

## NEW ZEALAND MERGERS & ACQUISITIONS



**David Quigg**

davidquigg@quiggpartners.com



**John Horner**

johnhorner@quiggpartners.com



**Melissa Pengelly**

melissapengelly@quiggpartners.com



**Mark White-Robinson**

Markwhite-  
robinson@quiggpartners.com



**Asha Stewart**

ashastewart@quiggpartners.com



**Peter Callus**

petercallus@quiggpartners.com



**Hannah Checkley**

hannahcheckley@quiggpartners.com

### WHAT'S ON THE BLOCK

- Retail shoe store chains
- Retail furniture store business
- Oil and gas/energy services business
- Various leading food brands
- Transport and freight forwarding/customs business
- Engineering and steel construction business
- Import, export and distribution business
- Hospitality business
- Wellington high rise building
- Apple orchard
- A forest
- Hawke's Bay and Northland vineyards
- Books and gifts direct marketing business
- Education services provider
- Hotel in Northland



### NEW ZEALAND'S OVERSEAS INVESTMENT REGIME

The Overseas Investment Office (OIO) issued a further second issue of the PeriOIOdical. It contains some practical and useful guidance on application dates and templates. On the thorny issue of the Section 37 List of Reserves an updated list has been kindly provided and with an indication that a further review is planned.

### TAKEOVERS/SCHEMES

**Takeovers Code Recommended Changes:** The Takeovers Panel has recommended to the relevant Minister the following amendments:

- the adding in of a minimum annual revenue or asset test to the definition of "code company";
- adding in an ability for electronic access for shareholders;
- a raft of technical amendments proposed.

**Takeovers Costs Now By Takeovers Panel:** Another welcome change is amendments have been made to the Takeovers Code so that the Panel has the role of primary adjudicator of cost disputes matters.

**Guidance Note:** The Panel has issued an updated Guidance Note on the process for costs reimbursement under the Takeovers Act/Code.

### NZX

The NZX circulated its revised Corporate Governance Code. The new Code applies from 1 October 2017. The Code is based on the principle "comply or explain".

### INTERNATIONAL TAX

New Zealand and the US IRS have signed a new agreement to share country-by-country reports. It is to be effective from the start of 2018.

### FINANCIAL MARKETS AUTHORITY

**De-registration:** The High Court upheld a decision by the FMA to de-register a company on the basis that it is or is likely to create a false or misleading appearance that it is an FSP (financial services provider) in New Zealand.

**FMA Survey:** The FMA recently released its annual survey of public attitude to financial markets. The survey showed confidence had risen from 56% (2016) to 65% (2017).

**Consultation:** The FMA are presently consulting on (i) obtaining feedback on the FMA guidance on substantial product holder disclosure obligations and (ii) improving financial information in an equity PDS. Submissions are due later this month.

## COURT OF APPEAL

**Limitation by Incorporation:** Previous dealings including a limitation of liability were held to be insufficient to establish incorporation of the limitation without specific intention.

## HIGH COURT

**Market Manipulation:** The Court held that the FMA could prove on balance of probabilities a breach of Section 11B (false or misleading appearance in trading) when trading shares. Australian authorities were seen as “helpful” by the Court.

**Scheme of Arrangement for Capital Return:** The Court approved NZOG’s return of capital via a scheme of arrangement.

**Fair Trading Personal Liability of a Director:** Both a company and its directors were held liable under the Fair Trading Act for a misleading pre-purchase moisture assessment report.

**Restoration of Limited Partnerships:** The High Court made a restoration order on a conditional basis.

**Injunction to Challenge by Judicial Review:** The Commerce Commission was to decide an application for clearance by Sky TV and Vodaphone to merge. Two competitors sought, and obtained, an interim injunction that would prohibit Sky and Vodaphone completing the merger under the end of three business days after the date of the Commerce Commission decision. [The Commission in fact declined the merger clearance application].

**Termination Reasonable Notice:** The Court held, in an exclusive license, that an implied term applied and that the license could be terminated on giving three (3) months’ notice. Such implied termination was not prevented by there being an express right of termination for breach by the licensee or upon expiry or lapse of patents.

**Derivative Action:** Such derivative action was granted in 50/50 shareholder disagreement involving a contemporaneous application of mandatory sale at “fair value”.

**Unprincipled Action by a Director:** The Court ordered the director to pay actual costs reasonably incurred (\$900K) in respect of proceedings where the director was held to have acted “unprincipled” including abusing his fiduciary obligations as a director.

## NZ M&A COMPETITION CLEARANCE ACTIVITY

Fairfax and NZME (previously APN in New Zealand) announced that they would appeal the Commerce Commission’s decision to decline their application for authorisation. The Commission released its final decision declining authorisation citing concern around the reduction of quality of news produced and the diversity of voices in New Zealand journalism.

The Commission granted conditional authorisation to two local authorities in relation to the joint operation of two landfills.

A decision on the Vero (Suncorp) clearance to acquire Tower is expected on 30 June 2017, relating to the supply of personal and commercial insurance.

## REMINDER: NEW CONTRACT & COMMERCIAL LAW ACT 2017 (CCL Act)

As from 1 September 2017 the CCL Act applies. It proposes to modernise 11 statutes relating to sale of goods, contracts, carriage of goods, electronic transactions and other commercial matters.

## RECENT M&A TRANSACTIONS FOR QUIGG PARTNERS

Quigg Partners has recently advised on New Zealand law matters relating to:

- Japan Pulp & Paper Co. acquisition of 51% of PagePack.
- Tabcorp Holding’s acquisition of Tatts Group.
- Medtronic sale of business division to Cardinal.
- Sale of Office Depot to Platinum Equity.
- Sealed Air sale of New Diversey to Bain Capital.
- Acquisition by USA tech company of New Zealand tech company.
- Australian acquirer of a New Zealand leading trade “website”.
- Block sale by Matrix of shares in Xero.
- Boundary Holdings acquisition of security IT from Wynyard’s liquidator.
- Singapore company acquiring a retail business.
- Global company corporatisation of a business division and its preparation for sale.
- An Australian seller undertaking a competitive trade sale of one of its business units.
- Offers to employees, rights or entitlement issues by ASX companies, ESP and DRP and overseas scrip offers and periodic Australian IPOs being also offered to the public in New Zealand via the Mutual Recognition “opt in” regime.

## FURTHER INFORMATION

### M&A Corporate

David Quigg	+64 4 4740755	davidquigg@quiggpartners.com
John Horner	+64 4 4740754	johnhorner@quiggpartners.com
Melissa Pengelly	+64 4 4740757	melissapengelly@quiggpartners.com
Mark White-Robinson	+64 4 4740782	markwhite-robinson@quiggpartners.com
Asha Stewart	+64 4 4740751	ashastewart@quiggpartners.com
Peter Callus	+64 4 4740769	petercallus@quiggpartners.com
Hannah Checkley	+64 4 4740759	hannahcheckley@quiggpartners.com

### Employment

Michael Quigg	+64 4 4740766	michaelquigg@quiggpartners.com
Simon Martin	+64 4 4740752	simonmartin@quiggpartners.com
Kathryn Nicholas	+64 4 4740758	kathrynnicholas@quiggpartners.com
Sarah Riceman	+64 4 4740765	sarahriceman@quiggpartners.com