

## NEW ZEALAND MERGERS & ACQUISITIONS



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### WHAT'S ON THE BLOCK

- Westpac NZ
- BNZ Life
- Kupe oil and gas field (a 46% stake)
- Mobile payment platform
- Iconic wine company
- Toll Logistics
- Manufacturing joint venture
- Boutique regional retail
- Food and beverage business
- NZ All Blacks (%)

### OVERSEAS INVESTMENT OFFICE

**Emergency Notifications Regime Extended Without Financial Thresholds:** The notifications regime has been presently extended to 25 May 2021. The surprising aspect is that, unlike Australia, New Zealand has not introduced some form of financial threshold before notifications would be continued to be required.

**New Investor Test Change:** The present good character and Immigration Act criteria has been changed from 22 March 2021 to a new test made up of two groups of factors: character and capability.

The character factors include:

- convictions resulting in imprisonment;
- corporate fines in New Zealand and overseas;
- being ineligible to come to New Zealand.

The capability factors include:

- prohibitions on being a director, promotor or manager;
- penalties for tax avoidance or evasion;
- unpaid tax.

**Penalty for Using Family:** Investors were fined a penalty of \$1.38 million for using family relatives based in New Zealand for buying forestry blocks in breach of the Overseas Investment Act.



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### TAKEOVERS PANEL

**Voting Agreement in Schemes:** The Takeovers Panel in late 2020 granted the Takeovers Code (Voting Agreements for Schemes of Arrangement) Exemption Notice 2020. With the recently announced scheme involving Tilt Resources the exemption was referenced in the Voting Deed between the acquirer of Tilt and Mercury.

**Independent Advisors:** The Takeovers Panel issued an update guidance note on Independent Advisors who have an integral role in any "change of control" transaction.



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### OVERSEAS INVESTMENT AMENDMENT (NO. 3) ("BILL")

The Select Committee on the Bill has flagged some "improvements" to the overseas investment regime by:

- (i) allowing investors to make additional incremental investments without additional consent;
- (ii) adding greater flexibility for investment by passive foreign investors;
- (iii) introduction of less restrictions applicable to the acquisition of non-productive farmland.

### NZX: ASX – MUTUAL LESSONS TO BE LEARNT

**Continuous Disclosure: Australian Reform Proposals a Lessons for NZX:** A New Zealand law firm (Bell Gully) has raised the question that the recent proposed Australian reforms of their continuous disclosure rules should be potentially followed by New Zealand.

With the growing number of class actions it is suggested that New Zealand should, following Australian proposals, modify our continuous disclosure rules to be less "tough on issuers".

[www.bellgully.com/pages/continuous-disclosure-proposed-Australian-reforms-may-prompt-NZ-rethink.aspx](http://www.bellgully.com/pages/continuous-disclosure-proposed-Australian-reforms-may-prompt-NZ-rethink.aspx).



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### FINANCIAL MARKETS

**New Financial Markets License:** The Government has introduced the Financial Markets (Conduct of Institutions) Amendment Bill. The Bill will require certain financial institutions to be licensed in respect of their general conduct towards consumers. The new license will be a different type although with a similar licensing framework as that for other types of market service licenses.

## AUSSIE EXEMPTION: FMA GRANTS AUSTRALIAN LICENSEES CLASS EXEMPTION

**Wholesale Exemption Consultation:** The FMA has circulated a consultation document in respect of the present \$750k minimum investment exemption.

## COURT OF APPEAL (MAINZEAL DIRECTOR'S CASE)

**Director Personal Liability for Reckless Trading/Incurring Obligations Increased Basis for Breach:** The Court of Appeal agreed with the High Court that the directors had recklessly traded but also found they had incurred obligations without having reasonable grounds they could perform the obligations. The Court of Appeal disagreed on how losses for reaches should be calculated. Generally it is believed finality on these issues will await a decision from New Zealand's highest court being the Supreme Court.

## HIGH COURT

**Local Director Prosecuted:** A local director who represented that a company was registered on the Financial Services Providers Register, when in fact it had been deregistered has been prosecuted.

**Food Regulation:** Substantive judgment that produce non-compliance with relevant food standard. Stay requested but refused on basis although supplier may suffer commercially if product removed, this was outweighed by the injurious effect on regulation and voluntary compliance and the regulator's market reputation.

## TAX

**Carry Forward of Losses:** Legislation is to be introduced to reform New Zealand's loss carry-forward rules to include a business continuity test.

**Technical Decisions:** The IRD has finally decided to publish summaries of certain technical decisions.

## INTERNATIONAL TRADE

**NZ/China:** New Zealand and China signed an upgrade to the New Zealand and China free trade agreement.

**CPTPP:** The UK has indicated its intention to join the CPTPP.

## OVERSEAS CASES OF INTEREST

**Parent Company Liability:** The UK Supreme Court provides guidance on the question of parent company liability for a subsidiary (Okapabi v Royal Dutch Shell [2021] UKSC3).

## COVID: BUSINESS DEBT HIBERNATION SCHEME

**Business Debt Hibernation Scheme Extended:** The Business Debt Hibernation Scheme has been extended to 31 October 2021.

## NZ COMPETITION LAW DEVELOPMENTS

**Commerce Commission:** The Commerce Commission released an updated Authorisation Guidelines.

**Criminal Offences for Cartel Conduct:** From 8 April 2021 criminalises cartel conduct with substantial penalties, and up to seven years imprisonment.

A Commerce Amendment Bill was introduced into Parliament last month. It covers a range of changes including increasing the maximum pecuniary penalties for M&As that breach the Commerce Act.

## RECENT M&A TRANSACTIONS FOR QUIGG PARTNERS

Quigg Partners has recently advised on New Zealand law matters relating to:

- Advising the Sherwin Williams Company on the sale of Wattyl to Hempel.
- Advising McAfee on the sale of its enterprise business to Symphony Consortium.
- Advising underbidder on the purchase of Seequent Software.
- Advising underbidder on the purchase of Tilt Renewables.
- Raft of (generally urgent) applications under the OIA Urgent Notifications regime in respect of global transactions where a New Zealand subsidiary/business was caught (although a small % of the global deal).
- Various offers of securities to employees, rights/entitlement issues, DRPs, scrip offers and schemes of arrangement, and IPOs or other offers to retail investors in New Zealand, by both listed and private overseas companies pursuant to various exemptions and exclusions, including the trans-Tasman mutual recognition regime. Also advice to overseas private equity funds, hedge funds and other capital raising to "wholesale investors".

## FURTHER INFORMATION

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