

## NEW ZEALAND MERGERS & ACQUISITIONS



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### WHAT'S ON THE BLOCK

- Trade services business
- Facilities management provider
- Auckland manufacturing business
- Rental hire business
- Scaffold business
- NZ Cement Company
- Import and distribution business
- Major telecommunications business

### QUIGG PARTNERS SEMINARS: AUSTRALIA – MELBOURNE & SYDNEY 2018

#### PROGRAMME: *Legal Issues for Businesses in New Zealand*

- Establishing a business/company
- Buy/Sell a NZ Business (M&A) (including takeovers/schemes)
- Overseas Investment regulation (spot the issue early!)
  - **RED FLAG** - new restrictions imposed by new NZ Government
- Business compliance (e.g. New Zealand resident director)
- New developments (new financial statements/audit rules)

#### *Managing your New Zealand Business: Employment and Labour Issues*

- **RED FLAG** Proposed employment changes, e.g. trial periods, union rights, re-instatement
- Restructuring from Australia
- Aligning employment agreements between Australia and New Zealand
- The grievance industry
- The new health and safety regime at work

#### DATES & VENUES:

##### Melbourne

Thursday 1 March 2018

Marketlane Bar

InterContinental Melbourne The Rialto

##### Sydney

Thursday 3 May 2018

Hobart Room

Sofitel Sydney Wentworth

More information and registration forms are available at [www.quiggpartners.com/seminar-location/australia/](http://www.quiggpartners.com/seminar-location/australia/).

### OVERSEAS INVESTMENT OFFICE

**Red Card Issued :** The Overseas Investment Office decline the proposed buyer (TIP-HNA) of ANZ's UDC Finance because a definitive ownership structure of the buyer was not provided.

**Changes on Restricting Overseas Land Purchases:** A Bill is now before Parliament outlining how restrictions on overseas persons buying "residential land" will apply is now subject to Select Committee process.

**Forestry Investment Concern:** The new NZ Government's attitude to overseas forestry ownership is generating considerable speculation.

### TAKEOVERS PANEL

**Exemption Condition Breach:** The Panel signaled that failure to comply with an exemption [from the Takeovers Panel] condition is a breach of the Code and the Panel will take into account all relevant facts in deciding on an appropriate remedy. The Panel did flag that early discussion with Panel executives is useful.

**Removal of Certification Requirements in Scheme Documents:** The Panel has indicated that certification requirements will no longer be required (reducing unnecessary repetition) for Schemes of Arrangement documentation.

### NZX

The consultation of the proposed changes to the NZX Listing Rules is now open for further feedback. Strong acceptances has been given by market participants to having a single equity market but mixed views taken as to having potential "premium" or "standard" categories for issuers. Also mixed views are given to technical changes in areas of placement capacity %s and the definition of "major transaction" approval. The new proposals are hoped to be finalised by April 2018 by the NZX then submitted to the FMA for approval.

## FINANCIAL MARKETS AUTHORITY (FMA)

**Financial Services Amendments:** A Bill with suggested changes has been introduced, submissions will be sought and the Select Committee is due to report back to Parliament in June 2018. The current biggest area of debate is the “exclusions” that put certain activities outside the scope of what gets regulated as “financial advice”.

**Robo Advice:** The FMA is presently consulting on the proposal to facilitate robo financial advice.

## TAX

The Government have introduced a Bill to Parliament proposing measures to counter the particular Base Erosion and Profit Shifting activities used by some multi-nationals to lessen their tax payable.

## SUPREME COURT

**Litigation Funding Agreement:** The Chief Justice of the Supreme Court, in an appeal which was settled and Court decided to issue a judgment, as issues of importance had been argued, indicated that there remained the legal position that such contracts remain subject to challenge as being contrary to public policy.

## COURT OF APPEAL

**Trustees Personally Liable:** The Court of Appeal upheld a High Court decision that because the trustee’s actions were so unreasonable the Trustees should pay both the costs awarded to the plaintiff and 50% of their own legal costs, personally.

## HIGH COURT

**Swaps and Hedging Claim Unsuccessful:** The High Court rejected a farmer misrepresentation claim against a bank in respect of interest rate swaps and hedges.

**Director Personally Liable:** The Court held a director personally liable to repay funds that the director paid to another company with the same director and shareholder being a breach of the director duty to act in good faith and in the best interest of the paying company.

**Breaches of Anti-Money Laundering Act:** The High Court ordered \$5.29m pecuniary penalties and ordered the principals prohibited from carrying out financial activities for “calculated and contemptuous disregard for” the Anti-Money Laundering legislation.

**Due Diligence Clause:** The Court held that a due diligence clause imposing obligation to provide any information relevant to the due diligence investigation was subject to the nature of inquiry of the purchaser and to be interpreted in light of caveat emptor. No breach was held to have occurred.

## NZ M&A COMPETITION CLEARANCE ACTIVITY

The New Zealand Commerce Commission continues to consider a merger clearance application by Trade Me that was filed in July. The Commission has concerns about the following markets:

- the provision of dealer management system products to independent motor vehicle dealers; and
- the supply of online motor vehicle classified advertising to dealers.

Other clearance applications under consideration by the Commission include:

- Daiken NZ acquisition of Dongwha NZ, relating to the manufacture of raw medium density fibre board (with an initial view of the Commission indicating the clearance will not be granted);
- H.J. Heinz acquisition of certain assets of Cerebos Gregg’s, relating to the wholesale supply of various sauces; and
- MYOB acquisition of Reckon, relating to the supply of practice software to accountants.

The New Zealand High Court dismissed the NZME/Fairfax appeal against the Commission’s decision to decline an authorisation application to allow the two media companies to merge.

## RECENT M&A TRANSACTIONS FOR QUIGG PARTNERS

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

- Five V and Malpha’s acquisition of Education Perfect.
- Belron’s Smith & Smiths proposed acquisition of Laser Group.
- Spectrum Brands sale to Energizer.
- ANT Financial’s acquisition to Moneygram.
- Cunningham Lindsey’s sale to Sedgwick Claims Management.
- MYOB’s acquisition of Reckon.
- Tetra Tech/Coffey’s acquisition of Norman Disney Young.
- Carlyle Group’s sale of Signode to Crown Holdings.
- 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

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