

Legal update on business law reform - June 2014

30 June 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 third tranche of draft regulations under the FMC Act, setting out the disclosure requirements for the new regime, was released by the Ministry of Business, Innovation, and Employment (MBIE) on 20 May 2014, and submissions closed on 20 June.

The Financial Markets Authority (FMA) is currently consulting on the governance regime that will apply under the FMC Act for debt securities and managed investment products, with submissions closing on 7 July.

For further information

- [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](#)

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 had its Second Reading on 2 July 2013. Subsequent to this further amendments to the Bill were introduced on 22 November 2013, which were summarised in our February update.

On 18 June 2014 it was divided into two separate amending Bills – the Companies Amendment Bill (No 4) and the Limited Partnerships Amendment Bill (No 2).

These Bills have had their Third Reading and are now awaiting the Royal Assent.

Once they have been enacted they will come into force on a date to be specified by Order in Council. Importantly the new requirement for all New Zealand-incorporated companies to have at least one director who is resident in New Zealand or an approved jurisdiction (and who is also a director of a company registered in that jurisdiction) will be subject to a six month transitional regime for currently registered companies.

For further information

- Buddle Findlay's legal update - [February 2014](#)
- MBIE's [website](#)

- [Minister's press release](#)
 - [Companies Amendment Bill \(No 4\)](#)
 - [Limited Partnerships Amendment Bill \(No 2\)](#)
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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's response, tabled in Parliament on 11 March 2014, agreed with the Commission's core recommendation to replace the Trustee Act, following a more detailed analysis of the Commission's recommendations.

It is unclear whether draft legislation will be released before the upcoming general election.

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

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

The Committee recommended a range of amendments to the Bill.

The Bill is currently awaiting its Second Reading and is number 3 on the most recent Order Paper.

For further information

- MBIE's [website](#)
 - [Commerce \(Cartels and Other Matters\) Amendment Bill](#)
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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 retains the existing prudential oversight regime for NBDTs (which is enforced by the Reserve Bank), 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) came into force on 1 May 2014.

The coming into force of the NBDT Act will see a stand-alone regime for NBDTs, with a 12 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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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 Financial Services Law Reform Bill had its Second Reading on 10 April 2014 and was divided by Supplementary Order Paper (SOP) 443 into two bills on 13 May 2014; the Credit Contracts and Consumer Finance Amendment Bill and the Financial Service Providers (Registration and Dispute Resolution) Amendment Bill.

Several minor amendments were made to the Bill before it was divided, and Labour and Māori Party SOPs proposing interest rate caps were voted down.

Both bills had their Third Reading on 27 May 2014 and received the Royal Assent on 6 June.

Before the operational provisions of the new legislation are brought into force officials will consult with industry and develop a Responsible Lending Code, which will provide safe harbours for lenders with regard to the new lender responsibility principles.

For further information

- Ministry of Consumer Affairs' [website](#)
 - [Credit Contracts and Consumer Finance Amendment Bill](#)
 - [Financial Service Providers \(Registration and Dispute Resolution\) Amendment Bill](#)
 - 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 noted above, the Financial Service Providers (Registration and Dispute Resolution) Amendment Bill had its Third Reading on 27 May 2014 and received the Royal Assent on 6 June.

The operational provisions of the legislation will be brought into force on a date to be specified by Order in Council.

For further information

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

- [Financial Advisers \(Custodians of FMCA Financial Products\) Regulations 2014](#)

What's it about?

On 27 March 2014 the Minister of Commerce announced a revised Code of Professional Conduct for Authorised Financial Advisers.

What's next?

The revised Code came into force on 1 May 2014.

For further information

- [Minister's announcement](#)
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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?

On 10 April 2014 the three AML/CFT supervisors published a User Guide for AML/CFT Annual Reports, providing guidance for reporting entities on how to prepare their annual reports.

The supervisors also published several AML/CFT Sector Risk Assessment Guides, which provide guidance on the relevant money-laundering risks in various sectors.

For further information

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