

NEW ZEALAND MERGERS & ACQUISITIONS



David Quigg

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WHAT'S ON THE BLOCK

- Wealth Management Business
- Finance company
- Packaging business
- Waste Management business
- Rental business
- Aluminium Smelter
- Boutique dairy company
- Tourism businesses
- Fabrication business
- "Holden" brand

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

Future Reform Picture: The Government Cabinet paper (December 2019) confirms introduction of a national interest test but also will remove lower risk transactions from coverage.

First Criminal Conviction: The Overseas Investment Office (OIO) obtained its first criminal conviction against an overseas acquirer for obstructing an OIO investigation and deliberate breach of the Overseas Investment Act (OIA). The acquirer's lawyers have pleaded guilty to various offences and await sentencing.

Incorrect Legal Advice Lead to Breach: An acquirer, based on incorrect legal advice, purchased properties in New Zealand in breach of the OIA. The OIO became aware of the transactions and the acquirers needed to dispose of the properties.

Aussie Rules: The thresholds for Australian investors in significant business assets were increased effective from 1 January 2020.



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TAKEOVERS PANEL

Small Code Companies Amendment: As from mid-January 2020 the definition of code company was amended to introduce an additional minimal financial threshold of both total assets and total revenue.

Takeover Panel Comments on Scheme Complaints: The Takeovers Panel received various complaints as to allegations of "false and misleading" conduct around a particular Scheme of Arrangement. After the Panel was involved certain additional clarifying disclosures were made.

Limited Partnerships and Control of Code Company Voting Rights: The Takeovers Panel have issued a useful note on takeover code issues (e.g. control of voting rights, associations, and disclosure issues).



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OVERSEAS CASES OF INTEREST

Continuous Disclosure Alert: A decision of the Australian Federal Court in the Myer case was a reminder of the art (rather than science) involved in meeting continuous disclosure requirements. The Judge, surprisingly, found in that particular case a 5% threshold for a change in earning guidance and for disclosure to be required.

NEW GOVERNMENT VENTURE CAPITAL FUND

Venture Capital Fund legislation has been passed. The fund is to target bridging the “capital gap” for New Zealand firms to expand beyond the start-up phase.

NZX

New Listing Rules Now Apply: The new NZX Listing Rules came into effect on 1 January 2020.

New Participant Rules Now Apply: The new NZX Participant Rule came into effect on 1 January 2020.

INLAND REVENUE DEPARTMENT (IRD)

The IRD released an issues paper on purchase price allocation. The paper proposes to remove “mis-matches” that purchasers and vendors mutually agree purchase price allocation.

FINANCIAL MARKETS AUTHORITY (FMA)

Proceedings Issued Against CBL Parties: The FMA has filed civil proceedings against CBL (in liquidation), six directors and the chief financial officer alleging multiple breaches of the Financial Markets Conducts Act.

COURT OF APPEAL (CA)

Vendors Warranties Deletion: The CA rejected an appeal and upheld the High Court decision that had rejected a claim of fraud whereby the vendor’s solicitors crossed out a clause containing the vendor’s warranties.

HIGH COURT

Non-Disclosure Agreement: The High Court rejected the argument that entry into of a non-disclosure agreement gave rise to fiduciary obligations between the parties.

All Reasonable Endeavours: A settlement agreement required a party to use all “reasonable endeavours”, acting in good faith, to refer construction work to it having a gross value of \$3m. The Court held that the reasonable endeavours obligations were enforceable despite an unquantified clause. The Court held no breach of the clause had been established.

Heads of Agreement and Joint Venture: The Court held that in a heads of agreement, although six steps taken towards giving effect, was not a binding contract as “a large number of matters still to be agreed” including some that “went to the heart” of the agreement. Also the Court decided that although the arrangement was a joint venture it was not one involving fiduciary duties.

NZ COMPETITION LAW DEVELOPMENTS

First Banning Orders: The Commerce Commission obtained their first management banning orders under the Fair Trading Act.

The Commerce Commission is busy with six open merger applications, including in relation to educational publishing, student management software, global pharmaceutical supplies, retail payment terminals, supply of fresh produce and other related services and animal health products.

The Commission has opened consultation on what is to be regarded as ‘fit and proper’ criteria in the context of proposed changes to the Credit Contracts and Consumer Finance Act around lenders and mobile traders. Submissions are due 18 March 2020.

RECENT M&A TRANSACTIONS FOR QUIGG PARTNERS

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

- A significant investment into Weta Digital/NZ film industry.
- Navis/Cargotec’s acquisition of Jade Logistics business.
- Black Dragon’s Capital acquisition from Belden.
- Neilsen’s spin-off of its Global Connect business.
- Bristol-Myers Squibb’s acquisition of Celgene.
- Amgen’s acquisition of Otezla.
- Ecolab’s acquisition of Gallay Medical & Scientific.
- 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

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