

LAWYERS

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FIRST QUARTER REPORT

It seems quite incredible to be completing the first months of the year, January and New Year compliments seemingly not that long ago!

We trust you've had a smooth, positive start to the year, achieving results along the way and looking forward to a bright forecast for the next quarter – be it personal, business and yes, the weather!

Here at JL it's been a busy start to the year following what was a period of significant change and development in 2009.

A key focus for the directors following the developments of '09 has been a review of our strategic business and visionary direction which has been a comprehensive exercise indeed, but one that will ensure we've implemented the most effective, and if necessary improved structure so that the services we provide to our clients are at the highest levels possible.

Of course as business owners will know, a well thought out and properly structured business plan is critical to the overall management and performance of your business. If you have not reviewed your strategic business plan for a while then perhaps now's the time to do this. More importantly if you own or run a business but don't have a strategic business plan in place then we recommend giving this some thought.

At the end of the day it's all about achieving good results and outcomes and hopefully, probably, a prosperous result. As always if we can assist in any way just give us a call.

Happy Autumn!

SOLICITORS NOMINEE COMPANY

Many of our clients are well aware that we operate a solicitors' contributory mortgage company, but we felt it was time to give new clients an introduction as well as "update" existing clients.

Johnston Lawrence Solicitors Nominee Company Limited operates under the rules prescribed by legislation and the special rules that distinguish **solicitors'** nominee companies from others that may operate.

The company is the approved lender of funds on mortgage, and is the **only** approved method of contributory mortgage lending through solicitors.

Every contributor, i.e. lender, has a defined share of any mortgage for which he/she provides funds, and the security is always a registered mortgage over real property. It is **not** a "big pool of money" as is the case with finance companies – of which so many have collapsed in recent years, with huge losses incurred by investors.

The interest returns available are significantly higher than bank deposit rates, but the borrowers are generally people who for one reason or another do not meet bank lending requirements at the time.

Interest is collected by us and paid to the lenders monthly. The cost of administration is payable by the borrower, in addition to the interest.

If you would like more information, please contact us.

Ian Lawrence, Director
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FINANCIAL ADVISERS REGISTRATION AND AUTHORISATION – DRAFT CODE OF CONDUCT RELEASED UNDER THE FINANCIAL ADVISERS ACT 2008

The Financial Advisers Act 2008 introduces mandatory registration and/or authorisation of all financial advisers, with stringent standards. A draft Code of Conduct was recently published by the Code Committee of the Securities Commission. The Act was to become fully operative on 1 December 2010, but the Minister has just announced that this will be delayed until 1 July 2011.

The new law applies not only to those previously known as financial advisers or financial planners but also to anyone else giving financial advice about specific products, or offering a financial planning service.

Financial advisers are expected to be authorised and registered if they sell or give advice about Category 1 products, such as securities, including life insurance, an estate or interest in land or futures contracts. Those that advise on Category 2 products, call or debt securities, bank term deposits, insurance products, including term insurance and consumer credit contracts, need only be registered on the Financial Service Providers Register with the Companies Office. Also, under the Financial Service Providers Dispute Resolution and Registration Act 2008, each financial services provider is required to belong to an approved dispute resolution scheme or the government reserve scheme. This will be operational from 1 December 2010. A Financial Advisers Commissioner has been appointed and will be responsible for investigating complaints, determining breaches of the Act and imposing penalties.

Code of Conduct

A draft code of conduct was recently released for submissions. It introduces 21 standards of conduct for ethical behaviour, client care, competence, skills and continuing professional training. Under the Act an advisor is required to exercise the care, diligence and skill that a reasonable financial adviser would exercise in the same circumstances, taking into consideration the nature and requirements of the Act.

The Code of Conduct proposes that every Authorised Financial Adviser must attain five (5) draft unit standards of education, or attain listed competence alternatives or designations.

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Disclosure obligations

All financial advisers for both Category 1 and Category 2 products will have to comply with the disclosure obligations under the Act. Disclosure to the client must include relevant experience, criminal convictions, insolvency, fees and remuneration, material interests or relationships, indemnity insurance arrangements, dispute resolution arrangements and matters required to be disclosed as part of the authorisation process for Category 1 advisers. A disclosure statement must be provided to the client prior to giving financial advice.

Complaints

Complaints may be made to the Securities Commission. The Commission must investigate all complaints, except when the complaint is fictitious or not sufficiently serious. Complaints will be referred to the Financial Advisers Commissioner and the Disciplinary Committee of the Securities Commission.

Penalties and Fines

The penalties and fines are quite severe, including deregistration.

An unregistered person who performs a financial adviser service commits an offence and is liable to a fine of up to \$5,000.00.

An unauthorised person who performs a financial adviser service that only an authorised financial adviser may perform commits an offence and is liable to a fine of up to \$10,000.00.

A person who breaches the disclosure obligations under the Act commits an offence and is liable to a fine of up to \$100,000.00.

A person who knowingly or recklessly misleads or deceives any other person commits an offence and is liable for a fine of up to \$100,000.00.

Exemptions

Lawyers, chartered accountants, real estate agents, tax agents and registered valuers are given a limited exemption from registration and authorisation as long as any financial advice they provide is a *necessary incident* of their own professional practice. It is an anomaly

that exemptions have been granted to these five professions, yet there are other professions that provide advice on the acquisition or disposal of an estate or interest in land such as engineers, architects, surveyors and rural farm consultants who have not been granted an exemption.

Qualifying Financial Entities (QFEs)

Where there are two or more financial advisers providing advice on Category 2 financial products, their organisation is able to be registered as a QFE. A QFE has to provide an Adviser Business Statement to the Securities Commission by 31 July 2010. Directors, financial advisers and nominated representatives working for the QFE will have to be named and listed in the QFE business statements.

The registration and authorisation of Financial Advisers is timely and the investing public should welcome this regulation of Financial Advisers. The newly announced Financial Markets Authority would further strengthen Financial Services Regulation in New Zealand.

For more information on the Financial Advisers Act or the Code of Conduct for Financial Advisers please contact:

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DDI: 04 916 0148; or

John Stevens, Managing Director

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