



Welcome to the autumn 2004 issue of *Financial Services Quarterly*, a review of current legal issues in the financial sector.

Each quarter, we summarise recent issues and preview upcoming developments under the following headings:

In the courts
In the journals
Legislation/In Parliament
Recent developments
Bell Gully news
Useful Web links

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Disclaimer: this publication is necessarily brief and general in nature. You should seek professional advice before taking any action in relation to the matters dealt with in this publication.



In the courts

Possession is nine-tenths of the law: court finds that possession can override ownership

In the first decision under the Personal Property Securities Act, the High Court has found that a lessor of goods can lose ownership of those goods if a third party holding a registered security interest over the lessee's property enforces that security interest.

A summary of the timing and information requirements for registering security interests of lessors at the PPSR is set out at the end of this case summary.

What constitutes an "offer to the public" for the purposes of the Securities Act? The court has rejected an argument that an offer of a debt security was not an offer to the public because the investors were all participants in a joint venture.

A mortgagee does not have to wait for an opportune time to sell mortgaged property to achieve a better price

The English Court of Appeal has found that a mortgagee is entitled to sell mortgaged property when it likes and is not constrained by the fact that exercise or non-exercise of its power could cause loss or damage to the mortgagor.

A contract is not "oppressive" merely because the obligor is naïve

The High Court has decided that a lender is not acting oppressively simply because it takes a guarantee from an obligor with little understanding of the corporate affairs associated with the borrower it is guaranteeing.

Security over Maori land - is it enforceable?

The High Court has considered the power of a Maori corporation to grant security over its land to secure a loan entered into for a specific investment purpose.

What is the "ordinary course of business" for the purposes of determining whether transactions are voidable?

The High Court has considered the application of section 294(2) of the Companies Act to payments made by a company shortly prior to its liquidation.

Are transactions with a debtor of a company subject to the same voidable preference rules as transactions with a creditor of a company?

The Court of Appeal has determined that section 292 of the Companies Act does not apply to a transaction where a debtor of an insolvent company paid off its debt.



In the courts

Possession is nine-tenths of the law: court finds that possession can override ownership

*In the first decision under the Personal Property Securities Act 1999 (the **PPSA**), the High Court has found that a lessor of goods can lose ownership of those goods if a third party holding a registered security interest over the lessee's property enforces that security interest.*

The decision will surprise many leasing companies, who might have assumed they could not lose ownership of goods simply by leasing them. This case makes it clear that this can occur even where there are provisions in the lease preventing the lessee from charging the goods or using the goods as collateral.

Before the advent of the PPSA, only the true owner of goods could pass title to them, except in limited circumstances.

In this case¹, NDG Pine Limited (**NDG**) leased five portable buildings from Portacom New Zealand Limited (**Portacom**).

No lease period was specified - under the PPSA, a lease that lasts longer than a year or is for an indefinite term is deemed to be a "security interest" and can be registered on the PPSR.

In addition, the lease terms and conditions acknowledged that the interest was registerable - but Portacom failed to register its interest.

Problems arose when NDG defaulted on its obligations to The Hongkong and Shanghai Banking Corporation Limited (**HSBC**). HSBC had lent significant funds to NDG and held a debenture over all of NDG's assets. The default led to the appointment of a receiver of NDG's assets.

A dispute then arose over who had priority to the portable buildings: was it HSBC or did Portacom retain ownership of the buildings?

The court considered the provisions of the PPSA and cases decided under the equivalent Canadian legislation and found that a lessee of goods may grant a security interest in goods - even though it does not own them. The dispute as to who had priority in the buildings was therefore determined under the PPSA's priority rules. Crucially, as HSBC had registered its interest on the PPSR and Portacom had not, HSBC had priority and its receivers had the right to sell the buildings and for HSBC to retain the proceeds.

Portacom's lawyers also argued that the terms used in the debenture granted in favour of the bank were not wide enough to cover the interest created by the PPSA, as the debenture was in a form used prior to the implementation of the PPSA and did not use the definition of "all present and after acquired property" referred to in the PPSA.

However, the court decided that, although the exact style in the PPSA had not been used, it was clear that the charging clause was wide enough to cover the leased goods. This is good news for banks and others who have been granted debentures prior to the passing of the PPSA and have not had them updated to reflect the PPSA's provisions.

However, the decision only relates to the specific wording of the debenture in this case. It is quite possible that the wording in another charging clause may not be wide enough to obtain an interest in leased goods not owned by the debtor.

The moral of this story is that the decision would have been entirely different if Portacom had simply registered its interest under the leases when the buildings were leased. This is a very straightforward task and requires payment of a \$5 fee. Leasing companies should review their leases and any other arrangements where third parties take possession of goods that the leasing companies own to ensure that they have protected their interests.

Owners should register their interest on the PPSR as soon as possible in order to maximise the chances they will retain priority and ownership, and to prevent a lessee or person with possession granting a prior ranking security interest to a third party.

Murray Tingey, a senior associate with Bell Gully, represented Ferrier Hodgson, the receivers of NDG, in the case described in this summary.

A summary of the timing and information requirements for registering security interests of lessors at the PPSR follows.

PPSA REGISTRATION - A BRIEF GUIDE TO THE RULES

Timing of registration

The general priority rule under the PPSA is "first to register wins".

However, the interest of a lessor of goods under a lease for a term of more than one year (which includes leases for an indefinite term) falls within the definition of "purchase money security interest", which has a better priority than prior registered general security interests, if the interest is registered within the following time frames:

Nature of collateral	Timing for registration
<p>Inventory</p> <p>Goods that are:</p> <ul style="list-style-type: none"> • Held by a person for sale or lease, or that have been leased by that person as lessor; or • To be provided or have been provided under a contract for services; or • Raw materials or work in progress; or • Materials used or consumed in a business 	<p>Prior to, or at the time, the debtor takes possession of the collateral</p>
<p>Collateral other than inventory or intangibles</p>	<p>Not later than 10 working days after the day on which the debtor obtained possession of the collateral</p>
<p>Intangibles</p>	<p>Not later than 10 working days after the day on which the security interest in the intangible attached</p>

Accordingly, if a lessor ensures that registration has properly been completed before the goods are supplied to the lessee, it should have a purchase money security interest that will defeat the interest in the leased goods of a prior registered secured party.

Continued over/..

Information required to register

In order to register a security interest in your favour on the PPSR you will need to have:

- registered as a secured party group; and
- collected the following information² about your debtor:
 - *Full name(s) (by reference to the Companies Office, for companies, or to a passport, driver's licence or similar, for individuals)
 - *Date of birth (for individuals)
 - E-mail address
 - Fax
 - Contact telephone
 - Contact address
 - *Full name of person acting on behalf of debtor
 - *Contact address of person acting on behalf of debtor

Please feel free to contact Rachel Gowing at rachel.gowing@bellgully.com if you would like more information on how to register.

Alternatively, visit the Ministry of Economic Development's website at www.med.govt.nz for training materials on using the PPSR.

¹ *Graham and Gibson and Ors v Portacom New Zealand Limited* (High Court, Auckland, CIV 2003-404-5577, 17 March 2004, Rodney Hansen J)

² Only those details marked with an asterisk are mandatory - the other information is optional.



In the courts

What constitutes an "offer to the public" for the purposes of the Securities Act?

The court has rejected an argument that an offer of a debt security was not an offer to the public because the investors were all participants in a joint venture.

In this case¹, a company received over \$1 million from 25 investors. The funds were deposited into a United States bank account and subsequently disappeared.

When the company was placed into liquidation, the liquidators brought proceedings on behalf of six of the investors to try to recover their investment from the directors, arguing that the company offered securities to members of the public in breach of the Securities Act 1978.

The defendant counter-argued that:

- the investment was not an offer of securities because the investors were participants in a joint venture with the company; and
- if the offer was of securities, it was not made to members of the public.

Rejecting these arguments and finding a breach by the defendant of the Securities Act, the court noted that:

- there was no joint venture - the risk taken by the investors was not shared by the company;
- there was a debtor/creditor relationship between the company and the investors - the investment was a debt security;
- the investors were all asked to participate in the venture and this constituted an offer; and
- despite the fact that the investors heard about the venture by word of mouth, approached the directors of the company themselves and were told that the investment was not open to the public generally, the offer was made to the public because the investors did not fall within the exceptions in the Securities Act.

Summary judgment was granted against the defendant.

¹ *Parsons & Kenaly v Archer* (High Court, Tauranga, CIV 2003-470-395, 26 February 2004, Master Lang)



In the courts

A mortgagee does not have to wait for an opportune time to sell mortgaged property to achieve a better price

The English Court of Appeal has found that a mortgagee is entitled to sell mortgaged property when it likes and is not constrained by the fact that exercise or non-exercise of its power could cause loss or damage to the mortgagor.

In this case¹, the bank advanced the borrower a loan to purchase three vessels and took mortgages over them as security.

When the borrower defaulted under the loan, the bank arrested one of the vessels in Panama. The vessel was loaded with bananas that were bound for Germany. In order to sell the vessel, the bananas had to be disposed of, the cost of which (US\$200,000) was deducted from the proceeds of sale.

When the bank demanded payment from the guarantor of the amount outstanding, the guarantor argued that the bank had been negligent in arresting the vessel in Panama instead of allowing it to travel to Germany, where the proceeds of sale would not have been diminished by the cost of disposing of the bananas.

The court decided that:

- A mortgagee has an unfettered discretion to sell when it likes to achieve repayment of the debt it is owed, and its decision is not constrained by the fact that the exercise or non-exercise of the power could cause loss or damage to the mortgagor;
- A mortgagee is entitled to sell property "as is" and is under no obligation to improve it or increase its value;
- When a mortgagee does exercise its power of sale, it comes under a duty to take reasonable precautions to obtain fair value for the mortgaged property at the date of sale;
- The remedy for breach of that duty is not damages, but an order that the mortgagee account to the mortgagor, not just for what it actually received, but for what it should have received;
- In this case, the bank was entitled to take the view that releasing the vessel from arrest and permitting it to travel to Germany with its cargo on board was a serious risk to the bank;
- The bank owed no duty of care in deciding whether to arrest the vessel or in deciding whether to release the vessel from arrest; and

- The mortgage and loan documentation between the mortgagor and the bank contained a number of rights of the bank, in particular to take possession of the vessel and institute legal proceedings if there was an event of default. The loan agreement also provided that the bank was entitled to exercise its rights and powers notwithstanding any rule of law or equity to the contrary and it was therefore impossible to argue that arresting the vessel breached a contract or duty on the part of the bank when an event of default had occurred.

¹ *Den Norske Bank ASA v Acemex Management Company Limited* [2003] EWCA CIV 1559



In the courts

A contract is not "oppressive" merely because the obligor is naïve

The High Court has decided that a lender is not acting oppressively simply because it takes a guarantee from an obligor with little understanding of the corporate affairs associated with the borrower it is guaranteeing.

In this case¹, the borrower went into voluntary liquidation and the lender demanded repayment of its facility from both the borrower and the guarantors.

Following non-payment by both the borrower and the guarantors, the lender sought summary judgment.

The guarantors opposed the application, arguing (among other things) that:

- the liquidation did not constitute a default under the facility;
- the lender acted oppressively by not issuing proceedings while it was still able to recover from the borrower; and
- the guarantees were unconscionable/oppressive under the Credit Contracts Act 1981 because the guarantors did not understand the extent of their liability.

The court rejected all of the guarantors' claims, noting:

- the liquidation was an event of default under the facility;
- there was no obligation on the lender to recover from the borrower before claiming against the guarantors; and
- the guarantees were not unconscionable - the guarantors' naivety and the complexity of the documents did not render the guarantees oppressive. Referring to the decision in *Etridge*², the court noted that people in business should be regarded as capable of looking after themselves and understanding the risks in giving guarantees.

¹ *S H Lock (NZ) Limited v Hyndman, Baker, Botica and Ratcliffe* (High Court, Auckland CIV-3145-03, 20 February 2004, Master Sargisson)

² *Royal Bank of Scotland v Etridge* [2001] 2 All ER (Comm) 1061



In the courts

Security over Maori land - is it enforceable?

The High Court has considered the power of a Maori corporation to grant security over its land (being Maori land) to secure a loan entered into for a specific investment purpose.

In this case¹, Matauri X Incorporation borrowed \$3.2 million from Bridgecorp secured by a mortgage over its land at Matauri Bay to invest in a failed water bottling plant.

Matauri X claimed that the loan was not valid because the incorporation did not have the power to make the investment and did not follow its own authorising procedures when approving the loan and the mortgage.

Under section 253 of the Te Ture Whenua Maori Act 1993, full capacity was conferred on a Maori corporation, subject to statutory and any other limitations or restrictions contained in the order of incorporation that expressly limited the corporation's powers.

The court decided that the order of incorporation of Matauri X did not contain any such restrictions and concluded that the corporation did have the power to borrow money for the investment secured over the land and the corporation could not escape the consequences.

The court also found that there was no evidence that Bridgecorp was aware that the Management Committee of the corporation had not authorised the chairman and secretary to execute the necessary documents on its behalf. The corporation was therefore bound by the "indoor management" rule - persons dealing with it were entitled to rely on the normal assumptions that a corporate body would carry out its necessary internal procedures. To hold otherwise would impose a severe handicap on those dealing with Maori corporations.

In reaching its decision, the court also looked at two apparently contradictory objects of the Te Ture Whenua Maori Act 1993:

- to halt the dispossession, alienation and fragmentation of Maori land; and
- to place the destiny of Maori land in the collective hands of its owners and their duly appointed representatives.

The court stated that the retention of Maori land was not to be seen as an absolute - Parliament in this Act recognises Maori as adults capable of determining for themselves how to deal with their land.

A declaration was made that the mortgage was valid and enforceable.

¹ *Bridgecorp Finance Limited v Proprietors of Matauri X Incorporation* (High Court, Auckland CIV-2003-404-3259, 17 December 2003, Fisher J)



In the courts

What is the "ordinary course of business" for the purposes of determining whether transactions are voidable?

In this case¹, the High Court considered the application of section 294(2) of the Companies Act 1993 to payments made by a company shortly prior to its liquidation.

The payments at issue were:

- for rent, tyres and parts, to a company with common directors and shareholders; and
- in part repayment of a loan, to friends of a director of the companies.

The case was brought by the creditors who had been paid, who sought to prove that the payments were in the ordinary course of the company's business and therefore should not be set aside.

The court decided that:

- the payments for rent, tyres and parts should be set aside because the creditor who received the payments was treated in a unique way compared to other creditors, the effect of which was a deliberate preference resulting from the special relationship; and
- the loan repayment was part of normal banking arrangements for businesses of this type, and should not be set aside.

¹ *Managh v Alpha Buses Limited (Re McKendry Holdings)* (High Court, Palmerston North CIV 2003-454-000561, 22 December 2003, M Gendall)



In the courts

Are transactions with a debtor of a company subject to the same voidable preference rules as transactions with a creditor of a company?

The Court of Appeal has overturned a decision of the High Court in determining that section 292 of the Companies Act 1993 does not apply to a transaction where a debtor of an insolvent company paid off its debt.

In this case¹, a company became insolvent after its squash crop failed. The company subsequently sold some equipment to a related company on a deferred payment basis. This increased the debt owed by that related company to the insolvent company.

When the local council successfully sued the insolvent company, it was put into liquidation and the liquidator sent a notice to the related company setting aside the sale of the equipment as a voidable preference.

The related company sought an order of the High Court that the transaction not be set aside. The order requested was refused on the basis that the related company received more in satisfaction of a debt than it would otherwise receive in a liquidation.

The related company appealed to the Court of Appeal, arguing that it was not a creditor, but a debtor of the insolvent company, and so the transaction was not subject to section 292.

The appeal was allowed because the related company had not received more in satisfaction of a debt than it would otherwise have done in a liquidation as it was a debtor, not a creditor, of the insolvent company.

¹ *Preston Farms Limited v Managh* [2004] 1 NZLR 629



In the journals

Obligations of issuers of securities

The Securities Commission considers offers that do not, for the purposes of the Securities Act, constitute "offers to the public".

Garcia extended - inch by inch

This article considers whether other relationships should be treated the same as husband-wife relationships in the context of guarantees.

Reflections on some practical issues which have arisen under New Zealand's Personal Property Securities Act and some lessons for Australia

A focus on some issues in the Personal Property Securities Act that have given rise to practical difficulties.

New restrictions on buy-back schemes

The Credit Contracts and Consumer Finance Act gives increased protection to home owners who enter into buy-back schemes.



In the journals

Obligations of issuers of securities

The Bulletin, January 2004

In this article, the Securities Commission considers offers that do not, for the purposes of the Securities Act 1978, constitute "offers to the public". In particular, it notes that:

- in the Commission's experience, situations that do not constitute offers of securities to the public are interpreted too broadly - in particular:
 - the exception for "habitual investors" only applies to persons who invest money in the course of their business. A person who simply invests regularly will not qualify by that fact alone; and
 - in relation to the exception for relatives or close business associates of the issuer, "close business associate" means the person receiving the offer should be on intimate business terms with the person making the offer; and
- in general, the evidential burden rests on issuers to show that one of the exceptions to the Securities Act applies.



In the journals

Garcia extended - inch by inch

Janine Pascoe, *Australian Banking and Finance Law Bulletin*, February 2004

This, the first of a two-part article, considers whether other relationships should be treated the same as husband-wife relationships in the context of guarantees.

The *Garcia*¹ decision is authority in Australia for the fact that the courts will intervene where a wife guarantees her husband's debt without fully understanding the guarantee agreement.

The question is: does this willingness to intervene extend to other types of relationships?

De facto relationships

The majority in *Garcia* considered the possibility of application of the principle to "long term publicly declared relationships short of marriage between members of the same or opposite sex".

The author of this article suggests that de facto relationships are the most logical and justified extension of the rule in *Garcia*.

Ex-wives

It has been decided² that, although in an unusual case, an ex-wife was financially dependent on her former husband and retained trust and confidence in him so far as financial matters were concerned and so she was able to escape liability under a guarantee given by her in respect of her husband's debts.

Siblings

It is noted that this category of relationship has not been accepted by the courts as available for the same type of relief as the husband-wife relationship.

Parent and (adult) child

The author of this article believes there is a strong case for arguing that guarantees given by a parent in respect of his or her adult child's debts should be granted the same relief as for a husband-wife relationship. However, we note that in both New Zealand³ and in Australia⁴ there have been recent cases in which the parent guarantor was not granted such relief.

The message is clear: ensure that in every case where the relationship between the borrower and a guarantor is not a strictly commercial relationship that the guarantor is independently advised and fully understands the nature of his or her obligations.

¹ *Garcia v National Australia Bank Limited* [1998] 194 CLR 395

² *Westpac Banking Corporation v Paterson* [2001] FCA 1630

³ *Lee v Damesh Holdings Limited* [2003] 2 NZLR 422

⁴ *Watt v State Bank of NSW* [2003] ACTCA 7 (13 March 2003)



In the journals

Reflections on some practical issues which have arisen under New Zealand's Personal Property Securities Act and some lessons for Australia

Michael Gedye, *Journal of Banking and Financial Law and Practice*, Volume 15, 2004

This article, first presented as a conference paper at the 20th Annual Banking and Financial Services Law and Practice Conference in Queenstown in August 2003, focuses on issues in the Personal Property Securities Act that have given rise to practical difficulties.

In particular, the article comments on issues encountered with:

- the collateral description requirements;
- errors that invalidate financing statements;
- the enforcement regime;
- the meaning of "ordinary course of business"; and
- the preferential creditor regime.



In the journals

New restrictions on buy-back schemes

New Zealand Business Law Guide, Report Summary No 150, 11 December 2003

The provisions of the Credit Contracts and Consumer Finance Act 2003 dealing with buy-back schemes came into force in October last year and give increased protection to home owners who enter into buy-back arrangements.

Buy-back transactions occur when a person transfers ownership of his or her land to a lender with the right to repurchase it once the loan has been repaid.

The new legislation requires special disclosure by the lender and independent advice for the borrower. In the absence of such disclosure and advice, the lender can't sell the land without court approval.

There are also restrictions on the amount of fees and other charges that a lender can impose on a borrower.



Legislation/In Parliament

Business Law Reform Bill passed

The Business Law Reform Bill was passed on 6 April, earlier than expected. This is important legislation that amends a number of New Zealand's core commercial statutes (including the Companies Act, the Securities Act and the PPSA).

Review of the Financial Reporting Act

The Ministry of Economic Development has released a discussion document entitled "*Who should be subject to financial reporting requirements?*"

Significant reform of New Zealand's insolvency laws proposed

Earlier this month, the Ministry of Economic Development released a draft Insolvency Law Reform Bill and a discussion document relating to it. These two documents are the result of a general review of insolvency law that began in 1999.

Review of financial information in offer documents

The Securities Commission has released a draft practice note about the application of accounting standards in relation to investment statements and prospectuses.

UPDATE: Consumer credit law reform - what do you need to know?

As mentioned in previous issues of *Financial Services Quarterly*, the Credit Contracts and Consumer Finance Act 2003 was enacted on 13 October 2003.

UPDATE: Reform of securities trading legislation

Targeted consultation on the Securities Law Reform Bill was expected to commence after the Easter break.



Legislation/In Parliament

Business Law Reform Bill passed

The Business Law Reform Bill was passed on 6 April, earlier than expected.

Commerce Minister Hon Margaret Wilson welcomed the passing of the Bill, which amended 13 business law statutes.

"The passing of the Bill is part of the government's commitment to ensuring New Zealand has up-to-date and modern business law to support growth and innovation, by providing certainty to business and keeping compliance costs as low as possible. Taken together, the amendments have a significant and positive impact on the body of law under which businesses must operate in a rapidly changing global environment," Margaret Wilson said.

Margaret Wilson stated that the Bill was the result of close and on-going consultation with the business community and addresses what the business community has indicated were some of its concerns with business related legislation.

A summary of some of the major changes introduced by the Business Law Reform Bill is outlined below:

Companies Amendment Act (No 2) 2004

There are two important changes introduced by this Amendment Act.

Financial assistance provisions

The Amendment Act amends the application of the solvency test in the financial assistance provisions of the Companies Act 1993. This effectively brings the "entitled persons" procedure for approving financial assistance into line with the section 76 procedure.

Definition of "major transaction"

There is an amendment to the definition of "major transaction" to expressly include contingent liabilities, and guidelines are provided for determining the value of such contingent liabilities. Directors must have regard to all the circumstances that they know, or ought to know, will affect the value of a contingent liability, and may take into account the likelihood of the contingency occurring. This is an improvement on the existing section that, arguably, required contingent liabilities to be valued at their face value.

Distress and Replevin Amendment Act 2004

This Amendment Act clarifies that a landlord can distrain for rent against chattels that are subject to a security interest (as defined in the Personal Property Securities Act 1999). These chattels are deemed to be the property of the tenant

or person in possession of the land for the purposes of the Distress and Replevin Act 1908. There are two exceptions to this rule:

- Motor vehicles; and
- Chattels that are the property of a tenant (or person in possession of the land), if the tenant is a company or a society incorporated under the Incorporated Societies Act 1908.

Financial Reporting Amendment Act 2004

This amends the Financial Reporting Act 1993 to ensure that statements prepared by a reporting issuer or company that contain prospective, summary or interim financial information comply with applicable financial reporting standards. This is in addition to any financial statements that are prepared at balance date or at the end of the financial year.

Personal Property Securities Amendment Act 2004

Priority in respect of accounts receivable

This amendment clarifies the uncertainty around the ability of factoring companies to obtain priority over accounts receivable in some situations. The new section makes it clear that a factoring company can obtain priority over discounted accounts receivables provided it registers a financing statement within the appropriate time frames.

Rights of assignee of an account receivable

A further change is the clarification of the rights of an assignee of an account receivable or chattel paper. In practice, this is an extremely important issue as it will determine who prevails between a bank exercising rights of set-off in relation to a deposit and a bank with a first ranking security interest in the deposit. We will provide a more detailed review of this section in the Winter 2004 issue of *Financial Services Quarterly*.

Securities Amendment Act 2004

There are several important changes to the Securities Act 1978 introduced by this Amendment Act:

Pre-offer advertisements

Issuers may now place advertisements seeking expressions of interest in offers of securities without having to comply with the provisions of the Securities Act. There are a number of conditions placed on such advertisements, which are aimed at ensuring that members of the public understand that the advertisement does not amount to an offer.

Wealthy or experienced investor exemption

The Amendment Act provides a disclosure exemption from the requirement to prepare an investment statement and prospectus in respect of offers made solely to investors who are wealthy or experienced. An investor is defined as "wealthy" if an independent chartered accountant certifies that the investor has either:

- net assets of at least \$2,000,000; or
- had an annual gross income of at least \$200,000 for each of the last two financial years.

A person is an experienced investor if an independent financial service provider determines that the person is able to assess:

- the merits of the offer;
- the value of the security;
- the risks involved in accepting the offer;
- that person's own information needs; and
- the adequacy of the information given by the person making the offer.

There is also a disclosure exemption where the minimum subscription price of the security is at least \$500,000.

Superannuation scheme exemption

The Amendment Act exempts superannuation employer schemes from prospectus requirements.

Power of courts to grant relief in respect of void or voidable allotments

One of the key issues addressed by the legislation is that of void allotments. A supplementary order paper in relation to this and certain Australian Registered Managed Investment Schemes was issued in October last year and was commented on in the Summer 2004 issue of *Financial Services Quarterly*. The Securities Act is now amended to permit courts to grant relief in respect of contravention of certain provisions in the Act. Such relief may be granted upon the application of the issuer, if the contravention has not materially prejudiced the interests of the subscriber, or where the Court considers it just and equitable to do so.

Other Acts amended by the passing of the Business Law Reform Bill

The other Amendment Acts that have been passed consequent to the passing of the Business Law Reform Bill are:

- Building Societies Amendment Act 2004
- Commerce Amendment Act 2004
- Co-operative Companies Amendment Act 2004
- Friendly Societies and Credit Unions Amendment Act 2004
- Life Insurance Amendment Act 2004
- Securities Markets Amendment Act 2004
- Superannuation Schemes Amendment Act 2004
- Unit Trusts Amendment Act 2004

The changes introduced by these Acts are mainly procedural or regulatory in nature. Although persons dealing with Unit Trust should be aware of the thousand-fold increase of the fine for issuing or offering an interest in a Unit Trust in contravention of the provisions of the Unit Trusts Act 1960.



Legislation/In Parliament

Review of the Financial Reporting Act

The Ministry of Economic Development has released a discussion document entitled "Who Should be Subject to Financial Reporting Requirements?"

The discussion document, for which submissions close on 14 May 2004, seeks to establish who should be subject to financial reporting requirements. The document also examines the specific needs of New Zealand companies and the users of their reports, with particular emphasis on eliminating unnecessary compliance costs, particularly for small and medium enterprises.

Electronic copies of the document are available from the Ministry of Economic Development website (www.med.govt.nz).



Legislation/In Parliament

Significant reform of New Zealand's insolvency laws proposed

Background

*Earlier this month, the Ministry of Economic Development (MED) released a draft Insolvency Law Reform Bill (the **Bill**) and a discussion document relating to that Bill. These two documents are the result of a general review of insolvency law that began in 1999.*

Most of the policy decisions surrounding the reform have already been made by the Government and have been publicised. The MED's intention in circulating the Bill is, therefore, not to re-open the policy debate. Rather, its intention is to get feedback on the detail of the proposed legislation. Also, while the Government's intention was not to fundamentally change New Zealand's insolvency law, the proposed legislation certainly goes beyond minor amendments.

Two parts to the Bill

Very broadly, the Bill is in two parts. The first part is a complete re-write of the Insolvency Act 1967, which governs the bankruptcy of individuals. The second part makes a number of changes to the various insolvency regimes applicable to companies, as set out in the Companies Act 1993. It also introduces a new insolvency regime – voluntary administration.

This article deals solely with the new voluntary administration regime, on the basis that it is likely to be the aspect of the Bill of most interest to financial institutions that deal with New Zealand companies.

Voluntary administration

Background

Currently, the only rehabilitative insolvency regime for viable companies is the compromise regime in Part XIV of the Companies Act. For a number of reasons (including, in particular, the need to obtain creditor consent), this has proved to be a difficult regime to apply in practice. The Government's view is that there should be an alternative regime that encourages business rehabilitation. In keeping with the continuing harmonisation of trans-Tasman business laws, the Government has settled on the voluntary administration model adopted by Australia in 1992.

The existing corporate insolvency regimes (compromises, liquidation, receivership and statutory management) will remain. No doubt, some will be disappointed by the retention of statutory management. Even though it has been used sparingly since its introduction 15 years ago, the fact that it exists on the statute books, and the fact that it is able to extinguish the most fundamental of creditor's rights, has made it (and, to a degree, New Zealand) unpopular with financial institutions.

Commencement of administration

The administration of a company begins when an administrator is appointed by:

- board resolution; or
- a liquidator; or
- a chargeholder having a charge over all, or substantially all, of the company's property where that charge has become enforceable; or
- the High Court, on the application of a creditor, a liquidator or the Registrar of Companies.

Consequences of administration

The appointment of an administrator has three main consequences. First, it vests control of the company's business in the administrator. Secondly, it triggers obligations on the administrator to hold various creditors' meetings to try to seek a consensus on the future of the company. Thirdly, it imposes a stay on certain creditor actions (similar to the moratorium imposed in a statutory management). This third aspect is outlined further below.

While a company remains in administration, in the absence of administrator consent or a court order:

- a transaction or dealing that affects the company's property is void;
- a person may not enforce a charge over the company's property (subject to the exceptions referred to below);
- the owner or lessor of property occupied or used by the company may not repossess that property (unless repossession began prior to the commencement of the administration); and
- court proceedings against the company may not begin or continue.

Furthermore, in the absence of a court order, a person may not enforce a guarantee given in respect of the company's liabilities by a director or their spouse or relative.

The general prohibition on the exercise of secured creditor rights does not apply to:

- a chargeholder having a charge over all, or substantially all, of the company's property who begins enforcing the charge no later than the tenth working day after the commencement of the administration; or
- any chargeholder who begins enforcing its charge prior to the commencement of the administration.

End of administration

Administration is intended to be a relatively short-term measure that (by and large) freezes the company's financial position while the administrator and the creditors negotiate the company's future. The Bill prescribes a tight timetable for that negotiation process, which may be as short as 20 working days.

The administration of a company ends either when the negotiations have been successful (in which case, a "deed of company arrangement" is entered into) or when the statutory timeframe expires without resolution. Other steps, such as the appointment of a liquidator, can also end an administration.

Significance for financial institutions

The Bill is only a draft at present. However, given the work and the consultation that has taken place over the last five years, there are unlikely to be many significant changes prior to the Bill's enactment. Based on the current form of the Bill, here are a few thoughts from a financial institution perspective.

- Financial institutions will need to check their standard form documentation to ensure that, if their borrower/counterparty is put into administration, an event of default arises. The need to assess *existing* documentation will, no doubt, be determined on a more selective basis.
- Financial institutions that typically take "all assets" security will need to ensure that their internal systems allow them to make enforcement decisions within the 10 working day "decision period". They should also ensure that they are notified of a company's administration as soon as possible after it begins.
- Financial institutions that typically take security over only certain assets of their borrower/counterparty will need to appreciate that they are at a relative disadvantage to "all assets" secured creditors. Given the stay on their rights during administration, the Bill encourages enforcement action to be taken earlier than might otherwise be the case.
- Unsecured creditors will need to understand that the administration process may compromise their position in a number of respects. For example, if a company in administration borrows money, the liability for repayment of that debt has priority over the company's existing unsecured creditors. Also, if a deed of company arrangement is approved by the requisite creditors (a majority in number and value of those voting), it will bind *all* creditors.
- The administration regime does not, in contrast to the liquidation and statutory management regimes, expressly confirm the enforceability of netting agreements. This will be of concern not just to derivative counterparties but also to financiers who have set-off agreements in place with borrowers.

Submissions

The MED has invited submissions on the Bill, to be received by **11 June 2004**. If you would like assistance in considering the significance of the Bill for your business, or in drafting submissions, please contact one of the Financial Services partners listed below.

Auckland

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Murray King

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Wellington

David Craig

Phone: 64 4 915 6839

Email: david.craig@bellgully.com



Legislation/In Parliament

Review of financial information in offer documents

The Securities Commission has released a draft practice note about the application of accounting standards in relation to investment statements and prospectuses. As a result of the adoption of international financial reporting over coming years, questions have arisen about how prospective financial information should be presented in offer documents during the transition period.

The Securities Commission has issued a request for comments on the draft practice note.

The request for comment and the draft practice note are available from: www.sec-com.govt.nz.



Legislation/In Parliament

UPDATE: Consumer credit law reform - what do you need to do?

As mentioned in previous issues of Financial Services Quarterly, the Credit Contracts and Consumer Finance Act 2003 was enacted on 13 October 2003. The provisions of the Act relating to buy-back transactions involving land are already in force. The remaining parts of the Act will come into force on 1 April 2005. The Act applies, in general, to credit contracts entered into with natural persons primarily for personal, domestic or household purposes.

Under the Act, "credit contract" means a contract under which credit is or may be provided. The definition of "credit contract" in the Act is wider than the definition of "credit contract" in the Credit Contracts Act 1981. In particular, an interest component is not needed under the new Act.

In relation to credit contracts entered into up to 31 March 2005, creditors may elect that the new Act applies to such credit contracts going forward. Therefore, creditors should now start to think about whether they want to have the new Act apply to any such contracts or to continue to have the Credit Contracts Act 1981 and/or the Hire Purchase Act 1971 apply to such contracts.

Factors that creditors should take into account include the costs involved (which may be high up front) and the remaining terms of such contracts. If some of these contracts are long term contracts (for example, residential home loans and mortgages), it may be appropriate to elect to have the new Act apply, as it may not be ideal to have two separate regimes applying after 1 April 2005.

We will provide guidance about what you should be doing in relation to the Act (and when you should be doing it) to ensure you are prepared for the commencement of the new Act on 1 April 2005 in subsequent issues of *Financial Services Quarterly*.



Legislation/In Parliament

UPDATE: Reform of securities trading legislation

Targeted consultation on the Securities Law Reform Bill was expected to commence after the Easter break.

The final part of a four-stage programme to improve the confidence of domestic and international investors in the New Zealand markets is to review the Securities Act 1978. The Ministry of Economic Development will begin the review later this year. It will look at the way offerings of securities are made, the possible licensing of financial intermediaries, transfer of securities, verification and monitoring of securities, the treatment of collective investment schemes such as unit trusts, and contributory mortgages.

The Government has indicated that it will give high priority to this legislation and hopes to introduce it into the House in the third quarter this year.



Recent developments

Financial advisers feel the heat

Nick Stride has reported that Australian financial planners are reeling after the big shake-up in their industry and that their New Zealand counterparts are feeling increasingly nervous about what's in store for them.

Corporate governance principles for New Zealand

The Securities Commission has given its report on Corporate Governance Principles for New Zealand to the Minister of Commerce.

UPDATE: Changes to International Accounting Standards

In the Summer 2003 issue of *Financial Services Quarterly*, we commented on standards issued by the International Accounting Standards Board. The two standards that relate to financial instruments are Standard 32: Disclosure and Presentation and Standard 39: Recognition and Measurement.

UPDATE: Clarification of directors' and officers' disclosure regime

Bell Gully has welcomed the Securities Commission's clarification of the application of the new disclosure regime for directors and officers of publicly listed companies, due to come into force on 3 May.



Recent developments

Financial advisers feel the heat

Nick Stride, *National Business Review*, 5 March 2004

Nick Stride has reported that Australian financial planners are reeling after the big shake-up in their industry and that their New Zealand counterparts are feeling increasingly nervous about what's in store for them.

The two-year transition period for the Financial Services Reform Act of Australia ended on 11 March 2004. Now, anybody who gives financial advice to Australians must be licensed to do so.

To get a licence, advisers must be able to demonstrate appropriate skills and experience, have adequate financial resources, and put in place training and supervision systems. Satisfactory arrangements for compensation of clients' losses are also necessary.

The legislation is intended to achieve conformity in "dealings in relation to financial products" and to ensure that financial advisers' conduct meets minimum standards.

The reforms are considered to be an indication of how things could develop in New Zealand.

However, a decision on regulation in New Zealand is not expected in the near future. Lianne Dalziel had indicated that the possible licensing of financial intermediaries was on the agenda as part of a review of the Securities Act and related issues later this year. But with Ms Dalziel's departure, we will have to wait and see what's in store.



Recent developments

Corporate governance principles for New Zealand

In February, the Securities Commission gave its report on Corporate Governance Principles for New Zealand to the Minister of Commerce.

The report followed extensive public consultation last year. In the report, the Commission developed principles for good corporate governance in New Zealand.

Jane Diplock, the Commission Chairperson, commented that *"there was strong support for the concept of a principles-based approach to corporate governance, and the final document is in line with the public views that came from the consultation process"*.

The principles focus strongly on reporting and disclosure of corporate governance structures and processes, as well as on reporting of financial and other material matters.

The document includes guidelines to assist entities with achieving each principle.

Corporate governance practices and research from relevant overseas jurisdictions were also taken into account in drafting the principles in order to bring New Zealand into line with best practices overseas.

The Commission's principles do not impose mandatory obligations on issuers of securities. Rather, the Commission encourages entities to adopt and report against these principles and, when poor corporate governance is identified, the Commission intends to report publicly on it.

Recent developments

UPDATE: Changes to International Accounting Standards

In the Summer 2003 issue of Financial Services Quarterly, we commented on standards issued by the International Accounting Standards Board. The two standards that relate to financial instruments are Standard 32: Disclosure and Presentation and Standard 39: Recognition and Measurement.

The Financial Reporting Standards Board (**FRSB**) of the Institute of Chartered Accountants of New Zealand is in the process of formulating the New Zealand equivalent of these standards and has issued discussion papers and exposure drafts. The Discussion Papers and Exposure Drafts for Standards 32 and 39 were issued in February 2004 and the due date for comments is 30 April.

The FRSB aims to have International Financial Reporting Standards available for use by New Zealand from 1 January 2005 and to have mandatory application from 2007.

The following is a brief summary of the standards relevant to financial instruments:

Standard 32: Financial Instruments: Disclosure and Presentation (IAS 32)

The New Zealand version of IAS 32 contains requirements for the presentation of financial instruments and identifies the information that should be disclosed about them.

There is a perception that IAS 32 is irrelevant for the majority of New Zealand entities, as most entities do not enter into complex financial instruments. However, IAS 32 is relevant to all entities as it affects whether a financial instrument is classified as equity or a liability in the statement of financial position. In the discussion paper, the FRSB highlights that some of the proposals for this standard differ significantly from current practice.

Standard 39: Financial Instruments: Recognition and Measurement (IAS 39)

The proposed NZ IAS 39 addresses how financial instruments are recognised and measured. This standard has a very wide scope and applies to all types of financial instruments unless they are explicitly excluded.

The proposed NZ IAS 39 is perceived by many as having a significant impact on financial reporting in New Zealand. The extent of the impact will depend on the nature of the financial instruments an entity enters into and how it currently accounts for them. Further revision of this standard in relation to the hedging of accounts was expected by 31 March 2004. To date, these have not been released.

For more information on the above standards and other proposed NZ IAS, visit the ICANZ website at www.icanz.co.nz

Recent developments

UPDATE: Clarification of directors' and officers' disclosure regime

Bell Gully has welcomed the Securities Commission's clarification of the application of the new disclosure regime for directors and officers of publicly listed companies, due to come into force on 3 May.

In a practice note released on 8 April, the Securities Commission suggested that the disclosure regime is aimed at employees of publicly listed companies with responsibility for making decisions that are significant to the financial standing and conduct of the company.

"The Commission has adopted a sensible and workable approach to the issue and focused on the disclosure regime's main objective: enhancing the efficiency of the market by providing valued information to investors on a timely basis," said Bell Gully Partner Peter Castle.

"We are also pleased that many of the issues raised in Bell Gully's submission to the Commission in February have been considered and addressed by this new advice and that the approach taken by the Commission is broadly consistent with the approach suggested in our February newsletter (available online at www.bellgully.com).

"Market comment in the last few weeks has tended to focus on the breadth of the concept of "officer" in the disclosure regime. Some commentators have suggested that, in any particular issuer, scores of employees would be required to make disclosures under this new regime.

"In our view, this approach to the regime has never been supported by the text of the proposed legislation or by the underlying policy of the regime, and may have contributed to some complaints levied at the regime.

"Our view has always been that the underlying policy meant that the new regime would affect only a very limited class of employees, even in New Zealand's largest issuers. We are pleased that this view is now supported by the Commission's published practice note.

"Coupled with practical exemptions that avoid double-reporting and needless detail, the new regime should achieve its aims without needlessly increasing the compliance workload of most companies," he said.

The practice note is available online at www.sec-com.govt.nz and Bell Gully is preparing further analysis and guidance on this issue. Background information on the disclosure regime is available from Bell Gully's earlier newsletters (available online at www.bellgully.com).



Bell Gully news

Final chapter in New Zealand equity swaps case?

On 9 March, in a decision that ended an 18-month legal dispute, New Zealand's highest court refused to hear a final appeal against the Court of Appeal decision in *Perry Corporation v Ithaca (Custodians) Ltd.*

Updated version of *Derivatives Law in New Zealand* available

An updated version of Bell Gully's *Derivatives Law in New Zealand* is now available.

The Holidays Act 2003: don't leave it too late

The Holidays Act 2003 came into force on 1 April 2004, and is intended to promote balance between work and other aspects of employees' lives and to provide employees with minimum entitlements to annual holidays, public holidays, sick leave and bereavement leave.

IFLR and *Asiamoney* awards for Bell Gully

Bell Gully has received awards from leading financial magazines *IFLR* and *Asiamoney*.

Off the shelf: news and publications from Bell Gully



Bell Gully news

Final chapter in New Zealand equity swaps case?

On 9 March, in a decision that ended an 18-month legal dispute, New Zealand's highest court refused to hear a final appeal against the Court of Appeal decision in Perry Corporation v Ithaca (Custodians) Ltd.

The background to this case, and the judgments of the High Court and the Court of Appeal, have been the subject of previous newsletters, New Zealand Court orders share forfeiture in equity swap case and New Zealand Court Of Appeal recognises "market reality" in overturning lower court decision (available at www.bellgully.com).

However, while the matter is at an end between the parties, the legal issue at the heart of the dispute looks set to continue with the Government confirming a law change. These developments are discussed in full in this newsletter (also available online at www.bellgully.com).



Bell Gully news

Updated version of Derivatives Law in New Zealand available

An updated version of Bell Gully's Derivatives Law in New Zealand is now available.

Bell Gully first published *Derivatives Law in New Zealand* in May 1999, shortly after the enactment of New Zealand's netting legislation.

Since then, there have been many legislative and judicial developments that, while not necessarily targeted at derivatives, could affect derivatives activity in New Zealand. For example:

- the Personal Property Securities Act 1999 has introduced a new regime governing security interests in personal property, which may apply to credit support arrangements as well as repo and securities lending transactions;
- recent amendments to the Securities Markets Act 1988 regulate the operation of a futures market or a futures exchange in New Zealand;
- the Court of Appeal in *Perry Corporation v Ithaca (Custodians) Limited* considered the application of New Zealand's substantial security holder disclosure regime to cash-settled equity swaps;
- recent amendments to the Reserve Bank of New Zealand Act 1989 introduce a new netting regime, which applies to "designated payment systems";
- the Gambling Act 2003, which comes into force on 1 July 2004, will introduce more uncertainty over whether derivatives are "gambling" (and, therefore, illegal); and
- the Public Finance (State Sector Management) Bill, once enacted and in force, will substantially change the law relating to the capacity of Crown entities to enter into derivative transactions.

The updated version of *Derivatives Law in New Zealand* incorporates all these changes, among others.

Derivatives Law in New Zealand is available online at www.bellgully.com and hard copies can be requested by emailing nicky.boughtwood@bellgully.com.



Bell Gully news

The Holidays Act 2003: don't leave it too late

The Holidays Act 2003 came into force on 1 April 2004, and is intended to promote balance between work and other aspects of employees' lives and to provide employees with minimum entitlements to annual holidays, public holidays, sick leave and bereavement leave.

Employers should adjust their systems in order to ensure recording compliance with the new legislation from 1 April 2004 and make plans to bring existing employment agreements into line no later than 1 April 2005.

This newsletter outlines the major changes brought in by the new Act and answers some frequently asked questions by employers.

Annual holidays

The Act retains the current provision of three weeks' paid annual holidays for all employees. However, from 1 April 2007, employees will be entitled to four weeks' annual leave.

Annual holidays are to be paid at the greater of the *ordinary weekly pay* at the time that the holiday is taken or the employee's *average weekly earnings* over the 12-month period before the annual holiday is taken. Payment is calculated on earnings up to the end of the pay period immediately preceding the holiday.

Ordinary weekly pay includes: regular allowances, regular productivity or incentive based payments (including commission or piece rates), the cash value of board or lodgings, and regular overtime.

Average weekly earnings are determined by calculating gross earnings over the 12 months prior to the end of the last payroll period before the annual holiday is taken, and dividing that figure by 52. Gross earnings include salary and wages, allowances, holiday and public holiday pay, sick and bereavement leave taken, overtime, productivity or performance payments, commission or piece rates, payment for annual and public holidays, the cash value of board and lodgings supplied, and any amount compulsorily paid by the employer under ACC and any other payments required under the terms of the employment agreement. It does not include discretionary payments.

Public holidays

The Act retains the same 11 public holidays as the Holidays Act 1981 but proposes different payment terms for those public holidays.

Under the new legislation, an employer must pay an employee at the rate of time and a half if the employee works for any part of a public holiday.

Also, if an employee works on a public holiday that would otherwise be a working day for that employee, then the employee is entitled to another day's holiday - called an "alternative holiday". If an employee is on call on a public holiday - and being on call restricts the employee's freedom of action to such an extent that, for all practical purposes, the employee had not had a holiday - then the employee is entitled to an alternative holiday.

Relevant daily pay is used to calculate payment for public holidays, alternative holidays, sick and bereavement leave. *Relevant daily pay* includes productivity or incentive payments (including commission or piece rates) if those payments would have been received if the employee had worked on those days.

Sick leave and bereavement leave

The new Act provides a minimum total of five days per year that can be taken for sick leave. An employee, after the completion of six months' continuous employment, will be eligible for sick leave.

The Act also allows an employee to carry over sick leave of up to 15 days into the next year, up to a maximum of 20 days.

An employer may require an employee to produce proof of sickness or injury for sick leave taken if the leave taken is for three or more consecutive days, whether or not the days are working days for the employee.

The Act allows that an employer must provide an employee with three days' bereavement leave upon the death of a person listed in the Act as a close family member.

In addition, one day's bereavement leave must be provided to employees on the death of any other person not specifically listed in the Act, where the employer accepts that the employee suffered a bereavement as a result of the death.

The Act lists relevant factors an employer should take into account, including the closeness of the association between the employee and the deceased person, whether the employee has responsibility for funeral arrangements, and whether the employee has any cultural responsibilities in relation to the death.

Tighter record-keeping required

The Act imposes stricter obligations on employers to keep detailed holiday and leave records (the number of categories of information that employers are required to record has increased from seven to 16).

In line with the philosophy behind other recent employment legislation, the Act says that an employer must inform the employee about his or her holiday entitlements when the employee enters into an employment agreement. An employer must inform new employees about their entitlements under the Act, and that more information is available from their union (if they are a member) or the Department of Labour.

All existing employment agreements must be amended to reflect the Act's changes by 1 April 2005, or when they are next amended or earlier.

Enforcement of penalties

Penalties for offences under the Act will increase significantly, with penalties of up to \$5,000 if the employer is an individual and up to \$10,000 if the employer is a company or a corporate body.

Frequently asked questions

What do I do with an employee who has accumulated a significant amount of annual leave?

If you and the employee cannot reach agreement on when annual leave will be taken, the Act allows an employer to direct an employee to take leave with not less than 14 days' notice.

Can I require an employee to work on a public holiday?

You can only require an employee to work on a public holiday if their employment agreement provides for it.

How do I manage the distinction between people who decide to come in to work on a public holiday and those who are directed to?

To avoid employees unilaterally deciding to work on a public holiday in order to reap the associated benefits under the new legislation, you should require employees to obtain written authorisation to work on a public holiday.

If an employee is scheduled to be at work on a public holiday but is sick, what are the pay/time off obligations?

In this situation, the employee would still receive the relevant daily pay and an alternative day's leave.

Conclusion

The new Act introduces substantial changes to current practice and it is essential that employers review their procedures, agreements and systems to ensure compliance - especially given the hefty increases in penalties.

Advice and information

Bell Gully's Employment Team can advise you on all types of employment issues, including the new Holidays Act 2003. Contact the team at the numbers below for more information.

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Bell Gully news

***IFLR* and *Asiamoney* awards for Bell Gully**

Bell Gully has received awards from leading financial magazines IFLR and Asiamoney.

The firm was named New Zealand Law Firm of the Year by the *International Financial Law Review (IFLR)* and was recognised as Legal Adviser on *Asiamoney's* M&A Deal of the Year 2003 at the magazine's Australian Awards.

Chairman Matthew Cockram accepted the *IFLR* award at an official ceremony in Hong Kong on 11 March. The award was made on the strength of Bell Gully's major corporate work in 2003.

"We are delighted to join a distinguished list of international award winners this year," said Matthew. "This award is the result of a lot of hard and smart work by what I believe is the leading commercial legal team in the country."

IFLR is published by *Euromoney's* Legal Media Group. It is the world's leading magazine for in-house counsel and practitioners in the financial markets. The magazine's annual awards are designed to reward legal innovation in the region last year across all areas of corporate finance. Read more at www.iflr.com.

Bell Gully received the *Asiamoney* award for its role in working in conjunction with the internal legal team at ANZ in advising ANZ on its acquisition of the National Bank of New Zealand from Lloyds TSB. Bell Gully was the only New Zealand law firm to feature in the awards.

Bell Gully partner Peter Castle received the award on the firm's behalf at an awards ceremony in Sydney in February, along with Australian law firm Blake Dawson Waldron, which also received an award for its work on the deal.

"We were delighted to be the only New Zealand law firm to receive an award from *Asiamoney* this year. It reflects well on Bell Gully's ability to work in partnership with leading Australian and New Zealand companies and law firms on complex Trans-Tasman deals," Peter said.

Asiamoney magazine is one of the leading commentators on finance, banking, investment and treasury matters in the Asia-Pacific region.



Bell Gully news

Off the shelf: news and publications from Bell Gully

Competition

Competition Update: Revised merger guidelines from New Zealand Commerce Commission
16 March 2004

Searches by the Commerce Commission
March 2004

Corporate and Securities

Regulator Report
1 April 2004

Exemptions from disclosure regime likely;
formal announcement expected
16 March 2004

New directors' and officers' disclosure regime (PDF)
26 February 2004

Reckless trading leaves director liable for \$7 million
19 February 2004

Employment

Just add a little bit of stress
The Independent, 31 March 2004

Murmurings about the Holidays Act
The Independent, 17 March 2004

Investigating misconduct? Play by the book
The Independent, 4 February 2004

Major overhaul of the Employment Relations Act
December 2003

New Technologies

Communications, technology and media update
Spring 2003



Useful Web links

New Zealand government

- Inland Revenue Department [www.ird.govt.nz]
- Ministry of Economic Development [www.med.govt.nz]
- Ministry of Foreign Affairs and Trade [www.mfat.govt.nz]
- New Zealand Government [www.govt.nz]
- NZ Government E-Commerce Information [www.ecommerce.govt.nz]
- NZ Treasury [www.treasury.govt.nz]
- Office of the Clerk of the House of Representatives [www.clerk.parliament.govt.nz]
- Parliamentary Counsel Office [www.pco.parliament.govt.nz]

New Zealand financial agencies and organisations

- The Companies Office [www.companies.govt.nz]
- Export Credit Office [www.treasury.govt.nz/exportcreditoffice]
- NZ Law Commission [www.lawcom.govt.nz]
- Office of the Banking Ombudsman [www.bankombudsman.org.nz]
- Office of Insurance and Savings Ombudsman [www.iombudsman.org.nz]
- Office of the Privacy Commissioner [www.privacy.org.nz]
- Personal Property Securities Register [www.ppsr.govt.nz]
- Reserve Bank of New Zealand [www.rbnz.govt.nz]
- Securities Commission [www.sec-com.govt.nz]
- Takeovers Panel [www.takeovers.govt.nz]

New Zealand commercial sites

- CLANZ [www.clanz.org]
- Institute of Chartered Accountants [www.icanz.co.nz]
- NZ Bankers' Association [www.nzba.org.nz]
- NZ Business Roundtable [www.nzbr.org.nz]
- NZ Institute of Economic Research [www.nzier.org.nz]
- NZ Stock Exchange [www.nzx.com]

Australian government sites

- Banking Ombudsman [www.abio.org.au]
- National Office for the Information Economy [www.ogo.gov.au]

Australian commercial sites

- Australian Financial Markets Association [www.afma.com.au]
- Australian Securities and Investment Commission [www.asic.gov.au]
- Australian Stock Exchange [www.asx.com.au]

International sites

- Bank for International Settlements [www.bis.org]
- Global Banking Law Database [www.gbld.org]
- International Monetary Fund [www.imf.org]
- International Swaps and Derivatives Association [www.isda.org]
- NASDAQ [www.nasdaq.com]
- New York Stock Exchange [www.nyse.com]
- United States Securities and Exchange Commission [www.sec.gov]
- World Bank [www.worldbank.org]