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BANKING SECTOR NEWSLETTER

IN THE MEDIA

ASIC to provide additional time for unlisted entity financial reports

ASIC announced that it will extend the deadline for unlisted entities to lodge financial reports under Chapters 2M and 7 of the Corporations Act 2001 (the Act) by one month for balance dates from 31 December 2019 to 31 March 2020. <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-084mr-asic-to-provide-additional-time-for-unlisted-entity-financial-reports/>

FSC Appoints new Deputy CEO

The Financial Services Council (FSC) has appointed Blake Briggs as its Deputy Chief Executive Officer. Mr Briggs starts with the FSC in May. <https://www.fsc.org.au/resources/1997-fsc-media-release-fsc-appoint-deputy-ceo/file>

Supporting up to \$40 billion of lending to SME businesses

The Morrison Government is making the first round of offers to banks and non-bank lenders to participate in the Coronavirus SME Guarantee Scheme to support small and medium sized businesses (SMEs) get access to working capital to help them get through the impact of the coronavirus. <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/supporting-40-billion-lending-sme-businesses>

The ABA welcomes the official commencement of the SME Loan Guarantee Scheme

Australian Banking Association CEO Anna Bligh said the scheme allows banks and other lenders to offer small and medium sized businesses new unsecured loans which have a 50% guarantee from the government, meaning these loans are able to be offered more cheaply and more freely compared to ordinary business loans. <https://www.ausbanking.org.au/sme-loan-guarantee-scheme-a-lifeline-to-struggling-small-businesses/>

APRA suspends issuing of licences

APRA will suspend the issuing of new licences due to the fundamental change in the economic and social environment, for at least six months as it does not consider it "prudent" to issue new licences at this time. <https://www.investordaily.com.au/regulation/46845-apra-suspends-issuing-of-licences>

Big banks cop a beating

The big four banks have all suffered a rating downgrade due to the COVID-19 fallout, while APRA warns they should cut dividends and bonuses. <https://www.financialstandard.com.au/news/big-banks-cop-a-beating-157635946>

ASIC cancels slew of AFSLs

ASIC has cancelled the AFSLs of three firms, including that of former advice dealer group MyPlanner. <https://www.financialstandard.com.au/news/asic-cancels-slew-of-afsls-157410613>

ASIC [20-078MR ASIC cancels AFS licences of FS Securities, Your Super Life and ACN 140 520 225 \(formerly MyPlanner Australia\)](https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-078mr-asic-cancels-afs-licences-of-fs-securities-your-super-life-and-acn-140-520-225-formerly-myplanner-australia/)

ASIC obtains orders to wind up three financial services companies

The Federal Court of Australia in Melbourne has ordered that the following companies be wound up and that liquidators be appointed. <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-082mr-asic-obtains-orders-to-wind-up-three-financial-services-companies/>

New Code provides welcome clarity for retail landlords, tenants and banks

The new Code of Conduct for small and medium enterprises leasing principles during the COVID-19 crisis brings very welcome clarity to all parties involved. <https://www.ausbanking.org.au/new-code-provides-welcome-clarity-for-retail-landlords-tenants-and-banks/>

A COVID-19 mortgage deferral won't affect your credit rating

Any Australian who is granted a six month deferral on loan repayments on their mortgage or other credit products, such as a credit card, will not have their credit rating affected as a result of that deferral, provided they were up to date with repayments prior to COVID-19. <https://www.ausbanking.org.au/a-covid-19-mortgage-deferral-wont-affect-your-credit-rating/>

Fighting financial crime together – SMRs during the COVID-19 pandemic

As a result of the COVID-19 pandemic, the restrictions on the movement of people and goods is changing the demand for products and services across sectors. Reporting entities are at the front line in combating financial crime. We encourage you to monitor for new and emerging threats and submit suspicious matter reports (SMRs) to AUSTRAC. <https://www.austrac.gov.au/smrs-during-covid-19>

IN PRACTICE AND COURTS

[SME Guarantee Scheme](#)

Under the Scheme, the Government will guarantee 50 per cent of new loans issued by eligible lenders to SMEs. The Scheme will be available for new loans made by participating lenders until 30 September 2020. A list of participating lenders will be available on the Treasury website once the offers to lenders have been accepted.

[ABA: FAQs: what you need to know about COVID-19 bank relief](#)

Relief has now been extended to 98% of all businesses with loans with an Australian bank. Contact your bank online to get a six month deferral of your business loan.

[IASB proposes further amendments to IFRS Standards in response to interest rate benchmark reform](#)

Proposed amendments to IFRS Standards are to assist companies in providing useful information to investors about the effects of interest rate benchmark reform on financial statements. To read and comment on the Exposure Draft, go to the [comment letter page](#). The comment deadline is 25 May 2020. The [Snapshot](#) provides a summary of the project and the proposals.

[AASB: Second compilation of latest IFRS IC agenda decisions published](#)

IFRS Interpretations Committee agenda decisions from October 2019 to March 2020 have now been compiled by the IFRS Foundation.

[Statement by Philip Lowe, Governor: Monetary Policy Decision](#)

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The Board reaffirmed the targets for the cash rate and the yield on 3-year Australian government bonds of 25 basis points, as well as the other elements of the package announced on 19 March 2020.

[AUSPAYNET: Changes to contactless PIN limit](#)

The payments industry will be temporarily increasing the contactless card PIN limit from \$100 to \$200 to help reduce the risk of COVID-19 transmission by reducing physical contact with the payment terminal. The new \$200 limit will be progressively introduced across certain cards and at certain retailers starting in April 2020.

[APRA issues guidance to authorised deposit-taking institutions and insurers on capital management](#)

In a letter to ADIs, general insurers, life companies and private health insurers, APRA outlined its expectations that these institutions limit discretionary capital distributions in the months ahead, including deferrals or prudent reductions in dividends.

[ASIC draft guidance on the new best interests duty for mortgage brokers](#)

The new obligations were legislated by the Parliament in response to [Recommendation 1.2 of the Royal Commission](#). From 1 July, the obligations will require mortgage brokers to act in the best interests of consumers and to prioritise consumers' interests when providing credit assistance. ASIC intends to publish final guidance before the obligations commence on 1 July 2020.

CASES

[Australian Securities and Investments Commission v Merlin Diamonds Limited \(No 3\) \[2020\] FCA 411](#)

CORPORATIONS – application for orders winding up the defendant in insolvency pursuant to s 459B of the Corporations Act 2001 (Cth) – alternatively pursuant to s 461(1)(k) of the Corporations Act 2001 (Cth) – where company is insolvent – where Court is of the opinion that it is just and equitable that the company be wound up – whether compelling reasons shown not to order winding up – where interested parties wish to appoint an administrator under s 436C of the Corporations Act 2001 (Cth) instead of winding up in order to provide an opportunity for a deed of company arrangement to be proposed – winding up ordered

ASIC has shown a prima facie case that Merlin has contravened s 208 of the Act by advancing loans to Axis in each of the financial years from 2012 to 2018.

[Bank of Queensland Limited v State of Western Australia \[2020\] FCA 442](#)

BANKRUPTCY – disclaimer of real property by trustees in bankruptcy pursuant to s 133(1) Bankruptcy Act 1966 (Cth) – application by mortgagee bank under s 133(9) to have property vested in it to exercise power of sale – where mortgage was given over real property to guarantee loans given to related company – consideration of how any surplus proceeds of sale should be dealt with – consideration of effect of escheat to the Crown.

[Lenthall v Westpac Banking Corporation \(No 2\) \[2020\] FCA 423](#)

REPRESENTATIVE PROCEEDINGS - where common fund order made beyond power and no longer operative – whether Court has power to approve notice informing group members of applicant’s intention to seek an order at conclusion of proceeding to distribute the burden of costs, fees and all other expenses equitably among all persons who have benefitted from the class action – whether BMW Australia Ltd v Brewster [2019] HCA 45; (2019) 94 ALJR 51 precludes the Court approving the issue of such a notice – whether the Court ought to refuse to issue notice in exercise of discretion - whether group members should be informed about the basis upon which the class action is now being funded – whether content of notice ought be approved – considerations of complexity in conveying information contained in notices – discussion of need to consider simpler and more accessible ways of communicating complex messages to large and varied classes.

[StockCo Agricapital Pty Ltd v Dairy Livestock Services Pty Ltd \[2020\] NSWSC 318](#)

MORTGAGES AND SECURITIES – Personal Property Securities Act 2009 (Cth) – agreement providing for customer to purchase livestock as agent for financier – financier retains title – whether a security interest

MORTGAGES AND SECURITIES – Personal Property Securities Act 2009 (Cth) – priorities – agreement by livestock agent to purchase cattle for customer and fund subsequent agistment and feedlot charges – security for recoupment of agistment and feedlot charges – whether a purchase money security interest – whether a purchase money obligation. Personal Property Securities Act 2009 (Cth), ss 12, 12(2)(c), 12(d), 12(e), 12(h), 14, 14(1)(b), 14(7)(b), 62.

[National Australia Bank v Bezeg \[2020\] VSC 163](#)

MORTGAGES – Where a possession order was granted in favour of a mortgagee – Where the mortgagee sold the subject land and placed chattels which remained on the land into storage – Where the mortgagee seeks to dispose of the chattels under the terms of the mortgage – Where the mortgagee seeks declaratory relief supplementary to judgment for possession – Declaratory relief granted but operative effect temporarily stayed to give the mortgagee an opportunity to collect the chattels.

LEGISLATION

Commonwealth

Regulations

[Guarantee of Lending to Small and Medium Enterprises \(Coronavirus Economic Response Package\) Rules 2020](#)

06/04/2020 - This instrument prescribes legislative rules under the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020. The Rules define the term ‘SME entity’. The Act specifies no conditions that need to be met before the power to make the Rules is exercised.

[National Consumer Credit Protection Amendment \(Coronavirus Economic Response Package\) Regulations 2020](#)

02/04/2020 - These regulations amend the National Consumer Credit Protection Regulations 2010 to temporarily exempt Australian credit licensees from responsible lending obligations under the National Consumer Credit Protection Act 2009. The exemption operates in limited situations where a consumer obtains credit under a credit contract or goods under a consumer lease for purposes that include a purpose of a small business operated by the consumer.

THIS EDITION’S EDITORS



David Murray-Nobbs

Partner
+61 2 9225 2714
+61 405 183 587
dmurraynobbs@tglaw.com.au



Phil Kaunitz

Partner
+61 7 3166 4511
+61 402 844 833
pkaunitz@tglaw.com.au

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