



## NEW ZEALAND MERGERS & ACQUISITIONS



David Quigg

dauidquigg@quiggpartners.com

### WHAT'S ON THE BLOCK

- BNZ Life
- Structuring Engineering business
- Wholesale plant nursery
- Civil engineering business
- Kupe oil and gas field (a 46% stake)
- Manufacturing and packing hire business
- Iconic Queenstown farm (\$50m)
- Manufacturing business
- Toll Logistics (?)



Asha Stewart

ashastewart@quiggpartners.com

### OVERSEAS INVESTMENT OFFICE

**Emergency Notifications Regime Extended:** The notifications regime has been presently extended to 25/2/21.

**Credit Where Credits Due:** The OIO have, in our experience, consistently “turned around” OIA notifications within the 10-15 Business Days target period they gave as guidance for processing notifications. Our clients have appreciated this “prompt” treatment of OIA notifications. It assists greatly deal certainty.

**Unsuccessful Challenge to OIO Decision:** The case involved a challenge for judicial review to the decision by a delegated decision maker (OIO) to approve a Chinese corporate interest to acquire Westland Dairy Company. The primary ground for the review involved an argument to extend the definition of farm land to include Westland’s processing plants because they are used principally for agricultural purposes. The Judge did not accept the request to expand the meaning of “farm land”.

**Unsuccessful Challenge to Ministerial Consent:** The High Court rejected the argument to engraft additional considerations onto the Overseas Investment Act beyond those already prescribed.

**The Overseas Investment Amendment Bill (No. 3):** The Select Committee [of Parliament] will report back to the House on 4 March 2021.

**New Investor Test Change:** The Government has flagged that the present good character and Immigration Act criteria is potentially to change to a proposed new investor test effective ahead of 16 June 2021.



Melissa Pengelly

melissapengelly@quiggpartners.com

### TAKEOVERS PANEL

**Extension of COVID-19 Exemption for Capital Raising:** The Takeovers Panel has agreed to extend the applicable exemptions until 31 December 2020. The Panel indicated that further extensions were not anticipated.

**Metlifecare Scheme of Arrangement:** A late objection to the Metlifecare Scheme (Version II) raised novel and interesting points:

- the Takeovers Panel considered and ultimately determined to issue its “no objection” statement. The Panel considered the disclosure made [for the Scheme] and the disclosed required for a takeover offer;
- the High Court, notwithstanding the Panel’s no objection letter, considered the common law criteria for approving the Scheme. The Court, reinforced, that the barrier was high to have a successful objection to such Scheme.

**Schemes of Arrangement:** The Panel, subject to various conditions, allows voting commitments exceeding the Code’s 20% threshold. This change will avoid the present need for existing shareholders giving statements of intent.



Jennifer Jelley

jenniferjelley@quiggpartners.com



Nicole Sampson

nicolesampson@quiggpartners.com

### NZX: COVID CLASS WAIVERS EXPIRED

The NZX package in respect of relaxed rules to assist issuers to access equity capital expired on 30 November 2020.



Liam Phipps

liamhipps@quiggpartners.com

## SUPREME COURT

**Directors Duties – Raising the Bar:** The Supreme Court overruled the Court of Appeal and reinstated the High Court decision in *Debut Homes Ltd*. The decision signals directors that continue to permit the company to continue to trade when in financial “trouble” have an increased danger of being personally liable for liabilities incurred.

Directors are effectively encouraged to initiate formal insolvency processes (e.g. voluntary administration, liquidation etc.) or a more informal compromise process with creditors earlier than previously contemplated, rather than directors “believing they know best”. The Court also specifically held the obligations of directors to act in the best interests of the company (Section 131) is a subjective, not an objective, test.

**Contract - Interpretation of Grape Supply Agreements:** The Supreme Court overruled the Court of Appeal on various contract interpretation matters (the Supreme Court following the prior decision of *Firm PI v Zurich*).

## COURT OF APPEAL (CA)

**Trading Sentencing:** The Court of Appeal overruled the High Court in respect of, the appropriate methodology and result, of the appropriate fine for a major corporate pleading guilty of misleading conduct and false representations.

## HIGH COURT

**Judicial Review of Decline of the Grant of a Petroleum Exploration Permit Bid:** The High Court made orders directing the bid be reconsidered on a “corrected” basis.

**Construction Contracts Restraints:** The High Court granted interim injunctions enforcing restraint obligations. The Court held that the balance of convenience favoured such injunctions as the claimant losses would be difficult to quantify.

**Injunction to Prevent Sale of Business:** The High Court refused an injunction to prevent the sale of a business as no seriously arguable case shown for various breaches alleged.

## OVERSEAS CASES OF INTEREST

**Meaning of Goodwill:** The UK Court of Appeal confirmed the meaning of “goodwill” in share purchase agreements.

**Material Adverse Effect Clause:** The UK High Court decided various preliminary issues as to the proper construction of, and burden of proof, in relation to an MAE clause in a Share Purchase Agreement.

## NEW PRIVACY ACT FROM 1 DECEMBER 2020

The biggest change is the introduction of new mandatory data breach notification requirements and some additional requirements when sending personal information offshore.

## NZ COMPETITION LAW DEVELOPMENTS

**Divestment Agreement:** The Commerce Commission, as part of a settlement agreement with Wilson Parking, procured a commitment from Wilson Parking to divest three car parking facilities in Wellington.

**Criminal Offences for Cartel Conduct:** The Commerce Commission has increased their educational activities to ensure the market is aware that, as from April 2021, cartel behaviour is a criminal offence with a maximum of seven years imprisonment.

**Market Study Announced:** The Commerce Commission has announced it will undertake a market study into the Retail Grocery Sector. A draft report is expected around July 2021.

## RECENT M&A TRANSACTIONS FOR QUIGG PARTNERS

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

- Microchip Technology’s acquisition of New Zealand’s Tekron International, a provider of high-precision GPS and atomic clock timekeeping technologies.
- Advising McDonald’s in respect of Plexure Group’s recent capital raising (via underwritten placement and SPP).
- Advising Onit, Inc in connection with its acquisition of the McCarthyFinch business.
- Advising European corporate acquiring its New Zealand distribution business.
- Advising an active hedge fund in respect of the Metlifecare scheme of arrangements.
- Raft of (generally urgent) applications under the OIA Urgent Notifications regime in respect of global transactions where a New Zealand subsidiary/business was caught (although a small % of the global deal).
- Various offers of securities to employees, rights/entitlement issues, DRPs, scrip offers and schemes of arrangement, and IPOs or other offers to retail investors in New Zealand, by both listed and private overseas companies pursuant to various exemptions and exclusions, including the trans-Tasman mutual recognition regime. Also advice to overseas private equity funds, hedge funds and other capital raising to “wholesale investors”.

## FURTHER INFORMATION

### M&A Corporate

David Quigg	+64 4 4740755	davidquigg@quiggpartners.com
Asha Stewart	+64 4 4740751	ashastewart@quiggpartners.com
Melissa Pengelly	+644 4740757	melissapengelly@quiggpartners.com
Jennifer Jelley	+644 4740757	Jenniferjelley@quiggpartners.com
Nicole Sampson	+64 4 4740769	nicolesampson@quiggpartners.com
Liam Phipps	+64 4 4740785	liamhipps@quiggpartners.com
Francesca Reedy	+64 4 4740782	francescareedy@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