

NEW ZEALAND MERGERS & ACQUISITIONS



David Quigg

davidquigg@quiggpartners.com



John Horner

johnhorner@quiggpartners.com



Asha Stewart

ashastewart@quiggpartners.com



Jennifer Jelley

jenniferjelley@quiggpartners.com



Hannah Checkley

hannahcheckley@quiggpartners.com



Nicole Sampson

nicolesampson@quiggpartners.com



Liam Phipps

liamhipps@quiggpartners.com

WHAT'S ON THE BLOCK

- Tourism businesses
- Fashion clothing retail business
- Napier port (partial sale)
- Hospitality group
- Industrial manufacturing business
- Import and distribution businesses
- Transport services business
- Sheep and beef breeding station
- Immigration consultancy
- Manufacturing business
- Material handling strategic partnership
- Scaffolding businesses

QUIGG PARTNERS SEMINARS



PROGRAMME	9:00-10:15 am	<u>Managing your New Zealand Business from Australia</u> Seminar 1 - Corporate Administration of your New Zealand business and New Zealand legal corporate "hot issues" Seminar 2 - Hiring and managing your New Zealand staff
	10:45-12:00 am	<u>Specific Topics</u> Seminar 3 – Buying/Selling a Company/Business in New Zealand Seminar 4 - Dealing with WorkSafe accidents in New Zealand

DATES & VENUES:

Melbourne

Thursday 14 February 2019
Wheat and Wool Rooms
InterContinental Melbourne The Rialto

Sydney

Thursday 14 March 2019
Adelaide and Hobart Rooms
Sofitel Sydney Wentworth

More information and registration forms are available at www.quiggpartners.com/seminar-location/australia/.

OVERSEAS INVESTMENT OFFICE

Residential Land Restrictions for Overseas Investor Rules: The new rules apply from **22 October 2018**. The rules require overseas investors (individuals or companies) to get consent before acquiring:

- residential land;
- "large" forestry rights;
- certain "profits-a-prendre" (rights to harvest, take extract crops or minerals from land).

There are five "authorized" means for an overseas investor to acquire residential land. Also an expanded "cases by case" exemption regime has been introduced.

Major Chicken Expansion Declined: The Overseas Investment Office Ministers declined Tegel Chicken's proposal to purchase farm land for a significant chicken breeding expansion. The Ministers considered that the land sale was not likely to result in substantial and identifiable benefits to New Zealand.

New Forestry Pathways: Two new consent pathways for forestry activities have now been introduced.

New OIO Newsletter: The OIO released another newsletter with a number of useful practical points including an updated delegation and some legal Q&A on the new residential property restrictions.

New Veto Right Flagged: The Government has flagged it is likely a new veto right will be effective by mid-2019 giving the Government the ability to decline a consent if in the "national interest".

TAKEOVERS PANEL

Updated Scheme of Arrangement Guidance: The Panel issued an updated guidance notice for the use of Schemes of Arrangement for Code Companies. The changes touched on key practical changes involving the Panel's approach to differential considerations being offered and the use of "deal protection" voting commitments or present intentions to vote in support of a scheme.

Costs Recovery: With New Zealand's relatively unique procedure of allowing target companies to recover their costs incurred as a consequence of receiving a takeover the Takeovers Panel has issued an updated guide note on how cost reimbursement operates under the New Zealand Takeovers Code.

NZX

Updated Rules: The updated NZX rules will be operative from 1 January 2019, with a six month transition period.

FINANCIAL MARKETS AUTHORITY (FMA)

First Infringement Notice: The FMA issued its first infringement notice against a company for failing to file financial statements by their due date.

Annual Corporate Plan: FMA's 2018/19 corporate plan sets out the planned work, strategic priorities and developing themes.

TAX

R&D Tax Incentives: The Government announced the design of the proposed new research and development (R&D) tax incentive.

GST on Internet Shopping: The Government announced GST will be charged on internet shopping from overseas websites from October 2019.

DELAWARE CHANCERY COURT

A First for a MAE: The Court, for the first time, accepted that a Material Adverse Effect had occurred and a buyer was justified in terminating a public company merger agreement.

SUPREME COURT

Major Transaction Relief: The Supreme Court decided that relief under Section 174 of the Companies Act was potentially available in the circumstances of a dispute between shareholders looking to undertake a "major transaction" (under Section 129) but in only limited circumstances.

Untrue Statement: In the long running Feltex class action case the Court held a forecast will be misleading if it was based on assumptions that were not reasonable in a way that affects the forecast, or the forecast outcome was not reasonably assessed as the most probable outcome in light of the stated assumptions.

HIGH COURT

Continuous Disclosure Rules: The High Court has held that the NZX Listing Rules and Financial Market Conduct continuous disclosure rules for listed issuers do not apply when the issuer is in voluntary administration.

NZ M&A COMPETITION CLEARANCE ACTIVITY

Public Benefit Test: The Court of Appeal confirmed the Commerce Commission and High Court decisions and agreed that it was appropriate to take into account non-economic detriments (such as plurality concerns) when applying the legal test for an authorisation application under the Commerce Act (related to the proposed merger between two media companies).

New Post Closing Investigations of M&A: The NZ Commerce Commission has now started to regularly open an investigation into M&A activity after the transaction has closed where no clearance application was made.

Ongoing Merger Investigations: The NZ Commerce Commission has four ongoing merger investigations where the regulator is considering if the transaction, or proposed transaction, would be likely to result in a substantial lessening of competition in a market in New Zealand. Industries of interest include supply of patient safety software to hospitals, gas distribution, car parking and wool dumping/scouring (no sheep jokes thank you!!).

Clearance Approvals: Other developments in the competition M&A space include clearance approvals granted in relation to the market for production and supply of natural gas and LPG and also what the Commission considered to be the 'mainstream yoghurt market' as distinct from gourmet, natural or Greek yoghurt products.

Authorisation Applications: The NZCC is currently considering an authorisation application (on public benefit grounds) in circumstances where a clearance application for the same transaction was declined in early 2016. The relevant markets are the collection of medical and quarantine waste in the South Island and the treatment of that waste.

RECENT M&A TRANSACTIONS FOR QUIGG PARTNERS

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

- L3 Technologies acquisition of Azimuth Security and Linchpin Labs.
- Servier's acquisition of Shire's Oncology business.
- Stafford Capital's proposed takeover of Phaunos Timber Fund Limited (including obtaining Overseas Investment Act approval).
- IPSOS's acquisition of the mystery shopping business of Market Pulse International.
- Establishment of Funlab (with Holey Moley bar/mini golf) in New Zealand
- Various offers to employees, rights or entitlement issues, ESP and DRP by ASX companies and overseas scrip offers and periodic Australian and other overseas IPOs being offered to the New Zealand public 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
Asha Stewart	+64 4 4740751	ashastewart@quiggpartners.com
Jennifer Jolley	+64 4 4740782	jenniferjolley@quiggpartners.com
Hannah Checkley	+64 4 4740759	hannahcheckley@quiggpartners.com
Nicole Sampson	+64 4 4740769	nicolesampson@quiggpartners.com
Liam Phipps	+64 4 4740785	liamhipps@quiggpartners.com

Employment

Michael Quigg	+64 4 4740766	michaelquigg@quiggpartners.com
Simon Martin	+64 4 4740752	simonmartin@quiggpartners.com
Nick Logan	+64 4 4740758	nicklogan@quiggpartners.com
Sarah Riceman	+64 4 4740765	sarahriceman@quiggpartners.com
Stephanie Hawkins	+64 4 4741370	stephaniehawkins@quiggpartners.com