

## CHAIR



### **The Hon Justice Clifford, Wellington**

Justice Denis Clifford was appointed a judge of the High Court in 2006. He was previously a commercial barrister and prior to that had practised for many years as a senior commercial partner with Buddle Findlay.

## PRESENTERS



### **David Flacks, Belly Gully, Auckland**

David practised at major London law firms before joining Bell Gully in 1984. He moved to Carter Holt Harvey as General Counsel and Company Secretary in 1993 and rejoined Bell Gully in Auckland in 1997. David specialises in major corporate and securities transactions.



### **Derek Johnston, Russell McVeagh, Wellington**

Derek is a partner in the Corporate Advisory Group in Russell McVeagh's Wellington office. He has acted in relation to a number of substantial acquisitions and divestments and has significant experience in capital markets transactional work generally.



### **David Jones, Jones Young, Auckland**

David is a partner of Jones Young, an Auckland law firm specialising in commercial and corporate law. He is Chairman of the Takeovers Panel, a member of the Institute of Directors in New Zealand, and former lecturer in company law at the University of Auckland Law School. He was appointed as personal adviser to the Minister of Justice as part of the company law reform process which culminated in the Companies Act 1993. He is also author of *Company Law in New Zealand – a Guide to the Company's Act 1993* (Butterworths 1993) and a former co-editor of *Morison's Company Law* (Butterworths).



### **Roger Wallis, Chapman Tripp, Auckland**

Roger is a partner in Chapman Tripp's Auckland office, specialising in company and securities law. He has acted for bidders, targets and significant shareholders in a number of Takeovers Code transactions, and has represented clients before several s 32 Panel meetings.

# CONTENTS

<b>1.</b>	<b>THE TAKEOVERS CODE: AN OVERVIEW .....</b>	<b>1</b>
1.	WHY A TAKEOVERS CODE?.....	1
2.	SCHEME OF THE TAKEOVERS ACT 1993 AND TAKEOVERS CODE.....	2
3.	APPLICATION OF THE CODE.....	3
4.	FUNDAMENTAL RULE .....	4
5.	ANTI-AVOIDANCE.....	5
6.	ASSOCIATES .....	6
7.	DEALINGS UNDER 20%.....	7
8.	THE EXCEPTIONS TO THE FUNDAMENTAL RULE .....	7
9.	TAKEOVER OFFER PROCESS .....	12
10.	LOCK-UP AGREEMENTS .....	31
11.	BREAK FEES .....	33
12.	COMPETING BIDS .....	34
13.	ACQUISITIONS OUTSIDE THE OFFER AND DISPOSITIONS DURING OFFER PERIOD.....	35
14.	DEFENSIVE TACTICS .....	36
15.	ENFORCEMENT .....	37
	<b>CASE STUDY.....</b>	<b>43</b>
<b>2.</b>	<b>TRANSACTION STRUCTURES.....</b>	<b>45</b>
1.	INTRODUCTION.....	45
2.	SHAREHOLDER APPROVED TRANSFER.....	45
3.	SHAREHOLDER APPROVED ALLOTMENT OF SHARES.....	45
4.	SHARE BUYBACK.....	46
5.	UPSTREAM ACQUISITIONS.....	46
6.	AMALGAMATIONS .....	46
7.	SCHEMES OF ARRANGEMENT .....	47
8.	ASSET ACQUISITIONS.....	47
<b>3.</b>	<b>SHARE BUYBACKS .....</b>	<b>49</b>
1.	INTRODUCTION.....	49
2.	DIRECTOR CONSIDERATIONS .....	49
3.	SHAREHOLDER APPROVAL.....	49
4.	APPLICATION OF THE CODE.....	50
5.	EXEMPTIONS FROM THE CODE.....	50
<b>4.</b>	<b>ASSOCIATES.....</b>	<b>53</b>
1.	MEANING OF ASSOCIATE .....	53
<b>5.</b>	<b>AMALGAMATIONS/EXEMPTIONS AND SHAREHOLDER APPROVALS.....</b>	<b>57</b>
1.	AMALGAMATIONS AND SCHEMES .....	57
2.	EXEMPTIONS .....	61
<b>6.</b>	<b>UNLISTED COMPANY ISSUES .....</b>	<b>65</b>
1.	INTRODUCTION.....	65
2.	THE 50 SHAREHOLDER REQUIREMENT .....	65
3.	TRANSITION ISSUES .....	65
4.	INTERFACE BETWEEN THE CODE AND OTHER CONTRACTS AND ARRANGEMENTS .....	66
<b>7.</b>	<b>TRUTH IN TAKEOVERS .....</b>	<b>67</b>
<b>8.</b>	<b>OYSTER BAY .....</b>	<b>71</b>