

NEW ZEALAND MERGERS & ACQUISITIONS



David Quigg

davidquigg@quiggpartners.com



John Horner

johnhorner@quiggpartners.com



Mark White-Robinson

markwhite-robinson@quiggpartners.com



Asha Stewart

ashastewart@quiggpartners.com



Peter Callus

petercallus@quiggpartners.com



Hannah Checkley

hannahcheckley@quiggpartners.com



Liam Phipps

liamhipps@quiggpartners.com

WHAT'S ON THE BLOCK

- Food processing business
- Auckland manufacturing business
- Significant mobile and broadband operator
- Scaffold business
- New build hotel
- Manufacturing business
- Shopping centre
- Trade services business
- Engineering business
- Import and distribution business
- NZ services business
- Craft beer producer
- Leading fire and general insurance business
- Apple orchard investment

NEW ZEALAND'S OVERSEAS INVESTMENT REGIME

RED FLAG : **New NZ Government Uncertainty:** The new Government, involving NZ First, has created uncertainty with the announced "strengthening" of overseas investment rules including "banning" overseas persons, not residents of New Zealand or Australia, and overseas controlled companies buying "existing residential houses".

RED FLAG : **New Ministerial Directive:** The first indication of the "strengthening" of the Overseas Investment Act (OIA) has been issued. Effective from **15 December 2017**:

- a heightened hurdle is established for overseas persons to obtain consent to purchase "rural land" exceeding 5 hectares;
- closer scrutiny (especially an increase in value-added processing) is required to obtain approval to purchase "forestry land".

Timing for Applications: Historically Overseas Investment Office average assessment time taken to assess "business assets" applications was 114 **working** days (June 2016 to April 2017) and for "sensitive land" applications was 146 **working** days. This does not include timing for "good character" assessment (undertaken by an applicant before lodging any application).

Aussie Rules Changes: New higher thresholds for Australian applicants have been announced effective 1 January 2018.

Partnerships: The recent Overseas Investment Office Periodical highlighted the "head count" approach adopted for partnership applications rather than % of economic interest/shareholding % approach used for companies.

TAKEOVERS/SCHEMES

Guidance Note: The Takeovers Panel have updated their guidance note in respect of the use of Schemes. Interesting and informative discussion is given in the key areas of settling the relevant "interest classes" involved and the practical use of voting agreements (i.e. voting "lock ups").

New Chief Executive: Andrew Hudson, previously General Counsel, has been appointed the new Chief Executive of the Takeovers Panel.

Breadth of Rule 47: The Panel reminded the market that information provided at investor meetings or to shareholders by telephone, as part of an offer process, are covered by the Rule and are required to be provided to the Panel.

NZX

Fundamental Review of NZX Listing Rules: A discussion document has been circulated with the review proposals. The main change is the change to a single equity market but allow for two differential standards for equity issuers. "Higher" standards for large issuers and "modified" standards for small and medium sized issuers.

INTERNATIONAL TAX

Employee Share Schemes Improvement: A Bill has been introduced to Parliament which will make the taxation of employee share schemes more attractive for employees.

FINANCIAL MARKETS AUTHORITY (FMA)

Anti-Money Laundering Reporting: From 1 November 2017 reporting entities (principally financial institutions and casinos) are required to report various international wire transfers and domestic cash transactions.

Trans-Tasman Co-operation: The FMA and ASIC (Australian equivalent) recently reaffirmed their co-operative approach first articulated in a HOA signed in 2012.

Yellow Card Issued for Foreign Financial Service Providers: The FMA has flagged a tough approach in that foreign financial service providers must provide more than mere administrative services from New Zealand if they wish to be on the Financial Services Provider Register.

SUPREME COURT

Preference Shares: The Supreme Court refused leave to appeal the Court of Appeal decision that had upheld a High Court decision that preferential dividends continued to accrue on the relevant preference shares until conversion.

COURT OF APPEAL

Unfair Prejudice Appeal Rejected (again): The Court of Appeal, agreeing with the High Court, held that a company giving a guarantee to another company was not unfair prejudice justifying winding up as there were reasonable commercial reasons for the giving of the guarantee.

HIGH COURT

Unlawful Exclusion from Tender Process: The Court refused to imply a term permitting unilateral exclusion for false bid information. The Party had been the preferred provider until excluded. The lost opportunity for profit held to be based on a 50% chance of being awarded the tender.

Fiduciary Obligation in Joint Ventures: The Court, considering the two leading Supreme Court decisions, held a proportionate interest in a joint venture existed in one entity (not the whole group).

Shadow Director: The Court held that a bank applying strict conditions and controlling payments that could be made by a company was not acting as a "shadow director".

Market Manipulation: The Court imposed penalties for market manipulation and distinguished various existing other High Court decisions.

NZ M&A COMPETITION CLEARANCE ACTIVITY

The "Cartels" amendment provisions have, after almost six years before Parliament, been passed. The primary change is the new provision on "cartel provisions" which replaces the pre-existing "per se" prohibition on price fixing. The new definition of "cartel provisions" cover price fixing, market allocation and output restriction arrangements.

RECENT M&A TRANSACTIONS FOR QUIGG PARTNERS

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

- ASX HRL Holdings acquisition of Analytica Laboratories.
- OneLogin's acquisition of tech start-up ThisData.
- Logitech's acquisition of Astro Gaming.
- Eurofin's – ELS acquisition of water sampling business (CFA).
- The Rohatyn Group's acquisition of GMO Renewable Resources.
- Osisko Gold's acquisition of Orion Mine Finance Royalty Portfolio.
- Electra's sale of Datacol business.
- Closing Integra Life Sciences acquisition of Codman Neurosurgery business from Johnson & Johnson.
- Purchase of "bolt-on" acquisition for NYSE listed company.
- 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 (especially Perth "booming").

FURTHER INFORMATION

M&A Corporate

David Quigg	+64 4 4740755	davidquigg@quiggpartners.com
John Horner	+64 4 4740754	johnhorner@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
Sarah Riceman	+64 4 4740765	sarahriceman@quiggpartners.com