



Financial Service Providers (Exemptions) Amendment Regulations 2015

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 4th day of May 2015

Present:

The Right Hon John Key presiding in Council

Pursuant to sections 44(1)(ab) and 79(1)(a) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008, His Excellency the Governor-General makes the following regulations, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with sections 44(1A) and 79(1A) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

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Regulations

1 Title

These regulations are the Financial Service Providers (Exemptions) Amendment Regulations 2015.

2 Commencement

These regulations come into force on 6 June 2015.

3 Principal regulations

These regulations amend the Financial Service Providers (Exemptions) Regulations 2010 (the **principal regulations**).

4 New regulations 14B and 14C inserted

After regulation 14A, insert:

14B Exemption for creditors involved in securitisation, etc, where transfer of rights under consumer credit contract on or after 6 June 2015

- (1) A person (the **new creditor**) is exempt from the application of the Act in respect of providing a financial service of being a creditor under a credit contract in cases where—
 - (a) the new creditor becomes a creditor under the contract by reason only of a transfer of the kind referred to in section 26A(1) of the Credit Contracts and Consumer Finance Act 2003 (the **2003 Act**) that takes effect on or after 6 June 2015; and
 - (b) section 26A of the 2003 Act does not apply in the case of the transfer by virtue of regulation 19 of the Credit Contracts and Consumer Finance Regulations 2004 (the **2004 Regulations**); and
 - (c) regulation 20 of the 2004 Regulations applies.
- (2) If the new creditor is exempt under subclause (1) in respect of a credit contract (the **relevant contract**) but a disqualifying event occurs after the transfer, the exemption in respect of the relevant contract ends at the close of the tenth working day after the day on which the new creditor becomes aware, or ought reasonably to have become aware, of the disqualifying event.
- (3) For the purposes of subclause (2), each of the following is a **disqualifying event**:
 - (a) a right of the new creditor in respect of a debtor or guarantor is exercised or enforced, or a debtor or guarantor is contacted by or on behalf of the new creditor in relation to the exercise or enforcement of such a right, otherwise than by or through the contract manager acting under the management contract:

- (b) a duty of the new creditor in respect of a debtor or guarantor is performed, or a debtor or guarantor is contacted by or on behalf of the new creditor in relation to the performance of such a duty, otherwise than by or through the contract manager acting under the management contract:
 - (c) the term of the management contract ends or that contract ends in some other way:
 - (d) condition D in regulation 20(5) of the 2004 Regulations ceases to be met (reading references in that regulation to the disclosure deadline as references to all times after the disclosure deadline):
 - (e) a complaint is made to an approved dispute resolution scheme of which the contract manager is a member and the contract manager fails to comply with—
 - (i) the rules of the scheme as they apply to the complaint (including as referred to in regulation 20(5)(b)(ii) of the 2004 Regulations); or
 - (ii) any resolution of the complaint binding on the contract manager (including as referred to in that regulation):
 - (f) a person has a complaint that no approved dispute resolution scheme can resolve (despite condition D in regulation 20(5) of the 2004 Regulations) where that is the case solely because the new creditor is not a member of any such scheme in respect of being a creditor under the relevant contract.
- (4) Subclause (3)(a) and (b) applies (without limitation) in relation to rights and duties under the relevant contract, a guarantee, a security interest, or an enactment.
- (5) Subclause (3)(b) does not apply if an enactment prevents the performance of the duty being done, or the contact being made, by or through the contract manager acting under the management contract.
- (6) In subclause (3)(e) and (f), **complaint** means a complaint in relation to the providing of any financial service connected with the relevant contract.
- (7) If the new creditor transfers (whether by assignment or operation of law) all of the new creditor's rights under the relevant contract to another person,—
- (a) subclause (3) applies, for the purpose of determining whether a disqualifying event occurs at or after the time that the transfer by the new creditor takes effect, as if paragraphs (a) to (e) of that subclause were deleted; but
 - (b) the exemption in respect of the relevant contract ends if, after the time that the transfer by the new creditor takes effect, there is a transfer (whether by assignment or operation of law) to the new creditor of any rights under the relevant contract.

- (8) In subclauses (3) to (7), terms that are defined in regulation 19 or 20 of the 2004 Regulations have the meaning given in that regulation and, in subclause (4), **security interest** has the meaning given in section 5 of the 2003 Act.
- (9) If an exemption (including an exemption under this subclause or regulation 14C(2)) ends under subclause (7)(b) or regulation 14C(7),—
 - (a) a new exemption is given to the new creditor in respect of the financial service of being a creditor under the relevant contract if—
 - (i) section 26A of the 2003 Act does not apply in the case of the transfer to the new creditor referred to in subclause (7)(b) or regulation 14C(7) by virtue of regulation 19 of the 2004 Regulations; and
 - (ii) regulation 20 of the 2004 Regulations applies; and
 - (b) subclauses (2) to (8) and this subclause apply to the new exemption as they apply to an exemption under subclause (1).

14C Exemption for creditors involved in securitisation, etc, where transfer of rights under consumer credit contract before 6 June 2015

- (1) This regulation applies if a person (the **new creditor**) becomes a creditor under a credit contract (the **relevant contract**) by reason only of a transfer (the **relevant transfer**) of the kind referred to in section 26A(1) of the Credit Contracts and Consumer Finance Act 2003 that takes effect before 6 June 2015.
- (2) The new creditor is exempt from the application of the Act in respect of the financial service of being a creditor under the relevant contract if regulation 14B(1) would have exempted the new creditor in that respect had—
 - (a) the relevant transfer taken effect immediately after the beginning of 6 June 2015; and
 - (b) references in regulation 20 of the Credit Contracts and Consumer Finance Regulations 2004 to the disclosure deadline been references to the time immediately after the beginning of 6 June 2015.
- (3) If a disqualifying event occurs, the exemption under subclause (2) ends at the close of the tenth working day after the day on which the new creditor becomes aware, or ought reasonably to have become aware, of the disqualifying event.
- (4) Regulation 14B(3) to (8) applies for the purposes of the exemption.
- (5) For the purposes of subclause (4), in regulation 14B(3)(d), the reference to all times after the disclosure deadline is to be read as a reference to all times after the beginning of 6 June 2015.
- (6) The new creditor is exempt from the application of the Act in respect of the financial service of being a creditor under the relevant contract if—
 - (a) the relevant transfer is made for the purposes of securitisation or covered bond arrangements or similar arrangements; and

- (b) before 6 June 2015, the new creditor transfers (whether by assignment or operation of law) all of the new creditor's rights under the relevant contract to another person; and
- (c) because of the transfer referred to in paragraph (b), the new creditor has no rights under the relevant contract at the beginning of 6 June 2015.
- (7) If there is a transfer (whether by assignment or operation of law) to the new creditor of any rights under the relevant contract that takes effect after the beginning of 6 June 2015, the exemption under subclause (6) ends at the close of the tenth working day after the day on which the transfer takes effect.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 6 June 2015, amend the Financial Service Providers (Exemptions) Regulations 2010 to give certain exemptions from the application of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **2008 Act**).

The exemptions apply to persons who are in the business of providing a financial service of being a creditor under a consumer credit contract in cases where they become a creditor as a result of transfers to them of rights of existing creditors. The exemptions are related to the coming into force on 6 June 2015 of section 7 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 that extends the scope of the 2008 Act to cover persons who become creditors under credit contracts by reason only of transfers of rights.

The exemptions are tied to the circumstances prescribed for the purposes of section 26A(3) of the Credit Contracts and Consumer Finance Act 2003 by regulations 19 and 20 of the Credit Contracts and Consumer Finance Regulations 2004 (as inserted by regulation 4 of the Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2015).

In broad terms, an exemption is given to a person (the **new creditor**) in respect of providing a financial service of being a creditor under a consumer credit contract in cases where—

- the new creditor becomes a creditor under the contract by reason only of a transfer of rights of an existing creditor; and
- the transfer is made for the purposes of securitisation or covered bond arrangements or similar arrangements; and

- after the transfer, the contract will be managed by another person (the **contract manager**) who is registered under Part 2 of the 2008 Act and is a member of an approved dispute resolution scheme under Part 3 of that Act; and
- the contract manager is a creditor under the contract or, if that is not the case, the rules of the contract manager's approved dispute resolution scheme apply in relation to the contract manager as if the contract manager were the creditor under the contract.

In broad terms, the new creditor's exemption in respect of a contract (the **relevant contract**) will end in the following circumstances:

- rights or duties of the new creditor are exercised or performed, or a debtor or guarantor is contacted in relation to the exercise or performance of such rights or duties, otherwise than by or through the contract manager. For example, the exemption may end if the new creditor exercises or performs rights or duties, or contacts a debtor or guarantor, without involving the contract manager or arranges for a third party to do so without involving the contract manager. Contact with a debtor or guarantor by a person other than the contract manager may be regarded as contact through the contract manager if the contact is arranged by the contract manager:
- the management contract under which the contract manager is managing the relevant contract ends:
- the contract manager ceases to be registered or to be a member of an approved dispute resolution scheme:
- the contract manager does not comply with the rules of the contract manager's approved dispute resolution scheme or a complaint in connection with the relevant contract cannot otherwise be resolved under an approved dispute resolution scheme because the new creditor is not a member of any such scheme.

However, there is a special rule limiting these circumstances if the new creditor transfers all of the new creditor's rights under the relevant contract to another person.

There are special transitional provisions for cases involving transfers of rights that occur before 6 June 2015.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 7 April 2015 to help inform the decisions taken by the Government relating to the contents of this instrument.

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

- <http://www.consumeraffairs.govt.nz/legislation-policy/policy-reports-and-papers/regulatory-impact-statements>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

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**Financial Service Providers (Exemptions) Amendment
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These regulations are administered by the Ministry of Business, Innovation, and Employment.

Wellington, New Zealand:

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