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MORTLOCK MCCORMACK LAW CLIENT NEWSLETTER ISSUE 20 MARCH 2018

EDITORIAL

We hope that you and your family had a lovely summer break. 2018 has kicked off with a hiss and a roar for our clients and staff with January and February proving to be extremely busy months. The effects of the Canterbury earthquakes are still being felt, with many people still settling their insurance and EQC claims, and there is also a significant amount of "business as usual" work. One major issue all law firms are facing is the new AML/CFT regime; more on this in our feature article this month.

In December 2017 MML supported the City Mission in their "Walk of Stars" Campaign to provide extra support to the Mission at a time of year that is difficult for many people. Over February and the beginning of March 2018 we have turned our attention to raising funds and support for Air Rescue - you can read more about that on page 4.

Read, enjoy and as always, we are happy to receive any feedback and/or suggestions on our Newsletter.

Sarah Manning
Partner

INSIDE THIS ISSUE

Andrew Logan and Michael O'Flaherty

AML / CFT and the Client Due Diligence Process

As of 1 July 2018 we will be making changes to the way we collect client information to ensure compliance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. Under the Act all law firms and other professionals must assess the risk they may face from the actions of money launderers and people who finance terrorism. If there are any suspicious transactions these must be reported by us to the Department of Internal Affairs.

Lawyers have been identified as attractive to money laundering and terrorism financing and as a result lawyers must obtain and verify information from prospective and existing clients about a range of things. This is called "customer due diligence".

Customer due diligence requires all law firms to undertake certain background checks before providing services to clients or customers. Lawyers must take reasonable steps to make sure the information they receive from clients is correct, and so they need to ask for documents that show this.

Mortlock McCormack Law will need to obtain and verify certain information from you to meet these legal requirements. This information includes:

- your full name; and
- your date of birth; and
- photographic identification; and
- your address.

To confirm these details, documents such as your driver's licence or your birth certificate, and documents that show your address may be required. If you are seeing us about company or trust business, we will need information about the company or trust including the people associated with it (such as directors and shareholders, trustees and beneficiaries).

We will also need to ask you for further information. We will need to ask you about the nature and purpose of the proposed work you are asking us to do for you. Information confirming the source of funds for a transaction may also be necessary to meet the AML legal requirements.

If we are not able to obtain the required information from you, we may not be able to act for you. Because the law applies to everyone, we need to ask for the information even if you have been a client of ours for a long time.

Before we start working for you, we will let you know what information we need.

Please contact the lawyer who will be undertaking your work, if you have any queries or concerns.

Senior Solicitor
Michael O'Flaherty
DDI 03 343 8587
michael@mmlaw.co.nz

Partner
Andrew Logan
DDI 03 343 8452
andrew@mmlaw.co.nz

Kent Yeoman

Commercial Law Reform – Update your Terms and Conditions

The past four years have seen the most significant reform to New Zealand's consumer laws in over 20 years. There have been changes made to the Contract and Commercial Law Reform Act 2017 (CCLA), the Fair Trading Act (FTA) and the Consumer Guarantees Act (CGA). It is a perfect time to review and update your business terms and conditions and other standard form contracts you may have.

Contract and Commercial Law Act 2017

The CCLA makes a lot of functional changes, and replaces a number of key statutes including the Sale of Goods Act 1908, the Contractual Remedies Act 1979 and the Contracts (Privity) Act 1982.

These Acts are amalgamated together into one piece of legislation. It is important to ensure your contracts are up to date. Any reference to the old legislation, while still good law in practice, would be inaccurate and potentially open up your business contracts to challenge.

Fair Trading Amendment Act 2013

The most substantive changes to the FTA are around unfair contract terms in standard form consumer contracts (SFCC). An SFCC is a contract that has not been subject to negotiation between a consumer and a commercial entity. A term will be 'unfair' if:

1. The term would cause a significant imbalance in the parties' rights and obligations.
2. The term is not reasonably necessary to protect the legitimate interests of the party advantaged by it.
3. The term would cause a detriment to a party if it were applied.

All of these requirements have to be met. For example, a term may cause a significant imbalance, but it would not be 'unfair' if it is reasonably necessary to protect the legitimate interests of the party. There are further tests and requirements set out within the Amendment Act, which we can guide you through. If a term is found to be unfair it cannot be enforced, relied upon or included in a SFCC. The potential penalties for an unfair contract are severe. The maximum penalty for individuals has been increased to $200,000 and $600,000 for a body corporate.

Unfair terms are often found in standard form contracts, as they are not exposed to the scrutiny of a negotiation process. They are often ignored and unchecked. Now is the perfect time to have them reviewed to ensure they are enforceable and that you are not exposing yourself to liability.

Consumer Guarantees Amendment Act 2013

The changes made to the CGA are less onerous. The main change relates to the contracting out provisions for parties in trade, which is commonly used to agree that the provisions of the CGA do not apply. There is now an additional requirement that in order for a contracting out clause to apply it has to be "fair and reasonable" that the parties are bound by it.

In determining whether the contracting out is "fair and reasonable" the subject matter of the agreement, the value of goods or services supplied, the respective bargaining power of the parties and whether they had legal representation will all be taken into account.

Partner Kent Yeoman – DDI 03 343 8453, kent@mmlaw.co.nz can advise you on matters in the business/commercial sphere.

MML PEOPLE

WELCOMES

Law Clerk, Josh Hitchcock has accepted a graduate position with Mortlock McCormack Law. Josh will be working under the supervision of Partner Hamish Douch.

CONGRATULATIONS

Office Manager, Sarah Wenborn and husband Matthew who are expecting their first child in July 2018.

Legal Executives Nicky Furness and Stacey Taylor competed in Marching at the Masters Games in Dunedin on 4 February 2018 for the first time.

They received the Gold Medal in Masters Display, Silver Medal in Leisure Team and Bronze Medal in Masters Technical.

FAREWELLS

Solicitor, Natasha McClure who will move to Japan with partner Blair in May 2018 as Blair takes part in the Japanese National Rugby Competition with top league team, the Canon Eagles.

Sarah Manning

Overseas Investment Act Changes

Since the election of the new Labour led Government there has been increasing scrutiny on the current Overseas Investment regime. Labour campaigned heavily on tightening restrictions around foreign property ownership and it has not taken them long to act on it.

The changes will be made in two ways. Firstly, through a Ministerial Directive letter and secondly, by an Amendment to the Overseas Investment Act (OIA).

Ministerial Directive Letter

The main change made by the Directive relates to the factors that are to be considered important by the Overseas Investment Office (OIO) when dealing with an application for the sale of rural land over five hectares.

Various factors will need to be considered before the sale can be approved. These factors include jobs; the introduction of new technology or business skills; increased export receipts; increased processing of primary products and participation by New Zealanders.

This would appear unlikely to have an effect on the sale of, say, farming enterprises as these factors would usually be met. However, the purchase of smaller farms or large lifestyle blocks will likely be caught by the new threshold. Unlike larger farming operations, these are more likely to struggle meeting the aforementioned factors.

Overseas Investment Act Amendment

The Government has also introduced a Bill that amends the Overseas Investment Act. This is intended to pass into law over the next few months. The explanatory note states that the Bill will ensure that "persons who are not resident in New Zealand will generally not be able to buy existing houses or other pieces of residential land." It does this by altering the definition of sensitive land and introducing a residency test, along with increasing the penalties for a breach.

Sensitive Land

As per the amendment, the definition of sensitive land would now include all properties classified as "residential" or "lifestyle" for rating valuation purposes.

The practical effect of this is that any purchase by an overseas buyer of an existing residential property would need OIO approval.

That approval is also harder to obtain. The Amendment changes the factors that are to be considered by the OIO and only permits purchases by overseas buyers in certain situations:

- They will be developing the land and adding to New Zealand's housing supply or;
- They will convert the land to another use and are able to demonstrate this would have wider benefits to the country or;
- They hold an appropriate visa and can show they are committed to residing in New Zealand.

This effectively bans foreign speculators from buying and on selling residential property for profit. The only overseas persons who would be able to buy residential properties are those who are planning to develop the property or are planning on residing in New Zealand permanently.

Residency Test

Like the current regime, the Amendment retains the exception that an overseas person who is "ordinarily resident in New Zealand" does not require approval by the OIO. However, the Bill modifies this test. In order for a person to be regarded as "ordinarily resident in New Zealand" for the purposes of the Amendment, they must either hold a permanent resident visa or have been residing in New Zealand for the immediate preceding 12 months.

If these requirements are met, the person is not considered an overseas person and therefore does not require OIO approval to purchase sensitive land.

Enforcement

The amendment also introduces a new enforcement regime. The OIO will have the power to issue a notice requiring the property be disposed of if they have reasonable grounds to believe that there has been a contravention of the Act. The maximum civil penalty for a breach of the Act has been raised. The maximum amount has been increased to 3 times the amount of any gain received by that person in contravention of the Act.

Furthermore the Amendment requires the lawyer or practitioner who is acting in relation to the purchase to issue a certificate that, to the best of that person's knowledge, the purchaser will not breach the Act by giving effect to the transaction. Failure to issue a certificate is an offence with a maximum fine of $20,000.

As can be seen, there are sweeping changes coming to the Overseas Investment Act that will have an impact on buyer and seller alike. With the Bill expected to pass within the coming months, it is well worth ensuring that any potential sale or purchase involving an overseas person is thoroughly checked to ensure its compliance.

For any further information or queries, please contact Partner Sarah Manning – DDI 03 343 8456, sarahm@mmlaw.co.nz

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The University of Canterbury: Child and Family Law Prize in Honour of Hugh Cottrell

The Partners of Mortlock McCormack Law are privileged to establish a yearly prize in recognition of academic excellence in child and family law at the University of Canterbury's School of Law in honour of the very fine man that was Mr Hugh Cottrell.

In December 2017 the inaugural award was secured by Ms Nichola Hodge (pictured with Partner Tony Herring, right). Nichola is a lovely, hard-working and worthy recipient who excelled in family law studies at UC. She recently moved to Wellington to take up a clerkship with Justice Glazebrook of the Supreme Court. Well done and all the best Nichola!

Hugh Cottrell Award Winner: Partner Tony Herring congratulating winner Nichola Hodge.

MML PEOPLE

2018 Air Rescue Summer Crew Challenge

Mortlock McCormack Law has entered a team into the Westpac Helicopter Air Rescue Summer Crew Challenge in which 24 teams from 20 local businesses partake in physical and mental challenges and rally together to raise funds for Air Rescue.

Our team consists of Partner Tony Herring, Senior Solicitor Michael O'Flaherty, PA Bianca Nuku and Receptionist Leah Smith (pictured right), and as a team Mortlock McCormack Law hopes to reach a fundraising target of $10,000 for Air Rescue. It is our first time getting involved with this exciting event and your support would be greatly appreciated.

The Crew: Partner Tony Herring, Receptionist Leah Smith, Senior Solicitor Michael O'Flaherty and PA Bianca Nuku – always ready for a challenge.

You can donate in person at our offices, contact our Office Manager, Sarah Wenborn – DDI 03 343 8380, sarahw@mmlaw.co.nz for further information on the event or ways to donate, or visit our "Givealittle" page which has been set up specifically for this Air Rescue Challenge: givealittle.co.nz/fundraiser/air-rescue-summer-crew-challenge-2018-mmlaw

Go Team Go!

Canterbury West Coast AIR RESCUE

Have you visited our new website yet? Check it out: mmlaw.co.nz

Mortlock McCormack Law
299 Durham Street North,
Christchurch Central
PO Box 13 474, Christchurch 8141

Telephone +64 3 377 2900
Facsimile +64 3 377 2999
Email law@mmlaw.co.nz
mmlaw.co.nz