

INVESTMENT IN NEW ZEALAND



INTRODUCTION

New Zealand is a country with many advantages for investors. New Zealand has a stable economic base that is well set up for long term international competitiveness. New Zealand has one of the world's most efficient, competition-friendly economies. The New Zealand Government has and continues to endeavour to provide an economic setting that enables international investors to set up or join forces with New Zealand based companies.

New Zealand is also a country well placed geographically to take advantage of increasing trade with Asia and other Pacific Rim countries. New Zealand's close trade and legal relationship with Australia gives businesses operating from New Zealand free access to a population of 24 million. This free trade relationship along with recent co-operation agreements with Singapore and Thailand, not to mention the recently agreed free trade agreement with the People's Republic of China, have significantly increased the size of the New Zealand consumer market.

New Zealand also has a very fast and efficient business start-up regime. To establish a company, obtain the appropriate Inland Revenue Department registrations and commence business can all be done in a very short time and the procedures are considered to be some of the simplest and most straight forward of all the OECD nations. There are also very few restrictions placed on businesses operating in New Zealand with a freedom of choice in regard to the nature of the business, its size and its location.

OVERVIEW OF NEW ZEALAND

Population

New Zealand had a population of approximately 4,300,000 with more than 75% of New Zealanders live in the North Island and approximately 30% of New Zealanders living in the area comprising greater Auckland.

Exchange System

New Zealand has as its the base monetary unit - the dollar. The dollar has a floating exchange rate and the law relating to currency exchange has been deregulated so that no restrictions are placed on the amount of funds which may be brought in or taken out of New Zealand.

Government

New Zealand is a parliamentary democracy with power highly centralised in a one-chamber Parliament in the capital city of Wellington. General elections are held every three years. A referendum conducted in 1993 has resulted in a change of the electoral system from the "first past the post" system to a "mixed member proportional" representation system. The maximum number of Parliamentary seats has been increased to 120 under the electoral system which came into effect in 1996.

For over 50 years the New Zealand political scene has been dominated by two parties, the National Party and the Labour Party. The new electoral system has resulted in a number of previously minor parties gaining representation in Parliament.

Almost all legislation relating to the conduct of business and the operation of companies in New Zealand is enacted by Parliament and administered by national Government agencies. As New Zealand is not a federal state, all legislation is passed by a single body, the House of Representatives, which is the highest law-making body in the country. A second tier of Government also operates in New Zealand, in the form of a number of territorial local authorities. The members of these organisations are also democratically elected on a regular basis however the national political parties do not play a large role in the local Government process. Most of these local Government organisations have the power to raise their own money and set and collect their own rates and levies. Generally these bodies do not play a large role in the governing of the economy, but specific business proposals may require town planning, environmental or building consent. As such, businesses may therefore have to deal with local Government requirements as well.

BANKING AND FINANCE

The Reserve Bank of New Zealand is New Zealand's central bank. The three main functions of the Reserve Banks are: the operation of monetary policy to maintain price stability, the promotion and maintaining a sound and efficient financial system and meeting the currency needs of the public.

Following a significant deregulation in the banking sector, New Zealand has maintained a relatively open policy on the entry of new registered banks. Banking licences are now available to any banking organisation that can demonstrate banking expertise and that has a good standing in the financial community.

Most commercial banking services are still provided by a variety of trading banks and these banks offer a range of services. The banks with the largest operations in New Zealand are ANZ National Bank Limited, Westpac Banking Corporation, Bank of New Zealand and ASB Bank Limited. Regular bank financing is usually provided by way of a bank overdraft facility, with the overdraft limit being individually set for the business concerned. Most financial accommodation is secured by way of a floating charge over the assets of a company. Personal guarantees from directors and major shareholders are frequently required as well.

The major commercial banks also provide other common commercial services, including letters of credit, bills of exchange, commercial bill facilities, term loans and forward exchange.

Financial Markets

NZX's three securities markets are the NZSX (New Zealand Stock Market), the NZDX (New Zealand Debt Market) and the NZAX (New Zealand Alternative Market). These markets form a diverse offering for companies wishing to raise capital and investors looking for secure investment products. These markets feature many of the nation's most established and proven companies and offer new opportunities for emerging new companies and listed issuers.

The NZSX is home to many of New Zealand's best known brands. Informally known in the past as the Main Board, the companies listed here stand out as symbols of success in their own right and as proof of the potential of local investment in the local market. They are the cornerstone companies of NZX and New Zealand's economy. As at May 2008 there were approximately 170 companies listed on the NZSX.

The NZDX offers a range of investment securities including corporate and government bonds and fixed income securities. The goal for this market is to expand and grow the facility that already exists, providing companies and a broader spectrum of investors with more opportunities for investment diversification and growth.

The NZAX is tailor-made to facilitate growth and is specifically designed for fast-growing, developing companies and companies with non-traditional structures (such as co-operatives) - all with a common need for market facilitation.

STARTING UP A BUSINESS

Overseas companies can establish their presence in New Zealand in one of two ways:

1. Either through the registration in New Zealand of a branch of an overseas company ("branch"); or
2. Through the incorporation in New Zealand of a local subsidiary, or the acquisition of a New Zealand registered company which will then become a subsidiary ("subsidiary").

The following are factors which need to be considered in determining whether a foreign company should establish its presence by way of a branch or subsidiary in New Zealand:

- It is necessary for branches of foreign companies to file each year with the Registrar of Companies a copy of their annual accounts together with a separate set of accounts made up in relation to the operations of the branch in New Zealand. These latter accounts must be certified by a person qualified to be an auditor in New Zealand and must comply generally with the Financial Reporting Act 1993. A subsidiary, where it is 25% or more owned by overseas residents, must also file a copy of its accounts with the Registrar of Companies.
- There will be slightly more administrative work involved for a subsidiary as opposed to a branch because of the necessity to keep a minute book and statutory registers in New Zealand, but this factor is probably not significant.
- A subsidiary may simplify dealings, as it is a separate entity for the purposes of contracting. More significantly a subsidiary will have limited liability in respect of the New Zealand operations.
- The impact of the taxation system varies with the type of structure chosen. This will be discussed generally below, but specific advice will need to be sought in respect of individual cases.

In the case of both branches and subsidiaries an annual return fee is payable to the Registrar of Companies each year when annual accounts are filed.

If a branch or a subsidiary is established in New Zealand, as opposed to buying an existing company and converting it to a subsidiary, a variety of incorporation documents will have to be filed in the Companies Office. If an existing company is acquired, then documents recording the change of shareholder and directors will have to be filed.

If the cost of setting up a business in New Zealand, or the cost of any acquisition exceeds \$NZ100,000,000 or is in respect of a "specified business", the consent of the Overseas Investment Office will be required. If the consideration does not exceed this figure, then generally the only consent required is from the Registrar of Companies for the use of the company name.

Overseas Investment Act 2005

The Overseas Investment Act 2005 came into force on the 25 August 2005. It replaces the Overseas Investment Act 1973 and the associated regulations. The Act applies to three categories of investment by overseas persons, they being:

1. Sensitive Land;
2. Significant business assets; and
3. Fishing Quotas

The Act requires consent to be obtained for a transaction before the overseas investment is given effect under the transaction. Overseas persons are all persons who are not ordinarily resident in New Zealand, any company that is not incorporated in New Zealand and any company incorporated in New Zealand the shares of which are controlled as to 25% or more by an 'overseas person'.

Every person or associate making an overseas investment must apply to the regulator for consent to the overseas investment transaction. A considerable amount of information is required to be included in any application for consent including information about the applicant, details of the investment, the rationale for the investment and evidence that the investment meets the relevant criteria in the Act.

The threshold for business investments has increased so that screening is required for significant business assets which are non-land business assets valued at over \$100 million (increased from the \$50 million threshold under the 1995 Regulations). Screening will remain over all sensitive land but not on land adjoining some non-sensitive reserves. Land will not, however, be screened based on value alone. This means therefore that purchases of land by overseas persons with unimproved value of more than \$10 million will no longer require consent where the land is not screened for other reasons. The removal of this requirement is only expected to affect purchases of land in the main central business districts.

All overseas investments subject to the screening regime will continue to be required to meet the investor test and, in the case of acquisitions of sensitive land, a 'benefit' test. The investor test requires the applicant to show business acumen, financial commitment, and good character. Further, it requires that the applicant does not contravene provisions of the Immigration Act 1987 dealing with criminal records, deportees and terrorist activities. Under the 'benefit' test the applicant must demonstrate a real and identifiable benefit to New Zealand, whether through the creation or retention of jobs, technology or expense, expansion of markets or the introduction of investment for development purposes.

LAND PURCHASES & PROPERTY DEVELOPMENT

Title to Land

New Zealand has a land ownership scheme based on a central register for each land district. This system is similar to the "Torrens" system in Australia and means that almost all parcels of land have their own separate certificate of title.

Once the purchaser's name is noted on a certificate of title as the registered proprietor the rights to ownership of that land are guaranteed by the New Zealand Government. This therefore means that if there are any errors in the chain of ownership, this will not affect the validity of the title and there is no need to trace the history in order to prove ownership.

In New Zealand it is possible to purchase property personally or as a company or a trust. There are different tax implications and processes in place for companies and trusts and further advice should be sought regarding such purchases.

Land Information New Zealand (LINZ) is responsible for providing New Zealand's land information. LINZ has automated its land titles and survey business functions in a computer system called Landonline. Landonline provides remote access facilities to subscribing customers such as lawyers, surveyors, real estate agents and local authorities. Landonline has now created a system called "E-Dealing" which is a new mechanism that transfers property immediately over the internet. The result of this E-Dealing is that once the electronic instruments are signed, certified and released for registration the computer land register will be instantaneously and automatically altered so as to record any new purchaser of a piece of land.

Agreements for Sale & Purchase

In order to have a legally binding agreement for sale and purchase of land, the contract or agreement must be signed by the parties and in writing. An agreement can however be subject to conditions. A common condition could be that the contract is subject to the purchaser being able to raise finance or the purchaser being satisfied with a Land Information Memorandum, which is a report provided by the local territorial authority. If conditions such as these are not satisfied, then the agreement comes to an end. The parties however, have a duty to take all reasonable steps to satisfy such conditions and if the conditions are not satisfied and the agreement comes to an end any deposit paid is generally refundable in full unless the parties have agreed otherwise.

The Building Act 2004

In New Zealand the building of houses is controlled by the Building Act 2004 which applies not only to the construction of new buildings but also to the alteration, demolition and maintenance of existing buildings.

The main reason for having building controls is to ensure buildings are safe and healthy to live in. There is a three-part framework for setting out these controls:

- The Building Act 2004 sets out the law on building work.
- The Building Regulations contain the mandatory New Zealand Building Code, and also the rules about building consents and building inspections.
- The New Zealand Building Code sets out performance standards that all building work must meet, and covers aspects such as fire safety, access, moisture control, durability, services and facilities.

IMMIGRATION

The migration of people into New Zealand is controlled by the Government through the New Zealand Immigration Service. Tourists and visitors are generally permitted to enter the country with a minimum of immigration formality. Temporary entry is normally granted through a visitor's visa which can be approved for up to a period of nine months. The other types of visa's available are a residence visa which is for those people who wish to permanently live in New Zealand. There are also work visa's which are for those people who want to work in New Zealand for a temporary period of up to three years. There is also a long term business visa which is for those people who wish to establish their own business in New Zealand for an initial period of nine but that can be established to three years.

There are four categories under which prospective immigrants can qualify for permanent residence in New Zealand under the present policy. These are as follows:

1. General Skills;
2. Business Investor;
3. Family;
4. Humanitarian.

Only the first two categories are reviewed below.

(a) **General Skills Category**

Applicants are assessed against a points system. The minimum 24 points required to enter the system, which is set annually by the Minister of Immigration.

Points are awarded on the basis of the applicant's educational and vocational background as well as age and financial factors. For example, any equivalent to a base degree, trade or three year diploma/certificate gains 10 points. Any advanced trade or professional qualification gains 11 points. Any equivalent of a masters or better gains 12 points.

In terms of age, applicants aged between 25 and 29 years receive a maximum of 10 points with a sliding scale down to 54 years of age. Those aged above 55 years do not qualify under this category.

An applicant's financial means are also taken into account. Points can be obtained where an applicant has \$NZ100,000.00 or more available for settlement funds. In addition, points may be awarded for a family sponsor and/or an employment offer.

An adequate knowledge of the English language, good health and character are also required.

(b) **Business Investor Category**

Under this category, applicants are required to reach a minimum level of English and meet immigration, health and character requirements. Applicants must also have a recognised qualification with one point awarded for a relevant base degree, trade or 3 year diploma, certificate or 2 points for an advanced qualification. Applicants are awarded points for age, business experience and investment funds.

Also in terms of age, applicants score 0-10 points for being 25-64 years, negative 2-4 points for being 65-84 years. The maximum age is 84 years. Points may be awarded proportional to an applicant's financial means. One to eleven points may be awarded for direct investment funds of NZ\$1million to NZ\$6million. One to fifteen points may be awarded for business experience of 4-20 years.

Applicants may also apply to work in a long term business (temporary visa). Business proposal plan needs to be provided to the Immigration Services. In addition to investment capital, applicants will need to show sufficient funds for the maintenance and accommodation of themselves and meet the health and character requirements.

The Entrepreneur category will apply to applicants who have established a business in New Zealand successfully. A business is considered to be benefiting New Zealand if it promotes New Zealand's economic growth. The requirements of health, character and language are also applicable here.

TAXATION

In New Zealand, income tax is levied under the Income Tax Act 2007. The New Zealand tax base incorporates income tax, goods and services tax, import tariffs and miscellaneous excise duties, rates and gift duty as direct and indirect taxes. Some of the important features of the New Zealand tax system and policy environment are that there is no capital gains tax in respect of certain transactions, no employee payroll tax and no social security tax.

At the time of writing, a New Zealand resident company is taxable on its worldwide income at a rate of 30%. All companies, whether resident or non-resident are taxed at the same rate however it should be noted that an overseas company is taxable at the same rate but only in respect of its income that has a New Zealand source.

The Inland Revenue Department collects and administers taxes and duties for the government. New Zealand's indirect or consumption tax is a Goods and Services Tax at 12.5 per cent, payable by the final consumer of goods and services. Individuals are taxed as follows:

- Income \$0 - \$38,000 19.5%
- Income \$38,001 - \$60,000 33%
- Income in excess of \$60,000 39%

Individuals are regarded as resident in New Zealand for income taxation purposes if they have a permanent house of residence (regardless if they also have one elsewhere) or if they are personally present in New Zealand for more than 183 days within a 12 month period.

Companies are considered to be resident in New Zealand if they:

- Are incorporated in New Zealand; or
- Have their head office in New Zealand; or
- They have their centre of management in New Zealand; or
- Control of the company by its directors is exercised in New Zealand whether or not decision making by directors is confined to New Zealand.

Goods and Services Tax (GST)

GST is charged at a fixed rate of 12.5% on the supply of most goods and services (with the sale and purchase of shares being a notable exception). GST is intended to be borne by the final consumer of goods and services.

Residential property sales are exempt from GST in New Zealand. Businesses are able to register for GST and claim a credit for any GST they incur in conducting their business while charging GST on their sales.

A person can register for GST provided that they are, or are going to be, conducting a taxable activity. A taxable activity is any activity carried on continuously and involves the supply of goods and services to another person for money.

Being GST registered is compulsory when supplies made in New Zealand have exceeded, or are likely to exceed NZ\$40,000 in any 12 months. All GST registered entities are required to file regular returns of the GST collected by them.

ACCOUNTING PRACTICES

With the exception of certain exempt companies, all companies are required to comply with the Financial Reporting Act 1993. Companies are required to produce "financial statements" which include a balance sheet, profit and loss statement and a statement of cashflows as at the end of each financial year. The financial statements must give a "true and fair view" of:

1. The state of affairs of the company;
2. The profit and loss or income and expenditure of the company; and
3. The cashflows of the company.

The Financial Reporting Act 1993 distinguishes between "exempt companies" and "reporting entities". Exempt companies are those which are not overseas persons and which do not have more than \$NZ450,000 in assets, or turnover which exceeds \$NZ1,000,000 and do not form a group of companies. These companies are required to comply with the accounting standards prescribed from time to time by the Minister of Justice. A "reporting entity" includes all other companies. Reporting entities must prepare their financial statements in accordance with generally accepted accounting practice.

The Companies Act 1993 and the Financial Reporting Act 1993 also require that companies with overseas shareholdings carrying 25% or more of the voting power must be audited and their accounts filed in the Companies Office. Financial statements must be completed within five months of the end of each financial year.

The New Zealand Society of Accountants controls the profession in New Zealand, and is a member of the International Accounting Standards Committee. Generally, international standards are incorporated within New Zealand and most accounts are prepared using historic costs, and recognising income on an accruals basis.

Companies are required to retain most of their business records, i.e. books of account recording receipts, payments, income or expenditure and vouchers, bank statements, invoices, receipts and all other financial accounts relating to the business for seven years after the end of the income year to which they relate. These records must be in the English language so as to enable the Commissioner of Inland Revenue in New Zealand to readily ascertain the assessable income derived by the taxpayer and allowable deductions.

All taxpayers, individuals and companies are required to furnish a return of income on the prescribed date for the income year ending on the preceding 31 March. If the Commissioner of Inland Revenue consents, a taxpayer may adopt an income year which ends on the date of the annual balance date of the taxpayer's accounts. In addition, companies are required to report certain payments made to residents and non-residents at the time the company return is furnished.

International Financial Reporting Standards

Legislation introduced in 2007 introduced a number of changes to the rules relating to financial arrangements and ensures that tax payers that adopt International Financial Reporting Standards ("IFRS") can continue to use tax rules that rely on accounting practice. For other tax payers the existing tax spreading methodologies continue to apply but without the option of using the Financial Reporting Methods.

COMMERCIAL LEGISLATION AND REGULATIONS AFFECTING BUSINESS

Set out below are details of some of the most significant legislation effecting businesses in New Zealand.

Company Law

The Companies Act 1993 codifies the law relating to companies and lays down a wide range of rules.

The Companies Act 1993 lays down a wide range of rules covering such matters as choice of company name, the powers of the company and its officers, the duties of directors, the conduct of meetings and the raising of money for the company, as well as other matters.

The Securities Act 1978

The Securities Act and its regulations provide minimum standards which must be complied with if shares or other investment securities are to be offered to the public. It establishes a Securities Commission and provides that no shares or other securities may be offered to the public unless the offer is accompanied by a registered prospectus, or is made in the form of an authorised advertisement. Certain minimum standards fixed by the Act must be followed in respect of registered prospectuses and authorised advertisements to ensure that fair and accurate information is supplied to the public. The Securities Act has no application to offers made otherwise than to the public. For example, it does not apply to offers made only to relatives or close business associates of the issuer. However, these exceptions are very limited.

Commerce Act 1986

One of the primary objectives of the Commerce Act 1986 is to provide the framework for effective competition in New Zealand. The Act prohibits any company or individual carrying on certain anti-competitive practices and also prohibits the acquiring or strengthening of a dominant market position.

The prior clearance or authorisation of merger or takeover proposals by the Commerce Commission is only necessary if the participants in the transaction believe that the transaction could result in a person acquiring a dominant position in a market or strengthening a dominant position in a market. The fines for failure to obtain clearance or authorisation where this is the case are substantial.

Resource Management Act 1991

The Resource Management Act in general terms deals with managing the land, air and water of New Zealand in a manner that is sustainable. It deals not only with planning approvals but generally with the effects of developments and creates responsibilities for dealing with these effects.

Each investment proposal needs to be separately considered in light of both this legislation and regional and district plans.

Fair Trading Act 1986

This Act is intended to ensure that consumers are given full and accurate information about goods and services. Its main operative provision states that "no person, in trade, shall engage in conduct which is misleading or deceptive". This legislation provides a significant degree of consumer protection which has been further expanded by the Consumer Guarantees Act 1993.

Consumer Guarantees Act 1993

The Consumer Guarantees Act 1993 creates statutory guarantees to protect the consumer purchasing goods and services. The Act applies to the supply of goods or services by persons in trade (including manufacturers, importers and distributors) to a consumer.

A consumer is defined in the Act as a person who buys goods or services of a kind ordinarily bought for their personal, domestic or household use, but not for resale, use in production or in the case of goods, repair to goods or fixtures on land.

The Act establishes statutory remedies which include repair, replacement and refund. In addition, a consumer may seek damages for reasonably foreseeable losses resulting from the failure to meet a statutory guarantee. Attempts to contract out of the Act may amount to a breach of the Fair Trading Act 1986 and lead to substantial fines.

Accident Insurance Amendment Act 2000 and Accident Insurance (transitional provisions) Act 2000

These acts are a continuation of the "no fault" compensation scheme for accidental injuries, whether in the workplace or at home. Negligence suits in respect of personal injury for accidents are not possible and instead compensation must be sought from a governmental authority. In addition, it means that except in exceptional circumstances employers may not be sued by their employees if they are accidentally injured at work. It also provides that each employer is liable to pay an Accident Compensation levy in respect of each employee.

The levels of compensation provided under the legislation are subject to major limitations and are generally perceived to be less than adequate.

Health and Safety in Employment Act 1998

The primary purpose of this law is to encourage employers to take responsibility for management of health and safety in the workplace. There is a general duty on employers to take all practical steps in this regard. These steps include providing and maintaining a safe work environment, maintaining facilities for the safety of employees, ensuring machinery and equipment is designed and set up to be safe for employees, ensuring that employees are not exposed to hazards and developing procedures for dealing with emergencies. Employers must ensure that employees are capable of operating machinery or plant which they may be required to use as

part of their job. Employers are required to investigate and record any accident at work, preserve the accident scene where practicable and notify the Department of Labour as soon as possible. A breach of the Act may result in significant penalties.

Privacy Act 1993

This Act is designed to protect the privacy of individuals in relation to the collection, use, access, correction and disclosure of personal information about individuals. The Act established 12 individual privacy principles for the protection of personal information. These principles are the key part of the Act. In business the application of the Act arises in areas such as sales and marketing, credit control and employment.