

Legal update on business law reform - February 2015

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

27 February 2015

Securities law reform

What's it about?

The Financial Markets Conduct Act 2013 (FMC Act) was (almost) fully implemented on 1 December 2014, together with its associated secondary legislation, the Financial Markets Conduct Regulations 2014 (FMC Regulations). (There are some provisions that are still to come into force, but these are limited to alternative securities markets – Unlisted and Sharemart.)

The FMC Act has replaced the Securities Markets Act 1988 and other legislation relating to the financial markets. The Securities Act 1978 has been repealed, but will continue in force until December 2016 in a transitional regime contained in the FMC Act. The effect of this is that for the time being there will be two regimes in force, until market participants fully transition to the new FMC Act.

What's next?

During the course of 2015 we can expect to see the remaining provisions of the FMC Act brought into force. This should give clarity as to the position of Unlisted and Sharemart, and their regulatory treatment in comparison with NZX's NXT market, which has regulatory approval and is expected to go live later this year.

Market participants will need to transition to the new legislation, with such steps obtaining fund manager licences from the Financial Markets Authority (FMA) and moving to the new offering documents.

We can expect to see further guidance from the FMA market participants during 2015 as the market adjusts to the new requirements.

For further information

- [FMC Act in final form](#)
- [FMC Regulations in final form](#)

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.

These changes have mostly now come into force, and have been summarised in our earlier updates.

What's next?

The remaining provisions to come into force are the residency requirements for directors being added to the Companies Act, which are scheduled to come into force on 1 May 2015 (with an additional 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](#)
 - [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](#)
-

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?

In March 2014 the Government formally responded to the Law Commission's recommendations, agreeing with the Law Commission's recommendation for a new Trusts Act.

The Ministry of Justice is currently reviewing the Law Commission's proposals, and it remains to be seen when a draft Bill will be released for consultation.

The Minister's statement on 17 February 2015 of the Law Commission's work priorities for this year did not include the law relating for trusts, suggesting that this will not be an immediate priority.

For further information

- [Law Commission report](#)
 - [February 2015 press release from the Minister of Justice](#)
-

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 9 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](#)
-

Fair trading - Unfair contract terms

What's it about?

The Fair Trading Amendment Act 2013 (Amendment Act) amended the Fair Trading Act 1986.

Most of the provisions in the Amendment Act have come into force, with the exception of new provisions relating to unfair contract terms (UCTs), which are scheduled to come into force on 17 March 2015.

The UCT provisions, when enacted, will apply to consumer contracts which are standard form contracts, as defined in the Amendment Act. If a term in a standard form contract is found to be "unfair" (again as defined according to statutory tests in the Amendment Act) then that term will have to be removed from contracts and will not be able to be relied on or enforced.

What's next?

The UCT provisions will come into force on 17 March 2015.

The Commerce Commission will be the only party able to apply to the courts under the UCT provisions to challenge a contractual term. In July 2014 it published draft guidance on its interpretation of the UCT provisions, and a final version in February 2015.

Once the UCT provisions are in force the Commerce Commission may issue further guidance, and once the provisions are tested in the courts market participants will be able to take any case law into account when reviewing their contracts.

For further information

- [The Fair Trading Amendment Act 2013](#)
- [The Commerce Commission's guidance on the UCT provisions](#)

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.

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 (Code), setting out requirements and safe harbours for lenders.

Officials published a draft Code in November 2014 which was the subject of public comment. The finalised Code is expected in late March 2015. The operational amendments to the CCCFA are expected to come into force in June 2015.

For further information

- [Credit Contracts and Consumer Finance Amendment Act 2014](#)
- [Draft Responsible Lending Code](#)

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

