

NEW ZEALAND MERGERS & ACQUISITIONS



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WHAT'S ON THE BLOCK

- Leading NZ news website
- Iconic ice-cream business
- Boutique fast food chain
- Childcare business
- SaaS management software business
- Small food sale & manufacture business
- Construction company
- Major finance company
- Import and distribution business
- Prominent vineyard

QUIGG PARTNERS SEMINAR: SYDNEY– THURSDAY 14 MARCH



9:00-10:15 am **MANAGING YOUR NEW ZEALAND BUSINESS FROM AUSTRALIA**

- Seminar 1 Corporate Administration of your New Zealand business and New Zealand legal corporate “hot issues”**
- OIO (aka FIRB) approval may be needed to set up in NZ or move premises in NZ
 - branch as structural choice losing popularity – why?
 - financial services registration changing (again)
 - new “privacy rules” impending

- Seminar 2 Hiring and Managing your New Zealand staff**
- ensuring you have the right employment agreement
 - managing disciplinary issues
 - how to restructure your business

10:45-12:00 pm **SPECIFIC TOPICS**

- Seminar 3 Buying/Selling a Company/Business in New Zealand**
- structural choices – private M&A/takeover/scheme
 - statutory approvals – overseas investment nightmare/increased competition review
 - key due diligence issues
 - most “delicate” negotiating area for SPA?

- Seminar 4 Dealing with WorkSafe accidents in New Zealand**
- knowing your duties
 - getting (and keeping) your house in order
 - managing your response to an accident
 - dealing with a prosecution

VENUE: Adelaide and Hobart Rooms
Sofitel Sydney Wentworth

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

OVERSEAS INVESTMENT OFFICE

Enforcement Action Settlement: The OIO reached a settlement agreement following its investigation into the good character of Agria Singapore and former PGG Wrightson chair. The settlement agreement included a required sell down and a requirement for penalty proceedings to be filed in the High Court.

CPTPP Agreement Potential Threshold Uplift: With the passage of the CPTPP Agreement the financial threshold for “business approvals” for countries non-government parties to the CPTPP Agreement may be increased from \$100 million to \$200 million. This new \$200 million threshold also applies to existing trade agreements with our “most favoured nation” obligations (e.g. Korea and China). However, there are applications that this higher threshold can be unavailable if relatively standard structuring arrangements are used.

New National Interest Test Coming: The Government have flagged introduction of a new “national interest” test (over and above the existing national benefit requirements) is expected to be completed by 2020.

TAKEOVERS PANEL

Annual Report: The recent annual report of the Takeovers Panel highlighted:

- (i) the flagged re-introduction of a minimum size (by revenue or assets) for unlisted companies caught by the Takeovers Code is still awaiting the formal legislative process;
- (ii) the pro-active approach of the Panel in a takeover (e.g. reviewing documents/releases) has been found to lessen requirements for formal enforcement action – voluntary remedial action has been able to resolve the Panel’s concerns.

NZX

Reminder: New NZX Rules were operative from 1 January 2019 with a six (6) month transition period.

Guidance: The NZX issued a guidance note on complying on the amended listed issuer continuous disclosure obligations.

FINANCIAL MARKETS AUTHORITY (FMA)

Insurer Inquiry: The FMA and Reserve Bank issued its report on life insurer conduct and culture with some very disappointing and unsavoury findings.

FINANCIAL REPORTING

The new accounting standard on leases, NZFRS16 Leases, is now applicable to for-profit entities (periods beginning 1 January 2019).

TAX

Capital Gains Tax Coming?: The Tax Working Group issued their final report recently. The report again recommended introduction of a capital gains tax. Let the political debate begin!

GST Offshore Supplier Registration Bill: The legislation is going through the Parliamentary process.

COURT OF APPEAL (CA)

Ostensible Authority: The CA confirmed that the normal inference is that commercial parties do not generally intend to be bound to a complex commercial agreement until it has been executed by all parties.

Earn-Out Dispute: The CA overturned a High Court interpretation of earn-out provisions in a Share Subscription and Sale Agreement. Whereas the High Court was prepared to “fill the gap” in the drafting to require payment of the earn-out amount triggered by the business being sold only if the sale occurred within the earn-out period, the Court of Appeal took a more black letter law approach to interpretation and held that in the absence of the appropriate wording, the payment was required regardless of when the business was sold.

Parental Company Liability: The CA held, in a preliminary hearing on whether there were serious questions to be tried, that a parent company may owe duties of care in tort in connection with the acts/omissions of their operating subsidiary. We now await the full trial.

HIGH COURT

Deed of Arrangement: The powers of administrators in a voluntary administration to enter into a deed of arrangement without the directors consent has been affirmed.

Director Liability for Reckless Trading: The high profile liquidators claim against Mainzeal directors (including an ex-Prime Minister), for breach of duty (“reckless trading”) concluded last week with judgment given in favour of liquidators. The personal liability against four directors totalled \$36m (\$6m against three directors and the full \$36m against the fourth director).

NZ COMPETITION LAW DEVELOPMENTS

Anti-Competitive Conduct: The Court of Appeal overturned a High Court decision and found the existence of price fixing among real estate agencies.

The NZ Commerce Commission has started 2019 with clearance approvals for mergers involving the markets for the productions and supply of grass seed and the regional wholesale supply of concrete sand to concrete product manufacturers.

Consistent with its stated focus in 2019 on non-notified mergers, the Commission was successful with enforcement action against gas distribution business arising from an anti-competitive acquisition. The High Court ordered pecuniary penalties and the purchaser agreed with the Commission not to enforce a restraint of trade provision against the vendor.

The NZ Government is consulting on reform of the Commerce Act provisions dealing with unilateral conduct by businesses with substantial market power with the preferred option being to align with the Australian law, i.e. shifting from a purpose based test to an effects based test. The discussion paper also considers removing the partial exemptions from general competition law relating to intellectual property rights and ensuring that covenants relating to land are within the prohibition on cartels.

RECENT M&A TRANSACTIONS FOR QUIGG PARTNERS

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

- Spectrum Brands sale of its global Auto Care Business to Energizer.
- An overseas investor in Blackstone’s acquisition in the Seven Office deal on Auckland’s waterfront.
- The sale of Pacific Door Systems to Assa Abloy.
- GlaxoSmithKline and Pfizer forming of their Consumer Healthcare Joint Venture.
- Hitachi’s acquisition of a power grid business from ABB.
- SPX’s purchase of the marine and obstruction lighting business of Carmanah Technologies.
- Viscofan’s acquisition of Australian Globus Group.
- 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

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