

Cartel crooks to face the clink

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After years of to-ing and fro-ing, cartel conduct has officially been criminalised in New Zealand with effect from 8 April 2021.

As well as the current civil penalties, criminal sanctions will be available for certain breaches of section 30 of the Commerce Act 1986. Specifically, criminal sanctions will apply to those breaches that involve entering into or giving effect to a cartel provision with the intention of engaging in price fixing, restricting output, or market allocating.

Individuals will be liable on conviction for imprisonment of up to 7 years, a fine not exceeding \$500,000, or both.

Companies will be liable on conviction for a fine up to the same level as the current civil penalties (the greater of \$10m, 3 times the value of the commercial gain resulting from the cartel, or 10% of turnover).

There will be a very limited defence which will apply if the defendant reasonably believed that one of the statutory exceptions applied in relation to the alleged cartel conduct, such as the new exception for 'collaborative activities' (eg genuine joint ventures). The limited nature of this defence makes it even more important to seek advice as to whether proposed or ongoing arrangements raise cartel risks.

Between now and 8 April 2021, businesses should review their compliance with cartel laws to minimise the risk of criminal sanctions. Our team can assist by reviewing compliance materials and providing tailored training. Please contact one of the team for more information.

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