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entity, or a type of not-for-profit entity to which any surplus assets will be distributed on liquidation or removal of the society from the Register, and the final meeting of a society may (by a valid constitutional amendment) approve a different distribution to a different entity from that proposed in the constitution.

The new Act will enable financially distressed societies to enter into compromises with creditors.

The new Act will facilitate amalgamations and mergers of societies.

Transition to the new Act

The new Act will provide for a transitional period of two years and six months, during which transitional period every existing society will need to check that its constitution complies with the new requirements (many existing constitutions may comply with the new requirements, but where a constitution lacks a rule required by the new statute, or does not comply with the new constitutional content requirements societies will need to amend their constitutions).

Reflections on the reform process

The Law Commission produced its report in June 2013 after some 30 months of work, and an Exposure Draft Incorporated Societies Bill was issued in October 2015. A wide variety of people and organisations have had significant input into the reform process over the last eight years, and they are likely to take a keen interest in the form of the bill the Minister will introduce into Parliament in a few months' time. Many (including the New Zealand Law Society) can be expected to make submissions and the new statute should be enacted in 2020.

Societies around the country will expect the legal profession to be capable of rising to the challenge of advising societies what they should do once the new statute is enacted. ▪

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UPDATE
INVESTMENT

The Zero Carbon Bill

A game changer for responsible investment in New Zealand?

BY **MARIJA BATISTICH** AND **NICK BERESFORD**

Responsible investment is big business in New Zealand. Over \$180 billion of assets were professionally managed in accordance with responsible investment principles in New Zealand in 2018, up from only \$58 billion five years earlier (RIAA *Responsible Investment Benchmark Report* 2019). This represents approximately 72% of all funds under professional management in New Zealand.

Responsible investment practises gained increasing prominence in 2016, when it was revealed that a number of KiwiSaver providers had invested in cluster munitions and nuclear weapons. More recently, a number of providers have divested from

tobacco companies and, in the wake of the Christchurch tragedy, civilian firearms manufacturers.

In addition to excluding (or 'negative screening') of controversial investments, fund managers in New Zealand are increasingly incorporating broader environmental, social and governance (ESG) considerations into their investment decision-making. A growing body of international evidence supports the view that ESG investment strategies have a positive effect on risk-adjusted financial returns, given the increased focus on non-financial risks.

Perhaps the most significant non-financial risk facing global capital markets is the threat posed by climate change. The Network for Greening the Financial System, a coalition of 34 central banks, recently published an open letter warning of the systemic risks of climate change to the global financial system, including the risks of a collapse in asset prices. A number of economic and market commentators have expressed concern that climate change risks are not being effectively priced. A 2015 report by global asset manager BlackRock stated that:

"Many equity investors ignore climate risk, and credit investors and ratings agencies do not routinely assess it. Real estate markets often ignore extreme weather risk, even in highly exposed coastal areas. Most asset owners do not measure their exposure to potentially stranded assets such as high-cost fossil fuel reserves that may have to be written off if their use is impaired by climate change regulation."

This year the NZ Super Fund released a white paper setting out its climate change investment strategy, in which it stated:

"We believe that financial markets currently under-price carbon risk… Our own research and experience as investors makes us confident that, because the time horizon involved is so long, climate risk has been under-appreciated, if not largely ignored, by many investors and analysts. Changes to policy and technology are likely to pan out over multiple decades. These risks – from policy, technology and society – can be and must be managed."

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Responsible investment in New Zealand

Although 98% of all New Zealand investment funds screened for controversial weapons and 97% screened for tobacco during 2018, only 45% of funds screened for investments in fossil fuel companies (RIAA report, page 11). This is despite research suggesting that New Zealand investors are more engaged in excluding fossil fuel companies from their portfolios than for other so-called 'sin stocks'.

In addition to negative screening of fossil fuel companies, a number of specifically 'green' financial products have come to market in New Zealand over the past 12-18 months. This included the first green bond issuance by a domestic issuer in June 2018, when Auckland Council issued a $200 million green bond to fund the purchase of electric rolling stock for its rail network. Contact Energy Ltd and Argosy Property Ltd have since followed suit, using the proceeds of their green bond issuances to fund investment in renewable energy and energy-efficient commercial buildings respectively.

Salt Funds Management launched its listed Carbon Fund in October 2018, which seeks to provide investors with exposure to the movement in price of carbon credits. KiwiSaver providers are increasingly benchmarking the carbon intensity of their portfolios against peers.

The Zero Carbon Bill

The long-awaited Climate Change Response (Zero Carbon) Amendment Bill (commonly known as the Zero Carbon Bill) was introduced to Parliament on 8 May 2019 after a lengthy consultation process. The headline objective of the bill is to reduce New Zealand's net carbon emissions to zero by 2050 in order for New Zealand to meet its targets under the Paris Agreement.

The framework to be established by the Zero Carbon Bill will require significant regulatory change across many sectors of the economy to ensure the emissions reduction targets are met. This change is likely to affect the viability and profitability of some sectors of the economy, particularly agriculture and other high-emission primary producers. The Productivity Commission stated in its August 2018 *Low-emissions economy* report that the price of carbon will need to rise from an existing price of around $25 per tonne to between $NZ75 and $250 per tonne for New Zealand to achieve the required net reduction in domestic emissions to meet Paris Agreement targets.

New costs imposed on some sectors of the economy are likely to change investor behaviour given the effect of increasingly onerous regulatory requirements on asset prices. Coupled with the likely introduction of climate-related financial disclosure, the Zero Carbon Bill is likely to lead to the allocation of capital away from high-emissions sectors of the economy.

Climate-related financial disclosures

The bill is partially modelled on the UK's Climate Change Act 2008, which represents possibly the most significant domestic emissions reduction framework in the world. Since 2013, public companies in the UK have been subject to mandatory climate-related disclosure, including requirements to disclose greenhouse gas emissions in annual directors' reports.

The Zero Carbon Bill does not itself contain frameworks for mandatory climate-related disclosures. However, the Productivity Commission has separately recommended in its *Low-emissions economy* report that the Government should:

- endorse the Task Force on Climate-related Financial Disclosures guidance, which requires disclosure of the material financial risks and opportunities associated with climate change; and
- implement mandatory principles-based climate-related financial disclosure (on a comply or explain basis) that should be audited and accessible to the general public.

The Government has recently endorsed those recommendations in its response to that report, and has proposed that mandatory climate-related disclosure should apply to listed companies, registered banks and licensed insurers. These proposals are intended to be incorporated into draft legislation for consultation over the coming months, likely by way of amendments to the Financial Reporting Act 2013.

Conclusion

The Zero Carbon Bill is a significant development in New Zealand's response to climate change. It looks set to be a game changer for further growth in responsible investment practices and our capital markets more generally.

The implementation of the bill and its supporting regulations will encourage the allocation of capital toward low-carbon sectors of the economy and likely drive investor demand for 'green' financial products. In addition, the introduction of mandatory climate-related financial disclosure will provide investors with a greater range of information, which will have flow-on effects for informed investor behaviour and the pricing of climate-related risks. ■

The Zero Carbon Bill is a significant development in New Zealand's response to climate change. It looks set to be a game changer for further growth in responsible investment practices and our capital markets more generally

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