

# Regulatory Impact Statement

## Securitisation Exemptions

### Agency Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment.
2. It provides an analysis of options in relation to possible exemptions for securitisation-type arrangements from:
  - a. requirements for disclosure of transfer of the rights of a consumer credit contract; and
  - b. requirements to register as a financial service provider and be a member of a dispute resolution scheme.
3. The status quo and the analysis in this regulatory impact statement are based on the Credit Contracts and Consumer Finance Act 2003 and Financial Service Providers (Registration and Dispute Resolution) Act 2008 as they will be at 6 June 2015, when remaining amendments come into force.
4. Options are limited by the scope of the regulation-making powers in the Acts. New section 26A(3) of the Credit Contract and Consumer Finance Amendment Act specifies that the circumstances for an exemption should relate to securitisation, covered bond arrangements or similar arrangements so options are limited to focusing on these types of arrangements.
5. There are a large number and variety of securitisation-type arrangements and we do not have information on the exact number of these and the number that would seek an exemption if one were available. However, we have included information to quantify the compliance costs for an individual creditor to comply with the requirements of the Act without an exemption.

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## **Status quo and problem definition**

### **Requirement for disclosure of transfer of debt**

6. The Credit Contracts and Consumer Finance Amendment Act (Amendment Act) comes into force on 6 June 2015. On this date, new section 26A of the Credit Contracts and Consumer Finance Act 2003 (CCCFA) will require a creditor to ensure that certain information is disclosed to every debtor and guarantor, where a creditor transfers the rights of a consumer credit contract to another creditor (the new creditor).
7. The information that must be disclosed includes, for example:
  - a. Contact details of a new creditor;
  - b. Contact details for the dispute resolution scheme that the new creditor is a member of;
  - c. Date of transfer of rights of the debt.
8. This requirement to ensure disclosure of information when a consumer credit contract is transferred was added to address the situation where debtors did not know their debt had been assigned and received demands for repayment from parties they did not know.
9. A problem may arise with the requirements for disclosing transfer where debt is securitised. Many financial institutions pool various types of contractual debt (such as residential mortgages and car loans) and sell consolidated debt to investors (see diagrams in Annex). In many such situations where the debt is securitised (e.g. through a special purpose vehicle or a covered bond), a debtor has no contact with the new creditor (the securitisation) in relation to management of the loan. In this situation where management arrangements for the loan do not change, the requirements for disclosure of transfer outlined in new section 26A may not be necessary. Furthermore, disclosure may confuse the debtor regarding who to deal with in relation to the debt.

### **Requirement to register as a financial service provider and belong to a dispute resolution service**

10. The Financial Services Providers (Registration and Dispute Resolution) Act 2008 (FSP Act) requires all persons in the business of providing financial services to be registered. It also requires that every financial service provider must be a member of a dispute resolution scheme.
11. The FSP Act currently includes 'providing credit under a credit contract' in the definition of a financial service. From 6 June 2015 this definition will be amended to refer to 'being a creditor'. This amendment is being made to capture situations where a debt is transferred or assigned to a new creditor (for example, to a debt collector), who may not meet the definition of 'providing credit'. This should ensure that where a credit contract is assigned, the new creditor is also required to be a registered financial provider and a member of a dispute resolution scheme, so that debtors continue to have access to dispute resolution services.

12. However, if debtors continue with their existing loan management arrangements and have no contact with a new creditor, it may not be necessary for the new creditor to be a member of a dispute resolution scheme as well as the existing loan manager. Requiring membership could create unnecessary compliance costs if the new creditor has no relationship with the borrower and no role or responsibility in relation to day to day management of the loan.

## Objectives

13. Consistent with the purposes and requirements of the legislation, objectives are as follows:
  - a. For the requirement to disclose transfer, the objective is to provide for disclosure of adequate information to meet the purposes of the Act including protecting the interests of debtors.
  - b. For the requirements to register and be a member of a dispute resolution scheme, the objective is to ensure debtors continue to have access to dispute resolution where action is taken to enforce terms of a loan.
  - c. In relation to both requirements, there is an objective to minimise compliance costs (the FSP Act provides that exemption regulations should only be made if the Minister is satisfied that costs of compliance would be unreasonable or not justified by the benefit of compliance).
14. We also note that although one of the purposes of the requirements to register as a financial services provider is to allow for the effective monitoring of compliance with the Anti-Money Laundering and Financing of Terrorism Act 2009, this purpose is not relevant to the objectives in this context, as creditors who are not themselves lenders are not reporting entities under that Act.

## Options and impact analysis

### Requirement for disclosure of transfer of debt

15. The options considered in this part of the RIS are:
  - a. Option 1: To require disclosure of transfer for all creditors as outlined in section 26A of the Amendment Act (status quo).
  - b. Option 2: To exempt disclosure of transfer for securitisation, covered bond arrangements or similar arrangements in circumstances where the debtor continues with existing arrangements for management of the loan and has no contact with the new creditor (if the existing arrangements cease and/or the new creditor contacted the borrower, an exemption would cease to apply)<sup>1</sup>.

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<sup>1</sup> Option 2 is defined in line with the circumstances highlighted by the Commerce Committee that led to the inclusion of a regulation-making power into the Act. As the exemption covers these particular circumstances, we have not added sub-options in terms of how to define an exemption, as regardless of how an exemption could be defined (options are either defining the type of structure that is exempt, or defining the exemption by the creditor's relationship with the debtor) it will always end up being defined to apply to the same circumstances.

16. The following table assesses the options against the relevant objectives:

| Objective                          | Option 1: status quo   | Option 2: exempt disclosure of transfer  |
|------------------------------------|--|--|
| Disclosure of adequate information | This option will result in adequate disclosure in some circumstances – however where all transfers are disclosed but debtor has no day-to-day contact with new creditor, debtors may not require disclosure and may be confused regarding who they are dealing with. | ✓<br>Borrower is clear who is managing the loan. In targeted consultation, the majority of submitters supported an exemption, provided the new creditor does not have contact with the debtor in relation to ongoing management of the loan. |
| Minimise compliance costs          | Under this option creditors are required to disclose transfer of consumer credit contract to a securitisation structure where disclosure is not required by, and may confuse the debtor.   | ✓<br>Where debt is securitised, only required to disclose where change in arrangements for management of loan.   |

17. Groups affected by the proposal are debtors, guarantors and those seeking credit, and creditors/those offering credit. The main difference between the impact of options for debtors is a potential reduction in confusion under option 2, where a securitisation is not required to be disclosed where the borrower has no ongoing contact with a new creditor in relation to managing the loan. For creditors, the main difference in impacts is a reduction in compliance costs from option 2.

### **Requirement to register as a financial service provider and belong to a dispute resolution service**

18. The options considered in this part of the RIS are:

- a. Option 1: To require all creditors to register and to be members of an approved dispute resolution scheme (status quo).
- b. Option 2: To exempt some creditors from the requirement to register and to be a member of an approved dispute resolution scheme, in line with the circumstances for an exemption from requirements for disclosure of transfer in the CCCFA.

19. The scope of options in this section is aligned with the options in the previous section, to address the same circumstances highlighted by the Commerce Committee. That is, where there was disclosure of transfer, there would not be an exemption.

20. The following table assesses options against the relevant objectives.

| Objective                    | Option 1: status quo  | Option 2: exemption from FSP Act requirements  |
|------------------------------|---|--|
| Access to dispute resolution | Debtors have access to dispute resolution as all creditors must register under the FSP Act and join a dispute resolution scheme.  | Debtors have access to dispute resolution as the party managing the loan is required to register under the FSP Act and join a dispute resolution scheme.<br><br>Submitters supported this option under the circumstances where there are arrangements to ensure that disputes are addressed through the party managing the loan and an exemption does not apply if the new creditor has contact with the debtor. |
| Minimise compliance costs    | All creditors required to register and become members of dispute resolution scheme, even where no contact with borrower and management of loan sits elsewhere.<br><br>The upfront cost associated with registration is \$707.78. The ongoing annual cost is \$411.33. The cost of being a member of a dispute resolution scheme depends on the scheme and typically on the size of loans. For example, Financial Services Complaints Limited (FSCL's) joining fee is \$115 and for loans less than \$1 million, its annual membership fee is \$515. | ✓<br><br>Creditor is not required to register and be a member of a dispute resolution scheme provided no contact or relationship with debtor. If the existing arrangements cease and/or the creditor contacts the borrower then the exemption would cease and the creditor would disclose the transfer, register under the FSP Act and join a dispute resolution scheme.   |

21. Groups affected by the proposal are the same as those outlined in section on disclosure of transfer, i.e. debtors and creditors. The impact on debtors is the same for each option. For creditors, the main difference in impact from the two options is a reduction in compliance costs where a creditor is not required to be registered and be a member of a dispute resolution scheme in situations where there is no contact/relationship with a debtor.

**Consultation**

22. During consideration of the changes that led to the Amendment Act, the Commerce Committee received a number of submissions on the issue of exemptions for securitisation-type arrangements from disclosure of transfer requirements and

requirements to register and be a member of a dispute resolution scheme. A number of financial sector stakeholders submitted that in the case of securitisation-type structures where the initial creditor continues the relationship with the debtor, that there was no benefit in the debtor knowing of the transfer and disclosure may confuse the debtor. Similarly, submitters noted that requiring membership of a dispute resolution scheme for securitisation-type structures where debtors already have access to dispute resolution may create unnecessary compliance costs.

23. In September 2014, a paper was released for consultation with key stakeholders on whether there should be exemptions for securitisation-type arrangements and, if so, what form any exemptions should take. Nine submissions were received from financial service providers, consumer groups and dispute resolution services. The majority of submitters supported an exemption from transfer of disclosure requirements for situations provided the debtor does not have contact with the new creditor in relation to ongoing management of the loan.
24. Submitters also supported an exemption from the FSP Act requirements consistent with an exemption for disclosure of transfer in principle. However, submitters noted that an exemption should only apply as long as an exempt creditor has no rights to follow up with the debtor or has arrangements in place to ensure that any disputes are addressed through the creditor managing the loan. It was also suggested that an exemption from the FSP Act requirements should no longer apply if the new creditor contacted a debtor.
25. Additional consultation will be undertaken with interested stakeholders on an exposure draft of regulations to implement the preferred option.

## **Conclusions and recommendations**

26. In relation to disclosure of transfer, based on the analysis above we conclude that option 2 is the preferred option, i.e. that disclosure of transfer not be required in circumstances where the debtor continues with existing arrangements for management of the loan and has no contact with the new creditor. The status quo option is not the preferred option, as it may confuse the debtor, and creates additional compliance costs for creditors.
27. In relation to the requirements to register and become a member of a dispute resolution scheme, based on the analysis above, we conclude that option 2 is the preferred option. Under both options, the impacts on debtors are the same, but there is a reduction in compliance costs for creditors under option 2.

## **Implementation plan**

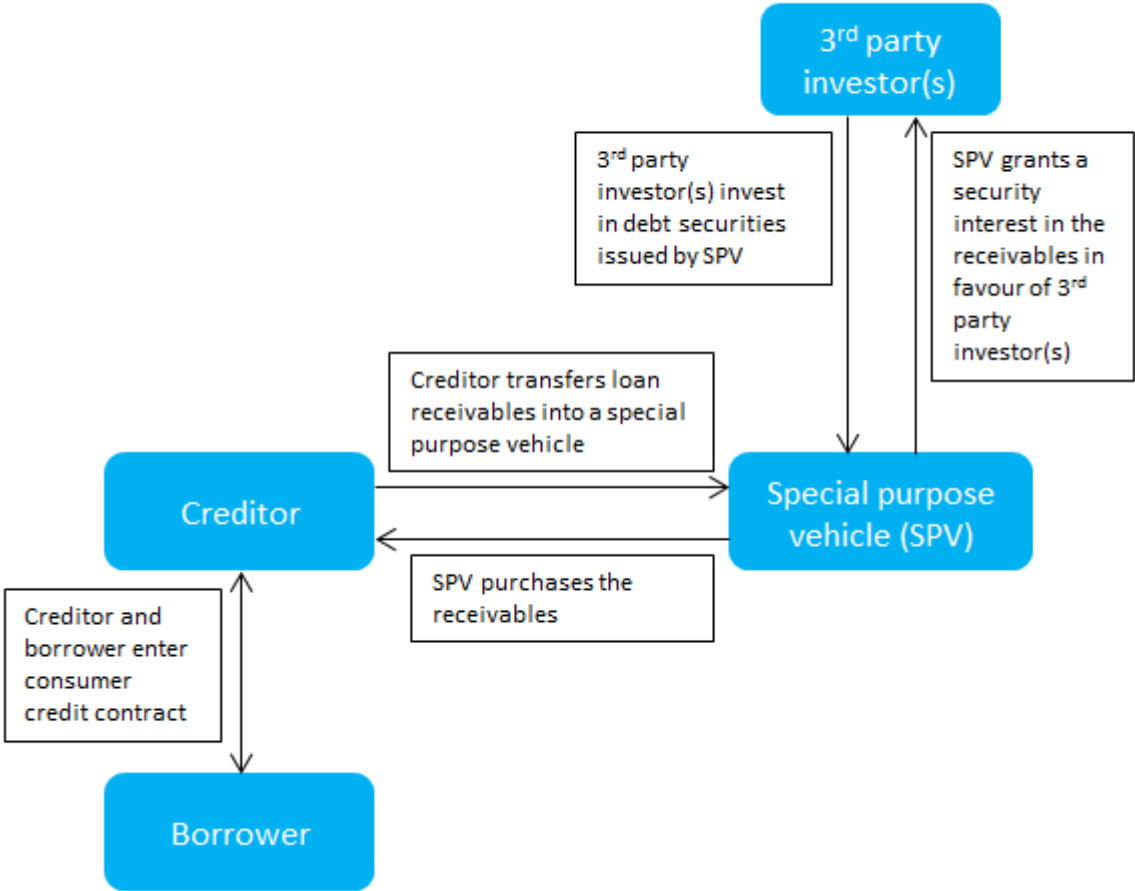
28. Exemptions for transfer of disclosure will be implemented through regulations under section 138(1)(da) of the CCCFA. Exemptions from requirements to register as financial service provider and be a member of a dispute resolution scheme will be implemented through amending the Financial Service Providers (Exemptions) Regulations.
29. Implementation will sit alongside overall implementation of the credit law changes. This is covered by the regulatory impact statement for changes to the consumer credit regime.

## **Monitoring, evaluation and review**

30. These regulations will be monitored as part of overall monitoring and evaluation of the package of reforms to consumer credit legislation. This is covered by the regulatory impact statement for overarching changes to the consumer credit regime.

# Annex: Examples of Securitisation Process

## A typical securitisation process



## Why the exemption is proposed

