Doing business in New Zealand.

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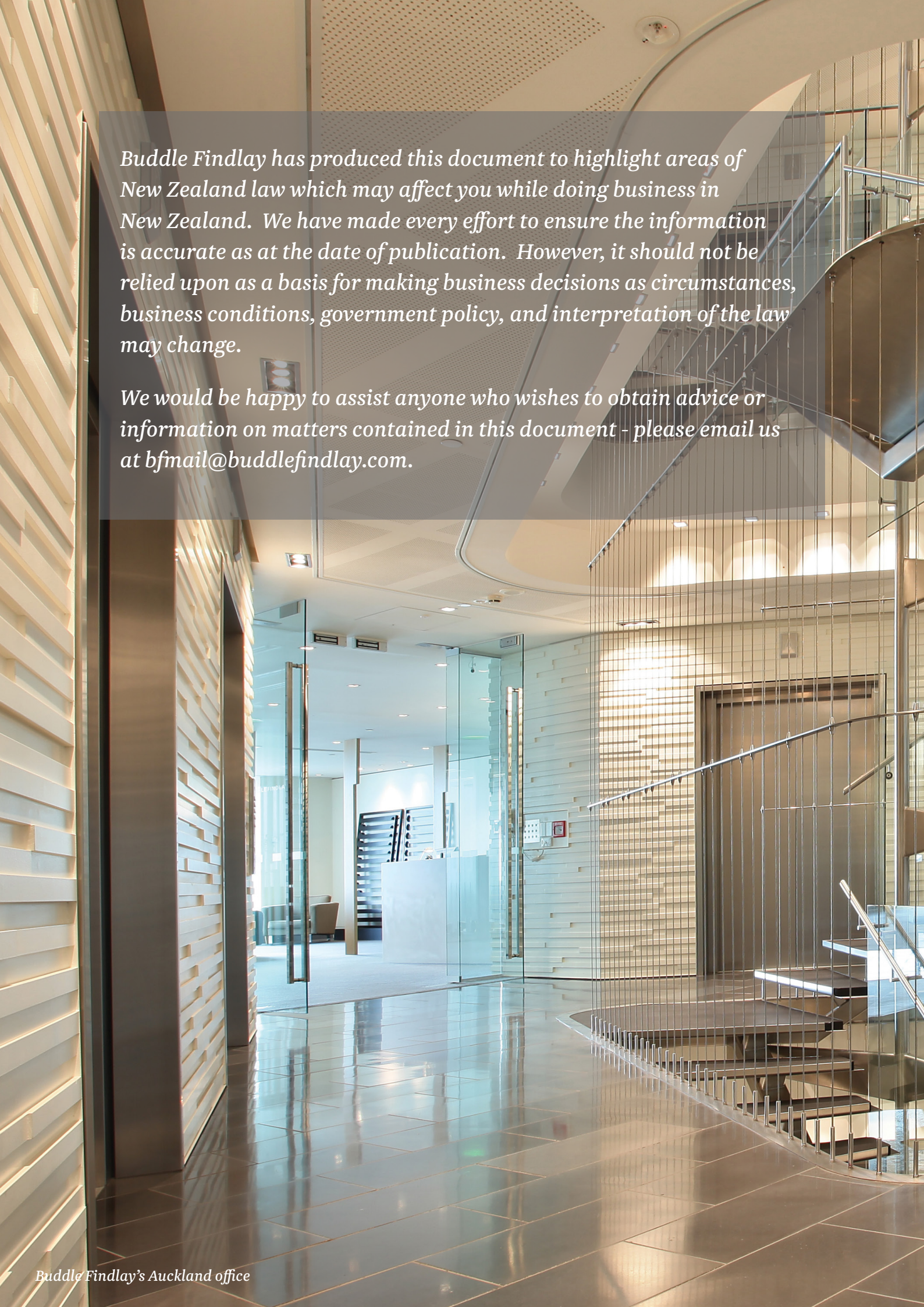
Buddle Findlay has produced this document to highlight areas of New Zealand law which may affect you while doing business in New Zealand. We have made every effort to ensure the information is accurate as at the date of publication. However, it should not be relied upon as a basis for making business decisions as circumstances, business conditions, government policy, and interpretation of the law may change.

We would be happy to assist anyone who wishes to obtain advice or information on matters contained in this document - please email us at bfmail@buddlefindlay.com.



Buddle Findlay's Auckland office

ABOUT NEW ZEALAND

Political system

New Zealand is an independent realm of the British Commonwealth. Queen Elizabeth II is the Head of State. However, convention dictates that she and her representative in New Zealand, the Governor General, remain politically neutral and follow the advice of government ministers (except in exceptional circumstances).

New Zealand has a mixed member proportional (MMP) electoral system. MMP is a form of proportional representation based on the German model, where voters each cast a party vote (to choose the political party they want to represent them in Parliament) and an electorate vote (to choose which individual from their electorate they want to be their member of Parliament).

New Zealand has an independent and democratically elected Parliament consisting of one house, the House of Representatives. The House of Representatives has approximately 121 members of whom 64 represent the general geographic electorates, seven represent Māori electorates and 50 are political party list members. The total number of members each party has in the House of Representatives is determined by the proportion of the party vote it receives. If a party has fewer electorate members than required by its party vote, list members are added to make up the difference. General elections are held every three years and the next one will take place in 2017.

Historically, the two significant political parties have been Labour (centre left) and National (centre right). Under MMP, however, smaller political parties play a greater role in government. The National party currently governs under Prime Minister John Key through three confidence and supply arrangements with ACT, United Future, and the Māori Party, giving a governing total of 63 seats in the House.

Police, education, health, fire and social welfare services are under the control of central government. Territorial authorities, such as district and city councils, administer local community services such as rubbish collection and water supply.

Legal system

New Zealand's legal system developed from the British model. While English and New Zealand case law (common law) remains important in many areas, much of New Zealand's law is codified in Acts of Parliament.

The system of Courts is hierarchical, and extends from District Courts through High Courts to the Court of Appeal and the Supreme Court. Prior to the establishment of the Supreme Court (January 2004), New Zealand's highest Court of Appeal was the Privy Council in London, England. There are also specialist tribunals empowered by statute, such as the Employment Relations Authority, Human Rights Review Tribunal, Environment Court and Commerce Commission. Decisions of these bodies are subject to the supervisory jurisdiction of the High Court.

The public receives protection under the New Zealand Bill of Rights Act, which restrains government action. The Human Rights Act prevents discrimination by private companies and individuals in some circumstances. The public may obtain certain information held by government bodies on request under the Official Information Act.

Economy

The economy is based on a private enterprise system. The government generally confines its commercial activities to those that are seen to have a "public good" element. In the early 1990s the government privatised its interests in a variety of industries - more recent asset sales include the sale of interests in energy and airport assets. The current government has signalled an intention to sell down stakes in further entities.

Extensive deregulation over the last two decades has promoted competition and reduced many regulatory burdens. New Zealand's approach to regulation is generally "light-handed", though there is a comprehensive regulatory environment to protect consumer and investor interests. Legislation such as the Commerce Act 1986, the Fair Trading Act 1986 and the Consumer Guarantees Act 1993 ensures that companies do not engage in anti-competitive behaviour and that consumers are supplied with goods of reasonable quality.

New Zealand's economic development has traditionally been based on its agricultural products. Agricultural commodities still account for around half of New Zealand's total exports. Other major exports include forestry products, manufactured goods, fish and horticultural products, and engineering products.

Auckland

COMING TO NEW ZEALAND

Immigration

A key objective of New Zealand's current immigration policy is to encourage economic growth by fostering international links and human capability and promoting enterprise and innovation. Immigration policies, therefore, favour skilled migrants and entrepreneurs with the resources and capital to contribute to the economy.

If you are not a New Zealand or Australian national you will need a work or residence visa to live and work in New Zealand.

A very brief outline of certain immigration procedures and policies relevant to those intending to invest and/or establish a business in New Zealand and to live and work in New Zealand for that purpose are set out below. The Immigration New Zealand website, www.immigration.govt.nz, includes introductory information on government immigration instructions, as well as downloadable forms and guides.

INVESTING IN AND ESTABLISHING A BUSINESS IN NEW ZEALAND

Work or residence visas are available to people who wish to invest in a New Zealand business and live and work here (investors), or people who intend to purchase or establish a new business in New Zealand (entrepreneurs).

INVESTORS

Individuals intending to make investments may gain a residence visa via two categories, each of which has basic health and character requirements:

- **Investor Plus (Investor 1 Category):** Available if you intend to invest at least NZ$10m in acceptable New Zealand investments for a minimum of three years. Applicants are required to reside in New Zealand for at least 44 days during each of the last two years of the three-year investment period
- **Investor (Investor 2 Category):** Available if you intend to invest at least NZ$1.5m in an acceptable New Zealand investment for a minimum of four years and a further NZ$1m in cash or net-assets to support yourself. You must reside in New Zealand for a minimum of 146 days during each of the last three years of the four-year investment period, have at least three years' business experience, be under 65, and meet English language requirements.

ENTREPRENEURS

People intending to purchase or establish a business in New Zealand can apply for an entrepreneur work visa. Applicants must make a minimum capital investment of NZ$100,000 (excluding working capital), provide a satisfactory business plan, have business experience relevant to their proposal and meet the health and character requirements for residence and English language requirements.

The visa is granted for an initial twelve-month period. After this period, or once an applicant's business is established, the applicant can apply for a further work visa for the remaining 24 months of the visa. An applicant must meet 120 points on a scale which awards points for factors relating to the likely success of the proposed business and its value to New Zealand. It is then possible to apply for a permanent residence visa in New Zealand under the Entrepreneur Residence category.

Entrepreneurs can apply under the Entrepreneur Residence category to be granted residence. There are two ways of qualifying under this category: the two year option and the six month option. Under the two year option, the applicant must provide that he or she operated a successful business which has benefited New Zealand significantly. Under the six month option, the applicants can fast track residency by proving that they have been running a high value business for at least six months, in which they have invested at least NZ$500,000 and created at least three full-time employment positions for New Zealand citizens or residents. Residency can be revoked if the applicant does not maintain the investment and employment thresholds.

GENERAL WORK AND RESIDENCE VISAS

A number of work and residence visa options are available to overseas persons and their employers. A few of the main general categories are outlined below.

SKILLED MIGRANTS

The Skilled Migrant Category is a points-based system that provides a pathway to permanent residence in New Zealand for people who have skills to fill identified needs and opportunities in New Zealand.

Points are allocated based on whether an applicant has been offered or is in current skilled employment in New Zealand, and on their work experience, qualifications, age and existing family members in New Zealand.

WORK TO RESIDENCE

There are three Work to Residence visa options which provide a work visa for two and a half years and can lead on to a permanent residence visa:

- **Talent (Accredited Employers) Work:** Accredited employers may supplement their New Zealand workforce in their core area of business activity. To be eligible, an applicant must be aged 55 years or under and have an offer of employment from an accredited employer for full-time employment for a period of at least 24 months. The position offered must be in the employer's core area of business with a minimum base salary of NZ$55,000 per annum. Where an employer is granted accreditation by Immigration New Zealand, it will be accredited for a period of 12 months and may be renewed annually.
- **Talent (Arts, Culture and Sports) Work:** For applicants who have an exceptional talent in a declared field of art, culture or sport, who are sponsored by a New Zealand organisation of national repute in the relevant field and who are 55 years or younger.
- **Long Term Skill Shortage List:** The applicant must have an offer of employment for a position on the Long Term Skill Shortage List that meets the specifications for the position and must be suitably qualified for the position. Any offer must be for full-time employment for a period of at least 24 months. The Long Term Skill Shortage List identifies areas with a sustained shortage of skilled workers and is reviewed bi-annually. A current copy of the Long Term Skill Shortage List is maintained on the Immigration New Zealand website.

After holding a Work to Residence visa for at least two years (and subject to meeting all other requirements), the holder may apply for a residence visa under the Residence from Work Instructions, allowing the holder to live and work in New Zealand permanently.

ESSENTIAL SKILLS WORK

The Essential Skills Work Instructions allow New Zealand employers to recruit workers from overseas on a temporary basis to meet worker shortages where workers cannot be recruited in New Zealand.

Immigration New Zealand will assess the skill level of an occupation (from 1 to 5, with skill level 1 being the highest) by reference to the Australian and New Zealand Standard Classification of Occupations (ANZSCO). The offer of employment must substantially match the description for that occupation under the ANZSCO. The applicant must also be suitably qualified for the occupation (by training or experience) and the applicant's qualifications and experience relevant to the proposed role in New Zealand.

SPECIFIC PURPOSE OR EVENT

Applicants may be granted a work visa for a specific purpose or event if Immigration New Zealand is satisfied that granting the application is likely to benefit New Zealand without impacting negatively on employment opportunities for New Zealand workers. The applicant must be coming to New Zealand for a specific purpose or event and must be skilled in relevant areas.

There are a number of recognised "specific purposes or events", including:

- A senior or specialist business person being on short term secondment to a substantial New Zealand company or a New Zealand subsidiary of an overseas company
- A person being seconded to New Zealand to be the chief executive or senior staff member of a multinational company for which similar applications have been approved
- Principal applicants for residence under the Business Investor category (if their application has been approved in principle) investigating direct investment opportunities and making direct investments in New Zealand.

EMPLOYEES OF RELOCATING BUSINESSES

Key employees of a relocating business (who are not eligible under any other residence visa) may live in New Zealand and work for the relocated business. There are a number of requirements both for the business that is relocating and for any employee relocating with the business. In particular, Immigration New Zealand must be satisfied that the applicant is a key employee of the business and that New Zealand Trade and Enterprise supports the relocation of the business.

CITIZENSHIP

To qualify for citizenship, an applicant must (among other things):

- Be a resident
- Have been present in New Zealand with New Zealand residence for at least 1,350 days during the five years immediately preceding the application, and
- Have been present in New Zealand with New Zealand residence for at least 240 days in each of these five years.

IMMIGRATION ADVICE

The only people legally able to give immigration advice in New Zealand are licensed immigration advisers and certain exempt people (which include New Zealand solicitors). Immigration New Zealand will not accept applications made through unlicensed advisers (unless they are exempt).

ESTABLISHING A BUSINESS

Alternative structures

As a result of New Zealand's Commonwealth legal tradition, the forms of business structure found in countries such as the United Kingdom, Canada and Australia also exist in New Zealand. These include limited liability companies, partnerships and limited partnerships.

The choice of business structure will be dictated by various matters, including the desire of investors to have limited liability, the size and nature of the relevant business, the need to raise funds from the New Zealand public, and tax considerations. Irrespective of the chosen structure, it is important to note that particular types of business may be subject to specific licensing and regulatory controls that are not covered in this guide, for example insurance providers and real estate agents.

In general, foreign investors prefer the company structure. However, there is an increasing trend for the use of limited partnerships (discussed further below) since the introduction of the Limited Partnerships Act 2008, particularly for investment funds and joint ventures.

An overseas company may conduct business in New Zealand by:

- Incorporating a subsidiary in New Zealand
- Registering as an "overseas company" (ie as a New Zealand branch of an overseas company)
- Acquiring an existing New Zealand company.

Legal, tax and commercial considerations will influence an investor's choice of corporate structure. Buddle Findlay is able to provide tax and legal advice to assist with such a decision.

If an overseas person or company has special requirements - for example wanting to provide financial services or establish a non-profit organisation - other forms of entity may be more appropriate and Buddle Findlay can provide advice on which vehicle may be most suitable. In addition, we can provide advice on establishing partnerships, limited partnerships and joint ventures with existing businesses.

INCORPORATE A SUBSIDIARY

Incorporating a subsidiary is a relatively simple matter. The desired company name must be reserved (and approved by the Registrar of Companies) and certain administrative documentation must be registered. A New Zealand subsidiary is required to have a registered office in New Zealand. A New Zealand subsidiary is also required to either have a director that lives in New Zealand or have a director that lives in an enforcement country (currently only Australia) and is a director of a company registered in that enforcement country.

As a separate company from the overseas parent, the subsidiary is a separate legal entity from its shareholder. Shareholders of companies incorporated in New Zealand obtain limited liability automatically (unless an unlimited company is specifically created).

Large companies, in which at least 25% of the shareholder voting power is held by a subsidiary of a company incorporated outside of New Zealand, a company incorporated outside of New Zealand or a person not ordinarily resident in New Zealand, may be required to file financial statements with the Registrar of Companies relating only to their operations and the operations of any subsidiaries, not the operations of their overseas parent companies.

BRANCH OF AN OVERSEAS COMPANY

An overseas company conducting business in New Zealand must register under the Companies Act 1993 as an overseas company. Registration must occur within 10 working days of the overseas company commencing business in New Zealand. Registration involves obtaining approval from the Registrar of Companies for the use of the name of the overseas company and lodging the relevant administrative documentation. Failure to register may attract liability for the company and each director for a fine of up to NZ$10,000.

Unlike a subsidiary, a branch is not a separate legal entity to the overseas company. There is no requirement that New Zealand directors sit on the board of an overseas company.

Each year certain overseas companies (eg most large overseas companies) must prepare annual reports containing their financial statements and make those annual reports available to their shareholders.

ACQUISITION

In addition to commercial and tax issues, a company acquiring a New Zealand company must consider the application of the Overseas Investment Act, the Takeovers Code and the Commerce Act. This legislation is discussed in more detail on pages 10 - 16.

PARTNERSHIPS

New Zealand law recognises partnerships, which are defined in the Partnerships Act as the relation that subsists between persons who carry on a business in common with a view to profit.

Whether any particular venture is a partnership is a question of fact irrespective of how the founding documents are worded. The key feature of a partnership is that partners are personally liable for partnership debts and losses.

A partnership should be established by a partnership agreement which sets out the rights and obligations of the partners and the rules governing the operation of the partnership.

LIMITED PARTNERSHIPS

In 2008, the New Zealand government introduced limited partnerships in the form of the Limited Partnerships Act 2008. The purpose of this legislation was to establish a modern regime that provides a flexible and internationally recognisable structure, similar to limited partnerships in use in other jurisdictions, and to facilitate the development of the venture capital industry in New Zealand.

The most recognisable feature of a limited partnership is its hybrid nature. It is a separate legal entity which provides the protection of limited liability for its limited partners but it is taxed in the same way as a traditional partnership (often referred to as “flow through” or “tax transparency”).

A limited partnership must be registered, have a partnership agreement, at least one general partner and one separate limited partner. There is a substantial amount of flexibility afforded to what a partnership agreement may incorporate and like a company's shareholders' agreement (but unlike a company's constitution) privacy is maintained as a partnership agreement will not be a publically available document. Also, while all partners' details must be registered, only details of the general partner will be made public thereby keeping the details of the underlying investor base confidential.

The limited partnership regime has become a popular business vehicle with local and overseas investors alike, particularly for investment funds and certain types of joint ventures. Investors are attracted by not only the potential tax benefits but also the less arduous disclosure requirements and reduced compliance costs traditionally struck in company structures.

JOINT VENTURES

A joint venture is an arrangement between two or more parties who contribute resources to a particular business. A joint venture may be carried out via:

- A limited liability company of which each joint venture party is a shareholder
- A partnership
- A limited partnership
- An unincorporated contractual joint venture.

The structure and operation of a joint venture should be dealt with:

- In the case of a company, in its constitution and/or shareholders' agreement
- In the case of a partnership or limited partnership, in the partnership agreement
- In the case of an unincorporated (contractual) joint venture, in a joint venture agreement.

ALTERNATIVE FORMS OF ENTITY

Alternative business structures may be appropriate if you wish to establish a non-profit entity (eg a charitable trust or incorporated society) or your members wish to work together co-operatively and/or trade with the entity (eg a co-operative company or industrial and provident society).

If you wish to establish a financial services business a unit trust or building society may be appropriate.

FOREIGN INVESTMENT CONTROLS

The Overseas Investment Act 2005 sets out a consent procedure for overseas persons and their associates investing in significant business assets in New Zealand. For more information about New Zealand's foreign investment control regime, please refer to page 32.

CORPORATE REGULATION

Securities regulation

New Zealand has undergone a review of its legislation relating to securities and the financial markets, and the final major step in this process was the passing of the Financial Markets Conduct Act 2013 (FMC Act).

The FMC Act covers a range of areas, including the regulation of capital raising. The provisions of the FMC Act that regulate the offering of financial products to the public came into force on 1 December 2014, and prescribe when disclosure is required and what form it must take.

The FMC Act provides for a transition period from 1 December 2014 to 1 December 2016. During the period from 1 December 2014 to 30 November 2015 all issuers were able to choose which regime they wish to comply with during this transition period - the 'old' Securities Act 1978 regime (Securities Act) or the 'new' FMC Act regime.

Since 1 December 2015 the transition options are more limited - the only persons who can offer under the Securities Act are persons who were continuous offerors of securities prior to 1 December 2014, while all other persons must offer under the FMC Act regime. Because both regimes are still applicable, however, we provide some comments on both.

WHEN DISCLOSURE IS REQUIRED

As a general rule, disclosure is required in circumstances where an issuer is proposing to make an 'offer of securities to the public for subscription' (under the Securities Act) or where an issuer is proposing to make a 'regulated offer' of financial products (under the FMC Act).

Although the 'offer' terminology is different as between the two statutes, the overall effect is the same.

The form of disclosure required under each regime is discussed below.

Both the FMC Act and Securities Act provide a range of exemptions and exclusions (the Securities Act uses the term "exemption", while the FMC Act uses the term "exclusion") enabling issuers to raise capital without requiring regulatory disclosure.

An issuer seeking to raise funds can structure its offer by only approaching certain classes of potential investors.

Under the Securities Act regime offers of securities that are made solely to the following groups of persons are exempted from disclosure requirements:

- Habitual investors or other investors demonstrating a particular level of wealth, relatives or close business associates of the issuer
- Investors required to pay at least NZ$500,000 for the securities before they are allotted
- Investors who can demonstrate experience and knowledge with regard to the proposed investment
- Any other person who in all the circumstances can properly be regarded as having been selected otherwise than as a member of the public.

These exemptions are mostly carried over to the FMC Act. However, where an exemption under the Securities Act is subject to a minimum financial threshold, the threshold in question has typically been raised under the FMC Act - for example, the threshold for large investments has been raised from NZ$500,000 to NZ$750,000.

In a number of areas the FMC Act offers considerably more generous exclusions from disclosure requirements than the Securities Act - for example, the FMC Act provides a near-complete exclusion for shares or debt offered as part of an employee share purchase scheme. Additionally, the FMC Act provides exclusions for offers of shares or debt that do not exceed prescribed annual, maximum thresholds (the "small offer" exclusion) and where financial products being offered are of the same class as financial products already listed on NZX (the "same class" exclusion).

The Financial Markets Authority (FMA) (New Zealand's financial markets regulator) also has the power to grant general exemptions from certain provisions of the Securities Act (previous exemptions have been granted in respect of charitable issuers, overseas listed issuers, issuers of convertible securities, etc) or specific exemptions relating to particular issuers, and has a similar power under the FMC Act.

With the different exemptions and exclusions that apply under the legislation many offers will be able to be structured in such a manner as to avoid the need to prepare offering documents. However, great care needs to be taken in assessing these provisions. Buddle Findlay can assist you in interpreting the exclusions from the general requirements of the Securities Act and the FMC Act.

SECURITIES ACT DOCUMENTS - REGISTERED PROSPECTUS

If an issuer decides to make an offer of securities in reliance on the Securities Act regime the issuer must prepare two documents - a prospectus and an investment statement. The prospectus must be registered with the Registrar of Financial Service Providers and provided to potential investors on request. The purpose of the prospectus is to convey all material information about the:

- Offer of securities
- Financial position and performance of the issuer
- Risks involved in the offer
- Material interests of those involved in making the offer (eg directors of the issuer).

The Securities Regulations 2009 (secondary legislation made under the Securities Act) set out detailed requirements for registered prospectuses, and in addition to these specific requirements there is a more general requirement for all material matters that are not otherwise specified to be disclosed. The FMA reviews a sample of all offer documents, and as an ultimate sanction may cancel the registration of a registered prospectus.

Further, where the security being offered is a debt security or a participatory security (a general term used under the Securities Act for a range of managed investment products) the issuer must appoint a trustee or statutory supervisor (licensed under the Securities Trustees and Statutory Supervisors Act 2011 and being one of the statutory trustee corporations or a person approved for the purpose by the FMA) and enter into a trust deed or deed of participation.

SECURITIES ACT DOCUMENTS - INVESTMENT STATEMENT

Where an offer of securities is made to the public under the Securities Act, an issuer must provide an investment statement to each prospective investor. An investment statement is intended to provide basic information that a prudent but non-expert investor would need to understand the features of the offer, key terms, factors that affect returns, charges and risks. An investment statement is not registered, but the FMA can make an order suspending an investment statement or prohibiting its distribution if it considers the statement is false, misleading or non-compliant with the relevant legislation.

FMC ACT OFFERING DOCUMENTS - PRODUCT DISCLOSURE STATEMENT AND REGISTER ENTRY

The FMC Act replaces the Securities Act requirements of a registered prospectus and investment statement with a single offering document that will be provided to investors, called the Product Disclosure Statement (PDS).

The PDS is intended to provide a clear, concise, and effective summary of information for investors to aid their decision-making, and is subject to strict length limits (for example, a PDS for an offer of debt securities is limited to 30 pages in length) with tightly prescribed contents. The PDS will be accompanied by a register entry. All regulated (that is, public) offers of financial products will have a register entry on a website operated by the Registrar of Financial Service Providers, that will provide additional, more detailed information such as full financial statements and ongoing information.

The particular requirements for the contents of the PDS and the register entry are set out in the Financial Markets Conduct Regulations 2014.

New Zealand's capital market

New Zealand has one national stock exchange operated by NZX Limited (NZX). NZX is termed a "licensed market operator" under the FMC Act. It offers listing of equity securities on the NZX Main Board and NXT (pronounced "Next") which is designed particularly for developing companies and companies with non-traditional structures that need access to the market. NXT was launched in June 2015 as a replacement for the NZX alternative market (NZAX) in providing a platform for growing businesses. While the NZAX continues to trade (at the time of writing), NZX has not accepted NZAX listing applications since December 2014. It is likely that NZX will, in due course, disestablish the NZAX.

While equity securities constitute the majority of trading in New Zealand, there are facilities for trading in a wide range of securities including hybrids and debt securities.

An unregistered stock exchange also operates in New Zealand ("Unlisted", www.unlisted.co.nz). Like NXT, Unlisted is targeted towards small to mid-sized, growth companies. In December 2015, the FMA granted an exemption to Unlisted from the licensing requirements of the FMC Act. Accordingly, investors trading in securities listed on Unlisted do not have the same protections afforded to investors trading in securities listed on NZX.

LISTING RULES

Issuers with securities listed on NZX are bound by the NZX Main Board / Debt Market Listing Rules, which govern the relationship between issuers and NZX. Issuers with securities listed on the NZAX and NXT (respectively) are bound by separate sets of listing rules (the NZAX Listing Rules and the NXT Listing Rules, respectively). These rules are based on the NZX Main Board / Debt Market Listing Rules.

STOCK BROKERS

Investors can buy and sell securities on the markets operated by NZX only through an accredited broker. There is a relatively small list of accredited brokers in New Zealand, compared with some jurisdictions, which reflects the dominance of several large firms and the relatively small size of the New Zealand capital market. Brokers must be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSPA) as discussed further on page 18 and in order to execute trades directly on the NZX need to be accredited as NZX participants.

More information about the New Zealand capital market is available at www.nzx.com.

Takeovers Code

The New Zealand Takeovers Code applies to companies that are listed on the stock exchange or that have 50 or more shareholders and 50 or more share parcels (and in addition, if a company with 50 or more shareholders falls below that number it will still remain subject to the Takeovers Code for some purposes). These companies are called "Code companies".

The Takeovers Code is based on a fundamental rule which prevents any person from becoming the holder or controller of more than 20% of the voting rights in a Code company except in a manner permitted by the Takeovers Code. If any person already holds more than 20% then that holding cannot be increased except as permitted by the Takeovers Code.

The Takeovers Code has deeming provisions with an anti-avoidance purpose which deal with situations where groups of people act jointly or in concert or join together as "associates" (very widely defined). The aim is to ensure that the structuring of securities transactions does not defeat the basic purpose and intent of the Takeovers Code.

EXCEPTIONS

There are permitted exceptions to the fundamental rule which allow a person to increase their holdings or control above the 20% threshold. The exceptions are:

- With the approval of shareholders (only disinterested shareholders may vote)
- By making an offer for all outstanding shares in a Code company (a full offer)
- By making an offer for a certain percentage of the total shares in a Code company (a partial offer)
- By making acquisitions in the 50% to 90% range at a rate of up to 5% per annum ("creep" provision)
- By making acquisitions in the 90% to 100% range by compulsory acquisition or otherwise
- Under an exemption issued by the Takeovers Panel.

Although the Takeovers Code has, by international standards, greater flexibility in allowing full and partial offers, there is a minimum acceptance condition. Under both full and partial offers a bidder must receive acceptances that result in the bidder holding or controlling a minimum of 50% of the voting rights of the Code company or, if a partial offer would result in the bidder holding or controlling a lower percentage, the offer must be approved by the disinterested shareholders. This rule is obviously not applicable if the bidder already holds or controls more than 50% of the voting rights before making an offer.

TARGET COMPANY OBLIGATIONS

The Takeovers Code has a 14 day notice and pause period, being the period between the date of the notice of the takeover offer and the date any acquisition can be made under the Code offer. The target company has a number of obligations during an offer, including the preparation of a target company statement and the obtaining of an independent adviser's report.

There are various restrictions on the directors of a Code company exercising certain defensive tactics. It is expressly acknowledged that directors may seek to encourage competing bona fide offers, however there is no obligation on directors to "auction" control of the company.

Further information about the Takeovers Panel and the operation of the Takeovers Code can be found at www.takeovers.govt.nz.

Competition law

COMMERCE ACT

Competition law in New Zealand is governed by the Commerce Act 1986. The aim of the Commerce Act is to promote competition in New Zealand markets for the long term benefit of consumers in New Zealand.

The Commerce Act regulates business acquisitions that impact negatively on competition and prohibits certain restrictive trade practices.

BUSINESS ACQUISITIONS

PROHIBITION OF CERTAIN BUSINESS ACQUISITIONS

The Commerce Act prohibits the acquisition of assets or shares of a business if the acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market. In determining whether an acquisition has or is likely to have such an effect, the Commerce Commission will:

- **Define the relevant market:** The relevant market is the market in New Zealand for the goods or services supplied by the business (including any goods or services which, as a matter of fact and commercial common sense, are substitutable for such goods or services)
- **Determine the impact of the acquisition on the market:** This analysis involves a comparison of the likely market outcome that would result if the acquisition did proceed (the "factual") against the likely market outcome if the acquisition did not proceed (the "counterfactual"). If the factual results in substantial lessening of competition against the counterfactual, the acquisition will not comply with the Commerce Act.

CLEARANCES AND AUTHORISATIONS

There is no compulsory notification regime in New Zealand for proposed mergers or acquisitions. However, businesses may apply for a clearance or an authorisation from the Commerce Commission, if there is a risk (or a perceived risk) that a proposed merger or acquisition may breach the Commerce Act.

The Commerce Commission may grant clearance for an acquisition where it is satisfied that an acquisition will not, or will not be likely to, have the effect of substantially lessening competition in the relevant market.

Alternatively, if a proposed merger or acquisition is likely to substantially lessen competition in the relevant market, the relevant business may apply for an authorisation for the merger. In order to grant an authorisation, the Commerce Commission must be satisfied that any lessening of competition is outweighed by the public benefits of the transaction.

CONCENTRATION INDICATORS

The Commerce Commission uses market share and concentration indicators to identify those mergers that are less likely to raise competition concerns. Specifically, the two indicators that a merger is less likely to raise competition concerns are:

- **Indicator 1:** where, post-merger, the three largest entities in the market have a combined market share of less than 70%, and the merged entity's market share is less than 40%; and/or
- **Indicator 2:** where, post-merger, the three largest entities in the market have a combined market share of 70% or more, and the merged entity's market share is less than 20%.

An acquisition that falls outside the indicators may still not have the effect of substantially lessening competition in the relevant market. A business can apply for clearance from the Commerce Commission if it believes that the acquisition will not result in the substantial lessening of competition. Alternatively, a business may apply for authorisation from the Commerce Commission.

BUSINESS ACQUISITION PENALTIES

For a breach of the business acquisition provisions, individuals may be penalised up to NZ$500,000. Companies may be penalised up to NZ$5m.

Companies may also be ordered to dispose of any assets or shares acquired in contravention of the Commerce Act.

RESTRICTIVE TRADE PRACTICES

The Commerce Act prohibits various restrictive trade practices which may be classified as follows:

- **Collective practices**
  - contracts, arrangements or understandings that have the purpose, effect, or likely effect of substantially lessening competition in a market
  - contracts, arrangements or understandings that exclude competitors
  - contracts, arrangements or understandings amongst competitors that have the purpose, effect, or likely effect of fixing, controlling or maintaining prices (regardless of the effect on competition). Cartel conduct such as market allocation will also fall into this prohibition.
- **Unilateral practices**
  - suppliers of goods fixing minimum resale prices
  - companies with a substantial degree of power in a market taking advantage of its market strength for an anti-competitive purpose. Anti-competitive purposes include restricting the entry of a person into a market, preventing or deterring a person from engaging in competitive conduct in a market, or eliminating a person from a market.

RESTRICTIVE TRADE PRACTICES PENALTIES

The Commerce Commission may impose penalties on individuals of up to NZ$500,000 for breaching the restrictive trade practices prohibitions in the Commerce Act. Companies are prohibited from indemnifying their directors, employees or agents for penalties incurred as a result of price fixing.

A company may be fined an amount which does not exceed the greater of:

- NZ$10m
- Three times the value of any commercial gain resulting from the contravention or, if the commercial gain cannot be established, 10% of the turnover of the group of companies to which the company breaching the Act belongs.

CARTEL AMENDMENT BILL

A Bill to amend the price fixing provisions of the Commerce Act is currently before Parliament. This Bill clarifies the type of conduct that constitutes price fixing ("cartel conduct") under the Act, removes the prohibition on exclusionary conduct, and creates a clearance process for certain collaborative activities. A previous proposal to criminalise cartel conduct was dropped in late 2015.

Buddle Findlay's Christchurch office

FINANCIAL SERVICES

Financial service providers

Individuals or firms in the business of providing financial services in New Zealand and who are either ordinarily resident or have a place of business in New Zealand are required to register under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSPA). In addition, those who provide financial advice to clients in New Zealand (with some limited exceptions) must register under the FSPA whether or not they have a place of business in New Zealand. Registration is an on-line process. The FSPA has recently been amended to provide enhanced abilities for New Zealand regulatory agencies to deny or cancel registration where they consider there is no bona fide business carried on in or from New Zealand.

Financial service providers are generally required to be a member of a dispute resolution scheme unless they only provide services to "wholesale" clients (eg institutions or wealthy and/or experienced investors).

FINANCIAL ADVISERS

The Financial Advisers Act 2008 (FAA) governs individuals and firms who provide "financial adviser services", which are defined as any of the following:

- Giving financial advice (essentially, making recommendations or giving opinions in relation to the acquisition or disposal of particular financial products)
- Investment planning services - financial advice based on an analysis of the individual's overall financial situation and goals
- Discretionary investment management services.

The regulatory controls on a financial adviser depend on the type of advice they offer, the financial products involved and characteristics of the client (ie whether they are "retail" or "wholesale" clients). For example:

- Authorised Financial Advisers (AFAs) are individual advisers who are subject to the most rigorous licensing, conduct and disclosure obligations. AFAs can give advice on all types of financial products to retail and wholesale clients. Only AFAs can provide investment planning services to retail clients
- Qualifying Financial Entities (QFEs) and their employees are subject to less rigorous licensing and conduct obligations but can only give advice to retail clients on simple financial products or more complex products that are issued or promoted by the QFE
- Other registered financial advisers who are not AFAs can only give class advice or personalised advice on simple types of financial products.

Financial advisers and brokers are required to make disclosures to their clients under the FAA that vary depending on the categories they fall under.

The section above is a basic outline of some of the key features of the FAA and FSPA and people intending to carry on a financial services business in New Zealand need to consider the implications of the FSPA and FAA carefully, particularly where they intend to offer services to non-institutional clients.

Banking in New Zealand

The banking industry in New Zealand is prudentially supervised by New Zealand's central bank, the Reserve Bank of New Zealand (Reserve Bank), whose powers are contained in the Reserve Bank of New Zealand Act 1989. The Reserve Bank manages monetary policy with the intention of achieving and maintaining price stability and as prudential supervisor is responsible for promoting a sound and efficient financial system and avoiding significant damage that could arise from bank failure. The Reserve Bank produces and manages the New Zealand currency. While the Reserve Bank is fully owned by the New Zealand government, it has operational independence.

Any financial institution that wants to operate or undertake activities in New Zealand and use the word 'bank', 'banker' or 'banking' in their name or title must apply to the Reserve Bank to become a registered bank. As of April 2016 there are 25 banks currently registered in New Zealand. These include prominent Australasian banks such as ANZ Bank New Zealand, ASB, Bank of New Zealand, CBA, Kiwibank and Westpac, and some well known international banks such as Bank of Tokyo-Mitsubishi, Citibank, HSBC, Rabobank, Industrial and Commercial Bank of China and Bank of India.

A financial institution that wants to operate as a bank in New Zealand may choose whether it wants to set up a branch or a local subsidiary in New Zealand.

The Reserve Bank prefers that financial institutions incorporate a local subsidiary in New Zealand. However, a financial institution is only obliged to do so if it is systematically important (ie if its New Zealand liabilities, not owed to related parties, exceed NZ$15b) or if it has more than NZ$200m of retail deposits in New Zealand and it operates in a country that gives priority to local depositors (eg Australia). Setting up a branch in New Zealand, rather than a local subsidiary, will have the advantage of having fewer Reserve Bank policies apply (eg governance, connected party exposure and open bank resolution).

To apply to be a registered bank, the applicant's business must consist of borrowing and lending money or the provision of financial services and the applicant must provide material relevant to the following criteria:

- **Incorporation and ownership structure of the applicant**, including the name of the proposed bank, method of incorporation, ownership of the proposed bank, structure charts of the proposed bank's group and, if the proposed bank is to incorporate a local subsidiary, proposed composition of the board, the source of initial capital and the constitution of the proposed bank
- **Size of the proposed business**, including a description of the services the proposed bank intends to provide and of the market sectors it plans to target and forecasts for the first three years of operation as a registered bank
- **Ability of the applicant to carry out its business in a prudent manner**, including an outline of the prudential and AML/CFT policies to be employed by the proposed bank, the nature and extent of audit arrangements, the accounting systems and internal controls and, where relevant, the arrangements for supervision of the New Zealand operations by the parent bank or head office and a description of the proposed risk management systems and policies, details relating to any functions or business to be outsourced and the capital structure of the proposed bank

- **Standing of the applicant and its owner in the financial markets**, including an outline of the parent company's main activities and areas of expertise, a list of the major shareholders of the parent company, the financial accounts for the parent company for the last three years and an outline of the extent and type of support that the parent company will be providing to the applicant
- **Suitability of the current management of the applicant**, including the resumes of the existing or proposed directors and executives, a copy of their criminal record and written consent for the Reserve Bank to make enquiries with any relevant authority.

Applications from overseas entities may also be required to provide information on the regulatory requirements relating to banking in the home jurisdiction of the applicant and the nature and extent of financial and other information disclosed to the public by the applicant or its parent company.

The Reserve Bank primarily imposes its policies (which are set out in the Reserve Bank's Banking Supervision Handbook and can be found on the Reserve Bank's website) through the conditions of registration of each registered bank. The Reserve Bank can impose or vary conditions of registration on seven days' notice. The Reserve Bank's standard conditions of registration are set out in appendix one of BS1 in the Reserve Bank's Banking Supervision Handbook and include minimum capital adequacy and liquidity requirements, limits on related party exposure and conducting non-financial activities and requirements relating to the corporate governance of the registered bank. Banks that become systematically important (ie the bank's New Zealand liabilities exceed NZ$15b) are subject to additional requirements.

Registered banks must also publish quarterly disclosure statements and the credit rating of the registered bank.

Other financial institutions

Financial institutions that are in the business of borrowing and lending money or providing financial services (or both) and offer debt securities to the public (a "non-bank deposit taker") are also regulated by the Reserve Bank in accordance with the Non-bank Deposit Takers Act 2013. A financial institution can be declared to be a non-bank deposit taker by regulation (and therefore be subject to the non-bank deposit takers regime).

Any financial institution that wants to carry out the activities of a non-bank deposit taker (as defined above) needs to obtain a licence before providing these activities. Non-bank deposit takers can apply for a licence from the Reserve Bank by submitting a licence application form, a suitability notice for each director and senior officer and providing financial information (and in some circumstances, information about the non-bank deposit taker's controller).

As with registered banks, the Reserve Bank imposes various restrictions on non-bank deposit takers in relation to their corporate governance structure and their compliance with credit rating requirements, capital adequacy requirements and related party transaction restrictions. These restrictions may be imposed as conditions on the licence granted by the Reserve Bank to the non-bank deposit taker.

The Reserve Bank largely relies on the trustee of the non-bank deposit taker (as required by the Securities Act and the Financial Markets Conduct Act for issuers of debt securities) to monitor whether the non-bank deposit taker is complying with these prudential requirements (which will form part of the relevant trust deed). The trustee is obliged to report to the Reserve Bank if the trustee believes that there has, or may have been, or is likely to be, a material breach of these prudential requirements.

Financial institutions that take deposits from the public must also comply with the Securities Act and/or the Financial Markets Conduct Act. For further discussions on the requirements of these enactments, see the section on securities regulation on page 10.

Financial institutions that provide consumer finance in New Zealand but do not offer debt securities in New Zealand (eg because they only raise funds in wholesale markets or from banks or their parent companies) are not prudentially regulated. The only registration requirement is as a Financial Service Provider (see the separate section on Financial Service Providers on page 18). The obligations of Financial Service Providers are not typically particularly onerous.

Raising finance in New Zealand

New Zealand operates a relatively unrestricted system for raising and providing finance, both domestically and internationally, with no specific approvals or similar regulatory restrictions or controls for onshore or foreign borrowing or lending (with the exception of the law relating to the issue of securities, which is outlined on page 10).

The sources of funding available in New Zealand are:

- Banks
- Non-bank deposit takers
- Finance companies, including Non-bank deposit takers
- Wholesale markets
- Debt capital markets.

If the entity raising finance in New Zealand has sufficient capital and, generally, a strong credit rating, funding may be raised through unsecured borrowing. Generally, however, lenders will require security over the borrower's property. Security may be taken in the form of a charge or mortgage over land or other non-personal property and/or a security interest (pursuant to the Personal Property Securities Act 1999) over all present and after-acquired personal property or specific personal property.

New Zealand lending documentation is generally consistent with international practice. Entry by a company into financial arrangements with its lenders will require the appropriate corporate authorisations to have been given by the directors and/or shareholders in order to comply with the Companies Act. For the purposes of providing finance, lenders will often rely on a certificate from a director of the company as to the financial position (ie solvency etc) of the company and other matters, sometimes combined with a solicitor's opinion, stating that relevant requirements of the Companies Act have been complied with and that necessary corporate authorisations have been given.

New Zealand also has a debt capital market (with some debt securities are listed on the NZX). The market is relatively small and typically only accessed by larger corporates.

Insolvency and credit recovery

New Zealand law provides a number of insolvency procedures. The most commonly used are bankruptcy (in the case of individuals), liquidation (in the case of companies), and receiverships (of secured assets). From late 2007 a voluntary administration procedure has been available for rehabilitation of companies in financial difficulty. These procedures are governed by the Insolvency Act 2006, the Companies Act 1993 and the Receiverships Act 1993.

The Insolvency (Cross-border) Act 2006 has been in force since July 2008. This adopts the UNCITRAL Model Law for cross border insolvency.

Although New Zealand has a creditors' compromise procedure for insolvent companies, there are no mandatory moratorium periods on creditor enforcement unless and until a proposal is approved by the requisite majorities of creditors (and any further requirements are met). This procedure is therefore rarely used.

BANKRUPTCY

Bankruptcy applications may be initiated by either a debtor or a creditor. Once adjudged bankrupt, the property of the debtor passes to the official assignee for the benefit of the debtor's creditors in accordance with their relative entitlements (the Insolvency Act provides for equal treatment of creditors but has exceptions allowing certain limited classes of creditors to receive distributions in priority to others). The official assignee is granted various powers to investigate the affairs of the bankrupt and to set aside various classes of preferential or undervalue transactions. Various restrictions apply to a debtor while bankrupt, including limits on the ability to engage in business. However, a bankrupt will generally be discharged after three years, at which point the debtor has a "fresh start", being released from most types of debt other than debts arising from fraud, court fines, court reparation orders, or child support and maintenance, which survive bankruptcy.

LIQUIDATION

Liquidation involves the application of similar principles to a body corporate. The process can be initiated by various parties, including the shareholders of the company and a Court on the application of a creditor (a creditor may also seek Court orders to appoint a receiver where a power is otherwise unavailable under a security document). Once appointed, a liquidator has custody and control of the company's assets in order to realise the assets for the benefit of unsecured creditors. As with bankruptcy, the liquidator has the ability to investigate the affairs of the company and, where appropriate, to commence proceedings against directors for breach of their duties or to set aside preferential or undervalue transactions. Payments of distributions to creditors are made in accordance with pari passu principles, subject to the priority payment of certain prescribed classes of creditors (secured, preferential and, lastly, unsecured).

RECEIVERSHIP

Bankruptcy and liquidation are both largely procedures that benefit unsecured creditors. Secured parties are generally expected to rely upon enforcement powers granted under security documents or pursuant to the Personal Properties Securities Act 1999 (see section below), including powers of sale and the ability to appoint receivers to the secured assets. The latter process is governed by the Receiverships Act, which provides a creditor-friendly system of taking control of the secured assets, with the purpose of selling the secured assets (if possible as a going concern) to satisfy the debt of the appointer. In contrast to official assignees or liquidators, a receiver's primary duty is to exercise his or her powers in the best interests of the appointing creditor.

Credit contracts

The Credit Contracts and Consumer Finance Act 2003 (CCCFA) applies to all "credit contracts" made on or after 1 April 2005 and replaced previous credit contracts and hire purchase legislation.

The CCCFA is primarily consumer protection legislation. The core provisions of the CCCFA do not - with the exception of the provisions relating to oppression - apply to business transactions. The core provisions apply only to those credit contracts that are "consumer credit contracts". Essentially, a consumer credit contract is a credit contract entered into by an individual for "personal, domestic or household purposes".

For further detail on this Act, see the section on consumer protection on page 39.

Secured creditors

The Personal Property Securities Act (PPSA) establishes a code for determining the validity and priority of the claims of secured creditors and other parties with interests in personal property. The PPSA is based on similar regimes operating in North America and a similar regime came into full force in Australia in early 2012.

The PPSA represents a significant departure from the previous priority rules that were based on English law concepts. To best protect its priority to personal property (collateral), a secured party needs to "perfect" its "security interest" in that collateral by taking possession of it or by registering a financing statement against the debtor on the New Zealand Personal Property Securities Register (Securities Register). Registering a financing statement is an on-line process.

The Act applies to transactions that create "security interests" in personal property. A security interest is defined as an interest in personal property created or provided for by a transaction that (in substance) secures payment or performance of an obligation, irrespective of the form of the transaction or the identity of the person having title to that property. Personal property includes virtually all assets and property other than land, although there are a few other narrow exceptions. (For more information about security interests over land, see the property section on page 26.) The types of transactions governed by the PPSA therefore include, for example, fixed and floating charges, chattel mortgages, hire purchase agreements, retention of title arrangements and finance leases relating to personal property.

The PPSA also deems that security interests arise from some arrangements that may not be ordinarily thought of as creating security. These include, for example, the lease or bailment of goods for a term of more than one year and the purchase or transfer of an account receivable. The result of this is that in some circumstances it is advisable for an owner of property to register a financing statement in relation to their own property while it is in the possession of another (to ensure priority over other secured creditors of the party in possession).

As a general rule, priority between secured parties with a perfected security interest in the same collateral is determined by the order in which the secured parties took possession or registered financing statements against the collateral on the Securities Register. However, the priority rules under the PPSA are complex and there are a number of specific priority rules that modify the general rule in certain circumstances.

The PPSA also regulates the enforcement of security interests in collateral by secured parties. The secured party and the debtor can agree to contract out of certain of the debtor's statutory rights that would otherwise apply on enforcement. It is therefore common for security agreements to be drafted to contract out of some or all of the debtor's rights.

Anti-money laundering regulations

The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 places obligations on certain New Zealand reporting entities, including financial institutions, casinos, trust and company service providers and financial advisers, to detect and deter money laundering and counter the financing of terrorist activities.

OBLIGATIONS FROM 30 JUNE 2013

The main operative parts of the Act came into force on 30 June 2013. Under the Act reporting entities must:

- Perform a detailed risk assessment of the money laundering and financing of terrorism risks that they face and establish and maintain a detailed written compliance programme that includes procedures to detect, deter, manage and mitigate money laundering and financing of terrorism
- Carry out various levels of customer due diligence to satisfy themselves that financial transactions are legitimate
- Report suspicious transactions to the Police Commissioner (in practice, to the Financial Intelligence Unit of the New Zealand Police) and retain information collected regarding the identity of the relevant customers
- Maintain detailed records of each transaction conducted through the entity to allow for transactions to be readily reconstructed.

AML/CFT SUPERVISORS

The Act appoints Anti-Money Laundering / Countering Financing of Terrorism (AML/CFT) supervisors. There are presently three supervisors: the Reserve Bank of New Zealand, the FMA and the Department of Internal Affairs.

The Reserve Bank supervises reporting entities that are banks, life insurers and non-bank deposit takers while the FMA supervises issuers of securities, trustee companies, futures dealers, collective investment schemes, brokers and financial advisers. The Department of Internal Affairs supervises casinos, non-deposit taking lenders, money changers and all other reporting entities not supervised by the Reserve Bank or the FMA.

CODES OF PRACTICE

These AML/CFT supervisors may be required to prepare codes of practice. These provide a statement of practice to assist reporting entities to determine and meet their obligations under the Act and Regulations. Compliance with a code of practice is not mandatory, but a reporting entity will be treated as complying with certain sections of the Act when it complies with the relevant code of practice.

At the time of writing this document, the only code of practice in force is the Amended Identity Verification Code of Practice, which provides a suggested best practice for all reporting entities conducting name and date of birth identity verification on customers (that are natural persons) that they have assessed to be low to medium risk.

Queenstown

PROPERTY AND LAND LAW

Property law

LAND TITLE SYSTEM

New Zealand utilises a land registration and transfer system based on the Torrens system. This system revolves around a public register of land ownership and is used in a number of other countries, including Australia, the United Kingdom and Singapore. The primary advantage of the Torrens system is that a purchaser of land can rely on the correctness of the title to land as it is recorded in the public register. Furthermore, in New Zealand the Crown guarantees that the details on the register are true and complete.

Almost all land in private ownership in New Zealand is held under the Torrens system as enacted in the Land Transfer Act 1952. This Act provides for a public register of land, divided into 12 land registration districts. All transactions in relation to a piece of land, including transfers of the land and the registration of mortgages, easements, caveats and other legal interests over the land, are recorded on a computer register (these are commonly called "certificates of title") retained in the relevant registry's electronic register. The computer register also records the area of the land. A search copy of the computer interest for a parcel of land can be obtained (for a nominal fee) by various agents who will obtain the search from Land Information New Zealand (LINZ) via its LandOnline service. The purpose of including all this information on the register is to put the public on notice of all interests which may affect the land, however, it should be noted that where land is designated as "Māori land" then, as the Māori Land Court also holds records relevant to such land, a search of the Māori Land Court's register for the land should also be obtained to ensure that all relevant interests in the land are known. LINZ is currently developing various improvements to LandOnline to unify this information.

When a purchaser of land requests a guaranteed search of the public register, he or she will be provided with a search copy of the relevant certificate of title. As the Crown guarantees that all interests affecting the land appear on the certificate of title, the purchaser need not look any further to ascertain the true property owner. As a result, the process of purchasing land in New Zealand is relatively straightforward and reliable – as well as cost-effective.

TREATY OF WAITANGI AND MĀORI LAND CLAIMS

The Treaty of Waitangi was entered into between the first inhabitants of New Zealand, the Māori, and the British Crown in 1840. The Treaty served initially as a means of ensuring a peaceful colonisation of New Zealand by British settlers. The Treaty guaranteed continued use by Māori of their land and resources. A series of subsequent land confiscations by the Crown and gradual dissipation of Māori land holdings resulted in increased reference to the Treaty itself as a means of protecting Māori interests from further erosion, and restoring to Māori land and resources previously taken from Māori by the Crown.

In response to pressure to formally adopt the Treaty and for a fulfilment of guarantees provided under the Treaty, the New Zealand government enacted the Treaty of Waitangi Act in 1975. This legislation established an administrative body - the Waitangi Tribunal - to investigate and hear Māori claims relating to the loss of land and resources.

At present, there are numerous claims under the Treaty of Waitangi Act 1975 by various Māori tribes throughout New Zealand. These claims, however, do not relate to privately owned land except in certain limited situations where the land was previously held by certain types of Crown entities. This is because only Crown land (including certain land previously held by certain Crown entities), resources and assets are subject to possible restoration to Māori. Accordingly, overseas investors should be aware of possible Māori land claims when purchasing land or assets that are or have been owned by the Crown or Crown trading entities.

A Māori land claim under the Treaty will generally be indicated by a memorial noted on the certificate of title.

PURCHASING LAND - AGREEMENTS FOR SALE AND PURCHASE OF LAND

An agreement for sale and purchase of land in New Zealand, and agreements for certain other dispositions of land, must be in writing and signed by the parties to the transaction or their lawful representatives. Generally, the vendor's real estate agent or solicitor prepares the agreement for sale and purchase. It is usual for the purchaser to pay a deposit to the vendor's agent which is released to the vendor when the agreement becomes unconditional.

An agreement for sale and purchase may be subject to certain conditions or may be unconditional. Conditions can be included for the benefit of either party. The party having the benefit of a condition must use its best endeavours to satisfy that condition unless the agreement states otherwise. If conditions cannot be satisfied within the stipulated time, either party may then avoid the agreement for sale and purchase, usually by giving written notice to the other party. If the contract is avoided, the purchaser is generally entitled to the return of any deposit or monies paid.

A prudent purchaser will either make a full investigation of the land before entering into an agreement (employing professional advisers where appropriate) or, more commonly, make the agreement subject to conditions which allow that investigation to occur subsequently. Common conditions relate to certificate of title investigation, building inspection, resource management issues, arranging finance and (in respect of leased commercial or industrial buildings) investigation of leases.

FOREIGN INVESTMENT CONTROLS

The Overseas Investment Act 2005 sets out a consent procedure for overseas persons and their associates investing in sensitive land in New Zealand. For more information about New Zealand's foreign investment control regime, please refer to page 32.

Commercial and industrial building leases

Every lease in New Zealand is negotiated between the landlord and tenant because there is no single standard form of commercial lease. There are, however, a number of widely used forms of commercial leases, such as the Property Council of New Zealand (PCNZ) standard office lease for large commercial buildings with numerous tenants, the PCNZ standard retail lease for retail developments, and the somewhat simpler Auckland District Law Society standard deed of lease.

Most leases provide that the tenant is responsible for paying various outgoings (sometimes called "operating expenses" or "property expenses") in addition to the rent. Common outgoings payable by the tenant include local authority rates, insurance premiums and internal maintenance costs. Some leases, particularly of premises in multi-tenanted buildings or shopping malls, impose on the tenant a share of all the expenses of ownership, operation and management of the property.

Most commercial leases are for a period of years, often including rights of renewal. Most leases also provide a rent review clause which allows the landlord to review the rent at specified intervals. These leases often include a ratchet clause which allows rent to increase, but not decrease (either at all, or to below the level of rent that was payable at the commencement date of the lease), on a review.

Leases may permit a tenant to transfer his or her interest in the lease by way of assignment or sublease. It is common that the landlord's consent will be required before such a transfer may take place, although generally the landlord's consent may not be unreasonably withheld. When a tenant transfers its interest in the lease to another party, generally both the original tenant, its guarantors (if any) and the new tenant remain liable under the lease until its expiry.

Building code

Building in New Zealand is regulated by the Building Act 2004. This Building Act establishes a building code that every building and all building works in New Zealand must comply with. The Building Act grants territorial authorities, such as local district and city councils, the power to approve or decline building consents and apply any conditions that the authority feels necessary to ensure that any building is safe, sanitary, has adequate fire escape egress and is constructed in a way to promote sustainable development.

Environmental and planning law

RESOURCE MANAGEMENT ACT 1991

The principal environmental and planning legislation in New Zealand is the Resource Management Act 1991. The purpose of the Resource Management Act is to promote the sustainable management of natural and physical resources.

The Resource Management Act covers all use and development of natural and physical resources including land, water, the coast and air resources. The Resource Management Act focuses on managing the adverse effects of activities on the environment. Every person has a general duty to avoid, remedy or mitigate any adverse effect on the environment arising from any activity. Controls on development are set out in publicly notified statutory planning documents, administered by local authorities called regional councils or territorial authorities (city and district councils). A range of activities may require resource consents in the form of land use and subdivision consents, and coastal, water and discharge permits under the Resource Management Act.

The Resource Management Act has a range of penalty and enforcement provisions. There are specific provisions under which directors and senior managers of a company may be found personally responsible for the acts or omissions of the company.

RESOURCE CONSENTS

All activities must be permitted under the relevant district / regional plan or authorised by a resource consent granted by the relevant consent authority. Resource consents include land use consents, subdivision consents, water permits, coastal permits and discharge permits. Existing use rights are given some legal protection to continue where new rules requiring that consent be obtained are introduced.

District and regional plans classify activities into a range of activity types and this classification determines when resource consents are required. Activities range from permitted activities, which can be carried on without consent, to controlled, discretionary and non-complying activities, for which consents must be obtained. Some activities may be prohibited altogether.

District plans control the use of land. Most district plans divide land within the district into zones with different controls on various land uses within each zone. Regional plans control the use of water and discharges of contaminants into the environment.

The Resource Management Act sets out detailed provisions regarding the resource consent application process. An application must include comprehensive information assessing the environmental effects of the proposal.

Depending on the type of activity, the application may proceed without public notification, on a publicly notified basis, or with limited notification to affected parties only. If an application is publicly notified, any person may make a submission against or in support of the application and has a right to appeal the consent authority's decision to the Environment Court.

Special procedures exist for proposals considered to be nationally significant. The Minister for the Environment (and/or the Minister of Conservation, for proposals relating partly or wholly to the coastal marine area) may direct that such a proposal be considered in the first instance by the Environment Court or a specially appointed Board of Inquiry (with appeals to the High Court on points of law only).

STATUTORY PLANNING PROCESS

District and regional councils regularly notify proposed changes to their statutory planning documents. It is beneficial for entities to be aware of proposed new plan provisions that may affect their activities and to participate in the public submission process at council level and in the Environment Court. Private parties may also seek private plan changes to rezone land to allow specific activities.

ENVIRONMENT COURT

The Resource Management Act establishes a specialist Court, the Environment Court, to hear appeals on resource consent applications and proposed plan changes. The Environment Court also has jurisdiction on enforcement matters and to issue declarations. Appeals to the High Court, the Court of Appeal and Supreme Court may only be taken on points of law.

MĀORI ISSUES

The Resource Management Act makes special mention of Māori issues. There are general instructions to regional and district councils to recognise and provide for, as a matter of national importance, "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu [sacred sites] and other taonga [treasures]" and to take into account the principles of the Treaty of Waitangi.

ENFORCEMENT

Enforcement action under the Resource Management Act is a readily accessible means for regional and district councils to ensure that resource users comply with the terms of their resource consents, or to stop operations that are in breach of a consent, a district or regional plan, or the Resource Management Act. Some of the enforcement provisions can also be utilised by the general public.

Enforcement procedures can be used to require a resource user to remedy any adverse environmental effects of a one-off accident at the user's cost. The current land owner or occupier may be liable to remedy such adverse effects even if the environmental problem was caused by a previous owner or occupier of the land.

The Resource Management Act also contains a separate regime of strict liability criminal offences. Individuals and companies can be prosecuted for the offences. Conviction can result in fines up to a maximum of NZ$600,000 and imprisonment.

Directors and senior managers of corporate entities who know or should know that the actions in question are taking place may be held personally liable for those actions of the corporate entity which are in breach of the Resource Management Act. Such directors and managers do not need to know that the actions are contrary to the Resource Management Act to be liable.

FINANCIAL/DEVELOPMENT CONTRIBUTIONS

Proponents of new land developments that create demand for infrastructure, including wastewater, storm water and reserves, will generally be required to contribute to the public cost of providing those infrastructure services by making financial or development contributions to the relevant council. Financial contributions are imposed as conditions of resource consents. Many councils use development contributions instead of financial contributions. Development contributions are charged in accordance with policies made under the Local Government Act 2002.

The Resource Management Act also allows for recovery of administrative costs by regional and district councils. The general rule is that the resource developer is responsible for these costs so long as they are reasonable.

EXCLUSIVE ECONOMIC ZONE AND CONTINENTAL SHELF (ENVIRONMENTAL EFFECTS) ACT 2012

A new legislative framework to manage the marine environment in New Zealand's exclusive economic zone (beyond the 12-mile limit regulated by the Resource Management Act) and continental shelf came into force in mid-2013. The purpose of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 is to promote the sustainable management of the natural resources in this area.

A person wishing to undertake certain activities in the area, such as exploratory or development oil drilling or seabed mining, must first obtain a marine consent from a centralised regulator, the Environmental Protection Authority. Depending on the nature of the proposed activity, a public hearing of the application may be held. Parties can appeal decisions of the Environmental Protection Authority to the High Court on points of law.

The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act has a range of penalty and enforcement provisions, including provisions under which directors and senior managers of a company may be found personally responsible for the acts or omissions of the company.

FOREIGN INVESTMENT CONTROLS

The Overseas Investment Act 2005:

- Sets out a consent procedure for overseas persons and their associates investing in "significant business assets" or "sensitive land" in New Zealand
- Imposes conditions upon such investment and enables the regulator, being the Overseas Investment Office, to monitor compliance with those conditions.

INVESTMENTS THAT REQUIRE CONSENT

SIGNIFICANT BUSINESS ASSETS

Overseas persons, or their associates, must get regulatory consent to invest in significant business assets in New Zealand. Consent will be required when:

- Acquiring ownership or control of 25% or more of a person (for example, a company) where the value of the shares or consideration provided or the value of the assets of the person and its 25% or more subsidiaries exceeds NZ$100m
- Increasing an existing 25% or more ownership or control of a person (for example, a company) where the value of the shares or consideration provided or the value of the assets of the person and its 25% or more subsidiaries exceeds NZ$100m
- Establishing a business in New Zealand if the business is carried on for more than 90 days in any year and the total expenditure to be incurred in establishing such business exceeds NZ$100m
- Acquiring property (including goodwill and other intangible assets) in New Zealand to be used in carrying on business in New Zealand (whether by one transaction or a series of linked transactions) if the total value of the consideration provided for the property exceeds NZ$100m.

Less restrictive rules apply to Australian investors.

SENSITIVE LAND

Overseas persons, or their associates, must get regulatory consent to invest in sensitive land in New Zealand. Consent is required to acquire a freehold interest in sensitive land, or a leasehold (or any other) interest in sensitive land for a term of three years or more. An interest in sensitive land may be acquired directly, for example by acquiring the land under a sale and purchase agreement, or indirectly, for example by acquiring a 25% or more interest in a company that owns sensitive land.

Land is sensitive land if it includes:

- Non-urban land greater than 5 hectares. Non-urban land includes:
  - farm land, which is land used exclusively for agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry or livestock
  - any land other than land that is both in an urban area, and used for commercial, industrial or residential purposes
- Land on a number of specified islands around New Zealand
- Foreshore or seabed
- Land greater than 0.4 hectares that is:
  - part of a lake bed
  - historic land
  - held for conservation purposes
  - subject to a heritage order
  - used as a reserve.

Sensitive land also includes land that adjoins certain types of land (for example, foreshore, the bed of a lake, a reserve or regional park, conservation land, land that includes a historic place or is subject to a heritage order) and exceeds specified size limits.

WHO IS AN OVERSEAS PERSON?

An "overseas person" is:

- An individual who is neither a New Zealand citizen nor ordinarily resident in New Zealand
- A company that is incorporated outside New Zealand
- A company that is 25% or more owned or controlled by overseas persons
- Certain types of partnerships, joint ventures, trusts, or unit trusts that are (in broad terms) 25% or more managed, controlled, or governed (as applicable) by an overseas person(s), or where 25% or more of the beneficiaries of the relevant entity are overseas persons.

ASSOCIATES

The Overseas Investment Act covers "associates" of an overseas person. In broad terms, an associate is any person who acts for or on behalf of, or is a "front" for, an overseas person. For example, any person that an overseas person appoints to conduct business in New Zealand on its behalf or any person who acts under the direction of or jointly with an overseas person is an associate.

CONSENT PROCESS AND CRITERIA FOR CONSENT

The Overseas Investment Office handles the consent process. Consent decisions are made by the Minister of Finance (for sensitive land decisions and significant business assets decisions), and the Minister for Land Information (for sensitive land decisions only). Decisions may be delegated to the Overseas Investment Office depending on the nature and complexity of the application.

The criteria (set out in the Overseas Investment Act and Regulations) are:

- The overseas person (or in the case of an overseas person that is not an individual (for example, a company), each of the individuals with control of the overseas person):
  - has (or collectively have, in the case of a non-individual overseas person) business experience and acumen relevant to the investment
  - is of good character
  - is not a person prohibited by section 15 or section 16 of the Immigration Act 2009 (which lists certain persons that are not eligible for visas or entry permission under that Act)
- The overseas person has demonstrated financial commitment to the investment.

There are additional criteria that only apply to investments in sensitive land (see below).

Consent will only be granted if all of the criteria are met.

Each overseas person (or associate) making the investment must apply to the Overseas Investment Office for consent. Consent must be obtained before a legal or equitable interest in the significant business assets or sensitive land is acquired. The application for consent must be in writing and must be accompanied by a statutory declaration verifying that the information contained in the application is true and correct.

It is possible for an overseas person to enter into an agreement to purchase significant business assets or sensitive land before obtaining consent under the Act, provided the agreement is conditional on obtaining consent.

For most applications, the Overseas Investment Office aims for a decision to be made within 50 working days of "active consideration". Active consideration excludes time spent waiting for information from the applicant and time spent waiting for Ministers to make decisions.

The legislation imposes certain conditions on every consent. Consent may also be granted subject to additional conditions.

ADDITIONAL CRITERIA FOR INVESTMENT IN SENSITIVE LAND

There are additional criteria that only apply to investments in sensitive land. The additional criteria are:

- If the land is or includes farm land, the farm land (or the securities to which the overseas investment relates) have been offered for acquisition on the open market to persons who are not overseas persons (unless there is an exemption that applies), and
- Either:
  - the overseas person (or each of the individuals with control of the overseas person) is a New Zealand resident or intends to reside in New Zealand indefinitely, or
  - the investment will, or is likely to, benefit New Zealand (and if the relevant land includes non-urban land exceeding five hectares, the benefit to New Zealand must be "substantial and identifiable").

Benefits are assessed by comparing what is likely to happen with the investment with what is likely to happen without the investment.

The question of whether an investment will, or is likely to, benefit New Zealand is determined with reference to specific statutory criteria, including:

- Whether there will be an economic benefit (for example, new jobs, increased exports, enhanced competition, introduction of new technology or business skills)
- Whether New Zealand's flora, fauna, and historic heritage will be protected
- Whether foreshore, seabed, lakebed and riverbed land has been offered back to the Crown
- Other factors, including New Zealand's image overseas, the investor's previous investments, government policy, and the participation of New Zealanders in the investment.

ENFORCEMENT AND PENALTIES

If a person fails to obtain consent under the Overseas Investment Act or enters into a transaction having the effect of defeating, evading or circumventing operation of the Act, that person commits an offence and may be liable:

- In the case of an individual, to imprisonment for up to 12 months or to a fine up to NZ$300,000
- In the case of a company, to a fine up to NZ$300,000.

If a person knowingly or recklessly makes any false or misleading statement or any material omission to the regulator, that person commits an offence and may be liable to a fine up to NZ$300,000.

In addition, the Court may, on the application of the regulator

- Order the disposal of property acquired in contravention of the Overseas Investment Act
- Order payment of a civil penalty.

INTELLECTUAL PROPERTY

TRADE MARKS

Trade marks can be registered pursuant to the Trade Marks Act 2002. Registration provides the owner with the exclusive statutory right to use that trade mark in New Zealand in relation to the goods or services for which it is registered. The initial registration period is 10 years and a registration can be renewed for subsequent 10 year periods upon payment of renewal fees.

Use is not a pre-requisite for filing a trade mark application. However, registered trade marks can be revoked if they are not used for a continuous period of three years.

To be registrable, a trade mark must be distinctive. Examples of marks that typically may not be registered include descriptive words and names with geographical significance associated with the relevant goods or services. Trade marks that contain Māori text or imagery may not be registered if they are considered offensive to Māori.

Trade mark registration is administered by the Intellectual Property Office of New Zealand (IPONZ). Trade marks can be registered in as little as six to seven months from the filing date.

New Zealand is a member of the Paris Convention and therefore trade marks can be filed in New Zealand six months after they were first filed in another Convention country, and claim the original overseas filing date.

The Madrid Protocol came into force in New Zealand on 10 December 2012. International applications based on New Zealand national trade mark applications and registrations can be filed with IPONZ. Also, IPONZ is now able to receive international registrations filed with the World Intellectual Property Organisation designating New Zealand as a country in which protection is sought.

DOMAIN NAMES

Businesses can reserve and use New Zealand domain names eg ".co.nz" and ".net.nz". There is no requirement that the registrant have a business presence in New Zealand. There are also no restrictions on the number of domain names that one registrant may reserve.

A Dispute Resolution Service (DRS) operated by the Office of the Domain Name Commission provides an administrative forum for the resolution of disputes concerning domain names. The DRS is based on the UK Nominet system.

BUSINESS NAMES

There is no official business name register in New Zealand.

COMPANY NAMES

Company names can be reserved for incorporation under the Companies Act, but a name cannot be reserved or used for incorporation under the Companies Act if it is identical or nearly identical to an existing company name. Registration of a company with a particular name does not, in itself, prevent another person from using a similar trading name. Trade mark registration is the best way to protect a brand or trading name in New Zealand.

PASSING OFF/FAIR TRADING ACT 1986

Unregistered trade marks are protected under the provisions of the Fair Trading Act. If use of a trade mark is misleading or confusing, or likely to mislead or confuse, the Fair Trading Act can be used against the party causing the confusion or deception. Actual confusion is not a requirement under the Fair Trading Act.

Unregistered trade marks are also protected under the tort of passing off if it can be shown that business goodwill has been damaged or is likely to be damaged by another party as a result of a misrepresentation in trade that is likely to deceive or cause confusion.

COPYRIGHT

The Copyright Act 1994 protects original "works" (artistic, literary (including software), dramatic and musical works, sound recordings, communication works (such as webcasts, television and radio broadcasts) and films. Protection under the Copyright Act gives the owner the exclusive rights in the work including the right to copy the work, issue copies of the work to the public, play and perform the work, communicate the work (using a communication technology) and make an adaptation of the work.

In New Zealand, copyright comes into existence upon creation of a work (there is no requirement to register). Some works need to be recorded in a material form (such as in writing or stored on a computer) for copyright to exist in them.

The term of copyright is generally the life of the author plus 50 years (for literary, dramatic, musical, artistic works). However, industrially applied artistic works are only protected for 16 years from the year of first industrial application. The implementation in New Zealand of the Trans-Pacific Partnership is likely at some point to increase the general term of copyright to the life of the author plus 70 years. The Copyright Act also recognises and protects moral rights including the right to be identified as an author. Moral rights cannot be assigned.

The Copyright Act provides that an employer owns all works created by an employee in the normal course of their employment. Similarly, the Copyright Act provides that the commissioner of certain original works is presumed to own the copyright in the commissioned work. Both these provisions can be overridden by contract.

PATENTS

The Patents Act 2013 provides for the grant of patents for inventions, including manufacturing processes, machines, pharmaceutical and products. To be patented, the invention must be industrially applicable, ie be able to be made or used in some kind of industry, new or novel and contain an inventive step that is non-obvious. The invention cannot be already known, or be two or more products or processes put together with no new or improved effect. If the invention has already been used, displayed or otherwise made available anywhere in the world it will not normally be patentable. The period of protection is 20 years. Patents can be renewed by the payment of renewal fees.

New Zealand is a member of the Paris Convention and Patent Co-operation Treaty.

"Swiss type" claims (ie new therapeutic uses for existing pharmaceuticals) are recognised in New Zealand.

DESIGNS

The Designs Act 1953 provides for the registration of designs (features of shape, configuration, pattern and ornamentation) that are new and original. Designs cannot be registered if they are solely functional.

Designs can be registered for a maximum period of 15 years (renewal fees are due after five and 10 years respectively).

CONFIDENTIAL INFORMATION

Information is confidential if it is communicated in circumstances that impart an obligation of confidence. Obligations of confidence can arise under contract (eg confidentiality and non disclosure agreements) and if the circumstances of communication require confidence (eg fiduciary duties) and by contractual provisions such as restraints of trade which limit the ability to use information.

The Beehive - Wellington

REGULATION AFFECTING DAY-TO-DAY BUSINESS OPERATION

Consumer protection

CONSUMER GUARANTEES ACT 1993

The Consumer Guarantees Act creates minimum standards of quality for all goods or services that are ordinarily acquired for personal, domestic or household use. A breach of any of the guarantees (set out below) will usually entitle a consumer to a remedy prescribed by the Consumer Guarantees Act. Depending on the circumstances, the consumer may be able to seek a remedy against the supplier or the manufacturer. The provisions in the Consumer Guarantees Act are designed to be self-policing in the sense that consumers enforce their own rights under the Consumer Guarantees Act.

COVERAGE

A consumer is a person who acquires from a supplier goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption and excludes anyone who acquires the goods or services for the purpose of resupplying them in trade, consuming them in the course of a process of production or manufacture or, in the case of goods, repairing or treating in trade other goods or fixtures on land.

GENERAL RULE - NO CONTRACTING OUT

The general rule is that contracting out of the Consumer Guarantees Act is not permitted. There is an exception to this rule for business transactions. If all parties to the agreement are in trade, those parties may contract out of the Consumer Guarantees Act if it is fair and reasonable to do so. The agreement to contract out must be in writing.

GUARANTEES FOR THE SUPPLY OF GOODS

The Consumer Guarantees Act sets out the following guarantees in relation to the supply of goods:

- The supplier has the right to sell the goods, which are free from undisclosed securities
- The consumer has the right to undisturbed possession
- The goods are of an acceptable quality (except where a defect has been drawn to the consumer's attention)
- The goods are fit for the purpose for which they were acquired
- The goods comply with their description and sample
- Where the price is not determined, the consumer is not liable to pay more than a reasonable price
- Repairs and spare parts are reasonably available, subject to certain exceptions
- If the supplier is responsible for delivery, that the goods are received at the time agreed (or within a reasonable time).

LIABILITY FOR GUARANTEES

Consumers may have a right of redress against the supplier, manufacturer or both the supplier and manufacturer, if goods fail to meet any of the guarantees.

Depending on the circumstances, a consumer's remedies may include repair (where a defect can be remedied), replacement, refund, compensation for reduction in value, or compensation for reasonably foreseeable loss or damage.

Manufacturers are also liable for any express guarantees they give to consumers.

The following persons are also deemed to be manufacturers by the Consumer Guarantees Act:

- Any person holding itself out to the public as the manufacturer
- Any person attaching their brand or mark to the goods
- If the goods are manufactured outside New Zealand and the manufacturer is not in New Zealand, the importer or distributor of the goods.

GUARANTEES FOR THE SUPPLY OF SERVICES

The Consumer Guarantees Act sets out the following guarantees in relation to the supply of services:

- The services are carried out with reasonable care and skill
- The services are fit for the purpose made known to the supplier by the consumer
- The services will be completed within a reasonable time
- The consumer is not liable to pay more than a reasonable price for the service.

Depending on the circumstances, consumers' remedies may include remedy of the failure, cancellation of the contract, compensation for reduction in value or reasonably foreseeable loss or damage.

FAIR TRADING ACT 1986

The purpose of the Fair Trading Act is to contribute to a trading environment in which the interests of consumers are protected, businesses compete effectively, and consumer and businesses participate confidently. To achieve this purpose, the Fair Trading Act prohibits unfair conduct and practices, promotes fair conduct and practices, and provides for the disclosure of consumer information and the setting of product safety standards.

GENERAL RULE - NO CONTRACTING OUT

The general rule is that contracting out of the Fair Trading Act is not permitted. There is a limited exception to this rule for business transactions. Specifically, if all parties to the agreement are in trade, those parties may contract out of the following sections of the Fair Trading Act, if it is fair and reasonable to do so:

- Section 9 (misleading and deceptive conduct)
- Section 12A (unsubstantiated representations)
- Sections 13 and 14(1) (false and misleading representations).

The agreement to contract out must be in writing.

MISLEADING AND DECEPTIVE CONDUCT

The Fair Trading Act contains a general provision prohibiting businesses from engaging in conduct that is misleading or deceptive, or is likely to mislead or deceive. In addition, certain specific types of conduct are prohibited, including misleading and deceptive conduct relating to the supply of goods, services and employment. It is also an offence under the Fair Trading Act to make false or misleading representations relating to matters such as the quality, price, performance characteristics or place of origin of goods, and to having the requisite skills, qualifications or approvals to perform a service.

UNFAIR PRACTICES

It is an offence under the Fair Trading Act to engage in certain practices, including bait advertising (for example, not having enough promotional stock), pyramid selling schemes, not honouring gift or prize promotions, and importing goods bearing false trade marks.

UNSUBSTANTIATED REPRESENTATIONS

The Fair Trading Act prohibits the marking of unsubstantiated representations. Unsubstantiated representations are representations made without reasonable grounds at the time they are made. It does not matter whether the representation is in fact false or misleading.

CONSUMER INFORMATION

Regulations may be made under the Fair Trading Act to require business to disclose certain information about goods and services. Current regulations require disclosure of certain information relating to clothing and footwear, used motor vehicles, and water use efficiency standards.

UNSOLICITED GOODS AND SERVICES AND UNINVITED DIRECT SALES

Consumers are not obliged to pay for unsolicited goods, and it is an offence to demand payment for such goods. A cool-down period (and other conditions) applies to sales made as a result of an uninvited direct sale, and the consumer must be made aware of their rights.

PRODUCT AND SERVICES SAFETY

Regulations can be made under the Fair Trading Act to prevent injury arising from the supply of goods and services. The Minister can declare goods unsafe and compulsorily recall products subject to safety regulations, such as children's toys and nightwear, baby cots and walkers, cigarette lighters and bicycles. There is also a voluntary product recall regime.

UNFAIR CONTRACT TERMS

The Commerce Commission may apply to a Court for a declaration that a term in a standard form consumer contract is an "unfair contract term". A term in a consumer contract may be unfair if it:

- Causes a significant imbalance to the parties' rights
- Is not reasonably necessary to protect a party's interests
- Would cause detriment to a party if it were enforced.

Only the Commission can apply to the Court for a declaration that a term is "unfair". If a contract term is decided to be unfair it is a breach of the Act to enforce that term.

PENALTIES

The Commerce Commission enforces the Fair Trading Act. Individuals may also bring private actions under the Act.

Courts can impose fines of up to NZ$600,000 and may grant other remedies, such as injunctions, damages and corrective advertising orders. The Commerce Commission may issue infringement offences for breaches of some provisions of the Act.

CREDIT CONTRACTS AND CONSUMER FINANCE ACT 2003

The primary purpose of the Credit Contracts and Consumer Finance Act 2003 is to protect the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions of land. The core provisions of the CCCFA do not apply to business transactions (with the exception of the provisions relating to oppression). The core provisions only apply to credit contracts that are "consumer credit contracts". Consumer credit contracts are contracts entered into by individuals for personal, domestic or household purposes.

A credit contract is any contract under which credit is or may be provided. Credit is defined under the CCCFA and means a right granted by a person to another person to:

- Defer payment of a debt
- Incur a debt and defer its payment
- Purchase property or services and defer payment for that purchase (in whole or in part).

The CCCFA contains a provision that if a party alleges that a credit contract entered into by an individual is a consumer credit contract, it will be presumed to be a consumer credit contract until proven otherwise. However, under the CCCFA a creditor may rely on a declaration from the debtor, obtained in accordance with the CCCFA, that the contract is for business or investment purposes, unless the creditor has reason to believe otherwise.

The CCCFA imposes a number of restrictions and obligations on creditors under consumer credit contracts. These include restrictions on the level of fees that can be charged by a creditor and various disclosure obligations.

Recently implemented amendments to the CCCFA require lenders to comply with the "lender responsibility principles" when entering into consumer credit contracts (and certain limited other contracts). The principles include: exercising reasonable care and skill; assisting the borrower to reach an informed decision; and treating the borrower (and their property) reasonably and in an ethical manner. The Minster of Commerce and Consumer Affairs publishes a Responsible Lending Code which, sets out guidance on how lenders can implement the lender responsibly principles. The Code is not binding, but compliance with the Code is to be treated as evidence that a lender has complied with the Principles.

PENALTIES

The Commerce Commission enforces the CCCFA. Individuals may also bring private actions under the CCCFA. Courts can impose fines of up to $600,000, and may grant other remedies such as amending the terms of a credit contract, injunctions, or prohibiting enforcement of certain terms.

SALE OF GOODS ACT 1908

The Sale of Goods Act applies to sales of commercial goods that may not be covered by the Consumer Guarantees Act. Such goods include goods purchased for resupply or resale, or for use in manufacturing processes, and personal or household goods for use in business (where the seller has contracted out of the Consumer Guarantees Act).

The Sale of Goods Act imposes various warranties into the sale of commercial goods, including warranties of merchantable quality, fitness for purpose, and compliance with sample and description.

The remedies available to the buyer include refunds and compensation. However, it is reasonably easy for sellers to exclude or vary these warranties by express agreement.

Employment law

Employment relationships in New Zealand are governed primarily by the Employment Relations Act 2000. The Employment Relations Act enshrines the principle of good faith and promotes collective bargaining. The parties to an employment relationship must deal with each other in good faith and not do anything, either directly or indirectly, to mislead or deceive each other. The Employment Relations Act also promotes the right of employees to bargain collectively.

EMPLOYMENT AGREEMENTS

In New Zealand the relationship between employer and employee is documented by an employment agreement. Employment agreements may be individual (personal to the individual employee and employer) or collective (covering a group of employees and entered into between one or more unions and employers).

It is compulsory to have either an individual or collective employment agreement, and that agreement must be in writing.

UNIONS

Union membership is not compulsory in New Zealand. However, unions have specific rights of access to workplaces under the Employment Relations Act. Employers must recognise the union that represents their employees. As at 1 March 2014, union members made up 15.7% of the employed workforce in New Zealand.

DISPUTES

Employees have the right to take a personal grievance against their employer for unjustified dismissal or, if they have not been dismissed but suffered some other detriment, for unjustified disadvantage. The Employment Relations Act encourages mediation as the first step in attempting to resolve employment disputes.

By pursuing a personal grievance, an employee can seek various remedies such as an award for compensation for lost wages together with an award for humiliation, loss of dignity and injury to feelings.

Employers can specify in the employment agreement a "trial period" of up to 90 days and certain technical requirements must be complied with for the "trial period" to be effective. If an employee is dismissed during this trial period, he or she cannot bring a personal grievance or other legal proceedings in respect of the dismissal. However, employees on trial periods are still protected against discrimination, sexual and racial harassment, duress, or unjustified action by an employer.

DISCRIMINATION

The Employment Relations Act (together with the Human Rights Act 1993) prohibits discrimination against employees on the grounds of sex, marital status, religious or ethical belief, colour, race, ethnic or national origin, disability, age, political opinion, employment status, family status, sexual orientation, and participation or involvement in the activities of a union as a union official or as a member. Employees who believe they have been discriminated against may take a personal grievance to the Employment Relations Authority or make a complaint to the Human Rights Commission.

REDUNDANCY

There is no statutory right to any redundancy payment under New Zealand law. Entitlement to any redundancy payment depends on the relevant employment agreement. It is common to expressly exclude any right to redundancy pay in employment agreements, although notice of termination for redundancy must be given. In certain limited circumstances where a business has been sold or transferred, the Employment Relations Authority can fix appropriate redundancy payments for the employees affected.

TRANSFERS OF UNDERTAKINGS

There is limited protection in New Zealand for employees if all or part of the business they work for is sold or transferred. Employees in several specified sectors, such as cleaners and food caterers, have a statutory right to transfer their employment on the same terms and conditions to the new owner of the business (unless that owner does not have any employees or has 19 employees or less, in which case exemptions may apply). Other employees have no such right, although their employment agreement must contain a clause setting out what steps the employer will take to protect the employees' rights in such a situation.

WAGES

The current minimum wage for employees aged 16 years is NZ$15.25 an hour before tax. That equates to NZ$122.00 for an 8-hour day, or NZ$610.00 for a 40-hour week.

A lower minimum wage can apply to employees starting out in work (aged 16-19), and those undergoing formal training. The current "starting out" and "training" wages are NZ$12.20 an hour before tax. That equates to NZ$97.60 for an 8-hour day, and NZ$488.00 for a 40-hour week.

There is no statutory minimum wage for employees who are under 16 years old. In most industries, employers pay wages and salaries at levels above the minimum wage level.

HOLIDAYS AND PARENTAL LEAVE

There are 11 statutory public holidays in New Zealand. Under the Holidays Act 2003 all employees are entitled to a minimum of four weeks' annual holidays.

Under the Holidays Act, employees are also entitled to at least five days' paid sick leave per annum, and paid bereavement leave on the death of close family members. Employees are entitled to accumulate sick leave up to a maximum of 20 days, although the parties can extend this by agreement.

The Parental Leave and Employment Protection Act 1987 allows for up to 18 weeks of "primary carer" leave for employees with six months' continuous service who are pregnant, who have given birth to a child, or who take permanent primary responsibility for the care, development, and upbringing of a child under six years of age.

Certain entitlements may also be available for the spouses or partners of primary carers. These include partner's leave of one week (after six months' service) or two weeks (after 12 months' service).

Extended leave, up to a total period of 52 weeks, can be shared between both parents if they have 12 months service with their respective employers. Employers are not required to pay employees for parental leave, but government-funded paid parental leave payments are available for primary carers, up to a maximum of NZ$516.85 per week (before tax) for up to 18 weeks. Self-employed people may also be entitled to these payments. In certain circumstances, additional payments are available in respect of preterm babies.

HEALTH AND SAFETY

The Health and Safety at Work Act 2015 provides that a person conducting a business or undertaking (PCBU) must ensure, so far as is reasonably practicable, the health and safety of workers who work for the PCBU. This duty also applies to workers whose work is influenced or directed by the PCBU, while they are working. The definition of "workers" covers any individual who works in any capacity for a PCBU, including but not limited to work as an employee.

A PCBU is also required, so far as is reasonably practicable, to ensure that the health and safety of other people is not put at risk from work carried out as part of the conduct of the business or undertaking. "Health" under the Health and Safety at Work Act means not only physical but also mental health.

Amongst other duties, and again so far as is reasonably practicable, PCBUs must provide and maintain a work environment that is without risks to health and safety, as well as safe plant, structures and systems of work. PCBUs must also provide any information, training, instruction, or supervision that is necessary to protect people from risks to their health and safety arising from work carried out as part of the PCBU's business or undertaking.

An "officer" of a PCBU must exercise due diligence to ensure that the PCBU complies with its duties under the Act. An officer includes a director of the PCBU and any other person holding a position which allows him or her to exercise significant influence over the PCBU's management, such as a chief executive.

WorkSafe New Zealand, the national workplace health and safety regulator, can prosecute PCBUs, officers and others for breach of the Health and Safety at Work Act. Significant penalties may be imposed for serious breaches, including imprisonment.

ACCIDENT COMPENSATION

New Zealand's law relating to personal injury is unique. Legal claims relating to personal injury are prohibited (other than for exemplary damages). Instead, a statutory scheme provides no-fault personal injury cover for all New Zealand citizens, residents and temporary visitors to New Zealand - whether injury occurs in the workplace or elsewhere.

The scheme is governed by the Accident Compensation Act 2001 and has various funding sources, including levies on employers and employees.

The Accident Compensation Act covers the majority of personal physical injuries, whether resulting from negligence or accident, and whether occurring in the workplace or elsewhere. It also covers a limited range of mental injuries. Employers are required to contribute to the scheme by payment of levies. The amount of these levies is determined by the risk classification of the employer's business, and its prior claims history "rating".

Compensation available under the scheme includes coverage of treatment and rehabilitation costs, payments for loss of earnings, independence allowances, funeral expenses and death benefits for dependants.

Superannuation and pensions

GOVERNMENT SUPERANNUATION

Financial superannuation assistance is available in New Zealand for people who meet certain criteria. To receive superannuation, a person must:

- Be 65 years of age or over
- Be a New Zealand citizen or permanent resident
- Have lived in New Zealand for a certain amount of time
- Normally live in New Zealand when the application is made.

PRIVATE SUPERANNUATION

There are many voluntary retirement savings schemes operating in New Zealand that are designed to assist people to put money aside for their retirement and to supplement the superannuation assistance provided by the government. Private schemes must be set up under a trust deed, keep proper accounts that are audited annually, and should be registered with the FMA.

KIWISAVER

A voluntary retirement savings scheme, KiwiSaver, came into force on 1 July 2007. Employees are automatically enrolled in KiwiSaver when they start a new job and can decide to opt-out between days 14 and 56 after starting work. Employees can also elect to join KiwiSaver at any time. Employers are required to make KiwiSaver deductions from employees' wages and forward them to the Inland Revenue Department in much the same way as PAYE. Employees can choose to make the minimum contribution of 3%, or contribute at 4% or 8% if they wish.

Employers must also pay compulsory employer contributions of at least 3% of the employee's gross salary or wages.

Privacy

The Privacy Act 1993 was introduced to promote and protect individual privacy.

The Privacy Act establishes 12 Information Privacy Principles (IPPs). The IPPs relate to the collection, use and disclosure of personal information by public and private sector agencies, and to each individual's right to access such information.

ENFORCEMENT

Only one of the IPPs can be enforced in Court - the right of an individual to access information held about them by a public sector agency. Breach of any other IPP does not automatically create an infringement of the Privacy Act. The breach must reach the higher level of "an interference with the privacy of an individual" before a remedy may be available.

The Privacy Act provides detailed procedures to be followed if a person alleges interference with his or her privacy, including investigation and mediation by the Privacy Commissioner (a position established under the Privacy Act). Ultimately, the Privacy Commissioner can refer an unresolved matter to the Director of Human Rights Proceedings who can bring an action before the Human Rights Review Tribunal. The person alleging interference can also bring an action if the Director decides not to take proceedings or agrees to the person bringing his or her own proceedings. The Human Rights Review Tribunal may grant a variety of remedies including a declaration, an order requiring certain action, damages, and costs against a party.

APPLICATION TO BUSINESS PRACTICES

The design and use of forms which gather personal information needs to be reviewed to ensure that forms reasonably inform individuals about the fact and purpose of collection, the recipient of the information, rights of access to and correction of the information, and a range of other details. A number of the IPPs also directly impact on use of information about an individual for credit risk assessments and human resources purposes.

Importing, exporting, tariffs and duties

Importing and exporting activity is governed by the Customs and Excise Duties Act 1996 and administered by the New Zealand Customs Service (Customs). Customs operates a modern importing and export system to facilitate international trade. This system, in conjunction with the New Zealand government's preference for low tariff and duties, provides an environment which is conducive to trade, making New Zealand an attractive place to undertake business.

Customs must clear all imported and exported goods. To obtain clearance, importers and exporters must make a declaration which includes providing a description of the nature, quantity, origin and, in the case of exports, the destination of their goods. Almost all imported goods are subject to a 15% Goods and Services Tax (GST), and some imports are also subject to tariffs. Given the importance of border security (particularly regarding biosecurity), the legislative requirements and procedure are strictly enforced with penalties imposed for non-compliance.

GENERAL PROCEDURE FOR IMPORTING AND EXPORTING

People wanting to undertake importing or exporting activities in New Zealand must use one of two electronic systems - the Customs Online Declarations website or the Electronic Data Interchange software (EDI), which must be installed by the importer or exporter on its computer system. EDI has lower transaction costs for obtaining Customs clearances than the online service so is suitable for high frequency importers and exporters.

The Customs Online Declarations website is suited to one-off or low volume users. The Customs Online Declarations website is designed for regular importers and exporters who have sufficient knowledge of the requirement to clear their own exports with Customs. Alternatively, a freight forwarder or customs broker can be engaged to undertake the transaction.

Both importers and exporters are responsible for making accurate customs entries, paying all Customs charges, and retaining all relevant documentation for seven years. Documentation must be presented to Customs on demand.

PENALTIES

Customs enforces a wide range of prohibitions and restrictions on imports and exports at the border.

Export and import entries providing details of shipments to be exported or imported are a legal declaration to Customs under the Customs and Excise Duties Act. A penalty can be imposed for filing entry documentation that contains an error or omission that renders the documentation materially incorrect or results in any amount of payable duty not being declared or paid. Regardless of whether a Customs broker or agent is used, the importer or exporter remains liable for any penalties or prosecution action taken under the Customs and Excise Duties Act for providing an erroneous entry or declaration to Customs.

DUTIES AND TARIFFS

In recent times, the New Zealand government has pursued a liberal trade policy and only imposes duties on selected goods entering New Zealand to protect the most vulnerable New Zealand industries.

The majority of goods subject to import duty have a rate imposed at around 5% to 7% of the goods' value. The manufacturing industry, particularly the textile, clothing and footwear industry, are subject to more protectionist measures. Goods competing with New Zealand's textile, clothing and footwear industry attract the highest tariffs, of up to 10% or more.

Customs applies duties to imported goods based on the following criteria:

- **Tariff classification:** The New Zealand Customs Service Working Tariff document is a commodity coding system used to identify and describe goods based on the World Customs Organisation International Convention guidelines
- **Concession applicability:** Goods are generally grouped together and fixed with a duty under the tariff classification system. However, there are special concessions for some goods
- **Preference:** New Zealand extends preferential tariff access to goods which are the "produce" or "manufacture" of specified countries and country groups.

An importer who is uncertain as to the origin of their goods can obtain information from Customs. An importer can also obtain a pre-importation ruling to determine the tariff classification or even seek a concession or preference where it is unsure of the nature of its goods.

Customs also imposes anti-dumping and countervailing duties at the time imported goods are entered and cleared for Customs' purposes. These duties are designed to correct the price of goods imported into New Zealand that are under-priced in their country of origin.

GST

Generally, goods imported into New Zealand, are liable for GST of 15%. There are very few exceptions. Customs collects the GST on imports as if it were Customs duty. GST is payable on the sum of the following amounts:

- The Customs value of the goods
- Any import duty, anti-dumping and countervailing duties, and industry specific levies
- The freight and insurance costs incurred in transporting the goods to New Zealand.

The importer is responsible for the payment of GST on imported goods. Under New Zealand law, an importer is the person by or for whom the goods are imported.

Special rules apply to the temporary importation of goods (ie if goods are brought into New Zealand for less than 12 months).

A reverse charge mechanism applies to imports of services in certain situations. Where the reverse charge applies, the importer will be liable to pay the GST.

Most exports are zero-rated for GST purposes, subject to satisfying certain criteria.

Taxation

New Zealand has two principal taxes - income tax and GST.

INCOME TAX

New Zealand imposes income tax on the basis of both residence and source. Broadly, residents of New Zealand for tax purposes are liable to tax in New Zealand on their worldwide income, with a credit available in most circumstances in respect of foreign taxes paid. Non-residents of New Zealand are subject to New Zealand income tax only on income with a New Zealand source, subject to possible complete or partial relief under an applicable tax treaty.

With the exception of employee income, income tax in New Zealand is generally imposed on a net taxable income basis (also sometimes called a gross/global approach). That is, tax is generally imposed on all income (from any source) other than excluded and exempt income, less allowable deductions. Some entities are entirely or partly exempt from income tax, such as charities.

GST

GST is a broad-based consumption tax, similar to a value added tax, currently levied at 15% on the supply of most goods and services in New Zealand. Any person who within a 12 month period makes total supplies in New Zealand in excess of NZ$60,000 in the course of all "taxable activities" is liable to be registered for GST. Some supplies are taxed at the rate of zero per cent ("zero-rated"), including exported goods, goods situated overseas at the time of supply and of delivery, taxable activities which include land disposed of as going concerns, and certain exported services. A person registered for GST who makes supplies (including zero-rated supplies) can generally claim an input tax credit for GST paid by that person on supplies received to make taxable supplies. Other specified supplies are exempt from GST. The main exempt supplies are domestic financial services, leases of residential accommodation, salary and wages, and supplies of fine metal.

Normally GST will have no impact on business profits, except for administration and compliance costs, and cash flow effects. However, there are instances (particularly in the financial services sector) where the tax will be imposed on the business taxpayer as a final customer.

CAPITAL GAINS TAX

New Zealand does not have a separate capital gains tax regime. However, in some circumstances, income tax may be imposed on profits made on the sale or other disposition of assets, including real and personal property (for instance, where such assets are acquired for the purposes of resale). Real property which is residential property and which is disposed of within two years of acquisition will be deemed to have been acquired with the intention of resale, and any gain will be subject to income tax (with some limited exceptions). The government is also introducing a new withholding tax on non-residents selling residential land which is subject to that two year rule. In addition, certain foreign portfolio equity holdings are subject to tax on a deemed return of 5% of the value of those holdings at the start of the relevant income year (in this case, any returns from these holdings will not otherwise be subject to tax).

Two new tax measures which affect land sales have recently been introduced. The first of these is the introduction of a two-year "bright-line" test on sales of residential land. Under the "bright-line" test, generally speaking any gain on the sale of property which is "residential land" (other than a person's main home) which is disposed of within two years of acquisition will be subject to income tax.

The second measure is a withholding tax called residential land withholding tax (RLWT). The RLWT creates a withholding imposition on sales of residential land by certain non-resident persons, referred to as "offshore RLWT persons". The amount of tax under the RLWT is calculated by reference to one of three alternative methods, the use of which is determined by the vendor's individual circumstance. This RLWT is an interim withholding, not a final, tax and may be able to be refunded.

OTHER TAXES

There is currently no inheritance tax, stamp duty, cheque duty, general land tax, gift duty or estate duty in New Zealand. There is however excise duty on alcoholic drinks, tobacco and certain fuels as well as accident compensation levies. Import tariffs are imposed on certain goods, subject to relevant free trade agreements. There are also other central government and local government (territorial authority) charges, such as vehicle registration fees and rates in relation to land.

Income tax rates

The main income tax rates (excluding ACC levy) are currently:

Individuals	10.5%	income to NZ$14,000
	17.5%	NZ$14,001 - NZ$48,000
	30%	NZ$48,001 - NZ$70,000
	33%	NZ$70,001 and over
Trusts	33%	(certain trusts are subject to tax at 45%)
Companies	28%	whether resident or non-resident

CORPORATE INCOME TAXES

RESIDENCE

A New Zealand tax resident company is subject to income tax on all worldwide income derived. A company is deemed to be tax resident in New Zealand if it is incorporated in New Zealand or its head office, centre of management or director control is in New Zealand. A tax credit is allowed in respect of foreign tax paid on foreign-sourced income, not exceeding the New Zealand tax otherwise payable on that foreign-sourced income, where such foreign tax is similar in nature to New Zealand income tax. A non-resident company is generally subject to income tax only on income with a source in New Zealand.

DIVIDENDS PAID/RECEIVED

Dividends paid by a company are not deductible to it, but are generally taxable to the company's shareholder(s). Dividends may not be taxable to a shareholder when that shareholder is also a company and is a member of the same wholly-owned group of companies as the payer.

New Zealand has a full imputation system, which is similar to the franking system operated in other jurisdictions (notably, Australia). Resident companies may attach imputation credits to dividends paid to shareholders. The credits represent income tax which has been paid by the company on its profits, subject to a 66% shareholding continuity requirement. The credits can be used by New Zealand tax-resident shareholders to offset any tax payable in respect of their taxable income. Imputation credits generally cannot be utilised by non-residents (other than indirectly through the application of a foreign investor tax credit regime).

LOSSES

Generally, losses incurred by resident and non-resident taxpayers may be carried forward indefinitely and offset against future taxable income from a New Zealand source. Corporate losses can be carried forward indefinitely and offset against future profits provided that a certain level of shareholder continuity, broadly at least 49%, is maintained. There is generally no "same business" test in relation to loss carry-forward. Company losses may also, subject to certain requirements (including a requirement that the companies have at least 66% commonality of ultimate shareholding), be utilised by offsetting those losses against the income of other group companies.

SPECIAL TAX SITUATIONS

In New Zealand there are various regimes governing specialist entity types and taxation situations. These include detailed rules governing:

- Trusts
- Unit trusts
- Partnerships and joint ventures
- Portfolio Investment Entities
- International tax regimes in relation to:
  - transfer pricing
  - thin capitalisation
  - foreign investor tax credits
  - controlled foreign companies and foreign investment funds
- Withholding taxes, including:
  - resident withholding tax
  - non-resident withholding tax, and a related approved issuer levy regime
  - deductions from salary and wages
  - non-resident contractors' withholding tax.

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