Corporate Reporter

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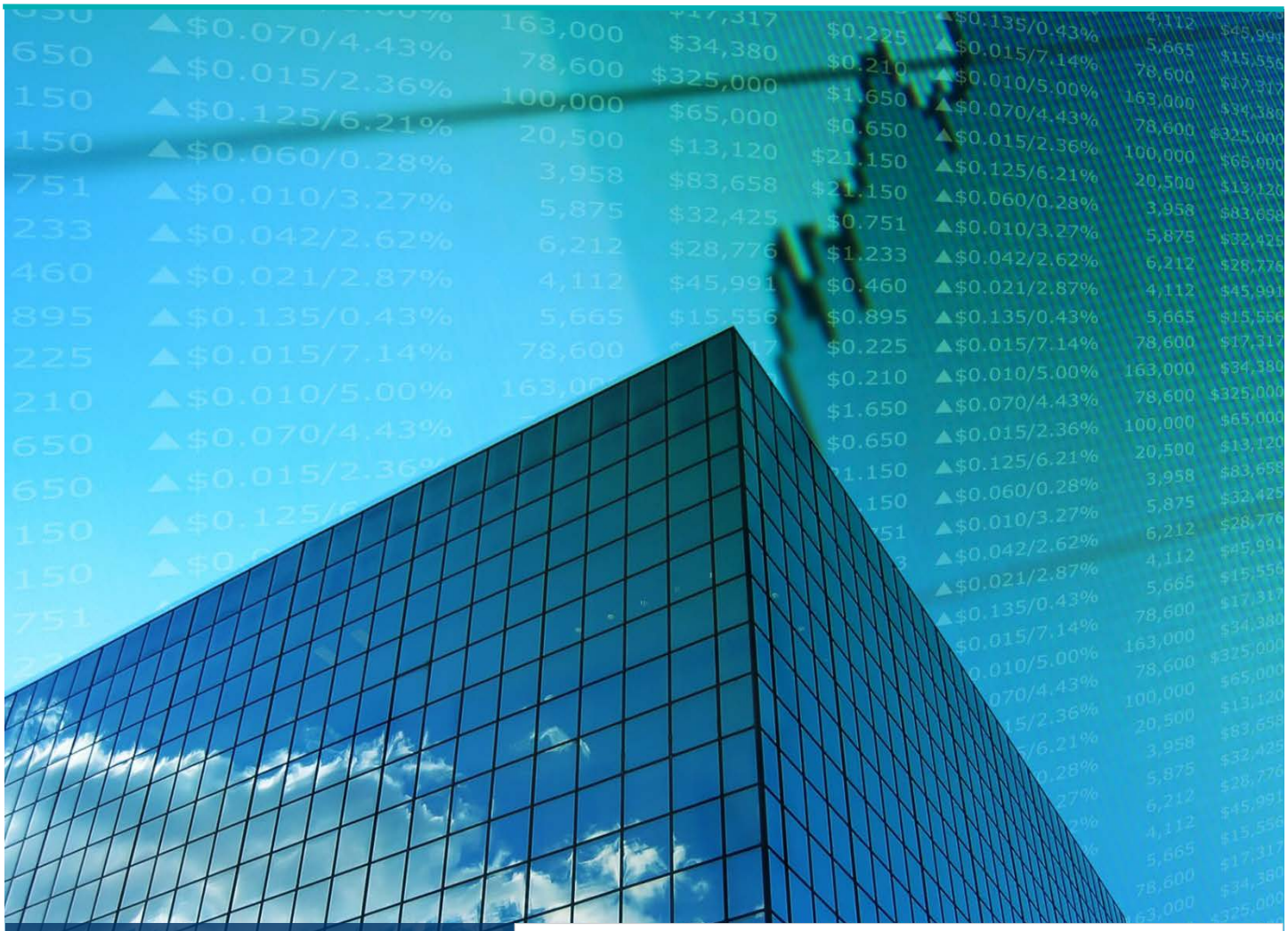

WELCOME
to Issue No. 52 of Corporate Reporter, Bell Gully's regular round-up of corporate and general commercial matters, designed to keep you informed on regulatory developments, legislation and cases of interest.

IN BRIEF

Items in this issue include:

- **FMC Act and Financial Services Legislation updates,**
- **First consultation round for the insurance contract law review,**
- **UK Supreme Court upholds effectiveness of 'no oral variation' clauses,**
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NEED MORE INFORMATION?

For more information on any of the items in the Corporate Reporter, please contact your usual Bell Gully adviser or any member of Bell Gully's Capital Markets, Commercial, M&A or Competition teams. Alternatively, you can contact the editor Diane Graham by email or call her on 64 9 916 8849.

CAPITAL MARKETS

Legislative developments

Further amendments to the FMC Regulations in force on 7 June

Since the enactment of the Financial Markets Conduct Regulations 2014 (**FMC Regulations**) there have been a series of amendments to the regulations to address some issues that were deferred, as well as remedial issues that have emerged since participants began operating under the new FMC regime. The latest of these amendments will come into force on 7 June 2018 under the Financial Markets Conduct Amendment Regulations 2018. The key changes include:

- **Prohibition on insider trading** – excluding the prohibition on insider trading from conduct that relates to a trade involving a new issue of a quoted equity, debt or managed investment products (but not quoted derivatives). This includes an issue of financial products carried out under the exclusion for quoted financial products of the same class set out in clause 19 of schedule 1 of the Financial Markets Conduct Act 2013, but not conduct relating to an issue of quoted managed investment products that are continuously offered in the ordinary course of an issuer's business (except under a dividend reinvestment plan). For full details on these changes refer to our earlier update here.

- **Annual reports** – clarifying the notification requirements for annual reports that are made available by e-reporting entities under regulations 61B to 61F of the FMC Regulations with regards to when the report must be available on an entity's Internet site and which shareholders must be given a notice relating to the report.

- **Defective service disclosure statements (SDS)** – inserting new provisions to address false or misleading SDSs provided to investors by DIMS, crowdfunding and peer-to-peer lending providers. This includes providing for when the provider must stop providing the service to an investor, setting out conditions for continuing to provide the service, and the procedures and obligations relating to providing a new SDS that is not defective.

- **Exchange-traded derivatives** – providing that the provisions relating to the holding and application of investor funds and property by derivatives issuers do not apply where the derivatives concerned are exchange-traded derivatives involving transactions by New Zealand wholesale investors.

- **Debt offers by registered banks** – amending the limited disclosure document requirements for debt securities offered by registered banks to reflect the Reserve Bank's new Dashboard approach for banks' quarterly disclosures.

Financial Markets Conduct (Incidental Offers) Exemption Amendment Notice 2018

The Financial Markets Conduct (Incidental Offers) Exemption Amendment Notice 2018 has made some technical amendments to the Financial Markets Conduct (Incidental Offers) Exemption Notice 2016 so that it covers demergers in keeping with the position that applied under the Securities Act (Overseas Companies) Exemption Notice 2013.

The 2016 Notice was enacted to encourage overseas companies to allow their existing New Zealand investors to participate in rights offers and offers arising from reconstructions that might otherwise not be extended to them due to the cost of compliance with the Financial Markets Conduct Act 2013's full disclosure requirements.

Regulations to support the Financial Services Legislation Amendment Bill

The Ministry of Business, Innovation and Employment (**MBIE**) has released two discussion papers on regulations which will be required to support measures in the Financial Services Legislation Amendment Bill.

The first discussion paper "Disclosure requirements in the new financial advice regime", which relates to proposed financial advice regulations, discusses information that should be disclosed when consumers are searching for a financial advice provider, when deciding whether to obtain advice from a particular provider, and when deciding whether to follow the advice they have been given.

The second discussion paper (here) introduces proposals to give effect to measures in the Bill aimed at addressing misuse of the Financial Service Providers Register (**FSPR**), while seeking to maintain consumer access to the financial dispute resolution system which is linked to registration on the FSPR.

Other regulations are being developed separately to support the measures in the Bill. Those include regulations prescribing the licensing fees and levies payable by financial advice providers and financial advisers.

Financial Advisers (Personalised Digital Advice) Exemption Notice 2018

The FMA has approved the first robo-advice provider (Kiwi Wealth) and has enacted the Financial Advisers (Personalised Digital Advice) Exemption Notice 2018. The notice comes into force on 1 June 2018.

The exemption notice allows FMA approved entities listed in Schedule 1 of the notice (**providers**) to provide personalised services to retail clients through a digital advice facility (also referred to as "robo-advice"), subject to certain consumer protection safeguards. This is how it works:

- To become a provider, an entity must:
  - complete the application process and be approved by the FMA;
  - be registered on the Financial Service Providers Register;
  - be a member of an approved dispute resolution scheme, and
  - be listed in Schedule 1 of the notice.

- Providers need to comply with exemption conditions. The conditions include prescribed disclosure, conduct and record keeping requirements.

- Providers can only provide services through a digital advice facility that are limited to:
  - certain specified products (including interests in KiwiSaver schemes and other managed funds, quoted equity securities, quoted debt securities, quoted managed investment products, Crown-issued debt securities, contracts of insurance, savings products, and credit contracts); and
  - investment planning services and financial advice (excluding discretionary investment management services).

Currently, the Financial Advisers Act 2008 only accommodates the provision of personalised financial advice by a human and, therefore, effectively prohibits the provision of robo-advice. This prohibition has frustrated those who see robo-advice as a solution to the "financial advice gap" as it will allow more New Zealanders access to affordable, quality financial guidance. Last year, the FMA decided to accelerate the introduction of robo-advice by exercising its exemption power under the Financial Advisers Act, ahead of proposed changes to financial adviser laws which are also designed to address this issue, but will not come into effect until 2019.

Financial Markets Authority (FMA)

Fourth statistical report on AFAs released

The FMA has published its fourth statistical report on Authorised Financial Advisers (**AFAs**). It has been published in tableau to enable the industry, media and interested members of the public to engage and interact with the data. The tableau can be accessed here.

Proposal to require market service licensees make an annual declaration of compliance

The FMA recently consulted on whether market service licensees (but not licensed independent trustees) should be required to make an annual declaration of compliance as part of the regulatory return under their standard licence conditions.

Under the FMA's proposal, licensees will be asked to confirm they have adequate systems, processes and controls in place to ensure compliance with their market services obligations under the Financial Markets Conduct Act 2013, and that they have operated effectively over the relevant period.

The FMA is also proposing to update the wording of the market service licence condition that requires licensees to submit a regulatory return to reflect the regulatory returns regime that has been put in place.

Market service licensees include licensed derivatives issuers, operators of crowdfunding platforms and operators of peer-to-peer lending platforms, managed investment scheme managers and providers of discretionary investment management services.

For further details refer to FMA's consultation paper here.

FMA reports on insurance industry's expenditure on soft commissions

The FMA has published a report which outlines the findings of its review into non-monetary commissions (also known as soft commissions) provided by nine life and health insurance companies over a two-year period. The key findings included:

- insurers spent $34 million on non-financial incentives like trips, business support and conferences for financial advisers; and
- nearly half of the soft commissions required the adviser to meet a target - to sell a particular dollar value or number of the insurer's products.

The FMA is interested in soft commissions because they present a real conflict of interest for advisers, as remuneration or incentives provided by insurers could influence an adviser in giving advice to a customer.

A copy of the report is available here.

FMA provides financial information guidance for an Equity PDS

The FMA has issued guidance on the financial information section contained in a product disclosure statement for a regulated offer of equity securities (**Equity PDS**). This follows its concerns that financial information is being presented in an unnecessarily complicated manner and different interpretations are being given to certain regulatory requirements for the Equity PDS (set out in Schedule 3 of the Financial Markets Conduct Regulations 2014).

A copy of the guidance note is available here. The FMA has also released a summary of the submissions it received on its earlier consultation on a draft version of this guidance.

The guidance complements FMA's July 2017 'Disclosing non-GAAP financial information guidance note'.

Room for improvement in PDSs

The FMA has issued a report 'Product disclosure statements: understanding investors' information needs' summarising feedback from investors who had recently invested in an IPO, bond offer or property scheme offered as a managed investment scheme.

Generally investors found the product disclosure statement (**PDS**) useful and an improvement on previous offer documents. However, according to the report even the experienced investors still struggled with some aspects of the PDS. The FMA would like to see issuers use the insights provided in the report to improve their disclosures. This includes feedback which suggests investors would like to see:

- more detailed information about the company's management and directors, as well as social responsibility information
- a financial information section that is not overly complex (through use of technical terms and fine print)
- risk information that is not too broad and generic.

For further details see the FMA's media release here.

Consultation on dual language PDSs

The FMA is considering granting an exemption to enable issuers to provide dual-language product disclosure statements (**PDSs**) for offers of financial products made under the Financial Markets Conduct Act 2013. This would allow a PDS to be provided in full in both English and Te Reo Māori (and possibly other languages) subject to applicable conditions. A copy of the consultation paper is available here.

FMA is aiming to have any exemption in force by mid-2018.

FMA releases a report on fund managers' quarterly fund updates

The FMA has published a report on the findings of a review it undertook on quarterly fund updates produced for licensed Managed Investment Schemes (**MIS**) in 2017. To ensure that the practices of all MIS managers were covered, the FMA reviewed at least one quarterly fund update from each licensed MIS manager required to produce these particular disclosure documents.

Overall, the FMA's findings did not raise any significant concerns. However, the review did find instances of potential non-compliance or instances where disclosure could be improved.

Continuous disclosure obligations during voluntary administration

The FMA intends to file a case stated procedure to seek the court's determination on whether continuous disclosure obligations for listed issuers continue to apply when the issuer is in voluntary administration. For further details see the FMA's media release here.

NZX Limited (NZX)

FMA consults on a proposed exemption for ASX/NZX listed issuers

The FMA is consulting on a proposed exemption to allow ASX listed issuers (with a secondary listing on NZX) to make same class offers of ASX-quoted financial products in New Zealand on an equivalent basis to the same class offers exclusion in Schedule 1 of the Financial Markets Conduct Act 2013 (**FMC Act**). The exclusion enables offers of equity securities, debt securities, or managed investment products of the same class as quoted financial products to be made without the disclosure document normally required to be given to investors under Part 3 of the FMC Act. This has been relied on by NZX-listed issuers significantly since it came into effect in April 2014. If the proposed exemption is granted, the exemption is expected to help attract secondary listings on NZX.

A copy of the consultation paper is available here and the draft exemption notice is available here. Submissions close on 13 June 2018.

Exposure draft of new NZX Listing Rules released for consultation

NZX has released an exposure draft of its proposed new listing rules for consultation, with a view to implementing the new rules towards the end of 2018 and bringing them into effect on 1 January 2019. This follows NZX's consultation at the end of last year on a wide span of issues to reform and reinvigorate NZX's capital markets, ranging from a consideration of the structure of NZX's equity markets to specific listing rule settings.

Key changes include:

- consolidating the NXT and NZAX Markets into NZX's Main Board;
- introducing a concept of "constructive knowledge" to the continuous disclosure obligations;
- decreasing the threshold for shareholder approval of issues of shares from 20 per cent to 15 per cent to align this with ASX's requirements;
- amending the major transaction approval requirements to include transactions which significantly change the nature or scale of the issuer's business; and
- replacing the requirement to publish a separate half-year report with a preliminary announcement of half-year results.

Interested parties have until 8 June to review the exposure draft of the listing rules and make submissions on them. This is likely to be the last opportunity for interested parties to comment on matters relating to policy. Any further consultations are expected to be targeted at technical and operational issues arising from the drafting of the rules.

A copy of the exposure draft of the proposed new listing rules and accompanying consultation paper are available here.

For Bell Gully commentary on the exposure draft of the NZX Listing Rules, refer to our earlier client update here.

Reserve Bank of New Zealand (RBNZ)

RBNZ authorisations for the use of restricted words by overseas banks

RBNZ has published a consultation paper seeking feedback on its current approach to allowing overseas banks to use restricted words in New Zealand without being registered here as a bank (restricted words include "bank' and its derivatives such as "banker" and "banking").

Currently, RBNZ's practice has been to provide non-objection letters to small numbers of overseas banks that are not registered as banks in New Zealand. These letters allow them to carry on limited activities in New Zealand using names or titles that include restricted words under the Reserve Bank of New Zealand Act 1989. RBNZ intends to move away from the use of non-objection letters, and instead use authorisations issued under section 65(1) of the Act.

There are two guidance notes included in the consultation paper. The first explains RBNZ's interpretation of when an overseas bank will be "carrying on an activity in New Zealand" and therefore require a section 65(1) authorisation to use restricted words in New Zealand without registering as a bank here. The second explains the Reserve Bank's approach to considering applications for section 65(1) authorisations.

Submissions close on 6 June 2018.

Until a new policy for section 65(1) is finalised, RBNZ has stated that it will not be assessing new applications by overseas banks to carry on activities in New Zealand using restricted words without becoming registered banks in New Zealand. There will likely be a transitional period after the new policy for section 65(1) is formally introduced for overseas banks who already have letters of non-objection.

Further details are available here.

MERGERS & ACQUISITIONS

Overseas investment

Report delayed on amendments to Overseas Investment Act

The date for the Select Committee to report to Parliament on the Overseas Investment Amendment Bill has been extended to 21 June 2018. The Select Committee's report was previously anticipated on 31 May 2018. This delay is unsurprising given the substantial number of submissions to the Select Committee.

For further details see our earlier client update here.

Takeovers

High Court delivers decision on reimbursement of takeover expenses

In April the High Court delivered its decision (here) on the reimbursement of expenses relating to the unsuccessful partial takeover attempt of listed issuer Abano Healthcare by Healthcare Partners. This is the only New Zealand court decision on recoverable expenses since a 1972 case (which was decided under legislation which preceded the current Takeovers Code) so, in that context, it is a significant decision for market participants.

The Court ruled that Healthcare Partners was required to pay all of the disputed costs. In doing so, the Court considered that it was timely to take a fresh look at the principles for recovery in the 1972 case to take account of the more regulated and complex modern takeovers environment and the burdens now placed on target companies. In particular:

- The case signals a more target-friendly approach than the 1972 precedent.
- The case removes the earlier restriction on recovering expenses incurred "resisting" the offer. Expenses for such activities are no longer automatically irrecoverable.
- The focus for whether an expense is "properly incurred" is whether it was reasonable and proportionate, based on the circumstances at the relevant time and without the "comfort of hindsight".

For further Bell Gully commentary on the decision see our earlier update: A fresh look at the recoverability of takeover expenses.

The Takeovers Panel, which now has jurisdiction over takeover expense disputes following recent amendments to the Takeovers Act 1993, also issued a statement following the High Court's ruling and says it will review and amend its related guidance if appropriate.

Exposure draft of amendments to the Takeovers Code released

This month, the Ministry of Business, Innovation and Employment (**MBIE**) consulted on an exposure draft of the Takeovers Code Approval Amendment Regulations 2018 (the **Amendment Regulations**). The Amendment Regulations seek to give effect to most of the Takeovers Panel's recommendations for changes to the Takeovers Code made to the then Minister of Commerce and Consumers Affairs in 2017.

The changes largely fall into three categories:

- standardising timeframes within which actions or events must or must not occur during takeovers and compulsory acquisitions;
- facilitating and prioritising electronic communication with shareholders by offerors and target companies under a takeover, and by Code companies with shareholders for other Code-regulated transactions; and
- improving information disclosure.

The Amendment Regulations also address some technical changes that are intended to support the clarity of the regulatory regime. This includes changing the name of the Takeovers Code Approval Order 2000 to the more appropriate Takeovers Regulations 2000 and combining the Takeovers Code Approval Order 2000 with the Takeovers (Fees) Regulations 2001 so that all relevant information is in a single set of regulations.

Three of the Panel's 2017 Recommendations are not being progressed through these Amendment Regulations as they require an amendment to the Act. This includes the Panel's recommendation to raise the threshold at which non-listed companies are required to comply with the Takeovers Code.

The Amendment Regulations have an indicative commencement date of 1 September 2018 (subject to Cabinet approval).

A copy of the consultation paper is available here.

COMMERCIAL

In the courts

UK Supreme Court upholds effectiveness of 'no oral variation' clauses

In a recent United Kingdom case, *Rock Advertising Ltd v MWB Business Exchange Centres Ltd* [2018] UKSC 24, the Supreme Court held that a no oral modification (**NOM**) clause is legally effective, overturning the Court of Appeal's ruling that a NOM clause did not prevent a valid variation of a contract by oral agreement. The Court pointed out that NOM clauses tend to contractual certainty and are supported by legitimate commercial reasons such as preventing inadvertent amendments or attempts to undermine written agreements by informal means.

At this stage it is unclear whether the Supreme Court's approach will be applied in New Zealand, but it will be of at least persuasive authority in future New Zealand cases.

The Supreme Court's decision is a timely reminder that parties to a contract need to take care in the administration of any variation after its signing. In particular, parties looking to effect any variation should check that the variation and their recording of the same comply with all specific contract terms (both in relation to any NOM clause and other contractual provisions).

For further commentary on this case and its relevance in New Zealand, refer to our earlier update here.

Legislative developments

First consultation round for the insurance contract law review

The Minister of Commerce and Consumer Affairs has released an issues paper on the government's review of New Zealand's insurance contract law. This provides an opportunity for interested parties to share their views and insights about the Ministry of Business, Innovation and Employment's initial analysis of various issues that have been raised with insurance contract law. It also allows for feedback on proposed objectives for the review. Submissions close on 13 July 2018. For details on how to make a submission click here.

Submissions on the issues paper will improve the Ministry's understanding of the issues and inform its advice to Ministers regarding what should be done about them. As such, the issues paper does not propose any solutions or legislative changes. Policy options to address any issues will be the subject of a second consultation document which is expected to be released toward the end of 2018.

The issues paper follows the government's announcement in March this year that it was undertaking a review of New Zealand's insurance contract law, with the accompanying release of a terms of reference which outlined the scope and proposed timeframe for the review.

What issues are being considered?

The issues paper addresses a number of insurance law issues, many of which have been the subject to reform in the United Kingdom and Australia in recent years. This includes:

- disclosure obligations for policyholders and remedies for non-disclosure;
- areas identified by the International Monetary Fund's Financial Sector Assessment Programme in May 2017 relating to gaps in the conduct regulation of insurers and intermediaries;
- a range of technical issues identified by the Law Commission and insurance industry;
- terms defined to be not "unfair contract terms" under the Fair Trading Act 1986;
- third party access to liability insurance monies;
- exclusions that have no causal link to loss; and
- the ability for consumers to find and compare prices and policies.

The legislation specifically included in the review is: the Marine Insurance Act 1908, the Life Insurance Act 1908, the Law Reform Act 1936, the Insurance Law Reform Act 1977, the Insurance Law Reform Act 1985 and the Insurance Intermediaries Act 1994.

What areas are excluded from the review?

The government has specifically excluded the following areas from the scope of the review:

- underinsurance;
- any competition issues related to the structure of the insurance market;
- the prudential regulation of insurers (which is being considered by the Reserve Bank in its review of the Insurance (Prudential Supervision) Act 2010);
- earthquake insurance as governed by the Earthquake Commission Act 1993 and accident compensation insurance as governed by the Accident Compensation Act 2001; and
- the regulation of financial advisers, and the dispute resolution regime in relation to insurance.

Holidays Act to be reviewed

The Government has announced that it will establish a tripartite Working Group to review the Holidays Act 2003 and make recommendations for change within the next 12 months. The key objectives of the review will be to develop options that:

- make the provision of, and payment for, entitlements to holidays and leave simpler and more readily applicable to the range of working arrangements in the labour market;
- provide clarity and certainty to employers and employees so that employees receive their correct entitlements and employers' indirect compliance costs are reduced;
- aim to protect the overall entitlements to employees; and
- are easy to systematise and implement in payroll systems.

The Government has made it clear that the scope of the review must be broad enough to consider any other matters relating to the Act such as parental leave, for example.

You can read more about the terms of reference of the review here. For Bell Gully commentary on the review refer to our earlier client update here.

New Zealand businesses affected by the wider reach of new EU data protection rules

This month the European General Data Protection Regulation (EU) 2016/679 (**GDPR**) came into force.

The GDPR is a new European Union (**EU**) privacy regulation that is touted as the most important change in data privacy regulation in our generation. The core ambitions of the GDPR are to:

- create one coherent data protection framework across the EU; and
- strengthen and protect the privacy rights of EU citizens, even when their data is processed outside the EU.

One of the most significant changes under the GDPR, particularly given the extensive compliance obligations and potential fines, is the expanded territorial scope. A New Zealand business will be subject to the GDPR if it processes personal information relating to individuals in the EU, whether or not they are EU citizens or residents, either as a result of:

- offering goods or services to such individuals, or
- monitoring the online behaviour of such individuals (where that behaviour takes place in the EU).

For many global New Zealand businesses, the GDPR is also triggered as a result of group company requirements or as a result of providing services as a "processor" in respect of data that is subject to the GDPR.

In general, there is no minimum threshold for the size of a business that is subject to the GDPR. However, some exceptions apply to smaller enterprises with fewer than 250 employees.

The mere accessibility of a business' website or email address or other contact details to EU residents alone will not trigger the GDPR. Additional factors are required, that make it apparent that the business intends to offer goods and services to consumers in the EU, such as the use of a language or currency generally used in one or more Member States, with the possibility of ordering goods and services in that other language or currency.

For a summary of the practical implications of the GDPR, by comparison to the requirements that apply under New Zealand's Privacy Act 1993 and the Privacy Bill (currently before Parliament), see our update: GDPR (EU) and Privacy Bill (NZ) - a momentous week for privacy law.

Updated guidance on the AML/CFT regime

The Anti-Money Laundering and Countering Financing of Terrorism (**AML/CFT**) Supervisors have released updated versions of the AML/CFT Risk Assessment Guideline (which is designed to help reporting entities conduct a risk assessment, as required under section 58 of the AML/CFT Act 2009) and the AML/CFT Programme Guideline (which is designed to help reporting entities develop their AML/CFT programme as required under section 56 of the AML/CFT Act).

The updates take into account the 2017 amendments to the AML/CFT Act providing for reporting on suspicious transactions to be extended to suspicious activities. The Suspicious Activity Report requirements come into effect on 1 July 2018 and will replace the current suspicious transaction report requirements.

Technical fix for AML/CFT regulations

The Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Amendment Regulations 2013 Amendment Regulations 2018 amend the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Amendment Regulations 2013 so that the expiry date of the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011 is 30 June 2020 (as provided for in the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Amendment Regulations 2017).

Exposure draft of Partnership Law Bill released for consultation

The Parliamentary Counsel Office and the Ministry of Business, Innovation and Employment are seeking feedback on an exposure draft of a proposed Partnership Law Bill before it is introduced to Parliament.

The Bill's purpose is to re-enact the Partnership Act 1908 to make it more accessible, readable, and easier to understand. It is not intended to make policy changes.

The Bill has been developed as part of a revision programme introduced under the Legislation Act 2012 to systematically revise the presentation of some of New Zealand's statutes and make them more accessible. The Contract and Commercial Law Act 2017 (which re-enacted 12 Acts under one statute) was the first Bill under this revision programme to be drafted and introduced to the House. It came into force on 1 September 2017.

Further details on the proposed Partnership Law Bill are available here. Submissions close on 15 June 2018.

Parliament presses ahead with changes for Friendly Societies and Credit Unions

The Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Bill has been reported back to the House by the Finance and Expenditure Select Committee and has passed its second reading.

Under the current Friendly Societies and Credit Unions Act, credit unions have a very complex supervisory and oversight regime. They are unable to incorporate, and must have internal trustees to hold property and conduct business. They are also not able to lend to businesses that are related to their members.

The Bill (with amendments incorporated from the Select Committee's recommendations) contains the following key changes to the Act:

- Instead of continuing to be unincorporated entities, credit unions and associations of credit unions will become bodies corporate and have full capacity to undertake any business, activity or any act (as authorised by the Act or the credit union's rules).
- The minimum number of credit union members needed for an association of credit unions to be validly constituted has been reduced from seven to two.
- Rather than only being able to make loans to members for a business-related purpose, credit unions will be permitted to make loans to small and medium sized enterprises (with no more than 19 full-time employees)

(**SMEs**) where the SME is related to a member in accordance with specified thresholds. The SME can be a body corporate, a firm under the Partnership Act 1908 or the trustees of a trust. However, limited partnerships registered under the Limited Partnerships Act 2009 have been excluded.

- Associations of credit unions will be able to provide a wide range of services to any non-member entity and not just to non-member entities that are mutuals and cooperatives, if authorised to do so under their rules.
- Friendly societies that are licensed insurers will be permitted to offer securities to their members for subscription. This would allow them to raise additional funds and continue to meet their minimum capital requirements under the Insurance (Prudential Supervision) Act 2010.

A copy of the Finance and Expenditure Committee's report on the Bill is available here.

Consultation on proposed changes to NZBN Primary Business Data

The Ministry of Business, Innovation and Employment (**MBIE**) is consulting on changes to the 'Primary Business Data' (**PBD**) information held about businesses on the New Zealand Business Number (**NZBN**) Register in response to feedback from government agencies and businesses about the usefulness of the information held on the NZBN Register and how it can improve. The proposed changes (which include adding a payment bank account number to facilitate finance and procurement transactions) are expected to make the PBD dataset substantially more useful to NZBN entities, and the businesses and government agencies that use information from the NZBN Register.

For full details refer to MBIE's website here. Submissions close on 20 June 2018.

Consultation on Health and Safety at Work Strategy 2018-2028

WorkSafe NZ and the Ministry of Business, Innovation and Employment are consulting on a draft strategy which aims to improve health and safety at work across New Zealand over the next ten years. Submissions close on 8 June 2018. Further details are available here.

COMPANY LAW

Recent developments

Proposed change to clarify dividend rules in the Companies Act

A Member's bill which aims to clarify that the constitution of a company can provide for shares in the same class to carry different entitlements to dividends in different circumstances has been introduced to Parliament. It is currently awaiting its first reading. See the Companies (Clarification of Dividend Rules in Companies) Amendment Bill.

COMPETITION AND CONSUMER LAW

Regulatory developments

Submissions called for the Commerce Amendment Bill

The Transport and Infrastructure Select Committee has called for submissions on the Commerce Amendment Bill. Submissions close on 15 June 2018.

The Bill will amend the Commerce Act 1986 by:

- empowering the Commerce Commission to undertake market studies (referred to as 'competition studies' in the Bill) on its own initiative, or at the direction of the Minister of Commerce and Consumer Affairs;
- enabling the Commerce Commission to accept enforceable undertakings in relation to enforcement matters under the Commerce Act;
- repealing the little-used cease and desist regime in the Commerce Act; and
- strengthening the regulatory regime for airports under Part 4 of the Commerce Act.

The select committee has until 2 November 2018 to report back to the House on the Bill. In the Government's press release on the Bill, Commerce and Consumer Affairs Minister Kris Faafoi has stated that he would like to see the Bill operational by the end of 2018.

Further details on the Bill are available in Issue No.51 of Corporate Reporter here. For details on how to make a submission click here.

New Zealand Commerce Commission (NZCC)

Media releases

The NZCC has issued the following media releases:

Industry Regulation and Regulatory Control

Independent report on how Fonterra estimates risk in setting milk price
The NZCC has released an independent report into whether Fonterra's approach to estimating risk in calculating the cost of financing milk processing operations is consistent with competitive market outcomes. The report has been written by CEPA, in collaboration with Freshagenda.
Click here for more

NZCC concerned Auckland Airport's profits may be too high
The NZCC is concerned Auckland International Airport's profits may be too high over the period 1 July 2017 to 30 June 2022. The NZCC made the initial finding in its review of Auckland Airport's pricing decisions for the five years from 1 July 2017. Auckland Airport is targeting a return of 7.06%, which is above the NZCC's mid-point benchmark of 6.41%.
Click here for more

Open letter to better understand emerging technologies in monopoly parts of electricity sector
The NZCC has written an open letter outlining its intention to gather information from regulated electricity distributors to better understand how they are planning, investing and accounting for emerging technologies. The information request has not been formally issued but is expected in June 2018, with responses due in July 2018, although official dates have not yet been set.
Click here for more

Additional scrutiny ahead of Transpower's price-quality path application

An independent verifier has been appointed to scrutinise key components of Transpower's proposal for its price-quality path for the five years from 2020 ahead of it being submitted to the NZCC for approval. If the verification pilot is successful, the NZCC expects to consult on whether it should be made mandatory for future Transpower price-quality resets.

Click here for more

Mergers and Acquisitions

Platinum to divest Winc NZ

Platinum Equity LLC has agreed to divest Winc NZ Limited to address the NZCC's competition concerns regarding Platinum's acquisition of OfficeMax Holdings Limited.

Click here for more

Ingenico seeks clearance to acquire Paymark

The NZCC has received a clearance application from Ingenico Group SA to acquire 100% of the shares in Paymark Limited. Ingenico is a global payment services company. Paymark is an operator of a payment switch and is owned by four of New Zealand's five major trading banks: ANZ, BNZ, Westpac, and ASB. A Statement of Preliminary Issues has also been released.

Click here for more

Authorisation application received from Infant Nutrition Council

The NZCC has received an application from the Infant Nutrition Council Limited seeking authorisation for an arrangement allowing the INC to restrict its members from marketing formula products for children aged up to 12 months. The INC is a company representing the major manufacturers and marketers of infant formula. It is owned by its members.

Click here for more

Telecommunications

NZCC releases telco market developments snapshot for 2017

The NZCC has released a snapshot paper about telecommunications market developments in 2017. In previous years the Annual Telecommunications Monitoring Report included a snapshot of market developments. 2017's report was condensed to focus on key trends, allowing it to be released five months earlier than in previous years.

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Study to improve understanding of fibre services ahead of future regulation

The NZCC has launched a study of fibre services, to help it prepare for future regulation of fibre networks. "This study will give us a better understanding of providers' networks, fibre services, network operations and business practices," Telecommunications Commissioner Dr Stephen Gale said.

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Feedback wanted on funding for future fibre regulation

The NZCC is seeking feedback from the telecommunications sector on the funding for its plan to implement new regulation for fibre networks. Parliament is currently considering the Telecommunications Amendment Bill. The proposed legislation would regulate the new fibre networks being rolled out nationally.

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Market Behaviour

NZCC files proceedings against Nelson pharmacy and directors for alleged price fixing

The NZCC has filed civil proceedings in the Nelson High Court against Prices Pharmacy 2011 Limited and its directors for alleged price-fixing. The NZCC has also issued warnings to nine other companies whose pharmacies were represented at the meeting in April 2016.

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Consumer Issues

NZCC lays charges regarding broadband advertising

The NZCC has laid 27 charges under the Fair Trading Act against Vodafone New Zealand Limited alleging false and misleading conduct in relation to its FibreX broadband service.

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First sentence handed down in NZCC's investigation into steel mesh

Timber King Limited and NZ Steel Distributor Limited have been fined $400,950 for making false and misleading representations relating to their steel mesh products which are used to strengthen buildings. Timber King was fined on five charges and NZ Steel Distributor on two charges under the Fair Trading Act.

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Charges filed against Noel Leeming for misrepresenting consumers' rights

The NZCC has laid nine charges against retailer Noel Leeming Group Limited for alleged misrepresentations about consumers' rights under the Consumer Guarantees Act. The charges are under the Fair Trading Act, as it is a breach of that Act to mislead consumers about their rights under the CGA.

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Biggest truck shop fine so far, total fines reach nearly $1.6 million

In the biggest fine so far handed down against a mobile trader, Mobile Shop Limited has been fined $330,000 for breaches of consumer laws. The sentence brings the total fines handed down in 13 NZCC prosecutions of mobile traders to $1.56 million. Mobile Shop is the 13th trader to be sentenced since the 2015 Mobile Trader report.

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New videos and quick guides to help businesses avoid unfair contract terms

The NZCC has launched a new series of videos and quick guides targeted at businesses to help them avoid unfair contract terms in their standard form consumer contracts. The guides cover terms that may be unfair such as unilateral variation and cancellation clauses, subscriptions and automatic renewals, and clauses that specify where responsibility lies if things go wrong.

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Reminder to businesses about 'Made in New Zealand' claims

The NZCC is reminding all businesses that any 'Made in New Zealand' claims they make about their products must be accurate, able to be substantiated and must not mislead consumers about the country of origin. This follows nine complaints received by the NZCC about the accuracy of some t-shirt "Made in NZ" labelling by clothing brand, WORLD.

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$52,500 fine for selling non-protective safety jacket

A protective clothing company has been fined $52,500 for selling a safety jacket that did not have the claimed protection against electrical burns. Argyle Performance Workwear Limited was sentenced on one charge under the Fair Trading Act. It represented a safety jacket as having an arc rating of 70 calories per square centimetre when it had no arc rating at all.

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Australian Competition and Consumer Commission (ACCC)

Selected ACCC media releases

The ACCC has issued the following media releases:

Mergers and Acquisitions

Seven and Nine cleared to acquire Ten's TXA shares

The ACCC has decided not to oppose Seven Network and Nine Network acquiring Network Ten's stake in joint venture TX Australia. TXA provides transmission services in Adelaide, Brisbane, Melbourne, Perth and Sydney. Transmission services are essential for television broadcasters to reach viewers.

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Market Behaviour

Flight Centre ordered to pay $12.5 million in penalties

The Full Federal Court of Australia has ordered Flight Centre to pay penalties totalling $12.5 million for attempting to induce three international airlines to enter into price fixing arrangements between 2005 and 2009. "The ACCC wants to ensure that penalties for breaches of competition laws are not seen as an acceptable cost of doing business", ACCC Chairman Rod Sims said.

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Second shipping company pleads guilty to criminal cartel conduct

Kawasaki Kisen Kaisha, a global shipping company based in Japan, has entered a guilty plea in the Federal Court to criminal cartel conduct. K-Line's plea follows an investigation by the ACCC in relation to cartel conduct concerning the international shipping of cars, trucks, and buses to Australia. The ACCC's investigation into other alleged cartel participants is continuing.

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Record $46 million in penalties for Yazaki cartel

The Full Federal Court has ordered Japanese company Yazaki Corporation to pay increased penalties of $46 million for cartel conduct, following an appeal by the ACCC. This is the highest penalty ever handed down under the Competition and Consumer Act. The trial judge had earlier found that Yazaki had engaged in anti-competitive cartel conduct in the supply of wire harnesses used in the manufacture of the Toyota Camry.

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Consumer Issues

Pental to pay $700,000 in penalties for 'flushable' wipes claims

The Federal Court has ordered Pental Limited and Pental Products Pty Ltd to pay penalties totalling $700,000, for making false and misleading representations about its White King 'flushable' toilet and bathroom cleaning wipes. These White King wipes can't be flushed, and Australian wastewater authorities face significant problems if they are because they can cause blockages in sewerage systems.

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Court orders Ford to pay $10 million penalty for unconscionable conduct

The Federal Court has declared, by consent, that Ford Motor Company of Australia Limited engaged in unconscionable conduct in the way it dealt with complaints about PowerShift transmission cars, and ordered Ford to pay $10 million in penalties. The Court's decision is a reminder that businesses must have systems in place to properly review consumer claims for refunds or replacements.

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