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LAWYERS

Establishing a business in New Zealand

A GUIDE FOR INTERNATIONAL BUSINESS

special report

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Minter Ellison

Minter Ellison is an international law firm with a strong Asia Pacific focus. Established in 1827, we have built a legal group that today is ranked the largest in the Asia Pacific and amongst the largest in the world.

We understand the dynamics of conducting global business. Through an integrated network of offices in Asia, Australia, New Zealand, the UK and the US, our 1,000 specialist lawyers support both local business and international companies with a range of services.

In New Zealand, the firm operates under the name Minter Ellison Rudd Watts, with offices in Auckland and Wellington and a legal staff complement of about 130. Servicing a diverse client base that includes leading domestic and international corporations and government at all levels, Minter Ellison Rudd Watts is considered one of New Zealand's top tier commercial law firms.

Our strengths are cross-border seamless service, industry-focused expertise and commercial, practical, results-oriented advice.

Recent highlights and achievements include:

- named as the winner of the New Zealand category in the 2006 International Law Office (ILO) Client Choice Awards
- named amongst New Zealand's leading lawyers in Banking and Finance, Corporate/M&A, Dispute Resolution, IP and Tax in *Chambers Global* which describes our lawyers as 'incredibly talented' and 'committed to achieving the best possible outcome'
- our International Trade Group was recognised and given a tier one ranking by *Chambers Global*, described as 'the foremost firm in the region for advice on international issues and trade policy'
- maintained a market-leading position in all areas of law evaluated in the 2006/7 *Asia Pacific Legal 500*
- two deals, in which Minter Ellison was a key adviser, have won accolades at the inaugural Australasian Legal Business (ALB) Deals of the Year awards.

For more information about Minter Ellison Rudd Watts please visit www.minterellison.co.nz
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1. Introduction

New Zealand is an open and competitive economy with a population of just over 4 million.

New Zealand has a range of strong manufacturing and service sectors which complement a highly efficient agricultural sector. The economy is strongly trade-oriented, with the agricultural, horticultural, forestry, mining, energy and fishing sectors playing an important role in the export sector and in employment. Overall, the primary sector contributes over 50% of New Zealand's export earnings.

Foreign investment is welcomed and all levels of Government are keen to promote business, economic development and employment growth, as illustrated by the Government's Growth and Innovation Framework (GIF), which aims to return New Zealand to the top half of the OECD in terms of GDP per capita.

The GIF is focussed on working in partnership with all sectors of the economy to build more effective innovation through enhancing the existing innovation framework, developing skills and talent, and increasing New Zealand's global connectedness.

In the most recent World Bank Doing Business survey, New Zealand was ranked as the second best country in terms of the ease of doing business, just behind Singapore. The findings in this survey complement the findings in the 2007 Index of Economic Freedom, compiled by the Wall Street Journal and the Heritage Foundation, which ranked New Zealand the fifth freest economy in the world.

New Zealand has also been ranked the least corrupt country – along with Finland and Iceland – by Transparency International in its *Corruption Perceptions Index 2006*.

In addition, New Zealand has one of the lowest unemployment rates in the OECD and has run budget surpluses consistently over the last decade.

New Zealand's economic growth has, in recent years, exceeded the OECD average, with a gross domestic product (GDP) growth rate of 2.1% per capita over the period 1995-2005. The lift in New Zealand's growth can largely be attributed to the following factors:

- increased employment growth, generated by rising levels of workforce participation and reduced unemployment
- a marked increase in the flexibility of the economy, which has led to a much more dynamic economy able to respond to shifts in markets and manage significant economic shocks
- a generally sound and sustainable macroeconomic framework, which has led to a marked reduction in economic volatility, allowing households and businesses to plan for greater certainty, and
- a marked increase in the efficiency of the government sector.

All of this highlights that the New Zealand business environment is good. Aspects such as a reasonably predictable policy environment, clear property rights and high level of trust and transparency provide a sound basis for sustained growth.

This guide is intended to:

- provide an introductory overview to doing business in New Zealand
- answer some preliminary questions frequently asked by those unfamiliar with the New Zealand economy.

For more comprehensive and proper professional advice, please contact either the Auckland or Wellington offices of Minter Ellison Rudd Watts, details of which are at the back of this guide.

2. System of government

New Zealand has a democratic parliamentary government system, based on the Westminster system of the United Kingdom. New Zealand is also a common law country, whose law is developed and shaped not just by legislation, but also through the decisions of an independent judiciary.

Parliament and government

The New Zealand Parliament makes the law, through a process of examining, debating and passing Bills. It has a single chamber, made up of the House of Representatives, so for a Bill to be enacted into law it only needs to be passed through this one House.

Every three years, Parliament is elected using the MMP ('Mixed Member Proportional') system, which replaced the previous FPP ('First Past the Post') system in 1996. MMP works using two votes. The first is the 'Party Vote', which determines each party's share of Parliament's (current) 121 seats, and the second is the 'Electorate Vote', which determines who will represent each electorate in Government. A majority of 61 seats is required to govern, which can be made up by a majority party or a coalition. After an election, the party or coalition with the majority of votes forms a Government in the House of Representatives. The leader of the winning party will then become the Prime Minister.

This system allows for minor parties to have a place in Government. Previously, the two main political parties – National and Labour – had been alternately creating one party majority Governments. But with the advent of MMP, most Governments now constitute a coalition of interests.

New Zealand currently has a minority coalition Government, after a close general election in September 2005. The Government was formed in October 2005, and is built on four main agreements between Labour and four minor parties. The Prime Minister, Helen Clark, is the leader of the Labour Party.

Labour and the Progressive Party (which has only one MP in the current Parliament) have signed off on a formal 'coalition' agreement, agreeing to work together in good faith and with a 'no surprises' policy, but also acknowledging the need to maintain their separate public political identities. The leader of the Progressive Party, Jim Anderton, has a number of Ministerial portfolios, including agriculture, biosecurity and fishing.

'Confidence and supply' agreements have been concluded with New Zealand First and United Future. These parties will stay outside Government, but agree to provide it with confidence and supply, receiving in return consultation and cooperation on a variety of matters. Both leaders of each supporting party have been given ministerial positions, despite not being a part of the coalition Government, which is a novel step in New Zealand. Winston Peters, the leader of New Zealand First, has been appointed Minister of Foreign Affairs, as well as Racing, and Peter Dunne of United Future the Minister of Revenue.

A cooperative agreement has been entered into between Labour and the Green Party, under which the Green Party has agreed not to oppose the Government on confidence and supply to maintain stability in government, and in return, to be consulted on a variety of issues and to have substantial input into policy and the budgetary process.

Under the current Government (scheduled to hold power until 2008), it is unlikely that controversial legislation will be passed, and other legislative proposals will probably proceed slowly, given the need for the many different views and priorities of the various parties to be incorporated into the decision-making processes.

The judiciary

The judiciary applies the law by interpreting the legislation passed by Parliament. It hears and decides cases by applying the relevant facts, and undertakes judicial review of administrative decisions. The judiciary is independent and generally operates under an open system. Most courts are public, and New Zealanders are free to comment on the outcomes of any dispute resolution process. This feature aims to enhance public confidence and accountability in the process.

The court of final appeal is the Supreme Court, which was established by the *Supreme Court Act 2003* and replaced the Judicial Committee of the Privy Council which was based in the United Kingdom. The Supreme Court is made up of New Zealand judges, and is presided over by the Chief Justice.

3. New Zealand's international trade profile

With a population of a little more than 4 million, trade is essential to New Zealand's continued prosperity. With exports of goods and services equivalent to almost 35% of New Zealand's GDP, trade is a fundamental component of the Government's broader economic policies designed to promote higher sustainable growth. New Zealand therefore has one of the more open economies in today's global trading system.

New Zealand's top five export destinations, as well as import sources, are Australia, the United States, Japan, the European Union and China. New Zealand's export profile continues to be dominated by agricultural commodities, with dairy, meat and wood constituting the top three export commodities.

New Zealand is committed to an open, rules-based international trading system and, in this regard, is an active participant in the World Trade Organization (WTO). Indeed, its market access commitments are among some of the most extensive (i.e. liberal) in the WTO.

New Zealand is also party to a range of bilateral free trade agreements (FTAs), most notably its long-standing Closer Economic Relations Agreement (CER) with Australia where almost all barriers to trade in services, as well as goods, have been eliminated. Australia and New Zealand have one of the most open economic and trade relationships between any two countries, with both countries moving progressively towards much closer integration of policies, laws and regulatory regimes through processes of coordination, mutual recognition and harmonisation.

More recently, New Zealand has concluded FTAs with a range of its trading partners, including Brunei, Chile, Singapore and Thailand, all of which tend to reinforce the relatively open nature of the New Zealand economy. At the same time, New Zealand is also negotiating FTAs with the likes of China, ASEAN and Malaysia.

4. Establishing a business presence

Overview

Trading with New Zealand

It is possible to do business in New Zealand without setting up formal structures. The following issues will require consideration:

- New Zealand tariffs apply to a limited range of goods imported from overseas. If, however, a local manufacturer is licensed to produce the goods in New Zealand, the issue of tariffs will only apply to any imported components.
- agency and distribution arrangements are freely able to be contracted and are not specifically regulated. The terms of any contract between agent and principal must therefore carefully address all aspects of the relationship.

Other legal issues that may arise include:

- protection of intellectual property rights
- the law of the contract, the relevant forum for enforcing the contract and the possible impact of the United Nations' *Convention on Contracts for the International Sale of Goods* (New Zealand is a party to that Convention)
- security for payment, including title retention
- dispute resolution and the relevant forum for settling disputes
- currency of payment and protection against exchange rate fluctuations
- potential product liability claims.

There are no exchange controls at the border. There are legal anti-money laundering requirements for financial institutions to report cash transactions over a certain limit as well as suspicious transactions. Persons arriving in or leaving New Zealand must also declare if they are carrying in excess of NZ$10,000 or foreign currency equivalent in cash or cash equivalent.

Trading in New Zealand

Foreign companies usually establish a business presence in New Zealand by:

- establishing or acquiring a New Zealand subsidiary company
- establishing a branch office.

The decision on whether to establish a subsidiary or branch office will generally depend on commercial and perhaps taxation considerations, rather than legal considerations.

The following table sets out the main legal differences between establishing a company in New Zealand and doing business through a branch office established in New Zealand.

Subsidiary company	**Branch office**
Companies law	
• separate legal entity registered with the Registrar of Companies and given a unique identifying number • liabilities remain with the subsidiary in the absence of guarantees and like arrangements, or if the subsidiary trades while insolvent	• not a separate legal entity • foreign company • registered with the Registrar of Companies and given a unique identifying number • liabilities are those of foreign company • must not commence business until the name of the foreign company has been reserved
Overseas investment regulations	
• approval may be required before subsidiary is acquired or established	• approval may be required before assets or land are acquired
Taxation	
• will be a resident for New Zealand tax purposes • will be taxed on all income, wherever sourced, subject to application of the conduit financing regime presently taxed at the rate of 33% on dividends paid – effectively eliminated to the extent dividend paid out of fully taxed profits	• will be taxed on all New Zealand sourced income presently taxed at the rate of 33% • may be affected by double taxation agreement • no New Zealand tax on repatriation of branch profits to parent
Debt: equity	
• subject to exceptions, the ratio of debt to equity cannot exceed 75%, and 110% of the debt/asset ratio of the worldwide group of which the company is a member, to qualify for a full tax deduction for interest expense if funded by debt from related entity (otherwise an arm's length rate of interest will be deemed to have been charged)	• a New Zealand branch will be denied a deduction for a portion of interest expense incurred where the branch is more than 75% debt funded (subject to special worldwide group rules)
Exchange controls	
• financial institutions must report significant cash transactions and transfers and any suspicious transactions	• restrictions and reporting requirements apply to transactions between a company's branch and head office
Ongoing administrative responsibilities	
• must lodge annual returns and financial statements with the Registrar of Companies under the *Financial Reporting Act 1993*	• must lodge annual returns and financial statements under the *Financial Reporting Act 1993*

Companies

Regulation

Company law is regulated by the provisions of the *Companies Act 1993*.

The activities of companies listed on the New Zealand Stock Exchange (NZX) are also regulated by the NZX Listing Rules.

Certain activities of companies, e.g. issuing securities to the public, are regulated by the New Zealand Securities Commission and the *Securities Act 1978*.

Registration

Any person, either alone or together with another person, may apply to register a company under the *Companies Act 1993*. A company, unless restricted by its constitution, has the full capacity of a natural person.

Each company is allocated a unique identifying number on registration.

Registration entitles the company to carry on business anywhere in New Zealand although, as a foreign company, approvals from the Overseas Investment Office (OIO) may still be required for certain asset acquisitions. (See Sections 5 and 6 for more on this).

Each company must:

- register its name
- have a registered office
- have at least one director and one shareholder (who may be the same person)
- usually file appropriate financial information on an annual basis.

Provided that all necessary information is available, companies can be registered and trading within one business day.

Additional business registrations for income tax and goods and services tax purposes will also usually be required.

Partnerships

In New Zealand, a partnership is the relationship which exists between persons carrying on a business in common, with a view to profit.

In the absence of an agreement between the partners, partnerships are regulated by the *Partnership Act 1908*.

Because a partnership is not a separate legal entity:

- each partner is the agent of the other partners and may make contracts, undertake obligations, and dispose of partnership property on behalf of the partnership in the ordinary course of the partnership business
- arrangements between partners will protect partners in their relationship with each other. Third parties without knowledge to the contrary, however, are protected from actions committed by partners beyond their authority.
- each partner is personally liable, jointly and severally, for the liabilities of the partnership. The liability of each partner is unlimited, except in the case of special partnerships.
- the property of the partnership is owned by the partners personally as joint owners, and
- each partner is liable personally, jointly and severally, for torts committed by the partners.

The partnership must submit a joint return of income to Inland Revenue Department (IRD) disclosing its income, allowable deductions and the distribution of profits to partners, although the partnership itself will not be assessed for income tax. The partners individually must submit a separate return of income to IRD and must pay tax on their share of partnership profits.

A form of limited liability partnership known as special partnership may be formed for the transaction of business, except banking or insurance, by any number of persons.

Special partnerships allow persons known as special partners to contribute specific sums of money as capital, beyond which they are not responsible for any debt of the partnership.

A special partnership must have at least one general partner, and it is only the general partners who can transact the business of the partnership.

A partnership, other than a special partnership, does not have to be formally registered.

Generally, special partnerships are ring fenced for loss utilisation purposes. Ordinary partnerships allow for partners to offset their losses in the partnership against other income.

5. New Zealand's business rules

Foreign investment rules

New Zealand's foreign investment law, generally speaking, encourages foreign investment in New Zealand. The regulatory regime reflects this general policy while maintaining a minimal level of control to discourage undesirable investment.

Foreign investment is regulated by the *Overseas Investment Act 2005* (OIA) and the *Overseas Investment Regulations 2005* (Regulations). Penalties for failure to comply with any of the requirements of the OIA and the Regulations are set out in the OIA.

The Overseas Investment Office (OIO) is responsible for screening all investment proposals that fall within the criteria set out in the OIA and the Regulations and monitoring compliance with any conditions of a consent granted under the OIA.

Certain 'overseas persons' who propose to acquire or acquire control of significant assets in New Zealand will require the consent of the OIO (given either by the relevant minister(s) or under delegation). Certain transactions do not require the consent of the OIO. The OIO makes its decisions in accordance with the criteria set out in the OIA and the Regulations.

'Overseas persons'

The OIA defines an 'overseas person' as:

- an individual who is not a New Zealand citizen and is not ordinarily resident in New Zealand
- a body corporate that is incorporated outside New Zealand or is a 25% or more subsidiary of a body corporate incorporated outside New Zealand
- a body corporate if an overseas person or persons have 25% or more of any class of the body corporate's securities or the power to control the composition of 25% or more of the body corporate's governing body or the right to exercise and control the exercise of 25% or more of the voting power
- a partnership, or unincorporated joint venture where 25% or more of the partners or members are overseas persons, or overseas persons hold or control 25% or more of the voting power of the partnership or joint venture or are entitled to or have a beneficial interest in 25% or more of the profits or assets of the partnership or joint venture
- a trust where 25% or more of the governing body or the persons having the right to amend or control the instrument establishing the trust or have the right to control the composition of the governing body are overseas persons, or where 25% or more of the trust property is held for the benefit of overseas persons
- a unit trust where the manager or trustee, or both, is an overseas person, or where overseas persons hold 25% or more of the beneficial interests in the trust's property
- any other unincorporated body of persons (other than a trust or unit trust) where 25% or more of the members are overseas persons, or overseas persons hold or control 25% or more of the voting power of body of persons, or are entitled to or have a beneficial interest in 25% or more of the profits or assets of the body of persons.

An associate of an overseas person may also be treated as if it were an overseas person for certain purposes.

Transactions requiring consent of the Overseas Investment Office

In general, an overseas person is required to obtain the consent of the OIO if it proposes to acquire, or acquires 'control' of sensitive land or significant business assets in New Zealand. 'Control' is generally associated with an overseas person obtaining a 25% or more ownership or controlling interest in any asset or land.

- **Consent required for the acquisition of sensitive land**
  Consent is required if an overseas person or an associate of an overseas person wishes to acquire sensitive land. (See Section 6 where sensitive land is defined and further discussed.)
- **Consent required for the acquisition of significant business assets**
  An overseas investment in significant business assets is the:
  - acquisition of the control of 25% or more of the securities or voting power in a New Zealand company (or any New Zealand individual, corporation, association or combination of those), or increase its beneficial interest in the securities or voting power of the company (having previously exceeded the 25% threshold), or acquire control of the appointment of 25% or more of the board or

management of the company, and where, in each case, the value of the securities or the consideration for the transfer of the securities or the value of the assets of the company (and its subsidiaries, if any) exceeds NZ$100 million

- establishment of a business in New Zealand where the business is carried on for more than 90 days in any one year (whether consecutively or in aggregate) and the total expenditure expected to be incurred in setting up the business exceeds NZ$100 million. However, consent is not required if the overseas person was lawfully carrying on business in New Zealand on 15 January 1996, if the investment requires consent only because it falls within this category, and
- acquisition of property (including goodwill and other intangible assets) in New Zealand used in carrying on business where the total consideration paid or payable for the assets exceeds NZ$100 million.

Transactions not requiring consent of Overseas Investment Office

Certain transactions are exempted under the Regulations from the requirement to obtain the consent of the OIO. These transactions include, among other things:

- transactions where there is internal restructuring but no change in the ultimate beneficial ownership
- certain financing transactions, particularly the enforcement of a security arrangement
- certain trust transactions
- transfer of assets to the overseas beneficiaries of a deceased estate
- certain transactions of life insurance companies, and superannuation schemes (of whom at least 75% of the beneficiaries are New Zealand citizens or residents)
- assets acquired as a result of the *Property (Relationships) Act 1976*.

The Regulations also give the Minister of Finance (in conjunction with the Minister of Lands in the case of transactions involving land) a discretionary power to exempt any person or transaction from any requirement or requirements provided in the OIA and the Regulations (although this discretion is likely to be exercised only in exceptional circumstances).

Criteria for consent

Consent must be attained before a transaction takes effect. A retrospective application may be made, subject to fines and penalties. Consent will only be granted to a proposal for the acquisition of significant business assets if the relevant Ministers or the OIO are satisfied that:

- the individuals exercising control over the overseas person have business experience and acumen relevant to the proposal, and
- the overseas person has demonstrated financial commitment to the proposal, and
- every person having at least 25% beneficial interest in the overseas investment is of good character and is acceptable under the *Immigration Act 1987*, or where the overseas person is not an individual, the individuals exercising control over the overseas person are of good character and are acceptable under the *Immigration Act 1987*.

Offences and penalties

Potential investors should note that it is an offence under the OIA to:

- enter into investments requiring consent without gaining consent
- defeat, evade or circumvent the operation of the OIA or Regulations
- resist or obstruct, or deceive any person who is exercising any power or function under the OIA or Regulations
- make a false or misleading statement or material omission in any communication with the OIO or in relation to the OIA or Regulations
- fail to comply with the OIA or Regulations, or a notice, requirement, or condition given or imposed under the OIA or Regulations.

An individual who commits an offence under the OIA may be liable to imprisonment for a term not exceeding 12 months, or to a range of civil penalties or fines not exceeding NZ$300,000.

Where a person acts in contravention of, or fails to comply with any condition of any approval granted under the OIA or Regulations, the OIO may seek a Court order that securities or land, or the rights or interests in the securities or land, among other things, be disposed of.

International Transactions

Transactions involving the acquisition of an offshore entity which owns, either itself or through its subsidiaries, sensitive land or significant business assets in New Zealand (described as 'international transactions' by the OIO) may require consent under the OIA despite the transaction taking place outside of New Zealand. Guidance issued by the OIO under the previous legislation indicated this would not generally be the case, however the OIO has not yet finalised its position under the new legislation (OIA and Regulations). Until new guidance is in place, transactions of this kind should be considered on a case-by-case basis.

Acquisitions of companies and businesses

Regulation

Acquisitions of shares and businesses are regulated by:

- the *Companies Act 1993*
- the *Securities Act 1978* and the *Securities Markets Act 1988*
- the *Takeovers Act 1993* and the Takeovers Code (where the target company is a 'Code Company', being a company that:
    - is (or was in the prior 12 months) listed on a registered exchange and has voting securities on issue; and/or
    - has 50 or more shareholders
- the Listing Rules of the NZX (where either a party to the acquisition is listed or the target company is listed but not a Code Company), and
- the OIA, the Regulations and legislation (if any) affecting the relevant industry of the corporation or business being acquired.

Matters which may need to be considered

Under the *Companies Act 1993*:

- if the acquisition is a 'major transaction' and the acquirer is registered under the *Companies Act 1993*, the acquisition will require the approval of a 'special resolution' of the shareholders of the acquirer
- generally, a company can only financially assist a person to acquire shares in itself if the board has previously resolved that the company should provide the assistance, giving the assistance is in the best interests of the company, the terms and conditions under which the assistance is given are fair and reasonable to the company, and the company can satisfy the solvency test. The solvency test requires that a company be able to pay its debts as they become due in the normal course of business and that the value of the company's assets is greater than the value of its liabilities.
- the acquisition by a company of its own shares is regulated and the *Companies Act 1993* requires that the solvency test be satisfied
- dealings by directors in the securities of companies which are not listed on the NZX are restricted.

A company proposing to offer securities to the public for subscription must comply with the *Securities Act 1978* and the *Securities Regulations 1983*. Unless an exemption applies, prior to the allotment of securities offered to the public for subscription, a registered prospectus must be prepared and an investment statement must be circulated to potential subscribers.

Under the *Securities Markets Act 1988*:

- every person who is, or becomes, the holder of a 'relevant interest' in 5% or more of the voting securities of a company listed on the NZX (a 'substantial security holder'), or who ceases to be a substantial security holder, is required to give notice of that to the listed company and the NZX
- a substantial security holder must notify the listed company and the NZX of changes in the number of voting securities in which the holder has a relevant interest of 1% or more or changes in the nature of the holder's relevant interest
- the language used in the definition of 'relevant interest' is very wide, extending to many interests in addition to registered ownership
- trading in securities of a company listed on the NZX by insiders who are in possession of information about that company which is not publicly available, but if it were publicly available would, or would be likely to, affect materially the price of the securities, is prohibited.

Under the Takeovers Code, no person can become the holder or controller of more than 20% of the voting rights in a Code Company (taking into account shares in the Code Company held by 'associates'), or increase an existing holding or controlling interest of 20% or more of the voting rights in a Code Company, except by means of:

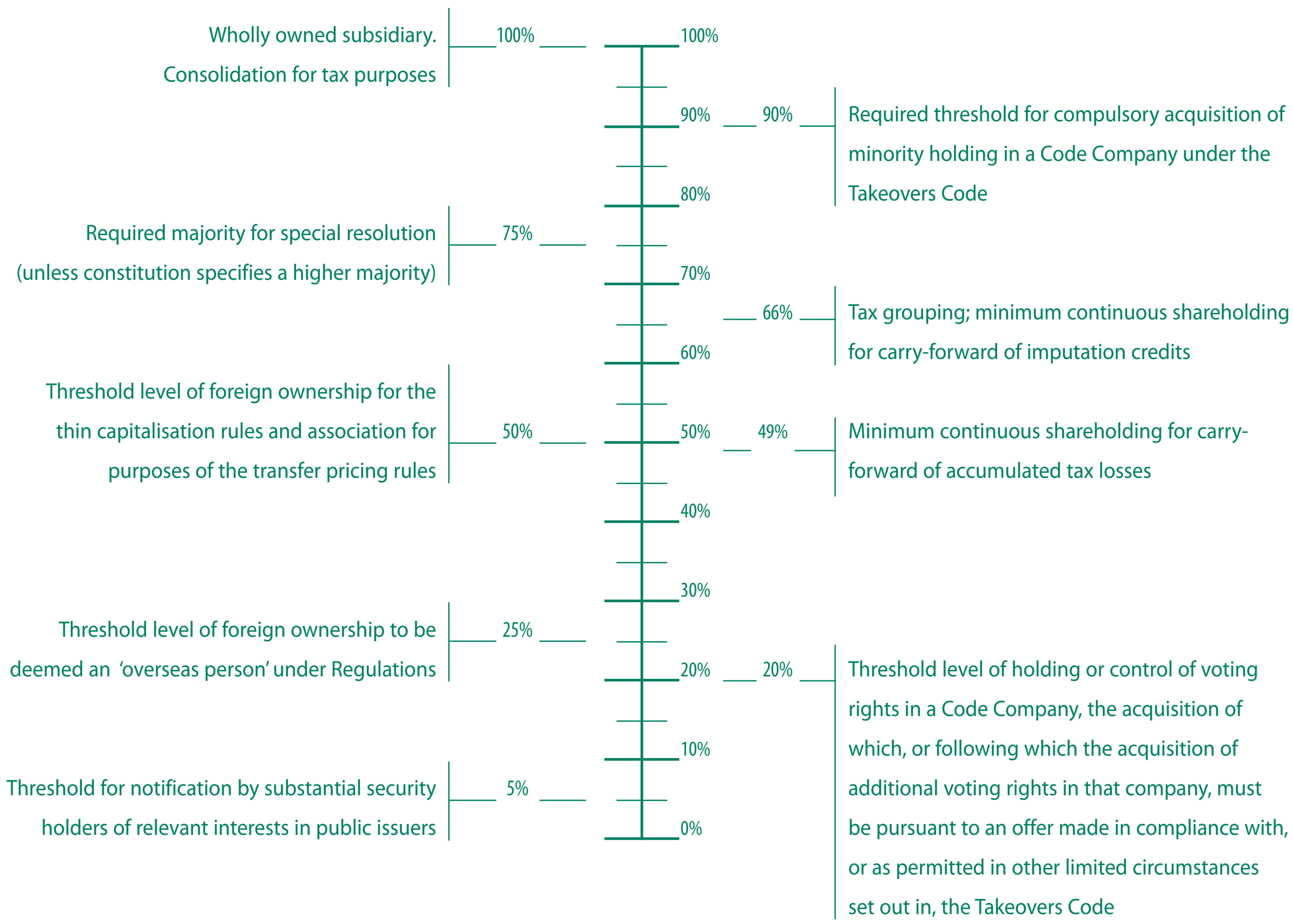
- an acquisition under a 'full offer' or 'partial offer' in accordance with the Takeovers Code

- an acquisition or allotment approved by an ordinary resolution of the shareholders of the Code Company in accordance with the Takeovers Code
- a 'creeping' acquisition, which allows a shareholder who already holds or controls between 50% and 90% of the voting rights in a Code Company to acquire up to an additional 5% of the voting rights in a 12 month period, or
- a compulsory acquisition, which allows a shareholder who already holds or controls 90% or more of the voting rights in a Code Company to compulsorily acquire the remaining voting rights in the Code Company.

Under the NZX Listing Rules, certain major transactions and transactions involving related parties may not be entered into by a company listed on the NZX without the prior approval of the shareholders of that listed company.

Company thresholds

The following shareholding thresholds are relevant to acquisitions of shares and/or businesses in New Zealand:



Taxation

New Zealand imposes taxation on the worldwide income of persons (including companies and unincorporated bodies) resident in New Zealand for taxation purposes, and on the New Zealand-sourced income of non-residents. Income can have a New Zealand source even if paid outside New Zealand, and companies and individuals doing business in or with New Zealand should be aware that their profits could become subject to New Zealand taxation, even though they may not have an established place of business in New Zealand.

There are double taxation agreements (DTAs) between New Zealand and a number of countries. These agreements mean that, in most cases, tax is imposed only by the country of residence of the taxpayer. However, New Zealand may impose limited withholding taxes on dividends, interest and royalties, and may also tax in full the profits of any commercial enterprise carried on through a 'permanent establishment' in New Zealand.

Countries with which New Zealand has a double taxation agreement:			
Australia	France	Mexico	Sweden
Austria*	Germany	Netherlands	Switzerland
Belgium	India	Norway	Taiwan
Canada	Indonesia	Philippines	Thailand
Chile*	Ireland	Poland	United Arab Emirates
China	Italy	Russian Federation	United Kingdom
Denmark	Japan	Singapore	United States of America
Fiji	Korea	South Africa	
Finland	Malaysia	Spain	

** These agreements are not yet in force as at 1 January 2006*

Residence

A company is a resident of New Zealand for tax purposes if:

- it is incorporated in New Zealand, or
- it has its head office in New Zealand, or
- the directors exercise control of the company from New Zealand (acting in their capacity as directors, whether or not decision-making by directors is confined to New Zealand).

An individual is a resident of New Zealand for tax purposes if he or she:

- has a permanent place of abode in New Zealand (whether or not he or she has a permanent place of abode elsewhere), or
- is in New Zealand for at least 183 days in a 365 day period.

Source of income

The determination of the source of particular items of income is dependent in most cases on matters of practical fact. New Zealand income tax law also lays down rules in a number of instances which deem income to have a New Zealand source.

Taxable income and rates of tax

Taxable income is generally computed in the same manner for both individuals and companies. It is necessary to calculate the gross income and deduct from it the allowable deductions and any available losses to arrive at the taxable income, on which tax is charged. The tax liability can be satisfied by way of tax credits to the extent available.

In principle, capital gains are not subject to tax in New Zealand, although a number of types of capital gain are included in taxable income.

The deductions allowable are generally all those expenditures and losses incurred in gaining or producing the taxpayer's gross income, or necessarily incurred in carrying on business for that purpose. Certain expenditure is not deductible, including that of a capital, private or domestic nature.

Certain tax deductions can be claimed by a taxpayer notwithstanding that they are of a capital nature, such as depreciation, interest and some research and development expenditure.

The taxation year runs from 1 April each year to 31 March in the following year.

The following is a summary of the current principal rates of taxation in New Zealand for natural persons. The rates may be changed by the New Zealand Government at any time.

Taxable income range NZ$	Marginal rate of taxation
0 - 38,000	19.5%
38,001 - 60,000	33%
60,001 and over	39%
Companies are taxed at the flat rate of 33%	

International transfer pricing

There is legislation specifically aimed at preventing tax minimisation through transfer pricing. This can affect pricing policies between a New Zealand company and an overseas parent, subsidiary or associated company.

Companies and dividends

New Zealand imposes tax on company distributions under an 'imputation system'. Dividends are generally taxable, but can be imputed with the tax paid by the company. This tax is then allowed as a credit to shareholders against their own tax liability. Imputed dividends pass between resident companies in a manner that also transfers the imputation credit.

Dividends paid between New Zealand resident companies which are 100% commonly owned are exempt from tax in most cases.

There is a 'qualifying company' regime which may apply to a company that is closely held by five or fewer natural persons (it may also apply to a company that is held by individual shareholders who are entitled to the occupation or use of a residential property in New Zealand where the property is the only significant asset of the company). In order to be a qualifying company, the company must make the appropriate elections to the New Zealand Inland Revenue. The qualifying company regime exempts from income tax unimputed dividends paid by the qualifying company to New Zealand resident shareholders and company losses can be attributed to shareholders.

When a New Zealand resident company pays a dividend to a non-resident, a special regime applies. Under this regime, dividends paid to a foreign company are subject to non-resident withholding tax (NRWT) of 30% (which is a final tax in the case of dividends). However, if the company attaches imputation credits to the dividend, then it is allowed a tax credit for all or part of the NRWT it has to withhold from the dividend. The tax credit must be passed on to the non-resident shareholder as a supplementary dividend. In the case of a fully imputed dividend, this allows the non-resident to receive the same net amount as if there was no NRWT. The regime offers tax credit benefits in their country of residence to some non-residents.

Branch offices

A non-resident company carrying on business in New Zealand through a branch or a permanent establishment is subject to New Zealand income tax at the rate of 33% on the net taxable income attributable to that branch.

Interest

Interest paid by a NZ resident to a non-resident with no permanent establishment in New Zealand is subject to a flat withholding tax of 15%. The person paying the interest is required to withhold and pay the withholding tax.

The withholding tax is the only tax on the interest, unless the lender and the borrower are 'associated'. In the case of two companies, they will generally be associated if there is a group of persons who:

- have a 50% voting interest in both companies, or
- control both companies by any other means.

New Zealand's DTAs generally limit the withholding tax to 10% (or in some cases 15%).

The withholding tax can be avoided by the payment of a 2% levy, if the lender and the borrower are not associated.

The interest paid by the New Zealand taxpayer is usually allowed as a deduction against gross income and accordingly, there may be advantages in financing a New Zealand subsidiary by way of debt, rather than equity capital. However, thin capitalisation rules can limit tax deductions for interest.

Thinly capitalised New Zealand companies which are 50% or more controlled by a single foreign shareholder and its associated persons are not permitted a tax deduction for interest to the extent that the debt: asset ratio exceeds the prescribed level. This is currently where the company's group debt percentages exceed both 75% of total assets of the NZ group to which the taxpayer belongs and 110% of the assets of the worldwide group to which the NZ group belongs. The permissible ratio can be increased for a company which is part of a group that is highly leveraged on a world-wide basis. Similar rules also apply to trusts and direct investment by a foreign investor; i.e. branches and permanent establishments. There is a concession for companies that enter into financial arrangements with third parties for the purpose of on-lending. However, the concession does not apply to foreign owned banks, which are subject to a separate and more complex thin capitalisation regime.

Interest on debt substituted for equity, or calculated by reference to the borrower's profits, is generally non-deductible.

Royalties

Royalties are deemed to have a source in New Zealand if they are paid by a New Zealand resident (unless paid in respect of a business carried on outside New Zealand by the New Zealand resident through a fixed establishment outside New Zealand), or are paid by a non-resident and deductible for New Zealand tax purposes.

In the absence of any DTA applying, royalties derived by non-residents from New Zealand sources are subject to a 15% withholding tax on the gross royalty. The person paying the royalty is required to withhold and account for the tax. The withheld tax is a final tax, if the royalty is paid in respect of an artistic work (i.e. literary, drama, music etc.).

In the case of residents of countries with which New Zealand has a DTA, New Zealand withholding tax is generally limited to an amount not exceeding 10% of the gross royalty income (although this depends entirely on the DTA, for example the DTA between NZ and Canada limits tax to an amount not exceeding 15%), unless the royalties are connected with a New Zealand branch.

Losses

Provided shareholder continuity requirements are met a company can carry forward its New Zealand tax losses indefinitely, and can set off those losses against future taxable income.

The right of a company to carry forward tax losses is lost if a continuity of ownership test is not met. The test requires that 49% or more of all voting (and in some cases market value) rights are beneficially owned by the same persons from the beginning of the year of loss to the end of the year of offset (although part year offsets are also allowed).

Losses can also be transferred between companies that are members of the same group, provided that certain ownership tests and other conditions are met. 66% commonality of ownership from the beginning of the year of loss to the end of the year of off-set is required (although part year off-sets are also allowed).

Foreign sourced income

New Zealand residents are subject to tax on their worldwide income, with any double taxation generally being relieved by means of a foreign tax credit system. New Zealand residents holding interests in certain types of overseas entities may be subject to New Zealand tax on the income of those entities as it is earned, under the controlled foreign company or foreign investment fund regimes.

Amendments to the foreign investment fund ('FIF') regime, in particular which apply to foreign portfolio share investments (ie investments of less than 10% in foreign companies), take effect from 1 April 2007. Prior to that date, a taxpayer holding a portfolio investment in a company resident in a grey list country (ie Australia, Canada, Federal Republic of Germany, Japan, United Kingdom, United States of America and Norway) was generally not subject to New Zealand's FIF rules.

Under the new FIF rules, New Zealand residents will generally be taxed at the 'fair dividend rate', being taxed on deemed income equal to no more than 5% of the market value of their total offshore share portfolio at the start of the tax year. The new rules work on a 'pooled investment' approach for applicable investments and not on an investment by investment approach, so all such investments must be grouped together in performing this calculation. The new FIF rules do not apply to, amongst other investments: total pooled investments with a cost of NZD$50,000 or less; investments in Australian resident companies listed on the Australian Stock Exchange, certain Australian unit trusts; and certain investments in NZ start-up companies that migrate offshore to gain access to finance.

Tax concessions

New Zealand does not generally offer tax incentives to encourage investment in New Zealand.

Where a non-resident invests outside New Zealand through a New Zealand resident company (referred to as 'conduit investment'), a special regime exempts the New Zealand company from tax on its foreign investment income. However, any distributions by the New Zealand company to the non-resident shareholder will be subject to non-resident withholding tax.

New Zealand is currently looking at introducing incentives to encourage the provision of money, time and skills to charities and non-profit organisations. The concessions will be similar to those currently offered in the UK and Australia.

New Zealand is also considering introducing tax credits for research and development, market development and skills training as an incentive for businesses to invest in these areas. The incentives are intended to be similar to those currently offered in other Commonwealth countries.

Investors seeking to use New Zealand as an intermediary in their investment strategy, should seek professional advice as to the effect of the foreign tax credit system, and as to the availability of conduit investment relief.

Goods and services tax

Goods and services tax (GST) applies generally to the supply of goods and services by businesses in New Zealand. A significant exception is for financial services which are exempt from GST (although there is the ability for certain financial service providers to charge GST at the rate of 0% on financial services). GST must be charged by New Zealand residents and by non-residents in relation to supplies made by a New Zealand branch. Non-residents may also be required to charge GST on goods which are in New Zealand when supplied, or services which are physically performed in New Zealand (subject in both cases to an option not to charge GST if the purchaser is able to claim an input tax credit – this will be the case for most business purchasers other than those conducting exempt activities). GST is also charged on the importation of goods into New Zealand.

Exports of goods, and the provision of services to non-residents which are not consumed in New Zealand, are generally zero rated (i.e. GST is charged at the rate of 0%).

Other taxes

New Zealand operates a no-fault accident insurance scheme covering all persons injured in New Zealand (including non residents) (the 'Accident Compensation' or 'ACC' scheme). Compensation for work place and non-work place accidents is provided by the New Zealand Government. This compensation is funded by levies imposed on employers, employees and motorists. Fringe benefit tax (FBT) is payable by all employers on any non-cash benefits provided to employees or persons associated with employees. A fringe benefit may take the form of private use or enjoyment of a motor vehicle (or the availability of a motor vehicle for such use), employment related loans, subsidised transport, contributions to certain insurance or superannuation schemes, or any benefit of any kind received by an employee. Employers will generally pay FBT on a quarterly basis (although an employer may elect to pay FBT on an annual basis). FBT is generally payable at either 49% or 64% of the GST inclusive value of the benefit, although if the 49% rate is used for the first three quarters the employer will have to use a multi rate calculation for the final payment, or alternatively pay FBT at 64% for that quarter.

Local body revenues are raised through rates levied on land owners.

There is no stamp duty or other similar document taxes in New Zealand.

Competition (anti-trust) and consumer protection law

In New Zealand, competition and consumer protection law is largely regulated by the *Commerce Act 1986*, the *Fair Trading Act 1986* (FTA), the *Consumer Guarantees Act 1993* (CGA), and the *Credit Contracts and Consumer Finance Act 2003* (CCCFA).

The *Commerce Act* was closely modelled on the provisions of Australia's *Trade Practices Act 1974* which was, in turn, influenced by US antitrust law. The core principles of New Zealand's competition law are similar to those of the European Union. The Commerce Act:

- prohibits anti-competitive behaviour and agreements, including the taking advantage of substantial market power
- regulates mergers and acquisitions
- governs the imposition of price control on particular goods and services.

The Commerce Commission (NZCC) is responsible for administering and enforcing the Commerce Act.

The NZCC may grant clearances for mergers or acquisitions where it is satisfied that the proposed acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in a market. The NZCC may grant an authorisation on public benefit grounds, for a proposed acquisition or for certain conduct that would otherwise result in a substantial lessening of competition.

Competition provisions

Anti-competitive behaviour

The *Commerce Act* contains a broad prohibition on contracts, arrangements or understandings which have the purpose, effect or likely effect of substantially lessening competition in a market.

The Act also contains a number of specific prohibitions. Under the *Commerce Act*, the following conduct is anti-competitive and illegal:

- agreements between competitors to fix, maintain or control prices
- resale price maintenance – requiring resellers to sell products at a specified retail price
- excluding competitors – agreements between competitors to restrict supply to/from a party who is also a competitor, unless those agreements do not substantially lessen competition in a market.

Taking advantage of a substantial degree of market power

It is illegal for a person with substantial market power to take advantage of that power for the purpose of:

- preventing someone from entering a market
- deterring or preventing a person from competing
- eliminating a person from a market.

Mergers and acquisitions

The *Commerce Act* prohibits the acquisition of shares or business assets if the acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market.

The acquisition of a foreign company by another foreign company may be subject to the Act if the acquisition affects a market in New Zealand.

Consumer protection

The consumer protection provisions of the FTA, CGA and CCCFA aim to protect consumers by:

- prohibiting misleading or deceptive conduct. This is extremely broad and includes not only the making of untrue claims or statements but also omitting to give all relevant details and failing to correct mistaken impressions
- implying warranties into sales transactions with consumers. The CGA implies warranties into sales transactions relating to the quality and standard of goods and services supplied. These warranties cannot be excluded from supply transactions with consumers other than where goods or services are acquired for commercial purposes and this is stated in the supply contract.
- requiring creditors who enter into consumer credit contracts to provide consumers with a written disclosure statement containing specific information about the terms of the contract. The CCCFA places restrictions on the means of applying interest and provides rules and guidelines for fees, payments, credit-related insurance, repayment waivers, extended warranties and cancellation.

Specific industry regulation

The NZCC also administers certain sector-specific regulations which apply to electricity lines businesses, gas pipelines, telecommunications companies and the dairy industry.

Penalties for breaching the Commerce and Fair Trading Acts

The penalties for breaching the *Commerce Act* are substantial. The maximum penalty for a corporation breaching the restrictive trade practices provisions of the *Commerce Act* is the greater of NZ$10 million or (either 3 times the value of any commercial gain resulting from the contravention or, if the commercial gain cannot be readily ascertained, 10% of group turnover). A corporation may be liable for a maximum penalty of NZ$5 million for breaching the business acquisitions provisions of the *Commerce Act*. A breach of the FTA exposes a corporation to a maximum penalty of NZ$200,000.

Individuals can also incur penalties of up to NZ$500,000 for breach of the *Commerce Act* and up to NZ$60,000 for breach of the FTA.

In addition, other remedies such as compensatory damages, exemplary damages, injunctions, divestment orders and orders excluding individuals from management may be awarded by a court.

The NZCC also has the power to apply to a Cease and Desist Commissioner to obtain Cease and Desist orders to restrain anti-competitive conduct or to require a person to do something to restore competition or the potential for competition in a market. These powers have only been used once by the Commission since their introduction in 2001. A Cease and Desist order may be made where an independent Cease and Desist Commissioner, appointed for this sole purpose, is satisfied that:

- a prima facie case has been made out that there is anti-competitive conduct that contravenes the Act, and
- it is necessary in the public interest to act urgently to prevent a particular person or consumers suffering serious loss or damage.

Leniency and co-operation

In December 2004, the NZCC introduced a new Leniency Policy to encourage the reporting of cartels. Under the Leniency Policy, immunity from Commission initiated proceedings will be granted to the first person involved in a cartel to inform and co-operate fully with the Commission provided the following conditions are met:

- the applicant must be the first person in the cartel to approach the Commission
- all relevant available information must be provided to the Commission
- the applicant must fully and truthfully co-operate with the Commission on a continuing basis
- the applicant must appear as a witness if required by the Commission; body corporates must encourage current and former directors, officers or employees to give evidence if required
- the applicant must confirm that their involvement in the cartel has ceased, and
- confidentiality in respect of the leniency application must be maintained.

The NZCC also has a general Co-operation Policy which operates in relation to the CA, CCCFA, Dairy Industry Restructuring Act 2001, Electricity Industry Reform Act 1998 and FTA. (The EIRA limits the ability of electricity generators to be involved in distribution and vice versa. The NZCC has the ability to grant exemptions.) Under this policy, the Commission may take a lower level of enforcement action, or no action at all, against an individual or business in exchange for information and full continuing and complete co-operation.

The Commerce Act implications for business conduct and transactions can often be complex. It is for this reason that it is advisable to seek professional advice on the issue before carrying on business in New Zealand, or entering into a transaction which may affect a market in New Zealand.

Industrial and intellectual property

Laws dealing with the protection of industrial and intellectual property in New Zealand can be classified into the following areas:

- patents for inventions
- registered designs
- trade marks
- domain names
- copyright
- circuit layout
- plant variety rights
- trade secrets, confidential information
- geographical indications
- unfair competition, passing off and *Fair Trading Act* actions.

Much of New Zealand's intellectual property legislation has undergone reform to ensure that New Zealand meets its international obligations under the WTO's *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement).

Patents

The New Zealand law relating to patents is contained in the *Patents Act 1953*. A patent is a monopoly right giving exclusive use of an invention.

A patent application may be instigated either by filing a provisional (followed by a complete) specification or by filing a complete specification. The term of a patent, if granted, runs for 20 years from the date of filing of the complete specification. For a patent application to be successful, the invention must:

- be industry applicable
- contain an inventive step that is 'non-obvious'
- be new or novel.

A patent application can also be filed in New Zealand for protection overseas through the *Patent Co-Operation Treaty* (PCT). Under the PCT system, a patent application can be made that designates other countries that participate in the PCT. This application will simultaneously seek protection for the invention in each of the designated countries.

In December 2004, a draft *Patents Bill*, intended to replace the current New Zealand *Patents Act 1953*, was released for public consultation. The changes proposed by the Bill include:

- strengthening the criteria for granting patents so as to ensure that patents are only granted for genuine innovations. Once the *Patents Bill* comes into force,

novelty will be measured against all matter made available to the public anywhere in the world, rather than the present 'local' novelty test
- amendments excluding from patentability methods of therapeutic, surgical and diagnostic treatment of human beings
- abolishing pre-grant opposition proceedings. However, this proposal is controversial and is expected to be thoroughly explored at the Select Committee stage;
- incorporating an experimental use exception, which has significant implications for research and innovation in areas covered by patents. The proposed exception would establish that the rights of a patentee are not infringed by acts done for experimental purposes relating to the subject matter of the patent, provided those acts do not unreasonably conflict with the normal exploitation of a patent. The kinds of activities covered by the proposed exception include:
  - determining how the invention works;
  - determining the scope of the invention;
  - determining the validity of the claims; and
  - seeking an improvement to the invention.

The exception is likely to be incorporated into the draft Patents Bill, which is expected to be introduced into Parliament during 2007.

Registered designs

New and original features of shape, configuration, pattern or ornament as they are applied to various kinds of articles, may be registered under the *Designs Act 1953*.

Design registration gives the owner the exclusive right to use that design in New Zealand. 'Use' of design includes the exclusive rights to make, import/sell or hire the article to which the design has been applied or license out the design.

Protection, similar to that afforded to a patent, is for an initial period of five years, renewable for two additional five-year periods, making available a total protection period of 15 years.

Industrial design may also be protected through copyright law. The advantage of design registration, although more expensive than copyright protection, is that the certificate of registration serves as evidence in Court of ownership and the right to the design. In a copyright action, the 'owner' will have to prove that copyright exists in the design in order to establish an enforceable intellectual property right.

Reform of design law reflects the overlap of copyright law and registered design in relation to industrial designs. The duration periods of protection are now similar whether the design is protected by copyright or through registration. Industrial designs may also receive some protection through trade mark registration where the logo or device mark includes a design aspect.

Copyright

Copyright is the exclusive right to reproduce or to otherwise deal with original literary, artistic, dramatic or musical works, together with other protected subject matter such as films and sound recordings. It is governed by the *Copyright Act 1994* and, unlike a patent, does not rely on a system of registration but arises automatically on the creation of work. It is important to note that copyright protects the expression of ideas, not the ideas themselves.

For copyright to exist, the product/object in question must fall into a category of work under the Act and the work must be original. In order for a work to be original, there must have been a sufficient exercise of skill, judgment and labour put into the work.

In general terms, the original copyright in a piece of work will rest with the person who actually performs the work, or, in certain circumstances, the person who commissions the work. Once copyright exists, it can be assigned.

A feature of New Zealand's copyright regime is the protection it extends to industrially applied designs, although the term of such copyright is limited to 16 years. For other works, copyright generally subsists for 50 years following the death of the author of the work. For films, sound recordings and broadcasts, the 50 year term runs from the end of the year the work is made or, if made available to the public, from the end of the year it is made available.

In 1998, the Act was amended to remove the protection previously available to copyright owners against parallel imports. However, in 2003 the *Copyright (Parallel Importation of Films and Onus of Proof) Amendment Act* came into force. This introduced a limited ban on the parallel importation of films made primarily for public showings in cinemas. The ban includes copies of films in other formats, such as DVDs, VHS videos and video CD's, for nine months after a title's first international release, with the ban remaining in force for a five year period. Further to this, the Government has indicated that it will keep its parallel importing policy, and its implications for the creative industries under review.

In addition to economic rights, moral rights to the work exist under the Act, such as the right to be identified as the author of a work or director of a film and the right to object to derogatory treatment of a work or a film.

Technology advances are also covered by copyright by the inclusion of computer programmes, computer generated works and cable programmes in the Act.

Further reform is taking place in light of a review of how digital technology impacts on copyright law, in the form of the *Copyright (New Technologies and Performers' Rights) Amendment Bill 2006*. The definition of 'copying' will be amended so that it clearly applies to digital works. In addition, a technology-neutral right of communication to the public will be provided, which will extend copyright protection to all communication works irrespective of the medium by which they are communicated. The proposed changes will also limit liability for internet service providers in appropriate circumstances, and prohibit the manufacture of devices that circumvent technological protection measures. The closing date for submissions on this Bill is 9 March 2007, after which it is expected to be considered by the Select Committee.

A discussion document, 'The Commissioning Rule, Contracts and the Copyright Act 1994' prepared by the Ministry of Economic Development, was released for public consultation in March 2006 seeking submissions on the adequacy of the current provision under the Copyright Act1994 as to the ownership of commissioned works.

The current provisions relating to commissioned works under the *Copyright Act 1994* apply to photographs, computer programs, paintings, drawings, diagrams, maps, charts, plans, engravings, models, sculptures, films and sound recordings. Where these works are commissioned, the person who commissions the work will be the first owner of copyright, rather than the creator (the 'Commissioning Rule').

The government is currently preparing a paper for targeted consultation which will further clarify the issues that members of various industries have raised in submission on the Commissioning Rule. The government proposes to provide final policy advice on these issues by mid 2007 and to indicate whether legislation will result.

Trade marks

A trade mark is an identifying sign or symbol used by businesses to distinguish its goods or services from others in the market. A trade mark can incorporate a sign that can be represented graphically, or a sign that uses sound, shape or smell.

The registration of a trade mark under the *Trade Marks Act 2002* gives the owner the exclusive use of that trade mark for a specified class of goods and services. For a trade mark to be registered, it must have a distinctive character, and must not be confusingly similar to any previously registered or unregistered trade marks.

The protection period is ten years from the date of registration. Registration can be renewed for further periods of ten years.

The person first using the mark in New Zealand, or who first applies to register the mark in New Zealand, is entitled to be registered as the owner of that mark, regardless of the fact that the mark may have been used or registered overseas by another party. Traders outside of New Zealand should apply for trade mark protection in New Zealand for valuable marks prior to entering into discussions with New Zealand parties on a new New Zealand venture, or as soon as trading in New Zealand is planned, otherwise the right to trade under the mark could be lost to another party who first uses or applies for the mark in New Zealand.

New Zealand signed the Singapore Treaty on the Law of Trade Marks in Geneva on 26 September 2006. The Singapore Treaty defines a set of simplified and internationally harmonised standards and rules regarding trade mark registration procedures. These standards and rules aim to reduce business compliance costs and to make national trade mark registration systems more user-friendly for applicants and owners of registered trade marks.

New Zealand also intends to accede to both the Madrid Protocol and the Nice Agreement. Preliminary work has begun on preparing amendments to the *Trade Marks Act 2002* to implement obligations arising from joining the Madrid Protocol and the Singapore Treaty.

The Nice Agreement provides that members adopt a common classification of goods and services for the registration of trade marks referred to as the 'Nice Classification'. Accession to the Nice Agreement will:

- allow New Zealand to participate in and influence the future development of the Nice Classification; and
- to formalise the requirement that the Commissioner of Trade Marks use the Nice Classification.

The Madrid Agreement and the Madrid Protocol together form the 'Madrid System'. This provides an international registration system for trade marks through the World Intellectual Property Organisation and simplifies the process of registering trade marks overseas through a single international application. The intention behind this system is to reduce costs for businesses seeking and maintaining trade mark protection in other member countries.

Major Events Management Bill

Also, the Major Events Management Bill was introduced into Parliament on 12 December 2006, in light of the major sporting events that will take place in New Zealand such as the Rugby World Cup in 2011 and the ICC Cricket World Cup in 2015. It is intended to counter the problem of ambush marketing that undermines official event sponsorship. The Bill is designed to address two types of ambush marketing:

- by association, where a person or organisation misleads the public that it is an authorised partner or somehow associated with the event; and
- by intrusion, where an advertiser intrudes on the attention of the audience gathered solely for the event and thereby gains exposure or publicity to which it is not entitled.

It is expected that this Bill will be progressed through Parliament during the course of 2007.

Domain names

Domain names ending in .nz can be registered in New Zealand. The Domain Name Commissioner is responsible for the oversight of the .nz domain name registration system.

Registration can be done through an authorised registrar who registers the domain name on the Shared Registry system. Registration of a domain name does not create any proprietary rights in the name. New Zealand Courts will, however, recognise rights in domain names where there is reputation or goodwill in the name.

A new addition likely to be introduced to this system is a disputes resolution process. A Working Group of InternetNZ has recommended policy based on a UK model. These recommendations are now subject to public notification. It appears likely that the policy will receive final approval and be implemented by the .nz Oversight Committee.

Domain names within the .nz space are registered on a first-come, first-served basis. Where disputes arise about who should be the registrant of a domain name, these have often been handled by Court action, including by claims for breach of the *Fair Trading Act 1986* and through passing off actions. In addition, the Office of the Domain Name Commissioner offers a Dispute Resolution Service (DRS) to assist with disputes of this nature. Anyone who wishes to make a complaint about the registration of a .nzdomain name that they view as being unfair may use this system, which came into effect on 1 June 2006.

Complainants must demonstrate that:

- the Complainant has rights to a name which is identical or similar to the domain name in dispute; and
- the registration of the domain name by the current registrant is unfair.

To succeed, the complainant must prove that 'on the balance of probabilities' both factors are present.

The DRS operates three tiers of resolution. The first is informal mediation (applicable only if there is a response to a complaint). The second is Expert Determination. The third arises if an Appeal is lodged, where a panel of three Experts is appointed to make a final decision.

The mediation process is free to use, but if an Expert determination is required, then the person making the complaint must pay a fee. A further free is required if an appeal is lodged.

Circuit layouts

Protection is provided for circuit layouts and integrated circuits. The protection is provided by the creation of copyright-style intellectual property rights in original circuit layouts, or integrated circuits made in accordance with a circuit layout.

No provision is made for registration of the rights, and the owner has the exclusive right to copy the layout, make an integrated circuit in accordance with the layout and exploit the layout commercially in New Zealand.

Trade secrets

Any licensing arrangements involve the divulging of certain confidential information which might be considered secret. When preparing a contract, careful consideration should be given to the protection of trade secrets and confidential commercial information.

In the absence of an express contract, some protection is given by a long-established principle of equity, whereby a person may be forced to respect the circumstances of a confidence. Nevertheless, it is prudent to make specific provision for confidentiality in all agreements.

Plant varieties

Protection of plant varieties is provided in New Zealand by the *Plant Variety Rights Act 1987*. Since this Act was passed, there have been significant advances in plant breeding techniques and international developments. In light of these developments, the *Plant Variety Rights Act 1987* has been reviewed to determine whether the Act provides adequate protection for new plant varieties. Following on from this, a draft *Plant Variety Rights Amendment Bill* was released for public consultation in August 2005 and is expected to be introduced to Parliament in the middle of 2007.

Geographical indications

New Zealand provides protection for Geographical Indicators (GIs). GIs are geographical names which identify goods as originating in a territory, region or locality, where a given quality, reputation or other characteristic of the goods is essentially attributable to those geographical origins by the general provision of the *Fair Trading Act 1986* and the law of passing off.

The *Geographical Indications Act 1994* sought to introduce a system for the registration of protected geographical indications, but this Act was never brought into force. The *Geographical Indications (Wine and Spirits) Registration Act 2006* has now repealed the 1994 legislation and introduced a legislative framework that brings New Zealand into line with its obligations under the TRIPS Agreement in relation to wine and spirits. This Act came into force in late November 2006.

The Act provides a new definition of 'geographical indication' to ensure that only those geographical indications that meet the TRIPS Agreement definition are to be registered under the Act. The Act establishes a registration system for geographical indications for wines and spirits and the process for registering geographical indications has been streamlined. Protection for geographical indications for other goods and non-registered geographical indications will continue to be dealt with under the *Fair Trading Act 1986* and the tort of passing off.

The Act clarifies the relationship between geographical indications and trade marks. It implements the 'first in time, first in right' principle for determining which right has priority. It further clarifies the treatment of homonymous geographical indications (geographical indications which are identical but that originate from different geographical areas). The Act allows for registration of both geographical indications and the Registrar is able to impose conditions on their use to ensure that consumer confusion does not result.

Unfair competition

In addition to the above, the general law and some statutes such as the *Fair Trading Act 1986* provide a basis for restraining some forms of unfair competition, such as where one trader misrepresents that his goods or services are those of another.

Employment and industrial relations

Employment relationships in New Zealand are primarily governed by minimum entitlement legislation, written employment agreements and common law.

Employment Relations Act 2000

The principal legislation is the *Employment Relations Act 2000*. Underpinning New Zealand's employment relations system is a statutory obligation on employers, employees and unions to deal with each other in 'good faith' in most employment matters, including bargaining for employment agreements, discussing any proposal which may affect employees, allowing workplace access to union members and making employees redundant. This duty of good faith contains several specific requirements that parties must comply with.

Under the Act, employment relationships for all employees in New Zealand are governed by either:

- an individual employment agreement (IEA), being a contract between an employer and a single employee; or
- a collective agreement (CA), being a contract between one or more employers and one or more unions, which binds members of the union/s who come within the agreement's coverage clause.

Both IEAs and CAs must contain certain minimum terms, which are set out in the Act and incorporated by other legislation. In all other respects terms of employment are for negotiation between the employee (or the union on his/her behalf) and the employer. For example, entitlements to redundancy payments, penal or overtime rates and long service leave are matters for negotiation. A number of procedural requirements also apply to bargaining for IEAs and CAs.

The *Employment Relations Act* provides protection for employees when their employer's business is restructured and their work will be performed by or on behalf of a new employer. Certain categories of employee (such as those engaged in the cleaning or food catering industries) are deemed 'vulnerable' to the effects of restructuring. When the employer's business is restructured, those vulnerable employees have the right to transfer to the new employer on identical terms and conditions of employment. The CAs and IEAs of other employees must contain employee protection provisions. These provisions set out the procedures that the employer will follow when negotiating with the new employer in relation to the effects of the restructuring upon employees.

Employers are able to enter into fixed term employment agreements with employees, but must have genuine reasons based on reasonable grounds for doing so (e.g. specific project work, covering parental leave etc.). Where a fixed term agreement is entered into, the employer must ensure that the agreement includes a written description of the way in which the employment will end and the reasons for this. A failure to do so will mean that the employer cannot rely on the fixed term provisions to end the employment relationship.

Where an employer employs a non-union member whose work is covered by the coverage clause of a CA, that employee's terms and conditions of employment are based on the CA for the first 30 days of employment. The parties may agree individual terms and conditions if the employee has not joined the union after the expiry of this period.

Union membership is voluntary. It is unlawful to discriminate against employees or prospective employees due to their membership or non-membership of a union.

Under current law, employees may only strike, and employers may only lock-out employees, in relation to collective bargaining which will bind the employees concerned (provided that at least 40 days have passed since the bargaining was initiated), or in some other strictly limited situations. Strike action in response to a dispute under an existing CA, sympathy strikes or political strikes are unlawful.

Disputes arising out of employment relationships are determined by specialist institutions (the Employment Relations Authority and the Employment Court). Mediation provided by the Department of Labour is required in almost all situations as the first forum for dispute resolution. Employees can take actions against their employers for a number of reasons including unjustified dismissal, unjustified disadvantage, discrimination, sexual or racial harassment or duress in respect of union membership (personal grievances) or breach of contract.

Independent contractors

Employers can also engage independent contractors to provide services where this is appropriate. The provisions of the *Employment Relations Act 2000* and other minimum employment-related entitlements will not apply to an independent contractor.

However, in determining whether a person is an independent contractor or an employee, the courts will look at the true nature of the relationship rather than allowing anything in writing to be determinative. There are a number of indications that will be considered in determining the true nature of the relationship. In limited situations, industry practice may also be used as a measure of the true nature of the relationship. If the relationship between the parties is more akin to an employment relationship then it is likely that the provisions of the *Employment Relations Act 2000* and other employment-related legislation could apply.

Holidays and sickness

The *Holidays Act 2003* provides for 11 specified public holidays to be taken as paid days on holiday if the employee ordinarily works on those days. The employment agreement can provide for alternative days to the 11 specified in the Act, but not fewer than eleven days in total.

If an employee works on a public holiday that is a normal day of work for that employee, he/she is entitled to be paid at least time and a half of his/her normal pay for the hours worked and also receive an alternative paid day's holiday. If an employee works on a public holiday that is not a normal day of work, he/she is entitled to at least time and a half for the hours worked, but no alternative holiday.

All employees are entitled to a minimum of three weeks paid annual leave after each year of continuous employment with the same employer (including part-time and casual employees). From an employee's first anniversary date after 1 April 2007, this statutory entitlement will increase to four weeks annual leave each year. Timing of annual holidays is to be agreed between the employee and the employer, but the employer must not unreasonably withhold consent to a request for annual leave. The employer can direct the employee to take annual leave on 14 days notice if agreement is not reached.

When an employee leaves a job, he/she is entitled to be paid accrued holiday pay upon termination.

After 6 months' employment with the same employer, an employee is entitled to 5 days' sick leave on pay during each subsequent 12 months of employment. This sick leave covers sickness or injury of the employee, the employee's spouse or partner, or a dependent of the employee and is able to be accumulated from year to year up to a maximum of 20 days.

After 6 months' employment an employee is also entitled to either 1 or 3 days' bereavement leave per bereavement, depending on the proximity of the relationship between the employee and the deceased.

Parental leave

To be eligible for parental leave, the employee needs to have worked for the same employer for at least 6 months before the expected date of delivery or adoption and for an average of at least 10 hours per week.

There are four types of unpaid leave which can be taken: special leave, maternity leave, partner's leave and extended leave. Where the employee has been employed at least 12 months prior to the expected date of delivery, an employer can be required to hold an employee's job open for up to 52 weeks in total while parental leave is taken. When an eligible employee has been employed for less than 12 months they are not entitled to extended leave, so the employer is only required to hold the job open for up to 14 weeks.

Eligible employees and self-employed people are also entitled to up to 14 weeks of Government funded payments during their parental leave, paid at the lesser of the employee or self-employed person's earnings or an annually specified rate. Instead of paid parental leave, employees and self-employed people may choose to take a parental tax credit. This entitlement can be transferred to an employee or self-employed person's spouse or partner.

Legislation is currently being considered to extend the entitlement to Government funded paid parental leave to self-employed persons as well as employees.

Wages or salary

Subject to certain taxation and other legislation, under the *Wages Protection Act 1983* an employer must pay the entire amount of any wages/salary to an employee without deduction, unless the deduction is requested by or consented to by the employee. Wages/salary must be paid in cash unless otherwise consented to by the employee. These days, most wages are paid by direct credit.

The *Minimum Wage Act 1983* allows minimum wages to be set by Order in Council for any class of workers defined by age. There is currently a youth minimum wage (under 18) and an adult minimum wage. The Act also provides for a 40 hour, 5 day week (not including overtime), but this can be varied by agreement between the employee and the employer.

Health and safety

The *Health and Safety in Employment Act 1992* imposes duties on employers to identify and, where practicable eliminate, isolate, or minimise significant hazards in the workplace. One example hazard listed in the Act is stress in the workplace. Employers are also required to take all practical steps to ensure that persons in the workplace are protected from harm. An employer who hires a contractor or subcontractor also has to take all practical steps to ensure that those persons, and their employees, are not harmed while at work for the principal.

There are over 30 employer duties in the Act, including duties in respect of hazard identification and management, training, supervision, employee participation in health and safety management and accident recording. There are also duties on employees, contractors, volunteers, principals and those in control of workplaces. Offences under the *Act* carry maximum penalties of $500,000 and $250,000. There is also provision for more minor infringement fines of up to $4,000.

Accident compensation

All employers are required by law to contribute to a Government controlled insurance fund in respect of personal injuries suffered at work. These entitlements are available to employees on a 'no fault' basis. Similar funds also cover personal injuries incurred outside of work. The legislation prohibits actions for damages as a result of personal injury.

The fund provides rehabilitation, weekly compensation, lump sum compensation for permanent impairment and funeral grants, survivors' grants, weekly compensation for dependents and child care payments. Employers are required to provide first week compensation to 80% of salary in respect of work related injuries.

General

Many aspects of employment law in New Zealand are governed to some extent by case law. In particular, case law sets out the process employers are required to follow in respect of disciplinary procedures, dismissals and termination for redundancy. In some cases these steps are relatively stringent. It is important that all employers in New Zealand have a good understanding of the current case law.

There is also other employment relations legislation which we have not discussed specifically here (e.g. human rights, privacy and whistleblowers legislation). It is recommended that any employer establishing a business in New Zealand obtains a full description of the relevant legal obligations which apply to employers.

It is also important for anyone planning to establish or acquire a business in New Zealand to ascertain the current terms in all relevant employment agreements, the content of existing workplace policies and practices, any contingent liability on the employer and the requirements of New Zealand's employment legislation. Where there is any likelihood of a conflict of laws, all employment agreements and other contractual documentation (e.g. confidentiality agreements) should expressly indicate the law which is to govern the agreement and the employment relationship.

6. New Zealand's real estate rules

Land law in New Zealand

In New Zealand a system of title by registration is used, known as the Torrens System. Under the Torrens System the State maintains a full set of records disclosing all interests in land and its use is compulsory. No legal interest in land may be created except by registration under the *Land Transfer Act 1952*.

The land titles system in New Zealand has recently undergone a process of computer automation which began with the introduction of the *Land Transfer (Automation) Amendment Act 1998*, which came into force on 1 February 1999. Land titles are now stored in a computer register and some land dealings can be completed electronically on the national Land Registry, which is located on Land Information New Zealand's website *www.landonline.govt.nz*. Original titles to land are no longer issued. All land dealings will be capable of being registered electronically by 1 July 2008.

Foreign investment rules

There are restrictions on foreign investment in land in New Zealand.

Certain types of land require the consent of the Overseas Investment Office (OIO). The OIO is constituted under the *Overseas Investment Act 2005* (OIA) and is responsible for screening all investment proposals that fall within criteria set out in the *Overseas Investment Regulations 2005* (Regulations) and monitoring compliance with any conditions of a consent granted under the Regulations.

OIO consent is required for 'overseas persons' (for a definition of an 'overseas person' see section 5) who propose to acquire or acquire control of significant assets in New Zealand, including land. The OIO makes its decisions in accordance with the criteria set out in the Regulations.

Criteria for consent

Proposals for transactions in land require evidence that the overseas investors intend to reside in New Zealand or that the proposal is to the benefit of New Zealand. In determining whether the proposal for ownership or control of land, is for the benefit of New Zealand, the OIO will have regard to a number of factors including whether the proposal will have the effect (in New Zealand) of providing economic or environmental benefits:

Economic benefits	Environmental benefits
creating new job opportunities	providing mechanisms for protecting or enhancing significant indigenous vegetation and significant habitats of indigenous fauna
introducing new technology or business skills	mechanisms for protecting and enhancing existing areas of significant habitats of trout, salmon, wildlife
developing or increasing export markets for exporters	mechanisms for protection and enhancement of historic heritage
improving market competition, efficiency or productivity or enhanced domestic services	mechanisms for providing, protecting, or improving walking access over the relevant land by the public
introducing new investment for development purposes, or	if the relevant land is or includes foreshore or seabed, or a bed of a lake or river, whether that land has been offered to the Crown
increasing the processing of New Zealand's primary products	

Penalties for failure to comply with any of the requirements of the OIA and the Regulations are set out in section 5.

The Regulations also give the Minister of Finance (in conjunction with the Minister of Lands in the case of transactions involving land) a discretionary power to exempt any person or transaction from any requirement or requirements provided in the Regulations (although this discretion is likely to be exercised only in exceptional circumstances).

Foreign investment in land

Consent is required if an overseas person wishes to invest in an interest in sensitive land, land that adjoins sensitive land, or farm land.

Sensitive land and adjoining land

An interest in sensitive land or land which adjoins sensitive land will require consent if it is for a term of three years or more and is not an exempted interest. To determine whether land is sensitive refer to the flowcharts attached as Schedules 1 and 2. Schedule 1 determines if land is sensitive land and Schedule 2 determines if the land adjoins sensitive land.

Farmland

Farmland is defined as land which is exclusively or principally used for agricultural, horticultural or pastoral purposes, or for the keeping of bees, poultry or livestock. This definition does not include forestry or forestry rights but includes farmland acquired to develop new forestry. OIO consent is required for the acquisition of either farmland or securities in an entity which owns or controls farmland. Before the OIO will give consent, the farmland or interest in farmland must have been offered for sale on the open market to New Zealanders. The sale advertisement must be published within 12 months that precedes the earlier of the date on which an application for consent is made or the date on which the transaction is given effect.

Treaty of Waitangi

The *Treaty of Waitangi* is a treaty that was entered into between the British Crown and the indigenous Maori population in 1840. The relevance of the Treaty to a broad range of New Zealand's laws and regulations has been progressively increasing since the 1970s.

In respect of land, the Treaty can be an important consideration in respect of land that may be the subject of a 'Waitangi claim' by Maori, and a specialist body – the Waitangi Tribunal – can make recommendations to the Government regarding the resolution of any grievances.

It should be noted that recommendations for the return of land to Maori generally only relate to land owned by the Government or state-owned enterprises. Privately owned land is not subject to return to Maori ownership, unless the title to the land in question provides for such a possibility.

7. New Zealand's environment and resource management law

New Zealand's environment and resource management law is intended to provide for the sustainable management of natural and physical resources whilst recognising the importance of New Zealand's unique biodiversity and environment.

Resource Management Act 1991

The principal legislation relating to the environment and resource management in New Zealand is the *Resource Management Act 1991* (RMA), which establishes a comprehensive regime for dealing with resource management issues and sets out the roles and responsibilities of decision-makers, including:

- District and Regional Councils
- Minister for the Environment
- Minister of Conservation
- Environment Court (a specialist Court with jurisdiction established under the RMA).

Resource consents

The RMA establishes that resource consents may be required for certain activities. District and Regional Councils are responsible for establishing a District or Regional Plan, and the rules specified in such Plans will set out whether a resource consent is required for a particular activity or use.

There are five main types of resource consent:

- land-use consent
- subdivision consent
- coastal permit
- water permit
- discharge permit.

Enforcement under the RMA

The RMA establishes a system with three tiers/levels of offences.

The first level relates to, amongst other things, breaches of:

- duties and restrictions concerning activities on land, within beds of rivers and lakes and the coastal marine area, the use of water, and discharges of contaminants
- resource consents
- enforcement orders (i.e. orders of the Environment Court applied for by a regional or territorial authority or a person requiring a person to cease from doing something or requiring a person to remedy or mitigate adverse effects), or an abatement notice which is issued by a district or regional council
- the second and third tier offences relate to such matters as obstructing an enforcement officer, or breaching a summons, and are considered to be of a more minor nature.

Penalties

Offences under the RMA are criminal in nature and are heard in the District Court by an Environment Court Judge.

The RMA imposes a strict liability regime, and it is therefore not necessary for the prosecution to establish the defendant intended to commit an offence. Generally, once responsibility for the act or omission in question is established, then (subject to the limited statutory defences established by the RMA), conviction follows.

For the first tier offences discussed above, the maximum fine is $200,000 or a term of imprisonment not exceeding two years. In circumstances where the offence is a continuing one, the offender can be subject to a further fine not exceeding $10,000 for each day the offence continues. To date, maximum fines imposed under the RMA have not approached the maximum although terms of imprisonment have been imposed in several prosecutions (for example in a prosecution relating to deliberate acts by a repeat offender).

Liability of principals or directors

Where an offence is committed by a person acting as an agent, contractor, or employee, the principal is also liable in the same terms and to the same extent as if the offence had been committed personally by the principal.

Where the defendant is a corporate entity, it is possible for its directors and/or management to face liability for the acts of the company. The RMA does however provide a defence for directors/management in situations where it can be established that:

- neither the directors nor any person concerned in the management of the corporation knew or could reasonably be expected to have known that the offence was to be, or was being, committed, or
- the corporation took all reasonable steps to prevent the commission of the offence.

Contaminated site liability

At present, there is no specific statutory (or regulatory) regime governing liability and responsibility for contaminated sites in New Zealand. Equally, there are a limited number of civil cases (regarding disputes in contract and tort) in which site contamination issues have been addressed and tested.

Of note, Regional Councils do have limited powers relating to 'contaminated sites', which relate to carrying out investigations of contaminated land. Pursuant to s314(1)(da) of the RMA, Regional Councils also have the ability to take enforcement action to require a person to do something that would be considered:

> *'necessary to avoid remedy or mitigate any actual or likely adverse effect on the environment relating to any land of which the person is the owner or occupier.'*

The RMA, however, does not presently specify whether:

- Regional Council power with respect to such sites can be exercised in relation to pre-1 October 1991 contamination, or
- which party (polluter, owner, occupier or all parties) should be properly targeted when the Regional Council is exercising its powers.

The Ministry for Environment has recently released a discussion paper concerning contaminated land management. The proposed initiatives considered in the discussion paper would make substantial changes to the current regime. If implemented, national environmental standards could be established, and a specific liability regime for pre-1991 liability introduced.

Hazardous Substances and *New Organisms Act 1996*

Businesses in New Zealand also need to consider issues and potential issues relating to any other statutory or planning authorisation outside of the realms of the RMA. For example, special authorisation is required for trade waste discharges and in situations where hazardous chemicals are being stored or handled at a particular site, a Location Test Certificate may be required under the *Hazardous Substances and New Organisms Act 1996* (HSNO).

The HSNO regime covers specific substances which are classified according to their potential hazardous properties.

Those properties include:

- explosiveness
- flammability
- ability to accelerate a fire
- toxicity to humans or the environment
- ability to corrode human tissue or metal
- capacity to develop one or more of the above properties on contact with air or water.

New organisms are also covered by the HSNO regime and authorisation is required for introduction or development of the following:

- micro-organisms
- reproductive cells
- genetically modified organisms
- all species not currently in New Zealand.

HSNO also established the Environmental Risk Management Authority, which is responsible for the assessment and regulatory approval process for hazardous substances and new organisms.

Climate change

New Zealand ratified the Kyoto Protocol (the Protocol) on 19 December 2002, and following ratification by Russia in late 2004 the Protocol came into force on 16 February 2004.

The Protocol is intended to address global climate change by setting the global target of reducing the total greenhouse gas emissions worldwide to 5% of those that existed in 1990. To do this, targets were set for individual countries and during the first committed period of the Protocol (2008-2012), New Zealand is committed to reducing its greenhouse gas emissions back to 1990 levels (on average over the five-year period). If this domestic target is not achieved, then New Zealand will have to take responsibility for the excess emissions by purchasing emission units on the international market or using forest sink credits to do so.

New Zealand's climate change policies are still being developed by the Government. A broad-based carbon tax was proposed to be introduced in 2007. However it is now clear that some form of emissions trading scheme is the Government's preferred method for addressing greenhouse gas emissions. Under an emissions trading scheme, major emitters would be allocated tradeable units to match some or all of their greenhouse gas emissions over a defined period of time. Emitters are then able to either reduce their own emissions or trade allowances to meet their obligations. Other possible alternatives to the carbon tax scheme include a narrowly-focused tax, renewable obligations and voluntary agreements. Policies targeting energy use and generation, the transport industry and agriculture sectors are also currently being considered by Government.

8. Entry into New Zealand

New Zealand entry, work and residence entitlements are granted under the Immigration Act 1987. The New Zealand Immigration Service (NZIS) administers the entitlements. While the Act is currently under review, an Immigration Bill to replace the 1987 Act is not likely to be introduced to Parliament until April 2007 and not enacted until late 2007.

The proposed legislative changes aim to improve the immigration system to ensure that:

- New Zealand has the skills, talent and labour it needs, now and in the future;
- New Zealanders are confident of the security of our border; and
- Migrants and refugees settle well and integrate into communities.

One important change under the Immigration Bill will be the simplification of visas into two main categories: high level visas and temporary visas. High level visas will include: permanent resident, resident, temporary entrant, limited visitor and transit passenger.

Visiting New Zealand

A visitor's visa or permit is required for entry into New Zealand by any person other than:

- a New Zealand citizen or residence permit holder
- an Australian citizen or resident who holds a current Australian resident return visa
- a person who is exempt from the requirement to hold a permit to be in New Zealand
- a citizen of a country which has a visa waiver agreement with New Zealand in which case the person does not need to get a visitor's visa if visiting New Zealand for three months or less.

Working in New Zealand

Any person who is not a New Zealand or Australian citizen or resident, or subject to an exemption, and wants to work in New Zealand, must hold a valid work visa or work permit.

A work permit or visa may be granted if the person meets health and character requirements. They must then also meet the work and skill requirements that are set out in the three categories that a person may apply under to work in New Zealand.

The maximum term of the work visa is three years.

There are special categories for people, for example, crews of foreign fishing vessels, or members of approved exchange schemes, who need to meet special set of criteria before the work visa or permit will be granted.

Long term business visa/permit

This is part of the Work to Residence policy, and is also applicable to those interested in establishing a business in New Zealand but who do not wish to live permanently in New Zealand.

A holder of this visa or permit will be granted a work visa for up to three years. After that time an application for residence may be made under the Business (Entrepreneur) Category (see below).

The applicant must:

- have a satisfactory business proposal plan
- have a sound business record and a sound business character
- have, in addition to investment capital, sufficient funds for their maintenance and accommodation and that of any non principal applicants
- have obtained professional or occupational registration in New Zealand if registration is required for the proposed business
- meet health and character requirements
- meet English language requirements, and
- satisfy the business immigration's specialist that they are genuinely interested in establishing a business in New Zealand.

A business plan is a proposal to establish a specific business in New Zealand and must be supported by appropriate documentation. The proposal form should cover the following:

- an outline of the proposed business and of its viability
- financial information (forecast and financing options)
- the business experience of the applicant (including English language ability)
- the applicant's knowledge of the New Zealand market.

Residence in New Zealand

Every person who wishes to immigrate to New Zealand needs to apply for residence. Residence entitles the person to live, study and work indefinitely in New Zealand.

The main categories for residency applications are Business Categories, Skilled Migrant, Family, and Family Quota. Both the Business Categories and Skilled Migrant Category have a minimum English language level requirement. There are also health and character requirements.

Skilled migrant category

To be granted residency under the Skilled Migrant category, an applicant must be under 56 years of age and score at least 100 points to register an expression of interest. Expressions of interest are then collected into a pool over a certain period and ranked. Those with the highest points are invited to apply for residency. The application will be assessed on the person's ability to settle successfully and make a real contribution to New Zealand's social and economic development.

If an applicant is unsuccessful in receiving an invite for residency the first time, they will remain in the pool for three months, and if unsuccessful after then, their application will be withdrawn. However, if they wish, they can lodge another application.

Points and bonus points are awarded for the following:

Points	Bonus points
Offer of employment or current employment in New Zealand	Awarded if employment is in an identified future growth area or cluster, an area of absolute skills shortage, a region outside Auckland, or their partner has employment or an offer of employment in New Zealand
Work experience	Awarded for having at least two years' work experience in New Zealand
Qualifications	Awarded for a recognised New Zealand qualification, a qualification that is in an identified future growth area or identified cluster, a qualification that is in an area of absolute skills shortage, and partner qualifications
Close family in New Zealand	
Age	

Business categories

Business categories consist of the Investor Category, Entrepreneur Category and Employees of Relocating Businesses Category.

The objective of the business immigration policy is to attract migrants who will contribute to New Zealand's economic growth by increasing the country's skills base, encourage enterprise and innovation and foster international linkages.

Investor category

Like the Skilled Migrant Category, an applicant must first submit an Expression of Interest, and then be invited to apply for residence. An applicant must be aged under 55 years, have at least five years' business experience, and have NZ$2 million to invest for two years with the Government and then a further five years in an approved business. This is often the path chosen by those who established the business under a Long Term Business Visa or Permit.

Entrepreneur category

This has been set up to grant residence to those people who have established a business in New Zealand successfully for a period of two years that is benefiting New Zealand.

Employees of relocating businesses

This category aims to promote New Zealand as a place in which to relocate business. To be considered under this category the owner(s) of the relocating business need to show that the business will operate in New Zealand, and be of benefit to New Zealand. The applicant must be a key employee of that business.

Residence from work policy

This policy provides additional pathways to gaining residence in New Zealand. Applicants must still meet lodgement, bona fide applicant, health, character and English language requirements. The pathways are:

- talent policy (employment with accredited employers)
- talent policy (for individuals with exceptional talent in a field of art, culture or sport)
- long-term skill shortage list (employment in an occupation on this list, available from NZIS).

More information on the current requirements for entry to and work in New Zealand can be found at the NZIS website: www.immigration.govt.nz.

Family category

The objective of this category is to allow individuals to maintain and be part of, a family unit.

This category is available to those applicants who:

- are in a genuine and stable marriage, de facto or homosexual relationship with a New Zealand citizen or resident who sponsors their application, or
- are a parent of an adult child who is a New Zealand citizen or resident, and their family's 'centre of gravity' is in New Zealand, or
- have a New Zealand citizen or resident parent, brother or sister who is living in New Zealand, and no other siblings or parents are living in the same country in which the applicant is currently living in, and have an acceptable offer of employment in New Zealand, or
- are a dependent child of a New Zealand citizen or resident and who want live permanently in New Zealand.

There is also a family quota category run by ballot.

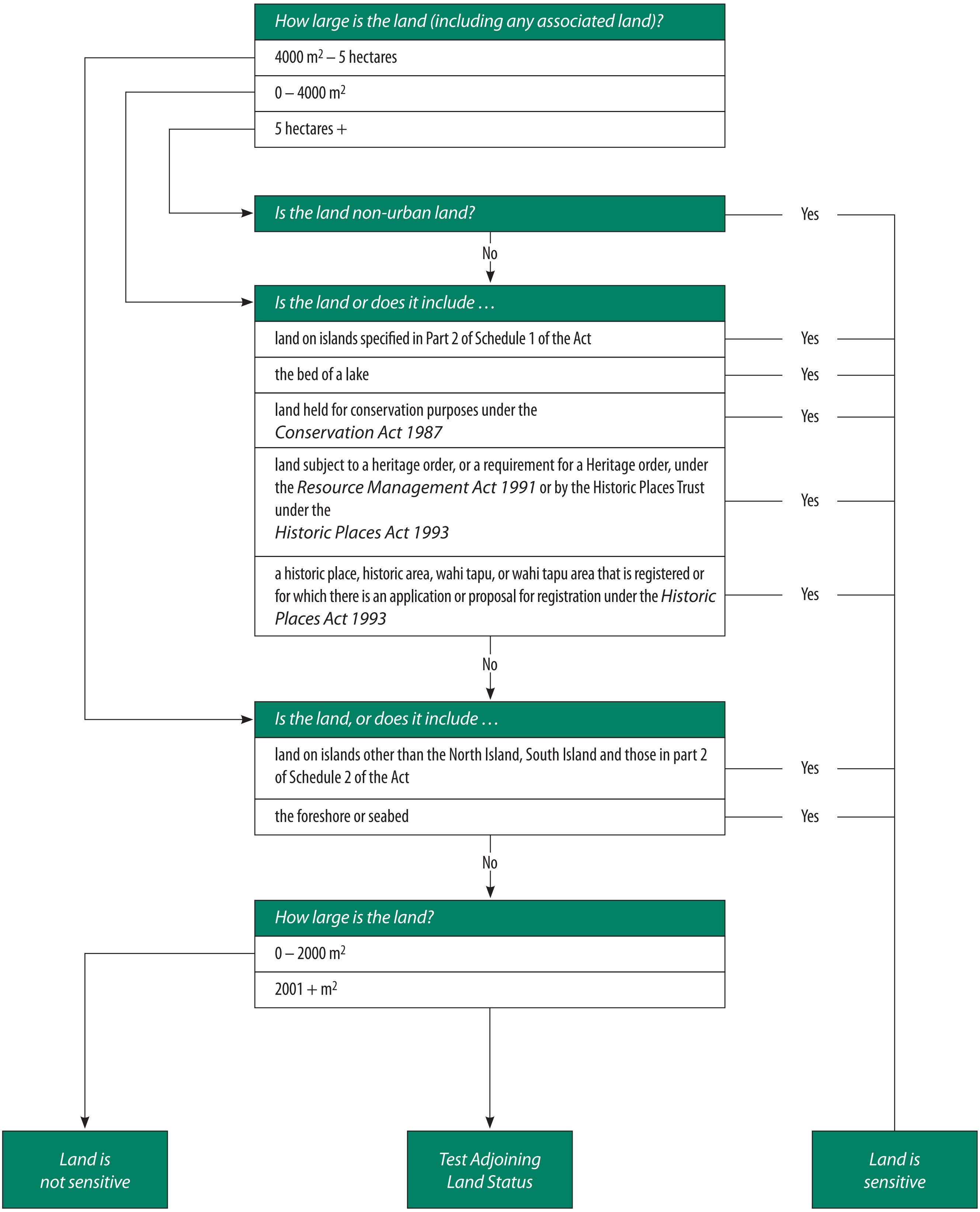
Disclaimer

A guide for international business: Establishing a business in New Zealand is prepared by Minter Ellison Rudd Watts. It is not intended to be fully comprehensive nor is it intended to be a substitute for legal advice.

Minter Ellison Rudd Watts can update you with the most current information. Professional advice should be sought before applying the information to particular circumstances. Whilst care has been taken in the preparation of this guide, no liability is accepted for any errors.

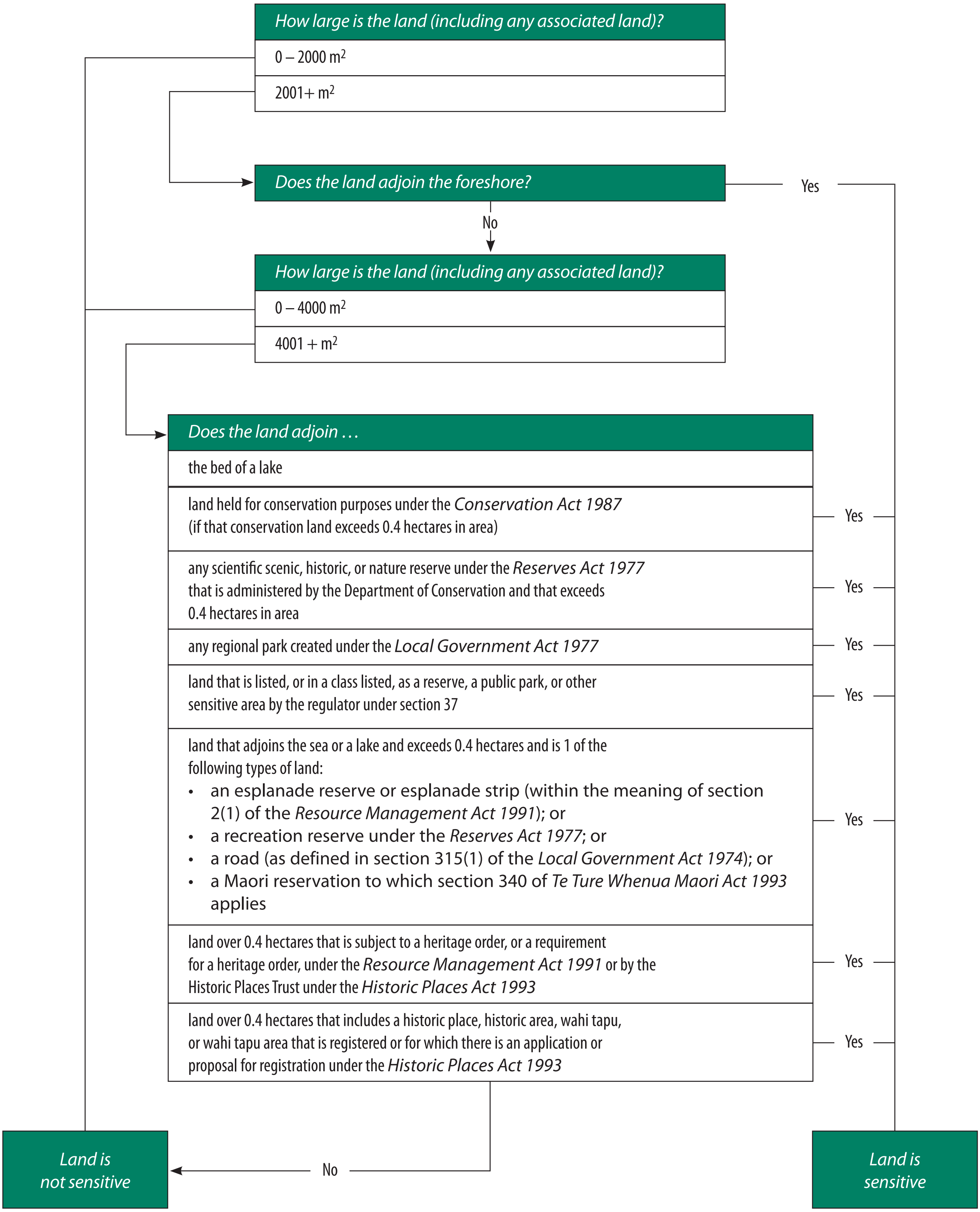
Schedule 1

To determine whether land is sensitive under the *Overseas Investment Act 2005*



Schedule 2

To determine whether land adjoins sensitive land under the *Overseas Investment Act 2005*



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