

## Legal update on business law reform - May 2015

[Jan Etwell](#), [Mark Odlin](#), [Susie Kilty](#)

2 June 2015

### Securities law reform

#### What's it about?

There have been two major recent developments regarding the Financial Markets Conduct Act 2013 (FMC Act).

The Ministry of Business, Innovation, and Employment (MBIE) has released an exposure draft of amendments to the Financial Markets Conduct Regulations 2014 (FMC Regulations). These are intended to tailor certain aspects of the FMC Regulations (for example, for offers of convertible financial products) and make improvements and enhancements to the regulations where issues have been identified.

In addition the Financial Markets Authority (FMA) has announced that it will use its exemption powers under the FMC Act to grant relief in relation to the wholesale investor exclusion for offers of \$750,000 or more (the FMC Regulations added requirements for warning statements and investor acknowledgements).

Concerns were raised that these requirements may be impractical, potentially resulting in fewer offers from overseas issuers. Following consideration of submissions received, the FMA has decided to grant two short-term exemptions to this exclusion:

- For offers of **Kauri bonds**, the warning and investor acknowledgment will not be required
- For offers of **unsubordinated debt securities** the investor acknowledgement is not required, and a warning is only necessary on the principal terms sheet given to the investor.

#### What's next?

MBIE's proposals are open for public submissions until 2 July 2015, and MBIE intends to make the amendment regulations from the third quarter of 2015 onwards, with some coming into force from 1 December 2015 onwards.

The FMA predicts its exemptions will be in place by the end of June 2015. They will initially run for 12 months allowing time for the FMA to review the use of the exemptions, and whether any changes need to be made.

The FMA will then publish a Regulatory Impact Statement, which not only summaries the submissions made, but also outlines the regulatory and non-regulatory impacts considered by the FMA in its decision to grant these exemptions.

#### For further information

- [FMC Act in final form](#)
- [FMC Regulations in final form](#)
- [MBIE proposals](#), with exposure drafts and commentary

---

### Companies and Limited Partnerships rule changes

#### What's it about?

The Companies Act 1993 and Limited Partnerships Act 2008 have been amended to strengthen the rules applying to the governance, registration and reconstruction of companies and the registration of limited partnerships.

The amendments received the Royal Assent on 2 July 2014 as the Companies Amendment Act 2014 and the Limited Partnerships Amendment Act 2014.

Since 1 May 2015 all newly incorporated companies must have a director who lives in New Zealand, or who lives in Australia and is

also a director of an Australian incorporated company. Also required by new registrations is the directors' date and place of birth, and if applicable the details of their ultimate holding company.

#### **What's next?**

Companies already on the Register have until 28 October 2015 to make these changes to their company details.

#### **For further information**

- [Buddle Findlay's legal update - February 2014](#)
  - [Companies Amendment Act 2014](#)
  - [Companies Amendment Act 2014 Commencement Order 2014](#)
  - [Companies Act 1993 Amendment Regulations \(No 2\) 2014](#)
  - [Limited Partnerships Amendment Act 2014](#)
  - [Limited Partnership Amendment Act 2014 Commencement Order 2014](#)
- 

## **Cartel criminalisation**

#### **What's it about?**

The Government has proposed criminalising 'hard-core' cartel conduct in New Zealand.

#### **What's next?**

The Commerce (Cartels and Other Matters) Amendment Bill has had its Second Reading, and the Bill is now Number 18 on the most recent Order Paper, and is awaiting the Committee stage.

The Commerce Commission consulted the market during August 2014 on its revised draft *Competitor Collaboration Guidelines*, which the Commission is preparing in anticipation of the Bill becoming law.

#### **For further information**

- [Commerce \(Cartels and Other Matters\) Amendment Bill](#)
  - [Draft Competitor Collaboration Guidelines, as prepared by the Commerce Commission](#)
- 

## **Financial Advice and Financial Service Providers reform**

#### **What's it about?**

MBIE has released an issues paper for public consultation discussing potential changes to the Financial Advisers Act 2008 (FA Act) and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act). This gives effect to the statutory requirements in the FA Act (section 161) and the FSP Act (section 45) for these statutes to be reviewed.

The paper asks a number of questions, seeking feedback on issues related to the provision, accessibility and quality of financial advice. It also asks questions as to how the Register of Financial Service Providers can best provide helpful information for users and avoid misuse or misrepresentation by market participants.

The purpose of the reform is to increase consumer accessibility to, and confidence in, financial advisers and the quality of advice they provide.

#### **What's next?**

Consultation on the issues paper closes on 22 July 2015.

Further review activity on the two pieces of legislation will be undertaken in parallel, with a report to the Minister regarding the FSP Act due on 15 August 2015, and final recommendations to the Minister on changes to the FA Act due by 1 July 2016.

#### **For further information**

- [MBIE issues paper](#)
-

## **Auckland**

188 Quay Street  
Auckland 1010

PO Box 1433  
Auckland 1140  
New Zealand

P: +64 9 358 2555

F: +64 9 358 2055

## **Wellington**

Aon Centre  
1 Willis Street  
Wellington 6011

PO Box 2694  
Wellington 6140  
New Zealand

P: +64 4 499 4242

F: +64 4 499 4141

## **Christchurch**

83 Victoria Street  
Christchurch 8013

PO Box 322  
Christchurch 8140  
New Zealand

P: +64 3 379 1747

F: +64 3 379 5659