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## **WE ARE WHAT WE EAT! DO WE WANT TO KNOW?**

**Y**ou may have noticed a difference in the packaging and labelling of food you have recently purchased. Packaged foods now clearly display their sugar, fat and sodium content - whether you want to know or not!

On 20 December 2002, the Food Standards Code ('Code') became compulsory in New Zealand.

### **What to Expect**

You can expect to see the following information on any food packaged after 20 December:

- A best before or use by date – this applies only to products with a shelf life of less than two years.
- A full list of ingredients – in descending order from largest to smallest ingredient.
- Nutritional information – ignorance was bliss.
- Percentage Labelling.

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### **Exempt Foods**

It is not practical for all food types to comply with the new labelling requirements, and the Code recognises this with a number of exemptions.

Exempt foods include: unpackaged foods, foods packaged in the presence of the purchaser, fruit, vegetables, meat (such as butchery products), takeaway or delivered food, and food sold at fundraising events.

### **GM Foods**

The Code prohibits the sale of food using gene technology, unless the GM ingredient falls within a limited number of exemptions. Genetically modified food products are those produced using gene technology which contains novel DNA and/or novel protein or has altered characteristics.

'Genetically Modified' must be clearly displayed where approved genetically modified ingredients have been used.

Restrictions are also placed on the irradiation of food, with irradiation being permitted only on a number of very limited food types such as Herbs and Spices.

### **Food Standards**

The Code sets specific standards for certain food types such as meat and dairy products. Standards include a minimum 25% meat in meat pies

and maximum 50% fat in sausages (by weight). The presence of offal must also be declared.

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### Help for Allergy Sufferers

Prior to December 2002 food allergy sufferers could be playing Russian Roulette with their packaged foods. Consumers with food allergies will now be able to tell at a glance what they are eating. The presence of common allergy causing foods such as nuts, shellfish, eggs and cereals in a food product must be clearly displayed on the label.

## Nutritional Claims

The Code also determines when certain claims can be made about a product's nutritional benefits. Packaging has often carried claims about nutritional properties such as 'Omega' content and low fat or sugar levels. The Code regulates and restricts such claims. The Code now defines exactly when claims can be made about the omega fatty acid content, low joule claims and lactose, gluten and salt content claims.

### In Summary

By reading the nutritional panel or label you can now expect to know exactly how many calories and grams of fat and protein you are consuming with each serving, whether you want to know or not!

## A DIFFERENT SORT OF ET

The use of e-mail as a business tool has become increasingly widespread in the last few years. This has given rise to the need to clarify rules relating to electronic communications, such as when a document:

- Is "in writing",
- Has been signed, and
- Forms part of a contract.

The Electronic Transactions Act 2002 was passed on 10 October 2002. It clarifies uncertainty regarding electronic



communications, and provides for certain paper-based legal requirements to be met using electronic technology.

### Is it Compulsory?

You have the right to elect to use a paper or electronic based system. Information which needs to be provided "in writing" can only be provided in an electronic form if the

party receiving it consents to receiving it in that form. Consent can be inferred from conduct. Where a person uses e-mail to make an offer, they will be treated as having consented to acceptance by e-mail.

### Receipt of Information

It can be important to determine when and where electronic communications are received or dispatched. The Act sets out default rules in relation to the receipt or dispatch of e-mails. Note that the default rules will not apply if the parties sending and receiving the e-mails have predetermined how those e-mails are to be treated.

The new rules will be important where time of notification of information by e-mail is important, or where it is important that a document is dispatched or received from or at a particular address.

### Time of Receipt

An e-mail is received when, if a person has nominated an information system to receive that communication, it enters that system, or in any other case where it comes to the attention of the addressee.

A person takes a risk where they nominate an e-mail address for communications, but have an unreliable e-mail system, which delays receipt of the information. If they had not nominated an e-mail address, they would be deemed to receive the e-mail only once it came to their attention.

### Incorporation of Terms

Additional terms can be incorporated into an electronic communication simply by reference to those terms, such as reference to a supplier's terms and conditions on a website. It is not necessary to attach the additional terms to the communications.

### Exceptions

Sometimes you cannot avoid using paper. Documents such as public

notices, wills, codicils, and affidavits cannot be in electronic form.

### What is "in writing"?

Where there is a legal requirement for a document to be in writing, recorded in writing or given in writing, an electronic document will meet that requirement if:

- It is readily accessible so as to be useable for subsequent reference; and,
- Where information is provided, the person receiving it has consented to its supply in electronic form.

### Electronic Signatures

An electronic signature is simply a means of identifying a person and indicating their approval of the information. The signature has to be as reliable as is appropriate given the type of information and scope of the contract. Legal requirements for a signature to be witnessed can be met by the witness also providing an electronic signature.

### What do you Need to Keep?

Where there is a legal requirement to retain electronic documents, that requirement will be met if the electronic form provides a reliable means of assuring the information's integrity is maintained, and the information can be readily accessed. If you wish to keep documents in electronic form you need to ensure the documents cannot be altered once stored. The origin, destination, and time of dispatch and receipt should also be kept.

*If you have any questions on newsletter items please contact us, we're only too happy to help*

### Impact

The Electronic Transactions Act is likely to have a significant impact on the way we do business in the future. This should be a timely reminder to analyse your practices and systems with regard to

electronic communications. If you need assistance please contact us.

## SHOULD I ACT AS GUARANTOR?

### What is a Guarantor?

A Guarantor is a person who gives a promise or 'Guarantee' to a creditor or lender to be answerable for the debt or obligation of another (the principal debtor or borrower) if that other defaults.

Most guarantees provide that the creditor can call on the guarantor to pay the debt in full (if it is due) without requiring payment from the borrower and without exhausting the creditor's remedies against the borrower or any securities given by the borrower.

### Financial Position of Borrower

Because a guarantee exposes a guarantor to potential liability for another person's debt without any direct benefit, logically nobody should give a guarantee. In practice however, the guarantor's decision to give a guarantee is determined by weighing up the following:

1. What is the borrower's ability to service and repay the loan?
2. What is the creditworthiness of the borrower?
3. What is the risk?
4. What is the likelihood of the debt being called up?

### Your Obligations as Guarantor

If you choose to give a guarantee the following provides a summary of most standard guarantee documents.

- Most guarantees are "All Obligations" guarantees, i.e. the guarantor is liable for all the principal debtor's obligations to the creditor and are not limited to the particular transaction which gave rise to the request for the guarantee. The guarantor's liability also extends to all debts that the

principal debtor already owes to the creditor.

- If the principal debtor has given the creditor a guarantee (i.e. is acting as a Guarantor) for yet another person or company, the guarantor will be liable for all claims against the principal debtor by the creditor relating to the other person or company.
- If a guarantee is not limited in amount then it is unlimited.

Standard All Obligations Guarantees also provide as follows:

- The creditor may make a demand on and bring court proceedings directly against the guarantor without bringing proceedings or making any demand against the principal debtor or any co-guarantor. In other words the creditor can choose the target - or which target he fires at first.
- If the creditor's claim against the principal debtor is void or unenforceable, the creditor may still have a claim against the guarantor.
- Where there are co-guarantors, the liability of each co-guarantor is joint and several so that each co-guarantor will be individually liable to the creditor for the whole of the guaranteed obligations.
- The guarantee is terminated in respect of future guaranteed obligations only if the guarantor gives written notice to the creditor. The guarantor will remain liable at least for the debts or liabilities which have accrued up to the giving of that notice.

A guarantor should receive a copy of the guarantee and all contracts between the creditor and the principal debtor to which the guarantee applies, at the time the guarantee is signed.

The interest rate, amount owing, terms of lending, security and other provisions which relate to the financial accommodation provided to the principal debtor may change and the guarantee will not be

released by those changes. However the guarantor should have those details disclosed to him or her at the time the change is made.

Acting as Guarantor is standard fare in many commercial/lending transactions. However you should always be aware of the size of the sledgehammer the creditor is wielding. If you are asked to act as guarantor you should always seek professional advice to limit your exposure.

## CONSEQUENCES OF BANKRUPTCY – THE END OR THE BEGINNING?

### What happens when you are Bankrupt?

There are two routes to bankruptcy. A creditor pursuing you for payment of a debt for which judgment in Court has been obtained may "petition" the Court for your bankruptcy, or you may decide that you can no longer cope with the pressures of owing money so you may voluntarily file your own "petition". Either way the consequences are similar.

### The Official Assignee

The Official Assignee is appointed as supervisor and controller of your affairs. The first thing that happens is that the Assignee advertises the fact of your bankruptcy. All of your property passes to the Assignee who becomes responsible for collating and assessing your debts which are crystallised, collecting in and realising any assets and managing your income with a view to creating a pool of funds to be made available to repay your creditors.

To assist with that process you must complete a statement of affairs. From that the Assignee will determine what steps he or she is going to take. The Assignee may decide to examine you as to your means, and has the power to do so on oath and/or publicly. The Assignee may also call a meeting of your creditors.

The Assignee has the power to sell any of your assets, subject to a statutory limit of leaving you with tools of trade to the value of \$500, and furniture and personal effects to the value of \$2,000. These limits are subject to some discretion to increase those amounts. The Assignee also has the power to require you to contribute an amount to that pool. If you are employed, the Assignee will leave you an allowance from your salary to live on.

### Restrictions on Bankrupt Persons

During the three years of bankruptcy there are a number of restrictions on you as a bankrupt. These include prohibitions on incurring any credit, on acting as a company director, on overseas travel (unless the Assignee consents) and a prohibition (without consent) to operating your own business. Consent can be obtained to enter or continue business after making an application to the Assignee. In that application it must be shown that the business is profitable, that there is ongoing work, that there is good cash flow and that someone else will monitor and supervise the business.

Transactions with others and gifts made by you within a certain period prior to your bankruptcy can be set aside and the property reclaimed by the Assignee.

There are a number of consequences if you do not assist the Assignee, including the Assignee's power to have you arrested and examined. Generally at the end of a 3 year period all debt remaining is wiped and you are free to start again.

Some people (who have been there) say that going bankrupt was the first step on their way to making their fortunes...

If you are contemplating or are facing bankruptcy then you should seek professional advice.

## eDEALINGS – THE NEW LAND TITLES SYSTEM

To keep up with the rapid electronic changes to a Land Titles system that has been with us for over 100 years property lawyers have had to review their conveyancing practices and acquaint themselves with the electronic age – New Zealand is moving towards a paperless conveyancing society.

### A Dinosaur?



The current "manual" system of registration through the Land Titles Office is being phased out. Typically documents are signed by the client, certified "correct" for the purposes of the Land Transfer Act by a solicitor (a mechanism that is intended to indicate that the documents are bona fide) and then lodged at the LTO for registration. This process can often take weeks depending on the number of dealings pending. It is by its nature old-fashioned, time consuming and cumbersome.

### Electronic Register

Two important pieces of legislation: the Land Transfer Regulations 2002 and the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 have given legal effect to the electronic registration of instruments. The body responsible for registration of Land Title documents in New Zealand (Land Information New Zealand) has established an electronic Register of all titles and related memorials such as mortgages, easements, transfers, land covenants, encumbrances and plans. The old system of paper titles is now obsolete. A "fresh" title is issued each time there is a change of proprietor and is available online. For those wanting to research the history of ownership, an historical title may be inspected separately.

## **New Broom**

The idea is that when the electronic register is fully in place a solicitor will be able to prepare and lodge routine transactions electronically from his or her desk. A pilot scheme is currently being conducted in Christchurch. A solicitor will be given a "digital certificate" which cannot be delegated to someone else. This will enable him or her to log onto the electronic register and sign documents then register accordingly.

## **Checks and Balances**

Various safety mechanisms and monitoring systems have been put in place by LINZ to ensure there is security and solicitors themselves will have to put in place systems such as providing a means of identifying a property client and obtaining a written authority to act in certain circumstances. Although paper titles may be obsolete and of no legal significance, solicitors will probably keep paper evidence of every transaction on file for many years. While the electronic dealings will perhaps make life seem simpler for the parties there will be an added responsibility on solicitors. The certifications solicitors will be required to make under the electronic system will be more significant than the "signing correct" procedure as at present. The safety net of Land Titles Office staff checking documentation will go.

The virtual lawyer may be becoming a reality but with that reality comes a responsibility. The format may be simplified but that does not mean the substance of the transaction behind the form is any less. As always look to professional advice.