

Legal update on business law reform - October 2014

31 October 2014

With the new Parliament sworn in, and with a new Minister of Commerce appointed, the task of law reform continues, so after a brief hiatus immediately after the election our update is back.

In terms of an overall indication of Government concerns in this area, the new Minister issued a [press release](#) on 29 October 2014 setting out his top priorities for the portfolio, including:

- Implementing the Financial Markets Conduct Act regulations
- Implementing the Credit Contracts and Consumer Finance Act regulations and the Responsible Lending Code
- Progressing the Commerce (Cartels and other Matters) Amendment Bill.

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.

Since then officials from the Ministry of Business, Innovation, and Employment (MBIE) have published a "near final" draft of the complete Financial Market Conduct Regulations 2014 (FMC Regulations). This was released on 26 September 2014 to provide guidance to market participants. Officials have stated that by "near final" they mean that while the draft may be subject to editing changes, they do not intend to revisit any policy issues.

Buddle Findlay have provided a summary of the key developments in the FMC Regulations in our legal update and are providing more detailed legal updates and seminars on the new regime.

What's next?

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

The remaining provisions are scheduled to be fully implemented on 1 December 2014, so the FMC Regulations will need to be finalised and made before that date.

For further information

- [FMC Act in final form](#)
 - [Financial Markets Conduct \(Phase 1\) Regulations 2014](#)
 - [Financial Markets Legislation \(Phase 1\) Commencement Order 2014](#)
 - [MBIE's progress report and link to "near final" draft of the FMC Regulations](#)
 - [Buddle Findlay's legal update on the FMC Regulations - Licensing](#)
 - [Buddle Findlay's legal update on the FMC Regulations - Disclosure](#)
 - [Buddle Findlay's legal update on the FMC Regulations](#)
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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 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 came into force on 1 September 2014 and 11 September 2014 respectively.

Most of the amendments to the Limited Partnership Act 2008 came 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 February 2014 legal update](#)
- [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.

For further information

- [Law Commission report](#)
- [March 2014 press release from Minister of Justice](#)

Cartel criminalisation

What's it about?

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

The Commerce (Cartels and Other Matters) Amendment Bill commenced its Second Reading on 24 June 2014.

What's next?

When the old Parliament rose on 31 July 2014 all business before the House lapsed as a matter of Parliamentary procedure. On 21 October 2014, however, the new Parliament reinstated all business that had been on the Order Paper when Parliament rose, including the Bill. The Bill is now Number 28 on the most recent Order Paper, and is awaiting completion of its Second Reading.

The Commerce Commission consulted 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

- 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 November.

For further information

- [Credit Contracts and Consumer Finance Amendment Act 2014](#)
 - [Discussion Document on Code](#)
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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?

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.

The Financial Markets Authority (FMA) now has extended powers to decline an application from an overseas entity for registration as a financial service provider, or to de-register a currently registered financial service provider, if the FMA considers that the registration or continuing registration may create or perpetuate a misleading impression that the overseas entity will be or is providing financial services in New Zealand or will be or is regulated by New Zealand law in relation to financial services it provides.

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](#)
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