).
- 90 Schedule 2 amended**
- In Schedule 2, clause 13(1), replace “If this Act requires a document or notification to be lodged with or given to the Registrar” with “If a document or notification required by or for the purposes of this Act must or may be lodged with or given to the Registrar”. 25
- 91 Schedule 4 amended**
- (1) In Schedule 4, after clause 1(1)(c), insert:
- (ca) **Part 3A** provides for a transitional provision relating to the Regulatory Systems (Commercial Matters) Amendment Act **2016**: 30
- (d) **Part 4** provides for transitional provisions relating to the Financial Markets Conduct Regulations 2014.
- (2) In Schedule 4, after clause 10, insert:

10A Banks' regulatory capital

- (1) This clause applies in respect of convertible securities offered and allotted before the close of the 2-year date (unless the issuer makes an election as referred to in clause 7(3)).
- (2) Despite clauses 7 and 10,—
 - (a) the former enactments apply, as if this Act had not been enacted, to any offer and allotment of the convertible securities and the specified equity securities to which the convertible securities relate; and
 - (b) an allotment of those specified equity securities may be made before, on, or after the 2-year date; and
 - (c) in the case of a specified equity security that is allotted after the 2-year date, clause 20 applies to the security on and after its allotment.
- (3) In this clause, **convertible security** and **specified equity security** have the same meanings as in the Securities Act (Banks' Regulatory Capital) Exemption Notice 2014 (as in force before its revocation).
- (4) In this clause, **former enactments**—
 - (a) has the same meaning as in clause 4(2); and
 - (b) includes the Securities Act (Banks' Regulatory Capital) Exemption Notice 2014 and the Securities Act (Heartland Bank Regulatory Capital) Exemption Notice (No 3) 2016 as in force on 30 November 2016 (as if those notices continued in force after their revocation).
- (3) In Schedule 4, after clause 62, insert:

Part 3A

Transitional provisions relating to Regulatory Systems (Commercial Matters) Amendment Act 2016

62A Financial reporting for registered schemes and funds

Sections 461A and 461H of this Act, as amended by **sections 74 and 75 of the Regulatory Systems (Commercial Matters) Amendment Act 2016**, apply to a registered scheme (and any separate fund) in relation to the following accounting periods of the scheme:

- (a) an accounting period that commenced before, but ends on or after, the commencement of this clause;
- (b) accounting periods that commence on or after the commencement of this clause.

Part 4

Transitional provisions relating to Financial Markets Conduct Regulations 2014

63 Definition

In **clauses 64 to 69, Regulations** means the Financial Markets Conduct Regulations 2014. 5

64 Certification as to eligible investors under Financial Advisers Act 2008

(1) This clause applies to a certification that is referred to in clause 3(4) of Schedule 1 of the Regulations and that is in effect immediately before that subclause is revoked. 10

(2) The certification remains in effect after the revocation (subject to any revocation under section 5F of the Financial Advisers Act 2008).

65 Service disclosure statement and investment proposal for existing DIMS

(1) This clause applies in relation to a DIMS provided by a person (A) to an investor (B) if, immediately before the commencement of this clause, clause 6 of Schedule 1 of the Regulations (**clause 6**) applies in relation to the DIMS. 15

(2) The following apply after the revocation of clause 6:

(a) A is not required to provide an SDS under sections 423 and 424 to B if A, under clause 6, was not required to do so before the revocation:

(b) A is not required to provide an investment proposal under regulation 206 of the Regulations to B if A, under clause 6, was not required to do so before the revocation: 20

(c) regulation 226(1)(a) of the Regulations does not apply to a client agreement if, under clause 6, that paragraph did not apply to the client agreement before the revocation: 25

(d) section 437(2) to (4) does not apply to an investment authority if, under clause 6, those subsections did not apply to the investment authority before the revocation.

(3) In this clause,—

investment proposal has the same meaning as in regulation 206(2) of the Regulations 30

SDS has the same meaning as in the Regulations.

66 Existing licences continue and cover supervision

(1) If, immediately before the revocation of clause 8 of Schedule 1 of the Regulations, that clause applies to a licence,— 35

(a) the licence continues in effect on and after that revocation; and

	(b) if the licence is treated as covering certain matters under clause 8(2) of that schedule, the licence must be treated as continuing to cover those matters.	
	(2) This clause applies despite clause 8(4) of Schedule 1 of the Regulations, but nothing in this clause affects the duration of the licence under section 12 of the Financial Markets Supervisors Act 2011 or prevents the FMA from exercising any power in relation to the licence.	5
67	Extension of licences to cover substantially the same matters under new law	
	(1) If, immediately before the revocation of clause 9 of Schedule 1 of the Regulations, that clause applies to a licence, the following apply on and after that revocation:	10
	(a) if, immediately before that revocation, the licence is subject to a variation under clause 9(3) of that schedule, the licence continues to be subject to the variation; and	15
	(b) if the licence continues to be subject to conditions, limitations, or restrictions under clause 9(4) of that schedule, the licence must be treated as continuing to be subject to the conditions, limitations, or restrictions.	
	(2) This clause applies despite clause 9(7) of Schedule 1 of the Regulations, but nothing in this clause prevents the FMA from exercising any power in relation to the licence.	20
68	Governance requirements for PIE call fund units, PIE term fund units, and bank notice products that are specified units	
	(1) This clause applies to a security if, immediately before the commencement of this clause, clause 19 of Schedule 1 of the Regulations applies to the security.	25
	(2) Clauses 20(1), 21, 22, and 30 of this schedule do not apply to the security if clause 28 of Schedule 8 of the Regulations applies in respect of the managed investment scheme to which the security relates.	
69	Certain superannuation schemes that elect to be treated as registered	
	If, immediately before the revocation of clause 30A of Schedule 1 of the Regulations, that clause applies to a scheme and to the interests in the scheme, that clause continues to apply to the scheme and the interests on and after that revocation.	30
92	Amendment to Financial Markets (Repeals and Amendments) Act 2013	
	(1) This section amends the Financial Markets (Repeals and Amendments) Act 2013.	35
	(2) In the Schedule, Part 1, item relating to section 3(1)(h) to (i) of the Financial Transactions Reporting Act 1996, delete “and substitute:” and repeal the paragraph (h) that was to be substituted.	

Subpart 8—Financial Service Providers (Registration and Dispute Resolution) Act 2008

93 **Principal Act**

This subpart amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **principal Act**). 5

94 **Section 18 amended (Deregistration of financial service provider)**

(1) After section 18(1)(aa), insert:

(ab) is required by section 48 to be a member of an approved dispute resolution scheme but is not a member of any such scheme as required; or

(2) After section 18(1), insert: 10

(1AA) **Subsection (1)(ab)** does not apply in respect of any time before the end of the period of 10 working days referred to in section 16(1)(ab).

Subpart 9—Friendly Societies and Credit Unions Act 1982

95 **Principal Act**

This subpart amends the Friendly Societies and Credit Unions Act 1982 (the **principal Act**). 15

96 **Section 28 amended (Appointment of trustees)**

Replace section 28(1) with:

(1) Every registered society and branch is to have 1 or more trustees, who must be appointed from time to time by a resolution of a majority of the members of the society or branch entitled to vote and voting on the matter. 20

97 **Section 49 amended (Duties of trustees in relation to investments)**

In section 49(1), replace “majority of the members of the society or branch present and entitled to vote in general meeting” with “resolution of a majority of the members of the society or branch entitled to vote and voting on the matter”. 25

98 **Section 50 amended (Trustees of society may make investments for branch, etc)**

(1) In section 50(2), replace “majority” with “resolution of a majority”.

(2) In section 50(2), replace “present and entitled to vote in general meeting” with “entitled to vote and voting on the matter”. 30

99 **Section 82 amended (Special resolutions)**

(1) In section 82(1)(b), replace “either in person or by proxy at the meeting” with “on the matter”.

- (2) In section 82(1)(b), replace “vote at the meeting” with “vote on the matter”.
- (3) Repeal section 82(2).

100 New sections 147A and 147B inserted

After section 147, insert:

147A Meetings may be held using audio, audio and visual, or electronic communication	5
The rules of a registered society or branch or of a credit union may (without limitation) provide for meetings to be held using audio, audio and visual, or electronic communication.	
147B Postal, electronic, and proxy voting	10
(1) This section applies to any matter that is to be determined by a vote of members of a registered society or branch or of a credit union.	
(2) The rules of the registered society or branch or of the credit union—	
(a) may (without limitation) permit voting in 1 or more of the following ways:	15
(i) by post:	
(ii) by electronic means (for example, by email or by the use of an Internet site):	
(iii) by proxy; and	
(b) must set out the procedures to be followed in relation to any voting permitted under paragraph (a) .	20
(3) Rules under this section that permit voting by post or electronic means may permit or require votes cast by post or electronic means to be cast in advance of any meeting at which the matter in question is to be determined.	
(4) Subsection (3) applies despite any enactment (for example, sections 64(3), 65(1)(a), and 82(1) of this Act) that requires a resolution to be passed, or a matter to be otherwise determined, at a meeting.	25

Subpart 10—Insolvency Act 2006

101 Principal Act

This subpart amends the Insolvency Act 2006 (the **principal Act**). 30

101A New section 3A inserted (Transitional, savings, and related provisions)

After section 3, insert:

<u>3A Transitional, savings, and related provisions</u>	
<u>The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.</u>	
	35

102 Section 228 amended (Assignee’s final statement of receipts and payments)

Replace section 228(2) and (3) with:

- (2) The final statement of receipts and payments must show in detail the receipts and payments in respect of the bankrupt’s estate.
- (3) The Assignee must provide a copy of the final statement of receipts and payments to any creditor, or other person who has an interest, if the creditor or other person requests a copy.
- (4) The copy must be provided within 20 working days after the Assignee receives the request.

5

103 Section 258 amended (Mutuality required for transactions under bilateral netting agreements)

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In section 258, insert as subsections (2) and (3):

- (2) **Subsection (3)** applies for the purpose of determining under this section whether there are mutual credits or mutual debts.
- (3) A debt or other liability incurred by a person (T) who holds property as a trustee is to be regarded as incurred by T in the same capacity as that in which T holds the property, if T incurs, and is authorised by the terms of the trust to incur, the debt or other liability acting as the trustee.

15

104 Section 348 replaced (Termination of appointment for failure to supervise adequately)

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Replace section 348 with:

348 Termination of supervisor’s appointment

The Assignee may—

- (a) terminate the supervisor’s appointment if the Assignee considers—
 - (i) that the supervisor has failed to supervise the debtor’s compliance adequately; or
 - (ii) that, after being appointed, the supervisor has been convicted of an offence involving dishonesty; and
- (b) appoint a replacement supervisor accordingly.

25

105 Section 350 amended (Variation or discharge of order)

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- (1) In the heading to section 350, replace “**discharge of order**” with “**cancellation of order by Assignee on application from debtor, creditor, or supervisor**”.
- (2) In section 350, replace “discharge” with “cancel”.

106 New section 350A inserted (Cancellation of order by Assignee without application)

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After section 350, insert:

350A Cancellation of order by Assignee without application

The Assignee may (without an application from any person) cancel a summary instalment order if satisfied that the debtor—

- (a) is in default under the order; or
- (b) is able immediately to pay the debtor’s unsecured debts (excluding any student loan balance); or
- (c) cannot be located.

107 Section 352 amended (Proceedings against debtor)

In section 352(2)(b), after “order”, insert “or the order has been cancelled”.

108 Section 355 amended (Meaning of current summary instalment order) 10

In section 355, replace “discharged” with “cancelled”.

109 Section 365 repealed (Assignee must notify creditors)

Repeal section 365.

110 Section 367 amended (When debtor admitted to no asset procedure)

Replace section 367(2) with: 15

- (2) The Assignee must, as soon as practicable,—
 - (a) notify each known creditor of the debtor that the debtor has been admitted to the no asset procedure and send each of them a summary of the debtor’s assets and liabilities; and
 - (b) advertise in the prescribed manner that the debtor has been admitted to the no asset procedure.

111 Section 408 amended (Assignee must apply for order of release)

- (1) In the heading to section 408, replace “**must**” with “**may**”.
- (2) Replace section 408(1) with:
 - (1) After preparing the final statement of receipts and payments in relation to the estate of a bankrupt (*see* section 228), the Assignee may apply to the court for an order releasing the Assignee from the administration of the estate.

112 Section 441 amended (Regulations)

Repeal section 441(1)(i).

112A New Schedule 1AA inserted 30

Insert the **Schedule 1AA** set out in **Schedule 1A** of this Act as the first schedule to appear after the last section of the principal Act.

113 Schedule 1 amended

In Schedule 1, after paragraph (w), insert:

- (x) bring a proceeding challenging the existence or terms of a trust (even if the bankrupt could not have brought the proceeding if the bankrupt was not bankrupt and even if the bankrupt is a settlor, trustee, or beneficiary of the trust).

114 Amendment to Insolvency (Personal Insolvency) Regulations 2007 5

- (1) This section amends the Insolvency (Personal Insolvency) Regulations 2007.
- (2) Revoke regulation 16.

Subpart 11—New Zealand Superannuation and Retirement Income Act
2001

115 Principal Act 10

This subpart amends the New Zealand Superannuation and Retirement Income Act 2001 (the **principal Act**).

116 Section 83 amended (Functions)

- (1) After section 83(d), insert:
 - (da) to promote education, and publish information, about financial matters to assist individuals to make financial decisions confidently and informedly: 15
 - (db) to advise on financial capability issues, when requested to do so by the Minister:
- (2) After section 83(g), insert: 20
 - (h) to perform any additional function that the Minister directs under section 112 of the Crown Entities Act 2004.

Subpart 12—Takeovers Act 1993

117 Principal Act

This subpart amends the Takeovers Act 1993 (the **principal Act**). 25

118 Section 2 amended (Interpretation)

In section 2(1), definition of **director**, paragraph (d), after “in the body corporate” insert “or unincorporate”.

119 New section 2B inserted (Transitional, savings, and related provisions)

After section 2A, insert: 30

2B Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

120 Section 8 amended (Functions of Panel)

After section 8(1)(e), insert:

(eaa) to make determinations in relation to the reimbursement of expenses under **sections 47 to 53**:

121 Section 18 amended (Further provisions applying to Panel)

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In section 18, replace “the Schedule” with “**Schedule 1**”.

122 Section 44Q replaced (Jurisdiction of courts in New Zealand)

Replace section 44Q with:

44Q Jurisdiction of courts in New Zealand

The High Court has exclusive jurisdiction to hear and determine proceedings in New Zealand under this Act, other than the following:

10

- (a) proceedings for offences against this Act;
- (b) proceedings in relation to recovery or enforcement as referred to in **sections 52 and 53**;
- (c) proceedings for appeals under section 31G.

15

123 New cross-heading above section 45 inserted

Before section 45, insert:

Exemptions and regulations

124 Section 49 replaced (Repeal of Companies Amendment Act 1963)

Replace section 49 with:

20

Reimbursement of expenses incurred in connection with offer or takeover notice

47 Interpretation for sections 48 to 53

In **sections 48 to 53**, the following terms have the same meanings as in the takeovers code:

25

- (a) equity security;
- (b) offer;
- (c) offeror;
- (d) takeover notice;
- (e) target company.

30

48 Reimbursement of directors

- (1) Despite anything in the constitution of a target company, each director of the target company is entitled to be reimbursed by the target company for any ex-

	penses properly incurred by the director on behalf, and in the interests, of holders of equity securities of the target company in relation to the offer or takeover notice.	
(2)	The amount to be reimbursed to a director is the amount—	
(a)	agreed between the director and the target company; or	5
(b)	determined by the Panel on an application made by the director or the target company (<i>see</i> section 50).	
49	Reimbursement of target company	
(1)	A target company is entitled to be reimbursed by the offeror for any expenses properly incurred by the target company in relation to the offer or takeover notice, whether as a result of section 48 or otherwise.	10
(2)	The amount to be reimbursed to the target company is the amount—	
(a)	agreed between the target company and the offeror; or	
(b)	determined by the Panel on an application made by the target company or the offeror (<i>see</i> section 50).	15
50	Determinations by Panel of amount to be reimbursed	
	If the Panel receives an application under section 48(2)(b) or 49(2)(b) , the Panel must (unless an agreement is reached beforehand under section 48(2)(a) or 49(2)(a))—	
(a)	determine the amount to be reimbursed for the purposes of section 48(2)(b) or 49(2)(b) ; and	20
(b)	order that amount to be paid, as the case may be,—	
(i)	by the target company to the director; or	
(ii)	by the offeror to the target company.	
51	Appeals against Panel's determination	25
(1)	The director or the target company may appeal to the High Court against the Panel's determination for the purposes of section 48(2)(b) .	
(2)	The target company or the offeror may appeal to the High Court against the Panel's determination for the purposes of section 49(2)(b) .	
(3)	An appeal under this section must be made—	30
(a)	within 21 days of the date on which the appellant was notified of the Panel's determination; or	
(b)	within any longer time allowed by the High Court.	
(4)	The High Court must determine the appeal by either dismissing the appeal or giving such directions or making such determination in the matter as it thinks fit.	35

- 52 Enforcement of agreement of amount to be reimbursed**
- If the amount to be reimbursed is agreed, the amount is recoverable as a debt due in any court of competent jurisdiction, as the case may be,—
- (a) by the director from the target company; or
 - (b) by the target company from the offeror. 5
- 53 Enforcement of Panel’s order for payment of amount to be reimbursed**
- (1) If the amount to be reimbursed is determined by the Panel, the Panel’s order under **section 50** may be enforced as if it were a judgment by the court for the payment of a sum of money.
 - (2) In this section, **court** means— 10
 - (a) ~~a the~~ District Court, if the amount to be reimbursed is no more than ~~\$200,000~~ \$350,000; or
 - (b) the High Court, if the amount to be reimbursed is more than ~~\$200,000~~ \$350,000.
- 125 New Schedule 1AA inserted** 15
- Insert the **Schedule 1AA** set out in **Schedule 2** of this Act as the first schedule to appear after the last section of the principal Act.
- 126 Schedule amended**
- In the Schedule heading, replace “Schedule” with “**Schedule 1**”.
- 127 Amendment to Takeovers Code Approval Order 2000** 20
- (1) This section amends the Takeovers Code set out in the Schedule of the Takeovers Code Approval Order 2000.
 - (2) Revoke rule 49.
 - (3) In Schedule 1, clause 9(1), replace “rule 49” with “**sections 47 to 53** of the Act”. 25
- 128 Amendment to Takeovers (Fees) Regulations 2001**
- (1) This section amends the Takeovers (Fees) Regulations 2001.
 - (2) After regulation 4(2)(aa), insert:
 - (ab) an application for a determination under **section 48(2)(b) or 49(2)(b)** of the Act: 30

Part 2 Communications

129 Principal Act

This Part amends the Postal Services Act 1998 (the **principal Act**).

130 Section 2 amended (Interpretation)

- (1) In section 2(1), insert in its appropriate alphabetical order:

courier service means a service for the conveyance or delivery of articles by courier if—

- (a) the sender requests that the article be conveyed or delivered by courier; and 5
- (b) both of the following are features of the service:
 - (i) conveyance or delivery on an expedited basis; and
 - (ii) the article is tracked throughout the conveyance or delivery process 10

- (2) In section 2(1), replace the definition of **letter** with:

letter means any form of written communication, or any other document or article (including any envelope, packet, package, or wrapper containing that communication, document, or article),—

- (a) that is addressed to a specific person or a specific address; and 15
- (b) that is to be conveyed or delivered other than by electronic means or courier service; and
- (c) that does not exceed—
 - (i) 260 mm in height; or
 - (ii) 385 mm in length; or 20
 - (iii) 20 mm in thickness; or
 - (iv) 1 kg in weight; and
- (d) for which a charge is made in respect of carrying, taking charge of, or sending it

- (3) After section 2(2), insert: 25

- (2A) However, an article to be conveyed or delivered by courier service is not an article that has been posted.

Part 3
Energy and resources

Subpart 1—Energy Efficiency and Conservation Act 2000 30

131 Principal Act

This subpart amends the Energy Efficiency and Conservation Act 2000 (the **principal Act**).

132 Section 37 repealed (Incorporation of material by reference)

Repeal section 37. 35

Subpart 2—Gas Act 1992

133 Principal Act

This subpart amends the Gas Act 1992 (the **principal Act**).

134 Section 2 amended (Interpretation)

In section 2(1), replace the definition of **gas distributor** with:

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gas distributor—

(a) means any person who supplies line function services, whether by means of a distribution system or by other means, to any gas retailer or to any other person or persons; and

(b) includes a gas distributor who is also a gas retailer providing line function services to itself

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135 Section 43EA amended (Membership of dispute resolution scheme)

(1) In section 43EA(3)(a), replace “section 43S(1)” with “**subsection (3A)**”.

(2) After section 43EA(3), insert:

(3A) The Governor-General may, on the recommendation of the Minister of Consumer Affairs made after consultation with the Minister of Energy and Resources, make regulations exempting, on any terms and conditions, any class of industry participants identified in regulations as a class that need not be a member of the dispute resolution scheme.

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136 Section 43S amended (Supplementary empowering provision for regulations and rules)

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Repeal section 43S(1)(fa).

Part 4

Building and housing

137 Principal Act

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This Part amends the Construction Contracts Act 2002 (the **principal Act**).

138 Section 11A amended (Application of this Act: savings provisions relating to Construction Contracts Amendment Act 2015)

After section 11A(2), insert:

(3) Subpart 2A of Part 2 (which relates to retention money) does not apply to a construction contract that was entered into before 31 March 2017 unless—

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(a) the contract is renewed for a further term on or after 31 March 2017 (in which case that subpart applies only in relation to retention money withheld during the further term); or

Regulatory Systems (Commercial Matters) Amendment Bill	
Part 4 cl 139	
(b) the parties agree that subpart 2A will apply.	
139 Section 18C amended (Trust over retention money)	
(1) In the heading to section 18C (as inserted by section 18 of the Construction Contracts Amendment Act 2015), replace “ Trust ” with “ Default arrangement: trust ”.	5
(2) After section 18C(1), insert:	
(1A) However, <i>see</i> section 18D (which allows for an alternative arrangement, involving a complying instrument, to protect payment to party B if party A fails to pay).	
(3) In section 18C(2), after “Retention money”, insert “held on trust”.	10
140 Section 18D replaced (Accounting)	
Replace section 18D (as inserted by section 18 of the Construction Contracts Amendment Act 2015) with:	
18D Alternative arrangement: complying instrument protects payment of retention money	15
Party A does not need to hold an amount of retention money on trust if and for so long as there is an instrument that complies with section 18FB in respect of the payment to party B of that amount.	
141 New cross-heading above section 18E inserted	
Before section 18E (as inserted by section 18 of the Construction Contracts Amendment Act 2015), insert:	20
<i>Retention money: held on trust</i>	
142 Section 18E amended (Use of retention money)	
In section 18E(1) (as inserted by section 18 of the Construction Contracts Amendment Act 2015), after “retention money”, insert “held on trust”.	25
143 Section 18F amended (Investment of retention money)	
In section 18F(1) (as inserted by section 18 of the Construction Contracts Amendment Act 2015), after “retention money”, insert “held on trust”.	
144 New sections 18FA to 18FC and cross-headings inserted	
After section 18F (as inserted by the Construction Contracts Amendment Act 2015 and amended by this Act), insert:	30
18FA Protection of retention money	
Retention money held on trust—	

- (a) is not available for the payment of debts of any creditor of party A (other than party B):
- (b) is not liable to be attached or taken in execution under the order or process of any court at the instance of any creditor of party A (other than party B).

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Compare: 2006 No 1 s 113(1)

Retention money: payment protected by complying instrument

18FB Complying instruments

- (1) **Subsections (2) to (4)** set out what is required for an instrument in order for party A to rely, and continue to rely, on **section 18D** in relation to an amount of retention money.
- (2) The issuer of the instrument must be—
 - (a) a licensed insurer:
 - (b) a registered bank:
 - (c) any other person, who is not an associate of party A, prescribed or within a class prescribed in regulations.
- (3) The instrument must—
 - (a) be issued in favour of party B or endorsed with party B's interest; and
 - (b) require the issuer to pay the retention money to party B if party A fails to pay that money on the date on which it is payable under the construction contract; and
 - (c) enable party B to enforce that promise against the issuer; and
 - (d) comply with any requirements that are prescribed in regulations and that apply in respect of the instrument.
- (4) The premium or other money that is payable, or that may become payable, to the issuer for the instrument must have been fully paid by party A and all terms and conditions must have been satisfied so that the instrument is, and remains, in effect.
- (5) An instrument may be of any kind (for example, insurance, a bond, or a guarantee) as long as it complies with the requirements in **subsections (2) to (4)**.
- (6) Nothing in **subsection (3)(b) or (c)** prevents the instrument from containing reasonable terms and conditions that relate to the manner or time in which party B must submit a claim.
- (7) Regulations for the purpose of this section may, without limitation,—
 - (a) apply for all instruments or for classes of instruments (and a class of instrument may be defined by reference to a construction contract or class of construction contract, including a contract entered into or renewed on or after a specified date):

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	(b) <u>include minimum or prohibited terms and conditions for instruments (including terms and conditions that relate to the manner or time in which party B must submit a claim):</u>	
	(c) <u>prescribe forms for instruments.</u>	
(8)	<u>In this section,—</u>	5
	licensed insurer has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010	
	registered bank has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989.	
	<i>Further provisions</i>	10
18FC	<u>Accounting and records</u>	
(1)	<u>Party A must keep proper accounting records of all retention money that—</u>	
	(a) <u>correctly record—</u>	
	(i) <u>all retention money held on trust; and</u>	
	(ii) <u>all amounts of retention money protected by instruments issued for the purpose of this subpart; and</u>	15
	(iii) <u>all dealings and transactions in relation to retention money or instruments; and</u>	
	(b) <u>comply with generally accepted accounting practice; and</u>	
	(c) <u>are readily and properly auditable.</u>	20
(2)	<u>Party A must keep proper and readily verifiable records of all instruments issued for the purpose of this subpart, including—</u>	
	(a) <u>a copy of all instruments; and</u>	
	(b) <u>for each instrument,—</u>	
	(i) <u>a record of party B's interest in the instrument, including the amount of retention money protected by the instrument; and</u>	25
	(ii) <u>all amounts of retention money protected by the instrument; and</u>	
	(iii) <u>if the issuer's liability under the instrument is limited to an amount, that amount; and</u>	
	(iv) <u>evidence that the premium or other money that is payable, or that may become payable, to the issuer for the instrument has been fully paid by party A; and</u>	30
	(v) <u>any failure to comply with the terms and conditions of the instrument.</u>	
(3)	Subsection (2) does not limit subsection (1).	35
(4)	<u>Party A must make the accounting and other records available for inspection by party B at all reasonable times and without charge.</u>	

(5) Regulations may prescribe further methods of accounting for retention money or requirements for records.

145 Section 18G amended (Interest on late payment)

In section 18G (as inserted by section 18 of the Construction Contracts Amendment Act 2015), replace “contract” with “construction contract” in each place.

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146 Section 18H repealed (Protection of retention money)

Repeal section 18H (as inserted by section 18 of the Construction Contracts Amendment Act 2015).

147 Section 18I amended (Prohibited provisions)

In section 18I(1)(c) (as inserted by section 18 of the Construction Contracts Amendment Act 2015), after “trust”, insert “or an instrument”.

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Schedule 1AA	Regulatory Systems (Commercial Matters) Amendment Bill	
	Schedule 1AA	
	<u>Transitional, savings, and related provisions for amendments to Building Societies Act 1965</u>	
		s 5A
	Schedule 1AA	5
	<u>Transitional, savings, and related provisions</u>	
		s 2A
	Part 1	
	<u>Provisions relating to Regulatory Systems (Commercial Matters) Amendment Act 2016</u>	10
1	<u>Annual returns</u>	
	<u>This Act, as amended by sections 4 and 5 of the Regulatory Systems (Commercial Matters) Amendment Act 2016, applies to a society in relation to annual returns relating to its affairs for the following financial years:</u>	
	(a) <u>a financial year that commenced before, but ends on or after, the commencement of this clause:</u>	15
	(b) <u>financial years that commence on or after the commencement of this clause.</u>	

Schedule 1
Transitional, savings, and related provisions for amendments to
Companies Act 1993

s 32

Schedule 1AA
Transitional, savings, and related provisions

5

s 8A

Part 1
Provisions relating to Regulatory Systems (Commercial Matters)
Amendment Act 2016

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1AA **Financial assistance not exceeding 5% of shareholders' funds**

This Act, as amended by **section 15 of the Regulatory Systems (Commercial Matters) Amendment Act 2016**, applies only to financial assistance given after the commencement of that section.

1 **Financial reporting and annual report amendments**

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This Act, as amended by **sections 18 to 25 of the Regulatory Systems (Commercial Matters) Amendment Act 2016**, applies to a company or an overseas company in relation to the following accounting periods:

- (a) an accounting period that commenced before, but ends on or after, the commencement of ~~this clause~~ those sections;
- (b) accounting periods that commence on or after the commencement of ~~this clause~~ those sections.

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2 **Variation of compromise**

Section 231(1A) (as inserted by section 26 of the Regulatory Systems (Commercial Matters) Amendment Act 2016)—

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- (a) applies to a compromise whether approved before or after the commencement of **section 231(1A)**; but
- (b) does not apply to a variation made before the commencement of **section 231(1A)**.

3 **Mutuality required for transactions under bilateral netting agreements**

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(1) Section 239AEJ(2) and (3) (as inserted by section 27 of the Regulatory Systems (Commercial Matters) Amendment Act 2016)—

- (a) applies to a bilateral netting agreement whether made before or after the commencement of **section 239AEJ(2) and (3)**; but

- (b) does not apply if the administration of the company began before the commencement of **section 239AEJ(2) and (3)**.
- (2) **Section 310D(2) and (3) (as inserted by section 28 of the Regulatory Systems (Commercial Matters) Amendment Act 2016)—**
- (a) applies to a bilateral netting agreement whether made before or after the commencement of **section 310D(2) and (3)**; but
- (b) does not apply if the liquidation of the company began before the commencement of **section 310D(2) and (3)**.

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Schedule 1A
Transitional, savings, and related provisions for amendments to
Insolvency Act 2006

s 112A

Schedule 1AA
Transitional, savings, and related provisions

s 3A

Part 1
Provisions relating to Regulatory Systems (Commercial Matters)
Amendment Act 2016

1 Assignee's final statement of receipts and payments

The amendments made by **sections 102, 112, and 114 of the Regulatory Systems (Commercial Matters) Amendment Act 2016**—

- (a) apply whether the bankruptcy commenced before or after the commencement of those sections; but
- (b) do not apply if the final statement of receipts and payments was prepared before the commencement of those sections.

2 Bilateral netting agreements

Section 258(2) and (3), as inserted by **section 103 of the Regulatory Systems (Commercial Matters) Amendment Act 2016**,—

- (a) applies to a bilateral netting agreement whether made before or after the commencement of **section 258(2) and (3)**; but
- (b) does not apply if the bankruptcy commenced before the commencement of **section 258(2) and (3)**.

3 Summary instalment orders: termination of supervisor's appointment

Section 348, as replaced by **section 104 of the Regulatory Systems (Commercial Matters) Amendment Act 2016**,—

- (a) applies to a supervisor's appointment whether made before or after the commencement of **section 104** of that Act; but
- (b) **section 348(a)(ii)** applies only to offences committed after the commencement of **section 104** of that Act.

4 Summary instalment orders: cancellation of orders

The amendments made by **sections 105 to 108 of the Regulatory Systems (Commercial Matters) Amendment Act 2016** apply to a summary

Schedule 1A	Regulatory Systems (Commercial Matters) Amendment Bill	
	<u>instalment order whether made before or after the commencement of those sections.</u>	
5	<u>No asset procedure</u> <u>The amendments made by sections 109 and 110 of the Regulatory Systems (Commercial Matters) Amendment Act 2016 apply only in cases where the debtor applies for entry to the no asset procedure after the commencement of those sections.</u>	5
6	<u>Order of release for Assignee</u> <u>The amendments made by section 111 of the Regulatory Systems (Commercial Matters) Amendment Act 2016 apply to the estate of a bankrupt—</u> (a) <u>whether the bankruptcy commenced before or after the commencement of that section; and</u> (b) <u>if the bankruptcy commenced before the commencement of that section, even if the filing of the final statement of accounts and statement of financial position was advertised before the commencement of that section.</u>	10 15
7	<u>Assignee's general powers</u> <u>The amendment made by section 113 of the Regulatory Systems (Commercial Matters) Amendment Act 2016 applies only to bankruptcies that commence after the commencement of that section.</u>	20

Schedule 2
Transitional, savings, and related provisions for amendments to
Takeovers Act 1993

s 125

Schedule 1AA
Transitional, savings, and related provisions

5

s 2B

Part 1
Provisions relating to Regulatory Systems (Commercial Matters)
Amendment Act 2016

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1 Application of sections 47 to 53

- (1) **Sections 47 to 53** apply in relation to an offer or a takeover notice only if the takeover notice is received by the target company on or after the date on which this clause comes into force (and rule 49 of the takeovers code continues to apply in any other case accordingly).
- (2) In this clause, **offer**, **takeover notice**, and **target company** have the same meanings as in the takeovers code.

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Legislative history

12 October 2016
18 October 2016

Introduction (Bill 183–1)
First reading and referral to Commerce Committee