

Small Share Deals Can Carry Big Consequences

Posted on: July 15, 2026

A recent High Court decision is a useful reminder for founders, directors and shareholders that the Financial Markets Conduct Act 2013 (FMCA) is not just something for large public capital raisings.

Before offering, selling or transferring shares, it is important to check whether the

FMCA applies, whether an exemption is genuinely available, and whether anything said to prospective investors can be properly supported.

What happened?

In *Claredon Ltd v Air Hull Technologies Ltd & Ors* [2026] NZHC 1690, a family farming company invested $200,000 in a private boat manufacturing business. The investment was completed in two parts: first, the purchase of existing shares from shareholders; and second, the issue of new shares by the company.

No Product Disclosure Statement (PDS) was provided. The Court found that the FMCA disclosure regime applied and awarded compensation of $200,000 plus interest and costs.

A PDS is the prescribed disclosure document intended to give prudent but non-expert investors the information they need to make an informed investment decision. It generally includes key information about the issuer and the principal risks of the investment. Under the FMCA, a PDS is required when shares are offered to retail investors unless a specific exemption applies.

Not just for large public offers

One of the notable features of the decision is that the investment was relatively modest and involved a private company. The defendants argued that the transactions fell within the small personal offer exclusion, but the Court disagreed.

Paul Tustin, Partner at Cooney Lees Morgan, says: “Many people assume the FMCA only applies to large public capital raisings. This case shows that even relatively small transactions between private parties can breach the legislation if an exemption is not available.”

Share sales can also be caught

The decision also highlights an issue that is easy to overlook. FMCA disclosure obligations can apply not only to the issue of new shares, but also to the sale or

transfer of existing shares. In this case, the Court held that the transfer of existing shares could contravene section 50 of the FMCA where disclosure was required but no PDS had been provided.

As Paul observes: "Business owners and existing shareholders should not assume the FMCA is only relevant when a company is issuing new shares. In some circumstances it can also apply to secondary sales."

Fair dealing obligations still matter

If the FMCA applies to an offer, the fair dealing provisions are also likely to be relevant. Those provisions prohibit misleading or deceptive conduct, false or misleading representations, and unsubstantiated representations in relation to financial products and financial services.

A business does not need to intentionally mislead investors to create risk. Claims about a business, its prospects, performance or potential returns need to be based on reasonable grounds at the time they are made. Optimistic forecasts, promotional claims or statements in an information memorandum may create exposure if they cannot be properly supported.

For private companies raising capital, the risk is often not deliberate misconduct. It is assuming that informal discussions, investor presentations or information memoranda sit outside the standards imposed by the FMCA.

Personal liability is a real risk

The Court imposed liability not only on the company, but also on a principal shareholder and director. It relied on the FMCA accessory liability provisions, finding that the individual was knowingly concerned in the contravention.

This is an important warning for people closely involved in capital raising or share transfers. Liability may not stop with the company.

As Paul puts it: "Directors, founders and major shareholders should not assume that liability stops with the company. The FMCA contains powerful accessory liability

provisions that can expose individuals who are involved in a contravention."

What should businesses do?

Before offering, selling or transferring shares, businesses and shareholders should pause and work through three questions:

- Does the FMCA apply to the proposed transaction?
- If so, is there a clear and valid exemption?
- Can every investor-facing statement be substantiated?

Getting those questions wrong can result in both corporate and personal exposure.

Source: *Claredon Ltd v Air Hull Technologies Ltd & Ors* [2026] NZHC 1690 (16 June 2026).

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