



Credit Contracts and Consumer Finance Amendment Regulations (No 2) 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 section 138(1) of the Credit Contracts and Consumer Finance Act 2003, 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 section 138(1C) of the Credit Contracts and Consumer Finance Act 2003.

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Regulations

1 Title

These regulations are the Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2015.

2 Commencement

These regulations come into force on 6 June 2015.

3 Principal regulations

These regulations amend the Credit Contracts and Consumer Finance Regulations 2004 (the **principal regulations**).

4 New regulations 19 to 21 and cross-heading inserted

After regulation 18 (as inserted by regulation 7 of the Credit Contracts and Consumer Finance Amendment Regulations 2015), insert:

Circumstances in which section 26A of Act (disclosure of transfer of rights of creditor) not to apply

19 Section 26A of Act not to apply if transfer made for purposes of securitisation or covered bond arrangements or similar arrangements

(1) For the purposes of section 26A(3) of the Act, section 26A of the Act does not apply in the case of a transfer of the kind referred to in section 26A(1) of the Act if—

- (a) the transfer is made for the purposes of securitisation or covered bond arrangements or similar arrangements; and
- (b) regulation 20 or 21 applies.

(2) In this regulation and regulations 20 and 21,—

debtor means a debtor under the relevant contract

disclosure deadline means the end of the period of 10 working days referred to in section 26A(2) of the Act

guarantee means a guarantee in relation to the relevant contract

guarantor means a guarantor in relation to the relevant contract

new creditor means the person to whom the transfer is made

payment means a payment—

- (a) under the relevant contract by a debtor; or
- (b) under a guarantee by a guarantor

relevant contract means the consumer credit contract to which the transfer relates.

20 Contract manager appointed by new creditor

- (1) This regulation applies if—
 - (a) conditions A to D are met; and
 - (b) condition E is met, subject to subclause (7).
- (2) Condition A is that, at the disclosure deadline, there is a contract (the **management contract**) between the new creditor and another person (the **contract manager**) that provides for the contract manager, during the period after the disclosure deadline until the end of the term of the management contract or until that contract ends in some other way,—
 - (a) to collect all payments from every debtor and guarantor; and
 - (b) otherwise to manage the relevant contract and every guarantee; and
 - (c) to deal with every debtor and guarantor for those purposes accordingly.
- (3) Condition B is that, no later than the disclosure deadline, the contract manager's name, address, and other contact details are disclosed to every debtor and guarantor.
- (4) Condition C is that,—
 - (a) immediately before the transfer takes effect, the contract manager is already performing the role referred to in subclause (2)(a) to (c) (as a creditor under the relevant contract or under a contract with such a creditor); or
 - (b) no later than the disclosure deadline, every debtor and guarantor is advised of the contract manager's role as referred to in subclause (2)(a) to (c).
- (5) Condition D is that,—
 - (a) at the disclosure deadline, the contract manager—
 - (i) is registered under the register of financial service providers; and
 - (ii) is a member of a dispute resolution scheme; and
 - (b) at the disclosure deadline,—
 - (i) the contract manager is a creditor under the relevant contract; or
 - (ii) the rules of the scheme referred to in paragraph (a)(ii) relating to complaints about its members apply in relation to the contract manager (whether by virtue of a provision of the rules themselves or by virtue of other arrangements)—
 - (A) as if the contract manager were the creditor under the relevant contract; and
 - (B) so that the scheme must accept for resolution, and the contract manager is bound by the resolution of, complaints on that basis accordingly.

- (6) Condition E is that, no later than the disclosure deadline, the following information is disclosed to every debtor and guarantor:
- (a) the contract manager's registration number under the register of financial service providers and the name under which the contract manager is registered under that register;
 - (b) the name and contact details of the dispute resolution scheme of which the contract manager is a member.
- (7) Condition E does not have to be met if—
- (a) the relevant contract is entered into before 6 June 2015; and
 - (b) subclause (4)(a) applies.
- 21 New creditor was contract manager before transfer**
- (1) This regulation applies if—
- (a) conditions A and B are met; and
 - (b) condition C is met, subject to subclause (5).
- (2) Condition A is that, immediately before the transfer takes effect, the new creditor (under a contract with a person who is a creditor under the relevant contract)—
- (a) is collecting all payments from every debtor and guarantor; and
 - (b) is otherwise managing the relevant contract and every guarantee; and
 - (c) is dealing with every debtor and guarantor for those purposes accordingly.
- (3) Condition B is that, no later than the disclosure deadline, the new creditor's name, address, and other contact details are disclosed to every debtor and guarantor.
- (4) Condition C is that, no later than the disclosure deadline, the following information is disclosed to every debtor and guarantor:
- (a) the new creditor's registration number under the register of financial service providers and the name under which the new creditor is registered under that register;
 - (b) the name and contact details of the dispute resolution scheme of which the new creditor is a member.
- (5) Condition C does not have to be met if the relevant contract is entered into before 6 June 2015.

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 Credit Contracts and Consumer Finance Regulations 2004 in order to prescribe the circumstances in which section 26A of the Credit Contracts and Consumer Finance Act 2003 (the **2003 Act**) does not apply. Section 26A is inserted by section 22 of the Credit Contracts and Consumer Finance Amendment Act 2014.

Section 26A of the 2003 Act requires certain information to be disclosed to every debtor and guarantor under a consumer credit contract (the **relevant contract**) if the rights of a creditor under that contract are transferred to another person (the **new creditor**). In broad terms, the information that is required to be disclosed is information about the new creditor and about the consequences of the transfer. Section 26A(3) provides that section 26A does not apply in the prescribed circumstances, which must relate to securitisation or covered bond arrangements or similar arrangements.

Regulation 4 inserts *new regulations 19 to 21* that set out the prescribed circumstances for the purposes of section 26A(3) of the 2003 Act.

First, the transfer of rights must be made for the purposes of securitisation or covered bond arrangements or similar arrangements (*see new regulation 19(1)(a)*).

Secondly, the conditions set out in either *new regulation 20* or *new regulation 21* must be met (*see new regulation 19(1)(b)*).

In broad terms, the conditions set out in *new regulation 20* are as follows:

- the new creditor must have a contract with another person (the **contract manager**), under which the contract manager is to manage the relevant contract. The contract manager could be the creditor who makes the transfer:
- the contract manager's contact details must have been disclosed to every debtor and guarantor. This disclosure may have been made before the transfer, for example, as required by the initial disclosure provisions of section 17 of the 2003 Act if the contract manager is a creditor when the relevant contract is entered into:
- the contract manager must have been managing the relevant contract before the transfer or, if that is not the case, every debtor and guarantor must be advised that the contract manager will be managing the relevant contract:
- the contract manager must be registered under the register of financial service providers maintained under Part 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and be a member of a dispute resolution scheme approved under Part 3 of that Act. If the contract manager is not a creditor under the relevant contract, the rules of the dispute resolution scheme must apply as if the contract manager were the creditor under the relevant contract. This is to ensure that a debtor or guarantor can make complaints against the contract manager in relation to the relevant contract and that any such com-

plaints are resolved in the same way they would be resolved if the contract manager were the creditor under the relevant contract:

- subject to a transitional provision that applies if the relevant contract is entered into before 6 June 2015, the contract manager’s registration details and the details of the contract manager’s dispute resolution scheme must have been disclosed to every debtor and guarantor. This disclosure may have been made before the transfer.

In broad terms, the conditions set out in *new regulation 21* are as follows:

- the new creditor must have been managing the relevant contract before the transfer under a contract with a creditor:
- the new creditor’s contact details must have been disclosed to every debtor and guarantor. This disclosure may have been made before the transfer:
- subject to a transitional provision that applies if the relevant contract is entered into before 6 June 2015, the contract manager’s registration details and the details of the contract manager’s dispute resolution scheme must have been disclosed to every debtor and guarantor. This disclosure may have been made before the transfer.

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>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 7 May 2015.

These regulations are administered by the Ministry of Business, Innovation, and Employment.