

# NEW ZEALAND MERGERS & ACQUISITIONS



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## WHAT'S ON THE BLOCK

- Kiwi Wealth (KiwiSaver Fund Manager)
- Infrastructure Support Services business
- Import distribution business
- International trading company
- Waste Management NZ
- Flagship Superstore
- Electrical franchise business
- Managed contracting company

## OVERSEAS INVESTMENT OFFICE

**Forestry Rules Changing to Introduce “National Benefit” Requirement:** The Government has announced that the streamlined forestry test (introduced in 2018) is proposed to end for overseas investors planning to convert farms to forestry. Changes are expected to be effective in the second half of 2022. The new rules will reintroduce a “national benefit requirement” before conversion would be approved.

**Practical Slow Down for Applications:** The current COVID surge in New Zealand is having the practical impact of “slowing” the processing of consent applications but hopefully it will only be a temporary occurrence.

**Penalties for Obstruction and Breach:** The High Court, in addition to criminal fines handed down in 2020, ordered civil penalties against two parties (one being the investor’s lawyer) after the pair attempted to obstruct an Overseas Investment Office investigation.

## TAKEOVERS PANEL

**Admitted Breaches during Takeover Offer:** The Takeovers Panel filed High Court proceedings against New Image Group alleging selective offers breached the Takeovers Code and failed to make all necessary disclosures. The Takeovers Panel has agreed with New Image Group to resolve proceedings and requested the High Court holds a penalty hearing.

## FINANCIAL MARKETS

**CCCFA Review:** Material consumer credit changes made late last year have had “unintended impacts” (e.g. a perceived spike of mortgage disapprovals). A review of the changes has been announced, and the Government has committed to making “practical amendments”.

**New Financial Advertising Code:** The Advertising Standards Authority has issued a new Financial Advertising Code that came into effect for new advertisements from 1 March 2022 (and from 1 June 2022 for all advertisements).

**Draft Insurance Contracts Bill:** The Bill seeks to consolidate the various pieces of legislation (6 plus) governing the law of insurance contracts. Submissions on the Bill are due 4 May 2022.

**New Financial Market Infrastructures Act (FMI Act):** The FMI Act established a new regulatory regime for financial markets infrastructures and establishes new rules to regulate and supervise payment and settlement systems.

**FMA Censures Trader for Derivatives Issuer (DI) – Licence Breaches:** The FMA in particular had concern around outsourcing: “DI’s must have proper legal arrangements with third party providers, including provisions that enable effective performance monitoring. This is a fundamental obligation”.

## SUPREME COURT

**Mainzeal Appeal:** A five judge five day hearing of the appeal and cross appeal was heard recently and the judgment is likely some months away. The case is a reminder of the potential personal liability for directors and that “in the post COVID” world careful financial/trading monitoring and assessment is critical. Professional assistance is highly recommended.

## OVERSEAS CASE OF INTEREST

**Australia: Continuous Disclosure and Earning Guidance:** The Australian Full Federal Court [Crowley v Worley (2022) FCAFC 33] held that Worley may not have had reasonable grounds for the forecasts in question (being earnings guidance). One commentator noted that the decision “now stands as clear authority for the disturbing proposition that one can be liable for not disclosing something that does not exist, that is, an opinion that has not been formed”.

## A FORM OF SUCCESSOR (PREDECESSOR) LIABILITY: DECOMMISSIONING BILL

The Crown Minerals (Decommissioning and Other Matters) Amendment Bill has now passed. Specifically this applies to the “petroleum infrastructure”. One commentator states “should a holder transfer a permit or licence, its directors can still be held criminally liable in perpetuity”.

## TAX

**Proposal to Tax the Sale of Shares by Controlling Shares:** By virtue of “consultation on top tax rate avoidance prevention proposals” one proposal includes treating the sale of shares in a company by the controlling shareholder as a taxable dividend to the shareholders to the extent of the company’s undistributed (i.e. retained) earnings other than from capital gains. The rule, if implemented, will apply to sales by shareholders who are New Zealand resident natural persons, trustees and companies.

## NZ COMPETITION LAW DEVELOPMENTS

**Commerce Commission:** The Commerce Commission filed proceedings to object to a software acquisition (in the building consent space). The parties agreed to settle the proceedings. The case highlights New Zealand’s lack of financial thresholds and therefore “modest sized” deals can, perhaps inadvertently, be caught out by the New Zealand competition approval regime.

**Width of Cartel Conduct:** The High Court made a declaration agreements in relation to not competing for key word advertising (e.g. Google search) to be cartel conduct. This is a good reminder of the issues involved and its importance due to recent criminalisation of cartel conduct.

**Warning on Cartel Conduct:** The Commerce Commission also reminded businesses that agreements between competitors can result in criminal liability.

## RECENT M&A TRANSACTIONS FOR QUIGG PARTNERS

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

- Advising Tiger Global on its investment in ArchiPro.
- Advising investors in FNZ.
- Advising GB Group on its acquisition of Cloudcheck.
- Advising the vendor in the sale of MaxiTrans NZ to THL.
- Advising National Tyre and Wheels on its acquisition of Carter’s Tyres in New Zealand.
- Advising J&J spin-off of its consumer products division.
- Advising Ipsos on its acquisition of InfoTools.

## FURTHER INFORMATION

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