

Current Legal Issues in Finance/Investment Sector

New Trusts Bill

The Trusts Bill has now been reported back from the Select Committee and looks set for enactment in 2019.

Its effect will be profound on trustees, who will become subjected to a new set of rules. Trustees will plainly need to become well versed in the new rules, though will have a period of grace (likely 18 months) whilst the existing Trustee Act transitions and makes way for the new Act.

Notable amongst the changes are limitations on exclusion clauses, restrictions on trustee indemnity clauses and express disclosure obligations to beneficiaries. These disclosure obligations are designed to ensure that beneficiaries have sufficient information to enable the terms of the trust and the trustee's duties to be enforced against the trustees. There is a presumption that certain minimum information must be provided and trustees who do not wish to provide it will find themselves in court proceedings defending their position.

Another marked change will be the right of beneficiaries, acting unanimously, to force the trustees to terminate the trust and distribute the property. This will effectively empower beneficiaries to gang up on trustees and force them to act in circumstances where they otherwise may prefer to defer.

Watch this space as the Trust Bill makes its way through Parliament in the course of the next few months.

Overseas Investment Reforms

Reforms making residential land "sensitive land" are now in place. These reforms were seen as urgently needed and achieve a widespread ban on foreign buyers from buying houses here.

With these urgent reforms now bolted down, the more systemic issues with the Overseas Investment regime are now being addressed. These target the slowness of obtaining approvals and the complexity in doing so. Criticism has been escalating that the time and cost of obtaining approval detracts foreign investment. Those criticisms are now being addressed.

A further change being scrutinised is screening of investments in significant business assets with monopoly characteristics (infrastructure type assets). This change is thought necessary to protect the national interest against a general sell out of important assets to overseas interests.

These reforms will also make their way through Parliament in 2019, so again, watch this space.

Mainzeal Trial Concludes

The trial against the directors of failed Mainzeal has now concluded. The directors face claims of around \$75m for breach of directors duties. The decision, once it becomes available will be burningly impactful on directors, insurers, liquidators and general creditors alike. The judgment may or may not come out before Christmas. If it does I will send out an update; it will be of great interest.

Don't hesitate to contact me for further information.