

## **Regulatory Systems (Economic Development) Amendment Bill**

Government Bill

### **Explanatory note**

#### **General policy statement**

This Bill is 1 of a package of 3 omnibus Bills that contain amendments to legislation administered by the Ministry of Business, Innovation, and Employment (the **Ministry**). The policy objective of the Bill is to improve regulatory systems by ensuring that they are effective, efficient, and accord with best regulatory practice. The amendments will achieve this objective by—

- clarifying and updating statutory provisions to give effect to the purpose of various Acts and their 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.

The amendments were identified as part of the Ministry's regulatory systems work programme, which arises from the chief executive's responsibility to relevant Ministers for the stewardship of the legislation administered by the Ministry under section 32 of the State Sector Act 1988.

The Bill responds to the New Zealand Productivity Commission's June 2014 report, *Regulatory institutions and practices*. The New Zealand Productivity Commission found that it can be difficult to find time on the parliamentary calendar for "repairs and maintenance" of existing legislation. As a result, regulatory agencies often have to work with legislation that is out of date or not fit for purpose. This creates unnecessary costs for regulators and regulated parties and means that regimes may not keep up with public or political expectations.

This Bill is a vehicle for these smaller regulatory fixes to be made in a timely and cost-effective fashion in order to deliver the flow-on benefits to business and the wider economy.

### Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at *[link to come]*.

### Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on *[date to come]* to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- *[link to come]*
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides that the Bill comes into force on *[date to come]*.

## Part 1

### Amendments to Building Societies Act 1965

*Clause 3* provides that *Part 1* amends the Building Societies Act 1965.

*Clause 4* amends section 124, which relates to cancellation or suspension of registration of a society. Currently, this section provides that the Registrar may cancel or suspend with the approval of the Minister on certain grounds. The amendments do 3 things. First, they remove the requirement for ministerial approval before the Registrar cancels or suspends registration. Second, they change 1 of the grounds, so that under section 124(1)(c) the Registrar will no longer need to be satisfied that the society wilfully contravened any of the provisions of the Act. Third, they remove the requirement for ministerial approval before the Registrar extends a suspension period.

## Part 2

### Amendments to Companies Act 1993

*Clause 5* provides that *Part 2* amends the Companies Act 1993.

*Clause 6* amends section 151 to disqualify a person from being a director of a company if the person is prohibited from being a director, or is prohibited from being concerned, or from taking part, in the management of a company, under the Insolvency Act 2006.

*Clause 7* replaces section 280(1)(l), which relates to the qualifications of liquidators, with a paragraph that is similar in effect. *New section 280(1)(l)* aligns with *new section 151(2)(baa)* (as inserted by *clause 6*) and includes a reference to section 299(1)(b) of the Insolvency Act 2006.

*Clause 8* repeals section 367, which is unnecessary as there are similar provisions in the Official Information Act 1982 and the Privacy Act 1993 that allow requests for information to be refused.

*Clause 9* repeals section 368 as a consequence of the repeal of section 367.

*Clause 10* amends section 382, which specifies persons who are disqualified, for a 5-year period following a relevant conviction, from being a director or promoter of a company, or from being concerned or from taking part in the management of a company, without the leave of the court. *Clause 10(1)* clarifies that section 138(1)(a) includes an offence under section 138A of the Act, which relates to a breach by a director of a company of the director's duty to act in good faith and in the best interests of the company. *Clause 10(3)* adds persons convicted of an offence under section 143A(1)(d) or 143B(1)(d) of the Tax Administration Act 1994 to the list of disqualified persons.

*Clause 11* amends section 383, which sets out the grounds on which a court may disqualify a person from being a director or promoter of a company or from being concerned or taking part in the management of a company. *Clause 11* adds a new ground, allowing for disqualification of a person who has been convicted of an offence under section 143A(1)(d) or 143B(1)(d) of the Tax Administration Act 1994.

*Clause 12* amends section 390 to allow documents (other than documents in legal proceedings) to be served by email on overseas companies.

*Clause 13* amends section 391 to allow documents to be sent by email to a creditor that is a body corporate.

*Clause 14* amends clauses 6 and 7 of Schedule 1 to allow a notice of a shareholders' meeting to specify a time that is less than 48 hours before the meeting as the time by which shareholders must cast proxy votes and electronic votes.

### **Part 3**

#### **Amendments to Continental Shelf Act 1964**

*Clause 15* provides that *Part 3* amends the Continental Shelf Act 1964.

*Clause 16* amends section 5A, which relates to payments and contributions with respect to the exploitation of the continental shelf 200 nautical miles or more beyond New Zealand's territorial sea. The section applies to permits in respect of the exploration or prospecting for, or the mining of, minerals (including petroleum). The

amendment removes references to prospecting because there is no need to specify a royalty rate for prospecting permits (no royalties are payable).

The amendments also align references to Ministers (to refer to the Minister of Energy and Resources).

## Part 4

### Amendments to Credit Contracts and Consumer Finance Act 2003

*Clause 17* provides that *Part 4* amends the Credit Contracts and Consumer Finance Act 2003.

*Clause 18* amends section 9C to provide that the lender responsibility principles set out in section 9C(2)(a) apply in relation to relevant insurance contracts.

*Clause 19* amends section 14 to provide that Part 3A, which relates to the repossession of consumer goods under a credit contract, does not apply to a credit contract if, before entering into the contract, the debtor makes a declaration that the credit is to be used wholly or predominantly for business or investment purposes.

*Clause 20* amends section 83C to clarify that Part 3A does not apply where a security interest over consumer goods is granted by a body corporate.

*Clause 21* amends section 99B, which prohibits enforcement of a credit contract if any creditor is not registered as required under Part 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008. *Clause 21* amends section 99B to limit its application to consumer credit contracts, a subset of credit contracts under which the debtor is a natural person and the credit is used, or intended to be used, for personal, domestic, or household purposes.

*Clause 22* amends section 102A to prescribe 2 new infringement offences for breaches of section 9K. Section 9K requires a creditor to publish information about all the costs of borrowing in relation to every class of contract the creditor offers. Section 9K(4) requires a creditor to provide a copy of this information free of charge to any person who requests it. *Clause 22* creates an infringement offence for a breach of section 9K(4). It also creates an infringement offence for a breach of section 9K(6), which requires that the published information contain the information prescribed in regulations. An infringement offence is committed if no information is provided for the purposes of a requirement in the regulations.

A person who commits an infringement offence may be required by an infringement notice to pay an infringement fee of up to \$2,000 or may be liable on conviction for a fine of up to \$10,000 (for an individual) or \$30,000 (for a body corporate).

*Clause 23* amends section 103 to add the offence in sections 9J (failing to publish standard for contract terms) and 9K (failing to publish costs of borrowing) as prosecutable offences with maximum penalties of \$200,000 (for an individual) or \$600,000 (for a body corporate).

*Clause 24 and Schedule 2* amend Schedule 1AA (application, savings, and transitional provisions). *New clause 4* allows a creditor under a credit agreement that was in

place before Part 3A of the Act (which relates to repossession) came into force to opt into the repossession scheme provided by that Part.

*Clause 25 and Part 1 of Schedule 1* amend the Credit Contracts and Consumer Finance Regulations 2004 in consequence of the amendments made to section 99B (*see clause 21*).

## **Part 5**

### **Amendments to Fair Trading Act 1986**

*Clause 26* provides that *Part 5* amends the Fair Trading Act 1986.

*Clause 27* amends section 30, which requires persons supplying goods to comply with product safety standards. The amendment clarifies that it is not only the person supplying the goods that must comply with the standards: the goods themselves must also comply.

## **Part 6**

### **Amendments to Financial Reporting Act 2013**

*Clause 28* provides that *Part 6* amends the Financial Reporting Act 2013.

*Clause 29* amends section 20 to allow auditing and assurance standards to include standards for agreed-upon procedures engagements. An agreed-upon procedures engagement may involve an auditor carrying out procedures of an audit nature to which the auditor and an entity (and any appropriate third party) have agreed and reporting on factual findings.

## **Part 7**

### **Amendments to Geographical Indications (Wine and Spirits) Registration Act 2006**

*Clause 30* provides that *Part 7* amends the Geographical Indications (Wine and Spirits) Registration Act 2006.

*Clause 31* amends section 7, which contains the definitions relating to registered geographical indications, in consequence of the changes made to sections 47A to 47D.

*Clauses 32 to 34* amend sections 42, 45, and 45A, which relate to the register, in consequence of the changes to the procedure for renewing the registration of geographical indications.

*Clauses 35 to 37* replace sections 47A, 47C, and 47D and amend section 47B. Those sections relate to the procedure for renewing the registration of geographical indications. The changes to these provisions mirror the changes being made to the Trade Marks Act 2002 by Part 14 of this Bill.

Currently, the registration of a geographical indication lasts for 5 years and may be renewed by an interested person for successive periods of 10 years. If the registration is not renewed before the expiry date, the geographical indication is removed from

the register on its expiry date. However, at any time in the following 12 months an interested person may apply to restore the geographical indication to the register. During that 12-month period, although the geographical indication is no longer registered, it must still be taken into account in determining the registrability of applications to register other geographical indications or trade marks.

The current situation causes confusion about the status of the geographical indication and can create difficulties for future applicants. The amendments will reverse this situation so that when a geographical indication's registration expires, it will remain on the register during the possible renewal period. However, during that period, although it remains a registered geographical indication for most purposes, it is declared not to be a registered geographical indication for the purposes of sections 21 to 24 (which impose restrictions on the use of geographical indications).

*Clause 38 and Part 2 of Schedule 1* amend the Geographical Indications (Wine and Spirits) Registration Regulations 2017 in consequence of the changes to the procedure for renewing the registration of geographical indications.

## Part 8

### Amendments to Insolvency Act 2006

*Clause 39* provides that *Part 8* amends the Insolvency Act 2006.

*Clauses 40(1), 41 to 43, 56 to 60, 62 to 65, 67, 69 to 73, 75, 76, 80, 81, 83, and 84* provide for summary instalment orders to be renamed as debt repayment orders. All summary instalment orders made before this Part commences are continued. From commencement, all provisions of the Insolvency Act 2006 that apply to debt repayment orders will apply to summary instalment orders, except where the Bill makes other substantive changes to those provisions (*see Schedule 3*).

*Clause 40(2)* inserts a definition of excluded debt for the purposes of a debt repayment order or the no asset procedure. It also inserts a definition of current debt repayment order, which reflects the renaming of summary instalment orders as debt repayment orders.

*Clause 44* amends section 67 to allow the Assignee to reject an incorrect or incomplete statement of affairs filed by a bankrupt in the case of a creditor-initiated bankruptcy. This power is already available to the Assignee in the case of a debtor-initiated bankruptcy.

*Clause 45* amends section 149 to prohibit a bankrupt, except with the consent of the Assignee, from working without reward for a relative or for a company, trust, trustee, or incorporated society owned, managed, or controlled by a relative. The Act already prevents a bankrupt from being employed by a relative or a company, trust, trustee, or incorporated society owned, managed, or controlled by a relative.

*Clause 46* replaces sections 158 and 159, which allow a bankrupt to retain certain assets, with a revised section 158. Section 158 currently allows the bankrupt to retain necessary tools of trade and household furniture and effects only up to a maximum

value fixed by the Assignee. *New section 158* is similar, but does not allow the Assignee to fix a maximum value.

*Clauses 47 and 49* amend sections 160 and 162 as a consequence of the replacement of section 159.

*Clause 48* repeals section 161. A similar provision relating only to the maximum value of a motor vehicle is included in *new section 158(3)*.

*Clause 50* amends section 165 to allow the Assignee to require information and assistance from the bankrupt and certain other persons.

*Clause 51* amends section 178 to remove the requirement that a record of a public examination of a bankrupt must be read to the bankrupt before the bankrupt signs it. Instead, the court may read the record to the bankrupt if the bankrupt requests the court to do so.

*Clause 52* amends section 193 to allow for the extension of any 5-year period referred to in subpart 7 of Part 3 of the principal Act.

*Clause 53* amends section 233 ...

*Clause 54* inserts *new sections 233A and 233B*. *New section 233A* provides that a creditor who fails to submit a creditor's claim form within the time specified by the Assignee is not entitled to receive the benefit of the first distribution by the Assignee of the bankrupt's assets. However, the Assignee may choose to include the creditor in the distribution if the creditor submits the claim before the distribution is made. *New section 233B* allows a creditor who fails to submit a claim before the first distribution of assets to be included in any later distributions.

*Clause 55* inserts *new section 290A* to provide that, if a bankrupt dies before filing a statement of affairs, the bankrupt is discharged from bankruptcy 3 years after death. Normally, a bankrupt (whether alive or dead) is discharged 3 years after filing a statement of affairs.

*Clause 61* replaces section 343 with a similar section. However, *new section 343* provides that the unsecured debts to which a debt repayment order relates may not include amounts owing under the Child Support Act 1991, a maintenance order under the Family Proceedings Act 1980, or a student loan (together, "excluded debt"). These excluded debts are not taken into account in determining the debtor's total unsecured debts, which may be no more than \$47,000 if the debtor is to be eligible for a debt repayment order. In *new section 343*, references to a summary instalment order are replaced with references to a debt repayment order.

*Clause 66* replaces section 350A with a similar section. The current section 350A allows the Assignee to cancel a summary instalment order if the debtor is able immediately to pay the debtor's unsecured debts. The relevant unsecured debts exclude any student loan balance. Under *new section 350A*, the relevant unsecured debts also exclude debts owing under the Child Support Act 1991 or a maintenance order under the Family Proceedings Act 1980.

*Clause 68* amends section 352 to allow proceedings against a debtor in respect of whom a summary instalment order is made if the proceedings relate to amounts owing under the Child Support Act 1991, a maintenance order under the Family Proceedings Act 1980, or a student loan.

*Clause 74* replaces section 358 with *new sections 358 to 358B*. *New section 358* is similar to the current section 358, except it provides that money paid by the debtor that is unable to be distributed in accordance with *new section 358(1)* is to be paid to Public Trust. The current section 358(2) is repealed, but a provision to the same effect is inserted as *new section 358A*. *New section 358B* sets out the effect of a debtor's discharge from a debt repayment order, which is similar to the effect of a discharge from the no asset procedure (*see* section 377A of the principal Act). Debts to which the debtor's debt repayment order relates, including any penalties or interest on those debts, are cancelled upon discharge. However, this excludes debts incurred by fraud, which, along with any interest and penalties accrued, become enforceable again after discharge.

*Clause 77* makes 2 substantive amendments to section 363. The first provides that the total debts taken into account in determining whether a debtor is below the \$47,000 threshold for admission to the no asset procedure excludes debts owing under the Child Support Act 1991 or a maintenance order under the Family Proceedings Act 1980. The second provides that a debtor may not be admitted to the no asset procedure if the outcome for any creditor would be materially better if the debtor were adjudicated bankrupt instead. *Clause 77* also replaces section 363(2) with a new subsection that is substantially the same, but more clearly expressed.

*Clause 78* replaces section 374, which relates to the preservation of a debtor's assets, with a similar section. However, *new section 374* allows the Assignee to apply for an order preserving a person's assets if the Assignee intends to apply for a reversal of the person's discharge from the no asset procedure. *New section 374* also provides that an order made under that section is effective from the time it is made.

*Clause 79* inserts *new sections 377C to 377E*. *New section 377C* allows the court to reverse the cancellation under section 377A of a debtor's debts. The cancellation of debts occurs upon a debtor's discharge from the no asset procedure. The court may only reverse a cancellation of debts within 2 years of that discharge. *New section 377D* sets out the grounds for reversing a cancellation of debts. The grounds are that facts have been established that were not known to the Assignee when the debtor was discharged from the no asset procedure, and that, had those facts been known, the Assignee would have been justified in terminating the debtor's participation in the no asset procedure under section 373(1)(a) of the principal Act. Section 373(1)(a) allows the Assignee to terminate a debtor's participation in the no asset procedure if the debtor was wrongly admitted (for example, because the debtor concealed assets or misled the Assignee). *New section 377E* provides that the effect of a reversal of a cancellation of debts is that the cancelled debts, and any interest or penalties accrued, become enforceable again.



*Clause 82* amends section 449 to require the Assignee to publish any known alias or trading name of any person who is or has been bankrupt, who is subject to a debt repayment order, or who is admitted to, or has been discharged from, the no asset procedure. *Clause 82(3)* inserts *new section 449(1)(ga)*, which requires publication of the date of a debt repayment order. *Clause 82(4)* amends section 449(1)(n) to require a supervisor's electronic address to be published instead of the supervisor's business postal address.

*Clause 85 and Part 3 of Schedule 1* make amendments to other enactments that are necessary as a consequence of the amendments in this Part.

*Clause 86 and Schedule 3* contain transitional, savings, and related provisions.

## Part 9

### Amendments to Limited Partnerships Act 2008

*Clause 87* provides that *Part 9* amends the Limited Partnerships Act 2008.

*Clause 88* amends section 8 to align the requirements about where general partners (or certain associated natural persons) must live with similar requirements that apply to directors of companies under section 10 of the Companies Act 1993.

*Clause 89* amends section 19A(2), which lists persons who are disqualified from holding office as a general partner of a limited partnership. The amendment adds to the list—

- a person who is prohibited from being a director of a company under section 299(1)(b) of the Insolvency Act 2006;
- a person who is prohibited from being concerned, or taking part, in the management of a company under section 299(1)(c) of the Insolvency Act 2006.

*Clause 90* amends section 52, which sets out the requirements for an application to register a limited partnership. The amendment provides that information prescribed in the Limited Partnerships Regulations 2008 (the **regulations**) is only required if an application is made in reliance on new paragraphs (a)(ii), (b)(ii), (c)(ii), or (e)(ii) of section 8(4) on the basis that a general partner (or a specified natural person) lives in an enforcement country. *Clause 92 and Part 4 of Schedule 1* amend the regulations as a consequence of the amendment to section 52.

*Clause 91* amends section 101, to provide that section 328(3)(a) of the Companies Act 1993 applies, with all necessary modifications, to a limited partnership. The effect of this amendment is to require the Registrar of Companies to give public notice before restoring a limited partnership to the register of limited partnerships.

## Part 10

### Amendments to Personal Property Securities Act 1999

*Clause 93* provides that *Part 10* amends the Personal Property Securities Act 1999.

*Clause 94* amends section 139 to remove the requirement that the personal property securities register be kept in New Zealand. Because the register is kept electronically, there is no justification for requiring it to be in New Zealand.

*Clauses 95 to 97* amend sections 140, 142, and 172.

Section 140 sets out the information that must be recorded on the register. Currently, if the debtor is an incorporated organisation, this includes its unique incorporation number.

Section 172 sets out the criteria by reference to which the register may be searched. For an incorporated debtor this includes the unique number assigned to the company by the Registrar of Companies on the registration of the company under the Companies Act 1993. This search criterion is problematic as it does not match the information recorded in the register under section 140 and creates difficulty when searching for overseas companies or organisations that are not companies (such as building societies or incorporated societies) that are not registered under the Companies Act 1993.

Section 140 is amended to ensure that if an organisation has a New Zealand incorporation or registration number, that number is recorded and that an organisation's overseas incorporation number is only used if it does not have a New Zealand number. Section 172 is amended to allow the register to be searched by reference to the numbers recorded under section 140. Section 142 (which relates to the data required to register financing statements) is amended to match the changes made to section 140.

Section 172 is also amended to remove the name or job title, and contact details, of the person acting on behalf of an organisation as search criteria. This information continues to be required under sections 140 and 142 but is removed as possible search criteria as it might produce misleading results.

*Clause 98 and Part 5 of Schedule 1* make a consequential amendment to the Personal Property Securities Regulations 2001 to revoke regulation 15, which is rendered redundant by the amendment to section 172(b) of the Act.

## **Part 11**

### **Amendments to Plant Variety Rights Act 1987**

*Clause 99* provides that *Part 11* amends the Plant Variety Rights Act 1987.

*Clause 100* amends section 5 to give applicants for a grant of plant variety rights the option of nominating an address for service that is in Australia instead of a New Zealand address.

*Clause 101* amends section 35 to allow for notices to be given, and documents to be served, by leaving them at, or sending them to, an Australian address that is the person's usual or last known place of abode or the person's address for service.

*Clause 102 and Part 6 of Schedule 1* amend the Plant Variety Rights Regulations 1988 to reflect the fact that an address for service may be in Australia.

## Part 12

### Amendments to Takeovers Act 1993

*Clause 103* provides that *Part 12* amends the Takeovers Act 1993.

*Clause 104* inserts definitions of accounting period and subsidiary into section 2. It also replaces the definition of code company (which cross-refers to section 2A) as a consequence of the amendments made by *clauses 105(5) and 106*.

*Clause 105* amends section 2A, which contains the substance of the definition of code company. *Clause 105* replaces section 2A(1)(c), the effect of which is that a company with 50 or more shareholders and 50 or more share parcels (currently, a code company) is a code company only if that company is also at least medium-sized (defined, in *new section 2A(4)*, by reference to total assets or total revenue of the company and its subsidiaries). *Clause 105* also repeals section 2A(2) as a consequence of the amendments made by *clause 106*.

*Clause 106* inserts *new section 2AB*. The rules applying to takeovers of code companies are set out in the Takeovers Code Approval Order 2000 (the **takeovers code**). *New section 2AB* is intended to make clear that all transactions and events that begin under the rules of the takeovers code are finished under the rules of the takeovers code. Under *new section 2AB*, if a company ceases to be a code company (as defined in section 2A) as a result of, or during, an event regulated under the takeovers code, the company continues to be treated as a code company—

- for the purposes of completing the transaction or event (including, if relevant, applying the compulsory acquisition rules in Part 7 of the takeovers code); and
- until the transaction or event is complete and all requirements of the takeovers code in relation to the transaction or event have been complied with.

*Clause 107 and Schedule 4* contain transitional, savings, and related provisions.

*Clause 108* revokes the Takeovers Code (Small Code Companies) Exemption Notice 2016 as a consequence of the amendments made by *clause 105*.

*Clause 109 and Part 7 of Schedule 1* make consequential amendments to the takeovers code.

## Part 13

### Amendments to Trade Marks Act 2002

*Clause 110* provides that *Part 13* amends the Trade Marks Act 2002.

*Clause 111* amends the definition of registered trade mark in section 5 in consequence of the changes made to sections 59 and 60.

*Clause 112* inserts *new section 13A*. A certification trade mark is a mark that denotes independent certification by the owner of the mark that goods or services in respect of which it is used possess certain characteristics (for example, the Fairtrade logo). Under section 14, a certification trade mark cannot be registered in the name of a person who carries on trade in goods or services of the kind certified. *New section 13A*

will ensure the reverse is also true—that a trade mark for goods or services cannot be registered in the name of a person who owns a certification trade mark for goods or services of that kind.

*Clause 113* amends section 14 to ensure that a person who owns a trade mark in respect of goods or services is included as a person carrying on trade in those goods or services.

*Clause 114* replaces section 53 to clarify that the Commissioner may issue a new certificate of registration at any time on application and payment of the prescribed fee. The new certificate replaces the existing one. This ensures that a trade mark owner can get a new certificate if the details of the trade mark's registration changes, the certificate is lost or damaged, etc.

*Clause 115* replaces sections 59 and 60, which relate to the renewal of a trade mark.

Currently, the registration of a trade mark lasts for 10 years. If the owner does not renew the registration before the expiry date, the trade mark is removed from the register on the expiry of the 10 years. However, at any time in the following 12 months the owner may apply to restore the trade mark to the register. During that 12-month period, although the trade mark is no longer registered, it must still be taken into account in determining the registrability of a later application.

The current situation causes confusion about the status of the trade mark and can create difficulties for future applicants. *New sections 59 and 60* will reverse this situation so that when a trade mark's registration expires, it will remain on the register during the possible renewal period. However, during that period, although it remains a registered trade mark for most purposes, it is declared not to be a registered trade mark for the purposes of subparts 1 to 3 of Part 4 (which relate to civil proceedings for infringement, criminal proceedings, enforcement officers, and border protection measures).

In addition to this change, the possible renewal period is reduced from 12 months to 6 months. Further, as the 6-month period is now stated in the Act, the Commissioner will no longer have power to extend the period. Previously, the 12-month period was specified in the regulations, so the Commissioner was able to exercise his or her power under regulation 32 of the Trade Marks Regulations 2003 to extend the period.

*Clause 115* also repeals section 60A, which is made redundant by the amendments to the Geographical Indications (Wine and Spirits) Registration Act 2006 in *Part 7* of the Bill.

*Clauses 116 to 118* amend sections 65, 66, and 68, which relate to revocation of the registration of a trade mark, to clarify their operation. In particular, the changes make it clear that if a ground for revocation listed in section 66 is found to exist, the trade mark's registration must be revoked.

*Clause 119* replaces section 167, which relates to security for costs, to enable security for costs to be required from any party to proceedings under the Act, not just overseas parties as is currently the case. This is consistent with the position under the Patents Act 2013.

*Clause 120* amends section 182 in consequence of the changes to the procedure for renewing the registration of trade marks.

*Clause 121* repeals section 191, which allows guardians and others to do things for the purposes of the Act on behalf of persons who are under 18 or otherwise lack capacity. Section 191 is redundant because it replicates the powers conferred on guardians and others under the laws under which they are appointed or other general laws (such as the Care of Children Act 2004 and subpart 6 of Part 2 of the Contract and Commercial Law Act 2017).

*Clause 122 and Part 8 of Schedule 1* amend the Trade Marks Regulations 2003 in consequence of the changes to the procedure for renewing the registration of trade marks.

## **Part 14**

### **Amendments to Weights and Measures Act 1987**

*Clause 123* provides that *Part 14* amends the Weights and Measures Act 1987.

*Clause 124* amends section 28, which relates to the powers of inspectors. Section 28(1)(h) allows an inspector carrying out an inspection of premises to require the production of documents relating to any goods kept, displayed, offered, or exposed for sale at the premises. This is amended to include documents relating to goods that have been sold as well as those still for sale.

*Clause 125* amends section 32(i), (j), and (k), which creates offences relating to weights, measures, and weighing or measuring instruments (**weighing equipment**). Those paragraphs make it an offence to, among other things,—

- sell weighing equipment that has a forged or altered mark or stamp:
- sell weighing equipment that is incorrect or does not comply with the Act:
- sell a stamped weight or measure that has been increased or diminished.

Section 32 is amended so that these offences will apply to the leasing of weighing equipment as well as sales.



*Hon David Parker*

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Regulatory Systems (Economic Development) Amendment Act **2018**.

**2 Commencement**

This Act comes into force on *[date to come]*.

**Part 1  
Amendments to Building Societies Act 1965**

**3 Amendments to Building Societies Act 1965**

This Part amends the Building Societies Act 1965.

**4 Section 124 amended (Compulsory cancellation or suspension of registration)**

- (1) In section 124(1), delete “, with the approval of the Minister.”.
- (2) In section 124(1)(c), replace “that the society has wilfully, and” with “that the society has.”.
- (3) In section 124(3), delete “, with the approval of the Minister.”.

**Part 2  
Amendments to Companies Act 1993**

**5 Amendments to Companies Act 1993**

This Part amends the Companies Act 1993.

**6 Section 151 amended (Qualifications of directors)**

After section 151(2)(b), insert:

- (baa) a person who is prohibited from being a director of a company under section 299(1)(b) of the Insolvency Act 2006:
- (bab) a person who is prohibited from directly or indirectly being concerned, or taking part, in the management of a company under section 299(1)(c) of the Insolvency Act 2006:

**7 Section 280 amended (Qualifications of liquidators)**

Replace section 280(1)(l) with:

- (l) a person who is prohibited from being a director of a company under section 299(1)(b) of the Insolvency Act 2006:
- (la) a person who is prohibited from directly or indirectly being concerned, or taking part, in the management of a company under section 299(1)(c) of the Insolvency Act 2006:

**8 Section 367 repealed (Application of Official Information Act 1982 and Privacy Act 1993)**

Repeal section 367.

**9 Section 368 repealed (Appeals from decisions under section 367)**

Repeal section 368.

**10 Section 382 amended (Persons prohibited from managing companies)**

- (1) In section 382(1)(a), after “3 months”, insert “, including an offence under section 138A”.
- (2) In section 382(1)(b), replace “1961,—” with “1961; or”.
- (3) After section 382(1)(b), insert:
  - (ba) a person has been convicted of an offence under section 143A(1)(d) or 143B(1)(d) of the Tax Administration Act 1994,—

**11 Section 383 amended (Court may disqualify directors)**

- (1) In section 383(1)(a), after “3 months”, insert “, including an offence under section 138A”.
- (2) After section 383(1)(b), insert:
  - (ba) a person has been convicted of an offence under section 143A(1)(d) or 143B(1)(d) of the Tax Administration Act 1994; or

**12 Section 390 amended (Service of other documents on overseas companies)**

- (1) In section 390(1)(c), after “company”, insert “; or”.
- (2) After section 390(1)(c), insert:
  - (d) by sending it by email to an electronic address used by the overseas company.

**13 Section 391 amended (Service of documents on shareholders and creditors)**

- (1) In section 391(3)(f), after “corporate”, insert “; or”.
- (2) After section 391(3)(f), insert:
  - (g) sent by email to an electronic address used by the body corporate.

**14 Schedule 1 amended**

- (1) In Schedule 1, after clause 6(5), insert:
  - (5A) However, if a time is specified in the constitution of a company under subclause (5) but the notice of the meeting provides that a proxy may be produced by a later time (being a time before the start of the meeting), a proxy produced by that later time is still effective.
- (2) In Schedule 1, clause 6(6), replace “subclause (5), the constitution” with “subclauses (5) and **(5A)**, the constitution or the notice”.
- (3) In Schedule 1, replace clause 7(4A) with:
  - (4A) Despite subclause (4),—

- (a) the constitution of a company, or the notice of the meeting, may specify a time (being a time less than 48 hours before the start of the meeting) 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) such postal votes must reach that person by the specified time (or, if different times are specified in the constitution and the notice, the later of them).

### **Part 3**

#### **Amendments to Continental Shelf Act 1964**

##### **15 Amendments to Continental Shelf Act 1964**

This Part amends the Continental Shelf Act 1964.

##### **16 Section 5A amended (Payments and contributions with respect to exploitation of continental shelf beyond 200 nautical miles)**

- (1) In section 5A(1)(b), delete “or prospecting”.
- (2) In section 5A(1)(c), replace “or prospecting for, or the mining of,” with “for or the mining of”.
- (3) In section 5A(3), replace “Transport” with “Energy and Resources”.
- (4) In section 5A(4), replace “relevant Minister” with “Minister”.

### **Part 4**

#### **Amendments to Credit Contracts and Consumer Finance Act 2003**

##### **17 Amendments to Credit Contracts and Consumer Finance Act 2003**

This Part amends the Credit Contracts and Consumer Finance Act 2003.

##### **18 Section 9C amended (Lender responsibility principles)**

Replace section 9C(2)(a) with:

- (a) exercise the care, diligence, and skill of a responsible lender—
  - (i) in any advertisement for providing credit or finance under an agreement or for providing credit-related insurance under a relevant insurance contract; and
  - (ii) before entering into an agreement to provide credit or finance or a relevant insurance contract and before taking a relevant guarantee; and
  - (iii) in all subsequent dealings with a borrower in relation to an agreement or a relevant insurance contract or a guarantor in relation to a relevant guarantee; and

**19 Section 14 amended (Effect of declaration)**

- (1) Replace section 14(1) with:
- (1) Before entering into a credit contract, a debtor may make a declaration that the credit is to be used wholly or predominantly for business or investment purposes (or for both purposes).
- (1A) If a declaration is made under **subsection (1)**,—
- (a) the credit contract is not a consumer credit contract; and
  - (b) Part 3A does not apply to the credit contract or any contract or arrangement that, in connection with the credit contract, creates or provides for a security interest in consumer goods.
- (2) In section 14(2), replace “Subsection (1)” with “**Subsection (1A)**”.

**20 Section 83C amended (Application of Part)**

After section 83C(2), insert:

- (2A) Despite subsection (1), this Part does not apply where a security interest over consumer goods is granted by a body corporate.

**21 Section 99B amended (Enforcement prohibited if creditor unregistered)**

- (1) In section 99B(1)(a), replace “credit contract” with “consumer credit contract”.
- (2) In section 99B(4), replace “credit contract” with “consumer credit contract”.

**22 Section 102A amended (Infringement offences)**

After section 102A(4), insert:

- (4A) Every creditor who is subject to section 9K commits an offence if the creditor breaches section 9K(4).
- (4B) Every creditor who is subject to section 9K commits an offence if both of the following apply:
- (a) a paragraph in regulations prescribed under this Act requires particular information to be contained in the information made publicly available;
  - (b) the creditor breaches section 9K(6)(a) by failing to make any information publicly available for the purposes of that paragraph.

**23 Section 103 amended (Other offences)**

- (1) In section 103(1), after “creditor,”, insert “lender,”.
- (2) In section 103(1), after “provisions of sections”, insert “9J, 9K,”.

**24 Schedule 1AA amended**

- (1) In Schedule 1AA, clause 3(1), after “subclauses (2) and (3)”, insert “and in **clause 4**”.
- (2) In Schedule 1AA, clause 3(4), after “In this clause”, insert “and in **clause 4**”.



- (3) In Schedule 1AA, after clause 3, insert the cross-heading and **clause 4** set out in **Schedule 2** of this Act.

**25 Consequential amendment to other enactment**

Amend the enactment specified in **Part 1** of **Schedule 1** as set out in that Part.

**Part 5**

**Amendments to Fair Trading Act 1986**

**26 Amendments to Fair Trading Act 1986**

This Part amends the Fair Trading Act 1986.

**27 Section 30 amended (Compliance with product safety standards)**

- (1) In section 30(1), replace “that person complies with that product safety standard” with “that product safety standard is complied with in respect of those goods”.
- (2) In section 30(2), replace “that person complies with one of those product safety standards” with “one of those product safety standards is complied with in respect of those goods”.

**Part 6**

**Amendments to Financial Reporting Act 2013**

**28 Amendments to Financial Reporting Act 2013**

This Part amends the Financial Reporting Act 2013.

**29 Section 20 amended (Auditing and assurance standards)**

Replace section 20(2) with:

- (2) Auditing and assurance standards may (without limitation) include—
- (a) professional and ethical standards that govern the professional conduct of persons who are appointed or engaged to carry out audits or other assurance engagements or engagements referred to in **paragraph (b)**;
  - (b) standards for agreed-upon procedures engagements.

**Part 7**  
**Amendments to Geographical Indications (Wine and Spirits)**  
**Registration Act 2006**

**30 Amendments to Geographical Indications (Wine and Spirits) Registration Act 2006**

This Part amends the Geographical Indications (Wine and Spirits) Registration Act 2006.

**31 Section 7 amended (What is registered geographical indication?)**

After section 7(3), insert:

- (4) However, this section is subject to **section 47D**.

**32 Section 42 amended (Register)**

- (1) In section 42(3)(d), after “indication”, insert “; and”.

- (2) After section 42(3)(d), insert:

- (e) if the registration of the geographical indication is subject to renewal (as defined in **section 47D**), a statement to that effect.

**33 Section 45 amended (Removal from register)**

In section 45(4), replace “on its expiry” with “when required to do so under **section 47C(2)**”.

**34 Section 45A amended (Notice of proposed removal)**

In section 45A(1), after “register”, insert “under section 45(1)”.

**35 Section 47A replaced (Renewal of registration)**

Replace section 47A with:

**47A Renewal of registration**

- (1) On application by an interested person, the Registrar must renew the registration of a registered geographical indication.
- (2) An application for renewal must be made to the Registrar—
- (a) not more than 12 months before, and not more than 6 months after, the date on which the registration expires (the **expiry date**); and
- (b) in the prescribed manner.
- (3) The renewed registration is effective for a period of 10 years commencing on the expiry date.

**36 Section 47B amended (Notice of pending expiration of registration of geographical indication)**

- (1) In section 47B(1), replace “If no interested person has made an application under section 47A within a prescribed period before the registration of a geographical indication expires,” with “If no application to renew the registration of a geographical indication has been made,”.
- (2) Before section 47B(2)(a), insert:

(aaa) be given at least the prescribed period before the registration’s expiry date; and
- (3) In section 47B(2)(b)(ii), after “fees”, insert “(including the amount of any renewal fee)”.
- (4) Replace section 47B(2)(b)(iii) with:
  - (iii) that,—
    - (i) if the registration is not renewed before its expiry date, the register will be changed to record that the geographical indication’s registration is subject to renewal; and
    - (ii) if the registration has still not been renewed 6 months after the expiry date, the geographical indication will be removed from the register.

**37 Sections 47C and 47D and cross-heading replaced**

Replace sections 47C and 47D and the cross-heading above section 47D with:

**47C Procedure if registration not renewed**

- (1) If the registration of a geographical indication is not renewed before its expiry date, the Registrar must record on the register that its registration is subject to renewal (until the registration is renewed or it is removed from the register).
- (2) The Registrar must remove the geographical indication from the register if—
  - (a) notice has been given under section 47B; and
  - (b) 6 months have elapsed since the registration’s expiry date; and
  - (c) the registration has not been renewed.

**47D Status of geographical indication that is subject to renewal**

- (1) If the registration of a geographical indication is subject to renewal, the geographical indication—
  - (a) is not a registered geographical indication for the purposes of sections 21 to 24; but
  - (b) is a registered geographical indication for all other purposes.
- (2) The registration of a geographical indication is **subject to renewal** if—
  - (a) its expiry date (referred to in **section 47A**) has passed; but

(b) the geographical indication has not yet been removed from the register.

**38 Consequential amendments to other enactment**

Amend the enactment specified in **Part 2** of **Schedule 1** as set out in that Part.

**Part 8**  
**Amendments to Insolvency Act 2006**

**39 Amendments to Insolvency Act 2006**

This Part amends the Insolvency Act 2006.

**40 Section 3 amended (Interpretation)**

(1) In section 3, repeal the definition of **current summary instalment order**.

(2) In section 3, insert in their appropriate alphabetical order:

**current debt repayment order** has the meaning set out in section 355  
**excluded debt**, in relation to a debt repayment order or the no asset procedure, means—

- (a) any amount payable under a maintenance order under the Family Proceedings Act 1980; and
- (b) any amount payable under the Child Support Act 1991; and
- (c) any student loan balance

**41 Section 6 amended (Corporations and other entities not subject to Act)**

In section 6(1)(c), replace “summary instalment” with “debt repayment”.

**42 Section 8 amended (Alternatives to bankruptcy)**

In section 8(1)(b), replace “summary instalment” with “debt repayment”.

**43 Section 41 amended (Order that disposition or proposal not act of bankruptcy)**

In section 41(1)(c), replace “summary instalment” with “debt repayment”.

**44 Section 67 amended (Bankrupt must file statement of affairs with Assignee)**

In section 67, insert as subsection (2):

(2) The Assignee may reject a statement of affairs that in the Assignee’s opinion is incorrect or incomplete.

**45 Section 149 amended (Prohibition of bankrupt entering business)**

(1) In section 149(1)(b), after “employed by”, insert “, or work without reward for”.

- (2) In section 149(1)(c), after “employed by”, insert “, or work without reward for”.

**46 Sections 158 and 159 replaced**

Replace sections 158 and 159 with:

**158 Bankrupt may retain certain assets**

- (1) The bankrupt may retain as the bankrupt’s own property the following assets:
- (a) the bankrupt’s necessary tools of trade:
  - (b) necessary household furniture and effects, including clothing, for the bankrupt and the bankrupt’s relatives and dependants:
  - (c) a motor vehicle (up to a maximum value of \$6,000).
- (2) For the purposes of **subsection (1)(c)**, the value of a motor vehicle is the value that the Assignee in the Assignee’s discretion places on it.
- (3) The fact that the value of the motor vehicle is less than the maximum value specified in **subsection (1)(c)** does not give the bankrupt rights in relation to other assets in the bankrupt’s estate.
- (4) The Governor-General may, by Order in Council, amend **subsection (1)(c)** by increasing the maximum value to take account of any rise in the all groups index number of the New Zealand Consumers Price Index.

**47 Section 160 amended (Retention of assets does not affect rights under charge or hire purchase agreement)**

In section 160, delete “or 159”.

**48 Section 161 repealed (Retention provisions do not confer rights to other assets)**

Repeal section 161.

**49 Section 162 amended (Relative or dependant may exercise bankrupt’s right to retain assets)**

In section 162, delete “or 159”.

**50 Section 165 amended (Assignee may summon bankrupt and others to be examined)**

Replace section 165(1)(b) with:

- (b) require that person to do any 1 or more of the following:
- (i) produce and surrender to the Assignee or District Court Judge before whom that person appears any document in that person’s possession or control that relates to the bankrupt’s property, conduct, or dealings:

- (ii) provide the Assignee with any information that the Assignee requests about the bankrupt's property, conduct, or dealings:
- (iii) assist the Assignee, to the best of the person's ability, to carry out the Assignee's functions and duties under this Act in respect of the bankrupt.

**51 Section 178 amended (Record of examination)**

- (1) Replace section 178(2)(a) with:
  - (a) signed by the bankrupt; and
- (2) After section 178(2), insert:
- (3) The court may, if the bankrupt requests, require that the record of the examination be read over to the bankrupt before the bankrupt signs it.

**52 Section 193 amended (Extension of 2 years and 6 months periods)**

- (1) In the heading to section 193, replace "2 years" with "5 years, 2 years,".
- (2) In section 193, replace "2 years or to 6 months means" with "5 years or to 2 years or to 6 months means 5 years or".

**53 Section 233 amended (Creditor must submit creditor's claim form)**

- (1) In section 233(1), delete "within the specified time".
- (2) Repeal section 233(2).

**54 New sections 233A and 233B and cross-heading inserted**

After section 233, insert:

*Late claims by creditors*

**233A Failure to submit claim within specified time**

- (1) A creditor who fails to submit a creditor's claim form within the specified time is not entitled to receive the benefit of the first distribution.
- (2) However, the Assignee may include the creditor in the first distribution if—
  - (a) the creditor submits a creditor's claim form before the distribution is made; and
  - (b) the claim is admitted.
- (3) If the Assignee does not include the creditor in the first distribution, **section 233B(2)** applies to the creditor's claim as if it were made, and admitted, after the first distribution.
- (4) In this section,—  
**first distribution** means the first of any distributions by the Assignee of the bankrupt's assets

**specified time** means the time for submitting the claim form that is specified by the Assignee by notice to the creditor or that is specified by the Assignee by advertisement in the prescribed manner.

**233B Failure to claim before first distribution of assets**

- (1) A creditor who fails to make a claim before the first distribution is made is excluded from the benefit of the first distribution.
- (2) However, if the creditor makes a later claim, and the claim is admitted, the creditor is entitled to receive the benefit of any distribution of assets that is made after the first distribution.
- (3) In this section, **first distribution** has the same meaning as in **section 233A**.

**55 New section 290A inserted (Automatic discharge of bankrupts who die before filing statement of affairs)**

After section 290, insert:

**290A Automatic discharge of bankrupts who die before filing statement of affairs**

- (1) If a bankrupt dies before filing a statement of affairs, the bankrupt is automatically discharged from bankruptcy 3 years after the bankrupt's death.
- (2) A bankrupt is automatically discharged from bankruptcy on the commencement date if the bankrupt died—
  - (a) on or after 3 December 2007 but before or on the date that is 3 years before the commencement date; and
  - (b) before filing a statement of affairs.
- (3) In this section, **commencement date** means the date on which this section comes into force.

**56 Part 5 heading amended**

In the Part 5 heading, replace “**summary instalment**” with “**debt repayment**”.

**57 Subpart 3 heading in Part 5 replaced**

In Part 5, replace the subpart 3 heading with:

Subpart 3—Debt repayment orders

**58 Section 340 replaced (Summary instalment order)**

Replace section 340 with:

**340 Debt repayment order**

A debt repayment order is an order by the Assignee that the debtor pay their debts—

- (a) in instalments or otherwise; and
- (b) in full or to the extent that the Assignee considers practicable in the circumstances of the case.

**59 Section 341 amended (Who may apply for order)**

In section 341, replace “summary instalment” with “debt repayment”.

**60 Section 342 amended (Form of application)**

In section 342(1), replace “summary instalment” with “debt repayment”.

**61 Section 343 replaced (Assignee may make summary instalment order)**

Replace section 343 with:

**343 Assignee may make debt repayment order**

- (1) The Assignee may make a debt repayment order if the Assignee is satisfied that—
  - (a) the debtor’s total unsecured debts (apart from any excluded debt) that would be provable in the debtor’s bankruptcy are not more than \$47,000; and
  - (b) the debtor is unable immediately to pay those debts; and
  - (c) the order relates only to those debts or a portion of those debts.
- (2) Before making the order, the Assignee must allow the debtor or a creditor to make representations, if the debtor or creditor wants to do so.
- (3) A debt repayment order is not invalid if the total amount of the debts proved is more than the amount specified in **subsection (1)(a)**, but in that case—
  - (a) the supervisor appointed under section 345 may refer the matter to the Assignee; and
  - (b) the Assignee may, if the Assignee thinks appropriate, cancel the order.
- (4) The amount in **subsection (1)(a)** may be varied by the Governor-General by Order in Council to take account of increases in the all groups index number of the New Zealand Consumers Price Index.

**62 Section 345 amended (Appointment of supervisor)**

In section 345(1), replace “summary instalment” with “debt repayment”.

**63 Section 346 amended (Role of supervisor)**

In section 346(1), replace “term’s of the summary instalment” with “terms of the debt repayment”.

**64 Section 349 amended (Period of instalments)**

In section 349, replace “summary instalment” with “debt repayment”.



**65 Section 350 amended (Variation or cancellation of order by Assignee on application from debtor, creditor, or supervisor)**

In section 350, replace “summary instalment” with “debt repayment”.

**66 Section 350A replaced (Cancellation of order by Assignee without application)**

Replace section 350A with:

**350A Cancellation of order by Assignee without application**

The Assignee may (without an application from any person) cancel a debt repayment 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 (apart from any excluded debt); or
- (c) cannot be located.

**67 Section 351 amended (Effect of order)**

In section 351, replace “summary instalment” with “debt repayment”.

**68 Section 352 amended (Proceedings against debtor)**

- (1) In section 352(1), after “debt”, insert “(other than an excluded debt)”.
- (2) In section 352, replace “summary instalment” with “debt repayment” in each place.

**69 Section 353 amended (Supervisor must give notice of summary instalment order to creditors)**

- (1) In the heading to section 353, replace “summary instalment” with “debt repayment”.
- (2) In section 353, replace “summary instalment” with “debt repayment”.

**70 Section 354 amended (Public register of debtors subject to current summary instalment order)**

- (1) In the heading to section 354, replace “summary instalment” with “debt repayment”.
- (2) In section 354(1), replace “summary instalment” with “debt repayment”.

**71 Section 355 amended (Meaning of current summary instalment order)**

- (1) In the heading to section 355, replace “summary instalment” with “debt repayment”.
- (2) In section 355, replace “summary instalment” with “debt repayment”.

**72 Section 356 amended (Creditor's claim)**

In section 356(1), replace “summary instalment” with “debt repayment”.

**73 Section 357 amended (Payment of debtor's earnings to supervisor)**

In section 357(1), replace “summary instalment” with “debt repayment”.

**74 Section 358 replaced (Distribution of money paid by debtor)**

Replace section 358 with:

**358 Distribution of money paid by debtor**

- (1) The supervisor must distribute the money paid by the debtor under the debt repayment order in the following order:
  - (a) first, payment of the costs of administration (including the supervisor's remuneration) in accordance with the prescribed scale:
  - (b) secondly, the Assignee's costs and fees:
  - (c) thirdly, payment of the debts in accordance with the order:
  - (d) fourthly, payment of any surplus to the debtor.
- (2) The supervisor must pay to Public Trust any money that is not able to be distributed for any reason.
- (3) Sections 284 to 289 apply to the money as if it were undistributed money (as defined in section 282).

**358A Discharge of debtor after distribution made**

The debtor is discharged from the unsecured debts to which the debt repayment order relates if the supervisor pays in full, from the money received under the order, the amounts in **section 358(1)(a) to (d)**.

**358B Effect of discharge**

- (1) On discharge under **section 358A**, the unsecured debts to which the debtor's debt repayment order relates are cancelled, and the debtor is not liable to pay any part of the debts, including any penalties and interest that may have accrued.
- (2) However, **subsection (1)** does not apply to—
  - (a) any debt or liability incurred by fraud or fraudulent breach of trust to which the debtor was a party:
  - (b) any debt or liability for which the debtor has obtained forbearance through fraud to which the debtor was a party.
- (3) The debts and liabilities referred to in **subsection (2)** become again enforceable on discharge under **section 358A**, and the debtor is liable to pay any penalties and interest that may have accrued.

**75 Section 359 amended (Default by debtor)**

In section 359(1), replace “summary instalment” with “debt repayment”.

**76 Section 360 amended (Offence of obtaining credit)**

In section 360, replace “summary instalment” with “debt repayment” in each place.

**77 Section 363 amended (Criteria for entry to no asset procedure)**

(1) In section 363(1)(d), replace “(excluding any student loan balance)” with “(apart from any excluded debt)”.

(2) In section 363(1)(e), after “debts”, insert “; and”.

(3) After section 363(1)(e), insert:

(f) the outcome for any creditor would not be materially better if the debtor were adjudicated bankrupt.

(4) Replace section 363(2) with:

(2) In this section, **realisable assets**—

(a) excludes the assets that a bankrupt is allowed to retain under **section 158**; but

(b) includes any assets (for example, gifted assets) that might be recoverable by the Assignee if the debtor were adjudicated bankrupt on the date of application for entry to the no asset procedure and if the irregular transaction provisions in subpart 7 of Part 3 applied.

**78 Section 374 replaced (Assignee may apply for preservation order)**

Replace section 374 with:

**374 Assignee may apply for preservation order**

(1) This section applies if—

(a) the Assignee intends to terminate, or has terminated, a debtor’s participation in the no asset procedure on the ground that the debtor concealed assets or misled the Assignee; or

(b) the Assignee or a creditor intends, under **section 377C**, to apply for a reversal of the cancellation of a debtor’s debts on the ground that the debtor concealed assets or misled the Assignee.

(2) The court may, on the application of the Assignee, make an order for the preservation of the debtor’s assets pending an application for the debtor’s adjudication.

(3) The order—

(a) may be on the terms and conditions that the court thinks fit; and

- (b) is effective, unless the court states otherwise, from the time that the order is made.

**79 New sections 377C to 377E inserted**

After section 377B, insert:

**377C Court may reverse cancellation of debtor's debts**

- (1) The court may, on the application of the Assignee or a creditor, reverse the cancellation under section 377A of a debtor's debts.
- (2) The cancellation of debts may be reversed at any time before 2 years after the date of the cancellation.

**377D Grounds for reversing cancellation of debts**

- (1) The court may reverse a cancellation under section 377A of a debtor's debts if—
  - (a) the debtor has been given notice of the application for cancellation (including the grounds relied on by the applicant); and
  - (b) the court is satisfied that facts have been established that—
    - (i) were not known to the Assignee before the debtor was discharged from the no asset procedure; and
    - (ii) had the Assignee known of them, would have justified the Assignee in terminating the debtor's participation in the no asset procedure under section 373(1)(a).
- (2) The court must not reverse the cancellation of debts if the applicant is a creditor and the facts relied on by the applicant were known to the applicant at the time the debtor was discharged.

**377E Effect of reversal of cancellation of debts**

- (1) If the court reverses a cancellation under section 377A of a debtor's debts, the debts that were cancelled under section 377A(1) become again enforceable, and the debtor is liable to pay any penalties and interest that may have accrued during the debtor's participation in the procedure or after the debtor was discharged.
- (2) The reversal of a discharge does not prejudice or affect the rights or remedies that any person other than the debtor would have had if the discharge had not been reversed.

**80 Section 441 amended (Regulations)**

In section 441(1)(r), replace “summary instalment” with “debt repayment”.

**81 Section 448 amended (Purposes of public registers)**

In section 448, replace “summary instalment” with “debt repayment” in each place.

**82 Section 449 amended (General information that must be held in public registers)**

(1) In section 449, replace “summary instalment” with “debt repayment” in each place.

(2) After section 449(1)(a), insert:

(ab) any other name (including any alias or trading name) used by P and known to the Assignee:

(3) After section 449(1)(g), insert:

(ga) if a debt repayment order is made in respect of P, the date of the debt repayment order:

(4) In section 449(1)(n), replace “business postal address” with “electronic address”.

**83 Section 453 amended (Search criteria)**

In section 453, replace “summary instalment” with “debt repayment” in each place.

**84 Section 454 amended (Search purposes)**

In section 454, replace “summary instalment” with “debt repayment” in each place.

**85 Consequential amendments to other enactments**

Amend the enactments specified in **Part 3** of **Schedule 1** as set out in that Part.

**86 Schedule 1AA amended**

In Schedule 1AA, after Part 1, insert the **Part 2** set out in **Schedule 3** of this Act.

**Part 9**

**Amendments to Limited Partnerships Act 2008**

**87 Amendments to Limited Partnerships Act 2008**

This Part amends the Limited Partnerships Act 2008.

**88 Section 8 amended (Requirements for limited partnership)**

(1) Replace section 8(4)(a)(ii) with:

- (ii) lives in an enforcement country and is a director of a body corporate that is incorporated in that enforcement country under a law that is equivalent to the Companies Act 1993:
- (2) Replace section 8(4)(b)(ii) with:
- (ii) live in an enforcement country and are directors of a body corporate that is incorporated in that enforcement country under a law that is equivalent to the Companies Act 1993:
- (3) Replace section 8(4)(c)(ii) with:
- (ii) live in an enforcement country and are directors of a body corporate that is incorporated in that enforcement country under a law that is equivalent to the Companies Act 1993:
- (4) Replace section 8(4)(e)(ii) with:
- (ii) live in an enforcement country and are directors of a body corporate that is incorporated in that enforcement country under a law that is equivalent to the Companies Act 1993.

**89 Section 19A amended (Qualifications of general partners: natural persons)**

After section 19A(2)(d), insert:

- (da) a person who is prohibited from being a director of a company under section 299(1)(b) of the Insolvency Act 2006:
- (db) a person who is prohibited from directly or indirectly being concerned, or taking part, in the management of a company under section 299(1)(c) of the Insolvency Act 2006:

**90 Section 52 amended (Application for registration)**

- (1) Repeal section 52(1)(d)(iii).
- (2) After section 52(2), insert:
- (3) If the requirement under section 8(4) is to be met by virtue of **paragraph (a)(ii), (b)(ii), (c)(ii), or (e)(ii)** of that section, the application must—
- (a) confirm that at least 1 of the natural persons referred to in that paragraph is a director of a body corporate that is incorporated in that enforcement country under a law that is equivalent to the Companies Act 1993; and
- (b) include the prescribed information.

**91 Section 101 amended (Restoration to register of limited partnerships)**

In section 101, delete “(except section 328(3)(a))”.

**92 Consequential amendment to other enactment**

Amend the enactment specified in **Part 4** of **Schedule 1** as set out in that Part.

## Part 10

### Amendments to Personal Property Securities Act 1999

#### 93 Amendments to Personal Property Securities Act 1999

This Part amends the Personal Property Securities Act 1999.

#### 94 Section 139 amended (Personal property securities register)

Replace section 139(1) with:

- (1) The Registrar must keep a register of personal property security interests known as the personal property securities register.

#### 95 Section 140 amended (Contents of register)

Replace section 140(b) with:

- (b) if the debtor is an organisation that is incorporated,—
  - (i) if it is incorporated in New Zealand, the unique number assigned to it on its incorporation; or
  - (ii) if it is registered under Part 18 of the Companies Act 1993 or Part 3 of the Limited Partnerships Act 2008, the unique number assigned to it on its registration under that Act; or
  - (iii) in any other case, the unique number (if any) assigned to it on its incorporation in its place of incorporation:

#### 96 Section 142 amended (Data required to register financing statement)

Replace section 142(1)(c) with:

- (c) if the debtor is an organisation that is incorporated, its unique incorporation or registration number referred to in **section 140(b)**:

#### 97 Section 172 amended (Search criteria)

Replace section 172(b) to (d) with:

- (b) the name and address of the debtor:
- (c) if the debtor is an individual, the name and date of birth of the debtor:
- (d) if the debtor is an organisation that is incorporated, its unique incorporation or registration number referred to in **section 140(b)**:

#### 98 Consequential amendment to other enactment

Amend the enactment specified in **Part 5** of **Schedule 1** as set out in that Part.

## Part 11

### Amendments to Plant Variety Rights Act 1987

#### 99 Amendments to Plant Variety Rights Act 1987

This Part amends the Plant Variety Rights Act 1987.

#### 100 Section 5 amended (Applications)

In section 5(1)(c), after “within New Zealand”, insert “or Australia”.

#### 101 Section 35 amended (Service of notices, etc)

In section 35(1)(b) and (c), after “in New Zealand”, insert “or Australia”.

#### 102 Consequential amendments to other enactments

Amend the enactment specified in **Part 6** of **Schedule 1** as set out in that Part.

## Part 12

### Amendments to Takeovers Act 1993

#### 103 Amendments to Takeovers Act 1993

This Part amends the Takeovers Act 1993.

#### 104 Section 2 amended (Interpretation)

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

**accounting period** has the same meaning as in section 5(1) of the Financial Reporting Act 2013

**subsidiary** has the same meaning as in sections 5 to 8 of the Companies Act 1993

(2) In section 2(1), replace the definition of **code company** with:

**code company**—

(a) has the meaning given to it in section 2A; and

(b) includes, for the purpose set out in **section 2AB**, a company for the time being treated as a code company under that section

#### 105 Section 2A amended (Meaning of code company)

(1) In section 2A(1), replace “a company that—” with “a company—”.

(2) In section 2A(1)(a), replace “is”, with “that is”.

(3) In section 2A(1)(b), replace “was”, with “that was”.

(4) Replace section 2A(1)(c) with:

(c) that—



- (i) has 50 or more shareholders and 50 or more share parcels; and
  - (ii) is at least medium-sized.
- (5) Repeal section 2A(2).
- (6) After section 2A(3), insert:
- (4) In this section, a company is **at least medium-sized** if—
- (a) the company has completed 1 or more accounting periods and either or both of the following are true:
    - (i) on the last day of the company’s most recently completed accounting period, the total assets of the company and its subsidiaries (if any) are at least \$30 million;
    - (ii) in the most recently completed accounting period, the total revenue of the company and its subsidiaries (if any) is at least \$15 million; or
  - (b) the company has not completed its first accounting period and on the last day of the most recently completed month the total assets of the company and its subsidiaries (if any) are at least \$30 million.

**106 New section 2AB inserted (Extended meaning of code company for purpose of completing code-regulated transactions)**

After section 2A, insert:

**2AB Extended meaning of code company for purpose of completing code-regulated transactions**

- (1) This section applies if a company ceases to be a code company within the meaning of section 2A(1) as the result of, or during, a transaction or an event regulated under the takeovers code.
- (2) The company continues to be treated as a code company for the purpose of completing the transaction or event, until the transaction or event is complete and all requirements of the code in relation to the transaction or event have been complied with.
- (3) For the purposes of **subsection (2)**, if, as a result of the transaction or event, a person becomes a dominant owner in the company, **completing the transaction or event** includes applying the compulsory acquisition rules in Part 7 of the code (and the transaction or event is not complete until those rules are applied).
- (4) **Subsection (2)** does not prevent the company from again becoming a code company under section 2A(1).
- (5) In this section,—
  - (a) **dominant owner**, in relation to a company, means a person who becomes the holder or controller, or 2 or more persons acting jointly or in concert who become the holders or controllers, of 90% or more of the

voting rights in the company (whether by reason of acceptances of an offer or otherwise):

- (b) words or expressions used in the definition of dominant owner have the same meanings as they have in the takeovers code:
- (c) a reference to rules in Part 7 of the code includes any other rules that, with or without modification, replace or correspond to those rules.

**107 Schedule 1AA amended**

In Schedule 1AA, after clause 1, insert the **Part 2** set out in **Schedule 4**.

**108 Consequential revocation of Takeovers Code (Small Code Companies) Exemption Notice 2016**

The Takeovers Code (Small Code Companies) Exemption Notice 2016 (LI 2016/298) is revoked.

**109 Consequential amendments to other enactment**

Amend the enactment specified in **Part 7** of **Schedule 1** as set out in that Part.

### Part 13

#### Amendments to Trade Marks Act 2002

**110 Amendments to Trade Marks Act 2002**

This Part amends the Trade Marks Act 2002.

**111 Section 5 amended (Interpretation)**

In section 5(1), definition of **registered trade mark**, after “means”, insert “, subject to **section 60**,”.

**112 New section 13A inserted (Trade mark not registrable if related certification trade mark owned)**

After section 13, insert:

**13A Trade mark not registrable if related certification trade mark owned**

If a person owns a certification trade mark in respect of goods or services, a trade mark in respect of goods or services of the kind certified must not be registered in the name of that person.

**113 Section 14 amended (Additional provisions that relate to registrability of certification trade marks)**

In section 14(b), replace “carries on a trade in” with “owns a trade mark in respect of, or otherwise carries on trade in,”.

**114 Section 53 replaced (Reissuing certificate of registration)**

Replace section 53 with:

**53 Replacement of certificate of registration**

The Commissioner must issue a new certificate of registration to replace an existing certificate if—

- (a) an application for a new certificate of registration has been made in the prescribed manner; and
- (b) the prescribed fee, if any, has been paid.

**115 Sections 59, 60, and 60A replaced**

Replace sections 59, 60, and 60A with:

**59 Procedure for renewal of registration**

- (1) On application by the owner of a registered trade mark, the Commissioner must renew the registration of the trade mark from the date on which the registration expires (the **expiry date**).
- (2) An application for renewal must be made to the Commissioner—
  - (a) not more than 12 months before, and not more than 6 months after, the expiry date; and
  - (b) in the prescribed manner.
- (3) If the owner has not applied for renewal, the Commissioner must send to the owner a notice setting out—
  - (a) the date on which the registration of the trade mark will expire; and
  - (b) the conditions (as to the payment of fees or otherwise) on which the registration will be renewed (the **renewal conditions**); and
  - (c) that,—
    - (i) if the registration is not renewed before the expiry date, the register will be changed to record that the trade mark's registration is subject to renewal; and
    - (ii) if the registration has still not been renewed 6 months after the expiry date, the trade mark will be removed from the register.
- (4) The notice must be sent in the prescribed manner before the expiry date.
- (5) If the registration of a trade mark is not renewed before its expiry date, the Commissioner must record on the register that its registration is subject to renewal (until the registration is renewed or it is removed from the register).
- (6) The Commissioner must remove the trade mark from the register if—
  - (a) notice has been sent under **subsection (3)**; and
  - (b) 6 months have elapsed since the expiry date; and

- (c) the renewal conditions have not been met.

**60 Status of trade mark that is subject to renewal**

- (1) If the registration of a trade mark is subject to renewal, the trade mark—
- (a) is not a registered trade mark for the purposes of subparts 1 to 3 of Part 4; but
  - (b) is a registered trade mark for all other purposes.
- (2) The registration of a trade mark is **subject to renewal** if—
- (a) its expiry date (referred to in **section 59**) has passed; but
  - (b) the trade mark has not yet been removed from the register.

**116 Section 65 amended (Application for revocation of registration of trade mark)**

In section 65(1), after “mark”, insert “on any of the grounds set out in section 66”.

**117 Section 66 amended (Grounds for revoking registration of trade mark)**

- (1) In section 66(1), replace “registration of a trade mark may be revoked on any of the following grounds” with “grounds for revoking the registration of a trade mark are as follows”.
- (2) In section 66(2), replace “despite subsection (1), a trade mark may not be revoked” with “there are not grounds for revoking the registration of a trade mark”.
- (3) Replace section 66(3) with:
- (3) Subsection (1)(a) does not apply if the owner commences or resumes genuine use of the trade mark in the course of trade in New Zealand after the expiry of the 3-year period and before the application for revocation is made.

**118 Section 68 amended (Revocation of registration of trade mark)**

Replace section 68(1) with:

- (1) If the Commissioner or the court is satisfied that grounds for revocation of the registration of the trade mark exist, the Commissioner or court must,—
- (a) if the grounds exist in respect of all of the goods or services in respect of which the trade mark is registered, revoke the registration of the trade mark; or
  - (b) if the grounds exist in respect of only some of the goods or services in respect of which the trade mark is registered, revoke the registration of the trade mark in so far as it relates to those goods or services.

**119 Section 167 replaced (Security for costs)**

Replace section 167 with:

**167 Commissioner or court may require security for costs**

- (1) The Commissioner or the court, as the case may be, may require a party to legal proceedings under this Act to give security for the costs of the proceedings if satisfied that—
  - (a) the party does not reside, and does not carry on business, in New Zealand; or
  - (b) there is reason to believe that the party will be unable to pay the costs of the other party if unsuccessful in the proceedings.
- (2) If the party does not give the security required, the Commissioner or the court may treat the proceedings as abandoned by the party and determine the matter accordingly.

**120 Section 182 amended (Contents of register)**

After section 182(b), insert:

- (ba) if the registration of the trade mark is subject to renewal (as defined in **section 60**), a statement to that effect:

**121 Section 191 repealed (Declarations, etc, on behalf of certain persons)**

Repeal section 191.

**122 Consequential amendments to other enactment**

Amend the enactment specified in **Part 8** of **Schedule 1** as set out in that Part.

**Part 14**

**Amendments to Weights and Measures Act 1987**

**123 Amendments to Weights and Measures Act 1987**

This Part amends the Weights and Measures Act 1987.

**124 Section 28 amended (Powers of Inspectors)**

Replace section 28(1)(h)(i) with:

- (i) any goods sold, or currently kept, displayed, offered, or exposed for sale; or

**125 Section 32 amended (Offences)**

- (1) In section 32(i), replace “uses, sells, or offers or exposes for sale” with “uses, sells, leases, or offers or exposes for sale or lease”.
- (2) In section 32(j), replace “or sells” with “, sells, or leases”.
- (3) Replace section 32(k) with:
  - (k) without lawful excuse—

- (i) increases or diminishes any stamped weight or measure; or
- (ii) uses, sells, leases, or offers or exposes for sale or lease any stamped weight or measure that has been increased or diminished; or

**Schedule 1**  
**Consequential amendments**

ss 25, 38, 85, 92, 98, 102, 109, 122

**Part 1**

**Consequential amendment relating to amendments to Credit  
Contracts and Consumer Finance Act 2003**

**Credit Contracts and Consumer Finance Regulations 2004 (SR 2004/240)**

Revoke regulation 18A.

**Part 2**

**Consequential amendments relating to amendments to Geographical  
Indications (Wine and Spirits) Registration Act 2006**

**Geographical Indications (Wine and Spirits) Registration Regulations 2017 (LI  
2017/146)**

Replace regulation 3(1)(d) with:

- (d) Part 4 contains provisions relating to renewing the registration of a geographical indication:

In the Part 4 heading, delete “**and restoration**”.

Revoke regulation 36 and the cross-heading above regulation 36.

Revoke regulation 37(b).

Replace regulation 38 and the cross-heading above regulation 38 with:

**38 Notice of pending expiry**

- (1) For the purposes of **section 47B(2)(aaa)** of the Act, the prescribed period is 2 months before the registration’s expiry date.
- (2) A notice for the purposes of section 47B(1)(a) of the Act, must be sent to the last known postal or email address of each person or organisation referred to in that paragraph.

In Schedule 2, delete the 2 items relating to regulation 38.

### Part 3

## Consequential amendments relating to amendments to Insolvency Act 2006

#### Protection of Personal and Property Rights Act 1988 (1988 No 4)

In Schedule 1, clause (1)(a)(ii), replace “summary instalment” with “debt repayment” in each place.

#### High Court Rules 2016 (LI 2016/225)

In Rule 24.17(1)(b), replace “summary instalment” with “debt repayment”.

#### Insolvency (Personal Insolvency) Regulations 2007 (SR 2007/333)

In regulation 5, replace “summary instalment” with “debt repayment” in each place.

In the Part 5 heading, replace “**Summary instalment**” with “**Debt repayment**”.

In the heading to regulation 44, replace “**summary instalment**” with “**debt repayment**”.

In regulation 44(1), replace “summary instalment” with “debt repayment”.

In regulation 45(1), replace “summary instalment” with “debt repayment” in each place.

In the heading to regulation 47, replace “**summary instalment**” with “**debt repayment**”.

In regulation 47, replace “summary instalment” with “debt repayment”.

In regulation 48, replace “summary instalment” with “debt repayment” in each place.

In the heading to regulation 49, replace “**summary instalment**” with “**debt repayment**”.

In regulation 49(1), replace “summary instalment” with “debt repayment”.

In the heading to regulation 50, replace “**summary instalment**” with “**debt repayment**”.

In regulation 50(1), replace “summary instalment” with “debt repayment”.

In regulation 56, replace “summary instalment” with “debt repayment”.

In the heading to regulation 57, replace “**summary instalment**” with “**debt repayment**”.

In regulation 57(1), replace “summary instalment” with “debt repayment”.

In regulation 61(1), replace “summary instalment” with “debt repayment”.

In regulation 62(1), replace “summary instalment” with “debt repayment”.

In regulation 63(1), replace “summary instalment” with “debt repayment”.

In regulation 70, replace “summary instalment” with “debt repayment”.

In regulation 72(2), replace “summary instalment” with “debt repayment”.



**Part 4**  
**Consequential amendment relating to amendments to Limited Partnerships Act 2008**

**Limited Partnerships Regulations 2008 (SR 2008/93)**

Replace regulation 4(da) with:

- (da) if **section 52(3)** of the Act applies, in relation to the proposed general partner, or the director, partner, or general partner of the proposed general partner, who is a natural person and who lives in an enforcement country,—
- (i) whether the person is a director of a body corporate that is incorporated in that enforcement country under a law that is equivalent to the Companies Act 1993; and
  - (ii) if so, that body corporate’s—
    - (A) registered name; and
    - (B) registration number or other unique identifier; and
    - (C) registered office or, if there is no registered office required by law, the body corporate’s address for service:

**Part 5**  
**Consequential amendment relating to amendments to Personal Property Securities Act 1999**

**Personal Property Securities Regulations 2001 (SR 2001/79)**

Revoke regulation 15.

**Part 6**  
**Consequential amendment relating to amendments to Plant Variety Rights Act 1987**

**Plant Variety Rights Regulations 1988 amended (SR 1988/101)**

In regulation 9(c), after “New Zealand”, insert “or Australia”.

**Part 7**  
**Consequential amendments relating to amendments to Takeovers Act 1993**

**Takeovers Code Approval Order 2000 (SR 2000/210)**

This Part amends the takeovers code set out in the Schedule of the Takeovers Code Approval Order 2000.

**Takeovers Code Approval Order 2000 (SR 2000/210)**—*continued*

In rule 3(1), replace the definition of **code company** with:

**code company**—

- (a) has the meaning given to it in rule 3A; and
- (b) includes, for the purpose set out in **rule 3AB**, a company for the time being treated as a code company under that rule

In rule 3(1), revoke the definition of **subsidiary**.

In rule 3A(1), replace “a company that—” with “a company—”.

In rule 3A(1)(a), replace “is”, with “that is”.

In rule 3A(1)(b), replace “was”, with “that was”.

Replace rule 3A(1)(c) with:

- (c) that—
  - (i) has 50 or more shareholders and 50 or more share parcels; and
  - (ii) is at least medium-sized.

Revoke rule 3A(2).

After rule 3A(3), insert:

- (3A) In this rule, a company is **at least medium-sized** if—
- (a) the company has completed 1 or more accounting periods and either or both of the following is true:
    - (i) on the last day of the company’s most recently completed accounting period, the total assets of the company and its subsidiaries (if any) are at least \$30 million;
    - (ii) in the most recently completed accounting period, the total revenue of the company and its subsidiaries (if any) is at least \$15 million; or
  - (b) the company has not completed its first accounting period and on the last day of the most recently completed month the total assets of the company and its subsidiaries (if any) are at least \$30 million.

After rule 3A, insert:

**3AB Extended meaning of code company for purpose of completing code-regulated transactions**

- (1) This rule applies if a company ceases to be a code company within the meaning of rule 3A(1) as the result of, or during, a transaction or an event regulated under this code.
- (2) The company continues to be treated as a code company for the purpose of completing the transaction or event, until the transaction or event is complete

**Takeovers Code Approval Order 2000 (SR 2000/210)**—*continued*

- and all requirements of the code in relation to the transaction or event have been complied with.
- (3) For the purposes of **subclause (2)**, if, as a result of the transaction or event, a person becomes a dominant owner in the company, **completing the transaction or event** includes applying the compulsory acquisition rules in Part 7 (and the transaction or event is not complete until those rules are applied).
  - (4) **Subclause (2)** does not prevent the company from again becoming a code company under rule 3A(1).
  - (5) In this rule, **dominant owner**, in relation to a company, means a person who becomes the holder or controller, or 2 or more persons acting jointly or in concert who become the holders or controllers, of 90% or more of the voting rights in the company (whether by reason of acceptances of an offer or otherwise).

**Part 8**

**Consequential amendments relating to amendments to Trade Marks Act 2002**

**Trade Marks Regulations 2003 (SR 2003/187)**

In regulation 132(1) and (3), replace “section 59(2)” with “**section 59(3)**”.

Revoke regulation 132(3)(a).

In regulation 132(3)(b), replace “it” with “the registration”.

Revoke regulation 133(1)(b).

Revoke regulation 134 and the cross-heading above regulation 134.

**Schedule 2**  
**Amendments to Schedule 1AA of Credit Contracts and Consumer  
Finance Act 2003**

s 24(3)

*Regulatory Systems (Economic Development) Amendment Act 2018*

**4 Creditor may, by notice to debtors, apply Part 3A to existing agreements**

- (1) Part 3A applies to the existing agreements described in this clause.
- (2) The existing agreements are those agreements—
  - (a) to which Part 3A would apply if the agreements had been entered into on or after the date on which Part 3A came into force; and
  - (b) in respect of which neither a creditor or a debtor has taken any action (such as issuing a pre-possession notice) under the principal Act or the Credit (Repossession) Act 1997, as in force immediately before the commencement of Part 3A; and
  - (c) in respect of which any creditor under the agreement has given notice to every debtor under the agreement—
    - (i) stating that Part 3A will apply to the agreement; and
    - (ii) specifying the date on which Part 3A begins to apply to the agreement (which must be at least 5 working days after the last notice is given); and
    - (iii) summarising the rights and obligations of the creditors and the debtors under Part 3A.
- (3) Part 3A applies to an existing agreement on and from the date referred to in **subclause (2)(c)(ii)**.
- (4) On and from the date on which Part 3A begins to apply to an existing agreement, the Credit (Repossession) Act 1997 (as in force immediately before the commencement of Part 3A) ceases to apply for the purposes of the agreement.
- (5) Section 83ZQ applies to the giving and receiving of a notice under **subclause (2)**.

**Schedule 3**  
**New Part 2 inserted into Schedule 1AA of Insolvency Act 2006**

s 86

**Part 2**  
**Provisions relating to relating to Regulatory Systems (Economic Development) Amendment Act 2018**

**8 Interpretation**

(1) In this **Part**,—

**Amendment Act** means the Regulatory Systems (Economic Development) Amendment Act **2018**

**commencement date** means the date on which **Part 8** of the Amendment Act comes into force

**summary instalment order** means a summary instalment order (as defined in former section 340) that was made under former section 343.

(2) In this **Part**,—

(a) a reference to a section (for example, section 158) is a reference to that section as in force on and from the commencement date; and

(b) a reference to a former section (for example, former section 158) is a reference to that section as in force immediately before the commencement date.

**9 Application of section 67(2) to statement of affairs filed before commencement date**

Section 67(2) does not apply in relation to a statement of affairs filed with the Assignee before the commencement date.

**10 Application of section 149**

Section 149 applies to undischarged bankrupts, whether they were adjudicated bankrupt before, on, or after the commencement date.

**11 Former sections 158 and 159 apply if adjudicated bankrupt before commencement**

If a person is adjudicated bankrupt before the commencement date,—

(a) section 158 does not apply to the person; and

(b) former sections 158 and 159 continue to apply to the person.

**Notes**

**I think it would be simplest if the existing sections 158 and 159 continued to apply to persons adjudicated bankrupt before com-**

mencement. An alternative would be to include a provision along the lines of the provision below, which would only save s 159 for a bankrupt who has already engaged with the provision before the commencement date. However, the drawback of this is that you would have a group of people to whom the old s 158 applies (because they were adjudicated before the commencement date), but who can't use the old s 159 (because they did not engage with it before the commencement date). This means you effectively have 3 regimes going for a time:

- old sections 158 + 159 (for those who were adjudicated before commencement and also used s 159 before commencement)
- old section 158 only (for those who were adjudicated before commencement but did not engage with s 159).
- new section 158 only (for those adjudicated after commencement).

This is the alternative provision:

**7 Application of former section 159**

Former section 159 continues to apply to a bankrupt who, before the commencement date,—

- (a) obtained the consent of creditors to retain assets worth more than the maximum value (as defined, before the commencement date, in section 158(2)); or
- (b) sought that consent, but, at the time of commencement, had neither obtained the consent nor had it declined.

My view is that we should include one of these options even if it is unlikely to have any application in practice. In theory, a bankrupt could seek such a resolution before this Act comes into force and we need to clarify what the law is if this happens. If it never happens, this clause does no harm.

**12 First Order in Council under section 158(4) after commencement date**

The first Order in Council made under section 158(4) after the commencement date may take into account any rise in the all groups index number of the New Zealand Consumers Price Index that occurred on or after 1 April 2016.

**Note**

I've suggested 1 April 2016 as it is the start of the first quarter after the last adjustment was made (24 March 2016). However, it's probably unlikely that the 24 March Order took account of the 1st quarter of 2016. If your records show that the 24 March Order only took

**account of rises in the CPI up to the end of 2015, the date above could be moved back to 1 January 2016.**

**13 Application of section 165(1)(b)**

Section 165(1)(b) applies whether the bankrupt to whom the requirement relates was adjudicated bankrupt before, on, or after the commencement date.

**14 Application of section 193 if gift or contribution made before commencement**

(1) For the purposes of section 205,—

- (a) section 193 does not apply in relation to a gift made by a bankrupt before the commencement date; and
- (b) former section 193 continues to apply in relation to the gift.

(2) For the purposes of section 213,—

- (a) section 193 does not apply in relation to a contribution made by a bankrupt before the commencement date; and
- (b) former section 193 continues to apply in relation to the contribution.

**15 Application of sections 233 to 233B if bankrupt adjudicated before commencement**

If a person is adjudicated bankrupt before the commencement date,—

- (a) sections 233, **233A**, and **233B** do not apply in relation to the person's bankruptcy; and
- (b) former section 233 continues to apply in relation to the person's bankruptcy.

**Application of section 290A(1) to bankrupt who died less than 3 years before commencement**

Section 290A(1) applies to a bankrupt who dies after the date that is 3 years before the commencement date.

*Summary instalment orders*

**16 Debt repayment order includes summary instalment order**

On and from the commencement date, a reference in this Act, any other enactment, or any instrument or document to a debt repayment order includes a summary instalment order unless—

- (a) this Part provides otherwise; or
- (b) the context otherwise requires.

**17 Outstanding applications for summary instalment orders**

- (1) An application made under former section 342 for a summary instalment order must, on and from the commencement date, be treated as an application for a debt repayment order.
- (2) **Subclause (1)** applies unless the Assignee has, before the commencement date, made a summary instalment order (or, as the case may be, declined to make the order) in response to the application.

**18 Former section 350A continues to apply to summary instalment orders**

Section 350A does not apply, and former section 350A continues to apply, to summary instalment orders.

**19 Former section 352 continues to apply to summary instalment orders**

Section 352 does not apply, and former section 352 continues to apply, to a debtor in respect of whom a summary instalment order was made before the commencement date.

**20 Section 358B(2) and (3) applies if debtor discharged on or after commencement**

**Section 358B(2) and (3)** applies in relation to the discharge of a debtor from a debt repayment order only if the discharge occurs on or after the commencement date.

*No asset procedure*

**21 Former section 363 continues to apply if application made before commencement date**

Section 363 does not apply, and former section 363 continues to apply, in relation to a debtor who applied for entry to the no asset procedure before the commencement date.

**22 Court may not reverse cancellation of debts if discharge occurred before commencement date**

The court may not exercise its powers under **sections 377C to 377E** in relation to the debts of a person who was discharged from the no asset procedure before the commencement date.

**23 Application of section 449**

- (1) Section 449(1)(ab) applies in relation to a person (**P**) who is or has been bankrupt (whether P was adjudicated bankrupt before, on, or after the commencement date and whether the bankruptcy was first entered on the public register before, on, or after the commencement date).
- (2) Section 449(1)(ga) applies in relation to a person who is subject to a current debt repayment order (whether the order was made before, on, or after the



commencement date and whether the order was first entered on the public register before, on, or after the commencement date).

**Query**

**Do you also want the amendment to section 449(1)(n) to apply in relation to existing entries?**

**Schedule 4**  
**New Part 2 inserted into Schedule 1AA of Takeovers Act 1993**

s 107

**Part 2**  
**Provisions relating to Regulatory Systems (Economic Development)**  
**Amendment Act 2018**

**2 Existing transactions unaffected**

- (1) This Act, the takeovers code, and (if relevant) the exemption notice, as in force immediately before commencement of **Part 12** of the Regulatory Systems (Economic Development) Amendment Act **2018**, continue to apply to every transaction and event regulated under the code (or that would be regulated under the code but for the exemption notice) that has started but is not completed before commencement (an **existing transaction**), until the existing transaction is complete and all requirements of the code and the exemption notice (as relevant) have been complied with.
- (2) In particular, a company who, because it is not at least medium-sized, ceases to be a code company on commencement, continues to be treated as a code company for the purpose of completing existing transactions (if any).
- (3) For the purposes of this clause, if, as a result of an existing transaction, a person becomes a dominant owner in the company, **completing existing transactions** includes applying the compulsory acquisition rules in Part 7 of the code (and the existing transaction is not complete until those rules are applied).
- (4) **Subclause (2)**—
  - (a) does not limit **subclause (1)**; and
  - (b) does not prevent the company from again becoming a code company.
- (5) In this clause,—

**commencement** means commencement of **Part 12** of the Regulatory Systems (Economic Development) Amendment Act **2018**

**dominant owner** in relation to a company, means a person who becomes the holder or controller, or 2 or more persons acting jointly or in concert who become the holders or controllers, of 90% or more of the voting rights in the company (whether by reason of acceptances of an offer or otherwise); and words or expressions used in the definition of dominant owner have the same meanings as they have in the takeovers code

**exemption notice** means the Takeovers Code (Small Code Companies) Exemption Notice 2016.

**Query**

**Transitional inserted 15.3.18 — MBIE to confirm.**