

The challenge of compliance

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"Compliance" – n. **1** the act or an instance of complying; obedience to a request, command etc; **2** the capacity to yield under an applied force.... - The Concise Oxford Dictionary.

Regulation in New Zealand's financial and capital markets has become a force to be reckoned with. Keeping up with change, not to mention complying, requires increasing diligence and stamina. It is very challenging legislation for clients and lawyers alike, and it's not for the faint hearted.

Regulation of the financial markets in New Zealand is a burgeoning affair, inspired partly by the worldwide financial crisis in 2008 and the subsequent collapse of various financial institutions the world over. Like bread proving, financial markets regulation is self-expanding as each change creates new compliance obligations and more complexity. That's not to say that regulatory oversight is unnecessary or even unwelcome by the market. It is just complex. It is all well and good having the capacity to yield under an applied force. The key is knowing what forces should apply, when to yield and how far.

Wholesale revision of the regulatory framework for the capital markets was introduced by the Financial Markets Conduct Act 2013 which brought a plethora of changes to associated regulations (from 2014) and exemptions and had an ancillary effect on a raft of other important legislation. Those changes are still bedding down, including new exemptions and designations which pop up regularly. We have recently seen the release of new [NZX Listing Rules](#) (applying from 1 January 2019) – a wholesale rewrite after a string of ad hoc amendments made since 2001. Legislation like the Financial Advisers Act, adviser codes of conduct and the Financial Services Providers regime, brought in progressively from 2008 and barely through its infancy, is now the subject of further significant amendments. Consumer credit law (the subject of significant review and reform in 2015) is under review, again, and anti-money laundering legislation (brought in from 2008) has increasingly been phased into businesses. Most recently, the industry has been the subject of review and critique in relation to conduct and culture in the banking and insurance sectors. No doubt further regulatory change will ensue. There are now more requirements for licences, registrations, disclosures, monitoring and reports in the financial industry, than ever before.

It is inevitable that regulation of the financial markets will go through a period of bedding down. After all, it is still teething in some respects. Given the rapid pace at which technology moves and market practices change, you might be forgiven for thinking that financial regulation is likely to be in a permanent state of flux. Change makes compliance more difficult. Constant change even more so.

We increasingly hear from clients that they are feeling overwhelmed by the tsunami of changes or are concerned about the breadth/impact of some new or proposed regulation. In some areas, such as credit law reform and anti-money laundering regulation, clients sometimes express a slight bewilderment at the way or extent to which their business is captured and/or query how, practically, they can comply. Often this is driven by a sense that the particular regulation is only marginally applicable to their business, with the resulting danger that they only intend to be marginally compliant. Indeed, that correlation carries some logic in isolation but is unfortunately not how regulation operates (although there is some burgeoning recognition of the need for risk-based compliance, where those who face the least risk are required to take the least compliance steps).

The purpose of regulation is to regulate behaviour, resulting in outcomes which are desirable at a community, governmental or other "greatest good" level. While it is easy to forget the greater good when regulatory compliance impacts on our businesses, we are seeing an increasing acceptance of financial market regulation as a part of the ordinary course of business for market participants and there is a growing acknowledgement that in a healthy financial market, compliance benefits the public and all complying participants alike. We aim to ensure that rather than being required to yield under the applied force of regulation, clients have the knowledge, tools and willingness to yield – to proactively comply, before any force is applied.

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