

Legal update on business law reform - August 2014

31 August 2014

SECURITIES LAW REFORM

What's it about?

The Financial Markets Conduct Act 2013 (FMC Act), and its associated regulations, will replace the Securities Act 1978, Securities Markets Act 1988, and other legislation relating to the financial markets.

The first batch of regulations required for the FMC Act's implementation have now been made and published.

What's next?

The first phase of the FMC Act came into force on 1 April 2014.

The Ministry of Business, Innovation, and Employment (MBIE) has published a revised timetable for the regulation making process under the FMC Act.

Officials intend to aggregate the different tranches of regulations that have been consulted on so far into one combined set of Financial Markets Conduct Regulations, with the goal being to make the regulations in October 2014, prior to full implementation of the legislation in December this year. As a part of this process, a Cabinet paper setting out further disclosure decisions was released on 6 August 2014.

For further information

- [Buddle Findlay's Financial Markets Conduct Act updates - March 2014 and May 2014](#)
- [FMC Act in final form](#)
- [FMA's timeline for implementation of the new legislation](#)
- [Financial Markets Conduct \(Phase 1\) Regulations 2014](#)
- [Financial Markets Legislation \(Phase 1\) Commencement Order 2014](#)
- [MBIE progress report](#)
- [Minister's press release of 6 August and link to Cabinet paper](#)

COMPANIES AND LIMITED PARTNERSHIPS RULE CHANGES

What's it about?

The Government has announced significant changes to the Companies Act 1993 and Limited Partnerships Act 2008 to strengthen the rules applying to the governance, registration and reconstruction of companies and the registration of limited partnerships.

What's next?

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

The amendments to the Companies Act relating to the criminalisation of certain directors' duties and arrangements and amalgamations of code companies came into force on 3 July 2014, and some further minor amendments will come into force on 1 September and 11 September respectively.

Most of the amendments to the Limited Partnership Act 2008 will come into force on 1 September 2014.

The majority of the amendments to the Companies Act relating to enhanced powers of the registrar and the residency requirements for directors do not come into force until 1 May 2015 (with a further six month grace period for existing companies).

Australia has been designated as an "enforcement country" for this purpose, so when the new requirements come into force companies must have at least one director who is resident in New Zealand or who is resident in Australia and a director of a company registered in that country.

For further information

- [Buddle Findlay's legal updates - February 2014 and June 2013](#)
 - [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](#)
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TRUSTS

What's it about?

On 11 September 2013 the Law Commission released its report *Review of the Law of Trusts*.

The report recommends the passing of a new Trusts Act, to replace the current Trustee Act 1956. The report recommends that the new Act should expressly set out trustees' duties, obligations regarding the provision of information to intermediaries, and rules regarding investment.

What's next?

Parliament rose on 31 July 2014 prior to the General Election and so no legislation will be introduced until after the election.

It will be necessary to assess the new Parliament's priorities to determine when any such legislation might be introduced.

For further information

- [Law Commission report](#)
 - [March 2014 press release from Minister of Justice](#)
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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 commenced its Second Reading on 24 June 2014 but was interrupted and was Number 6 on the most recent Order Paper.

As noted above, Parliament rose on 31 July 2014, and all business before the House will lapse as a matter of Parliamentary procedure. As a matter of standard practice, however, we expect the new Parliament to roll over the "old" business when it convenes.

In the meantime, the Commerce Commission will be consulting the market during August on its revised draft *Competitor Collaboration Guidelines*, which the Commission is preparing in anticipation of the Bill becoming law.

For further information

- Buddle Findlay's [May 2013](#) law reform update, [cartel criminalisation](#) update and [November 2011](#) legal update
 - MBIE's [website](#)
 - [Commerce \(Cartels and Other Matters\) Amendment Bill](#)
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CREDIT LAWS

What's it about?

The Credit Contracts and Financial Services Law Reform Bill was introduced to strengthen and consolidate the suite of legislation that governs consumer credit contracts.

In particular, the Bill introduces responsible lending requirements to the Credit Contracts and Consumer Finance Act 2003 (CCCFA), in addition to strengthening existing provisions so that borrowers are better informed and protected.

It was an omnibus bill, also containing amendments to the Financial Service Providers (Registration and Dispute Resolution) Act 2008, but the two components were separated on 13 May 2014.

What's next?

The Credit Contracts and Consumer Finance Amendment Act 2014 received the Royal Assent on 6 June 2014.

Before the operational amendments in the legislation come into effect officials will prepare a Responsible Lending Code, setting out requirements and safe harbours for lenders.

Officials have published a discussion document seeking comments on the shape of the Code. This document also includes an indicative timetable which suggests that the Code is to be finalised by March 2015.

Submissions on the discussion document closed on 13 August 2014, and a draft of the Code is expected in October.

For further information

- [Buddle Findlay's CCCFA and repossession legal updates](#) and our [submission](#) on the exposure draft
- [Credit Contracts and Consumer Finance Amendment Act 2014](#)
- [Discussion Document on Code](#)

FINANCIAL SERVICE PROVIDERS

What's it about?

The Credit Contracts and Financial Services Law Reform Bill also amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008, in order to prevent the misuse of our financial services registration scheme to give an appearance of credibility to overseas entities that do not properly undertake financial services business in this country.

What's next?

The Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 was enacted on 6 June 2014.

The legislation mostly came into force on 1 July 2014, by operation of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 Commencement Order 2014.

For further information

- Ministry of Consumer Affairs' [website](#)
- Minister of Commerce [statement](#)
- [Financial Service Providers \(Registration and Dispute Resolution\) Amendment Act 2014](#)
- [Financial Service Providers \(Registration and Dispute Resolution\) Amendment Act 2014 Commencement Order 2014](#)

FINANCIAL ADVISERS

What's it about?

The Financial Advisers Act 2008 (FA Act) has been amended to incorporate new obligations relating to the provision of broking services and, in particular, obligations relating to brokers who provide custodial services. Regulations have also been published for the more substantial broker custody requirements.

What's next?

The amendments to the FA Act and the regulations published under the FA Act came into force on 1 April 2014.

The reporting obligations in the regulations will take effect on 1 December 2014.

For further information

- [Discussion paper](#)
- [Buddle Findlay's submission](#)
- [Financial Advisers \(Custodians of FMCA Financial Products\) Regulations 2014](#)

ANTI-MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM ANNUAL REPORTS

What's it about?

Reporting entities are required to submit an AML/CFT Annual Report for the 12 month period from 1 July to 30 June. The first annual report will be due from 1 July 2014, and must be submitted by 30 August 2014 at the latest.

What's next?

The first AML/CFT Annual Reports were due on 31 August 2014.

For further information

- [User Guide: AML/CFT Annual Report](#)
- [AML/CFT Sector Risk Assessment Guides](#)

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