

NEW ZEALAND MERGERS & ACQUISITIONS



David Quigg

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WHAT'S ON THE BLOCK

- Regional hire businesses
- Niche engineering business
- Regional specialist manufacturer
- Regional finance company
- Retirement village
- Electronic security business
- Iconic food manufacturer
- Agricultural training centre business
- Payment technology business
- Nationwide veterinary clinic network
- National labour hire business
- Residential property management group



John Horner

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QUIGG PARTNERS AUSTRALIAN WORKSHOPS 2020



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 5 March 2020

Wheat & Wool Rooms

Intercontinental Melbourne The Rialto

Sydney

Thursday 2 April 2020

Adelaide & Hobart Rooms

Sofitel Sydney Wentworth

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



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OVERSEAS INVESTMENT OFFICE

Confidentiality Requests: The Overseas Investment Office (OIO) newsletter gave a friendly reminder that the Office, and applications, are subject to the Official Information Act (OIA). Therefore parties need to be aware of the restrictions on granting confidentiality (e.g. indefinite confidentiality is not possible).

Leases Caught: The OIO's recent newsletter also flagged that lease interests in land may be caught. The OIO indicated various cases where OIO approval has not been obtained.

Review of Investment Rules Continues: Such review continues (although delayed somewhat). The OIO indicate that they hope the [streamlining] process will be completed by 2020.

Prosecutions Increase: Recent press coverage and recent High Court judgements has highlighted recent cases of prosecutions for breach of the Overseas Investment Act (including forced sales and significant financial penalties).



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TAKEOVERS PANEL

Compulsory Acquisition: The Panel issued a new guidance note on compulsory acquisition.

Schemes of Arrangement: An updated guidance note has been issued by the Panel.

Defensive Tactics: An updated guidance note has been issued by the Panel.

Incorrect Public Documents: The Panel has articulated, via their newsletter, their expectations on when incorrect statements are included in public documentation.

New Class Exemption for Registered Charitable Trusts: The Panel has approved a new class exemption for registered charitable trusts in respect of appointments of and reductions in number of trustees.



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OVERSEAS AREAS OF INTEREST

"No Shop Clause": A recent Delaware case (Genuine Parts Co v Essendant Inc) provides a reminder of the latest effectiveness of "no shop" clauses.



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NZX

Capital Markets Report: An industry-led working group initiated by the NZX and FMA issued a report on “Growing NZ’s Capital Markets 2029”. Various recommendations were made.

New Constitutions: The latest round of NZX Company meetings generally included adoption of a new Constitution to incorporate the recent changes to the NZX Listing Rules.

FINANCIAL MARKETS AUTHORITY (FMA)

Related Party Transaction: The FMA determined that ANZ should have disclosed the dealing whereby its New Zealand CEO bought a property from ANZ. It should have disclosed the transaction as a related party transaction in its 2017 financial statements.

Financial Advisers – Transitional Licence Applications: The FMA have announced that it will commence accepting applications for transitional licences from 4 November 2019.

Consultation of New Financial Advice Exemptions: A consultation process has commenced on potential exemptions as a consequence of the new financial advice regime applicable under the Financial Services Legislation Amendment Act.

Expanded Oversight of Banking & Finance Sectors: The New Zealand Government has announced that it would introduce legislation and create an oversight regime for regulating conduct in the banking and insurance sectors.

COURT OF APPEAL (CA)

Construction of Option to Purchase: The Court of Appeal upheld the appeal in a complicated case involving a number of prior cases (both High Court and Court of Appeal decisions).

HIGH COURT

Tech Funding Agreement Termination: The High Court upheld Callaghan Innovation on terminating a funding agreement for a tech company.

Reasonable Notice to Terminate: The Court held a consultancy agreement was terminable on giving reasonable notice and that one (1) months’ notice was reasonable.

Reasonable Endeavours: The Court held an obligation to use reasonable endeavours was enforceable but, in the circumstances, no breach of such obligations was established.

Heads of Agreement and Joint Venture: The Court held a heads of agreement unenforceable as merely an agreement to agree. The Court did find that there was a joint venture but, not with imported fiduciary duties, as the relationship was to be regulated by the joint venture and shareholders agreement.

NZ COMPETITION LAW DEVELOPMENTS

Updated Authorisation Guidelines: The Commerce Commission is seeking comments on an updated draft authorisation guidelines and application forms.

Pecuniary Penalty: The High Court has given its first case brought by the Commerce Commission involving a “buyer side” cartel and the appropriate approach to fixing a pecuniary penalty.

The New Zealand Commerce Commission has been busy recently with the following M&A related matters:

- a clearance application for the acquisition of Treble Cone ski field by Cadrona Alpine Resort, being the two commercial ski fields most accessible from Wanaka;
- a clearance application for the acquisition of the Taupo bungy business by Queenstown Bungy Limited – two geographically isolated bungy jump operators;
- granting clearance to Infratil to acquire shares in Vodafone New Zealand in relation to the national markets for the retail supply of broadband and mobile services;
- two ongoing investigations into non-notified mergers including the acquisition of a lease by Wilson Parking in central Wellington and a proposed acquisition by Datix of patient safety software used in public hospitals.

RECENT M&A TRANSACTIONS FOR QUIGG PARTNERS

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

- CentralNic Group’s acquisition of Ideegeo Group.
- Greenlight Re Innovation’s investment in Cove Insurance start-up.
- Spence Stuart’s acquisition of the talent business of Aon.
- Granicus’ acquisition of Firmstep.
- TPV Technology privatisation by Scheme of Arrangement.
- 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. Also advice to overseas private equity funds, hedge funds and other capital raising to “wholesale investors”.

FURTHER INFORMATION

M&A Corporate

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