

## Legal update on business law reform - February 2014

28 February 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.

Buddle Findlay will publish a more detailed stand-alone update on what the implementation process means for our clients.

#### What's next?

The FMC Act received the Royal Assent on 13 September 2013 and is now law. The provisions repealing and amending other legislation were carved off, and enacted as the Financial Markets (Repeals and Amendments) Act 2013.

The legislation will be phased in with a two stage implementation process, with the first phase of operating provisions coming into force in April 2014 and the second phase in December 2014.

The Ministry of Business, Innovation and Employment (MBIE) will roll out the regulations required to give effect to the FMC Act (the Financial Market Conduct Regulations (FMC Regs)) in stages during the course of 2014.

The first phase of the FMC Regs, those required for the provisions of the FMC Act coming into force on 1 April 2014, were made on 24 February 2014 and termed the Financial Markets Conduct (Phase 1) Regulations 2014.

Also, a commencement order has been passed to bring the necessary provisions of the FMC Act into force for Phase 1 – the Financial Markets Legislation (Phase 1) Commencement Order 2014.

MBIE is currently consulting on the second phase of the regulations, focusing on governance, market conduct, and obligations of licensed persons, with a deadline for submissions of 14 March 2014.

#### For further information

- MBIE's [website](#) - updated with full background resources on the FMC Act
- [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](#)

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### Financial Reporting Act 2013

#### What's it about?

The Financial Reporting Act 2013 received the Royal Assent on 3 December 2013, and will replace the Financial Reporting Act 1993 and make wide-ranging changes to New Zealand's financial reporting requirements.

#### What's next?

The Financial Reporting Act 2013 and the Financial Reporting (Amendments to other Enactments) Act 2013 are both expected to come into force on 1 April 2014.

As we have previously outlined the general scheme of the legislation is that there will be a "core" Financial Reporting Act which sets out certain standard requirements for financial statements and the determination of financial reporting standards by the External Reporting Board.

Substantive requirements, setting out which entities need to prepare and publicly file financial statements, will now be found in entity and sector specific legislation, including the Companies Act 1993 for privately held companies and the Financial Markets Conduct Act 2013 for reporting entities regulated by the Financial Markets Authority (FMA).

#### **For further information**

- [MBIE's website](#)
  - [Financial Reporting Act 2013](#)
  - [Financial Reporting \(Amendments to other Enactments\) Act 2013](#)
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## **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 Companies and Limited Partnerships Amendment Bill was reported on by the Commerce Select Committee on 11 December 2012 with a number of changes recommended. These changes were given effect by SOP 249, released on 5 June 2013.

Subsequent to this on 22 November further amendments (SOP 403) were announced. The most important change to the Bill in SOP 403 is to add new defences to the offence of breaching directors' duties through reckless trading. These are a defence for situations where companies enter into formal work-out arrangements with creditors, and a defence for directors who reasonably believe that all creditors who will suffer serious loss have been identified and that those creditors have consented to the manner in which the business has been carried on.

The Bill had its second reading on 2 July 2013 and is now due for the Committee of the Whole House stage. It is number 24 on the most recent Order Paper.

#### **For further information**

- [MBIE's website](#)
  - [SOP No 403](#)
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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?**

The Government has announced that it will respond to the Law Commission's report by March 2014.

The Commission has indicated that it will undertake additional reviews of charitable and corporate trusts.

#### **For further information**

- [Law Commission report](#)
  - [Press release from Minister of Justice](#)
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# Anti-Money Laundering

## What's it about?

The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML-CFT Act) is designed to detect, manage and mitigate the possibility of money-laundering and terrorist financing.

The Act came fully into force on 30 June 2013. Financial institutions that the AML-CFT Act applies to must now fully comply with the Act and regulation requirements. Guidance from the three joint AML-CFT supervisors (Reserve Bank, FMA and DIA) can be found on their respective websites.

## What's next?

Since the November response from the joint supervisors regarding interaction between reporting entities (discussed in our November 2013 update), there have not been any further guidance proposals from the joint supervisors.

## For further information

- Reserve Bank's [website](#) and [guidelines](#)
  - FMA's [website](#)
  - DIA's [website](#)
  - [Anti-Money Laundering and Countering Financing of Terrorism Act 2009](#), and associated [regulations](#)
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# Cartel criminalisation

## What's it about?

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

The Commerce Select Committee reported back to the House on 13 May 2013 on the Commerce (Cartels and Other Matters) Amendment Bill.

## What's next?

The Committee recommended a range of amendments to the Bill.

The Bill is currently awaiting its Second Reading and is number 27 on the most recent Order Paper.

## For further information

- MBIE's website
  - [Commerce \(Cartels and Other Matters\) Amendment Bill](#)
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# Covered bonds

## What's it about?

The Government introduced a Bill setting out a regulatory framework for covered bonds, including mandatory registration requirements and independent monitoring.

The Bill received the Royal Assent on 3 December 2013 and became the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013, and came into force on 10 December 2013.

## What's next?

The amendments have now come into force.

## For further information

- [Reserve Bank commentary on the treatment of covered bonds](#)
  - [Reserve Bank of New Zealand Act 1990, with amendments](#)
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# Non-bank Deposit Takers

## What's it about?

The Non-Bank Deposit Takers Bill received the Royal Assent on 3 December 2013, becoming the Non-Bank Deposit Takers Act 2013 (NBDT Act).

The NBDT Act will retain the existing prudential oversight regime for NBDTs, and adds a licensing regime, with suitability requirements for directors and senior managers.

## What's next?

The NBDT Act (other than a couple of provisions) will come into force on 1 May 2014.

The coming into force of the NBDT Act will see a stand-alone regime for NBDTs, with a twelve month transitional period for these entities to adjust to the new requirements.

This regime may be subject to revision, depending on the outcome of the Reserve Bank's review of the NBDT sector.

## For further information

- [Reserve Bank report on NBDT regime](#)
  - [Reserve Bank announcement on passing of NBDT Act and timing](#)
  - [NBDT Act 2013](#)
  - [NBDT Commencement Order](#)
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# Consumer Law Reform Bill

## What's it about?

This Bill was introduced to modernise, amend, and consolidate various consumer laws, including the Consumer Guarantees Act 1993, Fair Trading Act 1986, and Sale of Goods Act 1908.

After the Select Committee and Committee of the Whole House stages, the Bill was split into five separate amendment Bills on 3 December 2013, and these received the Royal Assent on 17 December 2013.

## What's next?

The five separate pieces of legislation all have their separate commencement / implementation.

## For further information

- The five separate pieces of amendment legislation can be accessed [here](#)
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# Credit laws

## What's it about?

The Credit Contracts and Financial Services Law Reform Bill is intended 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.

## What's next?

As discussed in our earlier updates this Bill has been referred to the Commerce Select Committee, with a report back date of 17 March 2014.

Buddle Findlay's submission to the Commerce Select Committee on the legislation can be accessed [here](#).

## For further information

- Ministry of Consumer Affairs' [website](#)

- Law Commission's [website](#)
  - Minister of Commerce [statement](#)
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## 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?

As mentioned above, this Bill has been referred to the Commerce Select Committee, with a report back date of 17 March 2014.

### For further information

- Ministry of Consumer Affairs' [website](#)
  - Minister of Commerce [statement](#)
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## Financial advisers

### What's it about?

MBIE published a discussion paper on intended regulations under the Financial Advisers Act 2008. The paper relates to authorised financial advisers (AFAs) who provide discretionary investment management services (DIMS).

Officials have proposed that regulations be made under the Financial Advisers Act so that AFAs providing DIMS are subject to broadly similar requirements as firms that obtain a licence to provide DIMS under the FMC Act.

The FMA has published a Guidance Note for Authorised Financial Advisers who are licensed to provide DIMS.

The Guidance Note covers the FMA's expectations for DIMS providers under the Financial Advisers Act, and also provides some background on expected changes under the FMC Act.

In addition, in February 2014 the FMA published a guidance note dealing with brokers' obligations, which will be highly relevant for those financial advisers providing broking services.

### What's next?

Officials have stated that if regulations are made they will be in place for the implementation of the relevant parts of the FMC Act (expected to be 1 April 2014).

Watch this space for further guidance following the FMA's consultations earlier this year.

As mentioned above, it should be noted that the FMA has published its consultation paper on the licensing process for DIMS providers under the FMC Act.

### For further information

- [Discussion paper](#)
  - [FMA Guidance Note \(DIMS\)](#)
  - [FMA Guidance Note \(Brokers\)](#)
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