

27 July 2017

Tasha Petrie  
Senior Policy Advisor, Business Law  
Ministry of Business, Innovation and Employment  
PO Box 1473  
**Wellington**

Dear Tasha

### **Regulatory Systems Bill (3)**

I refer to Mark Steel's letter of 3 July 2017, seeking suggestions from the New Zealand Law Society for technical amendments to commercial legislation that could be included in a Regulatory Systems Bill. The Law Society has identified the following legislation that may be suitable for amendment via such a bill. These are:

- the Companies Act 1993 (section 332: definition of "carrying on business in New Zealand"), and
- the Secondhand Dealers and Pawnbrokers Act 2004 (sections 51 and 57: suggested replacement of the word "interest" with "redemption fee").

#### **Companies Act definition of "carrying on business in New Zealand"**

Section 334 of the Companies Act 1993 requires an overseas company that commences to carry on business in New Zealand to apply for registration under section 336 of the Companies Act within 10 working days of commencing to carry on business.

What amounts to "carrying on business in New Zealand" is set out in section 332 of the Companies Act. We suggest that section 332 should be reconsidered because of developments in the distribution of products and services, for example software and financial products. A company can carry on a significant amount of business in New Zealand without a physical presence in New Zealand. Consideration should be given to a simple "bright line" test that better reflects the level of business conducted in New Zealand. We note that this would also have flow-on effects for other legislation featuring "carrying on business" definitions, such as the Insurance (Prudential Supervision) Act 2010.

#### **Secondhand Dealers and Pawnbrokers Act 2004**

Sections 51(2)(g) and 57(1)(b) and (2) of the Secondhand Dealers and Pawnbrokers Act 2004 include the word "interest". This reference is intended to refer to the redemption fee charged by the pawnbroker, which is in reality a fee covering the pawnbroker's fixed and variable costs (administration, secure storage as required by statute, overheads and income). That fee is required to be disclosed to the pledger on entering the pawn contract. Although there is provision for the fee to be decreased by early redemption, the high proportion of fixed costs mean that changes in fee

are not a “rate over time” as defined in the Credit Contracts and Consumer Finance Act (CCCFA), because the increment over time is related mostly to variable costs.

This use of the word “interest” has in the past caused difficulties for pawnbrokers: the Commerce Commission for some time took the view that that pawn pledges were credit contracts (even though there was no debt – pawn is a walk-away transaction) and insisted that pawnbrokers carry full CCCFA disclosure. That led to the production of documents which were difficult to follow and potentially misleading to consumers.

There is no relationship between the pawn redemption fee and interest on a credit contract. The position with respect to disclosure was clarified by the exclusion of pawn transactions from the disclosure requirements of the CCCFA (section 15A) in 2015. However the continued requirement to use the word “interest” is at best confusing and at worst misleading to consumers.

The Law Society recommends that the word “interest” be replaced with the words “redemption fee” in both sections. Further clarification could be provided by adding a definition of “redemption fee” e.g. *Redemption fee is the fee to be paid by the pledger in addition to the amount of money advanced on the goods in order to redeem the goods.* We understand from a member of the Law Society’s Commercial and Business Law Committee that such an amendment would be likely to have the support of pawnbrokers.

## **Conclusion**

These comments were prepared with the assistance of the Law Society’s Commercial and Business Law Committee. If you wish to discuss the comments, please contact the committee convenor Rebecca Sellers, via the committee secretary Jo Holland at [jo.holland@lawsociety.org.nz](mailto:jo.holland@lawsociety.org.nz), (04) 463 2967.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Kathryn Beck', written in a cursive style.

Kathryn Beck  
**President**