

SUMMER 2019/20

FINANCIAL SERVICES QUARTERLY

REVIEW OF CURRENT LEGAL ISSUES IN THE FINANCIAL SECTOR

ISSUE HIGHLIGHTS

- **First “Unfair Contract Terms” declaration granted by High Court**
- **Consumer credit law set for major changes under expanded Amendment Bill**
- **Start date confirmed for new financial advice regime**

Each quarter, we summarise recent issues and preview upcoming developments in these areas:



IN THE COURTS



LEGISLATION /
IN PARLIAMENT



RECENT
DEVELOPMENTS

Also in this issue:



BELL GULLY NEWS



USEFUL WEB LINKS

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.

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IN THE COURTS

[First "Unfair Contract Terms" declaration granted by the High Court](#)

The first declaration that a contract is "unfair" has been issued by the High Court.

[Guarantee enforcement: Court of Appeal addresses minimum requirements](#)

The Court of Appeal has held that a guarantee was enforceable against a guarantor who countersigned a loan agreement as "guarantor", where the loan agreement didn't contain any other terms providing for a guarantee.

LEGISLATION /
IN PARLIAMENT[Responsible lending update – new draft regulations seek to clarify scope of "reasonable enquiries"](#)

New Zealand's consumer lending framework looks set to become considerably more prescriptive with the release of the consultation draft of the Credit Contracts and Consumer Finance Amendment Regulations 2020.

[Consumer credit law set for major changes under expanded Amendment Bill](#)

The Finance and Expenditure Committee has proposed extensive additional amendments to the Credit Contracts and Consumer Finance Act, including wholly new provisions that had not been included in the original bill, and therefore were not the subject of submissions.

[New conduct regime for banks, insurers and NBDTs](#)

The Government has announced wide-ranging legislative reforms to govern the conduct of financial institutions.

[Start date confirmed for new financial advice regime](#)

The Government has published a number of regulations, and set 29 June 2020 as the start date for the new regime.

[Consultation on disclosure regulations for financial advice regime](#)

The Ministry of Business, Innovation and Employment has consulted on disclosure regulations for the financial advice regime.

[Mandatory climate-related financial disclosures on the horizon](#)

The Ministry of Business, Innovation and Employment and the Ministry for the Environment are consulting on the design of a climate-related financial disclosure regime.

[Government announces insolvency law reform measures](#)

Cabinet has agreed to a package of reforms to improve aspects of insolvency law, notably for voidable transactions and other recoveries, and preferential claims under the Companies Act.

[Government to introduce a "National Interest Test" to the overseas investment regime](#)

Associate Minister of Finance David Parker has announced the Government's intention to introduce legislation that will give the Overseas Investment Office "new powers, consistent with global best practice, to protect New Zealand's best interests...".

[Farm Debt Mediation Bill update](#)

The Farm Debt Mediation Bill has been reported back from the Select Committee, with a number of important changes to the scope of the proposed regime.

[Revised partnership legislation in force from April 2020](#)

The Partnership Law Act 2019 revises and re-enacts the Partnership Act 1908, without materially changing its substance.

[Regulatory fixes for the CCCFA, the Companies Act and the Limited Partnerships Act](#)

The omnibus Regulatory Systems (Economic Development) Amendment Bill (No 2) makes a number of clarifying and updating changes to the Credit Contracts and Consumer Finance Act, the Companies Act and the Limited Partnerships Act.

RECENT
DEVELOPMENTS[Reserve Bank to publish banks' material breaches](#)

In an effort to improve transparency and market discipline, from next year the Reserve Bank of New Zealand will report material breaches by banks on its website.

[Review of capital adequacy framework](#)

The Reserve Bank of New Zealand has published three external reports, together with a summary of their findings.

[Financial action task force mutual evaluation](#)

The Reserve Bank of New Zealand and its members are working to prepare for an international review to assess New Zealand's level of compliance against international AML/CFT standards.

[Report sets out 10-year vision for New Zealand's capital markets](#)

The steering committee of Capital Markets 2019 has released its final report.

[AML/CFT high risk jurisdictions list updated](#)

The Financial Action Task Force has updated its list of "high risk and other monitored jurisdictions", by adding Iceland, Mongolia and Zimbabwe, and removing Ethiopia, Sri Lanka and Tunisia.

["Good Governance" resources help company directors](#)

The Companies Office has collaborated with the Institute of Directors and business.govt.nz, part of the Ministry of Business, Innovation and Employment, to create resources for small business owners to help them develop and move into business director responsibilities.

LATEST FROM THE FINANCIAL MARKETS
AUTHORITY[Standard conditions for transitional financial advice provider licences](#)

The Financial Markets Authority has imposed two standard conditions for transitional licences.

[Decisions announced on new financial advice regime exemptions](#)

The FMA has reached “in principle” decisions on whether various existing exemptions offered under the Financial Advisers Act 2008 will continue under the new regime.

[FMA's annual report](#)

The FMA has released its annual report for the year to June 2019, which is described in the report as a “watershed” year for the regulator.

[FMA's Kiwisaver Annual Report](#)

The FMA has published its 2019 Kiwisaver Report, summarising its activities as a regulator relating to Kiwisaver for the year to March 2019.

[Consultation on proposed guidance on green bonds and other responsible investment products](#)

The FMA has consulted on how green bonds and other responsible investment products should be described, labelled and promoted to investors.



IN THE COURTS

First “Unfair Contract Terms” declaration granted by the High Court

The first declaration that a contract is “unfair” has been issued by the High Court.

Almost five years after the introduction of the Unfair Contract Terms regime, the High Court has provided welcome guidance on its scope, and the importance of transparency in assessing whether terms are “unfair”.

Click [here](#) for a detailed discussion of this decision.

Guarantee enforcement: Court of Appeal addresses minimum requirements

The Court of Appeal has held that a guarantee was enforceable against a guarantor who countersigned a loan agreement as “guarantor”, where the loan agreement didn’t contain any other terms providing for a guarantee.

Click [here](#) for more information.

LEGISLATION / IN PARLIAMENT

Responsible lending update - new draft regulations seek to clarify scope of “reasonable enquiries”

New Zealand’s consumer lending framework looks set to become considerably more prescriptive with the release of the consultation draft of the Credit Contract and Consumer Finance Amendment Regulations 2020.

The Ministry of Business, Innovation and Employment has also issued an accompanying discussion paper and has sought submissions by 5 February 2020.

Click [here](#) for more information.

Consumer credit law set for major changes under expanded Amendment Bill

The Finance and Expenditure Committee has proposed extensive additional amendments to the Credit Contracts and Consumer Finance Act 2003, including wholly new provisions that had not been included in the original Bill, and therefore were not the subject of submissions.

The key changes in the report include:

- affordability and suitability tests now required for “material changes”,
- calculation of fees,
- requirement for annual returns,

- caps on fees and interest,
- changes relating to trustees in securitisation and covered bond arrangements, and
- advertising and disclosure.

Click [here](#) for more information.

New conduct regime for banks, insurers and NBDTs

The Government has announced wide-ranging legislative reforms to govern the conduct of financial institutions.

A new licensing regime will be introduced for banks, insurers and non-bank deposit takers in respect of their general conduct, including aspects of how they design and offer sales incentives.

The New Zealand Bankers Association is working with the Ministry of Business, Innovation and Employment on draft legislation to implement the new regime. The legislation is expected to be introduced by the end of this year.

Click [here](#) and [here](#) for more information.

Start date confirmed for new financial advice regime

The Government has published a number of regulations, and set 29 June 2020 as the start date for the new regime.

The regulations:

- set the commencement date,
- amend Financial Markets Authority levies,
- set licensing fees applicable to the new regime, and
- make minor changes to the registration regulations to facilitate transitional licensing.

The regulations that are needed for transitional licensing came into force on 25 November, with the remainder coming into force on 29 June 2020.

The FMA started accepting transitional financial advice provider licence applications on 25 November.

Click [here](#) for more information.

Consultation on disclosure regulations for financial advice regime

The Ministry of Business, Innovation and Employment has consulted on disclosure regulations for the financial advice regime.

Submissions closed on 8 November.

Click [here](#) for more information.

Mandatory climate-related financial disclosures on the horizon

The Ministry of Business, Innovation and Employment and the Ministry for the Environment are consulting on the design of a climate-related financial disclosure regime.



The consultation will apply to financial institutions and other entities that participate in New Zealand's financial markets, and addresses the following key questions:

- What are the arguments for retaining the status quo, versus introducing new mandatory climate-related financial disclosures?
- What should be disclosed?
- Which entities should be disclosing?
- When should they start disclosing?

Click [here](#) for more information.

Government announces insolvency law reform measures

Cabinet has agreed to a package of reforms to improve aspects of insolvency law, notably for voidable transactions and other recoveries, and preferential claims under the Companies Act 1993.

The bulk of the reforms are drawn from recommendations made in a 2017 report of the Insolvency Working Group.

Click [here](#) for more information.

Government to introduce a “National Interest Test” to the overseas investment regime

Associate Minister of Finance David Parker has announced the Government’s intention to introduce legislation that will give the Overseas Investment Office “new powers, consistent with global best practice, to protect New Zealand’s best interests...”.

Click [here](#) for more information.

Farm Debt Mediation Bill update

The Farm Debt Mediation Bill has been reported back from the Select Committee, with a number of important changes to the scope of the proposed regime.

Click [here](#) for more information.

Revised partnership legislation in force from April 2020

The Partnership Law Act 2019 revises and re-enacts the Partnership Act 1908 without materially changing its substance.

Click [here](#) for more information.

Regulatory fixes for the CCCFA, Companies Act and Limited Partnerships Act

The omnibus Regulatory Systems (Economic Development) Amendment Bill (No 2) makes a number of clarifying and updating changes to the Credit Contracts and Consumer Finance Act 2003 (the CCCFA), the Companies Act 1993 and the Limited Partnerships Act

2008. It was passed on 7 November and will come into force two months after it receives Royal assent.

The changes to the CCCFA include:

- clarifying that the overarching lender responsibilities in section (C(2) apply to “relevant insurance contracts”,
- adding offences and infringement offences for breach of certain requirements for the publication of standard form contract terms (section 9J) and publication of costs of borrowing (section 9K),
- allowing lenders to opt-in to the new repossession scheme introduced by the Credit Contracts and Consumer Finance Amendment Act 2014 for all loans which they administer, and
- providing that the Act’s repossession regime does not apply to goods owned by companies or where a business declaration has been signed.

Click [here](#) for more information.



Reserve Bank to publish banks’ material breaches

In an effort to improve transparency and market discipline, from next year the Reserve Bank of New Zealand will report material breaches by banks on its website.

The new policy will require banks to report any material breaches or possible breaches of a requirement “promptly”, and to report minor breaches every six months.

Click [here](#) for more information.

Review of capital adequacy framework

The Reserve Bank of New Zealand has published three external reports reviewing the analysis and advice underpinning its capital review proposals, together with a summary of their findings.

Final decisions are due in December 2019, with implementation of any new capital rules proposed to start from April 2020. A transition period of “a number of years” is expected before banks would need to meet any new requirements.

Financial action task force mutual evaluation

The Reserve Bank of New Zealand and its members are working to prepare for an international review (the Mutual Evaluation) to assess New Zealand’s level of compliance against international AML/CFT standards.

The Mutual Evaluation will focus on whether New Zealand’s legal framework meets international standards, and how well our AML/CFT system operates in practice.



The final report and ratings are expected to be published by the end of 2020.

Report sets out 10-year vision for New Zealand's capital markets

The steering committee of Capital Markets 2019 has released its final report.

The report sets out 42 recommendations (18 of which have been prioritised) intended to unlock stronger capital markets for all New Zealanders.

Click [here](#) for more information.

AML/CFT high risk jurisdictions list updated

The Financial Action Task Force has updated its list of "high risk and other monitored jurisdictions", by adding Iceland, Mongolia and Zimbabwe and removing Ethiopia, Sri Lanka and Tunisia.

Click [here](#) for more information.

"Good Governance" resources help company directors

The Companies Office has collaborated with the Institute of Directors and business.govt.nz to create resources for small business owners to help them develop and move into business director responsibilities.

Register of Companies Ross van der Schyff says "*Good Governance is a set of resources based on global best practice in governance, made relevant specifically for Kiwi businesses*".

The resources are available at business.govt.nz.

LATEST FROM THE FINANCIAL MARKETS AUTHORITY

Standard conditions for transitional financial advice provider licences

The Financial Markets Authority (the FMA) has imposed two standard conditions for transitional licences.

The FMA consulted on conditions for transitional licences to provide financial advice, and has imposed two standard conditions requiring financial advice providers to maintain adequate records and have a fair, timely and transparent internal process for resolving client complaints.

Click [here](#) for more information.

Decisions announced on new financial advice regime exemptions

The FMA has reached "in principle" decisions on whether various existing exemptions offered under the Financial Advisers Act 2008 will continue under the new regime.

The FMA has agreed that relief will continue to be given to:

- Australian financial services licensees with no place of business in New Zealand (and their representatives), to allow them to provide unsolicited regulated financial advice to retail clients in New Zealand from offshore,
- overseas custodians of client money and client property from new regulations to be made under the Financial Markets Conduct Act 2013, to relieve overseas custodians from the requirement to obtain an assurance engagement from a New Zealand qualified auditor that complies with requirements in the New Zealand regulation, and
- overseas custodians of scheme property under the Financial Markets Conduct (Overseas Custodians—Assurance Engagement) Exemption Notice 2018, to align the expiry date with expiry of the proposed new exemptions for overseas custodians of client money and client property.

Click [here](#) for more information.

FMA's annual report

The FMA has released its annual report for the year to June 2019, which is described in the report as a "watershed" year for the regulator.

Conduct and culture reviews within retail banks and life insurers dominated the FMA's activities during this period, and it has also been a strong year for enforcement activity.

Click [here](#) for more information.

FMA's Kiwisaver Annual Report

The FMA has published its 2019 Kiwisaver Report, summarising its activities as a regulator relating to Kiwisaver for the year to March 2019.

Click [here](#) for more information.

Consultation on proposed guidance on green bonds and other responsible investment products

The FMA has consulted on how green bonds and other responsible investment products should be described, labelled and promoted to investors.

The final date for submissions was 24 October, and a response is pending.

Click [here](#) for more information.



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For further details and more news visit the [publications section](#) of our website.

[Copyright review – MBIE’s approach to policy development](#)

[Government to introduce a "National Interest Test" to the overseas investment regime](#)

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[Mandatory climate-related financial disclosures on the horizon](#)

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[First “Unfair Contract Terms” declaration granted by the High Court](#)

[Corporate Reporter Issue No. 61](#)

[Farm Debt Mediation Bill update](#)



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