Welcome to the Spring 2018 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 in these areas:

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

**In this issue:**

- [Findings of consumer credit law review](#)
- [Proposed tax changes to simplify securitisations](#)
- [Suspicious Activity Reports guideline](#)

**Need more information?**

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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.*
LEGISLATION/IN PARLIAMENT

Findings of consumer credit law review
Following a recent review of the June 2015 changes made to the Credit Contracts and Consumer Finance Act 2003, MBIE issued a discussion paper, seeking feedback on areas of the legislation that still require improvement.

Regulatory fixes for the CCCFA
Various amendments to the CCCFA are being introduced through an omnibus bill containing regulatory fixes to legislation administered by MBIE.

Land transfer laws update
New Zealand’s land transfer laws are being updated with the introduction of the Land Transfer Act 2017, which will come into effect towards the end of 2018.

Co-regulation licensing regime for insolvency practitioners
The Government has introduced a Supplementary Order Paper to the Insolvency Practitioners Bill to change to a co-regulatory licensing framework, requiring insolvency practitioners to be licensed by an accredited body under new stand-alone legislation.

Proposed tax changes to simplify securitisations
A new tax bill proposed changes to the way on-balance sheet securitisation vehicles are taxed, making it easier to achieve tax neutrality.

Regulatory fixes for companies and limited partnerships legislation
Proposed amendments to the Companies Act and the Limited Partnerships Act have been introduced through an omnibus bill containing various regulatory fixes to legislation administered by MBIE.

Terms for Phase 2 of Reserve Bank Act review released
The terms for Phase 2 are intended to ensure the Reserve Bank Act is fit for purpose, and aligned with what the Government considers will provide a strong, flexible and enduring regulatory framework with public and industry support.

Residential land amendments mark new era in New Zealand’s overseas investment regime
The Overseas Investment Amendment Bill has been passed, and most of the changes are likely to be operative by the end of October 2018.

Partnership law to be revised
The Partnership Law Bill, which revises the Partnership Act 1908, is being revised to make it more accessible and easier to understand.

Improved regulatory regime for Friendly Societies and Credit Unions
The Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Act 2018 was assented to on 4 July 2018.

Ministerial exemptions granted for the AML/CFT regime
RECENT DEVELOPMENTS

Suspicious Activity Reports guideline
The New Zealand Police Financial Intelligence Unit has issued a Suspicious Activity Reporting guideline.

Commerce Commission lender website review
The Commerce Commission has reported its findings following a review of 215 lenders’ websites for compliance with disclosure rules.

Beneficial ownership disclosure requirements proposed for companies and limited partnerships
MBIE has released a discussion document on requirements for New Zealand companies and limited partnerships to hold and disclose information about their beneficial owners.

Legislative changes to enable ratification of CPTPP introduced
The Trans-Pacific Partnership Agreement Amendment Bill has been introduced to make the changes necessary for New Zealand to ratify the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

Latest from the Financial Markets Authority

Consultation on class exemption for managers of certain funds that invest in loans
The FMA is seeking feedback on a proposal for a class exemption to address an obligation on managers of managed funds to disclose borrower names.

Guidance on compliance assurance programmes
The FMA has published an information sheet setting out its expectations for a compliance assurance programme required for entities licensed under the Financial Markets Conduct Act.

Guide for peer-to-peer lending services on publishing default rate information
The FMA has published a guide aimed at helping peer-to-peer licensees understand and meet the minimum licensing standard to publish default rate information.

Report on improving financial statements
The FMA has released a report summarising findings from its review of improvements in the presentation of financial statements.

Annual survey on the public’s attitude to New Zealand’s financial markets
The FMA has released its 2018 survey on the level of confidence New Zealanders have in our financial markets and regulation.
LEGISLATION/IN PARLIAMENT

Findings of consumer credit law review

Following a recent review of the June 2015 changes made to the Credit Contracts and Consumer Finance Act 2003 (the CCCFA), the Ministry of Business, Innovation and Employment (MBIE) issued a discussion paper, seeking feedback on areas of the legislation that still require improvement.

The Minister of Commerce and Consumer Affairs requested a review of the changes, to assess whether borrowers are better informed, whether predatory and irresponsible lending has reduced, and whether further steps are required to ensure responsible lending, particularly for vulnerable consumers.

MBIE set out its review findings, noting that “while there have been some positive results from the 2015 reforms, it is clear that serious issues remain”.

Once submissions have been analysed, MBIE will prepare recommendations for the Government, with policy decisions expected to be announced later in 2018.
Regulatory fixes for the CCCFA

Various amendments to the Credit Contracts and Consumer Finance Act 2003 (the CCCFA) are being introduced through an omnibus bill (the Regulatory Systems (Economic Development) Amendment Bill), which contains regulatory fixes to legislation administered by the Ministry of Business, Innovation and Employment.

The Bill includes provisions that:

- clarify that the lender responsibility principles set out in section 9C(2) of the CCCFA apply in relation to “relevant insurance contracts”;
- allow lenders to opt-in to the new repossession scheme introduced by the Credit Contracts and Consumer Finance Amendment Act 2014;
- provide that the repossession regime does not apply to goods owned by companies, or where a business declaration has been signed;
- amend section 99B (which prohibits enforcement of a credit contract if a creditor is not registered as required under Part 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008) to limit its application to consumer credit contracts; and
- prescribe two new infringement offences for breach of requirements for the publication of standard form contract terms (section 9J) and publication of costs of borrowing (section 9K).

The Bill will be open for consultation during the select committee stage, which is expected to be in September 2018.

Click here to read the Bill.
Land transfer laws update

New Zealand’s land transfer laws are being updated with the introduction of the Land Transfer Act 2017, which will come into effect towards the end of 2018.

The new Land Transfer Act aims to simplify and modernise the law, make it more accessible, and improve certain property rights.

The new legislation includes some changes to terminology that may necessitate amendments to documentation. For example:

- “Certificate of Title” becomes “Record of Title”;
- “Proprietor” becomes “Owner”;
- “Dominant tenement” becomes “Benefitted land”; and
- “Servient tenement” becomes “Burdened land”.

There have also been some changes to reduce the time frames associated with obtaining guaranteed searches, and registering mortgages in reliance on guaranteed searches:

- guaranteed searches won’t be able to be ordered earlier than 5 working days from the date a transaction is settled; and
- a mortgage must be registered within 20 working days from the day after the day a transaction is settled.

As part of the implementation process, new regulations, standards and directives will need to be issued by the Registrar-General of Land. Exposure draft regulations are expected to be issued for public consultation later this year.

Click here for more information.
Co-regulation licensing regime for insolvency practitioners

The Government has introduced a Supplementary Order Paper (SOP) to the Insolvency Practitioners Bill to change to a co-regulatory licensing framework, requiring insolvency practitioners to be licensed by an accredited body under new stand-alone legislation.

As a consequence, the Bill and the SOP have been referred back to the Economic Development, Science and Innovation Committee for further consideration.

Click here for more information.
Proposed tax changes to simplify securitisations

A new tax bill proposed changes to the way on-balance sheet securitisation vehicles are taxed, making it easier to achieve tax neutrality.

The Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill, which was introduced on 28 June 2018, proposes to extend the flow-through tax treatment that currently applies to bank mortgage securitisations to a wider range of securitisation transactions.

Click [here](#) for more information.
Regulatory fixes for companies and limited partnerships legislation

Proposed amendments to the Companies Act 1993 and the Limited Partnerships Act 2008 have been introduced through an omnibus bill (the Regulatory Systems (Economic Development) Amendment Bill) that contains various regulatory fixes to legislation administered by the Ministry of Business, Innovation and Employment.

Click here for a summary of some of the amendments proposed.
Terms of reference for Phase 2 of Reserve Bank Act review released

Phase 1 focused on adding employment to the price stability objective of the Reserve Bank, and providing for a committee decision-making model for monetary policy decisions. The terms for Phase 2 are intended to ensure the Reserve Bank Act is fit for purpose, and aligned with what the Government considers will provide a strong, flexible and enduring regulatory framework with public and industry support.

Phase 2 will consider a series of key topics, including:

- institutional arrangements for prudential regulation and supervision;
- statutory functions and powers;
- strength and flexibility of current legislation;
- alignment with the domestic regulatory management system; and
- international experience and best practice.

Phase 2 work will be carried out jointly by Treasury and the Reserve Bank, in conjunction with the Independent Expert Advisory Panel.

Click [here](#) for more information.
Residential land amendments mark new era in New Zealand’s overseas investment regime

The Overseas Investment Amendment Bill has been passed, and most of the changes are likely to be operative by the end of October 2018.

The Bill designates residential land and certain profits à prendre as “sensitive land”, requiring overseas purchasers to obtain consent under the Overseas Investment Act before they can complete a purchase.

Click here for a full summary of, and commentary on, the new legislation.
Partnership law to be revised

The Partnership Law Bill, which revises the Partnership Act 1908, is being revised to make it more accessible and easier to understand.

Click here to read an exposure draft of the Bill, which was released for feedback in May 2018.
Improved regulatory regime for Friendly Societies and Credit Unions

The Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Act 2018 (the Amendment Act), which makes long-awaited changes to the outdated Friendly Societies and Credit Unions Act 1982, was assented to on 4 July 2018.

One of the more significant changes allows credit unions to become bodies corporate so that they no longer need trustees to hold assets and conduct business. This will help to remove unnecessary operating and compliance costs, and bring credit unions into alignment with other financial institutions in New Zealand.

Some other key changes to the 1982 Act include:

- reducing the minimum number of credit union members needed for an association of credit unions to be validly constituted from seven to two;
- allowing credit unions to make loans, not just to their members but also to small and medium-sized enterprises where they are related to a member (with specified thresholds);
- allowing associations of credit unions to provide a wide range of services to any non-member entity (not just to non-member entities that are mutuals and co-operatives); and
- permitting friendly societies that are licensed insurers to offer securities to their members for subscription.

The changes are expected to come into force by Order in Council before the 18-month long-stop date provided for in the Amendment Act.
Ministerial exemptions granted for the AML/CFT regime


Click here for more information.
RECENT DEVELOPMENTS

Suspicious Activity Reports guideline

The New Zealand Police Financial Intelligence Unit has issued a Suspicious Activity Reporting Guideline to help clarify obligations to report suspicious activity under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

The guideline:

- outlines the obligation for reporting entities to submit Suspicious Activity Reports;
- sets out the indicators of money laundering; and
- covers reporting entities’ obligation to prevent and detect terrorism financing.

Click [here](#) to read the guideline.
Commerce Commission lender website review

The Commerce Commission has reported its findings following a review of 215 lenders’ websites for compliance with disclosure rules.

The review covered:

- whether the lender had published its standard form contract terms and costs of borrowing clearly and prominently;
- what the lender had represented about borrowers’ rights to cancel contracts;
- descriptions and amounts of fees charged; and
- published interest rates.

Where breaches were identified, the Commerce Commission contacted lenders, most of whom indicated a willingness to remedy any issues.

Click here to read the review.
Beneficial ownership disclosure requirements proposed for companies and limited partnerships

The Ministry of Business, Innovation and Employment (MBIE) released a discussion document on requirements for New Zealand companies and limited partnerships to hold and disclose information about their beneficial owners.

This initiative is part of the government's ongoing crackdown on the misuse of New Zealand corporate entities for criminal activities, and is in line with measures being adopted internationally to counter the use of complex structures to hide criminal activity.

At this stage, MBIE’s preferred option is to require companies and limited partnerships to:

- identify their beneficial owners and keep accurate and up-to-date information about them;
- provide this information to the Registrar of Companies, to be made publicly available on the companies and limited partnership registers.

MBIE acknowledged that it reached this position based on certain assumptions and has sought feedback on its proposal.

Click [here](#) for more information.
Legislative changes to enable ratification of CPTPP introduced

The Trans-Pacific Partnership Agreement Amendment Bill has been introduced to make the changes necessary for New Zealand to ratify the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

Click here for more information.
LATEST FROM THE FINANCIAL MARKETS AUTHORITY

Consultation on class exemption for managers of certain funds that invest in loans

The Financial Markets Authority (FMA) is seeking feedback on a proposal for a class exemption to address an obligation on managers of managed funds to disclose borrower names.

The Financial Markets Conduct Regulations 2014 require managers of managed funds to disclose information about the assets of the fund. Where funds invest in loans secured by first-ranking mortgages, managers are obliged to disclose the names of borrowers.

Acknowledging that disclosure of borrowers’ names isn’t necessary to monitor the investment practices of fund managers, and that this raises privacy issues for the borrowers and the managers, the FMA has proposed a class exemption.

The FMA is also considering whether to extend the class exemption to funds that invest in loans that are secured by second-ranking mortgages, or by other assets, or that are unsecured.

Submissions closed on 23 July 2018. A copy of the consultation paper is available here.

Guidance on compliance assurance programmes

The FMA has published an information sheet setting out its expectations for a compliance assurance programme (CAP) required for entities licensed under the Financial Markets Conduct Act 2013 (FMC entities).

The information sheet includes guidance on the minimum standards for CAPs, and what the FMA looks for when assessing a licence application and during monitoring of an FMC entity. It also includes elements of what the FMA believes is good practice for a CAP.

Click here to read the information sheet.

Guide for peer-to-peer lending services on publishing default rate information

The FMA has published a guide aimed at helping peer-to-peer licensees understand and meet the minimum licensing standard to publish default rate information.

The guide explains:

- what “default” means;
- when licensees must comply with the standard; and
- how to publish fair, clear and transparent information.

Click here to read the guide.

Report on improving financial statements

The FMA has released a report summarising findings from its review of improvements in the presentation of financial statements.

This report follows on from the publication of its December 2014 report Quality Financial Reporting – How to Improve Financial Statements.

The review was based on financial statements of issuers that made up the NZX 50 as at 30 November 2017.
The report sets out the FMA’s observations across the sample, together with some additional suggestions to ensure that:

- useful information is prioritised in the financial statements;
- the presentation structure of the financial statements supports the communication of relevant information to users;
- disclosures are clear, concise and written in plain English.

Overall the FMA found that only 12 of the 50 issuers that were reviewed had made substantial observable improvements.

Annual survey on the public’s attitude to New Zealand’s financial markets

The FMA has released its 2018 survey on the level of confidence New Zealanders have in our financial markets and regulation.

The survey also looks at the types of investments held, as well as investors’ understanding of diversification and risks.

A copy of the survey report is available here.
BELL GULLY NEWS

For further details and more news visit the publications section of our website.

Holidays Act Issues Paper released for consultation
Submissions closed on proposed changes to the Insolvency Practitioners Bill 2010
Residential land amendments mark new era in New Zealand’s overseas investment regime
High Court rules on continuous disclosure obligations of companies in administration
First HSWA appeal confirms existing sentencing approach and sets guidelines for fines
Are you paying your employees correctly?
Responsible communication on a matter of public interest - Durie v Gardiner [2018] NZCA 278
Taxing the blockchain - cryptocurrency and employee remuneration
Class action developments: High Court finds in favour of kiwifruit class action
Proposed tax changes to simplify securitisations
Open banking and consumer protection - the Government weighs in
MBIE reviews key aspects of New Zealand insurance law
Europe FTA could offer NZ many indirect benefits
Zero Carbon Bill update: discussion document seeks public feedback
Privacy Bill update: Privacy Commissioner seeks penalties of up to $1 million
Development exemption struck from Overseas Investment amendments, private bill possible
New leniency for foreign buyers in Overseas Investment Act overhaul but redraft raises fresh issues
Domestic violence victims one step closer to receiving greater protection from their employer
Arbitration in New Zealand
Australian class action reform: implications for New Zealand
USEFUL WEB LINKS

New Zealand Government

- Consumer Affairs
- Inland Revenue Department
- Ministry of Business, Innovation & Employment
- Ministry of Foreign Affairs and Trade
- New Zealand Government
- NZ Treasury
- Office of the Clerk of the House of Representatives [New Zealand Parliament]
- Parliamentary Counsel Office

New Zealand financial agencies and organisations

- Commerce Commission
- The Companies Office
- Export Credit Office
- NZ Law Commission
- Office of the Banking Ombudsman – password required
- Insurance and Savings Ombudsman
- Privacy Commissioner
- Personal Property Securities Register
- Reserve Bank of New Zealand
- Takeovers Panel
- Financial Markets Authority

New Zealand commercial sites

- NZFMA
- ILANZ
- Financial Services Federation
- Chartered Accountants Australia and New Zealand
- NZ Bankers’ Association
- NZ Institute of Economic Research
- NZX
- The New Zealand Initiative

Australian Government sites

- Banking Ombudsman

Australian commercial sites

- Australian Financial Markets Association
- Australian Securities and Investment Commission
- Australian Stock Exchange

International sites

- Bank for International Settlements
- International Monetary Fund
- International Swaps and Derivatives Association
- NASDAQ
- New York Stock Exchange
- United States Securities and Exchange Commission
- World Bank