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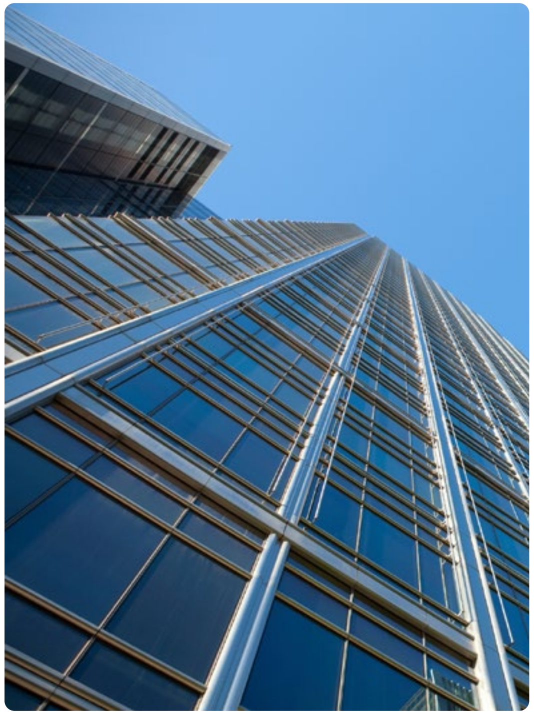
Welcome to the first edition of *Commercial eSpeaking* for 2021; we hope this year has started well for you, your family and also your business.

We hope you enjoy reading the articles in this e-newsletter, and find them interesting and useful. To talk further with us on any of the topics covered, or indeed any legal matter, please do not hesitate to contact us — our details are to the right.



Raising capital for your business

Some options for offering shares

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When raising capital to grow their business, however, many business owners find themselves limited by the size of their wallet. While interest rates are currently at an all-time low, trading banks' lending terms are arguably the strictest in recent memory. We discuss some options.

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Having a puff at work

Vaping now treated the same as tobacco smoking

New Zealand laws have finally caught up with vaping that have, for some time, enjoyed freedom from the country's strict tobacco regulation.

Since 11 November 2020, however, all vaping products and behaviours must now be treated the same as for tobacco products and smokers. All businesses and employers should be aware of the changes to SmokeFree legislation; for retailers of any vaping-related products these changes are especially important.

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Raising capital for your business

Some options for offering shares

The COVID pandemic has paved the way for innovation, and many New Zealanders spent 2020 investing time and money into their new or existing businesses.

When raising capital to grow their business, however, many business owners find themselves limited by the size of their wallet. While interest rates are currently at an all-time low, trading banks' lending terms are arguably the strictest in recent memory.

There are, however, alternatives to using personal funding or borrowings; you can offer shares in the company in exchange for funds (or 'capital').

While this method of capital raising sounds relatively straightforward, it can be a costly and complex process for business owners to navigate. When a business elects to raise capital by offering shares, it is governed by the Financial Markets Authority of New Zealand (FMA) and the Financial Markets Conduct Act 2013 (FMCA). Broadly, the FMA requires any offer of shares to be accompanied by a full suite of disclosure documents in accordance with the FMCA; these disclosure documents are expensive and time-consuming to prepare. The ongoing reporting associated with these activities is also significant and often requires substantial professional assistance from accountants and lawyers.

A lighter option

There is, however, another option that is lighter in its compliance requirements. Business owners can limit their share offer to investors who meet the eligible criteria of Schedule One of the FMCA. Schedule One offers are frequently the ideal solution to allow a company to raise capital while only making limited disclosure and, in some circumstances, no disclosure at all.

Investment by relatives

The easiest, and most frequently used, process is to use the relatives exemption. This rule allows the company to offer shares to immediate relatives of the directors such as spouses/partners, parents, children, siblings, and aunts and uncles, as well as relatives with whom the directors have a step-relationship. There are no limits on the amount of capital a company can raise this way, and no there are no disclosure requirements to either the new shareholder/s or the FMA.

Licensed intermediaries

Another commonly-used pathway to raise capital is to use the exemption for licenced intermediaries. These are the licensed crowdfunding or peer-to-peer lending facilitators.

The licenced intermediary acts as a matchmaker for the company seeking capital and an investor looking to invest in a business. This kind of capital raising is limited to $2 million raised within any 12-month period. While some of the capital raised by the licensed intermediary will be used to 'clip the ticket' as commission, raising capital in this way means your company itself is not required to make any disclosures, and that the licensed intermediary will complete all disclosure and reporting to the FMA on your behalf. The upside is also that it frees up your time as a business owner to focus on investing the funds raised wisely and it shifts the obligation of compliance onto a third party.

Small offers

The FMCA's small offers exemption allows you to offer shares to up to 20 shareholders in any 12-month period. The aggregate of all the capital raising must not exceed $2 million in any 12-month period. These 20 people must meet certain eligibility criteria, and you must ensure that there is no public advertising of your share offer.

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Having a puff at work

Vaping now treated the same as tobacco smoking

New Zealand laws have finally caught up with vaping (also called e-cigarettes) that have, for some time, enjoyed freedom from the country's strict tobacco regulation.

Since 11 November 2020, however, all vaping products and behaviours must now be treated the same as for tobacco products and smokers. All businesses and employers should be aware of the changes to SmokeFree legislation; for retailers of any vaping-related products these changes are especially important.

The reasons for vaping lagging behind tobacco products (legislatively speaking) were that not only had the technology for vape-related products developed rapidly, but also because encouraging vaping is part of the government's plan to help support smokers switch from tobacco products to 'significantly less harmful alternatives'. You can read more on that **here**.

If you run a business that is already required to be completely smoke-free (such as an early childhood centre, school or public transportation service), under the new legislation **here**, vaping is now considered to be equally prohibited.

If you run a restaurant or bar, you must take all reasonable steps to ensure that vaping only occurs in the same spaces you already permit smoking – that is, in open areas.

Employers

Employers must take all reasonably practicable steps to ensure that no one vapes inside a workplace at any time, and that you provide a vape and smoke-free environment for your employees.

If you allow smoking or vaping inside a work vehicle, you must ensure that members of the public do not have access to any part of that vehicle and that all staff (including volunteers) who use the vehicle have given written consent to the vaping and/or smoking in that vehicle. This applies even if those employees or volunteers use the vehicle on an irregular basis. If you do not get their consent, you could be liable for fines under the SmokeFree legislation, as well as potential personal grievance claims from your employees.

General retailers

For businesses that retail vaping products (but are not specialist vaping stores), the changes to how vaping products can be sold and marketed are comprehensive. The marketing restrictions that only applied to tobacco now apply to all vaping products.

Since 11 November 2020, non-specialist vape stores are prohibited from having a place name or trading name that signals that vaping products can be purchased; this includes online retailers.

More changes to come

Vaping laws may have taken a leap forward, but there are still significant changes to come.

From **11 May 2021**, vaping products or smokeless tobacco products that contain colouring substances cannot be sold in New Zealand.

From **11 August 2021,** unless you are a specialist vape retailer, you will also be prohibited from selling flavours other than tobacco, mint or menthol.

Packaging and labelling restrictions are expected to be regulated in 2021 with public consultation scheduled for early this year; there is a proposed effective date for the regulations of **11 August 2021**.

From **February 2022**, all vaping products must carry notifications similar to tobacco, notifying the consumer of the health dangers of the product. Regulators are creating a database of all 'notifiable' products that will be searchable from **11 August 2021** so businesses and consumers can find out what products are required to carry the notification.

Keep up-to-date with changes

All businesses, regardless of whether they are retailers of vaping products or not, should keep up-to-date with changes to the SmokeFree legislation. Managing employee, volunteer and customer spaces are obligations that apply to every business; penalties can be significant.

Please note that rules applying to specialty vaping retailers have not been covered in this article. If you are a speciality retailer for vaping products and you are not familiar or would like some help to navigate these changes, please don't hesitate to contact us.

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Business briefs

Covid relief key expiry dates for businesses in 2021

In 2020, the government introduced a raft of legislation to provide temporary relief for businesses struggling to navigate the effects of the Covid pandemic. Some relief measures, such as the safe harbour for company directors, have already expired, while others will expire this year unless they are renewed. The key expiry dates for 2021 that you should be aware of are:

- **26 March**: Landlords and tenants of commercial premises who could not agree on rental arrangements during the 2020 lockdown period have until this date to access the government's subsidised arbitration or mediation service to resolve the dispute.
- **31 March**: Measures allowing companies, incorporated societies and other entities to hold meetings online and make temporary exceptions to their rules.
- **15 May**: Provisions allowing for electronic signatures when signing security agreements that contain powers of attorney.
- **22 September**: The requirement for landlords to give 30 working days' notice instead of 10 working days' notice to end a commercial lease where the tenant fails to pay rent.
- **31 October**: The cut-off date for businesses to enter into the government's business debt hibernation scheme has been extended until 31 October 2021. The scheme allows businesses to have a month of protection from most creditors enforcing their debts, and a further six months' protection if their creditors agree.

If you would like specific advice on how you may be able to use the above measures before they expire, please don't hesitate to contact us.

Toolkit for employing mature-age workers

With no compulsory retirement age, New Zealanders are continuing to seek (or retain) their employment as they grow older. It is not unusual to see people in a workplace with ages ranging from late teens to someone who is more than 70 years old. The diversity that a wide range of ages, experience and outlook brings to a workplace can be of huge benefit to an organisation.

Acknowledging this, the Ministry of Business, Innovation & Employment (MBIE) has developed a 'Mature-age workers toolkit' that gives guidance for businesses hiring, developing and retaining working people who are aged 50 years-plus.

MBIE's toolkit includes:

- Skills assessment to see where existing knowledge sits in your business
- Learning and skills policy, with an emphasis on on-the-job learning
- Case studies
- Tips on leading age-diverse working people, from young to older
- A quiz on flexible working in your business, and
- A job advertisement worksheet to help you keep an open mind and find appropriate candidates.

To read more about the toolkit, click **here**.

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Raising capital for your business

If done correctly, however, shares offered and issued in this way only require very limited disclosure, a prominent warning statement on the offer document and notification to the FMA of your reliance on this exemption to offer shares.

The devil is in the detail

The matter of capital raising and making offers of shares in a company is a very complex area of the law with high levels of compliance required; by no means does this article cover all the options available.

If the above exemptions are not applicable to your circumstances, there may be another option available that is more appropriate to your situation.

It is important that if you are considering offering shares in your company that you talk with us to ensure you are not inadvertently breaching your obligations under the FMCA. ●

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Business briefs

Minimum wage increases on 1 April 2021

Adult minimum wage: The adult minimum wage will increase from $18.90/hour to $20.00/hour from 1 April 2021.

Starting-out and training minimum wage: This rate also increases on 1 April 2021: from $15.12/hour to $16.00/hour. This is 80% of the adult minimum wage.

All employers should ensure their payroll and processes are updated in advance of 1 April.

Government proposes sick leave increase

The government has proposed an increase in sick leave provisions from five days a year to 10 days. The increase would come into force two months after the legislation (Holidays (Increasing Sick Leave) Amendment Bill) is passed.

It is fair to say that most employers have not welcomed this news with unbridled joy, however many employees view this proposal very positively. To read more about the government's proposal and the fine print, go **here**.

Working at Easter and ANZAC Day

This year, Easter falls in early April. Good Friday is on 2 April and Easter Day is on Sunday, 4 April.

Paying employees who work on these public holidays can be complex. Business owners will find this a useful guide. If you need help with any aspect of Easter trading, please don't hesitate to be in touch.

ANZAC Day is on Sunday, 25 April although it is 'Monday-ised' with the public holiday being held on Monday, 26 April.

The Shop Trading Hours Act 1990 stipulates that almost all shops must be closed on Good Friday, Easter Day and until 1pm on ANZAC Day. For businesses that trade, or wish to open over all or some of Easter (such as garden centres), the rules on opening vary according to the type of business and the region in which it operates.

Paying employees who work on these public holidays can be complex.

For more guidance on Easter trading and paying your staff, Employment New Zealand's **website** is useful. If you need further help, please don't hesitate to contact us. ●