



BELL GULLY

Financial Services Quarterly

SPRING 2010



Welcome to the Spring 2010 issue of *Financial Services Quarterly*, a review of current legal issues in the financial sector.

Each quarter, we summarise recent issues and preview upcoming developments in these areas:

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Need more information?

For more information on any of the cases, articles and features in *Financial Services Quarterly*, please email rachel.gowing@bellgully.com or call on 64 9 916 8825.

Disclaimer: this publication is necessarily brief and general in nature. You should seek professional advice before taking any action in relation to the matters dealt with in this publication.

In the courts

Directors cleared of liability under the Financial Reporting Act

Represented by Bell Gully, the former directors of Feltex Carpets Limited successfully defended charges under the Financial Reporting Act for certain errors that appeared in Feltex's 2005 interim accounts.

Penalty interest post-judgment enforceable if agreed

The High Court at Christchurch determined that, for penalty interest to be payable post-judgment at a rate that is above the statutory rate, the parties must have specifically agreed.

When is an individual a "de facto" director under the Securities Act?

The High Court considered whether it was necessary for a person to be formally appointed as a director of the issuer for the purposes of establishing that person's liability under the Securities Act, or whether the Act also applied to "de facto" directors of the issuer.

Applying the Securities Act's minimum subscription amount safe harbour exemption

In a recent Court of Appeal decision involving an offer of participatory securities, the court had to determine whether the offer came under the minimum subscription amount safe harbour exemption. The particular question for the court was whether the "allotment" of the securities occurred before the purchaser's obligation to pay was due and thereby had excluded the application of the safe harbour exemption on the facts.

Legislation/In Parliament

Regulations and codes of practice for the AML/CFT Act released for consultation

A consultation document containing proposals for regulations required to complete the shape of the new Anti-Money Laundering and Countering the Financing of Terrorism regime has been released. The document also contains proposals for codes of practice related to customer due diligence, which are central to the regime.

Proposed changes to New Zealand's securities laws

Commerce Minister Simon Power has called for submissions on a discussion document proposing replacement of the Securities Act 1978 and the Securities Markets Act 1988, as well as amending other relevant legislation.

Amendments to the Consumer Guarantees Act proposed

The [Consumer Guarantees Bill 2010](#) (a private member's bill) has passed its first reading and has been sent to the Commerce Select Committee. The committee has now called for submissions on the Bill.

Property Law Amendment Act

The Property Law Amendment Act, which came into force on 7 July, amends section 139 (when a mortgagee becomes a mortgagee in possession) of the Property Law Act.

A new Land Transfer Act

In conjunction with Land Information New Zealand, the Law Commission has produced a report titled "A New Land Transfer Act".

Financial Advisers Act – latest developments

Revised Code of Professional Conduct for Authorised Financial Advisers submitted

The Code Committee for Financial Advisers has submitted a [revised draft Code of Professional Conduct for Authorised Financial Advisers](#) to the Commissioner of Financial Advisers.

Guide for Authorised Financial Advisers released

The Securities Commission has released the AFA Adviser Business Statement Guide, to help financial advisers prepare for the new regulatory regime.

Legislation simplifying compliance for financial advisers passed

The Financial Service Providers (Pre-Implementation Adjustments) Act amends the regulatory framework established under the Financial Advisers Act and the Financial Service Providers (Registration and Dispute Resolution) Act.

Further transitional measures now in place for the new financial advisers' regime

A number of transitional orders and regulations were made on 9 August.

Financial Service Providers register now open

The recent opening of the Financial Service Providers register marks the start of the transition to full implementation of the Financial Advisers Act and the Financial Service Providers Act (Registration and Dispute Resolution) Act.

Recent developments

Review of disclosure requirements for registered banks

The Reserve Bank of New Zealand has released a consultation document seeking submissions on its proposals to change the current disclosure regime for registered banks, which was first put in place in 1996.

Issuers could improve corporate governance reporting

The Securities Commission has recommenced its review of issuers' corporate governance disclosures, with a view to promoting high standards of corporate governance by issuers, and ultimately improving confidence in New Zealand's capital markets.

Trans-Tasman Memorandum of Understanding on Business Law

A Revised Memorandum of Understanding was signed by the Australian and New Zealand Governments on 23 June, recognising the Single Economic Market Outcomes Framework endorsed by the Prime Ministers in their Joint Statement of Intent in August last year.

Cabinet Paper on the FMA and KiwiSaver changes released

The Ministry of Economic Development has released a Cabinet Paper relating to decisions made on the establishment of the Financial Markets Authority and changes to the regulation of KiwiSaver.

Companies Office public notification changes

From 30 July 2010, copies of public notices required to be given by the Registrar of Companies relating to company removals, company restorations, and corrections to the register are no longer advertised in major newspapers.

In the courts

Directors cleared of liability under the Financial Reporting Act

*Represented by Bell Gully, the former directors of Feltex Carpets Limited successfully defended charges under section 36A of the Financial Reporting Act 1993 (the **Act**) for certain errors that appeared in Feltex's 2005 interim accounts.*

In this case¹, the directors relied on the defence provided in section 40 of the Act that they took "all reasonable and proper steps" to ensure compliance with the Act. In the first ruling on this section by a New Zealand court, Judge Doogue agreed that the directors had taken all reasonable and proper steps by:

- ensuring that the company had a well resourced financial management team;
- establishing a comprehensive transition process from the old accounting standards to the new ones (GAAP to IFRS);
- engaging a reputable accounting firm to:
 - prepare an IFRS assessment report to identify the differences in reporting resulting from the introduction of IFRS;
 - supervise a steering committee at Feltex to conduct a standard-by-standard review of IFRS; and
 - conduct a review of Feltex's 2005 interim accounts;
- having processes in place to ensure that all relevant documents and information were made available to its accountants;
- obtaining assurances from the chief financial officer that the company's internal financial controls were adequate and effective; and
- having a properly constituted audit committee to oversee the integrity of the financial reporting and control process.

The decision confirms that directors are entitled to rely on the advice of properly qualified professional advisers, provided the directors are properly informed about the company's affairs and have proper systems and processes in place.

Judge Doogue dismissed the prosecution's argument that the directors themselves should have reviewed the lengthy and complex IFRS standards and then applied those to Feltex's interim financial statements. This proposition was found to be "utterly unrealistic", as "company directors will not have anywhere near the same level of knowledge and expertise in accounting standards that a specialist auditor will have, and the best course for a director is to seek and follow the advice of an expert". Further, "reliance on advice, where appropriate conditions are satisfied, does not detract from, but enhances, the quality of directors' duties".

¹ *Ministry of Economic Development v Feeney* DC Auckland CRI-2008-004-29199, 2 August 2010

Penalty interest post-judgment enforceable if agreed

The High Court at Christchurch determined that, for penalty interest to be payable post-judgment at a rate that is above the statutory rate, the parties must have specifically agreed.

In this case¹, when a borrower failed to repay a loan on its due date, the lender sought repayment of principal, costs and interest, including prospective interest from the date of judgment.

The court considered whether it could award interest based on a penalty interest rate that was above the statutory rate, and whether it could do so prospectively from the date of judgment.

Its conclusion was that, because the loan agreement in this case specified application of the penalty interest rate "post-judgment", then it could award interest at the penalty rate prospectively until the date of payment in full.

The judge distinguished this case from cases where the penalty interest rate is applied from the date of breach but not specifically extended post-judgment.

Prudent lenders will need to ensure that their loan documentation specifically includes provision for penalty interest to apply post-judgment. The judge further noted that loan documentation might, for abundant caution (but, in his view, unnecessarily) also expressly exclude the doctrine of merger in the event of judgment being obtained.

¹ *FM Custodians Limited v Patullo* HC Christchurch CIV-2010-409-684, 4 June 2010

When is an individual a "de facto" director under the Securities Act?

*The Securities Act (the **Act**) provides a number of criminal and civil consequences that may be imposed on both an issuer of securities to the public and the issuer's directors, if the issuer and/or its directors have not complied with the relevant requirements of the Act in making the offer.*

In this recent High Court case¹, the court considered whether it was necessary for a person to be formally appointed as a director of the issuer for the purposes of establishing that person's liability under the Act, or whether the Act also applied to "de facto" directors of the issuer.

The definition of "director" in the Act refers to "*any person occupying the position of a director of the company by whatever named called*". The court considered that Parliament had "*clearly intended to allow persons who are not formally, or validly appointed as directors ... to be regarded as directors for the purposes of the Act*". Therefore, the question for the court was whether the person in question, who was not a formally appointed director, had occupied a position as a "director". In the absence of relevant New Zealand authority on this point, the court looked to English authority for guidance and concluded that in order to determine that question "*a holistic approach is required, in which the court is required to analyse all of the relevant evidence in order to determine, as a matter of fact, the role that the putative director played in the governance of the company. Persons who are not formally or validly appointed as directors will only be held liable to investors under the Act if it can be demonstrated that they carried out functions that would ordinarily be within the domain of the directors of the company.*"

On the facts, the court found that although the person in question had played a role in marketing and promoting the particular investment project on behalf of the company, her involvement did not go beyond that. Her husband, as director, had been the only one responsible for the corporate governance of the company. As a result, not being a "de facto director", the person in question was held not to be liable under section 37(6) in respect of subscriptions paid for that particular investment offer.

¹ *HLH Equity Trading Ltd & Ors v White, Leslie & Ors* HC Tauranga CIV-2009-470-000040, 19 May 2010

Applying the Securities Act's minimum subscription amount safe harbour exemption to an offer

*If a security is offered to the public in contravention of the Securities Act 1978 (the **Act**), then the allotment is void, monies are required to be repaid and the directors of the issuer can face criminal liability. However, there are a number of categories of investors to whom offers are exempt from some or all of the requirements of the Act.*

This includes offers to investors who fall under the minimum subscription amount safe harbour exemption, which provides that an offer of securities made to persons who are each required to pay a minimum subscription price of at least \$500,000 for securities before the allotment of those securities, is not an offer of securities to the public.

In this recent Court of Appeal decision¹ involving an offer of participatory securities, the court had to determine whether the offer came under the minimum subscription amount safe harbour exemption. The particular question for the court was whether the "allotment" of the securities occurred before the purchaser's obligation to pay was due and thereby had excluded the application of the safe harbour exemption on the facts.

Braemar was a vehicle for the construction and development of a luxury tourist accommodation complex. It offered units in the complex for sale, subject to a management agreement that gave a right to let the units for tourist accommodation. Under the terms of the sale and purchase agreements, on the settlement date, each purchaser was required to pay a subscription price of at least \$500,000 (less a deposit paid by way of a home bond arrangement) to obtain a unit and a proportionate right to share in the net tariff income of the property development (a "pooled income scheme").

It was accepted that the right to share in the income was a "participatory security" for the purposes of the Act and Braemar, after it had become aware that the offer may have been in breach of the Act, had given an enforceable undertaking to the Securities Commission (in relation to offers it had already made) and obtained an exemption (the Securities (Braemar Lodge 2004 Limited Exemption Notice) 2005) from the Securities Commission (the **Exemption Notice**) for future offers. The Exemption Notice exempted Braemar from complying with the prospectus and investment statement requirements and various other requirements of the Act, provided that Braemar complied with the provisions of the notice. This included a condition requiring Braemar to return the purchasers' deposits to them if a registrable transfer instrument for the units was not provided within a specified time period. Braemar failed to meet that condition and the purchasers sought an order from the High Court that the sale and purchase agreements were void under the terms of the Exemption Notice.

Braemar argued that the purchasers were not entitled to the protections offered by the Exemption Notice because the notice had no effect given that the offer came within the minimum subscription safe harbour exemption (in section 3(2)(a)(iia) of the Act). The purchasers asserted that the safe harbour exemption did not apply to the offer because, under the terms of the sale and purchase agreement, they were not required to pay the full subscription price before the allotment of the securities had taken place. The High Court agreed with the purchasers and declared the sale and purchase agreements void under section 37 of the Act.

On appeal, Braemar argued that it was wrong for the High Court to hold that the allotment of the securities had occurred at the time an obligation to make payments became unconditional. Braemar argued that allotment could not precede settlement, registration of the purchasers as holders of the securities, and their registration as proprietors of the titles for the units.

The Court of Appeal held that, for the purposes of section 3(2)(a)(iia) of the Act, "allotment" occurred upon each sale and purchase agreement becoming unconditional. Section 2 of the Act defines "allot" to include "sell, issue, assign, and convey". The court held that the breadth of that definition makes the approach ordinarily adopted in respect of the allotment of shares "readily applicable" to contractual arrangements. The court dismissed arguments that allotment only occurred on registration of the

¹ *Braemar Lodge 2004 Limited (in rec) v Owers* [2010] NZCA 300

security and that allotment requires a positive step of apportionment or notification. The court saw no reason why the participatory securities could not be both issued and sold under the individual sale and purchase agreements at the point when they became unconditional, and noted that the definition in the Act makes no reference to registration. The agreement itself, coupled with the fact that it was unconditional, was sufficient notification.

The Court of Appeal accordingly determined that the minimum subscription amount safe harbour did not apply to this transaction, and the Exemption Notice could not be relied upon because a condition of the notice was not met within the defined settlement period. As a result, under section 37(4) of the Act, the allotments made were invalid and of no effect.

Legislation/In Parliament

Regulations and codes of practice for the AML/CFT Act released for consultation

A consultation document containing proposals for regulations required to complete the shape of the new Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) regime has been released. The document also contains proposals for codes of practice related to customer due diligence (CDD), which are central to the regime.

The proposals should clarify the extent of responsibilities for reporting entities to enable business planning to commence. The document includes proposals for the following:

- commencement timeframes;
- exemptions to clarify the application of the AML/CFT Act to entities, transactions, products and services, and the extent of obligations that apply;
- applicable thresholds;
- CDD, including the basis for verification, entities to whom simplified due diligence may be applied, and identity requirements for enhanced due diligence;
- the way in which third party relationships will be managed in specific circumstances;
- eligibility for designated business groups, and the process of electing to join such a group;
- factors which must be taken into account in risk assessments;
- annual reporting requirements; and
- prescribed forms.

Submissions have been invited on all aspects of the proposals, and in particular on whether they are technically accurate and adequately address industry concerns. The closing date for submissions is 6 September 2010.

It is anticipated that final decisions on regulations will be made and communicated in late September, with regulations likely to be gazetted in December.

For more information, [click here](#) to visit the Ministry of Justice website.

Proposed changes to New Zealand's securities laws

Commerce Minister Simon Power has called for submissions on a discussion document proposing replacement of the Securities Act 1978 and the Securities Markets Act 1988, as well as amending other relevant legislation.

Releasing the document, Mr Power said "these proposed changes will contribute to strengthening and improving our financial markets, as well as restoring mum and dad investor confidence to invest in those markets".

The proposals reflect many of the recommendations of the Capital Market Development Taskforce, and compliment changes to financial sector regulation.

The discussion document, submissions on which have now closed, sought views on:

- which financial products are to be regulated and how;
- tailoring of disclosure requirements to better suit a retail investor audience;
- improving governance of managed funds; and
- possible additional powers for the Financial Markets Authority.

Amendments to the Consumer Guarantees Act proposed

The [Consumer Guarantees Bill 2010](#) (a private member's bill) has passed its first reading and has been sent to the Commerce Select Committee. The Committee has now called for submissions on the Bill.

The Bill amends the Consumer Guarantees Act 1993 (the **Act**) in the following two areas:

- extended warranties, and
- the supply of goods and services by suppliers through a competitive bidding process using an online trading facility. (Suppliers are defined in the Act as persons who, in trade, supply goods and services to consumers.)

The Bill requires consumers to be informed about whether an offered extended warranty provides any benefit, right, or convenience that is greater than the consumer's rights under the Act. The Bill also introduces a "cooling-off period" once an extended warranty has been purchased, so that consumers can reconsider whether to continue with the extended warranty. If they decide against it, they will be entitled to a full refund of the amount paid for the warranty.

The Bill also seeks to clarify that online sales are covered by the Act.

Submissions close on 9 September. For further details, [click here](#) to go to the New Zealand Parliament website.

Property Law Amendment Act

*The Property Law Amendment Act, which came into force on 7 July, amends section 139 (when a mortgagee becomes a mortgagee in possession) of the Property Law Act 2007 (the **Act**).*

The amendment clarifies exactly when a mortgagee becomes a mortgagee in possession following application to the court for an order to this effect. It also extends the application of sections 156, 162 and 163 of the Act to a mortgagee who becomes a mortgagee in possession under a court order.

- Section 156 requires mortgagees to give written notice to the mortgagor and to the public that it has entered into possession of the land or goods.
- Section 162 requires mortgagees entering into possession of land or goods to, within 2 months of entering into possession, prepare a report about the land or goods.
- Section 163 requires mortgagees to provide six monthly reports about the land or goods.

A new Land Transfer Act

In conjunction with Land Information New Zealand, the Law Commission has produced a report titled "A New Land Transfer Act".

In the report, which has been tabled in Parliament, the Law Commission recommends replacing the Land Transfer Act 1952 and its two amendment Acts.

The report contains a Land Transfer Bill, which modernises the Land Transfer Act and reflects the fact that the system is now predominantly electronic. While the essential elements of the Torrens system of land registration are retained, the Law Commission recommends providing a judicial discretion to reverse the principle of immediate indefeasibility, and providing an obligation for mortgagees to take reasonable steps to verify the identity of mortgagors.

For more information, and to view a copy of the report, [click here](#).

Financial Advisers Act – latest developments

Revised Code of Professional Conduct for Authorised Financial Advisers submitted

*The Code Committee for Financial Advisers has submitted a revised draft Code of Professional Conduct for Authorised Financial Advisers (the **Code**) to the Commissioner of Financial Advisers.*

The amendments have been made in response to the Commissioner's direction made on 17 August to ensure that the Code is consistent with the Financial Advisers Act 2008 (the **Act**). The main amendments made by the Committee are:

- the description of the financial adviser services requiring authorisation, which are set out in the Background to the Code, has been updated to reflect changes to the Act that came into force on 1 July;
- an explanatory note has been added to Code Standard 5; and
- a note has been added to Code Standard 8 clarifying that, where a client has opted out of receiving a suitability assessment, with the result that the adviser ends up providing a class service, the adviser must comply with Code Standard 10.

Code Committee Chairman Ross Butler is encouraging advisers to take advantage of the resources provided by the sector, and by training providers, to ready themselves for the new regime.

He states that, assuming the Code is approved by the Commissioner, and subsequently by the Minister, it is likely that the first advisers will be authorised from 1 December.

Information on the competence requirements for authorisation can be found at www.afacompetence.org.nz, where advisers can also book examination and workplace assessment, upload evidence, and check assessment results.

Guide for Authorised Financial Advisers released

The Securities Commission has released the AFA Adviser Business Statement Guide, to help financial advisers prepare for the new regulatory regime.

*“The Adviser Business Statement Guide (**ABSG**) provides a snapshot of how an adviser operates, by explaining the systems and procedures in place to ensure their business is conducted in a professional manner” says Commissioner for Financial Advisers, David Mayhew.*

The ABSG provides information to help advisers decide whether they need to be authorised, and also outlines the content to be developed in an Adviser Business Statement.

The ABSG is available at www.seccom.govt.nz/afa.

Legislation simplifying compliance for financial advisers passed

The Financial Service Providers (Pre-Implementation Adjustments) Act amends the regulatory framework established under the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

Commerce Minister Simon Power says that *“these changes will greatly simplify compliance while still providing a high level of consumer protection”*. Noting that it is now over to the industry to ensure that advisers and providers are ready to embrace the new regime, Mr Power said that *“we will continue to do everything to ensure people can work with the registration and authorisation framework”*.

For more information, [click here](#) to visit the New Zealand Government’s website.

Further transitional measures now in place for the new financial advisers' regime

The following transitional orders and regulations were made on 9 August:

The Financial Advisers Act Commencement Order 2010

This brings into force, in specified stages, the provisions of the Financial Advisers Act 2008 (the **FAA**) that are not already in force.

The Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010

This brings Part 2 and section 48 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **FSP Act**) into force, in specified stages.

The Financial Service Providers and Financial Advisers Transitional Regulations 2010

These regulations:

- provide that a period of authorisation of a financial adviser or a period of grant of Qualifying Financial Entity (**QFE**) status under the FAA must not commence before 1 December 2010 (on which date the key related provisions under the FAA come into force); and
- ensure that the section requiring persons who provide financial adviser services to be registered under the FSP Act (section 20D) is technically effective in the implementation period,

(together, the **Transitional Regulations**).

The transitional scheme for financial advisers under the Transitional Regulations is summarised in the table below.

From 16 August 2010	<ul style="list-style-type: none"> • The register opens under the FSP Act, and persons may register under that Act, but are not required to do so; • applications for approval as an authorised financial adviser or for QFE status may be made, and decided on, under the FAA. However, no period of authorisation or grant of QFE status can commence before 1 December 2010; • the disciplinary committee can be established under the FAA; and • all interpretative and other provisions of the FAA relevant to this preliminary implementation stage come into force. However, no conduct obligations for financial advisers, brokers, QFEs, or members of QFE groups, come into force at this stage.
On and from 1 December 2010	<ul style="list-style-type: none"> • It becomes mandatory for providers of financial services (other than financial adviser services) to be registered under the FSP Act; • the holding-out protections for the terms of authorised financial advisers and QFEs come into force (because periods of authorisation and periods of grants of QFE status may commence from this time); and • most of the conduct obligations under the FAA for financial advisers, brokers, QFEs, and members of QFE groups, and the related enforcement provisions, come into force.
On and from 1 April 2011	<ul style="list-style-type: none"> • At this time, the FSP Act is fully in force; • it becomes mandatory for financial advisers to be registered under the FSP Act; • any person seeking to rely on a grant of QFE status to avoid the need to register its employees and nominated representatives must have that status granted by this

	date.
On 1 July 2011	<ul style="list-style-type: none"> • All remaining provisions of the FAA come into force. In particular: • the restrictions on who is permitted to provide financial adviser services (sections 17 to 20 of the FAA) and the prohibition on holding out as a financial planner or investment planner (section 20B of the FAA) come into force; and • the disclosure obligations for financial advisers and brokers replace those set out in the Securities Markets Act 1988 for investment advisers and brokers.

Regulations have also been made setting:

- fees and the levy under the FSP Act (See the [Financial Service Providers \(Fees and Levy\) Regulations 2010](#) for details); and
- fees for applications to be authorised financial advisers and QFEs under the [FAA](#), and for the renewal of authorisation and QFE status (See the [Financial Advisers \(Fees\) Regulations 2010](#) for details).

Both regulations came into force on 16 August.

Financial Service Providers register now open

The recent opening of the Financial Service Providers register marks the start of the transition to full implementation of the Financial Advisers Act and the Financial Service Providers Act (Registration and Dispute Resolution) Act.

Commerce Minister Simon Power is urging those who provide financial services to register, noting that "the requirement to register applies to a wide range of financial service providers, and anyone who is in doubt about whether it applies to them should seek legal advice".

The Financial Service Providers Register is available at www.fspr.govt.nz.

Recent developments

Review of disclosure requirements for registered banks

The Reserve Bank of New Zealand (RBNZ) has released a consultation document seeking submissions on its proposals to change the current disclosure regime for registered banks, which was first put in place in 1996.

The stated aim of the review is to reduce compliance costs associated with the current disclosure requirements, while at the same time better matching the needs of the key stakeholders. The outcome is expected to be a significant modification, and reduction, in the Reserve Bank's disclosure requirements.

With a view to this aim, the RBNZ has developed the following "acid test" as an aid to its analysis of the disclosure regime:

"What is the value-added or marginal benefit of an item (mandated by the disclosure Orders In Council) on top of what is already disclosed, in terms of how much it says about risk of a bank's failure to stakeholders who may exert market discipline, relative to the cost to banks of producing it?"

The two preferred options have the following features:

- The removal of duplication or slightly different definitions between the RBNZ disclosure regime and the New Zealand International Financial Reporting Standards;
- a change in the requirement for financial statements included in half-year disclosure from being prepared on the annual financial reporting standards basis, to an interim financial reporting basis; and
- the removal of the Supplemental Disclosure Statements.

The two options proposed are:

Option A

The Key Information Summary will no longer be required. Instead, banks will make disclosures in off quarters that are significantly reduced from the current off quarter short-form disclosure statements, and on a more summarised basis.

Option B

There will be a quarterly Key Information Summary, which will be revised to be more user-friendly for retail depositors. It will include the key corporate information, summarised income statement and balance sheet, key ratios, a set of useful notes and a glossary. This will be the only required disclosure in the off quarters.

Submissions close on 24 September.

Issuers could improve corporate governance reporting

The Securities Commission has recommenced its reviews of issuers' corporate governance disclosures, with a view to promoting high standards of corporate governance by issuers and ultimately improving confidence in New Zealand's capital markets.

The Commission last undertook such a review in 2005. In its latest review, the Commission reviewed the disclosures of 68 issuers (with balance dates ranging from 30 June 2008 to 30 June 2009), by analysing disclosures made in their annual reports and websites against the [Securities Commission's Corporate Governance Principles and Guidelines](#).

The review found that issuers could improve their reporting by disclosing:

- how directors observe and foster high ethical standards; for example, by complying with a code of ethics;
- how remuneration incentives align with the issuer's objectives and risk management policies;
- how risk management policies are applied to material business and environmental risks faced by the issuer (for example, by providing a risk matrix);
- how the board builds constructive relationships with shareholders that encourage them to engage with the entity (for example, under market disclosure and communications policies); and
- who the board considers its key stakeholders are, and how it respects their interests.

A further measure would be for issuers to ensure that any standing corporate governance documents are readily available to interested investors and stakeholders; for example, via the issuer's website.

[Click here](#) to read the Commission's full report.

Trans-Tasman Memorandum of Understanding on Business Law

A Revised Memorandum of Understanding was signed by the Australian and New Zealand Governments on 23 June, recognising the Single Economic Market Outcomes Framework endorsed by the Prime Ministers in their Joint Statement of Intent in August last year.

The revised Memorandum of Understanding (**MOU**) follows the release of [27 short-term and medium-term proposals](#) for the single economic market agenda, released in August last year, and reaffirms both countries' commitment to coordination of trans-Tasman business law (as expressed in the earlier MOU signed in 2006). The MOU was revised in accordance with the commitment to review the MOU every five years.

The mutually agreed outcomes are in the areas of:

- insolvency law;
- financial reporting policy;
- financial services policy;
- competition policy;
- business reporting;
- corporation law;
- personal property securities law;
- intellectual property law; and
- consumer policy.

To view a copy of the Revised Memorandum of Understanding on Business Law, [click here](#) to visit the Ministry of Economic Development's website.

Cabinet Paper on the FMA and KiwiSaver changes released

The Ministry of Economic Development has released a Cabinet Paper relating to decisions made in April on the establishment of the Financial Markets Authority and changes to the regulation of KiwiSaver.

[Click here](#) to access this paper.

Companies Office public notification changes

From 30 July 2010, copies of public notices required to be given by the Registrar of Companies relating to company removals, company restorations and corrections to the register are no longer advertised in major newspapers.

Instead, they will be advertised in the "Public Notices" section of the Companies Office's website at www.business.govt.nz/companies/news-updates/public-notice.

Bell Gully news

[Bell Gully Chairman appointed to Chair New Zealand Business Roundtable](#)

Bell Gully Chairman Roger Partridge has been elected as new chair of the New Zealand Business Roundtable, New Zealand's leading public policy think tank.

[Pro bono programme's first year proves an overwhelming success](#)

Bell Gully's practical support for New Zealanders and international organisations in need has exceeded its target in the first year of its formal pro bono programme – and the contribution continues to grow.

[Dame Margaret Bazley shares her inspirational career](#)

A leader who has played a transformational role in many sectors of New Zealand public life has shared her personal and professional insights at the latest Bell Gully Women Leaders' Series event.

[In-house profession gathers to master its art](#)

More than 250 of the country's in-house lawyers gathered in Rotorua for the profession's annual conference. The keynote speakers were John Allen, Chief Executive of the Ministry of Foreign Affairs and Trade, and Hon Chris Finlayson, Attorney-General and Minister of Arts, Culture and Heritage.

For further details and more news visit the [news section](#) of our website.

Useful Web links

New Zealand Government

- [Consumer Affairs](http://www.consumeraffairs.govt.nz) [www.consumeraffairs.govt.nz]
- [Inland Revenue Department](http://www.ird.govt.nz) [www.ird.govt.nz]
- [Ministry of Economic Development](http://www.med.govt.nz) [www.med.govt.nz]
- [Ministry of Foreign Affairs and Trade](http://www.mfat.govt.nz) [www.mfat.govt.nz]
- [New Zealand Government](http://www.govt.nz) [www.govt.nz]
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- [Parliamentary Counsel Office](http://www.pco.parliament.govt.nz) [www.pco.parliament.govt.nz]

New Zealand financial agencies and organisations

- [Commerce Commission](http://www.comcom.govt.nz) [www.comcom.govt.nz]
- [The Companies Office](http://www.companies.govt.nz) [www.companies.govt.nz]
- [Export Credit Office](http://www.nzeco.govt.nz) [www.nzeco.govt.nz]
- [NZ Law Commission](http://www.lawcom.govt.nz) [www.lawcom.govt.nz]
- [Office of the Banking Ombudsman](http://www.bankombudsman.org.nz) [www.bankombudsman.org.nz]
- [Office of Insurance and Savings Ombudsman](http://www.iombudsman.org.nz) [www.iombudsman.org.nz]
- [Office of the Privacy Commissioner](http://www.privacy.org.nz) [www.privacy.org.nz]
- [Personal Property Securities Register](http://www.ppsr.govt.nz) [www.ppsr.govt.nz]
- [Reserve Bank of New Zealand](http://www.rbnz.govt.nz) [www.rbnz.govt.nz]
- [Securities Commission](http://www.seccom.govt.nz) [www.seccom.govt.nz]
- [Takeovers Panel](http://www.takeovers.govt.nz) [www.takeovers.govt.nz]

New Zealand commercial sites

- [CLANZ](http://www.clanz.org) [www.clanz.org]
- [Financial Services Federation](http://www.fsf.org.nz) [www.fsf.org.nz]
- [Institute of Chartered Accountants](http://www.nzica.co.nz) [www.nzica.co.nz]
- [NZ Bankers' Association](http://www.nzba.org.nz) [www.nzba.org.nz]
- [NZ Business Roundtable](http://www.nzbr.org.nz) [www.nzbr.org.nz]
- [NZ Institute of Economic Research](http://www.nzier.org.nz) [www.nzier.org.nz]
- [NZ Exchange](http://www.nzx.com) [www.nzx.com]

Australian Government sites

- [Banking Ombudsman](http://www.abio.org.au) [www.abio.org.au]
- [National Office for the Information Economy](http://www.noie.gov.au) [www.noie.gov.au]

Australian commercial sites

- [Australian Financial Markets Association](http://www.afma.com.au) [www.afma.com.au]
- [Australian Securities and Investment Commission](http://www.asic.gov.au) [www.asic.gov.au]
- [Australian Stock Exchange](http://www.asx.com.au) [www.asx.com.au]

International sites

- [Bank for International Settlements](http://www.bis.org) [www.bis.org]
- [Global Banking Law Database](http://www.gbld.org) [www.gbld.org]
- [International Monetary Fund](http://www.imf.org) [www.imf.org]
- [International Swaps and Derivatives Association](http://www.isda.org) [www.isda.org]
- [NASDAQ](http://www.nasdaq.com) [www.nasdaq.com]
- [New York Stock Exchange](http://www.nyse.com) [www.nyse.com]
- [United States Securities and Exchange Commission](http://www.sec.gov) [www.sec.gov]
- [World Bank](http://www.worldbank.org) [www.worldbank.org]