

NEW ZEALAND MERGERS & ACQUISITIONS



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WHAT'S ON THE BLOCK

- Leading small goods business
- Childcare centre
- Life insurance company (strategic stake)
- Leading bus transport business
- Trade services business
- Major port (partial sale)
- Plastics business
- Napier port (partial sale)
- Winery
- Leading regional aged care and retirement village operator
- Food sales and manufacturing family business

COMMERCIAL CLIENT WORKSHOPS

Our client workshops are designed to be a practical guide to commercial legal matters for non-lawyers. The sessions are based on a round-table discussion led by senior lawyers and we target 6-10 attendees for each workshop.

DATES & TOPICS:	17 July	Everyday Contracts – What to Watch For
	14 August	Buying and Selling a Business
	11 September	Joint Ventures/Shareholder Agreements
	9 October	Competition Law – How to Avoid the ComCom

Information and registration forms are available at www.quiggpartners.com/seminar-location/new-zealand/corporate/.

OVERSEAS INVESTMENT OFFICE

Legislation “Banning” Foreign Purchase of Residential Property: The draft legislation has had several hundred submissions and the Parliamentary Finance and Expenditure Committee is due to report back to Parliament by 21 June 2018. We await the “devil in the detail”.

The PeriOIdical: The latest OIO newsletter highlighted:

- the new Directive Letter has raised the bar for applicants in particular those seeking to purchase rural land;
- the enforcement team had a positive High Court judgment against four overseas investors;
- timelines for processing applications have been “longer than we would like”;
- a new consent and conditions template has been introduced; and
- better and earlier vendor due diligence recommended.

Mine Purchase Rejected: The Minister rejected an application to buy a closed mine as no substantial and identified benefits to New Zealand were identified by the proposed purchaser.

Breaches Prosecuted: The High Court ordered significant civil penalties against various individuals for breaches of the OIA.

Orchard Purchase Rejected: An overseas syndicate headed by New Zealand management were declined approval to buy a kiwifruit and avocado orchard. Unfortunately the applicant was held not to satisfy the requirement that the purchase would provide substantial and identifiable benefits to New Zealand.

TAKEOVERS PANEL

Takeovers Code – Draft Changes: The Takeovers Panel has circulated draft changes proposed to the New Zealand Takeovers Code and is seeking submissions on the proposed changes. The changes are not of material substance covering encouraging electronic communications and addressing certain disclosure gaps (e.g. requiring better disclosure of the persons controlling a bidder). The market still awaits the anticipated proposal by the Takeovers Panel to exclude “small” code companies from coverage of the Takeovers Code.

Costs Recovery: The High Court clarified New Zealand’s unique aspect that allows target companies to recover expenses “properly incurred” in relation to an offer or takeover notice from the bidder. The Court decided that “properly incurred” in the present environment of the Takeovers Code held that target company expenses in respect of actions responding to a hostile takeover in accordance with the Code was “properly incurred” however expenses involved in undertaking defensive tactics or misleading or deceptive conduct (which are prohibited) would not be covered.

Practically this means where a target company undertakes an “active strategy” in resisting a hostile takeover bid without breaching the Code will be able to seek full recovery of associated costs.

NZX

Consultancy: The NZX recently completed a consultancy round on policy and commercial initiatives to improve liquidity and increase transparency in the secondary market.

NZ Markets Disciplinary Tribunal: An NZX listed company has filed its Annual Report two (2) business days after its due date. The Tribunal believed any breach of the periodic reporting requirements has potential to damage public confidence in the market. The issuer was censured and fined.

FINANCIAL MARKETS AUTHORITY (FMA)

Corporate Governance Handbook: The FMA published a refreshed Corporate Governance Handbook.

Insider Trading Rules – New Issues of Financial Products: As from 7 June 2018 amendments to the Financial Markets Conduct Regulations detail certain exceptions to the insider trading rules for the new issue of financial products.

Confidentiality Obligation: The High Court restrained the FMA from disclosing certain information holding such disclosure would breach the FMA's duty of confidence to the bank that supplied the FMA the information in question.

TAX

GST Collection by Overseas Company: The Government announced its intention to close the "loophole" and overseas companies will be required to collect GST on all goods sold to New Zealand consumers (under \$400 per acquisition).

Incentives for R&D: The budget announced an intention to introduce an R&D tax incentive in 2019. A discussion document has been circulated.

SUPREME COURT

Enforcement of No Oral Modification Clauses (NOM): The UK Supreme Court unanimously confirmed such clauses are valid and enforceable. We await a decision from the New Zealand Supreme Court to confirm, or not, whether New Zealand will follow the UK approach.

HIGH COURT

Restraint in Shareholders Agreement: The High Court declined interim injunction restraining a former employee [related party to a shareholder]. Damages adequate remedy. "It was not a situation where a business was sold in return for a substantial goodwill payment".

Penalty Clauses – Recast?: The High Court held the indemnity clause in question was not an unenforceable penalty. Both parties were sophisticated parties. The clause reallocated commercial risk and the Court was not prepared to intervene.

Agreement Interpretation Cases: Discussion of interpretation approach in an equity investment agreement and whether implied term established. A second case looked at an investment bank's entitlement to a completion fee but refused a summary judgment request as stating all relevant contextual evidence was required.

Scheme Approval: The High Court approved the latest use of a Scheme of Arrangement to effect the "change of control" of Trilogy International by CITC China Partners.

NZ M&A COMPETITION CLEARANCE ACTIVITY

Office Supplies: The Commerce Commission has accepted enforceable undertakings from US based Platinum Equity to divest its existing New Zealand business (previously Staples, now Winc) in order to acquire OfficeMax NZ from Office Depot Inc. The Commission had previously sought an injunction to prevent the acquisition proceeding. Quigg Partners advised Office Depot Inc.

Other Activity: The Commission declined a clearance application by Trade Me to acquire a supplier of motor vehicle dealer management software due to concern around both vertical and horizontal effects of the acquisition. The Commission did grant clearance for two acquisitions involving the manufacture of medium density fibreboard products and the supply of residential swimming pool equipment respectively. MYOB formally withdrew its merger application for Reckon. Leave has been granted to appeal to the Court of Appeal the High Court decision to decline approval for the NZME/Fairfax merger.

RECENT M&A TRANSACTIONS FOR QUIGG PARTNERS

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

- Divestment of OfficeMax NZ by Office Depot, Inc.
- Sale of John Guest Holdings to Reliance Worldwide Corporation.
- Electra's purchase of 50% of Spark subsidiary Connect 8.
- IntegraFin IPO in UK.
- Gartner's sale of CEB Talent to Exponent.
- Plantronics acquisition of Polycom.
- USA funds investment receipt from New Zealand "wholesale" investor.
- 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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