



BELL GULLY

Financial Services Quarterly

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Welcome to the Summer 2009 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 these headings:

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In the courts

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Is notice of default an acceleration of debt in terms of an intercreditor deed?

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No set-off by guarantor against lessor

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Crown Deposit Guarantee Scheme – update

In our Spring 2008 issue of *Financial Services Quarterly*, we set out an overview of the Crown Deposit Guarantee Scheme. This article provides an update on progress since then.

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Syndication in Australia: is the market disrupted significantly?

This article looks at the Australian syndication market and considers whether it is a viable alternative to more sophisticated capital raising methods that have recently caused global financial turmoil.

The market disruption clause

This article offers an explanation for why market disruption clauses are not generally invoked by lenders.

Syndication and enforcement risk in adverse market conditions

This article summarises a recent English case concerning the invocation of an exclusive jurisdiction clause.

The Bell Group Litigation – the lessons learned

The Bell Group litigation which has recently been completed in Australia has given some timely insights into how the Australian courts will approach the legal issues involved in work-outs.

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Fast track response for capital raising now in the House

The new Securities Disclosure and Financial Advisers Amendment Bill, recently introduced into Parliament, contains key measures aimed at streamlining raising of capital for New Zealand businesses.

In the courts

Australian mortgagee sales expected to achieve market value

The Supreme Court of Australia has determined that the duty expressed in the Australian Corporations Act 2001 (Cth) is to take all reasonable care to sell the property for not less than market value.

The New Zealand equivalent provides that a mortgagee owes a duty of reasonable care to certain persons to "obtain the best price reasonably obtainable at the time of sale".

The Australian case¹ concerned a bank that exercised its power of sale to sell a mortgaged hotel using a private tender process with only one prospective purchaser. The hotel was not placed on the open market, or publicly advertised.

Following the sale, the bank sought to recover the deficit under a guarantee. The guarantors alleged that the bank had breached section 240A of the Corporations Act 2001 in failing to take reasonable care to sell the hotel property for not less than the market value which, in turn, reduced their liability to make up the deficiency on sale.

The Supreme Court decided:

- The duty expressed in section 420A(1)(a) is a duty to take all reasonable care to sell the property for not less than market value. This is identical to the statutory duty on mortgagees exercising the power of sale in some states. That duty requires the mortgagee to put the property on the open market and to bring it to the attention of potential purchasers by advertising and responding to enquiries and expressions of interest².
- The duty also requires a mortgagee to have taken reasonable steps to ascertain the value of the property before selling it³.
- In deciding whether there has been a breach of the section, the court will look at the process the mortgagee goes through in selling the property.
- Determining the best price that might have been achieved is distinct from determining market value, and is not what is required under the section. Similarly, there is no duty to sell for more than market value.
- Where the mortgagee has breached the duty by failing to take the necessary steps, but has in fact sold for market value, there is no entitlement to relief because there is no loss.

The New Zealand approach

The New Zealand Property Law Act 2007 imposes duties on mortgagees exercising their power of sale. Section 176 provides:

A mortgagee who exercises a power to sell mortgaged property, including exercise of the power through the Registrar under section 187, or through the Court under section 200, owes a duty of reasonable care to the following persons to obtain the best price reasonably obtainable as at the time of sale:

¹ *Fortson Pty Ltd v Commonwealth Bank of Australia* (2008) 100 SASR 162

² *Commercial & General Acceptance Ltd v Nixon* (1981) 152 CLR 491

³ *Henry Roach (Petroleum) Pty Ltd v Credit house (Vic) Pty Ltd* [1976] VR 309

- (a) Current mortgagor;
- (b) Former mortgagor;
- (c) Any covenantor (including guarantors);
- (d) Any mortgagee under a subsequent mortgage; and
- (e) Any holder of any other subsequent encumbrance.

This provision replaced section 103A of the former Property Law Act 1952 and has substantially carried over the previous provision. In respect of section 103A of the 1952 Act, New Zealand courts have decided that, in assessing compliance with the duty, the matter must be looked at broadly and in a realistic way. A mortgagee will not be adjudged to be in default unless he or she is plainly on the wrong side of the line. It is clear that the issue is a commercial one, and should thus be viewed in practical commercial terms¹.

What constitutes reasonable care will always turn on the facts of the case. A sale will be supported if the mortgagee proves that he or she took reasonable precautions to obtain the best price reasonably obtainable at the time of the sale. It is clear that the "*best price reasonably obtainable*" does not equate with the "*true market value*"².

Comparison

The standards required by the Australian and New Zealand provisions are fundamentally different. While the Australian provision requires reasonable care be taken to obtain the "*market value*", which the court in *Fortson* explicitly distinguished from the "*best price that might have been achieved*", the New Zealand provision requires the "*best price reasonably obtainable at the time of sale.*"

The New Zealand courts have found that failure of the mortgagee to obtain the market value will not constitute a breach where this varies from the amount obtained from the sale, so long as the mortgagee exercised reasonable care.

¹ *Apple Fields Ltd v Damesh Holdings Ltd* [2001] 2 NZLR 586

² *Cuckmere Brick Co Ltd v Mutual Finance Ltd* [1971] Ch 949

Mortgagee sale at a lower price than the first offer was not a breach of the Property Law Act

The High Court has held that any hindsight indication that it might have been better to sell at an earlier and higher offer was irrelevant in terms of the mortgagee's duties under the Property Law Act 2007.

In this case¹, the borrower owned a yacht financed by the lender. The lender took a security interest in the yacht, together with a guarantee.

When the borrower failed to make payments due under the credit facility, the lender made demand against the guarantors for payment of the outstanding amount. The lender also attempted to sell the yacht under its power of sale.

The first offer to purchase the yacht fell short of valuations and the debt, so the lender did not sell. When the lender attempted to sell the yacht a second time, it achieved a price that was lower than the first offer.

The lender sought summary judgement to recover the excess from the borrower and the guarantors, and they contested on the basis that the lender had breached its duty as a mortgagee under the Property Law Act 2007.

The court decided that:

- The Lender was entitled to make first demand against the guarantors. It was irrelevant whether or not the lender would be in a position to recover all or some of the debt owing when and if it sold the yacht. In other words, the court affirmed that the guarantee was a primary, and not a secondary, obligation.
- The fact that the lender had earlier received a higher offer for the yacht was not relevant in these circumstances. The Lender had not breached its duty under section 176 of the Property Law Act (which is a duty of reasonable care to obtain "the best price reasonably available as at the time of sale" to the mortgagor, the guarantor and other secured creditors) on the basis that it should have accepted the earlier offer. The court held that any hindsight indication that it might have been better to sell the yacht for the earlier offer was irrelevant in terms of the mortgagee's duties.

¹ *Commercial Receivables Ltd v Thwaites & Ors*, High Court, Wellington, CIV-2008-485-000807, 7 October, 2008

Transfer of home to family trust was alienation with intent to defraud creditor

This case¹ was a successful appeal against a decision of the Court of Appeal that transfer of a family home to a family trust was not an alienation with intent to defraud a creditor.

In 1998, a couple transferred their home to a family trust, of which they and a solicitor were the trustees. The couple then progressively gifted sums to the trust under a programme that extinguished the debt by 2002.

At the time of the transfer, the respondent was personally responsible for debts of around \$200,000 owed by his jewellery business to its supplier under a term loan. The supplier was not informed of the transfer of the home, which was the respondent's only significant asset, or the programme of gifting.

The jewellery business was placed into liquidation in April 2003. When the supplier was unable to recover the money it was owed, it brought a claim under s 60 of the Property Law Act 1952 (the **PLA**) to set aside the transfer of the house to the trust.

At issue on appeal was whether:

- the transfer of the house, in terms of s 60(1) of the PLA, was an alienation with intent to defraud a creditor;
- the property interest was received by the trustees in good faith, without knowledge at that time of any intent to defraud the appellant (if so this would be a defence under section 60(3) of the PLA); and
- whether the indefeasibility provisions of the Land Transfer Act 1952 precluded the making of the order sought by the appellant, in the absence of any application by the Official Assignee.

Alienation with intent to defraud the creditor

The Supreme Court unanimously stated that, as a matter of fact, the debtor had an intent to defraud the creditor. Their honours' views diverged, however, on whether such an intention could, or must, be presumed from the circumstances. Justice Tipping held that the presumption did exist, whereas Chief Justice Elias held that it did not. Justices Blanchard and Wilson (with whom Justice McGrath agreed) found it unnecessary to express a view on the presumption issue, because they found that the debtor was solvent, and therefore not within the scope of the rule, even if it existed.

In applying the factual inquiry, their honours identified similar features of the current transaction that were problematic (and could be useful guidance to future cases):

- At the time of the transfer of the property, it comprised the debtor's only substantial asset.
- The debtor remained in occupation of the house.
- In light of the gifting programme, the transfer was for no effective consideration.
- The seven year term of the gifting scheme was itself to the prejudice of the creditor.
- There was no adequate explanation for the transfer of the house property into the family trust, apart from the protection from creditors.
- Even if the company and the respondent were not insolvent, their financial circumstances were precarious, and the position of the creditor was inevitably prejudiced by alienating the debtor's only substantial asset.
- The transfer was kept secret from the creditor.

Indeed, Justices Blanchard and Wilson identified the last two features as "*badges of fraud*".

¹ *Regal Castings Limited v Lightbody* [2008] NZSC 87

Was the property received by the trustees in good faith without knowledge of the fraudulent intention?

The Supreme Court unanimously stated that the debtor's knowledge tainted the receipt by the trustees of the property. The trustees received it as a unity. Taking as joint tenants, the trustees were to be treated as one purchaser who had knowledge of the fraudulent intent. Thus, they were not entitled to the defence at section 60(3) of the PLA.

The court was unanimous in its decision to allow the appeal. A declaration was made that the trustees hold the debtor's one-half share in the property on trust for the Official Assignee of the debtor's estate, to be dealt with by the Assignee for the benefit of the debtor's creditors.

The Property Law Act 2007

Note that section 346 of the Property Law Act 2007 now makes it clear that a disposition by gift by an insolvent person (made after 31 December 2007) can be set aside without the need to show intent to defeat creditors, because the transferor has not received "*reasonably equivalent value in the exchange*".

And section 350(4) of the Property Law Act 2007 enables the courts to make remedial orders setting aside dispositions of property, even if this would override the indefeasibility provisions of the Land Transfer Act 1952.

Guarantor successfully argues breach of equitable duty of mortgagee to obtain best price at sale

This case was not heard in respect of the new Property Law Act 2007, which contains obligations on mortgagees to guarantors. However, the guarantor still successfully argued a breach of equitable duty on behalf of the mortgagee to obtain the best price at mortgagee sale.

In this case¹, a loan was made to a company with second mortgages and a guarantee as security.

Following default in payment of amounts owing under the loan by the borrower, the mortgagee sold the mortgaged property.

The lender sought summary judgment against the guarantor for the short-fall following mortgagee sale of \$1.35 million, plus interest on that sum at the default rate of 29.5 per cent per annum.

The guarantor argued that:

- the lender had breached its duty to take reasonable care to obtain the best price at mortgagee sale; and
- the application fees and/or interest rate were oppressive under the Credit Contracts and Consumer Finance Act.

Considering the first argument, the Associate Judge found that a *prima facie* basis existed for finding breach of duty (at equity) to take reasonable care to obtain the best price because:

- the evidence as to testing of the market was scant;
- the properties were not listed with a real estate agent;
- no auction or advertising was undertaken; and
- the sale price was \$1.2 million whereas a case could be made out for a potential realisable value of \$1.8 million.

The guarantor's second argument was rejected.

Property Law Act 2007

This case was decided under the Property Law Act 1952, which does not contain an obligation from a mortgagee to a guarantor. This is why the case was heard based on a breach of an *equitable* duty, and not an obligation under the Property Law Act "*to obtain the best price reasonably obtainable*". The Property Law Act 2007 contains a specific obligation from a mortgagee to a guarantor (at section 176(1)), so, if this case was heard in regard to the current legislation, the basis of the argument would be the new Property Law Act, and not breach of an equitable duty. In any event, the outcome would likely be the same.

¹ *Odin Enterprises Limited v Crawford* [2008] BCL 1042

Rights of subrogation allowed creditor to change its claim in a liquidation from unsecured creditor to secured creditor

A lender, who was previously unaware of its rights of subrogation in respect of a senior lender's security, was able to claim as a secured creditor.

In this case¹, a bank made a loan to a company, taking security in the form of a first ranking general security agreement.

The company repaid the loan using funds primarily provided by a second lender. The original first ranking general security agreement was not discharged.

When the company was subsequently placed into liquidation, the second lender didn't realise that it might have obtained rights of subrogation in respect of the security previously held by the bank. Instead, it filed an unsecured creditor's claim form with the liquidators for the amounts owing to it.

Throughout the liquidation, the second lender proceeded as an unsecured creditor and the liquidators proceeded as if there were no outstanding secured creditors.

The liquidators later learned that the company's over-the-counter EFTPOS receipts for March 2005 to September 2005 (a total of \$525,000) were transferred directly from its EFTPOS machine to a third party's bank account. There is no documented reason for the transfer of the sales receipts to the third party.

In the interim, the third party sold its business and its solicitors were holding the sale proceeds (\$179,000) on trust.

The liquidators considered that the amount held on trust represented a repayable on demand advance from the company to the third party and a demand for repayment was made. The third party's solicitors duly paid the amount held on trust to the liquidators.

At this stage, the second lender contended that, as a guarantor of the company's indebtedness, it paid \$300,000 to the bank and was therefore entitled to be subrogated to the bank's general security agreement and to claim the funds held on trust under that security.

The court agreed with the second lender's claim.

Prima facie, as the only secured creditor, the second lender's claim to the funds held on trust should take priority over all other creditors.

However, if the funds held on trust constituted an "account receivable", then priority goes to any "preferential creditors" under the Companies Act (where the assets of a liquidated company are insufficient to meet certain claims referred to in Schedule 7 of the Companies Act, preferential creditors (i.e. Inland Revenue and the liquidator's claim for costs and expenses incurred during the liquidation) have priority over a secured creditor to the extent that the secured creditor's security interest is over all or any part of the company's accounts receivable).

The liquidators sought direction from the court as to how the funds held on trust should be distributed.

The issues for consideration by the court were:

- Do the funds held on trust constitute an "account receivable"?
- Is the second lender a secured creditor?

Account receivable

¹ *Commissioner of Inland Revenue (CIR) v Northshore Taverns Ltd (in liquidation)* (2008) 23 NZTC 22,074

"Account receivable" is defined in the Companies Act to mean *a monetary obligation that is not evidenced by chattel paper, an investment security, or by a negotiable instrument, whether or not that obligation has been earned by performance.*

The liquidators submitted that:

- restricting the definition of "account receivable" to merely a book debt or trade credit account was too restrictive;
- the transfer of EFTPOS receipts created an obligation to repay, which constituted a monetary obligation; and
- therefore the funds held on trust constituted an "account receivable" in terms of the definition.

The senior creditor submitted that the definition of "account receivable" is restricted to book debts.

The court considered the Interpretation Act 1999, together with commentary on the Personal Property Securities Act, and determined that the meaning of "account receivable" is restricted to book debts or a trade credit account. The liquidator's interpretation would have the effect of substantially increasing the amount of an insolvent company's assets that were to be removed from the security interests of secured creditors for distribution to preferential creditors.

Accordingly, as the funds held on trust were not book debts or a trade credit account, they did not constitute an "account receivable".

Secured creditor

The court was in no doubt that the second lender was entitled to be subrogated to the interests of the bank in respect of the general security agreement.

Due to ignorance of its rights, the second lender failed to claim as a secured creditor, and instead had claimed as an unsecured creditor.

Applying *Re Winefield*¹ (a creditor is not bound by its election as to whether or not its claim is as a secured or as an unsecured creditor, if his original proof was filed as a result of a mistake and nobody is prejudiced by the change of election), the court allowed the second lender leave to claim as a secured creditor.

¹ [1885] NZLR 394

Is notice of default an acceleration of debt in terms of an intercreditor deed?

This case was about whether or not a letter of default sent to a debtor by a junior creditor contravened the "no acceleration" provision of an intercreditor deed.

In this case¹ the relationship of the senior and junior creditors, together with the debtor, was regulated by an intercreditor deed. The main purpose of the intercreditor deed was to rank the senior debt and the junior debt in a specified order.

Under clause 11 of the intercreditor deed, the junior creditor undertook not to accelerate any of the junior debt or to declare any of the junior debt prematurely due or payable "unless:

- *the Junior Creditor has first given the Senior Creditor not less than 45 days written notice of its intention to take such action; and*
- *it commences the first step of such action during the months of January, February or March in any year."*

In March 2008, the junior creditor wrote a letter to the debtor asserting that certain events of default had taken place, specifying:

"... if the Events of Default referred to above have not been remedied to our satisfaction or waived by us on or before 5 May 2008, we will require [the Debtor] to repay all monies (whether by way of principal, interest, fees or otherwise) outstanding in respect of [the Junior Debt] on that date."

On the same day, the junior creditor wrote to the senior creditor purporting to give notice, pursuant to clause 11 of the intercreditor deed, that one or more events of default had occurred and were continuing under the junior facility agreements.

The senior creditor alleged that the letter to the debtor contravened clause 11 of the intercreditor deed.

The junior creditor argued that the default letter fell within the meaning of the words "*the first step of such action*" in the second limb of clause 11. That step was not, however, the action referred to in the phrase "*intention to take such action*" in the first limb of clause 11. Rather, that action would be completed when, after 5 May, the junior creditor accelerated the junior debt.

The court determined that the default letter did not form "*the first step of such action*" within the meaning of clause 11. This was because the first limb of clause 11 envisaged a written notice by the junior creditor of its "*intention to take such action*". Unless it had "*first given*" such notice (of at least 45 days), the junior creditor was not permitted, without the senior creditor's written consent, to take "*such action*". It was clear that the notice had to specify the action intended to be taken.

The Judge had no doubt that the words "*such action*", where they appeared in clause 11, referred to the same action. In the Judge's opinion, "*such action*" was a reference to the actual acceleration of the junior debt and the default letter did not constitute such action.

If he was wrong, and the default letter and the subsequent acceleration of the junior debt were to be viewed as a process that started with the default letter and ended with the actual acceleration, the Judge decided that sending the default letter was something that was prohibited under the terms of the intercreditor deed, namely accelerating the junior debt.

¹ *Burdale Financial Ltd v Agilo Master Fund Limited* [2008] EWHC 1103 (Ch)

No set-off by guarantor against lessor

Whether or not a guarantor's claim against a lessor was valid, a no set-off clause in both the lease and the guarantee precluded her from setting-off amounts that might have been owed by the lessor against unpaid rent and other outgoings.

This case¹ involved an individual who entered into an agreement to lease a unit in a development. The individual subsequently incorporated a company which entered into a deed of lease for the unit with the developer. The individual signed the deed of lease as director of the company and as guarantor of the company's obligations.

When the company failed to pay rent and associated outgoings, the developer sought summary judgment. The guarantor opposed the application for summary judgment, alleging breaches of the lease, misrepresentation and breach of the Fair Trading Act by the developer.

When summary judgment was entered in favour of the developer, the guarantor appealed.

The issue for consideration by the court was whether the guarantor was prevented from setting-off any claim she might have had against the developer against the developer's claim for rent and other outgoings.

The High Court decided:

- The deed of lease was clear - the rental clause required the rent to be paid without set-off or deduction.
- As principal debtor under the guarantee, the guarantor was obliged to pay the rent without any set-off or deduction. The guarantor stood in the position of the tenant company for all purposes, and so she was precluded from raising any claims of set-off against the developer or as a defence to the developer's claim for rent.
- The rental obligations under the lease were to be paid either by the tenant company or by the guarantor, in both cases, without set-off.

¹ *Gielens v Broadway Developments Limited*, HC, Auckland, CIV-2008-404-004654, Nov 3, 2008

Legislation/In Parliament

New Zealand financial sector reform

Although to many it seems a classic example of reactive law making, legislation has now been passed in New Zealand to provide regulatory protection for investors in financial products.

The financial crisis has exposed the limitations of New Zealand's very light-handed regulatory system. Essentially, anyone was able to act as a financial adviser. There were no legal requirements around education, qualifications or membership of professional bodies.

The first step in the reform process was made in February 2008. The Securities Markets Amendment Act introduced a mandatory requirement for financial advisers to provide clients with a "*disclosure statement*" before giving advice on investment securities. The new legislation goes much further and imposes "*conduct*" standards (such as the requirement to act with integrity and exercise care, diligence and skill) on anyone who offers financial advice (including those who advise on life insurance, property insurance and mortgage broking). The new regime will differ significantly from the existing regime in that it will apply to those providing financial advice solely to wholesale clients. Currently, the relevant regulations only apply where advice is provided to the retail market. This will require a significant change in practice for many market participants.

The new regime is contained in two separate Acts – the Financial Advisers Act 2008 (the **FAA**) and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **FSP Act**).

Financial Advisers Act 2008

The FAA was passed in September 2008 and will be introduced in stages. The legislation is expected to be fully operational by the end of 2010. Parts of the FAA came into force on 5 December 2008 (under the Financial Advisers Act Commencement Order 2008), which will allow officials to start work on its implementation.

The stated policy behind the FAA is to promote "*the sound and efficient delivery of financial advice and to encourage public confidence in the professionalism and integrity of financial advisers*". To achieve this outcome, the FAA has adopted a tiered regulatory approach for financial advisers based on the nature of financial adviser service provided and the complexity of the financial product involved.

Financial adviser service

A "*financial adviser*" is a person who, in the course of business, performs a "*financial adviser service*". A "*financial adviser service*" is performed if a person:

- gives *financial advice* (that is, providing a recommendation, opinion or guidance relating to the acquiring or disposing of a "*financial product*"); or
- makes an *investment transaction* (which is the investment of money on behalf of another person in relation to the acquiring or disposing of a "*financial product*"); or
- provides a *financial planning service* (being a service that analyses an individual's current financial situation, identifies his or her financial goals, and develops financial options for realising those goals).

Different requirements will apply to the different services.

Financial products

"*Financial products*" are of two-types.

Category 1 products are complex products, such as futures contracts, real property or securities (other than call debt securities or bank term deposits).

Category 2 products are more simple products, such as call debt securities, bank term deposits, non-investment insurance products and consumer credit contracts.

Restrictions on performing financial adviser services

The FAA provides for three types of financial advisers. Each of the three types of financial adviser is subject to a different level of regulation in relation to performing a financial adviser service. The three types of financial advisers are:

- *Authorised financial adviser*

This represents the highest level of authorisation and therefore comes with the most onerous registration and compliance obligations.

To be an **authorised financial adviser**, the individual must be both registered as a financial service provider under the FSP Act and authorised by the Securities Commission under the FAA.

An authorised financial advisor is able to give financial advice or make an investment transaction in relation to both category 1 products and category 2 products, and provide any type of financial planning service, subject to the terms of the authorisation granted by the Commission. Authorisation can be granted for one or more of the following classes:

- performing a financial adviser service in relation to a category 1 product;
- making an investment transaction in relation to a category 1 product; and/or
- providing a financial planning service.

The FAA specifies criteria that a person must meet in order to obtain authorisation, including the requirement for the individual to be a person of good character, and meet specified levels of competency, knowledge, and skills for an authorised financial adviser.

- *Registered adviser*

An individual who is registered as a financial service provider under the FSP Act (a **registered adviser**) may give financial advice or make an investment transaction in relation to a category 2 product only.

- *QFE employee*

An individual (whether registered as a financial service provider or not) who is an employee or agent of what is termed a "*qualified financial entity*" (**QFE**) may, in the course of the QFE's business, give financial advice or make an investment transaction in relation to a category 2 product. Employees of a QFE may also give financial advice or make an investment transaction in relation to a category 1 product of which the QFE is the issuer.

The QFE status rule is intended to allow large organisations to avoid the excessive compliance costs that would otherwise result from the requirement to register all employees who give financial advice. Once the Securities Commission grants this status, the QFE becomes responsible for the conduct and disclosure obligations of its employees under the FAA. If an organisation does *not* have QFE status, both it, and each employee who performs a financial adviser service, must be registered under the FSP Act.

Disclosure obligations

The FAA provides that a financial adviser must make certain disclosures to the person for whom the financial adviser service is performed, before performing the financial adviser service.

The disclosure obligations under the FAA will replace the investment adviser disclosure requirements in Part 4 of the Securities Markets Act 1988, which will be repealed when the FAA is in full force.

Conduct obligations

The FAA requires financial advisers to comply with certain conduct obligations. As with the disclosure obligations, the conduct obligations that apply will differ, depending on which of the three types of financial adviser is providing the financial adviser service.

However, all financial advisers must comply with certain basic conduct obligations - such as exercising reasonable care, diligence and skill and not engaging in misleading or deceptive conduct. Authorised financial advisers are subject to additional conduct obligations in relation to handling clients' money and property.

Territorial Scope

Amendments are scheduled to the section dealing with the territorial scope of the FAA. For some unknown reason, the version that is currently law today in New Zealand differs from the version that was passed by Parliament.

The version that was assented to by the Governor-General (and therefore became law) includes the following section:

"This Act applies to a financial adviser service performed in New Zealand by a person in New Zealand, regardless of where the person performing the financial adviser service is resident, is incorporated, or carries on business."

When it is amended, the FAA will apply to a financial adviser service that is provided to a person in New Zealand, regardless of the location of the financial adviser. Put another way, financial adviser services provided in New Zealand from offshore will be subject to the FAA. We expect this change to be made well before the regime comes fully into force in 2010.

Financial Service Providers (Registration and Dispute Resolution) Act 2008

Broadly, the FSP Act does two things. First, it sets up a registration system for financial service providers. Secondly, it establishes a dispute resolution system that will be available to certain complainants.

Prior to the introduction of the FSP Act, there was no general licensing or registration regime for entities providing financial services in New Zealand. There were sector specific regimes (most notably for entities that wished to trade as banks) but a person could, for example, act as a money lender without any need for registration and without any direct regulatory oversight.

The FSP Act now requires all financial service providers to be registered and all financial service providers providing services to the public to be members of an approved industry-led dispute resolution scheme. Once the register and the dispute resolution scheme have been established and approved, and those affected have had an opportunity to comply with the legislation, consumers will be able to search the register via the internet and to make complaints under the dispute resolution scheme. This process is currently expected to take up to two years.

Registration

The FSP Act applies to persons who provide a "*financial service*", including, among others:

- a financial adviser service (this has the same meaning as when used in the FAA);
- acting as a deposit taker;
- being a registered bank;
- managing money or securities on behalf of others;
- lending money;
- operating money transfer or foreign exchange services;
- entering into derivatives;
- underwriting or placing insurance; and
- participating in the offer of securities to the public as issuer, trustee or manager.

However, importantly, the FSP Act only applies to those *in the business* of providing a financial service (although this may not be the only, or even the principal, business of that person). Moreover, it does not apply to specified persons (such as lawyers, accountants and real estate agents) who perform a financial service as a necessary but incidental element of their business.

Where the financial service provider is an organisation, and the organisation is registered under the FSP Act, its employees are not subject to it.

Responsible financial service provider

The FSP Act introduces the new concept of a "*responsible financial service provider*". If an entity is declared by Order in Council to be a responsible financial service provider, that entity becomes responsible for the financial services provided by its affiliates (who would not need to register separately). The intention of this amendment is to prevent unduly burdensome compliance costs in certain businesses where registration by each affiliated financial service provider would provide little benefit to consumers.

Registration process

The registration process will be overseen by the new Registrar of Financial Service Providers and Financial Advisers – initially to be the Registrar of Companies. Registration will be by way of application. The register will be kept in electronic form and will be searchable by the public. The register will disclose, among other things:

- the name and address of the financial service provider; and
- if the financial service provider is required to be licensed (e.g., because it is a registered bank), the name and address of the licensing authority.

For the vast majority of financial service providers, who are not currently regulated, the initial registration requirement, and the requirement to update their details annually, are additional compliance costs they must meet.

Territorial scope

Unlike the territorial scope of the FAA (once amended), the FSP Act territorial scope provision states:

"This Act applies to the provision in New Zealand of a financial service by a person who is in New Zealand, regardless of where the financial service provider is resident, is incorporated, or carries on business."

Accordingly, issues may arise over the different application of each piece of legislation to offshore financial advisers. This different treatment, and the resulting consequences for offshore financial service providers, is baffling. By way of example, an offshore financial adviser providing his or her services in New Zealand (but from offshore) will need to comply with the FAA's disclosure and conduct rules. But that person will not need to register as a financial service provider under the FSP Act. It defies logic for two pieces of such closely-related legislation to have a different territorial scope.

The enhanced regulation of financial advisers is certainly a welcome development, and should help to rebuild confidence in New Zealand's financial markets. However, as with all significant new legislation, there are a number of questions around how the new regulation will operate in practice. All participants in New Zealand's financial markets will need to have a clear understanding of these new laws as they evolve over the next few years.

Crown Deposit Guarantee Scheme – update

In our Spring 2008 issue of Financial Services Quarterly, we set out an overview of the Crown Deposit Guarantee Scheme. Set out below is an update on progress since then.

At this stage, three institutions have entered into a Deed of Guarantee with the Crown in respect of the Wholesale Funding Guarantee (the **Guarantee**).

While their entry into the Deed gives them access to the Guarantee, it does not guarantee any particular debt instrument. The Guarantee is structured so that, once an institution has been granted access to it, the institution must then apply for each individual instrument to be covered by it. Once the Crown has approved an instrument, it will issue a guarantee eligibility certificate confirming that the relevant liability is covered by the Guarantee. To date, only Bank of New Zealand has been issued a certificate in respect of a five year bond programme.

The Guarantee is designed to be used where required, and participating institutions will be encouraged to withdraw from using the Guarantee when "*market conditions permit*".

The Guarantee will cover an instrument until the earlier of:

- expiry of the instrument; and
- five years following its issue.

The Crown continues to maintain that each decision to grant a guarantee with a specific entity, and to issue a Certificate, is at its sole discretion.

Although not specifically confirmed, it appears that the New Zealand Treasury will issue an enforceability opinion in respect of each Guarantee. This opinion is expected to be in a standard form and we would expect it to accompany each Guarantee.

Since our overview of the scheme, the one noteworthy change has been a reduction of the fee payable. The reduction amounts to 15 or 50 basis points in respect of the term of the guaranteed instrument. The Treasury has advised that the change was made to take into account the changing market environment.

The revised fees are set out below:

<i>Credit Rating of issuer</i>	<i>Initial Fee (bps per annum)</i>		<i>Revised Fee (bps per annum)</i>	
	<i>1 year term or less</i>	<i>1+ year term</i>	<i>1 year term or less</i>	<i>1+ year term</i>
AA- and above	85	140	70	90
A- to A+	145	200	130	150
BBB- to BBB+	195	250	180	200

In the journals

Syndication in Australia: is the market disrupted significantly?

Miles David, Australian Banking and Finance Law Bulletin, November/December 2008

In this article, the author looks at the Australian syndication market and considers whether it is a viable alternative to more sophisticated capital raising methods that have recently caused global financial turmoil.

The article sets out an explanation of what syndicated loans are and how they work, highlighting the following benefits:

- there is one point of contact for the borrower;
- an opportunity to borrow larger sums than might be available from one lender is presented;
- there is a chance to build stronger relationships;
- an opportunity is available for lenders to cross-sell other products;
- the marketing costs are minimal; and
- junior lenders enjoy equal treatment with senior lenders.

The article then sets out an explanation of the documentation involved in a syndicated transaction, followed by an explanation of the legal aspects. Of particular relevance in the current market is the market disruption clause:

Market disruption

The author comments on the fact that banks are finding it difficult to fund their participations in syndicated loan transactions because of the current shortage of liquidity globally.

Because interest rates in syndicated transactions are typically floating rates determined by reference to LIBOR or the local equivalent, and because banks are often having to pay amounts greater than LIBOR for funds to on-lend to borrowers, banks are often able to pass on the higher cost of funds to borrowers using the market disruption clause.

The British Bankers' Association is heeding calls to radically overhaul the way the overnight reference rate is calculated and market participants are keenly awaiting developments in this regard.

Conclusion

The author concludes that syndicated loans simplify the borrowing process and, unlike some bond issues, can be arranged swiftly and discreetly.

There has been a huge contraction across the spectrum of capital markets in recent times, and syndicated loans are no different. It is hoped that, once the outstanding issue of invocation of market disruption clauses has been resolved, some aspect of trust and stability will return to the market.

The market disruption clause

Richard Gray and Suhrud Mehta, *International Financial Law Review*, December/January 2009: 88-89

The purpose of market disruption clauses is to allow a lender to charge the borrower an interest rate that represents the lender's true cost of funding the loan, rather than charging the borrower LIBOR or its local equivalent.

Due to current economic conditions, some lenders are facing a shortfall between their cost of funds and their interest rate return for LIBOR-based loans. For this reason, market disruption clauses are attracting a lot of attention, because they have the effect of entitling lenders to a better, cost-based interest rate that would be higher than LIBOR.

This article offers an explanation for why market disruption clauses are not generally invoked by lenders.

Syndication and enforcement risk in adverse market conditions

Nick Marsh, *Butterworths Journal of International Banking and Financial Law*, (2008) 23(11): 621

This article summarises a recent English case concerning the invocation of an exclusive jurisdiction clause.

A central issue in the case was whether a clause in a loan agreement that conferred exclusive jurisdiction on the Jersey courts would be upheld. The loan agreement was one of a number of related loan agreements, and all of the other agreements conferred exclusive jurisdiction on the English courts.

The court concluded that, although it would be commercially preferable for all disputes relating to the related agreements to be decided together in one jurisdiction, the intentions of the parties to confer jurisdiction on a foreign court could not be ignored. The court must leave parties free to come to their own arrangements, and should not superimpose its own wishes.

This serves as a reminder to bear litigation strategy (in terms of jurisdiction) in mind when drafting related loan agreements, given the increasing scope for litigation in current market conditions.

The Bell Group Litigation – the lessons learned

Diccon Loxton, Partner, Allens Arthur Robinson

The Bell Group litigation which has recently been completed in Australia has given some timely insights into how the Australian courts will approach the legal issues involved in work-outs.

The court advised banks and company directors to take a more cautious approach in work-outs, and in the standard procedures that apply whenever members of corporate groups give guarantees. Despite this being an Australian case, based on (now outdated) Australian law, some key principles emerged from the decision.

Simplified facts

- The Bell Group Limited (**TBGL**), an Australian listed holding company, and its English subsidiary, had borrowed money from banks on an unsecured basis. The loans were guaranteed by various members of its corporate group.
- TBGL subsequently suffered financial difficulties. It entered into a refinancing transaction with the banks, pursuant to which:
 - the term was extended;
 - the banks took guarantees and security over principal assets from many members of the group; and
 - the borrower and the guarantors undertook that all asset sale proceeds would be used toward repayment of the bank debt or would be paid into escrow.
- Most of the refinancing documents were executed in early 1990. In April 1991, TBGL appointed provisional liquidators, and the banks realised the assets subject to their security. TBGL and a number of its subsidiaries, the liquidators, and the trustee for the bondholders, sued the banks.
- They alleged, among other things, that the companies were insolvent when they entered into the refinancing transaction and gave the securities, and that their directors were in breach of their directors' duties. They claimed the banks were aware of the breach, and consequently were liable as constructive trustees to return the proceeds of realisation of the securities, and the refinancing transaction should be set aside.
- Further, there were various claims that the banks' conduct amounted to an equitable fraud on the companies and their creditors, including the bondholders, and claims that the security should be set aside under bankruptcy legislation as it then affected Australian corporations (the law has since changed).

The court's findings

The court found that:

- TBGL and its subsidiaries were insolvent when they entered the refinancing transaction and gave securities;
- the directors knew or should have known that the companies were insolvent, or nearly insolvent;
- entering into the transaction and giving the securities involved a breach of the directors' duties (specifically, the duty to act in the company's best interests); and
- the banks knew of that breach, and were therefore liable as constructive trustees.

Practical application of the lessons learned

The decision of the court included the following advice:

When groups of companies are in financial difficulties or seeking a work-out

Directors:

- Obtain and critically examine forward looking cash-flows showing a prospect of paying, continuing or refinancing existing debt.
- Examine the position of each company in determining corporate benefit.
- For each company, don't create security in favour of one group of creditors, unless there is a plan, or a reasonable prospect of a plan, for the company to continue to pay creditors.
- Treat with great caution any proposed guarantee from a company that has not previously given a guarantee of the debt.
- Ensure that the minutes of any meeting are accurate and a meeting is actually held for the company.

Banks:

- Examine the position of each company in determining corporate benefit.
- Obtain and critically examine cash-flows showing a prospect of paying, continuing or refinancing existing debt.
- Be aware of the restrictions on directors (see above).
- Ask for your standard requirement in relation to information, certificates and the like, and do not give up the request without extreme caution.
- In relation to each company, unless the corporate benefit is blindingly obvious, get defensible, reasonable statements (preferably minutes) setting out the reasons why the directors are entering into the transactions, and the corporate benefit for the company.
- Be very wary of accepting evidence of directors' resolutions that are implausible (i.e. they set out formalities that may not be followed).
- Be very cautious about becoming involved in the drafting of directors' resolutions.
- Be cautious about accepting identical pro forma minutes or resolutions for every company.

When companies in a solvent group are giving a guarantee of a new financing

Directors:

- Separately examine the position of each company in determining corporate benefit.

Banks:

- Insist on your standard requirements; be careful about giving them up.
- In relation to each company, unless the corporate benefit is clear, get defensible, reasonable statements (preferably not full minutes) setting out the reasons why the directors are entering into the transactions, and the corporate benefit (not simply a statement that there is a corporate benefit).
- Be very wary of accepting evidence of directors' resolutions that are implausible.
- Be cautious about pro forma resolutions for every single company – i.e., ensure each are appropriately adapted.
- Be aware that there may still be a risk where every company's constitution has a provision allowing its directors to act in the best interests of its holding company.

Recent developments

Fast track response for capital raising now in the House

The new Securities Disclosure and Financial Advisers Amendment Bill, recently introduced into Parliament, contains key measures aimed at streamlining raising of capital for New Zealand businesses.

Flowing from the first round of recommendations of the Capital Market Development (CMD) Taskforce for steps to respond to current financial conditions, they are particularly relevant for listed issuers and also reflect recommendations made by NZX.

Central to the bill's key provisions is the objective of making it easier for businesses to raise capital by introducing a simplified disclosure prospectus regime into the Securities Act 1978, doing away with a lot of duplicated information for NZX-listed issuers. At the same time, the simplified disclosure prospectus aims to ensure that timely and accurate disclosure of information is made to prospective investors.

The contents of the new simplified disclosure prospectus will be contained in regulations which, we understand, are currently being worked on. Once implemented, the new simplified disclosure prospectus will enable listed issuers to offer certain debt and equity securities without the need to duplicate information that is already made publicly available through the NZX continuous disclosure regime. Specifically, the bill's explanatory notes say that listed issuers will only be able to use the simplified disclosure prospectus route to issue securities of equal or higher rank than those securities already on issue.

The bill also proposes technical changes to categories of people exempt from disclosure requirements, making it easier for all companies - both listed and unlisted - to raise capital.

The bill also makes a number of minor, technical, amendments to the Financial Advisors Act 2008.

Simplified disclosure prospectus

A new definition has been inserted in the Securities Act to provide for use of the simplified disclosure prospectus by those issuers subject to continuous disclosure obligations. Background to the decision-making process that led to this new category of disclosure document are outlined in the bill's notes and traverse the possible legislative responses to the CMD Taskforce's initial recommendations released in November.

In particular, the notes make it clear that the preferred option for removing unnecessary impediments to capital raising by listed issuers is to use a new, single (simplified), offer document that relies on the information already made publicly available pursuant to the issuer's continuous disclosure obligations.

Specifically, by using a new (simplified) prospectus, those issuers who are subject to continuous disclosure would be able to make an offer of securities - relying on the information previously disclosed pursuant to those continuous disclosure obligations and any additional information material to the offer.

The obvious advantage for listed issuers is to reduce the time and cost of complying with the full (prospectus and investment statement) disclosure regime. The simplified disclosure prospectus would not seek to reduce the amount of information available to investors, instead simply to reduce duplication. As a result, relevant announcements and information made through the continuous disclosure regime will need to be referenced (incorporated by reference) in a simplified disclosure prospectus and made available to investors.

The provisions in the Securities Act relating to liability, penalties and remedies for the disclosure of false or misleading information will continue to apply to simplified disclosure prospectus in the same manner that they do to a full prospectus. However, the quid pro quo for the maintenance of these obligations is that the due diligence defences provided by the Securities Act in relation to the existing disclosure regime will also be available for a simplified disclosure prospectus. By contrast, the simplified disclosure regime being used in Australia to facilitate rights issues by listed issuers, using a very simple offering memorandum and a 'Cleansing Statement', does not provide the issuer and its directors with the same protections.

The additional changes made to the Securities Act to accommodate the use of a simplified disclosure prospectus include:

- creating an exception so that simplified disclosure prospectuses that refer to financial statements do not need to be accompanied by a copy of those financial statements; and
- providing a mechanism for the Securities Commission to make an extension order (extending the period within which securities may be allotted pursuant to a simplified disclosure prospectus) in three specified circumstances – two of which concern an issuer disclosing information that may have an adverse effect on the issuer and is material to the offer and the final one of which concerns an issuer failing to comply with its continuous disclosure obligations.

The bill also includes a mechanism and an example (which itself is a new development) for dealing with such an extension order. That example helps explain an investor's options if an extension order is made by the Securities Commission. Those options are to actively re-subscribe for the securities, to require that the investment be repaid or a "do nothing" option which preserves the investor's existing rights under the Securities Act to require the repayment of a subscription paid in respect of a "voidable allotment" within a period of up to 12 months.

Amendments to existing safe harbours in the Securities Act

Pleasingly the bill also contains changes to the exceptions in sections 3(2) of the Securities Act and to the "eligible persons" regime.

The effect of the amendment to section 3(2) is to provide that an offer of securities made only to persons who have previously paid a minimum subscription of at least \$500,000 for (initial) securities in a single transaction is not an offer of securities to the public to which the prospectus disclosure regime applies. However, there are some restrictions including that:

- the further securities offered must be identical to those initial securities; and
- the offer of further securities must be made within 12 months of the first allotment of the initial securities.

The proposed changes to the "eligible persons" regime amend anomalies in the original wording of that concessionary treatment enabling offers of securities to be made to "eligible persons" without the need for a prospectus or investment statement. The proposed amendments:

- allow a single offer of securities to both categories of "eligible person" (i.e. "wealthy" or "experienced" persons) and persons who are deemed not to be members of the public under the safe harbours provided by section 3(2) of the Securities Act, correcting an anomaly where the offer could only be made to one category but not both categories together;
- clarify that a family trust is a "person" for the purposes of applying the eligible person criteria; and
- allow certification that a person is "wealthy" every 12 months rather than every six months.

These changes apply to both listed and unlisted issuers and will help facilitate private placements in the SME market, particularly for start-ups and "angel investors".

What's next

The detail and content of the simplified disclosure prospectus will be contained in regulations which are yet to be promulgated.

The bill's explanatory note says that, in addition to background work first undertaken by the Ministry of Economic Development (MED) in 2006 and the interim report of the CMD Taskforce, the urgency attached to this reform package has meant that MED has limited consultation to discussions with a targeted group of industry participants. There has been close co-operation with the Securities Commission and consultation with Treasury and the Prime Minister's department. Officials have also notified Australian authorities in the context of the trans-Tasman mutual recognition regime. It seems likely that there will be no lengthy, formal, process for submissions on the bill and, possibly, only a further round of consultation with a targeted group of industry participants on the detail of the simplified disclosure prospectus to be contained in regulations.

While the devil will be in the detail of the regulations governing the content of the simplified disclosure prospectus, the speed and decisiveness with which the relevant policy decisions have been made to introduce the bill are encouraging.

The rapid introduction provides a further signal of the willingness with which officials have been prepared to address the need for a range of New Zealand businesses to raise capital quickly to respond to the pressures being brought to bear by the existing financial conditions.

Bell Gully news

Leading competition law practice belongs to Bell Gully

As the Commerce Commission takes an increasingly public profile in New Zealand and competition law issues continue to expand, leading international publisher *Global Competition Review* has judged Bell Gully's competition law team as New Zealand's best.

Bell Gully authors New Zealand chapter in global gas publication

Bell Gully partner and energy specialist David Coull has authored the New Zealand chapter of a publication focusing on the international gas sector.

Summer clerks escape the office for a good cause

As part of this year's summer clerk programme, Bell Gully's newest lawyers visited the homes of those affected by leukaemia and other blood related conditions to lend a helping hand.

\$100,000 penalty for spamming

The High Court has recently considered the Unsolicited Electronic Messages Act 2007 for the first time, and ordered a spammer to pay \$100,000.

RMA reforms signal a step in the right direction

Bell Gully welcomes the Government's announcement that it will be embarking on a significant series of reforms to the Resource Management Act.

Bell Gully partners again recognised by Asialaw

Bell Gully partners continue to feature as "leading lawyers" in the 2008 edition of Asialaw Leading Lawyers.

New Zealand insolvency expertise shared in specialist global guide

The New Zealand legal landscape around insolvency has been outlined by recognised Bell Gully specialist Murray Tingey in a newly released global publication.

Attack on rural activities: a mushrooming problem?

Meadow Mushrooms' decision to shut its Waikato growing operation, with more than 160 jobs lost, could not have come at a worse time for staff and the Morrinsville community – but it may also signal what's to come for more in the rural sector.

Useful Web links

New Zealand government

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

New Zealand financial agencies and organisations

- [Commerce Commission](http://www.comcom.govt.nz) [www.comcom.govt.nz]
- [The Companies Office](http://www.companies.govt.nz) [www.companies.govt.nz]
- [Export Credit Office](http://www.nzeco.govt.nz) [www.nzeco.govt.nz]
- [NZ Law Commission](http://www.lawcom.govt.nz) [www.lawcom.govt.nz]
- [Office of the Banking Ombudsman](http://www.bankombudsman.org.nz) [www.bankombudsman.org.nz]
- [Office of Insurance and Savings Ombudsman](http://www.iombudsman.org.nz) [www.iombudsman.org.nz]
- [Office of the Privacy Commissioner](http://www.privacy.org.nz) [www.privacy.org.nz]
- [Personal Property Securities Register](http://www.ppsr.govt.nz) [www.ppsr.govt.nz]
- [Reserve Bank of New Zealand](http://www.rbnz.govt.nz) [www.rbnz.govt.nz]
- [Securities Commission](http://www.seccom.govt.nz) [www.seccom.govt.nz]
- [Takeovers Panel](http://www.takeovers.govt.nz) [www.takeovers.govt.nz]

New Zealand commercial sites

- [CLANZ](http://www.clanz.org) [www.clanz.org]
- [Financial Services Federation](http://www.fsf.org.nz) [www.fsf.org.nz]
- [Institute of Chartered Accountants](http://www.nzica.co.nz) [www.nzica.co.nz]
- [NZ Bankers' Association](http://www.nzba.org.nz) [www.nzba.org.nz]
- [NZ Business Roundtable](http://www.nzbr.org.nz) [www.nzbr.org.nz]
- [NZ Institute of Economic Research](http://www.nzier.org.nz) [www.nzier.org.nz]
- [NZ Exchange](http://www.nzx.com) [www.nzx.com]

Australian government sites

- [Banking Ombudsman](http://www.abio.org.au) [www.abio.org.au]
- [National Office for the Information Economy](http://www.noie.gov.au) [www.noie.gov.au]

Australian commercial sites

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

International sites

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