The International Capital Markets Review

Eighth Edition

Editor
Jeffrey Golden

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PREFACE

This book serves two purposes – one obvious, but the other possibly less so.

Quite obviously, and one reason for its continuing popularity, *The International Capital Markets Review* addresses the comparative law aspect of our readers' international capital markets (ICM) workload and equips them with a reference source. Globalisation and technological change mean that the transactional practice of a capital markets lawyer, wherever based, no longer enjoys the luxury – if ever it did – of focusing solely at home within the confines of a single jurisdiction. Globalisation means that fewer and fewer opportunities or challenges are truly local, and technology more and more permits a practitioner to tackle international issues.

Moreover, the client certainly may have multi-jurisdictional ambitions or, even if unintended, its activities often may risk multi-jurisdictional impact. In such cases, it would be a brave but possibly foolish counsel who assumed: 'The only law, regulation and jurisdiction that matter are my own!'

Ironically, the second purpose this book aims to serve is to equip its readers to do a better job as practitioners at home. In other words, reading the summaries of foreign lawyers, who can describe relevant foreign laws and practices, is perfectly consistent with and helpful when interpreting and giving advice about one's own law and practice.

As well as giving guidance for navigating a particular local, but, from the standpoint of the reader, foreign scene, the comparative perspectives presented by our authors present an agenda for thought, analysis and response about home jurisdiction laws and regulatory frameworks, thereby also giving lawyers, in-house compliance officers, regulators, law students and law teachers an opportunity to create a checklist of relevant considerations both in light of what is or may currently be required in their own jurisdiction but also as to where things there could, or should, best be headed (based on best practices of another jurisdiction) for the future.

Thus, an unfamiliar and still-changing legal jurisdiction abroad may raise awareness and stimulate discussion, which in turn may assist practitioners to revise concepts, practices and advice in both our domestic and international work. Why is this so important? The simple answer is that it cannot be avoided in today's ICM practice. Just as importantly, an ICM practitioner's clients would not wish us to have a more blinkered perspective.

Not long ago, I had the honour of sharing the platform with a United Kingdom Supreme Court Justice, a distinguished Queen's Counsel and three American academics. Our topic was 'Comparative Law as an Appropriate Topic for Courts'. The others concentrated their remarks, as might have been expected, on the context of matters of constitutional law, and that gave rise to a spirited debate. I attempted to take some of the more theoretical aspects of our discussion and ground them in the specific example of capital markets, and particularly the over-the-counter derivatives market.

Activity in that market, I said, could be characterised as truly global. More to the point, I posited, that, whereas you might get varied answers if you asked a country's citizens whether they considered it appropriate for a court to take account of the experiences of other jurisdictions when considering issues of constitutional law, in my view derivatives market participants would uniformly wish courts to at least be aware of and consider relevant financial market practice beyond their jurisdictional borders and comparative jurisprudence (especially from English and New York courts, which are most often called upon to adjudicate disputes about derivatives), even when traditional approaches to contract construction as between courts in different jurisdictions may have differed.

In such cases, with so much at stake given the volumes of financial market trading on standard terms and given the complexity and technicality of many of the products and the way in which they are traded and valued, there appears to me to be a growing interest in comparative law analysis and an almost insatiable appetite among judges to know at least how experienced courts have answered similar questions.

There is no reason to think that ICM practitioners are any differently situated in this regard, or less in need of or less benefited by a comparative view when facing up to the often technical and complex problems confronting them, than are judges. After all, it is only human nature to wish not to be embarrassed or disadvantaged by what you do not know.

Of course, it must be recognised that there is no substitute for actual and direct exchanges of information between lawyers from different jurisdictions. Ours should be an interdependent professional world. A world of shared issues and challenges, such as those posed by market regulation. A world of instant communication. A world of legal practices less constrained by jurisdictional borders. In that sense and to that end, the directory of experts and their law firms in the appendices to this book may help to identify local counterparts in potentially relevant jurisdictions (three new jurisdictions – China, the Netherlands and Switzerland – having been added this year). And, in that case, I hope that reading the content of this book may facilitate discussions with a relevant author.

In conclusion, let me add that our authors are indeed the heroes of the stories told in the pages that follow. My admiration for our contributing experts, as I wrote in the preface to the last edition, continues. It remains, too, a distinct privilege to serve as their editor, and once again I shall be glad if their collective effort proves helpful to our readers when facing the challenges of their ICM practices amid the growing interdependence of our professional world.

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
November 2018

Chapter 18

NEW ZEALAND

Deemple Budhia and Lucy Becke[1]

I INTRODUCTION

New Zealand's capital markets are primarily regulated under the Financial Markets Conduct Act 2013 (the FMC Act). All offers of financial products must be made under the FMC Act. The Financial Markets Authority (FMA) is the principal regulator in respect of financial products and financial services, and is responsible for enforcing the FMC Act and other financial markets legislation.

i Structure and regulation

New Zealand has a legal system based on English common law. New Zealand's laws include legislation made by Parliament, rules made by local authorities and the common law, which is developed by judges. Legislation made by Parliament overrides the common law. The court system is a hierarchy that includes two appeal courts (the highest of which is the Supreme Court), whose decisions are binding on courts below them in the hierarchy.

Offers of financial products are regulated by the FMC Act and regulations made under the FMC Act (the Regulations). The FMC Act and the Regulations:

a impose fair-dealing obligations on conduct in both the retail and wholesale financial markets;
b set out the disclosure requirements for offers of financial products;
c set out a regime of exclusions and wholesale investor categories in connection with the disclosure requirements;
d set out the governance rules that apply to financial products; and
e impose a licensing regime.

A summary of the FMC Act provisions applicable to offers of financial products in New Zealand is provided in this chapter.

The FMC Act

Financial products

Under the FMC Act, an offer of financial products for issue requires disclosure to investors unless an exclusion applies to all persons to whom the offer is made. Certain specified offers of financial products for sale will also require disclosure to investors.

1 Deemple Budhia is a partner and Lucy Becke is a senior associate at Russell McVeagh. The authors would like to thank and gratefully acknowledge the assistance of Hamish Journeaux.

There are four categories of financial products: debt securities, equity securities, managed investment products and derivatives, each of which is separately defined. A managed investment product refers to an interest in a managed investment scheme, which is broadly defined to include any scheme:

a the purpose or effect of which is to enable participating investors to contribute money to the scheme to acquire an interest in the scheme;
b where the interests are rights to participate in or receive financial benefits produced principally by the efforts of others; and
c where participating investors do not have day-to-day control over the operation of the scheme.

The definition of derivatives is wide and explicitly includes transactions that are commonly referred to in New Zealand or overseas financial markets as futures contracts, forwards, options (other than options to acquire by way of issue equity securities, debt securities or management investment products), swap agreements, contracts for difference, margin contracts, rolling spot contracts, caps, collars, floors and spreads.

The FMA has the power to declare that a security that would not otherwise be a financial product is a financial product of a particular kind.

Regulated offers

An offer of financial products that requires disclosure is a 'regulated offer'. An offer that is not a regulated offer will still be subject to the general fair-dealing provisions in the FMC Act.

The disclosure required in relation to each financial product is set out in the Regulations and is tailored according to the characteristics of the particular product being offered.

Other legislation and legislative bodies

Other key statues regulating New Zealand's financial sector include the Financial Reporting Act 2013, the Companies Act 1993, the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSPA), the Financial Markets Authority Act 2011, the Financial Advisers Act 2008 (FAA), the Reserve Bank of New Zealand Act 1989 (the RBNZ Act), the Insurance (Prudential Supervision) Act 2010 (the IPS Act), the Non-bank Deposit Takers Act 2013 (the NBDT Act), the Financial Markets Supervisors Act 2011 and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AMLA).

The principal regulatory bodies for New Zealand's financial sector are:

a the FMA, whose principal objective is to promote and facilitate the development of fair, efficient and transparent financial markets. The FMA's functions include monitoring compliance with and investigating conduct that constitutes or may constitute breaches of financial markets legislation, and licensing and supervising authorised financial advisers, qualifying financial entities, licensed independent trustees and licensed supervisors; and
b the Reserve Bank of New Zealand, which is responsible for the prudential regulation of banks, non-bank deposit-takers and insurance providers.

Under the FMC Act, a person making a regulated offer of debt securities is required to appoint a licensed supervisor and enter into a trust deed with that supervisor, and issuers of regulated managed investment products under the FMC Act are required to register the management investment scheme, appoint a licensed supervisor and licensed manager and enter into a governing document. The licensing regime in respect of supervisors is set out in the Financial Markets Supervisors Act 2011, which includes compliance and reporting obligations for licensed supervisors and permits the FMA to remove a supervisor in certain circumstances.

ii Authorisation and licensing

There are no direct government controls on the issuing of financial products in New Zealand, either by domestic or foreign companies. However, market participants may need to obtain registrations or authorisations when participating in New Zealand's capital markets, depending on the type of activity an entity is proposing to conduct in New Zealand.

Overseas company registration

The Companies Act requires any company incorporated outside New Zealand that is 'carrying on business' in New Zealand to register as an overseas company. Whether a particular activity or activities constitute 'carrying on business' will be a question of fact and degree. Registration as an overseas company is a relatively simple process although there are continuing compliance obligations for overseas companies, including the requirement to lodge annual returns with the Registrar of Companies and (for entities of a certain size) to prepare and file financial statements.

Financial service provider registration

Subject to certain limited exceptions, the FSPA requires any person who carries on the business of providing a financial service and is ordinarily resident in New Zealand, has a place of business in New Zealand or is required to be a licensed provider under a licensing enactment (which includes registered banks, authorised financial advisers, certain licensed supervisors and others) to be registered for that service on the publicly available Financial Service Providers Register (the FSP Register). Financial service providers that provide financial services to retail clients must also join an approved dispute resolution scheme, subject to certain limited exceptions.

The definition of financial services is broad and includes, *inter alia*:

a a financial adviser, broker, licensed non-bank deposit-taker or registered bank;
b any person participating in a regulated offer as the issuer or offeror of the financial products;
c any person acting in the capacity of an issuer, supervisor or investment manager in respect of a regulated product;
d any person acting as a custodian or offering a licensed market service;
e an operator of a financial products market; and
f any person that trades financial products or foreign exchange on behalf of another person.

Most participants in the financial services industry in New Zealand will be required to register under the FSPA. Registration is a simple process and registered entities are required to pay annual fees depending on the nature of the financial services being provided.

Amendments to the FSPA to address misuse of the FSP Register by offshore entities are being considered by Parliament under the omnibus Financial Services Legislation Amendment Bill (the FAA Bill). The FAA Bill was introduced to Parliament in August 2017, and reported back from the relevant select committee in July 2018. The proposed changes will require businesses to have a stronger connection to New Zealand to register on the FSP Register.

Financial advisers

A person who provides financial adviser services (or broking services) in the ordinary course of his or her business to clients in New Zealand is required to comply with certain disclosure, conduct and registration requirements under the FAA. The requirements apply regardless of where the person providing the financial adviser service is resident, is incorporated or carries on business.

A person is deemed to provide a financial adviser service if he or she gives financial advice, provides an investment planning service or provides a discretionary investment management service. Financial advice is given when a person makes a recommendation or gives an opinion in relation to acquiring or disposing of a financial product (which would include equity securities and debt securities).

Financial adviser services exclude, *inter alia*:

a any form of communication made by or on behalf of an issuer of financial products that is not a regulated offer because of a relevant exclusion (which includes offers to wholesale investors);

b providing or making available a product disclosure statement, other limited disclosure document or information from a register entry or advertisement under the FMC Act; and

c financial adviser services covered by a market services licence for discretionary investment management services.

The FAA imposes different requirements depending on the types of products being advised on, the intended audience (whether wholesale or retail) and the type of advice (personalised or generic class advice). For example, the requirements for a financial adviser providing personalised financial advice to a retail client will be more onerous than the requirements for a provider of class advice to wholesale clients.

If the FAA Bill were enacted in its current form, it would, *inter alia*, repeal the FAA and create a new regulatory regime for the provision of financial advice by amending the FMC Act. The proposed new regime is described in more detail in Section III.

Bank or insurance company registration

Registration as a New Zealand registered bank is not required to provide banking or financial services, or to offer or sell financial products in New Zealand. However, pursuant to the RBNZ Act, no person can 'carry on any activity' (directly or indirectly) in New Zealand using a name or title that includes a 'restricted word', which are 'bank', 'banker' and 'banking' or any derivatives thereof (including any translation of those words into another language). The IPS Act contains a similar prohibition in relation to the use of 'insurance', 'assurance', 'underwriter' and 'reinsurance' (and terms with the same or a similar meaning). The prohibitions do not apply under the RBNZ Act if the entity is a registered bank, or under the IPS Act if the entity carries on insurance business in New Zealand (which would require the entity to hold an insurance business licence). If a potential issuer wishes to use a restricted word in its name but not register as a bank or obtain an insurance business licence, an application can be made to the Reserve Bank for an authorisation or exemption. The Reserve Bank undertook a public consultation on its approval of authorisations and exemptions under the RBNZ Act in April 2018 but has not yet made any final decisions based on that consultation.

Non-bank deposit-takers

A non-bank deposit-taker (NBDT) is a person who makes a regulated offer of debt securities in New Zealand and carries on the business of borrowing and lending money, or providing financial services, or both. The definition is broad and captures entities beyond the traditional finance companies at which the regime was originally targeted. The NBDT Act requires NBDTs to be licensed by the Reserve Bank. NBDTs are subject to prudential supervision by the Reserve Bank with the relevant supervisor (trustee) tasked with monitoring an NBDT's compliance with the relevant prudential requirements.

iii Offers of financial products

New Zealand has a disclosure-based approach to the offer of financial products to the public. An offer of financial products for issue will require full disclosure to investors under Part 3 of the FMC Act, unless an exclusion applies (and limited disclosure is required for offers made in reliance on some FMC Act exclusions).

In addition, certain offers of financial products for sale (secondary sales) also require disclosure. For example, if financial products are issued (but not, *inter alia*, under a regulated offer) with a view to the original holder selling the products and the offer for sale is made within 12 months of the original issue date, that secondary offer will require disclosure.

The FMC Act applies to any offer of financial products in New Zealand regardless of where the resulting issue or transfer occurs or where the issuer is resident, incorporated or carries on business.

For a regulated offer of financial products, a product disclosure statement (PDS) must be prepared, and certain information relating to the offer must be contained in a publicly available register entry for the offer. The PDS must be lodged with the Registrar of Financial Service Providers and the register entry must contain all material information not contained in the PDS. 'Material information' means information that a reasonable person would expect to, or that would be likely to, influence persons who commonly invest in financial products in deciding whether to acquire the financial products on offer and is specific to the particular issuer or the particular financial product. Investors to whom disclosure is required must (subject to certain exceptions) be given the PDS before an application to acquire the relevant financial products under a regulated offer is accepted.

The Regulations set out detailed requirements for the timing, form and content of initial and continuing disclosure for financial products, including limited disclosure for products offered under certain FMC Act exclusions. The content requirements for a PDS are prescriptive, and include prescribed statements and page or word limits. The Regulations impose different disclosure requirements for different types of financial products.

Under the FMC Act, there is an exclusion for offers to 'wholesale investors', which includes:

- *a* 'investment businesses';
- *b* people who meet specified 'investment activity' criteria;
- *c* 'large' entities (those with net assets of at least NZ$5 million or consolidated turnover over NZ$5 million in each of the two most recently completed financial years);
- *d* 'government agencies';
- *e* 'eligible investors';
- *f* persons paying a minimum of NZ$750,000 for the financial products on offer;
- *g* persons acquiring derivatives with a minimum notional value of NZ$5 million; and
- *h* *bona fide* underwriters or sub-underwriters.

Even where an exclusion applies, certain disclosure requirements may still apply.

The FMC Act also contains an exclusion for quoted financial products (QFP). This exclusion allows issuers to offer equity securities, debt securities and managed investment products of the same class as financial products that are quoted on an appropriate licensed market without a PDS. The QFP exclusion can also be used for offers of options to acquire financial products where the underlying financial products are of the same class as QFPs. The issuer must issue a 'cleansing notice' to the market (which includes a confirmation that the issuer is complying with its continuous disclosure and financial reporting obligations), as well as a document setting out the terms and conditions applicable to the financial product (commonly a short term sheet). The QFP exclusion is popular among issuers and has quickly become the norm in the debt and equity markets.

Liability

If a PDS, any application form that accompanies that PDS or the register entry relating to a financial product omits information required by the FMC Act or the Regulations, or contains a statement that is false or misleading or is likely to mislead, and that matter is materially adverse from the point of view of an investor, there is potential civil liability under the FMC Act. If a person acquires a financial product that declines in value after defective disclosure is made, that person is treated as having suffered loss or damage because of that defective disclosure unless it is proved that the decline in value was caused by a matter other than the relevant statement. This reverses the usual onus of proof, and means that investors do not need to show the link between the defective disclosure and the loss they have suffered to obtain an order for compensation.

Every director of the offeror at the time of the contravention will be treated as also having contravened that provision of the FMC Act, and can be ordered to pay a pecuniary penalty or compensation. A number of defences are available to that director, including if he or she can prove that he or she took all reasonable and proper steps to ensure that the entity complied with the relevant provision.

Criminal liability can also attach if the offeror knows that, or is reckless as to whether, the statement is false or misleading or is likely to mislead. In such circumstances, a director of an offeror may also commit an offence if the director knows or is reckless as to whether the statement is false or misleading or likely to mislead.

iv Some other features of New Zealand's capital markets

Regulation of derivatives

Offers of derivatives are regulated by the FMC Act and issuers are required to prepare and lodge a PDS in respect of a regulated offer of derivative products.

A 'derivatives issuer' (meaning a person in the business of entering into derivatives) who makes regulated offers of derivatives are required to hold a market services licence (unless an exemption applies). In addition to the exclusions discussed above, there are exclusions under the FMC Act that apply specifically to offers of derivatives, including:

a offers of derivatives made by a person who is not a 'derivatives issuer';
b offers of quoted derivatives on a licensed market;
c offers of derivatives approved for trading on a prescribed overseas market; and
d offers of currency forwards by registered banks (or their subsidiaries) where settlement is, broadly, within 12 months of issue.

If a derivatives issuer makes a regulated offer of derivatives, it will also be required to ensure that a client agreement is in place with the counterparty prior to the issue of the derivative and provide confirmations to the counterparty.

Exchanges and markets

The FMC Act

A person who wishes to operate a financial product market in New Zealand will be required to obtain a licence to operate that market from the FMA or the responsible minister under the FMC Act. NZX Limited (NZX) is currently a licensed market operator in New Zealand and is licensed to operate, *inter alia*, the NZX Main Board (NZSX, the NZX's original equities market), the NZX Debt Market (NZDX), the NZX Alternative Market (NZAX, for small to medium-sized businesses) and the NXT Market. NZX is in the process of reviewing its equity market structure and it is proposed that NZX consolidates all its equity markets (the NZSX, NZAX and NXT) onto a single board.

NZX

Listed issuers whose securities are quoted on one of NZX's licensed markets will be subject to the Listing Rules applicable to that market and the FMC Act. The Listing Rules set out a number of obligations for issuers, including obligations to prepare and deliver annual and half-yearly reports to NZX that contain certain prescribed information, and to make a preliminary announcement to the market before the release of each annual and half-yearly report. Listed entities must also describe their corporate governance practices in detail in their annual reports.

In addition, listed entities must comply with the continuous disclosure requirements of the Listing Rules, and disclose price-sensitive information to the market (by means of an announcement to NZX) immediately once they become aware of the information. There are limited exceptions to this disclosure obligation.

In certain circumstances, listed entities must also release material information to the market to prevent the development or subsistence of a market for its securities based on false or misleading information.

NZX is currently reviewing the Listing Rules. Proposed changes have been published and the new Listing Rules are expected to come into effect in January 2019. The new Listing Rules contemplate the ability to list wholesale debt securities, which is not currently the case.

Clearing

There are two principal settlement and clearing systems operating in the New Zealand financial markets: the NZClear system operated by the Reserve Bank (formerly known as Austraclear) and the clearing and settlement system operated by New Zealand Clearing and Depository Corporation Limited (a wholly owned subsidiary of NZX) (NZCDC). NZCDC clears and settles all trades conducted on NZX's markets.

NZClear and the NZCDC have each been declared to be a designated settlement system for the purposes of the RBNZ Act. As a result, those systems are subject to statutory protections in relation to, *inter alia*, the enforceability of the rules, the finality of settlements and the validity of netting in respect of those systems.

New Zealand is not a member of the G20 and has not introduced legislation to require standardised over-the-counter (OTC) derivatives contracts to be cleared through central counterparties. However, in 2018, the government approved the introduction of legislative amendments that should enable a New Zealand counterparty to a non-centrally cleared OTC derivative contract to comply with G20 margin requirements. The government is expected to introduce a Bill containing these amendments in late 2018.

Corporate governance

Directors' duties in New Zealand are prescribed by legislation, in particular the Companies Act and the common law. As fiduciaries, directors owe a duty:

a to act honestly;
b to exercise care and diligence;
c to act in good faith in the best interests of the company and for a proper purpose;
d not to improperly use their position or company information; and
e to disclose their material personal interests and avoid conflicts of interest.

Directors have duties regarding financial and other reporting and disclosure, solvency matters and reckless trading.

The Companies Act permits directors to rely on information or advice supplied by employees, professional advisers or experts, and other directors or directors' committees provided that the director acts in good faith, makes proper enquiries where warranted by the circumstances, has no knowledge that such reliance is unwarranted and has reasonable grounds to believe that his or her reliance on another person was warranted. Breaches of certain directors' duties under the Companies Act attract criminal liability.

At least one director of a company incorporated in New Zealand must live in New Zealand, or in an 'enforcement country' where that director is also a director of a company registered (not as an overseas company) in that enforcement country. Similar requirements apply to limited partnerships under the Limited Partnerships Act 2008. At present, Australia is the only country prescribed as an 'enforcement country'.

Anti-money laundering

New Zealand's anti-money laundering regime is set out in the AMLA.

The AMLA applies to 'reporting entities', which include, *inter alia*:

a a 'financial institution' (a wide definition that includes a person who participates in securities issues and provides financial services related to those issues in the ordinary course of business); and
b any other person or class of persons deemed to be a reporting entity under the regulations or any other enactment.

The AMLA includes customer due diligence, reporting and record-keeping requirements, and in addition requires reporting entities to develop and maintain a risk assessment and a risk-based anti-money laundering and countering financing of terrorism programme. The AMLA provides for external supervision of entities subject to the Act to monitor the level of risk of money laundering and the financing of terrorism involved in an entity's activities, and to ensure programmes are appropriately tailored to address those risks.

II THE YEAR IN REVIEW

i Continued green bond issuance

In the first 'retail' (regulated) offer of green bonds in New Zealand, in June 2018, Auckland Council (New Zealand's largest local authority) raised NZ$200 million from a regulated offer of green bonds. The proceeds of this issue are intended to be allocated to the financing of assets or projects that deliver positive environmental outcomes, or refinance corporate debt that supports such assets or projects.

ii Clarification of the insider trading rules

The FMC Act prohibits insider trading in relation to listed financial products. The Regulations previously clarified that the insider trading prohibition did not apply to trading where an issuer is issuing a listed debt security, equity security or managed investment product. However, issues under the QFP exclusion did not benefit from this insider trading carve-out.

The Regulations were amended with effect from June 2018 to extend the benefit of the insider trading carve-out to issues under the QFP exclusion.

iii First judgments under AMLA

The High Court has recently issued judgments in proceedings brought by the Department of Internal Affairs (one of the external supervisors under the AMLA) against reporting entities under the AMLA. The defendants in both cases provided currency change and money remittance services to their customers. In each case, the Department of Internal Affairs sought the imposition of civil pecuniary penalties on the defendants for breaches of the AMLA.

The first case, against Ping An Finance (Group) New Zealand Company Limited (Ping An), involved breaches of the AMLA at the severe end of the spectrum. Justice Toogood found that Ping An had failed to carry out the required checks as part of customer due diligence, or to adequately monitor accounts and transactions. The Court also found that Ping An had entered into or continued business relationships with persons who did not provide satisfactory evidence of their identity, and had failed to keep adequate records or report suspicious transactions. The Court ordered Ping An to pay a total of NZ$5.29 million in pecuniary penalties, and granted injunctions restraining both Ping An and its sole director and shareholder from carrying out any financial activities as a reporting entity under the AMLA. Ping An is a clear case of the Court imposing a significant pecuniary penalty to deter and denounce non-compliance under the AMLA.

The second case, against Qian Duoduo Limited, involved less severe breaches. The Department of Internal Affairs sought the imposition of a civil pecuniary penalty in relation to Qian Duoduo's failures to accurately identify the types of risks involved in its money remittance operations, to undertake enhanced customer due diligence on large or complex transactions or wire transfers, to undertake ongoing customer due diligence and account monitoring, and to keep adequate records of the bulk of transactions. Following negotiations between the parties, Qian Duoduo admitted liability and the Court decision related to the question of an appropriate penalty only. The civil pecuniary penalty imposed on Qian Duoduo by the Court was NZ$356,000.

III OUTLOOK AND CONCLUSIONS

As noted earlier, following a review of New Zealand's financial adviser and financial service provider regulation (currently under the FAA and the FSPA), the FAA Bill was introduced to Parliament in August 2017 and has been reported back from the select committee that had been considering it in July 2018. The FAA Bill completed its second reading in September 2018. If it were enacted in its current form, it would create a new framework for giving financial advice by amending the FMC Act and the FSPA, and repealing the FAA.

The key elements of the financial advice regime as set out in the FAA Bill are that:

a all providers of financial advice to retail clients must be covered by a licence. Licences are granted at the entity level to 'financial advice providers' (being persons who carry on the business of giving financial advice);

b there are three new types of financial adviser – financial advice providers, financial advisers and nominated representatives (who give advice on behalf of financial advice providers);

c robo-advice can be provided. In addition, the FMA has exercised its exemption powers under the current FAA to permit robo-advice to be offered by specified providers prior to the enactment of the FAA Bill. In August 2018, the FMA gave approval to the first provider to be able to take advantage of this exemption;

d the distinctions under the FAA between class and personalised advice and categories of financial products will be removed;

e a Code of Conduct containing uniform requirements will apply to all persons who give financial advice to retail clients. The Code of Conduct will set standards of competence, knowledge and skill, ethical behaviour and client care; and

f additional duties will be imposed on all financial advisers, including the requirement for anyone giving financial advice to give priority to the client's interest and disclose certain information to clients (the required information is likely to vary for wholesale and retail clients).

It is expected that the new financial advice regime, including the Code of Conduct, will come into effect sometime in 2019, approximately 12 months after the FAA Bill is passed. When the new regime comes into effect, all financial advice providers must hold a transitional licence. Existing industry participants will have approximately six months to apply for a transitional licence. Industry participants will have two years from when the regime comes into effect to be fully licensed and to comply with the new competency requirements.

The government is also undertaking a review of the RBNZ Act to ensure the Reserve Bank's monetary and financial policy frameworks still provide the most efficient and effective model for New Zealand. In particular, the focus is to ensure the RBNZ Act is fit for purpose and aligned with what the government considers will provide a strong, flexible and enduring regulatory framework that enjoys broad public and industry support. Public consultation is expected to occur from November 2018.

Appendix 1

ABOUT THE AUTHORS

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