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Securitisation exemptions – consultation

Thank you for your consultation paper, *Disclosure of information in relation to securitisation – potential exemptions*, which seeks feedback on whether regulations are needed to exempt securitisation of consumer debt from requirements under the Credit Contracts and Consumer Finance Act 2003 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008. The New Zealand Law Society (Law Society) wishes to comment on the proposed exemption from the requirements of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act).

The consultation paper asks whether “... regulations are needed [under the FSP Act] to exempt securitisations from the requirements of the Act where the debtor’s access to dispute resolution services is captured elsewhere, such as through the relationship with the initial creditor, and the scope of any such regulations”.

A potential solution is outlined at paragraphs 19 – 20, with the conclusion that the proposed exemption would “provide debtors with access to dispute resolution through the initial creditor, or through any creditor that the debt is transferred to who does not fall within the definition of the exemption”. The paper then poses question (e):

In your view, does this proposed scope [outlined in paragraphs 19 – 20], where the exemption is defined consistent with the exemption for disclosure of transfer, ensure that all debtors will continue to have access to dispute resolution when needed, particularly for situations where a debt is referred to a debt collector or repossession agent, while reducing unnecessary compliance costs?

The Law Society believes there may be an issue where the creditor does not retain sufficient interest in the credit contract that the consumer is entitled to use a dispute resolution scheme (DRS). The key issue must be that the consumer should have access to a DRS whatever the status of the debt. There needs to be provision for the debtor to make use of a DRS if the initial creditor is no longer in business, and the assignee is exempted. This may be able to be done by transferring the initial creditor’s rights and obligations with respect to the DRS to the assignee. Otherwise it would be too easy for the initial creditor to fold its business, leaving the debtor without recourse to dispute resolution.

If you wish to discuss these comments, please contact the Law Society’s Commercial and Business Law Committee secretary, Vicky Stanbridge (vicky.stanbridge@lawsociety.org.nz / 04 463 2912 ddi).

Yours sincerely



Chris Moore
President