



ANALYSIS

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SCHEDULE

New Part 1A Inserted in Second Schedule of Principal Act

1998, No. 34

An Act to amend the Credit Contracts Act 1981

[3 June 1998

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Credit Contracts Amendment Act 1998, and is part of the Credit Contracts Act 1981 (“the principal Act”).

(2) This Act comes into force on 1 March 1999.

2. Interpretation—Section 2 (1) of the principal Act is amended by inserting, after the definition of the term “Government agency”, the following definition:

“ ‘Guarantee disclosure’ has the meaning assigned to it in section 16A (2):”.

3. Disclosure of guarantee—The principal Act is amended by inserting, after section 16, the following section:

“16A. (1) Every creditor who enters into a guarantee of a controlled credit contract must ensure that guarantee disclosure is made to the guarantor.

“(2) In this Act, the term ‘guarantee disclosure’, in relation to a guarantee of a controlled credit contract, means disclosure in accordance with section 20 to every guarantor under that guarantee of—

“(a) The guarantee; and

“(b) The controlled credit contract or contracts which the creditor and the debtor enter into and to which the guarantee applies.

“(3) Guarantee disclosure of the guarantee, and of the controlled credit contract or contracts to which the guarantee applies at the time the guarantee is given, must be made either—

“(a) Before the guarantee is given; or

“(b) Not later than the end of the 15th working day after the day the guarantee is given.

“(4) Guarantee disclosure of any subsequent controlled credit contract that the creditor enters into with the debtor and to which the guarantee will apply, must be made not later than the end of the 15th working day after the day on which that subsequent controlled credit contract is entered into.”

4. Disclosure of modification of contract—Section 17 (2) of the principal Act is amended by inserting, after the words “every debtor”, the words “and every guarantor”.

5. Method of disclosure—(1) Section 20 (1) of the principal Act is amended by inserting, after the words “initial disclosure,”, the words “guarantee disclosure,”.

(2) Section 20 (1) of the principal Act is amended by omitting from the proviso the word “persons” wherever it occurs, and substituting in each case the word “debtors”.

(3) Section 20 (2) of the principal Act is amended by omitting the words “and 24 of this Act,”, and substituting the expression “, 24, and 24A,”.

6. Disclosure documents—(1) Section 21 (1) (a) of the principal Act is amended by inserting, after the words “initial disclosure,”, the words “guarantee disclosure,”.

(2) Section 21 (2) of the principal Act is amended by omitting from paragraph (a) of the proviso the word “persons” wherever it occurs, and substituting in each case the word “debtors”.

7. Debtor may cancel credit contract in certain circumstances—Section 22 of the principal Act is amended by adding the following subsection:

“(5) This section does not entitle a debtor to cancel a controlled credit contract on the ground that disclosure has not been made to the guarantor.”

8. Enforcement of guarantee before disclosure prohibited—The principal Act is amended by inserting, after section 24, the following section:

“24A. (1) Where guarantee disclosure is required by this Act to be made, subject to sections 31 to 33, no person may enforce the guarantee before the disclosure is made.

“(2) Failure to make disclosure to the guarantor under this Act does not affect the ability of a person to enforce a contract against the debtor.

“(3) Subject to sections 25 to 30, failure to make disclosure to the debtor under this Act does not affect the ability of a person to enforce a guarantee.”

9. Penalty for failure to make guarantee disclosure—The principal Act is amended by inserting, after section 25, the following section:

“25A. (1) If guarantee disclosure is not made in accordance with section 16A to a guarantor (whether or not the disclosure is subsequently made), then, subject to sections 31 to 33,—

“(a) The liability of the guarantor to pay an amount equal to the specified amount is extinguished and every provision of the guarantee to the contrary is of no effect; and

“(b) Subject to paragraph (a), the guarantee has the same force and effect as if this subsection did not apply to the guarantee.

“(2) In this section, if the failure to make guarantee disclosure relates to a controlled credit contract or contracts to which the guarantee applies at the time the guarantee is given, the ‘specified amount’ means the smaller of the following amounts:

“(a) An amount equal to 3 times the part of the total cost of credit payable under the controlled credit contract or contracts that relates to the period from the day the guarantee is given until the earlier of the following days:

“(i) The day on which guarantee disclosure of that contract or those contracts is made:

“(ii) The day that is 8 months after the day the guarantee is given:

“(b) The total cost of credit payable under the controlled credit contract or contracts.

“(3) In this section, if the failure to make guarantee disclosure relates to a subsequent controlled credit contract to which the guarantee applies, the ‘specified amount’ means the smaller of the following amounts:

“(a) An amount equal to 3 times the part of the total cost of credit payable under the subsequent controlled credit contract that relates to the period from the day the subsequent controlled credit contract is entered into until the earlier of the following days:

“(i) The day on which guarantee disclosure of that subsequent controlled credit contract is made:

“(ii) The day that is 8 months after the day the subsequent controlled credit contract is entered into:

“(b) The total cost of credit payable under the subsequent controlled credit contract.”

10. Penalty for failure to make modification disclosure—(1) Section 26 (1) of the principal Act is amended by inserting, after the words “section 17 (1) of this Act”, the words “to a debtor”.

(2) Section 26 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) If modification disclosure is not made in accordance with section 17 (1) to a guarantor (whether or not the disclosure is subsequently made), then, subject to sections 31 to 33,—

“(a) The liability of the guarantor to pay an amount equal to the specified amount is extinguished and every provision of the guarantee to the contrary is of no effect; and

“(b) Subject to paragraph (a), the guarantee has the same force and effect as if this subsection did not apply to the guarantee.”

11. Penalties to take effect at end of contract—Section 29 (b) of the principal Act is amended by inserting, after the expression “sections 25,”, the expression “25A,”.

12. Relief for inadvertent non-disclosure—(1) Section 31 of the principal Act is amended—

(a) By inserting, after the words “initial disclosure,”, the words “guarantee disclosure,”:

(b) By inserting, after the words “modification contract”, the words “or guarantee”.

(2) Section 31 of the principal Act is amended by adding to paragraph (d) the expression “; and”, and also by adding the following paragraph:

“(e) If there is a guarantor, the creditor has compensated or offered to compensate the guarantor for any prejudice caused the guarantor by the failure.”

13. Power of Court to reduce penalty—Section 32 (1) (a) of the principal Act is amended by inserting, after the word “contracts”, the words “, or a guarantee”.

14. Misleading advertisements prohibited—(1) Section 35 of the principal Act is repealed.

(2) Section 38 of the principal Act is amended by omitting the words “sections 35 to”, and substituting the words “sections 36 and”.

(3) Section 39 (1) (a) (iii) of the principal Act is amended by omitting the words “and 35 to”, and substituting the words “and 36 and”.

15. Second Schedule amended—The Second Schedule of the principal Act is amended by inserting, after Part I, the Part 1A set out in the Schedule.

16. Transitional provision—This Act does not apply to a credit contract made or a guarantee entered into before the commencement of this Act.

SCHEDULE

Section 15

NEW PART 1A INSERTED IN SECOND SCHEDULE OF PRINCIPAL ACT

"PART 1A

Section 21 (1) (a)

GUARANTEE DISCLOSURE OF GUARANTEE

1. Disclosure of guarantee to guarantor—In the case of section 16A (3), a copy of the guarantee which the guarantor has signed.

2. Disclosure of controlled credit contract to guarantor—In the case of section 16A (3), all information, statements, and other matters disclosed to the debtor under Part I in respect of the controlled credit contract or contracts.

3. Disclosure of subsequent controlled credit contract to guarantor—In the case of section 16A (4), all information, statements, and other matters disclosed to the debtor under Part I in respect of any subsequent controlled credit contract."

This Act is administered in the Ministry of Justice.
