

## COVID-19 response: Regulatory and other financial relief/extensions

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### Background

New Zealand is currently operating in an unprecedented constitutional position. In particular:

- A national state of emergency has been declared under the Civil Defence Emergency Management Act 2002. This gives the Government wide powers to evacuate premises, enter premises, close roads and public places and requisition property
- A medical officer of health has special powers under the Health Act 1956 to declare property unsanitary and potentially destroy it, close premises, require people to submit to medical examination, require people to go into isolation and/or quarantine and authorise certain premises (but not private homes) to be used for hospitals or as quarantine facilities
- A notice has been given under the Epidemic Preparedness Act 2006, which means, amongst other things, wide powers are given to the Governor General, by Order in Council (on Cabinet's advice) to amend legislation if it is otherwise impossible or impractical to comply with that legislation fully.

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### Impact on Financial Markets

The following is a brief summary of the relief announced by New Zealand's financial markets regulators and regulation makers in response to the New Zealand COVID-19 crisis.

The New Zealand regulatory landscape is rapidly evolving at present and we expect further announcements and initiatives in the financial markets over the next few weeks and months. However, to date we have already seen:

- Relaxing of certain Takeovers Code rules to facilitate capital raising
- Deferral of financial reporting deadlines for up to two months for entities with a reporting date between 31 December 2019 and 31 May 2020 (with a possibility this may be extended)
- Additional liquidity facilities to be made available to banks through a daily tender managed by the Reserve Bank, additional long-term liquidity facilities to be made available to banks to fund loans made under the Business Finance Guarantee Scheme, and Banks restricted from making dividend payments and redeeming non-Common Equity Tier 1 capital instruments
- The Government announces scheme to provide interest-free loans to small business
- A statement from the Minister of Commerce asking the Commerce Commission to show flexibility to enable market participants to work together to ensure essential services are provided to the public (but not price fix or market allocate)
- NZX offering class relief for equity issuers
- Some limited capital relief to assist banks (and hopefully non-banks) to grant mortgage deferrals. This is mainly by modifying the accounting treatment for capital so these loans don't have to be treated as in default
- The passing of the Credit Contracts and Consumer Finance (Exemptions for COVID-19) Amendment Regulations 2020 (for registered banks) and the Credit Contracts and Consumer Finance (Exemptions for COVID-19) Amendment Regulations (no 2) 2020 (for non-bank lenders)
- Temporary removal of LVR restrictions announced by the Reserve Bank in April 2020, with a reinstatement of LVR restrictions proposed in December 2020
- Delay of implementation of new capital requirements announced by the Reserve Bank
- FMA offering 'no action' relief to an applicant for a breach of a statutory or regulatory obligation
- Support announced to risk-share business lending (for banks only at this stage)
- Deferral of the changes to the Credit Contracts and Consumer Finance Act, which in particular allow for a 6-month deferral of the fit and proper person certification, which is now due on 1 March 2021

- Deferral of the commencement of the Financial Services Legislation Amendment Act to 15 March 2021 - which gives those who still have a lot of work to do to apply for a licence by 29 June this year to defer doing so (although those who have filed don't need to refile and those ready to file, can still do so)
- Deferral of submission deadlines until 30 April 2020 for the Financial Markets Infrastructure Bill and the Financial Markets (Conduct of Institutions) Amendment Bill
- Deferral of certain regulatory initiatives by the Reserve Bank, primarily related to banks
- Deferral of the date for submissions on phase two of the Reserve Bank of New Zealand Act review until October 2020 and introduction of the Reserve Bank of New Zealand Bill
- The Government considering changes to reckless trading laws
- A statement from the joint regulators on how to apply anti money laundering requirements during the self-isolation period and in particular the use of scanned documents before originals can be sighted
- The International Financial Reporting Standards (IFRS) Foundation publishing some guidance on the application of IFRS-9 (Financial Instruments) during the COVID-19 pandemic
- The Government announcing further measures to support SMEs during COVID-19 crisis, including tax support and the extension of timeframes before landlords can cancel leases and mortgagees can exercise their rights to sale and repossession
- Guidance published by the Commerce Commission on the application of certain aspects of the CCCFA to lenders operating under strained COVID-19 circumstances as well as the Addendum to the Responsible Lending Code published by the MBIE which sits alongside the Guidance.

This material is not an exhaustive list of all initiatives that may be applicable to your business. We will update this from time to time as new developments occur.

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## Council of Financial Regulators summarises the various COVID-19 regulatory deferrals affecting the financial sector and provides a revised timetable for these regulatory initiatives

The [Council of Financial Regulators \(CoFR\)](#) has been [operating since 2011](#) as a forum for agencies with responsibility for financial sector regulation to share information, identify issues and develop coordinated responses to issues that may require cross-agency involvement.

CoFR is comprised of the Reserve Bank of New Zealand (RBNZ), Financial Markets Authority (FMA), Commerce Commission, the Treasury and the Ministry of Business, Innovation and Employment (MBIE).

On 9 April 2020, CoFR published a [document summarising the regulatory initiatives affecting the financial sector](#) that were deferred as part of the initial response to the COVID-19 crisis.

In September 2020, the CoFR agencies prepared and published a [document setting out an updated timetable](#) for these regulatory initiatives for the rest of 2020 and throughout 2021.

We discuss these regulatory initiatives in further detail in our update below, highlighting the key information together with relevant links.

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## Takeovers Code - COVID-19 exemption relief for capital raising

On 9 April 2020, the Takeovers Panel announced that it had approved the granting of a suite of temporary class exemptions from compliance with the Takeovers Code that are aimed at assisting companies raise capital. These exemptions are set out in the Takeovers Code (Facilitation of Capital Raising in response to COVID-19) Exemption Notice 2020 (the COVID-19 Notice).

The exemptions apply to eligible capital raising conducted between 10 April 2020 and 31 October 2020, with an extension of this timeframe possible upon review.

The COVID-19 exemptions comprise (in summary):

- **General Increase Exemption:** An exemption which permits a person (together with their associates) to increase voting control to either 30% or 10% above their starting aggregate control percentage (whichever is higher)
- **Rights Offer Exemptions:** A series of exemptions for allotments of voting securities pursuant to pro rata offers. These largely replicate the exemptions in and provide further relief over and above what is provided under the Takeovers Code (Class Exemptions) Notice (No. 2) 2001

- Pro rata Underwriter Exemption: An exemption for persons who underwrite pro rata offers (this is not limited to professional underwriters)
- Professional Underwriter Exemption: An exemption for professional underwriters (which provides further relief over and above what is provided under the Professional Underwriters Notice).

Note, those who rely on the 10% Increase Exemption must reduce control within two years of the first increase date as per the terms and process set out in the COVID-19 Notice.

See a copy of the COVID-19 Notice [here](#).

The Takeovers Panel has also released some official guidance on interpreting and applying the exemptions, [view here](#).

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## Deadline extended for financial reporting of FMC reporting entities

On 19 March 2020, the Financial Markets Authority (FMA) announced on 19 March 2020 that all FMC Reporting Entities (as defined in the Financial Markets Conduct Act 2013) would be granted (via a class exemption) an additional two months to complete and file their annual financial statements. This extends the usual period from four months to six months.

The relief applies to FMC Reporting Entities with balance dates from 31 December 2019 to 31 July 2020. On 3 April 2020 it was announced that the original extension to 31 May 2020 had been further extended to 31 July 2020. Regulatory relief for later balance dates may also be considered, if required.

See the FMA's website for more information: [FMA to extend deadline for financial reporting](#).

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## Reserve Bank announces measures to support banking system liquidity and removal of credit tiers

On 16 and 20 March 2020, the Reserve Bank announced several initiatives designed to support banking system liquidity and to ensure that short-term interest rates continue to trade near the OCR to assist cash market functioning.

The initiatives comprise:

- A Term Auction Facility (TAF) which will be offered daily at 9:30am in lieu of the day's Open Market Operation (OMO). Bids in the tender will be accepted between 9:30am and 9:45am and results announced at approximately 10:00am. The operation of this facility and the rules and guidelines applying to it will be similar to the OMO
- Changes to the Reserve Bank's monetary policy implementation framework relating to pricing of its standard facilities and ESAS accounts.

See the Reserve Bank website for more information:

- [Financial system sound, and Reserve Bank providing additional support](#)
- [Reserve Bank announces new facility and removal of credit tiers](#)

On 30 March 2020, the Reserve Bank announced it was deploying another tool to provide additional liquidity to the corporate sector and to support smooth market functioning in the form of a new weekly OMO that will provide liquidity in exchange for eligible corporate and asset-backed securities. Further operational details are available in a Domestic Markets release found [here](#).

On 30 March 2020, the Reserve Bank also put out an announcement to summarise the measures it had taken and reassure the market of all elements of the financial system that it regulates including insurers, credit unions, building societies and finance companies. For more information see [here](#).

### Term Lending Facility (TLF)

On 2 April 2020, the Reserve Bank announced the Term Lending Facility (TLF) scheme, which ensures that banks can access funding at low interest rates for a duration up to three years. The TLF is a further part of the Reserve Bank's efforts to provide liquidity to the banking system, following on from the introduction of the Term Auction Facility (TAF) scheme, which focussed on ensuring lower short-term interest rates for durations up to 12 months. The TLF is intended to ensure a stable source of funding for the Government's earlier announced Business Finance Guarantee Scheme (BFGS), which provides funding for adversely affected businesses that meet certain qualifying criteria.

On 4 May 2020, the Reserve Bank announced further operational details about the TLF scheme, for example:

- The Reserve Bank will lend funds to banks at the Official Cash Rate, fixed for three years

- Access to the funds will be linked to each banks' lending under the BFGS and be subject to approved eligible collateral being provided;
- The TLF will be available for eligible counterparties to use for a period of six months on the 18th to 20th business day (inclusive) of each month (the 'Prescribed Days'), beginning 26 May 2020
- Requests for funds under the scheme will be accepted between 10.00am-12.00pm and between 1.00pm-3.00pm on the Prescribed Days, with settlement to occur on a next business day basis; participants may request to terminate any TLF repurchase amount before its maturity date to match funding from the TLF with loans outstanding under the BFGS
- If a participant's total outstanding BFGS loan amount falls below the amount the participant has borrowed under the scheme, the Reserve Bank may require the early termination of any repurchase transaction until the amount outstanding under the scheme is equal to or less than the outstanding BFGS loan amount
- The total volume of funds lent under the scheme will be recorded and published on the Bank's D10 tables a month later.

Please see [the Reserve Bank's website for further details on the TLF](#).

### Funding for Lending Programme (FLP)

On 11 November 2020, the Reserve Bank announced the Funding for Lending Programme (FLP), following a decision by the Monetary Policy Committee (MPC) to provide additional monetary stimulus to the economy to meet its consumer price inflation and employment remit.

The Reserve Bank will implement the FLP in early December 2020.

The FLP involves the Reserve Bank providing eligible financial sector entities with long-term funding at a low cost, secured against high-quality collateral. The programme aims to promote lending to businesses and households at lower interest rates, increasing investment and consumption.

The high-level design feature of the FLP is similar to schemes implemented in countries such as Australia, the United Kingdom and Europe. The below table outlines the Reserve Bank's choice for the features of the FLP. The Reserve Bank will announce operational details such as the terms and conditions over November 2020.

### Design features of the Funding for Lending Programme (FLP)

FLP feature	Design choice
Cost of funds	Prevailing OCR (at any point in time).
Size of programme	Initial allocation of 4% of each eligible participant's total loans and advances to New Zealand households, private non-financial businesses, and non-profit institutions serving households ('eligible loans'). A conditional additional allocation of 2% of eligible loans will then be made available, for a total size of 6% of eligible loans.
Term of lending	Three years, with a floating interest rate.
Eligible collateral	High-quality collateral – eg New Zealand government bonds, Kauri bonds, and Internal Residential Mortgage-Backed Securities (I-RMBS).
Incentive mechanism	The additional allocation discussed above can only be accessed when participants increase their provision of credit to the economy. The FLP provides 50 cents of funding for every \$1 increase in their stock of eligible loans. The additional allocation is capped at a limit of 2% of the participant's eligible loans at launch of the FLP.
Length of operational window	18 months for the initial allocation and a further six months for the additional allocation.

### Dividend Restrictions

On 2 April 2020, the Reserve Bank [announced](#) that, taking effect immediately, all locally-incorporated banks will be restricted from paying dividends on ordinary shares and redeeming all non-Common Equity Tier 1 capital instruments such as bonds "until further notice" under revised Conditions of Registration. The Reserve Bank stated that these restrictions are designed to maintain higher levels of capital during a period of reduced economic activity resulting from the COVID-19 pandemic and will be kept in place until the economic outlook has sufficiently recovered.

The Banking Supervision Handbook (the Handbook) sets out the detailed rules regarding conditions of registration which are imposed upon banks under the Reserve Bank of New Zealand Act 1989. On 14 April 2020, the Reserve Bank issued revised versions of two Handbook documents including the document 'Statement of Principles - Bank Registration and Supervision' (BS1) which reflects these earlier announced restrictions on banks from making certain types of distributions. BS1 updates the standard wording of the Conditions of Registration and adds explanatory text.

For further information on the Handbook and revised documents, please see [the Reserve Bank's website](#).

On 11 November 2020, the Reserve Bank announced that the restrictions on dividends and redeeming non-Common Equity Tier 1 capital instruments will be retained until 31 March 2021 or later if required.

Further, the Reserve Bank has [written to insurers](#) to advise that it expects insurers will only make dividend payments if it is prudent for that insurer to do so, they should take into account their own stress testing and elevated risks in the current climate.

For further information on this regulatory update, please see [the Reserve Bank's press release](#).

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## Minister's Statement on Commercial Cooperation

On 22 March 2020, the Hon Kris Faafoi announced the Government's request to the Commerce Commission to show flexibility around allowing businesses to "work together, share resources or take other cooperative measures" to ensure that essential services and products are available to the public during the response to COVID-19. The Minister has made it clear that the Government will not tolerate any unscrupulous behaviour in this regard.

See [here](#) for the Minister's announcement.

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## NZX offers class relief for issuers

On 19 March 2020 NZX Regulation announced class relief to listed issuers from a number of listing rules relating to periodic reporting requirements and equity capital raising capacity. The class waiver is intended to facilitate issuers to access sufficient equity capital urgently.

Under the class waiver, issuers will have up to an additional 30 days to prepare and release results announcements (including preliminary interim and full year financial statements) and up to an additional two months to prepare and release annual reports (as applicable). Originally applying only to equity issuers, this was extended to issuers of debt and to fund issuers with 30 June 2020 and 31 July 2020 balance dates.

NZX Regulation is encouraging issuers to complete and release their periodic results and reports as soon as they are able to do so to ensure the market can access recent financial information.

NZX Regulation and the Financial Markets Authority (FMA) have coordinated to ensure the class relief offered by each in relation to financial reporting, is consistent. The Financial Markets Authority and NZX will continue to monitor the situation for later balance dates.

Reliance on this exemption must be notified to the market in the form set out in the class waiver and issuers are warned to check any contractual deadlines they may have (for example, with their bank) for deliverance of financial reporting. All continuous disclosure obligations will still apply.

The class waiver also lifts some existing caps applicable to equity capital raising until 31 October 2020, to enable listed issuers to better access capital without requiring shareholder approval.

See the NZX announcements for more information:

- [NZX Regulation Issuer Update: COVID-19 class relief](#)
- [NZX extends financial reporting class relief](#)

See the [class waiver](#).

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# Relief for mortgagors and small to medium business owners

## Business Finance Guarantee Scheme

On 24 March 2020, the Government announced a business finance guarantee scheme for small and medium-sized businesses.

The scheme allows banks to provide short-term bridging finance to qualifying business which are adversely affected by COVID-19. The scheme will include a limit of \$500,000 per loan and will apply to businesses with a turnover of between \$250,000 and \$80 million per annum.

The lending is expected to be at “competitive, transparent” rates, for a term of no more than three years. Banks will carry 20% of the credit risk with the Government carrying the remaining 80%.

On 1 May 2020, the Government announced that it would be removing the requirement for a General Security Agreement under the business finance guarantee scheme, however, banks will retain the option to require Borrowers to provide such security.

See [this link](#) on the Reserve Bank’s website for more information.

## Mortgage Deferrals Scheme

On 24 March 2020, the Government, retail banks and the Reserve Bank announced financial support for mortgagors affected by COVID-19 in the form of a six-month principal and interest payment holiday. Whilst described as a “holiday”, it’s probably more appropriately described as a deferral given that interest will continue to accrue during the deferral period.

Initially, deferrals were only made available to residential property mortgages (and any business lending secured against residential property). In April 2020, the scope of the scheme was extended to cover other lending such as lending to SMEs and agriculture sector.

The Reserve Bank has agreed to facilitate this initiative and allow banks to make the capital available, partly by deferring the new regulatory capital rules (that would have increased regulatory capital ratios by 1% in July this year) and partly by amending the treatment of past due loans for regulatory capital purposes as well as reducing banks ‘core funding ratios’ (see the Reserve Bank announcement of 18 March 2020 below).

## Mortgage Deferrals Scheme – Extension

On 17 August 2020, the Reserve Bank announced an extension of the regulatory guidance for the mortgage deferrals scheme from 27 September 2020 to 31 March 2021.

On 27 February 2020, the Reserve Bank had issued regulatory guidance, allowing banks to offer borrowers deferrals and treating those deferred loans as ‘performing’ (non-defaulted) for a six-month period. Upon the expiry of this regulatory guidance on 31 March 2021, banks will still be able to offer deferrals, however, will not be able to apply the concessionary regulatory treatment covered by the guidance.

The Reserve Bank cautioned that the borrower’s best interests must still be considered when assessing the suitability of a mortgage deferral and that if a lender considers there is little reasonable prospect that the borrower will be able to resume payments once the deferral ends, other options should be considered, including hardship arrangements with the bank. The Reserve Bank also reiterated that other regulatory obligations, such as those under CCCFA and the Responsible Lending Code would continue to apply.

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## NZX offers class relief for accelerated offers of equity securities

NZX Regulation announced on 26 March 2020 that it would provide class relief for issuers seeking to undertake an accelerated non-renounceable entitlement offer (ANREO) under the NZX listing rules.

See [here](#) for the NZX announcement.

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## CCCFA Exemptions in response to COVID-19

On 31 March 2020 the Credit Contracts and Consumer Finance (Exemptions for COVID-19) Amendment Regulations 2020 were passed (the ‘Bank Exemptions’). The Bank Exemptions are made under section 138(1)(ab) of the Credit Contracts and Consumer Finance Act 2003 (the CCCFA) and take effect on 1 April 2020.

The Bank Exemptions exempt registered banks from some of the specific requirements of the CCCFA when applying COVID-19 relief for their borrowers (including the mortgage deferral scheme announced on 24 March 2020 (and described in the summary

above)). The Bank Exemptions are designed to facilitate the swift implementation of assistance to borrowers. They apply only to existing contracts which are varied, or replacement contracts entered into, before 31 October 2020 and where the contract is varied/entered into for the purposes of alleviating financial difficulties experienced by borrowers due to the economic or health effects of COVID-19.

The Bank Exemptions include:

- Exemptions from the time limits for making disclosure and giving or sending terms under the initial disclosure and variation disclosure provisions in the CCCFA (subject to certain conditions)
- Exemptions from the various timeframes in section 57A of the CCCFA for dealing with hardship applications (subject to certain conditions)
- Exemptions from certain responsible lending principles as they relate to varied or replacement consumer credit contracts, particularly the duties of the lender to make certain enquiries and be satisfied of the borrower's ability to repay under the agreement without suffering substantial hardship.

See the [Credit Contracts and Consumer Finance \(Exemptions for COVID-19\) Amendment Regulations 2020](#).

On 13 May 2020, the Credit Contracts and Consumer Finance (Exemptions for COVID-19) Amendment Regulations (No 2) 2020 came into force (the 'Non-Bank Exemptions'). The Non-Bank Exemptions are made under section 138(1)(ab) of the CCCFA. Similar to the Bank Exemptions, the Non-Bank Exemptions exempt non-bank lenders (except mobile traders) from certain provisions of the CCCFA when either varying or replacing existing consumer credit contracts, to alleviate financial difficulties experienced by borrowers due to the economic or health effects of COVID-19. The exemptions do not apply to high-cost consumer credit contracts.

Unlike the Bank Exemptions, the Non-Bank Exemptions do not exempt non-bank lenders from any of the lender responsibilities in section 9 of the CCCFA. Further guidance, including a COVID-19-related Addendum to the Responsible Lending Code has been separately published by the Commerce Commission (see our update on this below).

See the Credit Contracts and Consumer Finance (Exemptions for COVID-19) Amendment Regulations (No 2) [here](#).

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## Status of LVR restrictions

### Reserve Bank announces temporary removal of LVR restrictions

On 30 April 2020, the Reserve Bank of New Zealand (the 'Reserve Bank') announced that, from 1 May 2020, it will temporarily remove mortgage loan-to-value ratio ('LVR') restrictions for 12 months per the Reserve Bank's financial stability mandate and in response to the economic downturn caused by COVID-19. This decision followed on from a seven day consultation period where the Reserve Bank reviewed a Regulatory Impact Assessment and over 70 submissions on the proposal.

The LVR restrictions were introduced in October 2013 and have been adjusted in the interim, with the Reserve Bank noting that calibration in response to economic conditions was the intended use of such macro-prudential tools.

Prior to the decision, banks were restricted from making more than 20% of their residential home mortgage lending to high-LVR owner-occupier borrowers (ie less than 20% deposit) and more than 5% of their residential home mortgage lending to high-LVR investor borrowers (ie less than 30% deposit). The calculation of new lending under the LVR policy would capture only the new amount of lending associated with any mortgage deferral, arising from the capitalisation of principal and/or interest during the deferral.

During the 12-month period in which the LVR restrictions will be removed, LVR surveys on new commitments will remain in place for statistical and continuity purposes. The impact of the removal of LVRs will be monitored and reported on in the Reserve Bank's bi-annual Financial Stability Report.

The removal of LVR restrictions will be implemented via a change in the Conditions of Registration for banks. The central change to the Conditions of Registration will be to remove the references to the LVRs, which are defined in the Banking Supervision Handbook document BS19 (Framework for Restrictions on High-LVR Residential Mortgage Lending). The temporary measure will be reviewed and consulted on ahead of the end of the 12-month period and following this period, a decision will be made regarding whether to reinstate LVR restrictions.

For further information on the announcement, please see the [Reserve Bank's website](#).

### Consultation on reinstatement of LVR restrictions

On 11 November 2020, the Reserve Bank [announced](#) that it would consult about reinstating the LVR restrictions on high-risk lending in December, the reinstatement taking effect from 1 March 2021.

On 8 December 2020, the Reserve Bank [announced a proposal](#) to reinstate LVR restrictions on high-risk lending and published

an accompanying [consultation paper](#) providing further detail regarding the proposal.

The Reserve Bank is seeking public submissions on the reinstatement proposal until 22 January 2021. The Reserve Bank will announce its decision on the proposal in February 2021 along with a Regulatory Impact Assessment, with a view to reinstating LVR restrictions from 1 March 2021.

The Reserve Bank noted that the decision to remove LVR restrictions in April 2020 was, amongst other things, to ensure LVR restrictions would not discourage banks from granting mortgage deferrals. Under the mortgage deferral scheme, interest continues to accrue on a loan thereby increasing the LVR of the loan. The Reserve Bank also cited a desire to ensure credit flow and to support the economy.

The Reserve Bank has noted that new applications for mortgage deferrals as well as the number of mortgages on deferral have sharply declined in the interim.

Accordingly, the Reserve Bank does not anticipate that a reinstatement of LVR restrictions will adversely impact the mortgage deferral scheme. Further, the Reserve Bank is concerned that increases in highly leveraged borrowing, if continued, could lead to emerging risks to financial stability.

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## **FMA announces 'no action' relief for regulatory breaches**

On 24 April 2020, the Financial Markets Authority (FMA) announced that where a market participant breaches or expects to breach a regulatory obligation because of COVID-19, and seeks relief from the FMA, their primary approach would be to take no action. The FMA noted that a 'no action' confirmation would not preclude third parties from taking legal action against the same or similar conduct.

The FMA further stated that their expectation is that breaches will be remediated at a later date and applicants will mitigate any risk resulting from the breach. The 'no action' approach will not be available for ongoing or open-ended breaches or where there is significant risk of customer detriment.

An application for 'no action' relief will require the applicant to note which provisions it will not be able to comply with and provide information such as how a grant of such relief would be consistent with the purposes of the relevant Act. For example, if seeking relief from an obligation contained in the Financial Advisers Act 2008, by demonstrating that the costs of compliance would be unreasonable or not justified by the benefits of compliance.

The FMA will publish details of 'no action' decisions that will affect a wide range of market participants.

For further information on this announcement, please see [the FMA's website](#).

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## **Government announces scheme to directly provide interest-free loans to small business affected by COVID-19**

On 1 May 2020, the Government provided details about the 'Small Business Cashflow (Loan) Scheme' (the Scheme) whereby the Government will directly provide loans of up to \$100,000 to firms with 50 or fewer full-time equivalent employees. The Government emphasised that the Scheme was designed to provide cashflow relief on concessionary terms to small businesses that lost most or all of their revenue during the lockdown but remain otherwise viable businesses.

Urgent legislation authorising the Inland Revenue to administer the Scheme was passed on Thursday, 30 April 2020 under the COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Bill - an omnibus bill that also provided taxation and other regulatory amendments to form part of the Government's response to the impact of COVID-19. Inland Revenue will be accepting applications for the Scheme from 12 May 2020 and will pay out shortly thereafter.

The Scheme will provide \$10,000 to every eligible firm with an additional \$1,800 for every full-time equivalent employee. These loans will be interest-free if they are paid back within a year. The interest rate will be 3% for a maximum term of five years. Repayments will not be required for the first two years.

The eligibility criteria will be the same as the Wage Subsidy Scheme criteria. Additionally, applicants will have to declare that they are a viable business and they will use the loan funds for core business operating costs.

For further information on the Scheme, please see [the Beehive website](#).

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## **Credit Contracts Legislation Amendment Act (CCLAA) and Regulations, delayed start date**



On 26 March 2020, as a result of the significant disruption and other impacts of COVID-19, the Ministry of Business, Innovation and Employment ('MBIE') announced that the start date for the Credit Contracts Legislation Amendment Act 2019 ('CCLAA') (including the new Part 5A relating to the fit and proper person certification) will be delayed from 1 April 2021 to no earlier than 1 October 2021.

Note that some of the CCLAA provisions relating to mobile traders and high-cost loans were brought forward under the COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Act 2020 and came into force on 1 May 2020, with the balance of those provisions coming into force on 1 June 2020 (as previously scheduled). Some of the measures include:

- An upper cap on the maximum cost of borrowing, so that consumers will never have to pay back more than 100 per cent of the loan principal
- Certain prohibitions on lending under high-cost loans to borrowers who already have one or more high cost loans
- Banning compound interest on high-cost loans
- Limiting default fees to a prescribed amount of \$30.

On 17 June 2020, MBIE called for further submissions on the Credit Contracts and Consumer Finance Amendment Regulations 2020 (the Regulations) and changes to the Credit Contracts and Consumer Finance Act 2003 (CCCFA) as introduced under CCLAA.

MBIE asked for submissions addressing the merits, scope and nature of a potential exception to the prescriptive affordability requirements in the existing draft Regulations, noting that these requirements may be inappropriate when applied to variations to existing contracts in instances where the existing borrower requires relief from repayments due to financial stress. MBIE requested that submissions on this topic be sent by email to [consumer@mbie.govt.nz](mailto:consumer@mbie.govt.nz) by COB on 24 June 2020.

### **Credit Contracts and Consumer Finance Amendment Regulations 2020**

On 17 June 2020, MBIE also provided an indicative date of 30 June 2020 to provide revised drafts of sections of the Regulations pertaining to suitability, affordability and variation disclosure noting that there will be a five business day turnaround time for comment on the revised drafts. MBIE intends to finalise all draft Regulations in August 2020, with a view to commence the CCLAA on 1 October 2021.

On 6 August 2020, MBIE stated that it would split the Regulations into two tranches, with the first tranche to be made before the general election and the second tranche to follow later in the year.

The first tranche relates to advertising and disclosure provisions. The second tranche relates to the suitability and affordability provisions.

Both tranches will come into force on 1 October 2021. However, the provisions that allow the Commerce Commission to receive applications for certification will commence in June 2021.

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## **Financial Services Legislation Amendment Act (FSLAA) - delayed start date**

The Government announced on 27 March 2020 that the start date of the new financial advice regulatory regime has been deferred from 29 June 2020.

On 25 June 2020 the Government announced a commencement date of 15 March 2021 for the new financial advice regulatory regime. The Government also released the disclosure requirements for financial advisers operating under the new regime - see our separate regulatory update on the disclosure regulations.

Transitional licensing for a Financial Advice Provider (FAP) licence, remains open and FAPs now have until the delayed deadline to obtain a transitional FAP licence. Those who already have FAP licences approved or who have already submitted a transitional FAP license application will not need to reapply.

[See the FMA's website for more information.](#)

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## **Increased capital requirements for Banks – delayed start date**

On 16 March 2020, the Reserve Bank [announced](#) that it would delay the start date of [increased capital requirements](#) for banks by 12 months from 1 July 2020 to 1 July 2021.

On 11 November 2020, the Reserve Bank announced that it would further delay the start date of [increased capital requirements](#) by a further 12 months to July 2022.

The Reserve Bank will reconfirm this timing near the end of 2021 and consider making further amendments to the timing if conditions warrant it.

Other aspects of the capital reforms will proceed from 1 July 2021, including the new rules around capital instruments.

The Reserve Bank has provided an updated [Capital Review Implementation Timetable](#) that sets out the elements of the capital reforms that the Reserve Bank is implementing during 2021 and the beginning of 2022.

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## Extension of submissions on the Financial Markets Infrastructure Bill

On 26 March 2020 it was announced that submissions on the Financial Markets Infrastructure Bill would be extended to 30 April 2020.

"This bill proposes to establish a new regulatory regime for financial market infrastructures (FMIs). It also provides certain FMIs with legal protections relating to settlement finality, netting, and the enforceability of their rules." (description of the legislation from the Parliamentary website).

See [here](#) for more information.

On 4 August 2020, the Finance and Expenditure Select Committee published its final report.

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## Extension of submissions on the Financial Markets (Conduct of Institutions) Amendment Bill

The Finance and Expenditure Select Committee announced on 24 March 2020 that submissions on the Financial Markets (Conduct of Institutions) Amendment Bill would be extended to 30 April 2020.

"This bill proposes to create a new regulatory regime for the general conduct of financial institutions and their intermediaries. This regime has been designed in response to recent reviews that have identified that certain institutions, particularly banks and life insurers, lack focus on good outcomes for customers and have ineffective systems and controls to identify, manage, and remedy conduct issues." (description of the legislation from the Parliamentary website).

See [here](#) for more information.

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## Reserve Bank to slow down its regulatory initiatives

On 18 March 2020 the Reserve Bank announced that it would slow down most of its planned regulatory initiatives for an initial period of six months, to enable financial institutions to focus on their business and customers in response to the COVID-19 crisis.

Increased capital requirements for banks has been deferred by 12 months (to 1 July 2021), to allow banks to make additional credit available to the market (announced 16 March 2020). Further deferrals will be considered, if necessary.

The Reserve Bank is also extending the transition period for its revised outsourcing policy by 12 months (from five years to six years). Affected banks will now need to be fully compliant with the new requirements by 1 October 2023.

On 14 April 2020, the Reserve Bank issued revised versions of two Banking Supervision Handbook (the Handbook) documents including the document 'Outsourcing Policy' (BS11) which incorporates the minor changes needed to extend the transitional period and 'Statement of Principles – Bank Registration and Supervision' (BS1) which documents a temporary reduction in the minimum core funding ratio under the Reserve Bank's liquidity policy from 75% to 50%.

The Handbook sets out the detailed rules regarding conditions of registration which are imposed upon banks under the Reserve Bank of New Zealand Act 1989. For further information on the Handbook and the revised documents, please see [the Reserve Bank's website](#).

The Reserve Bank has deferred a number of 'external-facing' reviews scheduled, including:

- Review of the bank liquidity thematic review (and subsequent review of the liquidity policy (BS13))
- Review of the Insurance (Prudential Supervision) Act 2010
- Standard terms for Residential Mortgage Obligations
- Cyber resilience guidelines for all regulated entities
- Revisions to banks' disclosure of regulatory breaches

- Review of the stress-testing framework and planned bank stress-tests
- Revising the process for approving banks' internal capital adequacy models for credit risk
- Future of cash – standards for banknote-processing machines.

It will continue to work on these reviews internally where possible and intends to clearly communicate a re-start of any deferred activities to ensure the market can re-engage where applicable.

For more information, see [the Reserve Bank website](#).

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## Phase 2 review of Reserve Bank of New Zealand Act

### Treasury to slow down its review of Reserve Bank of New Zealand Act

Due to COVID-19, the Government has decided to extend the third round of consultation for Phase 2 of the review of the Reserve Bank of New Zealand Act 1989 by six months from the original deadline for submissions. Submissions will now close on 23 October 2020. This decision supports the action taken by the Council of Financial Regulators to delay or slow down a number of planned regulatory initiatives for the financial sector for a period of six months. The Government recognises that the attention of regulatory agencies, as well as industry and other stakeholders, is best placed on addressing the immediate challenges created by COVID-19.

### Reserve Bank of New Zealand Bill introduced

On 28 July 2020, the Reserve Bank of New Zealand Bill was introduced to Parliament. This is the first of two bills resulting from the Phase 2 review of the Reserve Bank of New Zealand Act 1989. The Government has decided that the current Reserve Bank Act 1989 will be replaced with two new pieces of legislation - the 'Reserve Bank Act' and a 'Deposit Takers Act'.

The bill is expected to pass into law by September 2021, with full commencement targeted by July 2022 after a nine-month transition period.

The bill focuses on reforming the overall institutional, governance, accountability, and funding arrangements of the Reserve Bank. Key provisions of the bill include:

- Introduction of an overarching financial stability objective, to complement the recently updated monetary policy objectives
- Moving from a 'single decision maker' model to a 'board' model
- Amending the Reserve Bank's funding model to allow for recovery of costs through industry levies and fees
- Amending the Reserve Bank's accountability and reporting frameworks (eg introducing a new framework for management of foreign reserves) and providing more ministerial guidance on matters the Reserve Bank must consider when setting and implementing its strategic approach.

See the [Reserve Bank website](#) for more information.

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## Government to consider changes to reckless trading laws

We understand that the Government is considering changes to directors' duties concerning reckless trading under sections 135 and 136 of the Companies Act 1993. This follows recent changes in Australia to relieve directors from liability for insolvent trading while they trade through the COVID-19 situation. We will provide more information on this when it is available.

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## Guidelines for Financial Services businesses and staff under COVID-19 Alert Level 2

In a recent Financial Markets Authority announcement, guidance for the Financial Services sector was given for working under Alert Level 2. Workplaces are permitted to reopen where WorkSafe contact tracing is possible and provided one metre separation between staff is maintainable. Workplaces are to minimise the risk of transmission by maintaining physical distance and adopting practical hygiene measures. The guidance provides that for ease of contact tracing, workplaces are to hold centralised records of employees working together. Workers who have symptoms, have been in close contact with someone displaying respiratory symptoms, are being tested for COVID-19, or are a confirmed or probable case, are not to attend their workplace.

The full guidelines can be accessed [here](#).

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## Guidance from the AML/CFT Supervisors

The AML supervisors (the Financial Markets Authority, Reserve Bank and Department of Internal Affairs) have published a joint guidance note for AML Reporting Entities (under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009) on complying with verifications requirements during COVID-19 Alert Levels. The guidance note states:

“The supervisors understand that, in the current situation, it may be more difficult for reporting entities to carry out ongoing CDD as per their usual processes. Instead, reporting entities should apply a risk-based approach. This may mean, for example, that reporting entities accept scanned copies of documents as an interim measure, with the originals to be sighted at a reasonable later time (upon lifting of alert levels).”

The guidance note includes information about delayed verification for new business relationships and interpretation of certain aspects of the Identity Verification Code of Practice 2013.

See the [guidance note](#).

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## Guidance on IFRS 9 (Financial Instruments)

On 27 March 2020, the International Financial Reporting Standards (IFRS) Foundation published some guidance on the application of IFRS 9 (Financial Instruments) during the COVID-19 pandemic.

IFRS 9 specifies how an entity should classify and measure financial assets, financial liabilities, and some contracts to buy or sell non-financial items.

The short guidance “does not change, remove nor add to, the requirements in IFRS 9 Financial Instruments. It is intended to support the consistent and robust application of IFRS 9”. The guidance (amongst other things) highlights:

- Requirements within the standard that are relevant for entities considering how the pandemic affects their accounting for expected credit losses (ECL) during and as a result of, the pandemic
- Acknowledges that estimating ECL on financial instruments is very challenging in the current environment
- Acknowledges that there is no bright-line test in accounting for ECLs.

See the [guidance note here](#).

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## Government announces temporary changes to Companies Act 1993

On 2 April 2020, the Government announced that it would introduce legislation that temporarily loosens obligations under the Companies Act 1993 to help companies facing insolvency due to COVID-19. Parliament will be asked to apply some of these changes retrospectively. Key changes include:

- Giving directors 'safe harbour' from insolvency duties
- Allowing affected businesses to place existing debts into hibernation until normal trading resumes – this will require the consent of 50% of a business' creditors. On 1 December 2020, the Government [announced](#) that it would extend this business debt hibernation scheme by 10 months to help companies struggling due to COVID-19. The scheme was initially due to end on 24 December 2020, however, businesses can now apply to enter the scheme until 31 October 2021
- Extending deadlines for reporting annual returns to the Companies Register
- Allowing the use of electronic signatures
- Providing relief for companies unable to comply with requirements in their constitutions.

Finance Minister Grant Robertson emphasised that provisions addressing "serious breaches of the duty [by directors] to act in good faith" and "punishing those who dishonestly incur debts" will remain in place.

See the [Companies Office website for more information](#).

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## Government announces further regulatory and other financial relief/extensions to support SMEs during COVID-19 crisis

On 15 April 2020, the Government announced a suite of measures in addition to the earlier announced wage subsidy scheme and Business Finance Guarantee scheme to assist small and medium sized enterprises facing insolvency due to COVID-19. The

primary focus of these measures is to improve cash flow and bolster confidence. Key changes include:

- Commercial real estate - extension of timeframes required under the Property Law Act 2007 (PLA) before landlords can cancel leases and mortgagees can exercise rights to sale or repossession. The changes will allow a greater period to remedy defaults and breaches when an epidemic notice is in force
  - the current 10 working days timeframe that commercial landlords may cancel a lease for failure to pay rent will be extended to 30 working days. This will be for both the period the tenant is in arrears before the notice is given, and for the period to remedy the breach
  - the current timeframe before lenders may take enforcement action after issuing a PLA notice in relation to mortgaged land will be extended from 20 to 40 working days and in relation to mortgaged goods will be extended from 10 to 30 working days. This will apply to both commercial mortgages and home loans (noting, however, that the earlier announced mortgage deferrals are likely to be the first port of call for residential borrowers)
- Tax support measures - announcement of a tax-loss 'carry back' scheme which permits losses incurred in either the 2020 or 2021 tax year to be carried back to the prior tax year as well other measures such as granting Inland Revenue temporary discretion to extend deadlines, designed to mitigate the impacts of COVID-19
- Business consultancy - \$25m will be provided over the next 12 months to provide businesses with free consultancy services in relation to issues they face, including business continuity, HR and finance advice. Existing helplines such as Regional Business Partner Network will scale up their advisory services.

Legislation enacting these changes will be introduced on 27 April 2020 and Parliament will be asked to apply these changes retrospectively once the bill is passed.

For detailed information on the tax support measures, please see our legal update '[Significant Tax Changes Proposed](#)'.

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## Guidance by the Commerce Commission on CCCFA Compliance by lenders and Addendum to the Responsible Lending Code

On 2 April 2020, the Commerce Commission (the Commission) published guidance (the Guidance) to assist lenders apply the provisions of the Credit Contracts and Consumer Finance Act 2003 (CCCFA).

Broadly, the Guidance reiterated that lenders must comply with CCCFA requirements. However, it noted that:

- The Credit Contracts and Consumer Finance (Exemptions for COVID-19) Amendment Regulations 2020 provide exemptions from compliance with certain CCCFA requirements under certain specified circumstances
- The Commission's approach to enforcement of the CCCFA during this period will be informed by the circumstances in which lenders are operating while COVID-19 affects the economy.

The Guidance focuses on four key areas:

### 1. Lender Responsibility Principles:

When entering into new loans or varying existing loans, lenders must comply with Lender Responsibility principles and the Responsible Lending Code - notably ensuring that the loan entered into meets a borrower's requirements and objectives, and that the borrower will be able to make payments under the loan without suffering substantial hardship.

- Noting the difficulty in acquiring the information usually required to corroborate and underpin responsible lending decisions, the Guidance sets out what enquiries must be made and what processes must be followed by lenders until such information is available
- Lenders should recognise their duty to assist borrowers to make informed decisions when entering loans and in all subsequent dealings. For instance, where only verbal communication with a borrower is practicable it must be followed up with written disclosure as soon as reasonably practicable
- The Guidance sets out the minimum expectations for disclosure of agreed changes in circumstances where a loan is varied or replaced due to COVID-19 by reducing payments, extending the term or deferring payments.

### 2. Borrowers Under Financial Stress:

- Lenders may expedite variations to a loan to assist a borrower who is currently unable to make payments - accepting variations by telephone may be appropriate in circumstances where an application in writing may be difficult
- The Commission considers the hardship procedure in the CCCFA to be a minimum standard - decisions should be made at least within the timeframes set out in the Act.

### 3. Disclosure:

- Lenders should take all reasonable steps to provide disclosure in compliance with the CCCFA. However, the Commission will take into account the difficulty caused by disruptions in communications when enforcing compliance
- At the very least, lenders should provide disclosure verbally and take all reasonable steps to ensure the borrower understands it. Lenders should keep records of the steps taken and provide written disclosure as soon as reasonably practicable.

#### 4. Fees:

- Lenders should not seek to introduce new fees or vary the amount of existing fees unless specifically allowed to do so in the contract. Lenders must demonstrate an increase in closely connected costs in order to increase any fee
- Fees should reflect the costs that are closely connected with the matter giving rise to the fee.

See the Guidance [here](#).

### Responsible Lending Code - Addendum

On 23 June 2020, the Responsible Lending Code was amended under section 9I of the CCCFA via the issuing of the 'addendum to the Responsible Lending Code' (the Addendum). The Addendum came into force on 24 June 2020 and expires on 31 March 2021 (extended on 17 August 2020 from its initial expiry date of 30 November 2020).

The Addendum applies to all CCCFA lenders but its necessity was driven primarily by non-bank lenders in the wake of the Consumer Finance (Exemptions for COVID-19) Amendment Regulations (no. 2) 2020 which exempt non-bank lenders from certain provisions of the CCCFA, but do not go as far as the Consumer Finance (Exemptions for COVID-19) Amendment Regulations 2020 for registered banks.

The Addendum sits alongside the Responsible Lending Code and, in addition to the Guidance prepared by the Commission in April 2020, provides further guidance on how the lender responsibility principles and lender responsibilities may be implemented by lenders while dealing with borrowers experiencing or reasonably expecting to experience financial difficulties or health effects caused by the COVID-19 pandemic where either an existing contract is varied or a replacement contract is entered into to reduce these difficulties on or before 30 November 2020.

In short, the lenders must make sufficient enquiries to be satisfied that a borrower requires payment relief due to the financial difficulties they are facing and, given their circumstances, the relief is appropriate. The Addendum provides specific examples of the types of enquiries which may be relevant eg asking the borrower how COVID-19 impacted them and whether there are any current or expected changes to their income or expenses, checking whether the borrower is aware of financial support available from the Government and considering the likely long-term impact of any repayment relief provided on the borrower's obligations.

See the Addendum [here](#).

### Responsible Lending Code - Extension of Addendum

On 17 August 2020, following a call for submissions by 12 August 2020 and due to heightened uncertainty, MBIE decided to extend the expiry date from 30 November 2020 to 31 March 2021.

This date was chosen to align with the Reserve Bank's announcement to extend its regulatory guidance for the mortgage deferrals scheme from 27 September 2020 to 31 March 2021.

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