

Compliance in Property Advisory and Valuation

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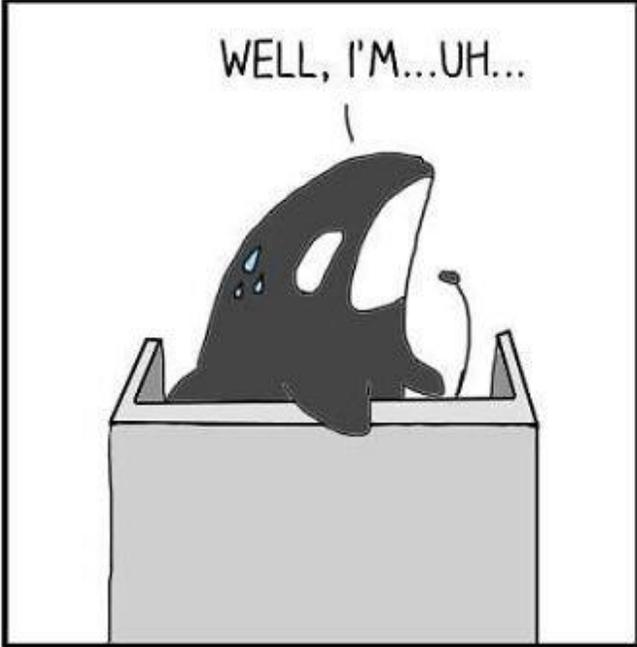
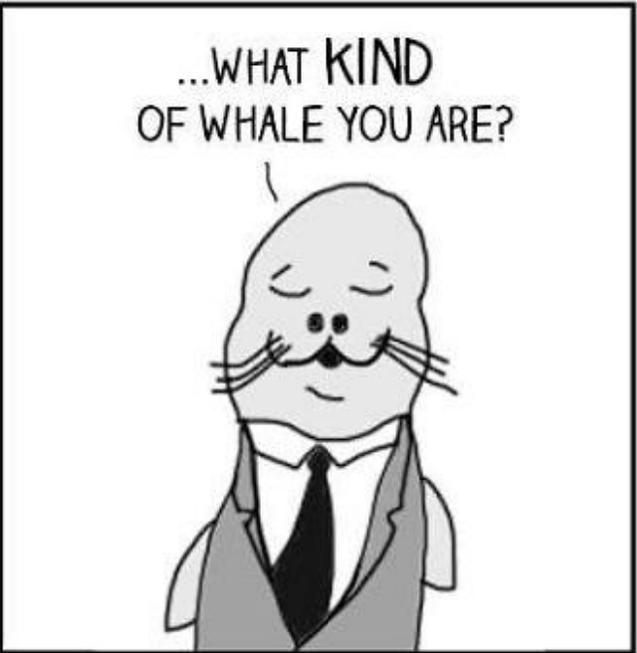
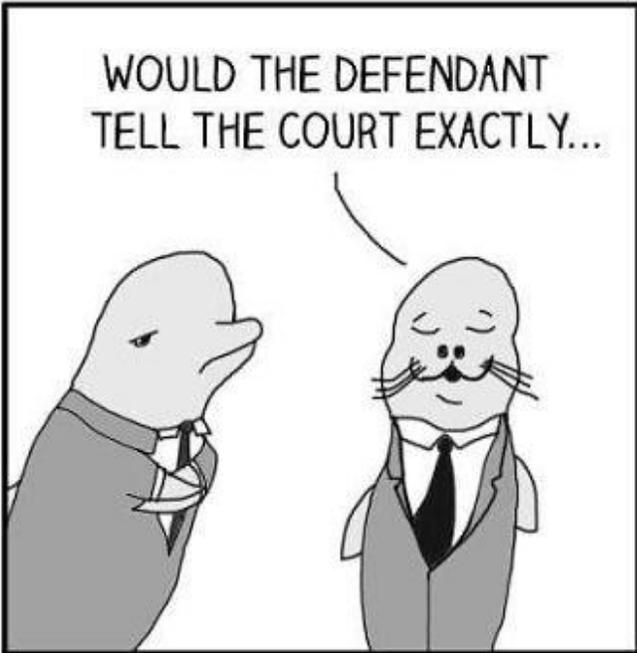
Principal - Property Consultant & Senior Valuer

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REGULATORY OBLIGATIONS

- Expectation to have multi-disciplinary skills for any asset advisory team.
- Wide scope in terms of compliance requirements of statutory regulations.
- Particular projects and jurisdictions should be considered on a case by case basis.
- Professional responsibility and conduct of individual employees should be such that there is a usual process to check compliance.
- There exist various professional body and international “regulations” that vary from legally mandatory, to market benchmark to purely voluntary or reference points.



IN NEW ZEALAND

- Beca would likely provide professional services that likely fall under or near to requirements of:
 - Valuers Act 1948
 - Financial Advisors Act 2008 (FAA)
 - Real Estate Agents Act 2008 (REAA)
- Legislation that prevents Beca from providing certain types of advice (ie. Lawyers and Conveyancers Act 2006). The Act will prevent Beca from providing regulated legal services to the public.
- But Beca is a multi-disciplinary firm in nature and, therefore, it is impracticable for it to provide regulated legal services in NZ's market. Beca will not be able to give property law advice, except to the extent possible by virtue of being licensed under the REAA 2008.

REGULATION OF PROFESSIONAL SERVICES

- Often requires a professional to undertake a particular role or meet a particular credential or status requirement.
 - I.e. Valuers required to be Registered to be involved in certain processes under the Public Works Act (1981), Land Transfer Act 2017 and Unit Titles Act 2010.
- Not necessary to be a Registered Valuer in NZ to hold oneself out as a valuer or to undertake valuation work (ie. valuation or feasibility studies for land development)
- BUT, status of Register Valuer is both a market benchmark and often statutory requirement for particular situations and context.
- Arguably, a valuer who is NOT Registered could provide valuation advice in NZ where there is no stipulated requirements for the valuer to be registered.

“REGISTERED VALUER” and “PUBLIC VALUER”

- Protected terms under the Valuers Act 1948
- CANNOT be used to apply to anyone who is not a land and buildings valuer registered under the Act.
- Confusion with PINZ Registration. Although valuers registered with PINZ are a type of valuer and have type of registration, it is still unlawful to refer to them as “Registered Valuer”
- Under the Act, the New Zealand Institute of Valuers (NZIV) is created in perpetual succession. Registered Valuer in NZ is automatically a member of NZIV but can opt out on grounds of conscientious objection.

“REGISTERED VALUER” and “PUBLIC VALUER”

- Most recent case on the metes and bounds of Valuers Registration Board and the NZIV disciplinary processes can be sighted at: [2015] NZHC 1312 [15 June 2015]. In his judgment, Justice Kose, at [28] stated, “*The Valuers Act 1948 is a somewhat antiquated piece of legalisation.*”
- He identified the primary disciplinary provisions. These essentially provide powers for the VRB to remove a Registered Valuer from the register to make an inquiry by the Board into charges and for further disciplinary power to include a penalty not exceeding \$10,000, or to impose a suspension of registration for a period not exceeding 12 months.
- The case goes on to acknowledge the jurisdiction of the NZIV to make rules and a code of ethics and to also impose a fine. However, these processes would be imposed against the valuer personally, rather than a company.

“REGISTERED VALUER” and “PUBLIC VALUER”

- Valuers will need to ensure they maintain careful compliance with the New Zealand Valuers Registration Board requirements.
- Registered Valuer that is signing off the report has significant responsibility.

PINZ / NZIV / RICS / NZIQS

- PINZ is a voluntary body and has a degree of association with the distinct statutory NZIV body. It acts as a de-facto umbrella professional body for a number of otherwise unregulated property sector professions.
- More of relevance to Beca is the PINZ membership status systems and registration of IPM valuers.
- Although PINZ is voluntary and not statutory, they are treated as de-facto benchmarks of professional standing for some vocations such as registered IPM valuers.
- Royal Institute of Chartered Surveyors (RICS) has a presence in NZ and provides a wide range of credentials for those within the property sector including land and building valuers, IPM valuers and various types of advisors and surveyors.
- New Zealand Institute of Quantity Surveyors (NZIQS) is also voluntary body. This is off less significance to different types of valuers or property advisors.

LINZ

- REAA has been subject of some discussion in relation to Beca Property Consulting. In 1988 people undertaking certain roles in the public works context were called “accredited agents”. This changed in 2004/05 to “accredited suppliers” to communicate that there is no agency between LINZ and the supplier.
- LINZ Accreditation is not a statutory process but it is a market indicator of those from whom LINZ will accept recommendations in order to make a statutory decision. Beca is LINZ accredited.
- Beca competes for property consulting work with regards to PWA and other statues.
- As licensed Real Estate Authority (REA), Beca is also bound by the Anti Money Laundering and Countering Financing of Terrorism Act 2009 and must have a Compliance Officers carry our risk assessments of customers and have audits every 2 years.

EXEMPTIONS

- The FAA applies an onerous compliance requirement for financial advisors but there are many task that are exempt from statutory regulation.
- Having a Registered Valuer and Licensed Real Estate Agent might benefit Beca due to exemption provisions.
- Alternatively, Beca could seek compliance under the requirements of the FAA. Another option could be to consider if other personnel in Beca can meet some of the exemption provisions, such as if Beca employs a tax agent or qualified statutory accountant.

Australia

- Traditionally valuation profession regulated differently in different states.
- Most states such as NSW has terminated valuer regulation system. Few remaining QLD and WA.
- Queensland Valuers Registration Board operates much like New Zealand's system and there is a rapid mutual recognition between Qld and NZVRB.
- Other states and territories of Australia are essentially regulated by the valuation professional body Australia Property Institute (API). API and PINZ are sister bodies, both being non-statutory based and having voluntary professional membership.

Western Australia (WA)

“23. Valuers to be licensed:

- (1) A person shall not carry on business, or by any means hold himself out, or demand or receive commission, reward or other valuable consideration in respect of his services, as a Valuer of land unless he is licensed under this Act. Penalty: \$50,000.*
- (2) Subsection (1) does not prevent a firm or corporation from carrying on business, or holding itself out, or demanding or receiving commission, reward or other valuable consideration in respect of its services, as a Valuer of land so long as every valuation of land supplied by that firm or corporation is made by a person who is licensed under this Act.*
- (3) Subsection (1) does not prevent —*
 - (a) a student who is undertaking a prescribe course of study in the valuation of land; or*
 - (b) a person who is employed as an assistant to a licensed Valuer,*
- from performing and discharging, under the supervision of a licensed Valuer, functions and duties connected with the valuation of land.*
- 24. False claim of being licensed*
 - (1) A person who, not being a licensed Valuer, in any way implies that he is licensed under this Act shall be guilty of an offence against this Act. Penalty: \$50,000.*
 - (2) Subsection (1) does not prevent a firm or corporation of which at least one officer is a licensed Valuer from using the term “licensed Valuers”, or otherwise implying in any way that it is able to render the services of a licensed Valuer, in a notice or advertisement or in a letterhead or other document so long as the notice, advertisement or document also contains the names of the officer or officers of the firm or corporation who is or are licensed under this Act.”*

Queensland (QLD)

Under the Valuers Registration Act 1992 (Qld) it is an offence to practise valuation without registration, with some exceptions for architects, engineers or quantity surveyors, which are particularly provided for under section 63 of that Act:

“Practice of unregistered Valuer prohibited

63.(1) Subject to subsections (2) and (3), a person who is not a registered Valuer must not—

(a) hold himself or herself out as being a registered Valuer; or

(b) carry on or attempt to carry on the business of a registered Valuer;

or

(c) take, use or exhibit a name, letter, word, title, description or symbol that, either alone or in the circumstances in which it is taken—

(i) is capable of being reasonably understood to indicate; or

(ii) is intended by the person to indicate;

that the person is a registered Valuer or is entitled to carry on the business of a registered Valuer.

Maximum penalty—100 penalty units.

(2) If the person is a body corporate, an offence against subsection (1) is not committed if at least 1 director or member of the board of management of the body corporate or an employee of the body corporate is a registered Valuer.

(3) It is not an offence against subsection (1) for a person who is an architect, engineer or quantity surveyor to make cost assessments or cost estimates in relation to a building, structure or improvement in the course of the person’s professional duties.”

Australia cont.d

- Membership status Certified Practising Valuer (CPV) is treated as a professional benchmark by the market in those states and territories.
- Not mandatory to be a CPV to undertake valuation work in Australia.
- RICS also has a presence in Australia and has been gaining recognition for its member status and registered valuer status.
- One of the issues with NZ valuers practicing in AU is subtle differences in scope. (ie. Depreciation schedules for tax purposes are restricted to particular profession such as quantity surveyors but not valuers). Contrasted in NZ, valuers can undertake this work in relation to NZ tax depreciation.

Asia Pacific

The particular legislative requirements for regulation of professions differs across these countries and in some cases legal systems and purpose of public policies are quite different from those of AU and NZ.

Samoa

- Samoa Land Valuation Act 2010 under section 9 to 15 provides for the registration and licensing of land valuers.
- Under the Act, register of valuers must be accessible to public, a great deal of discretion is reserved to the committee and is largely appointed or employed by the government.
- The Head of State acting on the advice of Cabinet may take regulation prescribing matters including “the conduct of land valuation” and “prescribing methods of making applications and forms”
- Overall appears that the Government has significant control over the valuation profession and potentially the actual valuation processes and the careers of valuers within Samoa.

Samoa

The two key provisions are section 17 and 18. Section 18 means that a valuer, not registered in Samoa, would be involved in the commission of an offence and that the valuer in Samoa would be liable to conviction and a fine or imprisonment if undertaking work in Samoa without registration under the Act. Specifically, the Act provides:

“18. Performing land valuations without registration and an annual practising certificate – A person who carries out a survey without:

(a) being registered; and

(b) holding an annual practising certificate,

commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding one (1) year, or to both.

17. Formula Valuation System

(1) The Ministry shall determine and publish a Formula Valuation System as a guide to the current land market value in Samoa.

(2) A licensed Valuer shall use the Formula Valuation System as a guide to the current land market value in Samoa.”

Samoa has been used as an example to indicate that there might be reasons for Beca not to become involved in land valuation in some countries throughout Asia and the Pacific.

Fiji

As with Samoa, the Government has a significant influence over the valuation profession through this legislation. Part III provides for the Register of Valuers. It is an offence to practise as a valuer in Fiji without Fijian registration.

Section 20 provides clearly that this is an offence and liable to conviction and a fine:

“20.-(1) Subject to subsection (2) a person, other than a registered Valuer, who-

(a) pretends that he is or holds himself out, directly or indirectly, to be a registered Valuer or to be entitled to practise as a Valuer;

(b) takes or uses the name or title of a registered Valuer, or a name, title, addition or description implying that he is a registered Valuer;

(c) practises as a Valuer, or charges or receives a fee for work done as a Valuer, is guilty of an offence and liable on conviction to a fine not exceeding \$1000.

[which relates to a commencement date in 1986]”

Other Factors – Asset Management and Auditing

Recommended to have people skilled or the ability to meet ISO55000 (Institute of Asset Management).



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everyday
better.**