

# NEW ZEALAND MERGERS & ACQUISITIONS



David Quigg

davidquigg@quiggpartners.com



Asha Stewart

ashastewart@quiggpartners.com



Melissa Pengelly

melissapengelly@quiggpartners.com



Jennifer Jelley

jenniferjelley@quiggpartners.com



Nicole Sampson

nicolesampson@quiggpartners.com



Matt Woolley

mattwoolley@quiggpartners.com



Liam Sweeney

liamsweeney@quiggpartners.com



Francesca Reedy

francescareedy@quiggpartners.com



Anna Quigg

annaquigg@quiggpartners.com

## WHAT'S ON THE BLOCK

- Major waste management business
- Iconic NZ food manufacturer
- Manufacturing business
- SaaS Carbon and Utilities Management
- Construction business
- Rural business
- Engineering business
- B2B businesses

## OVERSEAS INVESTMENT OFFICE

### June/July Rule Changes (Overseas Investment Act) [OIA]

**Consents:** Various changes effective from 5 July 2021:

- more limited rules for triggering “sensitive land” consent:
  - lease period extended from old 3 years to 10 years test.
  - removing “adjacent” land test which caught land if next to sensitive land.
- The prior “good character test” for OIA consents to a more targeted “investor test” where there is a list of factors that decision makers must take into account.
- In respect of a “land approval” where a purchaser must show the investment will, or is likely to, benefit New Zealand the previous 21 benefit factors and “counterfactual” analysis is replaced by a more streamlined seven broad factors assessment against the existing investment at the time the transaction is entered into.

**Notifications:** The Covid-19 Emergency Notification regime has been replaced from 7 June 2021.

The previous broad application of the notification regime to direct or indirect acquisitions of 25% or more of a business has been replaced by a narrower national security and public order notification regime.

In broad terms, strategically important businesses are businesses operating in areas that are considered to be strategically important to New Zealand, including businesses involved in military or dual use technology, ports or airports, electricity, water, telecommunications, banking and financial markets infrastructure. The new notification regime should be carefully considered, as a pre-closing notification may be mandatory in which case a direction order allowing the transaction to proceed must be obtained. If a transaction is considered to pose significant risk to national security or public order, there are powers for investments to be blocked, conditions to be posed or the ordering of the disposition of assets.

**Fees:** As from 13 September 2021 new fee levels and structures now apply.

The fees especially for land applications increased considerably for complex applications. The fees signal a move from a single fee to a more differential fee approach depending on the specifics of the application involved (i.e. costs recovery based on time spent on the application).

**Judicial Review Proceedings:** The Overseas Investment Office has had judicial review proceedings issued against it in respect of the decision to approve the sale of a significant housing development area to an overseas acquirer.

**Further Changes from 21 November 2021:** Certain technical changes apply from 24 November 2021 impacting on:

- fresh and seawater areas (formerly “special land”);
- assessment timeframes for making decisions on consent applications (being phased in); and
- farmland advertising.

## TAKEOVERS PANEL

**Takeovers Code Proposed Amendments:** The Takeovers Panel have completed their consultation in respect of a range of proposed amendments dealing with technical changes of low policy content. The Panel hope such amendments may be effective by mid 2022.

## FINANCIAL MARKETS

**New CEO:** The Financial Markets Authority (FMA) have appointed a new CEO as from January 2022. Samantha Barrass, a Kiwi returning home, has worked in a range of regulatory and executive roles in the UK and Europe.

**AML Breach Order:** Another corporate received a pecuniary penalty for breaches of the AML Act as a result of FMC proceedings.

**FMA Warning:** The FMA issued a formal warning to Sharesies for failing to have sufficient AML procedures, policies and controls in place.

**FMA Stepping up AML Enforcement:** The FMA has signalled it is now increasing enforcing the AML/CFT rules.

**Climate Change Disclosures:** Various disclosure requirements for listed equity or debt issuer companies, registered banks, licensed insurers and registered investment schemes will become mandatory when the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill, presently before Parliament comes into force [expected by the end of 2021].

## CREDIT CONTRACTS & CONSUMER FINANCE ACT 2003

Various substantial changes were to come into force on 1 October 2021 due to recent Covid-19 issues:

- (i) the new certification requirements will still come into place on 1 October 2021; and
- (ii) lenders will have until 1 December 2021 to comply with the remaining changes in relation to responsible lending, due diligence, disclosure and fees and advertising requirements.

## COURT OF APPEAL

**Guarantee Update:** The Court of Appeal's decision held that, even if there has been a material variation to an underlying agreement, the Court gave effect to the plain meaning of an anti-discharge provision in a guarantee and held the guarantor liable.

## PRIVACY/DATA PROTECTION

**First Compliance Notice:** The Privacy Commissioner issued its first "Compliance Notice". It was issued to the Reserve Bank of New Zealand (Reserve Bank) in relation to the cyber-attacks in 2020 which highlighted certain shortcomings in the Reserve Bank's security measures.

## TAX

**Crypto Focus:** A new tax amendment is proposed giving GST exemption for "cryptoassets" (e.g. blockchain but not NFT (non-fungible tokens)).

**Deductibility:** The latest focus in the "war" against rising residential house prices [subsequent to banning overseas buyers for NZ residential property] is to deny deductibility of interest payable on loans related to residential investment properties from 1 October 2021.

**Cross-Border Employment:** Consultation released on technical changes to improve the tax rules that apply to internationally mobile workers.

## EMISSIONS TRADING SCHEME (ETS)

**Cost Increase Ahead:** The Government has announced material changes to the amount of the annual cost containment reserve trigger price for ETS auctions for 2022 to 2026.

## NZ COMPETITION LAW DEVELOPMENTS

**Loose Lips Between Competitors:** A single phone call between competitors resulting in significant penalties in respect of a single, unsuccessful attempt to enter into a price-fixing agreement.

## RECENT M&A TRANSACTIONS FOR QUIGG PARTNERS

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

- Advising PDFTron on its acquisition of tech company Solid Documents.
- Advising IDEXX Lab Inc. on its acquisition of ezyVet.
- Advising an institutional shareholder on the Square/Afterpay deal.
- Advising Insight Partners and Airtree in respect of their investment in LawVu.
- Advising Clarus on its acquisition of Rhino-Rack.
- Advising RSK (UK) on its acquisition of QSI.
- Advising Nuance in respect of its acquisition by MicroSoft.
- Advising McAfee in respect of the sale of its enterprise business to Symphony Tech.
- Advising Viessmann Group on its strategic partnership with VAE Group.

## FURTHER INFORMATION

### M&A Corporate

David Quigg	+64 4 4740755	davidquigg@quiggpartners.com
Asha Stewart	+64 4 4740751	ashastewart@quiggpartners.com
Melissa Pengelly	+64 4 4740757	melissapengelly@quiggpartners.com
Jennifer Jelley	+64 4 4740760	jenniferjelley@quiggpartners.com
Matt Woolley	+64 4 4740759	mattwoolley@quiggpartners.com
Nicole Sampson	+64 4 4740769	nicolesampson@quiggpartners.com
Liam Sweeney	+64 4 4740785	liamsweeney@quiggpartners.com
Francesca Reedy	+64 4 4740782	francescareedy@quiggpartners.com
Anna Quigg	+64 4 4740754	annaquigg@quiggpartners.com

### Employment

Michael Quigg	+64 4 4740766	michaelquigg@quiggpartners.com
Simon Martin	+64 4 4740752	simonmartin@quiggpartners.com
Nick Logan	+64 4 4740758	nicklogan@quiggpartners.com
Sarah Riceman	+64 4 4740765	sarahriceman@quiggpartners.com
Stephanie Hawkins	+64 4 4741370	stephaniehawkins@quiggpartners.com