

NEW ZEALAND MERGERS & ACQUISITIONS



David Quigg

davidquigg@quiggpartners.com



John Horner

johnhorner@quiggpartners.com



Asha Stewart

ashastewart@quiggpartners.com



Hannah Checkley

hannahcheckley@quiggpartners.com



Nicole Sampson

nicolesampson@quiggpartners.com



Liam Phipps

liamphipps@quiggpartners.com

WHAT'S ON THE BLOCK

- Seed Business
- Regional manufacture/distribution
- Scaffold hire business
- NZ small food manufacturer
- Large integrated apple business
- Automotive sector after market distribution business
- NZ manufacturer (local and international sales)
- Import and distribution businesses
- Industrial service provider
- Regional niche manufacturing business
- Investment in tech and computer support provider

QUIGG PARTNERS COMMERCIAL CLIENT WORKSHOPS



DATES & TOPICS:

- 18 June** **Public M&A – Takeovers/Schemes/Strategic Stakes**
An overview of public M&A in New Zealand
- 30 July** **Contract Essentials – Tricks and Traps**
A practical guide to contract law: what to accept, what to avoid and how to negotiate a good deal.
- 20 August** **Buying and Selling a Business**
An overview of the legal issues relevant to the sale or purchase of a business.
- 17 September** **Joint Ventures/Shareholder Agreements**
We will discuss our experiences establishing and working with joint ventures along with recent legal developments in the area.
- 15 October** **Competition Law – Spot the Risks**
An overview of how competition law applies to business and how to avoid becoming the subject of an investigation by the Commerce Commission and other enforcement action.

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

OVERSEAS INVESTMENT OFFICE

Split Decision Refusal: An application to buy land to expand Waihi gold mine was declined. The Finance Associate Minister was satisfied of the “substantial and identifiable benefit” to New Zealand however the Land Information Minister was not.

Public Consultation on New National Interest: Public consultation is underway on a new national interest test. Perhaps more practically important is the package includes changes to reduce complexity and cutting unnecessary red tape. Quigg Partners has actively supported the latter changes and hopes the removal of unnecessary complexities and complications can survive the political process.

First Consent Under the New Forestry Test: The first approval has been granted under the new streamlined forestry approval process.

Civil Financial Penalties: The High Court imposed civil penalties totalling \$220,000 against a corporate and certain individuals for breaching the requirement to remain of good character under their relevant condition of a consent.

TAKEOVERS/SCHEMES

Guidance Note: The Takeovers Panel issued an updated Guidance Note on the appointment of Independent Advisers.

Trade Me Scheme Approval: The High Court approved the scheme of arrangement noting it was by far the largest takeover by way of scheme but features of the scheme were otherwise straightforward and consistent with prior approvals.

BUDGET 2019

New Fund: Last week the budget announced establishment of a new \$300m fund to provide capital for start-ups and keep them in New Zealand for longer.

NZX

Consultation Paper: The Financial Markets Authority and the NZX have issued a consultation paper to seek submissions on an industry-led review of capital markets in New Zealand

FINANCIAL MARKETS

Reserve Bank Censures ANZ: The Reserve Bank has recently revoked ANZ's accreditation to model its own operational risk capital requirements due to a persistent failure in its controls and attestation process.

Formal Warning: The Financial Markets Authority (FMA) advised it had issued 10 formal warnings for apparent breaches of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

New Financial Advisers Regime: The new regime has been passed and a new code of conduct approved. However, the industry has until early/mid 2020 to become compliant before the new rules/code becomes operative.

Insider Trading: The FMA agreed to an enforceable undertaking from a person potentially in breach of New Zealand's insider trading rules. One commentator questioned whether settling a criminal prosecution was appropriate or "out of step" with the Australian Hayne Royal Commission view that regulators should use the Courts, rather than undertakings, as their primary enforcement tool.

Disclosure Powers: The Court of Appeal overturned a High Court decision and has approved the FMA to disclose certain information obtained during its investigations for the benefit of interested third parties. Leave to appeal was declined by the Supreme Court.

TAX

Capital Gains Tax a "Dead Duck": The Government have rejected the introduction of a capital gains tax.

Digital Services Tax: The Government has flagged that it will proceed with public consultation.

COURT OF APPEAL (CA)

Penalty Clauses: The CA has held that, sparingly, clauses will be held to be a penalty (and unenforceable). The clause must be "out of all proportion" to the legitimate performance interests of the innocent party for it to be a penalty clause.

Registrar of Companies Exemption Challenge: The Court overturned the Registrar of Companies decision not to exempt an overseas company from NZ reporting requirements.

Breach of Contract & Fair Trading Act: The CA, overruling a High Court decision, held that a vendor's failure to disclose certain information to the purchaser during due diligence investigations amounted to a breach of the relevant contract and misleading and deceptive conduct under the Fair Trading Act (including holding the director personally liable).

Funding Agreement: A dispute involving Callaghan Innovation and client was convincingly won by Callaghan and allowed for both suspension and eventual termination of the funding agreement.

HIGH COURT

Amalgamation Impact: The Court confirmed that an amalgamation of an entity holding a forestry right did not cause a transfer requiring approval or trigger a non-assignment clause.

NZ COMPETITION LAW DEVELOPMENTS

Cartel Criminalised Law Passed: Although passed there is a two (2) year time period to allow businesses to review arrangements and update the same to be compliant with the new rules.

Commerce Commission Investigates BNZ: The Commerce Commission has launched an investigation into BNZ's compliance with the Credit Contracts & Consumer Finance Act.

RECENT M&A TRANSACTIONS FOR QUIGG PARTNERS

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

- Purchase by Descartes Systems Group Inc of the tech firm CORE Transport.
- Purchase by McDonald's Inc of a strategic stake and an enhanced SaaS Agreement with NZX tech company Plexure.
- Ideal Industries Inc's acquisition of power solutions company Enatel (including obtaining consent under the Overseas Investment Act).
- Leo Pharma to acquire Bayer prescription dermatology portfolio.
- Establishment of Sephora's first store 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
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