

Legal update on business law reform - March 2013

31 March 2013

The Government has signalled that the wave of law reform activity that occurred in 2012 will continue in 2013, and Buddle Findlay will continue to keep market participants abreast of these developments. In this update we summarise the outcome of a number of law reform projects from June 2012 to March 2013.

Securities law reform

What's it about?

The Ministry of Business, Innovation and Employment (MBIE) has carried out a comprehensive review of the Securities Act 1978 and parts of the Securities Markets Act 1988. This review resulted in the drafting of the Financial Markets Conduct Bill.

Much of the detail that will be needed to give the Financial Markets Conduct regime effect will be set out in the regulations.

MBIE released a Discussion Paper in relation to the Financial Markets Conduct Regulations in December last year. Submissions were due on 1 March 2013. Officials are now considering the submissions made, and will prepare a Cabinet paper seeking approval for policy decisions on the Regulations.

What's next?

The Bill had its second reading on 14 February 2013 and will now proceed to the Committee of the Whole House stage. The Minister is expected to table a Supplementary Order Paper in the next two to three weeks containing proposed amendments to the Bill.

MBIE officials have confirmed that the goal is still to have the Bill enacted by the middle of the year. The Bill is expected to become fully operational in May 2014.

MBIE officials expect an announcement following Cabinet's approval of the Regulations (potentially May/June). Exposure drafts of the Regulations are expected in October 2013.

For further information

- MBIE's [website](#)
- [Financial Markets Conduct Bill](#)
- Buddle Findlay's [submission](#) to MBIE on the Discussion Paper in relation to the Regulations

Financial Reporting Act changes

What's it about?

The Government has announced wide ranging changes to the financial reporting requirements in New Zealand. This includes matters relating to:

- Small and medium companies
- Charities and not for profits
- Parent financial statements
- Time for filing.

Related to this, the External Reporting Board (XRB) is currently consulting on a new Accounting Standards Framework.

What's next?

The Financial Reporting Bill is currently with the Select Committee (submissions on the Bill closed on 18 January 2013), and the Committee is expected to report back to the House by 28 May 2013.

In March 2012, the XRB issued four Exposure Drafts relating to the new Accounting Standards Framework for for-profit entities. Comments and submissions on these documents were due by 3 August 2012. The new Standards have now been finalised and apply to periods beginning on or after 1 December 2012.

For further information

- MBIE's [website](#)
 - XRB's [website](#)
 - [Financial Reporting Bill](#)
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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 2006, including:

- Criminalising certain serious breaches of directors' duties
- Requiring companies and limited partnerships to have a New Zealand resident director or agent
- Enhancing the investigation and enforcement powers of the Registrar, including "flagging" the register entries of suspect companies and limited partnerships
- Changing the rules for arrangements, amalgamations and compromises of companies subject to the Takeovers Code
- Introducing qualifications for general partners, including disqualifying undischarged bankrupts and banned directors from being general partners.

What's next?

The Companies and Limited Partnerships Amendment Bill was introduced to Parliament on 13 October 2011 and referred to the Select Committee on 24 July 2012. The Committee has reported back recommending a number of changes, and also advocating redrafting of the director liability provisions that have been the subject of considerable discussion. The next step in the Parliamentary process will be the Bill's Second Reading.

For further information

- MBIE's [website](#)
 - [Companies and Limited Partnerships Amendment Bill](#)
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Financial Markets Authority fees and levies

What's it about?

In June 2011, MBIE consulted on fees and levies payable to the Financial Markets Authority (FMA) by certain financial markets participants. These and other fees/levies were finalised last year. It is intended that these will be reviewed in 2014, after being in force for two years.

What's next?

New levies for FMA and XRB, and a new fee structure for the Companies Office commenced on 1 August 2012.

For further information

- MBIE's [website](#)
 - FMA's [website](#)
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FMA guidance note on effective disclosure in offer documents

What's it about?

The FMA has published a guidance note on effective disclosure.

What's next?

After two rounds of submissions, the final guidance note was released in June 2012.

The guidance note is effective for new offers from 9 July 2012, with all issuers and existing offers needing to be compliant from 1 January 2013 as they replace their offering documents.

For further information

- [FMA Guidance Note on Effective Disclosure](#)
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FMA exemption reviews

What's it about?

A number of exemption notices from the Securities Act 1978 and other financial markets legislation have expired. The FMA has been consulting on the renewal of these and other exemption notices.

What's next?

The FMA is still finalising some remaining drafts of exemption notices, but staff have advised that these are on track for completion by 31 March 2013. With the coming into force of the Financial Markets Conduct Bill, these exemption notices will cease to apply, so other than individual exemption notices, we are unlikely to see any further activity in this space.

For further information

- FMA's [website](#)
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FMA guidance note on "non-GAAP" financial information

What's it about?

The FMA has published a guidance note on the use of non-GAAP financial information.

What's next?

After a round of submissions in June 2012, the FMA published the final guidance note in September 2012.

For further information

- [FMA Guidance Note on Disclosing Non-GAAP Financial Information](#)
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Kiwisaver changes

What's it about?

The Government announced changes to the reporting of returns, fees, assets and conflicts of interest by KiwiSaver fund managers in June last year

The Government reviewed the arrangements for default providers of KiwiSaver schemes and issued a discussion paper in November 2012.

The FMA published the final version of its guidance note on KiwiSaver performance fees in May 2012.

What's next?

The changes were announced as part of Budget 2012.

Draft reporting requirements were set out in regulations released in October 2012 for consultation. We understand MBIE is currently making minor amendments to the proposed regulations and while a further round of consultation may be possible, we're likely to see the regulations published in final form, to come into effect from 1 July 2013.

MBIE issued a discussion paper on the review of KiwiSaver default providers in November 2012. Any changes will be implemented ahead of 30 June 2014, when the current default provider's seven year appointment ends.

For further information

- MBIE's [website](#) and [discussion paper](#) on default providers' arrangements
 - FMA's [website](#) and [Guidance Note](#) on KiwiSaver Performance Fees
 - Minister of Commerce's [press release](#)
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Auditor Regulation Act

What's it about?

The Auditor Regulation Act 2011 creates a licensing and oversight regime for auditors and audit firms of public issuers.

What's next?

The Auditor Regulation Act 2011 came into force on 1 July 2012.

Auditor Regulations were introduced on 23 April 2012. Among other things, the regulations allow for auditors who successfully registered for transitional licences before 26 June 2012, to be treated as holding a licence under the Act until 1 July 2014.

For further information

- FMA's [website](#)
 - NZICA's [website](#)
 - Companies Office [Auditors Register](#)
 - [Auditor Regulation Act 2011](#)
 - [Auditor Regulations 2012](#)
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Electronic AGMs

What's it about?

The Government has amended the Companies Act 1993 to facilitate "electronic" annual general meetings.

What's next?

The Regulatory Reform Bill was divided into separate components and enacted in August 2012. The Companies Amendment Act (No 2) 2012 contained the relevant amendment to Schedule 1 of the Companies Act enabling "electronic" general meetings.

For further information

- [Companies Amendment Act \(No 2\) 2012](#)
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Anti-Money Laundering

What's it about?

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

What's next?

Cabinet approved the content of the 2013 AML-CFT Regulations in February 2013. Several Guidelines were also published by the Reserve Bank in December 2012.

The AML requirements under the Regulations come fully into force on 30 June 2013.

For further information

- Ministry of Justice's [website](#)

- Reserve Bank's [website](#)
 - FMA'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.

What's next?

The Commerce (Cartels and Other Matters) Amendment Bill is being considered by the Commerce Select Committee, with a report back date of 14 May 2013.

For further information

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

What's it about?

The Basel III reforms, developed by the Basel Committee on Banking Supervision, aim to strengthen the regulation, supervision and risk management of the banking sector, in light of the global financial crisis.

What's next?

In December 2012, the Reserve Bank released the final capital adequacy standards, which implement the Basel III capital requirements, most of which took effect on 1 January 2013.

For further information

- Reserve Bank's [website](#)
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Covered bonds

What's it about?

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

What's next?

The Bill had its Second Reading on 27 February 2013, and is due for the Committee of the Whole House stage. As it is at No 5 on the most recent Order Paper, it is likely to be called soon.

For further information

- Finance and Expenditure Committee's [report](#)
 - Reserve Bank's [website](#)
 - [Reserve Bank of New Zealand \(Covered Bonds\) Amendment Bill](#)
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Non-bank deposit takers

What's it about?

Non-bank deposit takers (NBDTs) are subject to prudential oversight by the Reserve Bank.

The first phase of reforms requires NBDTs to have credit ratings, risk management policies, minimum capital ratios and limit related party exposures.

The second phase of reforms will introduce licensing requirements and suitability tests for directors and officers of NBDTs. These changes, along with the existing Part 5D of the Reserve Bank of New Zealand Act 1989, will be incorporated into a new NBDT Act.

Finally, the Reserve Bank and MBIE are together considering the requirements for prudential disclosure by NBDTs.

What's next?

The first phase of reforms was fully in force as of 1 December 2010.

The NBDT Bill will implement the second phase of reforms. The Finance and Expenditure Select Committee report on the Bill was released on 1 June 2012 and the Bill had its Second Reading in August 2012. The Bill is presently No 19 on the Order paper and so is likely to enter the Committee of the Whole House stage reasonably soon.

The Reserve Bank released a consultation document on regulations under the Non-bank Deposit Takers Bill 2011 on 3 April 2012.

For further information

- The Finance and Expenditure Committee's [report](#)
 - Reserve Bank's [website](#)
 - [Non-bank Deposit Takers Bill](#)
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Insurance (Prudential Supervision) Act

What's it about?

The Insurance (Prudential Supervision) Act 2010 will require all insurers carrying on business in New Zealand to obtain a licence and to comply with various prudential standards.

What's next?

The transitional period is now over. All insurers are now required to have a provisional licence. Full licences are required by September 2013.

For further information

- Reserve Bank's [website](#)
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Zero rate of AIL for certain bonds

What's it about?

Parliament has introduced a new zero rate of approved issuer levy (AIL) in response to concerns that the previous standard rate of 2% AIL was an impediment to investment in New Zealand corporate bonds by non-resident investors.

The zero rate of AIL may apply to interest paid on certain types of New Zealand dollar denominated bonds that are either:

- Listed on an exchange registered under the Securities Markets Act 1988; or
- "Widely held" as defined in the amendments.

What's next?

The rules applicable to the zero rate of AIL are now in effect, and may apply to payments of interest made on or after 7 May 2012 if the approved issuer of the bond has issued a required statement to IRD.

For further information

- IRD's [website](#)
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Takeovers

What's it about?

The Government has amended the Takeovers Act 1993 to clarify that the Code only applies to companies with more than 50 shareholders and 50 share parcels as part of the Regulatory Reform Bill.

Separately, the Government has proposed changing the rules for arrangements, amalgamations and compromises of companies subject to the Takeovers Code as part of the Companies and Limited Partnerships Amendment Bill (see above).

The Takeovers Panel has made still further recommendations for amendments to the Takeovers Act (possibly as part of an omnibus bill), but such changes do not appear to be likely in the short term.

The Takeovers Panel has also been reviewing the Takeovers Code. The Panel has suggested that amendments will be made to improve the market efficiency of the Code and the extent of mandatory disclosure to shareholders. A number of technical amendments are also proposed.

Finally, the Takeovers Panel has consulted on a new class exemption for family trusts, and corrected some drafting errors in the class exemption relating to scaling oversubscribed partial takeover offers.

What's next?

The Takeovers Amendment Act was enacted in August 2012 (as part of the Regulatory Reform Bill process), making a series of amendments to the scope of the Takeovers Act.

The Select Commerce Committee reported back on the Companies and Limited Partnerships Amendment Bill on 11 December 2012. The Bill is now awaiting its Second Reading.

The Takeovers Panel recommended to the Minister of Commerce that various amendments should be made to the Code on 20 August 2012. The Panel will, along with the MBIE, consult on draft regulations to the Code.

For further information

- [Takeovers Amendment Act 2012](#)
- [Companies and Limited Partnerships Amendment Bill](#)
- [Takeovers Panel's Recommendations](#)

Consumer Law Reform Bill

What's it about?

The Government has introduced a Bill to modernise, amend and consolidate various consumer laws, including the Consumer Guarantees Act 1993, Fair Trading Act 1986, and Sale of Goods Act 1908. Changes to direct selling rules are also proposed. The Bill also attempts to harmonise our law with Australian Consumer Law.

What's next?

Consumer Law Reform Bill has had its Second Reading and is awaiting the Committee of the Whole House Stage. The Bill is number 23 on the most recent Order Paper.

For further information

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

Credit laws

What's it about?

The Government intends to amend New Zealand's credit laws, including strengthening the Credit Contracts and Consumer Finance Act 2003 and introducing responsible lending requirements.

Separately, the Law Commission has also released a comprehensive report on New Zealand's credit repossession laws, particularly the Credit (Repossession) Act 1997.

What's next?

The Government released the CCCF Amendment Bill exposure draft on 2 April 2012. Officials are currently reviewing submissions and the Bill is expected to be introduced to Parliament later in 2013.

For further information

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

Review of Trade Marks Regulations

What's it about?

The Trade Marks Amendment Regulations were made on 5 November 2012. They make various changes to the Trade Marks Regulations 2003, including:

- Revising the fees payable to the Intellectual Property Office (IPONZ)
- Implementing several international treaties, including the Madrid Protocol (relating to the cross border registration of trade marks)
- Other changes for operational efficiency.

What's next?

The Trade Marks Amendment Regulations came into force on 10 December 2012.

For further information

- MBIE's [website](#)
- [Cabinet Paper on the amendments](#)
- [Trade Marks Amendment Regulations 2012](#)

Review of incorporated societies

<i>What's it about?</i>	<i>What's next?</i>	<i>For further information</i>
The Law Commission recently sought public feedback on incorporated societies and the not-for-profit sector.	200 submissions have been received on this. Work on recommendations for the final report has begun and the report is expected to be published at the end of June 2013.	<ul style="list-style-type: none">• Law Commission's website

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For further information

- Law Commission's [website](#)
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