About Chapman Tripp

- **National Firm of the Year: New Zealand - 2015 IFLR Asia Awards**
- **New Zealand Law Firm of the Year - 2015 Chambers Asia Pacific Awards for Excellence**
- **NZ Deal Maker of the Year (John Strowger) – 2015 Australasian Law Awards**
- **NZ Deal Team of the Year (Corporate) – 2015 Australasian Law Awards**
- **Large Law Firm of the Year - 2014 New Zealand Law Awards**

As New Zealand’s leading full service law firm, Chapman Tripp delivers the highest levels of legal and business performance. We have 51 partners and 190 legal staff across offices in Auckland (the commercial and economic centre of New Zealand), Wellington (the centre of government) and Christchurch (the South Island’s business hub).

We help major New Zealand and multinational companies achieve a competitive edge in today’s market with clear, commercially focused advice across all of their legal requirements, including commercial, corporate, property, construction, finance, tax, dispute resolution, environmental and government relations issues. We play key roles in mergers and acquisitions, disposals, takeovers, financing, insolvency, restructuring, banking, procurement processes, large scale infrastructure projects and dispute resolution proceedings in New Zealand and around the world.

Our lawyers have worked in other jurisdictions including Australia, the UK, the US, Russia, the Middle East, China, Asia and Europe, and are well-placed to advise on inbound and outbound trade and investment.
International recognition

Chapman Tripp is ranked as top tier in the following areas by independent legal directories including Chambers Global and Asia Pacific, IFLR1000, AsiaLaw Profiles and Asia Pacific Legal 500:

- banking and finance
- capital markets
- competition law
- corporate and commercial
- dispute resolution
- environment
- energy and infrastructure
- insurance
- mergers and acquisitions
- projects and resource management
- public (government) law
- real estate and construction
- restructuring and insolvency
- tax
- technology, media and telecommunications

Trusted inbound investment advisers

We know what it takes for international companies and investors to invest and operate successfully in New Zealand. We provide an integrated service ranging from the evaluation of potential investments to all aspects of commercial and property acquisitions and advice on day to day operational issues. We assist clients to navigate the overseas investment regime, and resource management and Māori law issues, ensuring they get the right expertise at each stage of the process.

We are the firm of choice for many global companies operating in, or with interests in, New Zealand. We are also regularly sought out by international companies planning to enter the New Zealand market or to acquire New Zealand-based assets.
Haere mai

Haere mai is Māori for welcome, and New Zealand is one of the most open economies in the world. But there are rules and regulations that apply to doing business here, and we are familiar with them.

This booklet is designed to provide the prospective investor with an introductory guide to the New Zealand legal framework as it applies to business. The information was accurate at the time of publication. But 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 recommend that you seek advice specific to your needs before making any decisions and we will be happy to assist.
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We make every effort to ensure the accuracy of the information provided but 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.
New Zealand as an investment choice

New Zealand is physically remote; two specks of green in the vast Pacific Ocean and 1,500 km away from our nearest neighbour, Australia. Despite this physical remoteness, New Zealand is a sophisticated country, deeply engaged with the rest of the world economically, culturally and through a myriad of personal connections.

Our population is small, just over four million, but is ethnically diverse as New Zealand is a nation of migrants. The statistics tell the story. One in every four people now working in New Zealand was born elsewhere while one New Zealander in four is currently living and working overseas.

New Zealand enjoys a stable democracy with a proportional representation voting system which tends to produce coalition governments. We are rated second (one point behind Denmark) for freedom from corruption by Transparency International.

Our stock exchange is the first in the world to open trading each day as our time zone (in GMT) puts us two hours ahead of Sydney, three hours ahead of Tokyo, four hours ahead of Beijing, 12 hours ahead of London and 17 hours ahead of New York.

New Zealand culture assigns a high value to fairness, ingenuity, practicality, modesty, restraint and informality. These values have remained remarkably consistent over time, surviving radical changes to the country’s social and economic fabric.

The pattern of economic change in New Zealand over the past 40 years has been driven by three core principles: diversification, liberalisation and transparency.

Diversification

When New Zealand was Britain’s farm and could make a good living by selling sheep carcasses, cheese and butter to the British market, life was fairly uncomplicated. Our export earnings were so strong that we were able to insulate the domestic economy from marketplace realities through widespread use of subsidies and import controls to shelter a manufacturing sector, much of which was either inefficient or only marginally efficient.

When Britain joined the European Economic Community in 1973, however, all of that became unsustainable. We had no choice but to diversify both our products and our markets. The adjustment process was initially slow and difficult but New Zealand now exports throughout the Asia-Pacific region as well as to North America, the Middle East and Europe. Dairy and meat are still significant contributors to overall GDP but tourism now rivals pastoral agriculture as a leading export earner. We also have developing industries in export education, boat building, IT, horticulture, wine and film.

Liberalisation

The loss of the preferential trade relationship with Britain and the need to compete for export sales with lower cost countries forced a radical re-engineering of New Zealand’s economic policies. As a result, New Zealand now has one of the most open economies in the world and is ranked first of 181 countries in the latest World Bank Doing Business survey for ease of starting a new business and second for ease of doing business.
Moves to deregulate the economy have included floating the New Zealand dollar, privatising or corporatising many State-Owned Enterprises, deregulating the labour market and dismantling protectionism. The policy preference of both major political parties – National and Labour – is to rely on market disciplines except where those disciplines are blunted by market dominance (as in competition law) or where the political judgement is that they might deliver outcomes which are socially unacceptable (occupational health and safety, the statutory minimum wage).

Those tariffs which remain are few by comparison with almost all other countries, and low. New Zealand is also party to a number of free trade agreements, including with China and Australia.

The agreement with Australia has created a trans-Tasman marketplace for most goods and services and significant harmonisation of regulatory requirements. Since the FTA with China took effect in 2008, exports to China have more than trebled and it rivals Australia as our largest export market.

Few restrictions are imposed on businesses establishing in New Zealand, with freedom of choice extending to the type of business, its size and its location. Capital is allowed to flow freely both inwards and outwards.

**Transparency**

Transparency and clear accountability are key features of New Zealand’s public sector and institutional framework.

The Reserve Bank Act 1989 makes the Reserve Bank independent from government and tasks it with keeping future price inflation between 1% and 3% on average over the medium term. There is, however, flexibility within the Act for the Reserve Bank to "look through" one-off price shocks in order to avoid unnecessary instability in output, interest rates and the exchange rate.

The Fiscal Responsibility Act 1994 requires the government to set explicit fiscal objectives and to specify its intentions for fiscal management beyond the next 12 months. It also commits the Treasury to produce regular updates through the year on the fiscal and economic position. The idea is to encourage fiscal discipline.

**Legal system**

New Zealand has a common law system similar to that in England and many other western countries, and has familiarity with most international legal structures – especially in the finance and corporate law areas.

We have a hierarchy of generalist courts: the District Court, the High Court, the Court of Appeal and the Supreme Court. Most criminal and civil matters are dealt with by the District Court with the High Court handling the larger and most serious cases. A right of appeal exists from the High Court to the Court of Appeal and, with leave, to the Supreme Court.

New Zealand has a single legal profession in which most members hold a practising certificate as barrister and solicitor. Judges are appointed by the Governor-General on the advice of the Attorney-General and have a strong tradition of judicial independence.
**Overseas investment regime**

New Zealand welcomes foreign investment but requires consent from the Overseas Investment Office (OIO) for certain transactions involving "overseas persons". The screening regime is contained within the Overseas Investment Act 2005 (Act).

An overseas person is defined as:
- an individual who is neither a New Zealand citizen nor ordinarily resident in New Zealand
- a partnership, company, body corporate or trust where an overseas person or persons have 25% or more ownership or control.

The Act applies to acquisitions by overseas persons of 25% or more direct or indirect ownership and/or control of interests in:
- significant business assets
- "sensitive" and "special" New Zealand land
- farm land, and
- fishing quota.

**Business assets**

An overseas person may require consent for business acquisitions (not involving sensitive land) where:
- the total expenditure for establishing a new business exceeds NZ$100 million
- the price paid for an existing asset or business (either by one transaction or a series of related transactions) exceeds NZ$100 million, or
- the amount paid for the shares, or the gross value of the New Zealand assets of the target company (including its 25% or more subsidiaries), exceeds NZ$100 million.

For Australian non-government investors, the current threshold is NZ$477 million. This amount is adjusted each year to reflect movements in GDP in each country.

There are a number of exemptions to the requirement to obtain consent that are contained in the Overseas Investment Regulations 2005 (Regulations). These can be viewed on the OIO's website at [http://www.linz.govt.nz/overseas-investment](http://www.linz.govt.nz/overseas-investment)

**Commercial fishing**

In addition to the Act and the Regulations, commercial fishing is also subject to the Fisheries Act 1996. We recommend you check with a qualified adviser on these requirements. Chapman Tripp will be happy to assist.
Overseas investment in sensitive land

Overseas persons wishing to buy sensitive land will require Ministerial approval. This applies to both freehold interests in the land and to a lease for a term of three years or more (including rights of renewal). To secure consent, the overseas investor will need to demonstrate that the purchase will bring benefits incremental to those which would result from continued New Zealand ownership or sale to a New Zealand purchaser.

Briefly, land will be sensitive if it is, or includes:

- non-urban land over five hectares in area
- the foreshore or seabed
- land on certain named islands if the land is over 0.4 hectares
- land on any other islands (outside the North or South Island), regardless of the land area involved
- any land which is over 0.4 hectares and:
  - is the bed of a lake
  - is held for conservation purposes under the Conservation Act 1987
  - is earmarked in a district or proposed district plan to be used as a reserve, a public park, for recreation purposes or as open space
  - is subject to a heritage order or a requirement under the Resource Management Act 1991 or the Heritage New Zealand Pouhere Taonga Act 2014, and
  - is an historic place or area or wāhi tapu (site sacred to Māori) which is registered or the subject of an application to register under the Historic Places Act 1993, and
- any land which is over 0.2 hectares and adjoins the foreshore.

Land will also be sensitive if it is over 0.4 hectares and adjoins:

- the bed of a lake
- land held for conservation purposes under the Conservation Act 1987 if the conservation land is itself over 0.4 hectares
- any scientific, scenic, historic or nature reserve under the Reserves Act 1977 that is itself over 0.4 hectares
- any regional park
- any land listed as a reserve or a park by the OIO
- land over 0.4 hectares that adjoins the sea or a lake and is an esplanade reserve, a recreation reserve, a road or a Māori reservation
- land over 0.4 hectares that is subject to a heritage order or requirement for a heritage order, and
- land over 0.4 hectares that includes a historic place, historic area (which is itself over 0.4 hectares) or wāhi tapu.
The definition of sensitive land is very detailed so requires careful checking and analysis from qualified advisers. In particular, it may be “sensitive” by association if it adjoins any of the types of land listed above, or is “associated” with other land already controlled by an overseas person. Advice should also be sought on how to meet the incremental benefit test.

**SPECIAL LAND**

Special land is defined in the Regulations as the foreshore, seabed, riverbed or lakebed. If an investor wishes to acquire sensitive land under the Act and that sensitive land includes any special land, the special land must first be offered to the government by the owner. The government can acquire only that part of the sensitive land that is special land and can acquire it only if the overseas person actually completes the acquisition of the sensitive land.

The general policy approach is to acquire the land only if there is a public interest in the government owning it. Criteria include: whether there is a “recognised attitude” among New Zealanders or a group of New Zealanders toward the land; the inter-relationship of the land with the surrounding area; whether there is a more cost-effective alternative to government ownership; whether the benefits exceed the costs; and whether government purchase will adversely affect the overseas person’s ability to carry out the investment.

**OVERSEAS INVESTMENT IN FARM LAND**

Where a proposed acquisition involves farm land (being land that is used exclusively or principally for agricultural, horticultural or pastoral purposes, or for the keeping of bees, poultry or livestock), that farm land must first have been offered by the vendor on the open market to persons who are not overseas persons in accordance with the procedures set out in the Regulations. Exemptions from this requirement can be obtained, but only in special circumstances and at the discretion of the relevant Minister.

**The consent process**

All applications for consent must be tested against the prescribed investment criteria set out in the Act and Regulations. An applicant (or if the applicant is not an individual, the persons with control of the applicant) must:

- be of good character
- have relevant business experience or acumen, and
- be able to demonstrate a financial commitment to the investment.

**ADDITIONAL CRITERIA FOR SENSITIVE LAND**

Applications for overseas investment in sensitive land must also satisfy the following additional criteria.

Either:

- the applicant, or if the applicant is not an individual, all the individuals who control the applicant, are New Zealand citizens, ordinarily resident in New Zealand, or are intending to reside in New Zealand indefinitely and have applied for a visa or permit under any of Immigration New Zealand’s residence policies (refer to the chapter on Immigration)
or:

- the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined by the relevant Ministers
- if the relevant land includes non-urban land that in area (either alone or together with any associated land) exceeds five hectares, the relevant Ministers determine that that benefit will be, or is likely to be, substantial and identifiable
- the applicant submits a detailed business plan that addresses the "benefits to New Zealand" factors set out in the Regulations. Such benefits can be longer term as well as immediate, and
- the application must assess the benefits to New Zealand against those benefits which would arise, or would be likely to arise, from continued New Zealand ownership or sale to a New Zealand purchaser (a counterfactual analysis).

Processing and decision application

The OIO is responsible for overseeing the Act, and assesses consent applications. The OIO will commonly contact the applicant or its advisers for further information during the process. The power to make decisions on whether to approve or decline an application is vested in the relevant Minister of the Crown. The Ministers have delegated to the OIO the power to decide all applications except those involving sensitive rural land and land adjoining waterways.

The processing of consent applications can take several months: two to three months for a business acquisition and three to six months for a sensitive land acquisition is typical. For complex applications, a longer period is not uncommon. We advise that potential consent requirements be assessed early when considering a foreign investment in New Zealand.

Consent conditions

Consent is usually granted subject to various conditions with which the applicant must comply. When imposing conditions of consent, the OIO must be satisfied that the condition is necessary and will achieve the desired result. Conditions can be varied or revoked in appropriate circumstances.

Compliance will be monitored by the OIO until the benefits of the investment have been realised or the conditions have been revoked. The government has instructed the OIO that in general, monitoring should not extend beyond five years unless the benefits are not expected to begin accruing until after that time.

Penalties apply in case of a breach of these provisions. In addition, the High Court has the power, on application from the OIO, to order disposal of any property (which includes a right or interest in any security, an interest in land, an interest in fishing quota or any other property or any rights or interests in any other property).

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1 Some factors which may apply in considering whether an investment involving land will benefit New Zealand include:
- economic factors
- creation or retention of jobs in New Zealand
- introduction of new technology or business skills
- any increase to export receipts for New Zealand exporters
- added market competition, greater efficiency, productivity or enhanced services in New Zealand
- the potential for further foreign investment in New Zealand for development purposes, and
- whether the investment will be likely to assist New Zealand to maintain New Zealand control of strategically important infrastructure on sensitive land.

2 An investor who fails to apply for consent (or attempts to circumvent the Act) where consent is required is liable on conviction, in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding NZ$300,000 and in the case of a body corporate, to a fine not exceeding NZ$300,000.
Starting up a business

Corporate structure options

Four main avenues are open to overseas entities wishing to set up a business in New Zealand. They are to:

- trade directly, registering as an overseas company (i.e. as a branch)
- form a subsidiary company
- merge with or take over an existing New Zealand company, or
- enter a limited partnership.

If entering into business with a third party, the usual structures of joint ventures (both incorporated and unincorporated), partnerships and limited partnerships are all available.

REGISTERING A BRANCH

An overseas company wishing to register a branch in New Zealand must reserve its name (the same name as it has registered in its home jurisdiction) with the Registrar of Companies, and apply for registration.

The registration application must be filed within 10 working days from the start of business in New Zealand and must include:

- the date business commenced or will commence in New Zealand
- the names and current residential addresses of the directors of the overseas company
- the address of the overseas company’s principal place of business in New Zealand
- the name and physical address of at least one person in New Zealand who is authorised to accept service of documents on the overseas company’s behalf, and
- evidence of the overseas company’s incorporation and a copy of the instrument constituting or defining its constitution (either in English or a certified English translation).

Australian companies wishing to register a branch in New Zealand benefit from an information sharing arrangement between the Companies Office and ASIC, which reduces the amount of information that needs to be provided in the application. Australian companies provide their Australian company number and all of the information listed above except directors’ details, evidence of incorporation and a copy of the constitution (which the Companies Office receives direct from ASIC. Australian overseas companies also benefit from reduced compliance requirements. For example, they need only file a simplified annual return, with ASIC supplying the Companies Office on request with the relevant information filed by the company in Australia.

FORMING AND REGISTERING A SUBSIDIARY COMPANY

A subsidiary company incorporated in New Zealand must (for companies incorporated from 1 May 2015) have at least one director resident in New Zealand, or who is resident in Australia and is a director of an ASIC registered company. Existing companies must have appointed a director who meets these requirements by 28 October 2015. Non-resident shareholders and directors are otherwise permitted. Generally, any legal entity may be a shareholder. Only individuals may be appointed directors. There is no statutory requirement to appoint a company secretary.
There is no restriction on the size of a company’s share capital. Companies (other than cooperatives) are not permitted to have a par or nominal value attached to their shares. It is not necessary for the issue price to be fully paid, although shareholders are liable to creditors (and liquidators) to the extent of any amounts unpaid on their shares.

As with a branch, the first step to register a subsidiary is to apply to reserve the proposed subsidiary’s name. Once the name has been approved and reserved with the Registrar, the following incorporation documents must be filed:

- a signed director consent form for each director, setting out full name and residential address (which will be publicly available) including a certificate that he or she is not disqualified from acting as a director. Directors also need to supply their place and date of birth (which will not be publicly available).
- a signed consent form for each shareholder
- a copy of the constitution, if the company is to have one, and
- details of the ultimate holding company.

Applications to the Registrar must also include:

- the name and residential address of each director
- the names and addresses of each shareholder, and the number of shares to be issued respectively to them, and
- details of the registered office and the address for service of documents, both of which must be physical addresses in New Zealand.

A BRANCH OR A SUBSIDIARY?

The decision whether to establish a branch office or a subsidiary company will be influenced by legal, tax and commercial considerations. The following issues may be relevant.

**Liability**

A New Zealand branch (being legally the overseas company), bears directly any liabilities that it may incur under New Zealand law. There is no sheltering of liability behind a different legal persona for the overseas parent. Establishing a special purpose (overseas) subsidiary to be the branch in New Zealand may help ring-fence this liability. In practice, however, unless the subsidiary is of substance in its own right, any significant commercial dealings may need to be guaranteed by the overseas parent.

**Tax**

A New Zealand branch of an overseas company will generally be considered non-resident for taxation purposes. The overseas company will be required to account for New Zealand tax on the portion of the non-resident entity’s taxable income attributable to the New Zealand branch. Losses of a branch may be able to be claimed in the home jurisdiction of the head office. If an overseas company incorporates a subsidiary in New Zealand, that subsidiary is a New Zealand tax resident. The subsidiary will be subject to New Zealand tax on the subsidiary’s worldwide income. The subsidiary’s losses cannot be offset against any income of the parent and usually cannot be taken into account in determining the parent’s tax liability in its home jurisdiction. Please refer to the Taxation chapter for more information on the New Zealand tax environment.
Merger or takeover proposal?

A company considering merging with or buying a New Zealand company must be aware of the restrictions on business acquisitions contained in the Commerce Act 1986. Please refer to the Regulations affecting business chapter for an outline of the key restrictions.

If the New Zealand company is listed on the New Zealand stock exchange or, if not listed, has more than 50 shareholders, and/or share parcels, the Takeovers Code is likely to apply. Specific advice on the implications of the Takeovers Code should be sought.

FORMING A LIMITED PARTNERSHIP

From an investor’s perspective, a limited partnership provides the limited liability protection of a company and some of the flow through tax and confidentiality advantages of a partnership. The New Zealand limited partnership model is broadly comparable to limited partnerships in other jurisdictions, including Delaware, Australia and the Channel Islands. The following issues may be relevant in deciding whether to establish a limited partnership.

Confidentiality

Although the identity of the limited partners must be registered with the Registrar, that information is not publicly disclosed. Every limited partnership must have a limited partnership agreement. Unlike a company’s constitution, however, this agreement is not registered with the Registrar and is not a matter of public record.

Liability

Like a company, a limited partnership is a separate legal entity from its investors; this separation helps to protect those investors from losses and claims arising from the business activities of the limited partnership. Limited partners are passive investors and their liability is typically limited to the capital they agree to contribute, provided they do not take part in the management of the limited partnership. The general partner manages the business and is responsible for the debts and obligations of the limited partnership if the limited partnership itself cannot meet them. A general partner may be a company.

Tax

Limited partnerships are treated as fiscally transparent for New Zealand tax purposes, notwithstanding their separate legal identity. The limited partners are treated as holding the assets of the limited partnership, and personally derive the income and deductions. This presents a number of tax advantages, such as the ability to distribute capital gains tax free to the limited partners and the pass through of tax losses (although the losses claimable by a limited partner are effectively capped at the amount of that limited partner’s economic exposure to those losses).

Flexibility

There is no restriction on the business activities of a limited partnership. Although a limited partnership is a creation of statute, in comparison with a company, the limited partnership is much less regulated.
Immigration

New Zealand has a reasonably open door immigration policy, particularly for skilled migrants and for entrepreneurs with the resources and capital to contribute to the economy by setting up a business in New Zealand.

If you are not a New Zealand or an Australian national, you will need a visa to work in New Zealand unless you are on a short visa for business meetings only.

Visa types include:
- Work Visa (temporary)
- Work to Residence Visa
- Study to Work Visa
- Visitor Visa (Business or Tourist)
- Highly Skilled Visa (Silver Fern)
- Entrepreneur Work Visa (Business)
- Residence Visa
- Working Holiday Visa
- Student Visa

Applicants for any visa must:
- be of good character and have an acceptable standard of health, and
- hold a valid passport which expires later than three months after the proposed date of departure.

Work Visa

Work Visas are time-limited and can be issued for a period of up to five years. To qualify foreign nationals must have a job offer:
- for an occupation on the skills shortage list, or
- from a New Zealand employer who:
  - is accredited or has approval to recruit foreign workers, or
  - can prove there are no suitable New Zealand applicants for the job.

An applicant may also be eligible when coming here for a specific purpose which will be of benefit to New Zealand.

This option also covers specialist skills such as sports people, inter-company transfers and extended business visits beyond a short period.

A Work Visa will usually be specific to one employer, one position and one region.
Employees of a business which is relocating to New Zealand can also apply for a Work Visa and, later, for residence under the Employee of a Relocating Company Category, if they do not meet any other criteria for residence.

Partners of New Zealand residents or citizens can be granted Open Work Visas to allow them to remain with their partner while accumulating time to the 12 months required before a residence application can be made. Dependent children can obtain Student Visas or Visitor Visas.

Work Visa holders, who hold at least a six month visa, may bring their partners and dependent children. Partners may be granted an Open Work Visa and children of primary or secondary school age, a Student Visa to study at New Zealand rates, rather than international ones.

More information about these options is available at: www.immigration.govt.nz/migrant/stream/work

**Highly Skilled Visa**

The ‘Silver Fern’ visa is designed to attract highly-skilled long term immigrants aged 20 to 35. It is issued initially for nine months, extendable to two years after skilled work has been obtained. Applicants may then apply for residence. This option is limited to 300 applicants a year and the selection takes place only once a year.

**Entrepreneur Work Visa (Business)**

Those wishing to establish their own business, or buy part of an existing business, can apply for an Entrepreneur Work Visa (Business). Applicants must invest capital of at least NZ$100,000 in their business (although Immigration New Zealand can waive this requirement for proposals involving a high level of innovation or which are export-oriented and have high short-term growth prospects). They must also have access to maintenance funds of at least NZ$100,000 (or more if they have children). The applicant must work full-time in the business in New Zealand for 24 months before they can apply for residence.

In addition to satisfying English language, health and character requirements, applicants must get at least 120 points in a points system based on:

- business experience
- job creation and/or export potential
- capital investment, and
- age (with maximum weighting for ages 25 to 49) with
- potential bonus points for locating outside Auckland or for having obtained formal endorsement from New Zealand Trade and Enterprise, the Ministry of Business, Innovation and Employment or from a local council or chamber of commerce.
The Temporary Retirement Category
This is a two-year multiple entry Visitor's Visa available to applicants who: are aged 66 and over, invest NZ$750,000 in New Zealand for two years into an acceptable investment, demonstrate ownership of NZ$500,000 of maintenance funds and an annual income of NZ$60,000 at the time of application, meet standard health and character requirements and hold and maintain comprehensive travel and/or health insurance for the duration of their stay.

They may include their partner in their application but not any dependent children.

Working Holiday Visa
New Zealand has reciprocal arrangements with many countries, which allow young people, usually between the ages of 20 and 30 or 35, to come and holiday and work in New Zealand for between 12 and 23 months, depending on the country. Such applicants are not normally allowed to undertake full-time work and there is an expectation that the primary purpose of their visit is to holiday rather than to work.

New Zealand Residence
The main paths to New Zealand residence are through the following categories:
- Skilled Migrant
- Work to Residence
- Investor
- Entrepreneur, and
- Family.

SKILLED MIGRANT CATEGORY
The Skilled Migrant Category operates on a points system with points awarded for qualifications, work experience, age, whether the person has a job offer and other settlement factors. In addition, applicants must satisfy health, character and English language proficiency standards. The process commences with an Expression of Interest, which may lead to an invitation to apply for residence. At the residence stage, you must prove all the points made in your Expression of Interest.

More information is available at: www.immigration.govt.nz/migrant/stream/work/skilledmigrant

WORK TO RESIDENCE
An applicant who is either working for an accredited employer in New Zealand or meets all the requirements of the Long Term Skill Shortage List and is employed in such a role in New Zealand, can apply for residence once they have completed 24 months of employment. This option also covers applicants such as high ranking sports players or coaches who play or coach a nationally reputed team or person.
INVESTOR CATEGORY

The options are:

- **Investor One Category**: requires an investment of NZ$10 million for three years. No age restriction or English language requirement. Must stay in the country for at least 44 days in each of the last two years of the three-year period, and

- **Investor Two Category**: requires an investment of NZ$1.5 million for four years with settlement funds of NZ$1 million (transfer not required). The applicant must be under 65, have at least three years’ business experience and have some English language skills. In each of the last three years over a four year period, must stay in the country at least 146 days.

More information is available at: www.immigration.govt.nz/migrant/stream/invest/

ENTREPRENEUR CATEGORY

Applicants who have run a successful business in New Zealand for two years can apply for residence, providing the business has met the original business plan targets.

A special fast track provision is available after six months where the applicant has invested at least NZ$ 500,000 in the business and has created at least three full-time jobs for New Zealanders.

FAMILY CATEGORY

Applicants may be able to apply for residence depending on their family connections in New Zealand. The three options are:

- **Partner Category** – living for 12 months with a New Zealand resident or citizen creates an opportunity to apply for residence on partnership grounds

- **Parent Category** – the parents of a New Zealand citizen or resident may be eligible to apply for residence if they have a child or children who are eligible sponsors and either the sponsor or the parent has sufficient income and assets. There are two tiers to this option and thus far only the higher tier applicants have been considered. Applicants may not have any dependent children

- **Parent Retirement Category** – this is available to those with family links to New Zealand who are able to make a significant contribution to the New Zealand economy. To qualify the applicant must: have an adult child who lives in New Zealand and is either a New Zealand citizen or resident for at least three years; invest NZ$1 million for four years into an acceptable investment, demonstrate ownership of NZ$500,000 of settlement funds and an annual income of NZ$60,000 at the time of application and meet standard health and character requirements.
ONCE RESIDENCE IS GRANTED

With the first resident visa come travel rights which are valid for two years. This allows the resident to leave New Zealand temporarily without endangering his or her residence status.

At the end of the two years, residents can apply for a Permanent Resident Visa allowing multiple trips into and out of New Zealand for at least the life of their passport and currently transferable to their next passport. Eligibility depends on:

- the amount of time spent in New Zealand during the first two years
- holding New Zealand tax resident status
- having established or invested (25%) in a business which has been trading successfully for at least a year
- having an acceptable level of investment in New Zealand, or
- having a family base in New Zealand (bought a home or been employed).

Citizenship

To qualify for citizenship, the applicant must have been resident for at least five years, be free of any convictions and have:

- been present in New Zealand for at least 1,350 days during the five years immediately preceding the application, and
- been present in New Zealand 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 solicitors and licensed immigration advisers. It is important that you establish the credentials of your adviser as Immigration will not generally accept applications where the advice has come from someone either unlicensed or not specifically exempted from holding a licence. This requirement applies also to advice given from off-shore.
**Taxation**

New Zealand has a broad-based tax system consisting principally of:

- income tax
- fringe benefit tax
- resident and non-resident withholding tax (RWT and NRWT)
- goods and services tax (GST)
- Accident Compensation levies
- import tariffs and miscellaneous excise duties, and
- local authority rates on property.

Stamp duty, gift duty and death duties are not payable in New Zealand.

Tax advice provided by lawyers enjoys legal privilege, meaning that it does not have to be disclosed to the authorities in most circumstances.

**Income tax**

**RESIDENCY AND RATES OF TAX**

For individuals and companies defined as “resident” in New Zealand, income tax is imposed on worldwide income, subject to some exceptions (BD 1). Non-resident individuals and companies, on the other hand, are taxed only on New Zealand-sourced income, and their tax liability may be reduced by the provisions of an applicable Double Tax Agreement.

Individuals are regarded as resident in New Zealand for income tax purposes if they have a permanent place of abode in New Zealand or are present in New Zealand for more than a total of 183 days within any 12-month period. A non-resident who has come to New Zealand for the first time or, in certain cases, who returns to New Zealand and has not been resident in New Zealand for a continuous period of 10 years before becoming a New Zealand resident, can qualify for temporary transitional residence status. A transitional resident is exempt from New Zealand income tax on their foreign-sourced income other than service income for a period of four years after they meet the test for New Zealand tax residency.

A company is regarded as resident in New Zealand if it:

- is incorporated in New Zealand
- has its head office in New Zealand
- has its centre of management in New Zealand, or
- is controlled by its directors in New Zealand.
Companies (both resident and non-resident) are taxed at 28%. Individuals (both resident and non-resident) are taxed progressively at between 10.5% and 33%. As noted above, non-residents are taxed only on their New Zealand-sourced income.

For individuals, assessable income includes (among other items) salary and wages, bonuses, other employment benefits or remuneration, partnership income and investment income. For salary and wage earners, tax is deducted at source by the employer through the Pay As You Earn (PAYE) system. The amount of tax deducted will depend on the gross salary or wage paid to the employee. Non-cash benefits provided to employees are subject to fringe benefit tax which is payable by the employer.

For companies, net taxable income generally corresponds with accounting profit or loss. However, adjustments are commonly required in relation to:

- the timing of income and expenditure recognition
- bad debts, and
- various provisions and reserves.

New Zealand does not levy tax on capital gains. In certain circumstances, however, the proceeds from the sale of real or personal property (including shares) may be subject to income tax (for example, where the dominant purpose of the initial purchase was to resell the property at a profit).

On 17 May 2015, the Prime Minister announced proposals to bolster the current NZ tax rules on property. The proposals include:

- requiring income tax to be paid on the gains from the sale of a residential property (other than the seller’s main home), sold within two years of purchase; and
- requiring the provision of a New Zealand IRD number for the purchase or sale of property other than the person’s main home. This will apply equally to New Zealand residents and non-residents. If the person is resident in another jurisdiction, they will also have to provide any tax identification number that has been issued to them by that country.

Specifically in relation to non-residents, the proposals include:

- a possible withholding tax for non-residents selling residential property; and
- as a prerequisite to applying for an IRD number, a non-resident will need to open a New Zealand bank account.

The changes (with the exception of the withholding proposal) are proposed to apply from 1 October 2015. The withholding tax is proposed to be introduced mid-way through 2016.

**DOUBLE TAX AGREEMENTS**

New Zealand has entered into double tax agreements (or tax treaties) with more than 30 countries to reduce the incidence of double taxation and to provide more certainty for taxpayers operating in foreign jurisdictions. Foreign tax credits are generally available to New Zealand residents for foreign income tax imposed on income derived from countries or territories outside New Zealand. The availability and quantum of the foreign tax credit is subject to certain limitations, but does not depend on New Zealand having entered into a double tax agreement with the particular country or territory concerned.
TREATMENT OF TAX LOSSES
If a resident company or a New Zealand branch of a non-resident company incurs a tax loss, that loss can generally be carried forward (indefinitley) to offset future New Zealand net income and shared between group companies, provided a certain level of shareholder continuity (or in the case of group companies, common ownership) is maintained. Individuals and trusts can also carry forward tax losses, but these losses and cannot be shared with other entities.

TAXATION OF DIVIDENDS PAID BY RESIDENT COMPANIES TO RESIDENTS
Dividends paid by resident companies to resident shareholders are, in most instances, taxable to the shareholder. However, dividends paid between New Zealand resident companies that are part of the same wholly-owned group are generally exempt (subject to certain other requirements).

To avoid the double payment of tax on the same income (i.e. by the company and the shareholder when the company's income is distributed as a dividend) imputation credits may be attached to dividends paid by resident companies (to both residents and non-residents). An imputation credit represents a portion of the tax paid by the company (for every $1 of tax paid, a company receives a $1 imputation credit which it can attach to dividends). Imputation credits received by resident shareholders (companies and individuals) are offset against any tax payable on their income, including tax on dividends received.

Subject to certain exceptions, a dividend paid by a resident company to a resident is subject to a 33% withholding tax, although the withholding tax liability is reduced by any imputation credits attached to the dividend. If the dividend is fully imputed (i.e. imputation credits are attached at the maximum rate) only a residual 5% withholding tax will be imposed on the dividend (i.e. the 33% tax liability is reduced by the 28% tax paid by the company to 5%).

PORTFOLIO INVESTMENTS ENTITIES (PIES)
Widely held investment entities which are tax resident in New Zealand can take advantage of New Zealand’s PIE tax regime. Broadly speaking, to qualify as a PIE, they must be widely held (or owned by widely held vehicles); an investor may not hold more than 20% of any investor class; and the PIE cannot hold more than 20% of any company or unit trust they invest into (subject to some exceptions).

A PIE is exempt from tax on gains from the sale of shares in New Zealand resident companies, and in Australian companies that are listed on certain approved indices of the Australian stock exchange.

PIEs are not taxed like companies. Instead their income is taxed only once – either to the PIE (if the investor is an individual or trustee (other than a trustee of a unit trust or charitable trust)) or to the investor (if the investor is a company or another PIE). For individuals, the PIE pays tax at more or less the investor’s marginal tax rate, with a cap of 28%.

Non-resident investors in certain PIEs bear no New Zealand tax on foreign-sourced income.
TAXATION OF OVERSEAS INVESTMENTS BY NEW ZEALAND RESIDENTS

The taxation of equity investments by New Zealand residents in non-New Zealand companies is governed by the New Zealand Controlled Foreign Company (CFC) and Foreign Investment Fund (FIF) regime.

Subject to certain exceptions, a New Zealand resident investor is taxed on foreign-sourced income derived by a non-resident entity that is either a CFC or a FIF, even though that income has not been received by the New Zealand resident investor.

In the case of a CFC, subject to a number of exceptions, the New Zealand investor will be taxed on its proportionate attributed share of all net passive income of the CFC. Net passive CFC income broadly comprises rent, royalties, certain income related to telecommunications services, income from offshore insurance businesses, life insurance policies, disposals of revenue account property, base company services income, certain dividends and interest, less related expenses. Attributed income does not include “active” income or passive income of the CFC if the passive income is less than 5% of its total income.

In the case of a FIF, the New Zealand resident shareholder will be taxed on income calculated by one of five calculation methods available to it. These methods are:

- fair dividend rate method
- cost method
- comparative value method
- deemed rate of return, and
- attributable FIF income method.

Income from foreign investment funds (FIFs) is generally calculated either using the fair dividend rate method or the comparative value method. The fair dividend rate method taxes the shareholder on deemed income of 5% of the value of the investment. The comparative value method taxes appreciation during the year plus distributions. There are significant exemptions from both the CFC and FIF regimes for investment in Australian companies.
TAXATION OF PAYMENTS TO NON-RESIDENTS

Payments of dividends, interest and royalties to individuals or companies not resident in New Zealand are generally subject to non-resident withholding tax (NRWT). The rate of NRWT imposed depends upon the type of payment and whether a double tax agreement is in place:

<table>
<thead>
<tr>
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<th>DOUBLE TAX AGREEMENT COUNTRIES</th>
<th>OTHER COUNTRIES</th>
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<tbody>
<tr>
<td>Dividends*</td>
<td>0-15%</td>
<td>0-30%</td>
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<tr>
<td>Interest</td>
<td>10-15%</td>
<td>15%**</td>
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<tr>
<td>Royalties</td>
<td>5-15%</td>
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* A 0% rate of NRWT applies to fully imputed dividends paid to a non-resident shareholder holding a 10% or more direct voting interest in a New Zealand company or holding less than 10% but whose post-treaty rate is less than 15%. A 0% rate of NRWT also applies to a fully imputed non-cash dividend. To the extent the dividend is not fully imputed, NRWT will be required to be withheld at 30% (reduced to 15% for countries New Zealand has a double tax agreement with; and to lower rates under some treaties for substantial shareholdings).

** Where interest is paid to a non-resident and a resident (jointly) the applicable rate of NRWT will be higher than 15%.

In the case of interest paid to non-associated persons, dividends, and certain royalty payments, NRWT is generally a final tax for New Zealand tax purposes.

The Foreign Investor Tax Credit (FITC) regime alters the NRWT regime by effectively eliminating the monetary effect of NRWT on dividends paid by a New Zealand company to a non-resident shareholder who holds a direct voting interest in a New Zealand company of less than 10% and the post-treaty tax rate for the initial dividend is 15% or more.

The FITC regime achieves this by providing a tax credit to the New Zealand resident company, which the resident company must use to fund an additional “supplementary dividend” to the non-resident (which is equal to the NRWT payable where the dividend is fully imputed). This ensures that the non-resident shareholder is in a no less beneficial position than a New Zealand resident shareholder receiving the same dividend.

In respect of interest payments made by an approved New Zealand borrower (Approved Issuer) to a non-associated non-resident lender, the NRWT rate can be reduced to 0%, provided certain conditions and registration formalities are satisfied. Approved Issuers must generally pay a levy (Approved Issuer Levy or AIL) equivalent to 2% of the interest payment for the right to reduce the NRWT rate to 0%.

Interest paid on certain qualifying widely held bonds may be eligible for a 0% rate of NRWT without the payer of the interest having to pay AIL.

Withholding payments are deducted at the rate of 15% from non-resident contractors for certain work or services performed in New Zealand (this rate increases to 20% where the non-resident contractor does not provide a prescribed withholding declaration to the payer prior to the payment being made). An exemption certificate removing the need for the withholding deduction can be granted by the IRD in certain circumstances. This is not considered a minimum or final tax. It is credited against any final income tax liability the non-resident contractor may have in New Zealand, and is refundable to the extent of any excess.
TRANSFER PRICING AND THIN CAPITALISATION

New Zealand’s transfer pricing regime seeks to protect the New Zealand tax base by ensuring that cross-border transactions are priced (at least for tax purposes) on an arm’s length basis. New Zealand also has thin capitalisation rules which, broadly speaking, disallow certain interest deductions for a foreign owned New Zealand group (depending on their debt to equity ratio) or for New Zealand residents with an income interest in a CFC or who control a resident company with such an interest.

Goods and services tax (GST)

GST is a consumption tax charged at 15% on the supply of most goods and services in New Zealand. GST-registered taxpayers must charge GST on the goods and services they supply and can obtain a credit for any GST they pay in the course of their business. In this way, the burden of GST is borne by the final consumer.

Those making supplies in New Zealand are required to register for GST if they carry on a taxable activity (which is similar in concept to a business, but wider in scope) through which they will make taxable supplies of more than NZ$60,000 per year. A person carrying on a taxable activity can voluntarily register for GST even if they are under this NZ$60,000 threshold.

Provided certain circumstances are met, non-residents who do not carry on a taxable activity in New Zealand may also voluntarily register for GST. Certain supplies of goods and services can be either exempt from GST or zero-rated (an example of an exempt supply is the supply of financial services. Examples of zero-rated supplies include certain “exported” services and supplies wholly or partly consisting of land).

Accident compensation levies

New Zealand operates a no-fault accident compensation scheme whereby persons suffering from accidental injuries need not prove fault before receiving compensation. The scheme provides for some financial assistance for medical expenses, loss of earnings, and compensation for dependants in the case of death. All compensation is paid by the Accident Compensation Corporation (ACC), which is funded by:

- levies paid by all employers, self-employed persons and private domestic workers for work-related accidents. The levy for the self-employed and private domestic workers is set by regulation, whereas the levy for employers is determined by the industry risk class applying to the employer, and may be adjusted up or down depending on the individual employer’s safety management practices
- levies paid by self-employed persons, private domestic workers and employees for non-work related accidents
- a residual claims levy paid by employers, private domestic workers and the self-employed to cover claims outstanding prior to the introduction of the Accident Compensation Act 2001, and
- funds set aside by Parliament to fund compensation for injuries to non-earners.
Another option is the ACC’s accredited employer programme under which employers can elect to pay a reduced levy, in return for funding all or a share of any compensation entitlements incurred at their workplace. To be accepted for the programme, the employer must satisfy a number of criteria, including a minimum level of safety expertise and financial solvency.

For more information about ACC, please refer to the chapter on Labour and employment.

Import duties
Import licensing, once a common means of sheltering New Zealand producers, no longer exists in New Zealand, with tariffs now the principal form of protection.

Over recent years, there has been a steady reduction of tariff rates for goods imported into New Zealand. Tariff rates vary from item to item and depend upon the country of origin, with preferential rates being applied to Australia, Canada, “least-developed countries”, “less-developed countries” and Pacific Forum countries. Items that are outside the scope of local manufacturing are generally duty free, or may qualify for a duty concession.

Where New Zealand is party to a free trade agreement (FTA), the FTA will address in detail the tariffs applicable between the two countries (for further information, refer to the Accessing world markets from New Zealand chapter).

GST is also charged on any goods which are imported into New Zealand. An input tax credit can be claimed for this GST (meaning no net cost arises) where the importer is GST-registered and is acquiring the imported goods for the purpose of making supplies which are subject to GST.

Local government rates
Rates are the main source of local government revenue. These are calculated as a percentage of the value of land and/or capital improvements.
Regulations affecting business

The following is intended to give you a general flavour of New Zealand’s business regulation. It is not an exhaustive list and does not cover industry-specific legislation. You should seek specific advice about whether and how the legal framework will affect your plans. Chapman Tripp will happily assist.

Competition law

The Commerce Act 1986:
- regulates business acquisitions
- prohibits restrictive trade practices, and
- allows price controls to be imposed in certain industries.

BUSINESS ACQUISITIONS

Part 3 of the Commerce Act prohibits the purchase of shares in or assets of a business where the acquisition would have (or would be likely to have) the effect of substantially lessening competition in a market.

The Commerce Commission is charged with administering the Commerce Act. Parties to an acquisition which may substantially raise competition concerns may seek pre-transaction clearance from the Commission. Clearance, if granted, immunises the deal from scrutiny by the Commission or third parties. The clearance regime is voluntary and it is common for mergers to proceed on a non-notified basis.

In assessing whether a merger is likely to substantially lessen competition, the Commission will analyse the merged firms’ ability to raise prices and/or reduce product quality or service, relative to what would have occurred without the acquisition. Relevant to this enquiry are the market share of the merged entity, the market shares of other participants, the likelihood of new entry, the merged entity’s relationship with suppliers and purchasers, and whether there are features of the market which are suggestive of the potential for collusion and discipline.

The Commerce Commission has issued two informal “concentration indicators” (previously known as “safe harbours”) for assessing whether horizontal aggregation in a market may substantially lessen competition. The Commission’s guidance is that a merger or acquisition is unlikely to raise Commerce Act concerns if, after the acquisition:
- the three largest firms in the market have a combined market share of less than 70% and the merged entity has a market share of less than 40%, or
- the three largest firms in the market have a combined market share of more than 70% and the merged entity has a market share of less than 20%.

Those taking comfort from these “indicators” should seek specific advice and carefully consider the relevant market definitions and dynamics. It is also worth noting that they are only a starting point for the analysis and that falling outside them will not necessarily mean that an acquisition will be judged to lessen competition. For example, market shares may be high but there may be few barriers to entry or expansion.

3 For the purposes of the section 47 analysis, a company and ‘interconnected’ or ‘associated persons’ will be treated as ‘one head’ in the market.
Maximum penalties for an acquisition in breach of the Commerce Act are:

- NZ$500,000 for individuals
- NZ$5 million for companies, and/or
- an order requiring divestment of specified assets or shares (which can potentially include unwinding of the merger).

**RESTRICTIVE TRADE PRACTICES**

Part 2 of the Commerce Act regulates restrictive trade practices, unless explicitly authorised by the Commerce Commission on public benefit grounds. Such practices include:

- any contracts, arrangements or understandings which have the purpose, effect, or likely effect of substantially lessening competition in a market
- price-fixing and market-sharing arrangements between competitors
- collective boycotts between competitors which prevent or restrict trade, resulting in a substantial lessening of competition
- resale price maintenance arrangements by which suppliers of goods set and enforce sale prices to be charged by re-sellers, and
- taking advantage of a substantial degree of market power in a market (which can include trans-Tasman markets) for the purpose of restricting entry into a market, deterring competitive conduct, or eliminating a competitor from a market.

Engaging in a prohibited practice may result in a penalty of:

- up to NZ$500,000 for individuals, and
- for a body corporate, the greater of NZ$10 million or either three times the value of any commercial gain resulting from the contravention (if it can be easily ascertained) or 10% of the turnover of the body corporate and all its related bodies corporate.

Part 2 of the Commerce Act is being reformed. Changes are likely to be implemented by the end of 2015. The *Commerce (Cartels and Other Matters) Amendment Bill* is presently before Parliament and will criminalise price fixing behaviour and certain other types of cartel conduct.

**PRICE CONTROLS**

Part 4 of the Commerce Act contains a mechanism to impose price controls on particular goods and services. There are no restrictions on the industries to which Part 4 may apply.

Industries currently subject to specific market regulation include:

- telecommunications (under the Telecommunications Act 2001)
- dairy (under the Dairy Industry Restructuring Act 2001)
- electricity lines services and the gas industry (under the Commerce Act 1986).

**Consumer protection**

**PROVISION OF GOODS AND SERVICES TO CONSUMERS**

The Fair Trading Act 1986 and the Consumer Guarantees Act 1993 are New Zealand’s principal consumer protection laws.
THE FAIR TRADING ACT

The Fair Trading Act applies to anyone "in trade". It prohibits, whether the activity is intentional or not:

- engaging in conduct that is likely to mislead or deceive
- engaging in conduct that is liable to mislead as to the nature, manufacturing process, characteristics, suitability for purpose, or quantity of goods
- engaging in conduct that is liable to mislead as to the nature, characteristics, suitability for purpose, or quantity of services
- engaging in misleading conduct in relation to employment that is or may be offered to a person
- making false, misleading or unsubstantiated representations in respect of goods or services, and
- including or enforcing any terms in a standard form consumer contract that have been declared unfair by a court, in accordance with the Fair Trading Act.

The Fair Trading Act sets information and safety standards for some types of products, including children's nightwear, baby walkers and bicycles.

The Fair Trading Act also deals with miscellaneous consumer protection matters such as layby sales, direct (door-to-door) sales, extended warranty agreements, auctions, and product recalls. It prohibits various types of unethical commercial behaviour including falsely applying trademarks, falsely offering prizes, bait advertising, and pyramid selling.

The Fair Trading Act is enforced by the Commerce Commission and gives consumers direct rights of action. Suppliers of goods and services to consumers cannot contract out of the Fair Trading Act and business to business contracts can only exclude the Fair Trading Act in specific circumstances.

Breaching the Fair Trading Act can attract both civil and criminal penalties. Penalties include:

- fines of up to $200,000 per offence for an individual and $600,000 per offence for a company
- orders for payment of the equivalent revenue or commercial gain earned from certain offending
- corrective advertising orders
- contract rectification, and
- compensation payments to affected parties.

THE CONSUMER GUARANTEES ACT

The Consumer Guarantees Act:

- provides consumers with certain minimum guarantees in relation to the quality, suitability and other aspects of goods and services, and a basic guarantee as to title to goods, and
- gives consumers remedies against suppliers and manufacturers where goods or services fail to comply with one or more of those guarantees.

The Consumer Guarantees Act does not apply to dealings with business customers and commercial contracts. It defines a consumer as a person who acquires goods or services of a kind ordinarily acquired for personal, domestic or household use and who does not hold him or herself out as acquiring, the goods or service for the purpose of resupplying them in trade, using them in a manufacturing process or repairing the goods in trade.

Remedies include damages, including for consequential losses sustained as a result of the breach of guarantee, and the right to cancel a contract and be refunded any amounts paid.
Generally, New Zealand’s consumer protection regime is similar to that of many comparable jurisdictions.

**CONSUMER CREDIT**

Providing credit at the consumer level through credit contracts and hire purchase agreements is regulated by the Credit Contracts and Consumer Finance Act 2003. The Act sets out disclosure requirements for contracts, allows debtors to have the terms of a contract changed for reasons of hardship and allows the courts to re-open and vary "oppressive" contracts. The Act requires repossession agents to be licensed and prohibits lenders taking security over certain “essential” goods or particular types of documents.

Lender responsibility principles apply to all lenders’ dealings with consumer borrowers. These principles require the lender to exercise the care, diligence and skill of a responsible lender in dealing with consumers and to comply with certain specific lender responsibilities. The responsible lending code provides guidance on how lenders can comply with these principles.

**RETAIL REGULATION**

Many other laws and regulations affect the operation of retail businesses, including:

- smoke free legislation
- restrictions on the sale of liquor
- restrictions on shop trading days (but only three and a half days of the year have restrictions)
- weights and measures standards, and
- food safety and labelling legislation.

**Contract law**

New Zealand contract law is light handed, and allows contracting parties significant freedom in concluding their bargain.

Most contracts can be concluded orally. The exceptions are contracts involving land, mortgages, extended consumer warranties, credit contract disclosures or employment agreements, all of which must be written. Certain contracts may be supplemented by terms implied by various statutes. The Sale of Goods Act 1908, for example, sets out various terms that are read into contracts for the sale of commercial goods unless the parties clearly intended otherwise.

Other context-specific pieces of legislation which apply to all contracts:

- the Minors’ Contracts Act 1969, which protects minors (persons under the age of 18) from commercial exploitation. A contract with a minor cannot be enforced against the minor, subject to certain specific exceptions and the court’s discretion
- the Contractual Remedies Act 1979, which allows a party to cancel a contract for a misrepresentation (if prescribed criteria are satisfied), and recover damages. The courts also have the power to grant other types of relief under the Act, and
- the Illegal Contracts Act 1970, which confirms the common law position that contracts which are illegal at law or equity will be of no effect and grants the courts the power to make a variety of orders including amending the contract. Consistent with other similar jurisdictions, unreasonable restraints of trade are one example of an illegal contract.

Several common law rights of recourse also exist for misleading conduct and/or statements.
Public protection
New Zealand has legislated, like many other countries, to protect various rights of the public at large.

INFORMATION PRIVACY
The Privacy Act 1993 aims to protect the confidentiality of personal information by limiting the purposes for which it can be used and disseminated and by giving individuals a right of access to personal information held about them.

HUMAN RIGHTS
The Human Rights Act 1993 generally accords with United Nations covenants and conventions on human rights. The Act:

- makes it unlawful to discriminate in relation to employment or the provision of goods or services on the grounds of sex, marital status, religious or ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status or sexual orientation
- prohibits sexual and racial harassment and the incitement of racial disharmony, and
- prohibits publishing or displaying any advertisement or notice which indicates an intention to commit a breach of any of the provisions of the Act.

GAMBLING
The Gambling Act 2003 prohibits gambling unless it is authorised under the Act.

“Gambling” involves (broadly) staking money (or money’s worth) directly or indirectly on an outcome that depends at least partly on chance, where a prize is involved. You should seek specialist advice if you plan on setting up a gambling business (whether as a primary or ancillary part of your proposed business) or where you offer prizes in exchange for the purchase of goods or services.

Creditor protection
The Personal Property Securities Act 1999 allows creditors to give notice of a security interest they hold over property held by debtors by registering a “financing statement” on a public (online) register. A range of security interests are registered, including in relation to fixed and floating charges, chattel mortgages, hire purchase agreements, finance leases and retention of title arrangements. Registration is vital in determining the validity and priority of a creditor’s interest.
Buying and developing property

Title
New Zealand uses the Torrens land registration system under which most parcels of land have their own titles showing dimensions and location, and recording ownership and other interests affecting the land. The government guarantees the accuracy of titles, which can be searched by the public for a nominal fee.

Chapman Tripp provides a full title searching service.

The primary attraction of the Torrens system is that dealings can be conducted in reliance on a single title, rather than on a succession of title deeds. New Zealand has converted almost all titles, plans and instruments into an electronic format, allowing real-time searching and electronic registration of all land title and surveying transactions.

Under New Zealand law, buildings and other improvements permanently attached to the land form part of the land itself and pass with ownership of the land, unless the current owner and a purchaser agree otherwise.

Contracts for sale and purchase of land
To be enforceable under New Zealand law, a contract for the sale and purchase of land must be in writing and signed by the parties involved or their authorised agents. Once signed, an agreement for sale and purchase becomes legally binding on all parties. It can, however, be made subject to conditions which protect the seller or buyer.

Common conditions are:
• the buyer raising finance
• the buyer being satisfied with valuation, local authority information relating to the land, engineering reports and building reports, and
• the buyer being satisfied with the title.

Where a real estate agent is engaged by a seller to effect a sale, commission is payable by the seller. There is no stamp duty.

Dealings with land are registered electronically against the title.

Resource Management Act and district plans
The Resource Management Act 1991 (RMA) is New Zealand’s principal statute relating to the use of land, water, minerals, the coast, air and physical resources. The Act aims to promote “sustainable management of physical and natural resources”. The Act also seeks to maintain and enhance New Zealand’s “clean, green” image.

The RMA has major implications for industrial projects and property developments. A new development may require a number of consents under the Act before it can go ahead.

Controls on development are administered by locally elected government authorities and are expressed through a range of publicly notified plans. These include regional plans, regional coastal plans and district plans. Plans set out rules for activities in various locations or “zones”. Parties seeking consent to proceed with a development must follow the procedures set out in the relevant plan. This may involve public participation through the public notification of the consent application.
Privately owned land may be designated in the district plan as being required by the government for a public work (compulsorily if necessary). The current market value of the land would be paid as compensation.

Building works

The Building Act 2004 is designed to regulate and control building work and the use of buildings. Every new building and most substantial alterations or additions to existing buildings will require a building consent. Multiple-use approvals are available for group home builders who build homes throughout New Zealand using the same or similar plans.

On completion of works, a code compliance certificate will be issued, provided compliance with the building consent has been satisfied.

Allied to the Building Act is the Building Code. This sets criteria to ensure buildings are safe, sanitary, have adequate means of escape and, in the case of public buildings, have access and facilities for disabled persons. Existing buildings, which are being altered, may require upgrading in the course of the alterations in order to comply with these criteria as nearly as is reasonably practicable. Buildings considered earthquake prone may also be required to be upgraded.

The Act imposes restrictions upon occupation of a building where public areas of that building are subject to building works for which a code compliance certificate has not yet been issued.

Stratum estates

The Unit Titles Act 2010 allows titles to be issued for parts of buildings, for example an apartment or industrial park. The Act provides for a body corporate (comprising the unit owners) to be established, with a set of rules governing the use and maintenance of the building. The body corporate is tasked with insuring the building and controlling and maintaining the common areas. The unit owners pay a body corporate levy to cover its expenses. Before buying a unit, the vendor is required to provide to the purchaser a pre-contract disclosure statement setting out prescribed information relating to the body corporate, including information regarding body corporate levies. The information set out in the pre-contract disclosure statement will typically be provided by the body corporate secretary.

Barriers to buying land

In general, there are few restrictions on the purchase of land in New Zealand, unless that land falls within one of the regulated categories under the Overseas Investment Act 2005. For a detailed discussion of the screening regime, refer to the Overseas Investment Regime chapter. There are restrictions on the sale of land held by government agencies, which will need to be resolved before any sale to a private party (whether local or overseas) can proceed.

Māori land claims

Land claims by Māori, the indigenous people of New Zealand, are governed by the Treaty of Waitangi Act 1975. Under the Act, grievances are heard by the Waitangi Tribunal which can then make recommendations to the government regarding the resolution of those grievances.

Recommendations for the return of land to Māori are generally applicable only in respect to land owned by the government or State-Owned Enterprises. Privately owned land is not subject to return to Māori ownership unless the title to the land has been specifically endorsed to that effect (and even then, current policy is not to exercise that right). If it was exercised, the current market value would be paid.
Minerals

Access to and rights to prospect, explore and mine New Zealand’s extensive petroleum and mineral estate, including coal, are governed by the Crown Minerals Amendment Act 2013 and Minerals and Petroleum Programmes issued under it.

All petroleum, gold, silver and uranium existing in land (including under the sea) is the property of the Crown (government). No person may prospect, explore for, or mine, government-owned minerals without an appropriate permit.

The Minerals Programmes govern the policies and procedures applicable to the management of government-owned minerals, coal and petroleum. By and large, a permit will be awarded to the person most likely to prospect, explore or develop the resource effectively and in accordance with the permit obligations and good practice.

Return to the government is assured through a royalty regime, although there is provision in the Act for the government also to participate in any given permit and thus derive a fair financial return through that avenue. The current policy is, however, not to exercise this right.

All transfers of or other dealings with a permit interest require the consent of New Zealand Petroleum & Minerals to be effective.

More information is available at: www.nzpam.govt.nz

Residential property

Gains from the sale of residential properties purchased after 1 October 2015 and held for less than two years will be taxed at the owner’s income tax rate. Exemptions will apply if the property is:

- the seller’s main home
- inherited from a deceased estate
- sold as part of a relationship break down.

This “bright line” test supplements the current law. Gain from sale of a property held for longer than two years may still be taxed if the Inland Revenue Department (IRD) considers that the seller acquired the property for a purpose or intention of resale, or if one or more of the specific land taxation provisions applies (for example, if the seller carried on, or was associated with someone who carried on, a business of land dealing, land development or building at the time of acquiring the property and sells that property within ten years).

Residents and non-residents will be required to provide an Inland Revenue Department (IRD) tax number as part of the usual Land Information New Zealand transfer process (unless the property is their main home).

A non-resident will also be required to have a New Zealand bank account and to provide a home jurisdiction tax number together with another form of identification, e.g. a passport. These information requirements are intended to provide the IRD with the information to enforce the two-year rule.

The government is currently investigating a withholding tax for non-resident property owners, to ensure that they pay what is due on their New Zealand property investments. If implemented, this would likely come into effect in mid-2016.
Labour and employment

Employment Relations Act

The Employment Relations Act 2000 (the Act) is the principal statute governing employment in New Zealand. It aims to promote good faith in the employment relationship and the right of workers to bargain collectively.

Agreements must be in writing, and may be individual (between an individual employee and the employer) or collective (between one or more unions and one or more employers). Employers must hold a signed copy of employment agreements.

Union membership is not compulsory but all collective agreements must be negotiated and concluded with a union.

Good faith

The parties to an employment relationship must not do anything, either directly or indirectly, to mislead or deceive each other. They must be “active and constructive,” as well as “responsive and communicative” in their dealings.

The Act also requires parties to bargain in good faith. Employers and employees/unions must, at a minimum, come to the bargaining table, listen and respond to what the other party puts forward.

Further, employers proposing to take an action that may have an “adverse effect” on their employees must (subject to genuine although strict confidentiality exceptions) provide information about the decision and consult with their employees in good faith before the decision is made.

Sale of a business/contracting out

When engaging in a sale, merger or contracting out arrangement, as well as complying with the good faith/consultation requirements described above, an employer must negotiate with the proposed purchaser/new employer in relation to the employees. Such negotiations must include discussion about who will be offered employment with the new employer, and on what terms and conditions.

The Act also provides that “vulnerable employees” (primarily cleaning and food catering workers, as well as some other types of vulnerable workers in specified sectors) are entitled to transfer to the new employer as of right and to bargain for redundancy payments with the new employer if their services are not required.

TERMINATION

Most individual employment agreements are indefinite (i.e. they continue until terminated) but the law also recognises casual and fixed term employment arrangements. Fixed term agreements are lawful, but subject to certain restrictions.
The employee can end an indefinite employment arrangement by giving the specified notice period. However, an employer can terminate an employee’s employment only after following a prescribed legal process and only for reasons of redundancy, misconduct, poor performance or incapacity. The parties can agree on a written 90-day trial period, during which the employer can end the employment arrangement without following the normal process or facing a personal grievance. There are strict requirements regarding trial period clauses (for example, agreements with trial clauses must be signed before the employee starts work).

There is no statutory right to redundancy compensation in New Zealand and, other than in very limited circumstances, compensation is only payable if it is provided for in the employment agreement.

DISPUTE RESOLUTION
The Act encourages mediation as the primary means of settling employment disputes. If mediation is unsuccessful, the parties may have their dispute decided by the Employment Relations Authority, an investigative body. If still unsatisfied, parties have a right of appeal to the Employment Court.

Very often, employment disputes are solved in mediation and do not proceed to litigation.

STRIKES AND LOCKOUTS
The only lawful strikes or lockouts are those which relate either to bargaining for a collective agreement or to health and safety issues.

When a strike occurs, an employer can only use existing employees to perform the work of the striking employees, and then only if the existing employees agree to perform the work. External workers may only be employed when the work is necessary for public health and safety reasons.

UNION ACCESS
Union representatives have a right to request access to a work place at reasonable times, in a reasonable manner, for purposes related to union business (which includes recruiting members). Employers cannot unreasonably refuse access.

Working conditions

WORKFORCE
In general, the New Zealand workforce is well-educated and well-trained. There are occasional shortages of senior management and skilled technical employees.

WAGES
The minimum wage under the Minimum Wage Act 1983 is reviewed annually. Currently, the minimum wage for employees over the age of 16 is NZ$14.75 an hour or NZ$118.00 for an eight-hour day, or NZ$590.00 for a 40-hour week. Average total weekly earnings (full time equivalent) as at December 2014 were NZ$1079.33.
HOLIDAYS AND LEAVE
In addition to 11 statutory holidays, employees are entitled under law to at least four weeks’ paid annual leave after 12 months of employment.

After six months’ continuous employment, employees are entitled to:
- a minimum of five days’ sick leave which they can also draw on when their spouse or someone who depends on them for care is sick or injured. Accumulated sick leave to at least 15 days must be carried over from year to year, and
- bereavement leave of three days on the death of an immediate family member and of one day in all other circumstances where the employer accepts that the employee has suffered bereavement.

KIWISAVER
All new employees must be automatically enrolled in the KiwiSaver superannuation scheme. Automatic enrolment does not apply to temporary employees or to most business sale situations. Existing employees can also enrol in KiwiSaver if they wish.

Employees who are automatically enrolled have a six week period in which they can opt out.

Employees who are members of KiwiSaver will have part of their gross earnings (minimum of 3%) deducted and paid by their employer to a superannuation scheme. Required employer contributions are also 3%. Total remuneration approaches (where employer contributions are deducted from the employee’s salary) to KiwiSaver are generally permitted.

PAYROLL TAX
In addition to KiwiSaver contributions and Accident Compensation Corporation (ACC) levies (see below), employers in New Zealand are required to deduct “Pay As You Earn” payroll tax (PAYE). Deductions are made on a fortnightly or monthly basis. The Inland Revenue Department may also require other deductions such as payments towards student loans or child support.

PARENTAL LEAVE
The Parental Leave and Employment Protection Act 1987 provides for both parents to take specified periods of parental leave (unpaid) on the birth or adoption of a child.

GOVERNMENT-FUNDED PAID PARENTAL LEAVE
Primary caregivers are entitled to receive up to 16 weeks’ paid leave of a maximum of NZ$516.85 (gross) per week, or 100% of the parent’s previous weekly earnings, whichever is the lower.

The scheme allows the mother of the child to claim the paid leave or transfer the payment to the child’s other parent, whether the father or a same sex partner.
EQUAL OPPORTUNITIES

Legislation is in place to ensure that employers cannot discriminate on the basis of an employee’s (or prospective employee’s) sex, marital status, religious beliefs, ethical beliefs, colour, race, ethnic or national origin, disability, age, political opinion, employment status, family status, sexual orientation or union involvement.

ACCIDENT COMPENSATION

In New Zealand, legal claims relating to personal injury are prohibited under the Accident Compensation Act 2001. Instead, the Act provides a statutory no-fault scheme under which cover is available for those suffering personal injury.

Coverage is broad based and includes most physical injuries, regardless of whether they occur in the workplace or elsewhere. Unless sustained as the victim of a crime, pure mental injury is not covered by the scheme.

Compensation for injuries can take the form of payments for loss of earnings, health care treatment, cost of rehabilitation, independence allowance for disability, funeral expenses and death benefits for dependents. The scheme is funded from a number of sources, including levies on employers (linked to the amount of wages paid, with levy rates being determined on the basis of injury rates in the relevant industry), levies on employees, taxes on vehicle registration and taxes on petrol.

Accident compensation benefits are available to non-residents who are injured while in New Zealand. However, earnings-related compensation is not available to non-residents who derive their income from outside New Zealand.
Health and Safety in Employment Act 1992

The Health and Safety in Employment Act 1992 (HSE Act) places duties and responsibilities on a range of different workplace participants, including employers, employees, principals, contractors, land and building owners, leaseholders, manufacturers and hirers or suppliers of plant or machinery.

EMPLOYER DUTIES

Employers must take all reasonably practicable steps to:

- provide and maintain a safe working environment and work facilities
- ensure that plant at work is arranged, designed and maintained so that it is safe for use
- ensure that employees are not exposed to hazards in their place of work or near their place of work under the employer’s control
- develop procedures for dealing with emergencies that may arise while employees are at work, and
- ensure that no action or inaction by any employee while at work harms any other person.

Employers must also maintain a record of every accident that harmed (or might have harmed) an employee at work or any person in the place of work controlled by the employer, or which resulted from a hazard to which the employee was exposed while at work. If an accident or harm occurs, the employer must take all practicable steps to ensure that the occurrence is investigated so as to determine whether it was caused by or arose from a significant hazard.

EMPLOYER REPORTING OBLIGATIONS

Employers must notify WorkSafe within seven days of becoming aware of any serious harm accidents occurring at work. Serious harm refers to an injury or illness that causes severe loss of bodily function, permanent or temporary. WorkSafe investigates all serious workplace accidents.

EMPLOYEE DUTIES

Employees are required to take all practicable steps to ensure that no action or inaction of theirs while at work causes harm to any person. This includes things they omit to do (such as not using safety gear).
ENFORCEMENT

WorkSafe inspectors enforce the HSE Act. Other agencies may also be involved where the industry has specific requirements, such as Maritime New Zealand and the Civil Aviation Authority.

Inspectors may visit a workplace at any reasonable time, without giving advance notice. Inspectors may visit to offer information, inspect the workplace, or investigate reported incidents.

Health and safety inspectors have a range of options available to ensure compliance with the HSE Act. A health and safety inspector can:

- issue an improvement notice requiring action (failure to comply with an improvement notice is an offence)
- stop unsafe machinery or work by issuing a prohibition notice. This has immediate effect and remains in force until the problem is rectified to an inspector’s satisfaction
- issue an infringement notice. A notice can impose a penalty ranging from NZ$100 to NZ$4,000 on a person or company that has, despite prior correspondence or notices, failed to ensure that all practicable steps have been taken to remove a hazard. An employer served with an infringement notice may elect to pay the fee or seek a hearing in the District Court
- prosecute where a party has failed to meet its obligations under the HSE Act. Fines range up to NZ$500,000, but most offences carry a maximum fine of NZ$250,000.

INDIVIDUAL LIABILITY

Employees, officers, directors and agents may also be charged in relation to failures under the HSE Act.

Prosecutions against individual employees under section 19 of the HSE Act are relatively rare and will usually only take place where it is clear that an employee disobeyed clear instructions, acted recklessly, was grossly negligent, was involved in sky-larking behaviour, or wilfully ignored obvious hazards.

Under section 56 of the Act, directors, officers or agents may be charged irrespective of whether the company is prosecuted or convicted. The current test for liability requires knowledge that the situation in question was unsafe or otherwise contrary to health and safety legislation.
Intellectual property

New Zealand’s intellectual property laws are derived historically from English legislation and common law but have been influenced and reformed in recent years pursuant to the TRIPS Agreement and New Zealand’s World Trade Organisation obligations.

Copyright

The Copyright Act grants exclusive rights to:
• copy a work (including, in relation to some works, storing the work in any medium by any means)
• issue copies of the work to the public
• play, perform or show certain works in public
• "communicate" the work
• make an adaptation of the work, and
• authorise another party to do any of the above.

Works that can be subject to copyright include:
• literary works (including computer programmes)
• dramatic works
• artistic works (which may include drawings, moulds, dyes etc for utilitarian items such as machinery or clothing)
• musical works
• sound recordings, and
• films and broadcasts, including over the Internet.

To qualify for protection, a work must be “original”.

In accordance with the Berne Convention (to which New Zealand is a signatory) copyright is established as soon as the work is created. A work does not need to be registered to gain protection.

The copyright in literary, dramatic, musical and artistic works generally lasts for the life of the author plus 50 years. Unlike in some countries, there is no bar in New Zealand copyright law against protection for industrially applied artistic works. However, the copyright term for industrially applied three-dimensional works is usually 16 years. Protection for industrially applied “works of artistic craftsmanship” lasts for 25 years. For other works, copyright generally lasts for 50 years.

Public performances of various kinds may also be the subject of separate protection given in certain circumstances to performers (but not in the performance of sporting activities). In addition, the Copyright Act protects “moral rights” which, (depending on the circumstances) may include:
• a right to be identified as the author
• a right to object to derogatory treatment of a work, and
• a right against being falsely attributed as the author of a work.

Under New Zealand law, moral rights are not assignable. They can, however, be waived.
**Patents**

The Patents Act 2013 brings New Zealand generally into line with our major trading partners.

The grant of a patent allows the owner to prevent others from exploiting (e.g. by making, using or selling) a patented invention for 20 years from the date of the patent.

An exception allows for third parties to do things “reasonably related” to the development and submission of information required under New Zealand law, or the law of another country, regulating the exploitation of the product.

A patent will be granted where the Commissioner of Patents is satisfied “on the balance of probabilities” that the application meets the requirements under the legislation. The most important of these are that the invention meets a universal or absolute novelty test and involves an inventive step (meaning that it is not “obvious”).

Certain things are excluded from patentability, including methods of medical treatment of human beings by surgery or therapy, a method of diagnosis practised on human beings, and inventions the commercial exploitation of which would be contrary to public order or morality.

“Embedded software” may be patented. “Swiss-type” patent claims in the pharmaceutical area are possible.

Various procedures are open to third parties wishing to object to or oppose a patent, both before and after grant. These include asking for a re-examination.

**Registered designs**

New and original industrial designs are registrable under the Designs Act 1953 if their shape, configuration, pattern, or ornamentation has visual appeal. However, because the Copyright Act protects industrially applied artistic works and useful articles in New Zealand, some businesses are content to rely on the protection given by copyright law only (although there are advantages to gaining registered protection under the Designs Act).

Under the Designs Act, the period of protection is for an initial five years, with rights of renewal for two further five-year periods.

**Trade marks**

Trade marks may be registered under the Trade Marks Act 2002 (for goods and services). Once a trade mark is registered, the proprietor has the exclusive right to use the trade mark in relation to the goods and/or services for which it was registered.

The Act permits comparative advertising involving registered trade marks, except where the advertisements are “unfair” to the reputation of the mark. The Act also contains “anti-dilution” provisions to prevent unfair use of well-known registered marks in relation to goods and services which are dissimilar to those for which the mark is registered. Marks involving Māori language or symbols must be referred to a special committee for consideration before they are eligible for registration.

The Madrid Protocol allows for a multi-country trade mark application process.
**Company names**

A company name will not be approved if it is identical (or nearly identical) to an existing company name. Registering a company or reserving a company name gives no right to use the name as a trade mark, and provides no defence to infringement of third party trade mark rights. (This is also the case in respect of domain names.)

**Domain names**

Regional domain names, such as “.co.nz” and “.govt.nz”, are registrable in New Zealand. New Zealand courts have protected businesses against “cyber squatting” in some instances. In so doing, they have relied on principles developed in English and United States courts. There is also now a dispute resolution service operated by the Domain Name Commission, similar to the UK Nominet service.

**Passing off**

The law of passing off may also be invoked to protect business goodwill and is frequently used for the protection of trade marks (whether or not registered), names, logos, packaging designs and shapes. The principles are similar to those that have been developed in English and Australian common law.

**Parallel importation**

Importers can import lawfully made goods from foreign countries in commercial quantities without infringing the copyright of the “official” distributor in New Zealand, or of the overseas manufacturer. However, the prohibition against importing pirated goods, made without the copyright owner’s consent, remains in force.

The parallel importation of films is restricted for a period of up to nine months after their initial international release.

**Confidential information**

New Zealand law protects confidential information relating to trade secrets, such as business methods and industrial processes. As with passing off, the principles are similar to those that have been developed in English and Australian law. Non-disclosure agreements (NDAs) are useful for providing contractual rights to prevent disclosure of confidential information and can be used to supplement common law rights.
Financial markets

The Reserve Bank of New Zealand

The Reserve Bank of New Zealand is New Zealand’s central bank. Its primary function is to formulate and implement monetary policy with the aim of achieving and maintaining price stability.

Policy targets are set to achieve this; these are currently defined as maintaining underlying inflation within a 1-3% range over the medium term, with a focus on keeping average inflation near 2%. The Bank is required to publish a monetary policy statement every quarter.

The Reserve Bank’s other functions are:

• maintaining the note and coin issue and the public debt and forex reserves
• advising the government on matters relating to monetary policy, banking credit and overseas exchange
• licensing and the prudential supervision of banks and insurers, and
• regulating non-bank deposit takers.

Financial institutions

Among the wide range of financial institutions in New Zealand are banks, building societies, private savings banks, merchant banks, finance companies, trust and mortgage companies, small loan companies and insurance companies.

BANKS

Following substantial de-regulation of the banking industry, New Zealand has maintained a relatively open policy on the entry of new registered banks with the philosophy that greater competition leads to greater efficiency and innovation.

There are currently 25 registered banks operating in New Zealand, representing a particularly high banks per capita figure by international standards. Not all of these banks operate full retail banking businesses.

The banks with the largest operations in New Zealand are:

• ANZ Bank New Zealand Limited
• ASB Bank Limited
• Bank of New Zealand
• Westpac (through Westpac New Zealand Limited and Westpac Banking Corporation), and
• Kiwibank (which is owned by and run through New Zealand’s postal operator, New Zealand Post).

Finance sector regulation

Any person who advises on financial products, provides an investment planning service, makes investment management decisions on behalf of another person under an authority, or receives, holds, pays or transfers client money is subject to disclosure requirements and conduct obligations under the Financial Advisers Act 2008 (FAA).
Persons providing services relating to more complex products will generally also have to become authorised by the Financial Markets Authority and meet qualification, training and competence requirements. Persons providing services on simpler products will generally need to be registered in New Zealand. The FAA applies regardless of the country in which the person performing the services resides.

The Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSPA) requires that any person or entity which provides a financial service is registered on the Financial Service Providers Register and (if they provide financial services to the public) is a member of a dispute resolution scheme. This includes financial advisers under the FAA, banks, securities issuers, KiwiSaver managers, custodians, money managers, credit contract providers, credit card providers, travellers cheque providers, currency exchanges, insurers, trustees, listed companies, issuers of derivatives to the public and foreign exchange dealers. Generally the FSPA will not apply to financial service providers who reside outside New Zealand and provide financial services in New Zealand.

Securities trustees and statutory supervisors are registered under the Securities Trustees and Statutory Supervisors Act 2011. Insurers are regulated by the Insurance (Prudential Supervision) Act 2010.

In August 2013, the Financial Markets Conduct Act (FMCA), described as a “once in a generation” rewrite of capital markets law, was passed and came into effect progressively from April 2014. The FMCA governs how financial products are created, promoted and sold as well as the responsibilities and behaviour of those who work with them. Market participants have up to 24 months from 1 December 2014 to comply with the new disclosure and governance requirements.

The Anti-Money Laundering and Countering Financing of Terrorism Act sets out the current anti-money laundering regime, requiring financial institutions to carry out customer due diligence, identity verification and suspicious transaction reporting. The regime reflects the Financial Action Task Force Recommendations.

Financial markets

The New Zealand Exchange (NZX) regulates and facilitates New Zealand’s four securities markets, as follows.

NZX MAIN BOARD

The NZX Main Board is New Zealand’s principal market for equity securities. It features the securities of the majority of New Zealand’s listed companies and a number of overseas companies. There are approximately 155 companies listed on the NZX with a combined market capitalisation of approximately NZ$100 billion (at 31 March 2015).
The NZX Main Board is suited to large and established enterprises. To list on the NZX Main Board the company must, among other things, have an appropriately qualified board of directors, at least 500 shareholders who hold at least 25% of the class of securities between them, and comply fully with NZX disclosure and other requirements. NZX also recommends that such companies have annual revenue of at least NZ$50 million. In certain situations, securities of overseas issuers which are listed on a recognised overseas stock exchange can be dual listed on the NZX without complying with a number of these requirements.

The NZX Main Board is the first of the world’s markets to open each day, due to New Zealand’s proximity to the International Date Line.

NXT AND THE NZX ALTERNATIVE MARKET

NZX has recently established a new market - NXT - for small to medium sized companies (with an expected market capitalisation of more than $10 million and less than $100 million). Companies can apply to list on NXT, either in conjunction with a capital raising (in which case at least $5 million must be raised) or as a compliance listing where no capital is raised. In general, NZX will encourage companies with an anticipated market capitalisation of $50 million or less to list on NXT rather than the NZX Main Board. To be eligible for NXT, companies must also meet minimum spread requirements (have at least 50 shareholders who are members of the public who, together, hold at least 25% of the applicant’s shares). NXT offers lower standards of compliance and corporate governance requirements, and lower costs, than the NZX Main Board.

NXT is intended to be a long-term replacement for the existing NZX Alternative Market (which had been available to small to medium sized companies). NZX is not accepting new listings for the NZX Alternative Market and is actively promoting the migration of eligible NZX Alternative Market companies to NXT. It is likely that NZX will disestablish the NZX Alternative Market in the medium term.

NZX DEBT MARKET

The NZX Debt Market provides investors with a transparent and liquid market to buy and sell debt securities. Debt securities which may be offered on the NZX Debt Market include:

- government bonds
- State-Owned Enterprise bonds (bonds issued by companies owned by the government, and thus similar to government bonds but trading at slightly higher yields)
- local authority stock (issued by city councils and regional councils)
- corporate bonds and debentures
- money market instruments, including treasury bills, bank medium term notes, promissory notes and certificates of deposit
- capital notes
- perpetual notes, and
- preference shares.
FUTURES AND OPTIONS MARKET

New Zealand futures and options contracts are currently traded on the Australian Securities Exchange (ASX), in relation to:

- electricity futures and options at the Otahuhu and Benmore grid reference points
- 90 day bank bills
- three and 10-year government stock, and
- 30-day official cash rate bonds.

The NZX is in the course of establishing an exchange traded equity options market, which will initially have share options in Fletcher Building, Spark and Trade Me.

To enter into futures and options contracts with, or on behalf of, members of the public a dealer must be licensed by the Financial Markets Authority and comply with the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and with the regulated offer disclosure regimes and (where applicable) the property custody requirements of the Financial Markets Conduct Act 2013 (FMCA) and the FAA.

FOREIGN EXCHANGE MARKET

There are no restrictions on the buying and selling of foreign currencies. The New Zealand banking system offers a full range of foreign exchange services including spot, forward, futures, options and the more sophisticated derivative products.

New Zealand operates a very open regime.

Borrowers may raise finance on and off-shore and in the currency of choice. Banks are actively engaged in the provision of short and medium-to-long term debt to the consumer, commercial and corporate sectors. Market forces determine the level of interest rates.

Repatriation of funds

There are no restrictions on the repatriation of capital or earnings of a New Zealand business to overseas investors. This includes the remitting of dividends, profits, interest, royalties, management fees, etc. In many cases, however, non-resident withholding tax will be required to be deducted from the amount of those payments. For more information on New Zealand tax, please refer to the chapter on Taxation.
Dispute resolution

The structure of New Zealand's courts

The District Court is the court of first instance for most criminal prosecutions and many civil cases. In criminal cases, whether the District Court has jurisdiction often depends upon the nature and seriousness of the alleged offence. In civil cases, the District Court will have jurisdiction if the amount in dispute is NZ$200,000 or less. Above that amount, the claim must be advanced in the High Court. The High Court also has exclusive jurisdiction in certain matters as directed by statute, e.g. under the Companies Act 1993.

A judgment of a first instance court may be appealed. There is generally one right of appeal – from the District Court to the High Court or from the High Court to the Court of Appeal. Second appeals require the leave of either the court appealed from or the court appealed to. All appeals to the Supreme Court require the leave of that court.

The Supreme Court does not entertain appeals for the sole purpose of error correction, and will generally not grant leave unless:

- the appeal involves a matter of general or public importance
- a substantial miscarriage may have occurred, or may occur unless leave is granted or
- the appeal involves a matter of general commercial significance.

The Court of Appeal is therefore the final appellate court for most cases.

Specialist tribunals

Outside the hierarchy of general courts is a range of courts and tribunals with limited jurisdiction or, more commonly, jurisdiction over specialist subject-matter. The specialist courts and tribunals include:

- the Employment Relations Authority and the Employment Court, which have exclusive jurisdiction in respect of disputes arising out of the employment relationship
- the Environment Court, which has civil and criminal jurisdiction in relation to environmental matters under the Resource Management Act 1991
- the Taxation Review Authority, which has jurisdiction to resolve certain disputes between the Commissioner of Inland Revenue and taxpayers, and
- the Weathertight Homes Tribunal, which has jurisdiction to adjudicate on claims by private property owners who believe that their residences have been damaged as a consequence of leaky building syndrome.

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4 In certain circumstances, some decisions of the District Court and the High Court may be reviewable by the High Court instead of being appealed.
5 The ground of substantial miscarriage of justice is largely restricted to criminal proceedings. It would be rare for the Supreme Court to grant leave to appeal on this ground for a civil matter.
6 The Disputes Tribunal, for example, has limited jurisdiction to resolve some civil disputes involving amounts not exceeding NZ$15,000 (or NZ$20,000 with the agreement of all of the parties).
The decisions of the specialist tribunals may be appealed to, or reviewed by, the generalist courts. The court having jurisdiction to hear the appeal is prescribed by statute. In some cases leave is required in order to appeal, and some appeals are restricted to questions of law.

Criminal prosecutions

With the exception of contempt of Parliament and contempt of court, all criminal offences in New Zealand are prescribed by statute. The sentencing options available in respect of each statutory offence are also prescribed by legislation (usually the same statute as that which creates the offence in conjunction with the Sentencing Act 2002).

Although many offences may be prosecuted by individuals (referred to as "private prosecutions"), in practice offences are prosecuted by the Crown Solicitor or by the government department or institution having responsibility for the statute which is alleged to have been breached.

In New Zealand, Prosecution Guidelines do not permit a prosecutor to initiate or to invite a "plea bargain" in any criminal proceeding. However, it is permissible for a defendant to propose an arrangement whereby the defendant will enter a guilty plea either to some existing or amended charges, on the basis that other charges will be withdrawn or amended.

Rights and obligations imposed on litigants

Individuals are entitled to represent themselves before any court or tribunal, although most choose to be represented by lawyers. All lawyers authorised to practise in New Zealand have the right to appear in court.

It is therefore unnecessary to instruct a lawyer practising solely as a barrister for appearances in court. If a barrister is instructed, regulations generally require that the instruction be via a solicitor – meaning that the litigant will require a lawyer authorised to practise as a barrister and solicitor to act, in addition to the barrister sole.

In contrast to individuals, bodies corporate must ordinarily be represented by a lawyer. Only in exceptional circumstances will the generalist courts permit an unqualified representative (for example, a director) to appear on behalf of a body corporate.

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7 Appeals from the Employment Court are to the Court of Appeal. Appeals from the Environment Court and the Taxation Review Authority are to the High Court. Appeals from the Weathertight Homes Tribunal are to the District Court or the High Court depending upon the amount in issue.
8 For example, decisions of the Employment Court may be appealed to the Court of Appeal. However, such appeals first require the Court of Appeal to grant leave.
9 Appeals from the Employment Court and the Environment Court are restricted to questions of law, while appeals from the Taxation Review Authority and the Weathertight Homes Tribunal may be on questions of law and/or fact.
10 Some Government institutions, such as the Serious Fraud Office, also have a panel of lawyers in private practice who provide advice to the institution and/or act on behalf of the institution in prosecuting offences.
11 Such representation is permitted in most courts and tribunals, with the main exception being the Disputes Tribunal. Matters before the Disputes Tribunal tend not to be complex, and parties are generally not permitted to be represented by a lawyer.
12 Except in the Disputes Tribunal.
Disclosure of documents

In criminal proceedings, the prosecution is required to disclose relevant documents to the defendant. There is no corresponding requirement on the defendant. In civil cases, each party is ordinarily required to disclose relevant documents to the other party or parties. Disclosure may be required on a general basis or in relation to specific issues only, but in either case each party must disclose both documents which support the party’s case and documents which are adverse to it.

Certain documents are excluded from the disclosure requirement. The most commonly used exceptions are for communications between the party and his or her legal adviser and between the parties for the purpose of attempting to resolve the dispute. The existence of such documents must be disclosed, but ordinarily not the documents themselves.

Protections may also be sought for documents which are highly confidential or commercially sensitive. A common protection directed by the courts is for such documents to be disclosed to the other party’s legal advisers and external experts, but not to the party himself or herself.

Court fees and costs awards

Fees are imposed for certain steps in civil proceedings and are usually payable by the party instigating that step. For example, the party commencing a proceeding must pay a filing fee (currently a maximum of NZ$1,350.00 in the High Court). Similarly, the plaintiff must usually pay a fee for each hearing day after the first (currently NZ$1,600.00 per half-day in the High Court).

In New Zealand, the generalist courts have an absolute discretion to award costs and disbursements to any party or parties to an application or proceeding. However, costs awards are ordinarily calculated on scales which are set out in the applicable Rules of Court. Costs awards calculated on this basis often equate to between 25% and 50% of the costs actually incurred by a litigant, with the result that a proportion of the costs incurred are irrecoverable. Disbursements (including the amount of fees charged by the court) are usually recoverable in their entirety.

Alternative dispute resolution for civil disputes

Civil disputes are often resolved by negotiation directly between the parties or by mediation. Such resolution may occur at any time, whether before or after judgment in any proceeding, but most often resolution occurs before trial (or, in some cases, shortly after a trial has begun). The courts encourage resolution of disputes by the parties, and it is a requirement for many civil proceedings in the District Court that the parties first attend a judicial settlement conference before a trial is allocated.

Civil disputes may also be resolved by private arbitration, pursuant to the Arbitration Act 1996 (which is based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law). Some contracts provide for arbitration in the event of a dispute, but parties may also agree to arbitrate after a dispute has arisen.

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13 Costs awards are to reimburse the party in whose favour the award is made for legal fees incurred, and the award may not exceed the legal fees actually incurred by that party.

14 A judicial settlement conference (JSC) is a negotiation between the parties, facilitated by a judge and held in chambers. If a JSC does not result in a resolution between the parties, the judge who presided at the JSC is not permitted to preside at any subsequent trial, unless the parties consent or the only matter for resolution at trial is a question of law.

15 Such provisions are most common in agreements between commercial parties. There are some restrictions on imposing requirements to arbitrate in contracts between commercial parties and consumers (see, for example, s 11 of the Arbitration Act 1996).
Accessing world markets from New Zealand

New Zealand is a strong advocate for free trade and is signatory to a number of trade treaties.

China

New Zealand has a comprehensive free trade agreement (FTA) with the People’s Republic of China, which came into force on 1 October 2008. One of the most important features is a phased reduction and elimination of tariffs on 96% of New Zealand’s exports to China. The FTA contains rules to determine which goods qualify for tariff cuts and measures relating to customs procedures and cooperation, sanitary and phytosanitary provisions and technical barriers to trade. The Agreement also includes a comprehensive investment chapter, providing binding investor-state arbitration at the option of a qualifying investor.

Hong Kong

The New Zealand-Hong Kong, China Closer Economic Partnership (CEP) came into effect in 2011 and complements New Zealand’s FTA with China by enhancing the potential for Hong Kong to be used as a platform for trade into Mainland China.

The CEP contains measures to improve business flows and promote cooperation in a broad range of economic areas of mutual interest, and is supported by legally-binding side agreements on labour and the environment that are in line with New Zealand’s broader objectives for sustainable development. A legally-binding side agreement was also secured to negotiate an Investment Protocol within two years of entry into force. This does not, however, appear to have been concluded.

Chinese Taipei

ANZTEC – an Economic Cooperation Agreement with Taiwan – was signed in July 2013 and came into force in 2014. It provides for the immediate elimination of more than 70% of current tariffs on exports to Chinese Taipei, and for trade between the two signatories to eventually become tariff-free.
**Australia**

A set of trading agreements, known as CER, or Australia and New Zealand Closer Economic Relations, have been in place since 1983. These are now at a high level of maturity. Full free trade in goods was achieved in July 1990, four years ahead of schedule. Recent expansion of CER has included free trade in services, agreements to free up trade in areas such as aviation, and proposals to address taxation impediments to trade and investment. Both governments are embarked on a programme of further reforms to increase harmonisation. An Investment Protocol was signed on 16 February 2011 and entered into force on 1 March 2013.

**ASEAN**

On 1 January 2010, New Zealand and Australia entered into a free trade agreement with the ten member countries of the Association of South East Asian Nations (ASEAN), representing a market of over 500 million people. The FTA includes the eventual removal of tariffs on 99% of New Zealand’s current exports to the four ASEAN markets of Indonesia, Malaysia, the Philippines and Vietnam.

**Other Agreements**

New Zealand also has comprehensive free trade agreements in force with Singapore, Thailand, Malaysia and the ‘P4’ (New Zealand, Brunei, Singapore and Chile).

New Zealand has also concluded (but not yet signed) an agreement with the Gulf Cooperation Council (GCC), and has signed (but not yet ratified) a high quality agreement with South Korea, which is currently being reviewed by a New Zealand parliamentary select committee.

**Agreements under negotiation**

New Zealand is currently in negotiation with the US through the Trans Pacific Partnership (TPP) agreement to establish a free trade bloc. Other negotiating partners are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore and Vietnam.

New Zealand is also engaged in negotiations to conclude a Regional Comprehensive Economic Partnership (RCEP). The RCEP is an FTA negotiation among 16 countries: the 10 members of ASEAN (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam) and the six countries with which ASEAN has existing Free Trade Agreements (FTAs) – Australia, China, India, Japan, Korea, and New Zealand. RCEP countries account for approximately 60 per cent of New Zealand’s goods exports.

New Zealand is also in FTA negotiations with India and Russia-Belarus-Kazakhstan and is exploring with Japan the concept of entering an FTA with that country.

Information on New Zealand’s international trading agreements can be found on the Ministry of Foreign Affairs and Trade website: www.mfat.govt.nz
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