DOING BUSINESS IN NEW ZEALAND

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This is a general guide only and is not to be relied upon. Detailed advice should be obtained to cover the specific factual situation.

ABOUT SIMPSON GRIERSON

Simpson Grierson is one of New Zealand's leading commercial and technology-focused law firms, delivering comprehensive advice in every commercial practice area. A national practice with more than 200 lawyers (46 of whom are Partners), Simpson Grierson combines leadership, innovation, technical expertise and good business sense to ensure our clients receive the best legal service available.

The results of recent independent market research* have confirmed that Simpson Grierson has clearly strengthened its position in the market in terms of awareness, leadership and performance. The research confirms Simpson Grierson is well-established in the top four New Zealand law firms and that "Simpson Grierson is perceived as the most modern and innovative law firm in New Zealand".

Simpson Grierson consistently ranks highly in international legal directories. The firm was ranked the number one New Zealand law firm in the 2005 *PLC Which Lawyer? Yearbook* (formerly known as *Global Counsel 3000*). Simpson Grierson also had one of the highest numbers of recommended lawyers in the 2006 *International Who's Who of Legal Business Lawyers.* The banking and finance team is "market-leading" and the capital markets team is "superb" according to the 2006 *Asia Pacific Legal 500*.

In keeping with our reputation as a contemporary and progressive firm, our Auckland office is now located in the new Lumley Centre on Shortland Street. Featured in *Metro Magazine* as one of the city's best new offices, the 28-storey building has sweeping views across the city and Auckland's magnificent harbour. Our Wellington office, located in the HSBC tower, also enjoys excellent views and award winning design features.

The fit out in both offices has been designed to encourage a more streamlined approach to work – where communication and collaboration between various workgroups within the firm are faster and more efficient, providing improved efficiencies and work practices and ultimately delivering a more cost-effective service to our clients.

Our success is reflected in the excellent calibre of our client portfolio and our involvement in some of the most high profile and complex projects recently undertaken in the marketplace. A selection of these include:

- DB Zwirn Asia Investment BV on its financing of Positive Educare in connection with the takeover offer for KidiCorp Group, valuing the target at over NZ$42million (Peter Hinton, Michael Pollard).
- Methven on its purchase of the UK's Deva Tap Company for NZ$59 million, funded by an institutional placement, issue of new shares to shareholders and Deva management, and debt (Michael Sage).
- MFS Living & Leisure Group on its takeover offer for Tourism Holdings, valuing the target company at NZ$277 million (Shelley Cave).
- Dorchester on its acquisition of a 25% stake in St Laurence, the placement of a 13% interest in Dorchester to St Laurence Mortgage Holdings and associated grant of various put and call options (Michael Pollard).
- BOC Gas on the acquisition of Shell's New Zealand commercial LPG business (Carl Rowling).

- Fulton Hogan on its disposal of its EnviroWaste business (provider of waste collection, transfer station and landfill services) to Australia's Ironbridge Capital (Shelley Cave, Peter Hinton).
- Guinness Peat Group plc, and its issuing subsidiary GPG Finance plc, on the exchange offer and general offer of NZD350 million of new capital notes (Peter Eady, Don Holborow).
- Gullivers Travel Group Ltd on the takeover by Australian travel and property management company S8 (Shelley Cave, Michael Pollard).
- Landmark Supreme Court decision to abolish barristers' immunity (Rob Gapes).
- New Zealand Wine Fund acquisition of the business and assets of Goldwater Estate Limited (Richard Nelson).
- Private Health Care New Zealand in respect of the disposal of its 25 per cent stake in Metlifecare Limited and resultant public bid, deal value approximately NZD340.5 million (Peter Hinton, Michael Pollard).
- Vector's credit wrapped bond issue for NZD1 billion in Sept/Oct 2005 - this is considered to be the largest deal of its type by a New Zealand issuer.
- Britomart Station - NZD350 million massive urban renewal project, the largest project ever undertaken in New Zealand by a local council (Phillip Merfield, Michael Weatherall, Carole Durbin, Peter Stubbs).
- Department of Corrections regional prison development project - NZD800 million (Philip Milne and Carole Durbin).
- Gullivers Travel Group Limited acquisition of the travel businesses of Pacific International Holdings Limited (Shelley Cave).
- Versacold Holdings Corporation (Canada) acquisition of P&O Cold Logistics (NZ) Limited, as part of acquisition of all P&O Cold Logistics businesses in NZ, Australia, US and Argentina (Neil Cameron, Lisa Carbines).
- Capital Properties New Zealand Limited as the target company in a NZD301 million takeover by AMP NZ Property Fund (Don Holborow).
- Oceana Gold IPO (Don Holborow).
- Pumpkin Patch IPO (Peter Hinton).
- Methven IPO (Michael Sage).
- Gullivers Travel Group IPO (Shelley Cave).
- Prime Infrastructure's bid for Powerco - Simpson Grierson acted for New Plymouth District Council (Jonathan Salter, Peter Hinton).
- Rural Portfolio Investment's partial takeover of Wrightson (Richard Nelson, Peter Eady).
- Deutsche Post/DHL joint venture with NZ Post (Richard Nelson).
- RECT Funds Management on its investment into Abano Healthcare (Peter Hinton).
- Neuren Pharmaceuticals IPO (Kevin Jaffe).
- Tenon as the subject of the partial takeover bid by Rubicon Forests (Peter Hinton).
- WH Smith on the sale of the Whitcoulls Group retail chain (Kevin Jaffe).

- National Australia Bank/Bank of New Zealand's financing of Aged Care's takeover offer for Guardian Healthcare Group (Peter Eady).
- New Zealand legal aspects of the global joint venture between Bertelsmann AG and Sony Corporation of America (Neil Cameron, Stuart Hutchinson).
- Fisher & Paykel's acquisition of Farmers Finance from Foodland Associates and securitisation of its finance portfolio (Andrew Harkness).
- Hauraki Private Equity No 2's acquisition of the trans-Tasman businesses of global conglomerate Tyco International (Andrew Harkness).
- Liquidation of the HIH Insurance New Zealand Group (Mariette van Ryn).
- Penlink Toll Road project - NZD70 million (Michael Weatherall, Bill Loutit).
- Newmont Mining - NZD80 million underground gold mine (Rob Fisher).

**Undertaken in 2007 by Essence Research/Consumer Link (n=200) including organisations ranked in the Atlantis Top 300 New Zealand list.*

For further information about us go to www.simpsongrierson.com.

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OVERVIEW

The purpose of this guide is to provide an introduction to doing business in New Zealand, with a focus on the legal and regulatory environment. The principal areas of this guide are as follows:

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2. **Political and Commercial Structure:** An introduction to the political, economic, financial and legal system in New Zealand.

3. **Investing in New Zealand:** A commentary on the key constraints for investing and a discussion of the principal corporate structures for doing so.

4. **Special Issues:** A commentary on local agents, intellectual property, trade practices, foreign exchange and currency control.

5. **Taxation:** A commentary on the tax regime in New Zealand including income tax, goods and services tax and other taxes.

6. **Takeovers:** A commentary on the regulations relating to takeovers in New Zealand.

7. **Employment Law in New Zealand:** A discussion on New Zealand's employment laws and practices.

8. **Land Transfer in New Zealand:** A discussion of New Zealand's land laws relating to European title.

9. **Maori Land Law:** A discussion of land law insofar as it relates to Maori title and a short discussion on the Treaty of Waitangi.

10. **Personal Property Securities Act 1999:** A discussion of the law relating to recourse to personal property – relevant to financing and corporate insolvency.

11. **Dispute Resolution:** A short commentary on the principal mechanisms for dispute resolution in New Zealand.

1. THE COUNTRY AT A GLANCE

1.1 Geography

New Zealand lies in the southwest Pacific Ocean and consists of two main islands and a number of smaller islands. The combined area of these islands is 268,000 square kilometres, which is similar to the size of Japan or the British Isles.

The main North and South Islands are separated by Cook Strait, which is relatively narrow. They lie on an axis running from northeast to southwest, except for the Northland Peninsula. The administrative boundaries of New Zealand extend from 33 degrees to 53 degrees south latitude, and from 162 degrees east to 173 degrees west longitude. In addition to the main and nearby islands, New Zealand also includes the following smaller inhabited outlying areas:

- The Chatham Islands, 850 kilometres east of Christchurch.
- Raoul Island in the Kermadec Group, 930 kilometres northeast of the Bay of Islands; and
- Campbell Island, 590 kilometres south of Stewart Island.

New Zealand has jurisdiction over the territories of Tokelau and the Ross Dependency in Antarctica.

1.2 Population

According to Statistics New Zealand, the resident population of New Zealand at 30 June 2006 was estimated at 4,140,300.

The capital and seat of Government in New Zealand is the city of Wellington, situated at the southernmost point of the North Island. The largest city in the country is, however, Auckland situated upon an isthmus in the upper North Island.

Until the late 18th Century, New Zealand's population and culture was wholly Maori, of Polynesian origin. Since the major immigration waves of the 19th Century, especially from Britain, New Zealand's culture has largely reflected these British origins, although continued immigration throughout the 20th Century from other Pacific Islands, Asia and many European countries has resulted in an ethnically diverse population.

1.3 Travel

(a) **Visa requirements:** Under New Zealand's immigration regulations, the requirement to obtain a visa to visit New Zealand varies according to the country of origin of the visitor.

Australian citizens or residents who hold a current resident return visa issued by the Government of Australia are not required to obtain either a resident's visa or a visitor's visa.

Citizens of countries with visa waiver agreements with New Zealand do not require a visitor's visa for visits of up to three months. A full list of these countries is provided at http://www.immigration.govt.nz/visit.

British citizens and other British passport holders who produce evidence of the right to reside permanently in the United Kingdom may be allowed to stay for up to six months.

(b) **Customs procedures:** The New Zealand Customs Service provides advice for travellers to New Zealand at http://www.customs.govt.nz/travellers/default.asp. Customs procedures are thorough but efficient and should not cause much delay.

1.4 Communications

(a) **Telephone:** The country code for telephoning New Zealand without operator assistance is 0064. The city codes for the major cities of New Zealand are as follows:

Auckland	09
Christchurch	03
Dunedin	03
Wellington	04

(b) **Fax and e-mail availability:** Fax and e-mail access is widely available throughout New Zealand.

(c) **Courier services:** International courier companies serving New Zealand include DHL Worldwide Express, New Zealand Couriers and Federal Express. There are a number of International Couriers that have arrangements with New Zealand courier companies.

1.5 Currency

The New Zealand unit of currency is the dollar. It is freely floated against all major currencies.

1.6 Language

English is the everyday language spoken in New Zealand. Maori is the other official language of New Zealand. Many other languages are spoken by the various ethnic groups which make up New Zealand's multicultural population.

1.7 Time Zone and Business Hours

One uniform time is kept throughout New Zealand. This is a time 12 hours ahead of co-ordinated universal time, and is named New Zealand Standard Time (NZST). It is an atomic standard, and is maintained by Measurement Standards Laboratory of Industrial Research Ltd, a Crown Research Institute. One hour of daylight saving, named New Zealand Daylight Time, which is 13 hours ahead of co-ordinated universal time, is observed during the summer months (October to March inclusive). Time in the Chatham Islands is 45 minutes ahead of that in New Zealand.

Business hours are kept between the hours of approximately 8:30am to 5:30pm. Shops are generally open on both Saturdays and Sundays in the larger centres.

1.8 Holidays

Public Holidays in New Zealand are:

New Year:	January 1 and 2
Waitangi Day:	February 6
Easter:	Friday & Monday of Easter weekend (dates vary)
Anzac Day:	April 25
Queen's Birthday:	First Monday in June
Labour Day:	Last Monday in October
Christmas Day:	25 December
Boxing Day:	26 December

Many businesses close for the whole Christmas and New Year period, for up to two weeks.

2. POLITICAL AND COMMERCIAL STRUCTURE

2.1 Political System

New Zealand is a parliamentary democracy based on the British "Westminster" system. It is a unicameral system with only one legislative body, the House of Representatives.

In New Zealand, the Executive Council consists of the Prime Minister and the cabinet of ministers selected by the Prime Minister, and the caucus consists of government Members of Parliament. The English monarch is the reigning monarch in New Zealand. It is a constitutional monarchy with no real political power. However, the Governor-General who is the appointee of the monarchy (upon the recommendation of cabinet) has a final veto on all laws passed. The position is, in practice, one of formality. Intervention would require a most extreme case; the Governor-General did not intervene on any occasion in the 20th century.

The House of Representatives is made up of 120 members of whom 67 are regional representatives. It includes six who are elected by the Maori population (Maori may be included on the Maori roll rather than general electoral roll at their option) and 53 who are representative of the political party vote.

Politics throughout much of last century were dominated by two political parties, the National Party and the Labour Party.

From the 1996 general election, the election of Members of Parliament has been by a system of proportional representation called Mixed Member Proportional (MMP). This has led to an increase in the number of smaller parties represented in Parliament.

2.2 Economic System

New Zealand's economic system is comprised of two sectors: private and public.

The private sector encompasses all business that is not owned or run by the Government. This grouping of business ranges from owner-operated small business to multi-national companies.

The public sector incorporates both profit-making and non-profit-making institutions. Government departments that perform a commercial activity have generally been corporatised or privatised. The regulatory allocation, distribution and stabilisation roles of the Government are performed by the non-profit sector of Government.

The financial and fiscal deficits of the government presented annually and a budget is tabled in Parliament each July. The budget includes data from the previous financial year plus proposed expenditure for the forthcoming year. The financial year for the Government in New Zealand now runs from 1 July to 30 June.

The New Zealand economy underwent substantial structural reform during the 1980s and 1990s. There was an economic liberalisation of the New Zealand economy and deregulation in many areas.

2.3 Financial System

There has been rapid change in the financial sector since 1984, when direct controls on the financial sector were largely removed. In November 2001 there were 18 banks registered in New Zealand, only a few of which were wholly New Zealand-owned. Monetary policy is operated by New Zealand's central bank, the Reserve Bank of New Zealand. The bank also registers and supervises banks, manages the issue of notes and coins and provides policy advice to the Treasurer and Minister of Finance.

The Treasury acts as the Government's advisor under the Public Finance Act 1989. Its function is to advise and inform the Government on economic and financial matters and to assist in the implementation of those policies.

2.4 Legal System

The New Zealand legal system is based on the English common law system which is found in most countries of the Commonwealth and which underlies the system in the United States. Many New Zealand statutes are based on English and/or Australian Acts but address particularly the New Zealand situation.

The court system is hierarchical, with the courts of first instance being the District Court for civil claims of less than $200,000 and lesser criminal offences and the High Court for more substantial claims and serious criminal offences. The High Court also has a "Commercial List" which provides a fast track procedure for the resolution of commercial disputes.

There are rights of appeal from the District Court to the High Court, and from the High Court to the Court of Appeal. In the past, a final appeal from the Court of Appeal to the Privy Council in England has been available upon the granting of leave by either Court. However, New Zealand's ties to the Privy Council have been abolished in favour of a new Supreme Court which replaced the Privy Council in 2004 as New Zealand's final appeal court. Up to six judges are appointed to the court, on the recommendation of the Attorney-General.

Appeals to the Privy Council ended on 31 December 2003, except for a few court cases already under way, and the new Supreme Court began hearing appeals in July 2004.

There are also many administrative tribunals with jurisdiction over matters arising within the scope of their respective empowering statutes, for example the Environment Court, the Land Valuation Tribunal and the Commerce Commission (controlling trade practices and business acquisitions). The decisions of such bodies are subject to judicial review by the High Court of New Zealand.

3. INVESTING IN NEW ZEALAND

3.1 Overseas Investment Office

The New Zealand Government's foreign investment policy is generally to encourage foreign investment into New Zealand whilst ensuring that sensitive New Zealand assets (in particular land) are protected by screening foreign investments and by monitoring the management of sensitive assets post acquisition. This policy is effected by the Overseas Investment Office in accordance with the provisions of the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005.

An “Overseas Person” basically includes an individual who is not a New Zealand citizen or resident, an overseas company, a New Zealand company with 25% or more foreign shareholding, or a New Zealand person acting on behalf of an Overseas Person.

An Overseas Person requires the consent of the Overseas Investment Office before embarking upon:

(a) investments in "sensitive land" (whether directly or by acquiring shares in a company which owns land), which includes:

  (i) non-urban larger than 5 hectares in area; and

  (ii) land which comes within certain categories of sensitive land (such as land on many offshore islands, land including or adjacent to reserves, lakes or the foreshore and land of conservation or historical significance); and

(b) investments in "significant business assets", including:

  (i) buying a 25% or more ownership or control interest in company where the consideration paid, or the value of assets of the company or its group, exceeds NZ$100 million; or

  (ii) establishing a business where expenditure incurred before commencement will exceed NZ$100 million; and

  (iii) a business acquisition for more than NZ$100 million; and

(c) investments in a fishing quota, an interest in quota, provisional catch history or annual catch entitlement.

When assessing any application for consent, the Overseas Investment Office focuses on the identity of the Overseas Person and economic matters. The key questions to be answered in any application for consent (land or business assets) are whether the Overseas Person has relevant business acumen and experience, whether they are financially committed to the investment and whether they are of good character.

In the case of investments involving an interest in land, the Overseas Person must also demonstrate that the purchase would be in New Zealand's national interest (in that the investment will bring a net benefit to New Zealand). When assessing whether such an investment will result in a net benefit to New Zealand, the Overseas Investment Office will take into account a number of factors including the following:

(a) added competition, lower prices, greater efficiency;

(b) new technology, managerial or technical skills;

(c) development of new export markets or increased market access;

(d) positive contribution to balance of payments;

(e) creation of new job opportunities;

(f) promotion of New Zealand's economic growth;

(g) whether mechanisms are in place to protect/enhance:

  (i) indigenous vegetation/fauna;

  (ii) habitats of trout/salmon/wildlife and walking access to those habitats;

  (ii) historic heritage within land; and

  (iv) walking access;

(h) whether refusal of consent would result in an adverse effect on New Zealand's image/trade relations or a breach in international obligations;

(i) whether the Overseas Person plans other significant investment or has previously undertaken investment in New Zealand;

(j) whether the investment gives effect to/advances Government policy or enhances ongoing viability of other investments undertaken.

Overseas Persons acquiring an interest in land are not only required to provide evidence that the purchase will be in New Zealand's national interest in terms of economic net benefits (demonstrated in a business plan), but they also (at the Minister's discretion) have to provide a management plan and supporting statements detailing how the Overseas Person will manage any sensitive land.

Farm land or shares in a company owning farm land must be offered for sale to persons who are not Overseas Persons before consent may be given for their purchase by an Overseas Person. This is an important consideration in any sales process involving farm land.

Where an overseas person acquires standing trees pursuant to the grant of a forestry right (as defined in the Forestry Rights Registration Act 1983) and the value of the crop is less than $100 million, New Zealand Overseas Investment Office consent is not required even though a forestry right is an interest in land.

If any interest in land includes an interest in the beds of certain waterways or foreshore and seabed land, the Crown will have a right of first refusal to purchase such land. This is an important consideration in any sales process involving such land.

The Overseas Investment Office monitors the activities of the overseas investment following acquisition to ensure compliance with the law, any representations made in the application for consent and any conditions of consent imposed by the Overseas Investment Office. The Overseas Person is required to report on compliance and the Overseas Investment Office has a number of powers to enforce compliance.

Incentives are available for investments in activities that encourage export expansion, regional development and employment.

Incentives for export expansion are generally limited to those that involve the Government providing a service to potential exporters.

The Ministry of Foreign Affairs and Trade encourages the development of links with potential exporting nations through the establishment and running of trade missions.

The government agency, Trade New Zealand, provides leadership and support to enable New Zealand to be a real force in the global economy. It facilitates trade, international investments and the exchange of knowledge into and out of New Zealand.

The Department of Labour administers subsidies for job creation programs as well as providing placement and employment advisory services along with training subsidies.

There are restrictions on natural resources extraction and various consents will be required. For mining, a permit is required under the Crown Minerals Act 1991 and from the Minister of Conservation if the land is administered by it. It may also be necessary to get resource consents for land or water use from the relevant District and/or Regional Council. Delays can occur in obtaining the necessary planning consents and ministerial consents to carry out mining or other related activities.

3.2 Principal Legal Structures for Investing in New Zealand

There are three principal legal structure for foreign investment to invest in New Zealand. These are:

(a) establishing a local subsidiary or purchasing an existing local company;

(b) setting up a joint venture; and

(c) registering a branch of an overseas company.

Other structures do exist and Simpson Grierson can provide details of these.

3.3 Subsidiaries and Joint Ventures

The registration of a New Zealand subsidiary is a relatively simple matter. Name approval must be obtained and registration of incorporation documentation effected. A New Zealand subsidiary must have an address for service in New Zealand but is not required to have New Zealand directors. Small to medium enterprises with 25% or more foreign ownership do not have to complete and file accounts annually. Companies with 25% or more overseas ownership only have to prepare financial statements if they are a "large company". A "large company" has at least two of the following characteristics:

(1) total assets greater than $10,000,000;
(2) total turnover greater than $20,000,000;
(3) 50 or more full time employees.

Joint ventures may be undertaken through a joint venture company (of course, other structures are also available). Joint ventures are normally governed by a joint venture or shareholders agreement. An incorporated joint venture involves the establishment of a private limited liability company with a constitution reflecting the terms of the joint venture arrangement.

A New Zealand company may have only one shareholder and one director.

Companies can be incorporated either with all the rights, powers and privileges of a natural person or with limited objectives.

A company may, (by way of a resolution passed by means of an entry in its minute book signed in accordance with the Companies Act requirements), do everything which is required to be done by a company by way of shareholders resolution at a meeting. This convenient facility avoids the necessity for annual and extraordinary general meetings of companies.

Generally, foreign equity ownership is not restricted, and joint venturing with local New Zealand companies is not required.

Registration and Administration of Companies

The following fees are presently payable to the Registrar of Companies on registration:

Overseas company	$100
New Zealand subsidiary	$100

The annual return fee is $30 and a late filing penalty fee of $100 applies. These fees are inclusive of Goods and Services Tax.

Where speed is of the essence, a shelf company will normally be acquired. To adapt this, the officers of the company need to be changed and the shares transferred. Later, the capital can be increased, the name changed and the constitutional documents modified to suit the requirements of the particular circumstances.

A name approval is a prerequisite to registration. It usually takes only a matter of a few days to obtain approval of a preferred company name. Alternatively, to avoid delays, a shelf company can be used to overcome this requirement. Registration/incorporation can usually be effected once a name approval is available subject to the following:

(a) in the case of an overseas company to receipt of the required documentation in the appropriate form from overseas; and

(b) in the case of a New Zealand subsidiary to receipt of the required incorporation documentation from overseas duly executed. To expedite matters of necessity, Powers of Attorney can be used.

The allocation of Inland Revenue Department and Goods and Services Tax numbers can sometimes delay the commencement of business operations. In the case of a New Zealand subsidiary, applications cannot be lodged prior to incorporation. These allocations are increasingly becoming available without delay.

There are no onerous administrative company regulations. Obligations include the completion and filing of audited accounts annually and the completion of annual returns (in the case of New Zealand subsidiaries). Companies are required to send to shareholders, no later than 20 days before the annual meeting of shareholders, either a copy of the company's Annual Report or a notice stating the following:

(a) shareholders have the right to obtain an Annual Report free of charge (within 15 working days);

(b) shareholders may obtain the Annual Report electronically (including details of how to do this); and

(c) whether the Board has prepared a concise Annual Report and, if so, shareholders have the right to obtain an Annual Report free of charge (within 15 working days), electronically if they wish (including details of how to obtain it electronically).

(NB: Annual Reports are not required to be filed by "non-active companies" (as defined in section 10 of the Financial Reporting Act 1993).)

There are, however, other statutory obligations including the filing of various tax returns on an ongoing basis.

In the case of an overseas company, registration must be applied for within 10 working days of commencing to carry on business in New Zealand. In the case of a New Zealand registered company, incorporation should be effected as soon as possible to minimise the necessity for pre-incorporation contracts. Limited liability is only conferred by incorporation under the Companies Act, and a company is not capable of exercising the functions of an incorporated company prior to the date of incorporation stated in the certificate of incorporation.

3.4 New Zealand Branch - Overseas Companies Doing Business in New Zealand

Before an overseas company can carry on business in New Zealand it must reserve its name with the Companies Office. Registration of an overseas company is then required within 10 working days of carrying on business within New Zealand. Failure to reserve an overseas company's name or to register within the prescribed time renders the company and every officer or agent of the company who knowingly and wilfully authorises or permits the default to a fine not exceeding $10,000.

There is no precise definition of what constitutes the carrying on of business in New Zealand. However, it does include establishing or using a share transfer office or share registration office in New Zealand, and administering, managing or dealing with property in New Zealand through its employees or an agent or any other manner.

Failure to register does not render it impossible for a company to secure government contracts, hire local labour, open bank accounts, import equipment, obtain work permits, import materials or export materials. However, overseas companies carrying on business in New Zealand usually have a place of business in New Zealand and, accordingly, register under the Companies Act.

There are no financing restrictions imposed on foreign-owned companies.

Inter-company agreements, such as licenses, rental agreements, technical assistance agreements, management contracts, leases and the like, are permitted although agreements with tax avoidance objectives may be ineffective from a taxation point of view.

3.5 Purchase by Foreign Corporations of a Business in New Zealand

As a general rule, foreign corporations can acquire local companies, or the assets of local companies, subject to Overseas Investment Office consent where necessary (refer to Section 3.1, Overseas Investment Office).

There are few areas where foreign investment is prohibited. There are areas where foreign investment is controlled either by reference to the type of industry or by reference to the amount of the investment. These controls are exercised by:

(a) the Overseas Investment Office in the circumstances set out in Section 3.1, Overseas Investment Office; and

(b) the Commerce Commission for certain business acquisitions.

Commerce Commission clearance or authorisation is required in the case of a business acquisition which will have the effect of substantially lessening competition in a market. The onus is on the parties to an acquisition to notify the Commission, seeking a clearance or authorisation. If prior clearance or authorisation to an acquisition is not obtained and it causes a substantial lessening of competition in that market, then severe penalties may be imposed.

No stamp duty is payable on the transfer of shares, assets, including goodwill, or commercial land.

4. SPECIAL ISSUES IN DOING BUSINESS IN NEW ZEALAND

4.1 Local Agents

Goods are typically imported and distributed in New Zealand by informally appointed agents who are purchasers and on-sellers of products. These agreements are often informal letters of appointment which are normally capable of termination by either party on 1-3 months notice. If a more formal arrangement is contemplated, distribution agreements are used, typically with a 2-5 year term of exclusivity, subject to continuing performance covenants. Agency arrangements are usually capable of termination for any reason, while distribution agreements will usually only be capable of termination by the foreign person on default by the distributor.

In general, commission agents are only used for procuring importation of high value goods directly from the manufacturer, with a commission being payable from sales. These arrangements do not give the commission agent any rights as an employee under local law. However, commission sales arrangements for the on-sale of goods and services in New Zealand (eg insurance, real estate, motor vehicles) are common. The rights of the commission agent and the obligations of the New Zealand employer would depend upon the nature of the relationship.

Foreign companies are subject to income tax on sales where the income from those sales has a source in New Zealand. If the foreign company is resident in a country with which New Zealand has a double tax agreement and the company does not have a permanent establishment in New Zealand, the income will not be subject to double taxation.

There are no regulations or controls upon the appointment by foreign persons of commission agents or distributors in terms of the relationship between such parties.

The appointment of an agent, whether as a re-seller or as a commission agent, will be subject to the terms of any agreement existing between the parties. In the absence of agreement, the law of agency will apply if New Zealand law is applicable.

There are no regulations or controls as to the rates of commission payable to agents.

4.2 Intellectual Property Protection

Trade Marks

The Trade Marks Act 2002 provides for registration of trade marks in any of the 45 classes for goods and services corresponding to the International Classification (9th edition) which is adopted by New Zealand. Trade marks, collective marks, and certification marks can be registered in New Zealand. A trade mark is defined in the Trade Marks Act as any sign capable of being represented graphically and capable of distinguishing the goods or services of one person from those of another person. Trade marks may also be registered upon evidence of acquired distinctiveness. The definition of sign has been expanded to include smells, sounds and tastes, so long as these are capable of being represented "graphically". For smells, this is likely to include the provision of appropriate descriptive text and chemical equations.

Trade mark registration is valid for a term of 10 years, from the date of application. Thereafter, registration may be renewed in perpetuity in successive 10 year periods. Use is not a prerequisite to registration, although a trade mark can be removed from the register for non-use during a continuous period of three years.

New Zealand is committed to introducing the Madrid Protocol whereby a single Madrid application filed in New Zealand would provide trade mark protection in member countries overseas. Currently, it is proposed that New Zealand accedes to the Madrid Protocol by December 2008.

Copyright

The Copyright Act 1994 protects against the copying of works including original artistic, literary, dramatic or musical works (in all their various forms). Copyright arises automatically in a wide range of works. Only works which are original (ie, works which are not just a copy of another work) will be protected by copyright, provided there has been sufficient labour and effort in their creation. The right attaches to the work itself (ie, the expression) and not to the idea, so that the protected work must be an identifiable form of the work. There is no requirement for registration. The period of protection is generally the life of the author plus 50 years, or 16 years (or 25 years in some cases) for industrially applied works, depending on the nature of the work.

The Copyright (Digital Technologies and Performers' Rights) Amendment Bill was introduced to Parliament in late 2006. The Bill introduces new exceptions to copyright infringement to allow for format-shifting, time-shifting and transient copying by new technologies. The Bill also limits internet service provider liability.

The Bill was reviewed by Select Committee in August 2007.

Patents

The Patents Act 1953 provides a system of protection by registration of patents for an "invention" defined as "any manner of new manufacture" and "any new method or process". The invention must be "new", that is not publicly disclosed in New Zealand (ie, has "local novelty") and non-obvious as at the priority date. This is different from most countries where an invention cannot be patented if it has been publicly disclosed anywhere in the world (ie, "worldwide novelty"). International conventions can be used to file an application in New Zealand (or through the Patent Cooperation Treaty designating New Zealand) within 12 months of the date of a first filing in any overseas country (and vice versa out of New Zealand). This obtains a priority date of the first filed foreign application.

All patent applications are examined before acceptance. Grant of a patent usually takes 12-18 months from filing of the complete specification. The period of protection is a maximum of 20 years (subject to payment of renewal fees).

The Government released a Draft Patents Bill on 20 December 2004. The Bill proposes to introduce important changes to the patent system in New Zealand, including:

(a) a shift to a requirement of an absolute (or worldwide) novelty, and inventive step;

(b) a shift in the onus of proving patentability from giving the benefit of the doubt to an applicant, to the Commissioner needing to be satisfied on the balance of probabilities, that the invention is patentable;

(c) the specific exclusion from patentable inventions of human beings; biological processes for their generation: diagnostic, therapeutic or surgical methods for treatment of human beings;

(d) the introduction of assertion and re-examination phases, both before and after registration, in place of the opposition regime.

At the heart of the changes proposed in the Draft Bill, is the Government's desire to grow an innovative New Zealand and to encourage the transfer of technology to New Zealand by overseas innovators. The changes will bring New Zealand patent law into line with the majority of other countries. They also constitute a tougher regime in accordance with the objective that if New Zealand is to encourage innovators to invest in research and development in New Zealand, the patent system must be stringent and protection must only be afforded to genuine innovations. The new Patents Bill is expected to be introduced to receive its first reading in 2007.

Plant Variety Rights

Plant Variety Rights ("PVRs") are granted in New Zealand under the Plant Variety Rights Act 1987. PVRs provide plant variety owners with the exclusive right to commercially reproduce fruit, flowers or other products derived from the "protected variety" for a period of 20 years, or 23 years for woody plants or rootstocks.

The Government has introduced the Plant Variety Rights Amendment Bill 2005. The purpose of the proposed changes is to increase incentives for New Zealand plant breeders to allow their new varieties to be released in New Zealand while bringing New Zealand's PVRs regime into line with other countries.

The Bill proposes to make the following changes:

(a) removal of rights persons who merely 'discover' a new plant variety. A degree of human input in development is now required;

(b) recognition of indigenous sensitivities. Future plant varieties will not be protected if culturally offensive to Maori;

(c) broadening of exclusive rights to include rights to sell, market, import and export the protected variety;

(d) extension of rights to include 'EDVs' (essentially derived varieties).

Designs

The Designs Act 1953 provides protection for features of shape, configuration and pattern applied to an article by an industrial process. The features of the design cannot be those dictated solely by function. The period of protection is a 15 year term (subject to payment of renewal fees).

Unlike other countries, there is no specific regime for unregistered designs in New Zealand, however there is protection for unregistered industrially applied designs under the Copyright Act.

Confidential Information

The common law provides for protection of know-how when the following elements are present:

(a) the information sought to be protected is of a confidential nature; and

(b) the information is communicated in circumstances importing an obligation of confidence; and

(c) there is unauthorised use or threat of use or disclosure of the information, to the detriment of the party who communicated it.

If these elements are established, then unauthorised disclosure or use of the information is actionable.

Know-how and confidential information may also be protected in some circumstances by other common law actions, such as breach of fiduciary duty or by contractual restraints of trade.

Passing Off and the Fair Trading Act 1986

The common law of New Zealand includes the tort of "passing off", that is preventing the goods or services of a person being passed off as the goods or services of another party. In addition, the Fair Trading Act 1986 provides protection against misleading and deceptive conduct and false representations with respect to the supply of goods or services.

International Treaties: New Zealand is a party to the following International Treaties:

(a) **Trade Marks:** The Paris Convention (London Version and Stockholm Articles 13-30);

(b) **Copyright:** The Berne Convention (Rome Version), The Universal Copyright Convention (Geneva Text), Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms (Geneva);

(c) **Patents:** The Paris Convention (London Version and Stockholm Articles 13-30), Patent Co-operation Treaty;

(d) **Designs:** The Paris Convention (London Version and Stockholm Articles 13-30);

(e) **Plant Variety Rights:** International Convention for the Protection of New Varieties of Plants (Geneva 1978 Version);

(f) **Other:** Convention Establishing the World Intellectual Property Organisation (WIPO) and World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Procedures under the Trade Marks Act 2002, the Patents Act 1953, and the Designs Act 1953 are all regulated by the Intellectual Property Office of New Zealand.

There are no notarisation requirements for the filing of applications for trade marks, patents or designs. The only requirement at the time of filing is the appointment of a New Zealand address for service, usually the patent attorney or solicitor representing the applicant. Where required, such an appointment is executed by an authorised officer of the applicant.

There are few regulatory guidelines for licensees of intellectual property rights. Proprietors are free to negotiate the terms of any agreement. There are provisions in the Trade Marks Act concerning the optional registration of licensees as registered licensees on the Register of Trade Marks, and the Patents Act includes provisions relating to the licensed use of patents. There are also compulsory licence provisions within the Patents Act. In all other respects, the law of contract will be applicable.

There are requirements relating to the licensing, manufacture and use of certain products in New Zealand, such as food, drugs, chemicals and toxic substances. These generally require a licence to be granted by an authorised regulatory body before products can be used or manufactured in the New Zealand market.

There are no statutory or regulatory controls relating to royalties or remission of same from New Zealand, other than deduction of non resident withholding tax.

Informal arrangements between foreign corporations and wholly-owned subsidiaries are common. More formal arrangements include service agreements, licence arrangements (where applicable), and other debt and equity instruments.

Major Events Management Act 2007

In August 2007 New Zealand became the first country to introduce generic legislation aimed at providing special protection against ambush marketing for major events staged wholly or partially in New Zealand. The Economic Development Minister can nominate an event as a "major event". If the nominated event meets the prescribed criteria in the Act the event will then obtain special protections such as restrictions on vicinity marketing in nominated clean zones around event venues, restrictions on unauthorised "associations" with the event, restrictions on ticket scalping, provision for declaration of official event words or emblems, and an increased range of available remedies, including offence provisions for intentional acts of ambush marketing.

4.3 Competition Law

(a) **Restrictive Trade Practices:** The provisions of the Commerce Act 1986 apply to all trade practices which have the purpose or effect of substantially lessening competition in a market, or fix prices, or relate to taking advantage of market power. There is an exemption for contracts or arrangements concerning the exploitation or enforcement of statutory intellectual property rights where such provisions might otherwise be anti-competitive.

The Commerce Act covers five broad categories of restrictive trade practices. The five categories are:

(i) contracts, arrangements, or understandings which have the purpose, effect or likely effect of "substantially lessening competition" in a relevant market;

(ii) arrangements between competitors which have the purpose, effect or likely effect of fixing the price for goods or services (including any discount, allowance, rebate, or credit) which are supplied to, or acquired by, the parties to the arrangement;

(iii) taking advantage of a substantial degree of power in a market for the purpose of restricting entry into that market, preventing or deterring competitive conduct in that market, or eliminating persons from that market;

(iv) resale price maintenance; and

(v) collective boycotts.

Contravention of the restrictive trade practices provisions of the Commerce Act exposes those in breach to: a) pecuniary penalties of up to NZ$500,000 for individuals and the greater of NZ$10 million for companies or three times the value of any commercial gain resulting from the contravention, or 10% of the turnover of the company (and all of its interconnected companies); b) private actions for damages, which may be taken by any person affected by a trade practice; c) injunction to halt or prevent a contravention. These may be sought by the Commerce Commission or affected parties. There is a procedure to apply to the Commerce Commission for authorisation of certain restrictive trade practices. Essentially, the Commerce Commission must be satisfied that there is sufficient public benefit attaching to the trade practice to outweigh any anti-competitive effects.

(b) **Business Acquisitions:** The Commerce Act also regulates "business acquisitions" within New Zealand. No person may acquire assets of a business or shares in a company if that acquisition would have, or would be likely to have, the effect of substantially lessening competition in a relevant market. The regime places the onus on parties to an acquisition proposal to assess its competitive effects before implementing the transaction.

There are pecuniary penalties for breach of the business acquisitions prohibitions to a maximum sum of NZ$500,000 for individuals and NZ$5 million in the case of a company. Proceedings for imposition of such penalties may only be instigated by the Commerce Commission. Private parties may seek injunctions, (for example, to prevent the implementation of a merger or take-over) and/or damages for any loss arising from a breach of the Act. The High Court also has power to order divestiture of shares or assets acquired in breach of section 47, but only at the instigation of the Commerce Commission.

The Act contains provisions to control the prices particular goods and services. Price control must be triggered by Order in Council and is administered by the Commerce Commission.

4.4 Foreign Exchange and Currency Control

Over the last 15 years, exchange controls in New Zealand have been relaxed and the foreign exchange market deregulated. As a result, there is no statutory requirement in New Zealand requiring dealers in foreign exchange and foreign exchange products to be registered.

However, foreign exchange dealers will be financial institutions for the purposes of the Financial Transactions Reporting Act 1996. The Act imposes an obligation on financial institutions to report suspicious transactions to the Commissioner of Police. A suspicious transaction is one where any person conducts or seeks to conduct any transaction through a financial institution and the financial institution has reasonable grounds to suspect that the transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence. As a general rule, a suspicious transaction will be a transaction which is inconsistent with a customer's known, legitimate business or personal activities or the normal business for that type of customer.

The Act also imposes reporting obligations on individuals who arrive or leave New Zealand with cash (in any currency) in excess of NZ$10,000. Where the cash is in a foreign denomination, the amount of the cash shall be taken to be the equivalent in New Zealand currency calculated at the rate of exchange on the date of the determination.

5. TAXATION

5.1 Income tax:

Income Tax Generally

New Zealand income tax is imposed on the world-wide income (subject to certain exceptions) of New Zealand residents (including individuals, companies and other entities). It is also imposed on the income of non-residents to the extent that that income has a New Zealand source (although the liability may be reduced by operation on an applicable double tax agreement (discussed further below)). "Income" includes most receipts on revenue account as well as some capital gains.

Tax Residence - Individuals

Individuals are resident in New Zealand for income tax purposes if they have a permanent place of abode in New Zealand, even if they also have a permanent place of abode overseas. Moreover, an individual is resident if he/she spends more than 183 days in aggregate in any contiguous 12 month period in New Zealand, regardless of whether or not he/she has a permanent place of abode in New Zealand. If an individual is resident in New Zealand and also resident under the domestic laws of the country with which New Zealand has consummated a double tax agreement (discussed further below), the "tie-breaker" provision in that agreement will determine where the person is to be considered resident for the purposes of applying the agreement for the relief of double taxation.

Further, a four year domestic income tax exemption in respect of foreign sourced income (other than employment or services income) is available for overseas individuals who become New Zealand tax residents. The exemption does not apply if the person has been a New Zealand tax resident within the last 10 years.

Tax Residence – Companies

A company is automatically resident in New Zealand for income tax purposes if it is incorporated in New Zealand. A company not incorporated in New Zealand is resident in New Zealand if its head office, centre of management, or the place from which the directors exercise control of the company, is situated in New Zealand. Again, tie-breaker provisions apply for the purpose of double tax agreements.

Income From Employment and Self-Employment

All forms of employment income are taxable on a gross basis (i.e. no deductions are allowed in respect of the derivation of such income). The current marginal tax rate for individuals for income (including personal services income) up to $38,000 per annum is 19.5%, for income between $38,000 and $60,000, 33%, and income in excess of $60,000, 39%. These rates compare to a flat 33% rate on all income of companies and trustees.

Employers withhold tax from salary and wage payments under the Pay As You Earn ("PAYE") system. The amount withheld is calculated by reference to the employee's annualised effective tax rate, having regard to the above marginal rates. Any tax that is withheld is credited against the employee's terminal income tax liability for the relevant income year.

Self-employed individuals pay tax on a net basis (ie, they are allowed deductions for expenditure incurred in deriving their income) at the above rates. They are also generally subject to the provisional tax system. Provisional tax is payable in three instalments throughout the year. This is based either on the income tax paid for the previous year with an uplift, or on a current year estimate. Any overpayment or underpayment of provisional tax is corrected later when the taxpayer files a terminal tax return for the relevant tax year.

Because the top personal marginal tax rate (39% on income exceeding $60,000 per annum) exceeds the rate for companies and trusts, there is an incentive for self-employed persons to "interpose" such an entity between themselves and their clients. An anti-avoidance rule exists, however, which in some circumstances requires the income of such an interposed entity to be "attributed" to the relevant self-employed person and included within his/her taxable income.

Company Taxation

Companies (including New Zealand subsidiaries of foreign companies) and other business taxpayers are taxed on their net income after allowable deductions. The current company tax rate is 33%. The provisional tax system described above also applies to companies.

Deductions

As noted above, deductions are not permitted for expenditure incurred in producing income from employment. In other cases current year deductions are allowed for expenditure or losses which meet the statutory test of either being incurred in gaining or producing assessable income, or necessarily incurred in carrying on a business for such purposes. Most companies are allowed a deduction for interest without meeting this test. Deductions are not allowed for expenditure or losses on capital.

Depreciation may be claimed in respect of the capital assets of a business taxpayer, in calculating the taxpayer's income tax liability. For tax purposes, depreciation is calculated in accordance with prescribed scale rates determined by the Commissioner of Inland Revenue and applied on a diminishing value or straight-line basis.

Dividends

The term "dividend" is widely defined and includes most benefits provided by a company to a shareholder or associate thereof. A system of dividend imputation exists to minimise the imposition of secondary taxation of shareholders in receipt of dividends, where tax has been paid on operating profits at company level. This system allows companies to pass on the benefit of income tax paid at company level as credits attached to dividends distributed to shareholders. The credits can be used by resident shareholders to offset their income tax liabilities (including the liability in respect of the dividend paid). Imputation credits attached to dividends paid to one company by another can be used to offset the recipient company's tax liability and credited to that company's imputation credit account for subsequent distribution to the recipient company's shareholders.

Non-resident shareholders in receipt of an imputed dividend may enjoy a supplementary dividend under the foreign investor tax credit ("FITC") regime. This offsets the impost of non-resident withholding tax on the dividend.

Most inter-company dividends are taxable. However, those received by one member of a wholly owned group from another, and those received by a New Zealand company from a foreign company, are exempt. Despite the existence of the latter exemption, a special dividend withholding payment ("DWP") may be deducted and paid by a New Zealand company (essentially as a proxy for the ultimate individual resident shareholders in that company) upon receipt of a foreign-sourced dividend. This DWP liability may be reduced to the extent of foreign tax paid by the company paying the dividends (under the underlying foreign tax credit regime), or to the extent the recipient company is owned by non-residents (under the conduit tax regime). Any DWP payable gives rise to DWP credits which, like imputation credits, can be later used to offset the tax payable by shareholders when the New Zealand resident company makes a distribution.

Withholding Tax

Subject to certain exemptions, resident withholding tax is imposed on interest and dividend income paid by one resident to another unless the recipient holds a valid certificate of exemption. The rate of deduction is 19.5% on interest paid to individuals, 33% on interest paid to companies and 33% on all dividends, (although in the case of individuals higher rates may apply if elected by the recipient, or if the recipient fails to provide a tax file number to the payer) and the amount deducted is credited against the payee's residual income tax liability for the year.

Dividends, interest and royalties paid by New Zealand residents to non-residents are subject to non-resident withholding tax ("NRWT"). The rate of NRWT is 30% in respect of dividends (other than fully imputed non-cash dividends, on which the rate is 0%, and fully imputed or DWP credited cash dividends, in which case it is 15%) and 15% in respect of interest and royalties. As noted above, to the extent that the dividends carry imputation credits, the FITC regime may reduce or eliminate NRWT. Further, NRWT is reduced by virtue of most double tax agreements to 15% in respect of dividends and 10% in respect of interest and royalties.

NRWT on interest may be replaced with a 2% "approved issuer levy" ("AIL"), payable by the borrower. The AIL regime requires both registration of the borrower as an approved issuer, and registration of the loan as a registered security. The regime cannot be used where borrower and lender are associated persons.

Various other withholdings are required from payments such as directors fees, honoraria, salespersons' commission, and non-resident contractors' fees.

Branch Taxation

New Zealand branch operations are liable to income tax on branch profits at the rate of 33% (unless New Zealand has a double tax agreement with the jurisdiction in which the head office is located, and the New Zealand branch is *not* a "permanent establishment" for the purposes of that agreement). As with other business taxpayers, branches are taxed on their net income, after allowable deductions. Any loss on expenditure deducted must be directly attributable to the branch operations. Income tax paid by branches is a final tax and no withholding tax is payable on subsequent repatriation of the tax-paid profit overseas. Further, any tax free capital gains realised by the branch can be repatriated overseas without any New Zealand tax cost. NRWT will, however, still be imposed on the payment of royalties (broadly defined under the New Zealand legislation), and NRWT or AIL on interest, by a branch operation to non-residents.

Taxation of Certain Offshore Investments of New Zealand Residents

Under the Controlled Foreign Company ("CFC") regime, certain investments by New Zealand residents in foreign companies suffer income tax, even if no dividends or other income are actually remitted to the New Zealand resident. Thus, such investments are taxed on an unrealised basis. The CFC regime applies where five or fewer New Zealand residents directly or indirectly control more than 50% of a foreign company or other entity, or if a single New Zealand resident controls 40% of such a company or other entity and no non-resident controls the same or a greater percentage.

Exemptions from the CFC regime are available in respect of investments in certain "high tax" jurisdictions (currently US, UK, Germany, Canada, Australia, Japan, Spain and Norway). These are referred to as the "grey list" countries.

The government is currently reviewing the CFC regime and is considering an exemption for CFCs that derive "active" income (as opposed to passive income such as interest and dividends).

Under a similar regime, income tax is imposed on foreign investment fund ("FIF") interests held by New Zealand residents, regardless of the level of control held by the New Zealand resident. There is no similar grey list exemption for FIF interests. However, interests in some Australian listed companies are exempted as are interests costing less, in aggregate, than NZ$50,000.

Tax on Capital Gains

While there is no general capital gains tax in New Zealand, gross (taxable) income includes amounts derived from certain transactions which would be taxed as capital gains in other jurisdictions. These transactions include the following:

(i) Profits from the sale of land in certain circumstances;

(ii) Profits from the sale of any personal property acquired with the purpose of sale or pursuant to a profit-making scheme;

(iii) Certain royalty payments;

(iv) Gains from any "financial arrangements" under the accrual regime; and

(v) Certain gains brought to tax under the FIF and CFC regimes discussed above.

Thin Capitalisation
Where either a branch or a New Zealand resident subsidiary owned by non-New Zealand residents is debt funded (whether by associated or non-associated party debt, and whether from onshore or offshore) New Zealand's thin capitalisation regime must be taken into account. Under this regime, a branch or New Zealand resident subsidiary will be denied a deduction for interest to the extent that its ratio of debt to assets exceeds 75%, and 110% of the branch or subsidiary's world-wide debt to asset ratio.

Transfer Pricing
New Zealand has a comprehensive transfer pricing regime dealing with transactions between associated parties. The objective of the transfer pricing regime is to prevent New Zealand tax-paying entities reducing income by inflating deductions through non-arms length transactions with non-resident associates.

The Treaty Network
New Zealand has entered into double tax agreements ("DTAs") with 34 trading partners. The DTAs are designed to remove the double taxation (ie. tax in two jurisdictions in respect of the same income) which would, in their absence, be suffered by New Zealand residents investing overseas, and non-residents investing in New Zealand. DTAs have been entered into with Australia, Austria (not in force), Belgium, Canada, Chile, China, Denmark, Fiji, Finland, France, Germany, India, Indonesia, Ireland, Italy, Japan, Malaysia, Mexico (not in force), Netherlands, Norway, Philippines, Poland, Republic of Korea, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Taiwan, Thailand, the UK, the United Arab Emirates and the US.

As a member of the OECD, New Zealand has adopted the OECD Model Convention as the basis of its DTAs.

5.2 Goods and Service Tax ("GST"):

GST is a value added tax imposed on supplies of goods and services in New Zealand by a GST registered person. The rate of GST is generally 12.5% of the value of a supply. A supplier of goods and/or services must be registered for GST if the annualised value of taxable supplies made by that supplier exceeds or is likely to exceed $40,000.

GST charged by registered persons on supplies of goods or services is known as "output tax". A registered person reduces output tax charged on supplies made in a taxable period by GST paid by the registered person in the course of making those supplies ("input tax"). The net amount is paid to Inland Revenue or claimed as a refund.

In some circumstances, a New Zealand recipient of imported services must account for GST to Inland Revenue under the "reverse charge" rules.

Some supplies, most importantly supplies of financial services, are exempt from GST (although some supplies of financial services will be treated as zero-rated supplies). In addition, certain supplies (including sales of businesses as going concerns) are zero-rated (ie. GST is reduced to 0%). The main difference between exempt and zero-rated supplies is that a registered person making zero-rated supplies may claim input tax credits for tax paid in the course of making those supplies, whereas a maker of exempt supplies may not.

GST returns must be filed every one, two or six months depending on the level of turnover of the business.

5.3 Other Taxes:

Fringe Benefit Tax ("FBT") is payable by employers on the value of most non-cash benefits provided to their employees, for example motor vehicles, low interest loans. The FBT rate depends on the marginal tax rate of the employees.

Under New Zealand's universal no-fault accident compensation regime, levies are charged to employers, the rate depending on the nature of the employer's business activity. Self-employed persons also pay these levies.

New Zealand also has a gift duty regime. Gift duty is payable on all property, wherever situated, to the extent it is disposed of for less than adequate consideration by an individual donor domiciled in New Zealand at the date of the gift, or a body corporate donor incorporated in New Zealand. Gift duty is also payable on property situated in New Zealand, to the extent it is disposed of for less than adequate consideration by an individual donor not domiciled in New Zealand or a body corporate donor not incorporated in New Zealand. Gift duty applies only to gifts made by a donor in excess of $27,000 in any 12 month period (note a donor must file a gifting statement with Inland Revenue if the donor gifts more than $12,000 in a 12 month period). In addition, there are exemptions for some dispositions.

6. TAKEOVERS

6.1 In General

Takeover activity in New Zealand is regulated by both statutory and non-statutory means. The primary legislative measure governing takeover activity is the Takeovers Code, which came into force on 1 July 2001.

6.2 Takeovers Code

With effect from 1 July 2001, the existing matrix of statutory and non-statutory regulation governing takeover activity in New Zealand was replaced (except in the case of a listed entity that is not a limited liability company) by the Takeovers Code which has, as its central theme, the right for all shareholders in a target company to participate equally in a takeover offer for more than 20 per cent of the shares on issue.

The fundamental rule underpinning the Takeovers Code is that a person may not increase holding or control of voting rights in a "Code company" beyond the 20 per cent threshold, other than by means of a Code offer made to all shareholders on equal terms. If a person already holds more than the 20 per cent threshold, the holding cannot be increased, except as permitted by the Code. There are no controls below the 20 per cent threshold. A "Code company" is:

(a) a company listed, or which was in the previous 12 months, listed, on a (New Zealand) stock exchange; or

(b) a company with more than 50 shareholders.

The second limb extends the application of the Code beyond listed companies so that it applies to all large (by New Zealand standards) companies. However, the Code does not extend to other listed entities, such as unit trusts, or a number of syndicate structures in common use for investments in property or forestry development which would otherwise meet the test in the second limb.

There are several methods of increasing the holding or control in a Code company beyond the 20 per cent threshold that are permitted by the Code.

A Code offer may be a full offer or a partial offer. A full offer must be for all of the voting securities of the target company as well as any non-voting equity securities on issue. If the offer is made for different classes of equity security, the consideration and terms offered must be fair and reasonable as between classes (an independent adviser's report is required which must specifically address fairness).

A partial offer (an offer for less than 100 per cent of the voting securities on issue) must be made to all holders and must be for a specified percentage of the voting securities on issue. Again, if there is more than one class of voting security on issue, the offer must be for a specified percentage of each class and must be fair as between classes.

For partial offers of more than 20 per cent of the voting securities in the target and where the offeror holds or controls less than 50 per cent of the voting securities in the target, the offer must be for a sufficient number of voting securities that, if accepted, will result in the offeror holding or controlling more than the 50 per cent threshold. Unlike a full offer, a partial offer need not be extended to non-voting securities. However, like a full offer, if a partial offer is made for more than one class of security, the consideration and terms offered must be fair and reasonable between classes.

The acquisition of existing securities or the issue of new securities resulting in a person acquiring voting securities in excess of the 20 per cent threshold also may proceed if the acquisition or issue has first been approved by an ordinary resolution of the Code company. The Code imposes specific requirements governing the notice of meeting and voting at the meeting (specifically, a person disposing of or acquiring existing securities and any subscriber for new securities cannot vote on the relevant resolutions).

A person holding or controlling more than 50 per cent, but less than 90 per cent, of the voting securities on issue may increase the holding by up to 5 per cent in any 12 month period. Where the number of securities that the person held or controlled changed over the course of the relevant period, the measure is 5 per cent of the lowest level of their stake in that period.

A person holding or controlling 90 per cent or more of the voting securities on issue may utilise the Code to require the outstanding holders to sell their equity securities to that dominant holder. In addition, the outstanding holders may require such a dominant holder to acquire their holdings.

The Code contains detailed provisions dealing with the contents of a Code offer/target company response and the minimum and maximum periods that a Code offer may remain open for acceptance.

The Takeovers Panel, established to oversee the enforcement and operation of the Code, has very extensive enforcement powers. Those powers include the ability to issue interim restraining orders and to apply to the court for a wide range of orders, including those for:

(a) disposal or forfeiture of shares;

(b) removal of voting rights;

(c) avoidance of agreements; and

(d) payment of compensation.

Interested parties also may, in certain circumstances, apply for court orders where the Takeovers Panel determines that it is not satisfied that the Code has been complied with. These interested parties are:

(a) New Zealand Exchange Limited ("NZX");

(b) the relevant Code company;

(c) the shareholders and affected former shareholders of the Code company;

(d) other parties who have made offers under the Code in the six months prior to the application; and

(e) any other person with the leave of the court.

6.3 Stock Exchange Listing Rules

Non-statutory regulation of takeovers of listed entities other than Code companies (eg, listed unit trusts) continues to be provided by the NZX Listing Rules. Briefly, the Listing Rules require certain notice periods prior to the transfer of securities being effected, and they prescribe response requirements on the part of the directors of a target entity. The Listing Rules only apply to transfers which involve:

(a) a person acquiring more than 20 per cent of a listed entity's securities; or

(b) a person who already holds 20 per cent or more, seeking to acquire in excess of 5 per cent in any 12 month period.

6.4 Securities Markets Act 1988

Note: *The Securities Markets Amendment Act 2006 has been enacted which will modify the principal Act largely in terms of increasing disclosure requirements when it comes into force. However, as at September 2007 it is still unknown as to the date the Amendment Act will come into force.*

The Securities Markets Act, which was substantially amended and renamed in December 2002, requires persons acquiring a "relevant interest" (as defined) in 5 per cent or more of the share capital of a listed company to disclose particulars of that interest to the NZX and the subject company. The definition of "relevant interest" is wide and its purpose is to identify the ultimate controller of the rights associated with a voting security. Notices must also be given where a change in the number of voting securities held amounts to 1 per cent or more, or if the shareholder ceases to be a substantial security holder (ie, ceases to hold 5 per cent or more of the issued shares).

This Act also incorporated provisions concerning insider trading and the liabilities of insiders who deal in, or tip about, securities of a public issuer. The Act has the practical effect of limiting the acquisition of pre-bid stakes where the potential bidder has received price sensitive information.

The amendments made to the Act in December 2002 included new provisions dealing with continuous disclosure by public issuers, disclosure of relevant interests by directors and officers of public issuers, and enhanced powers of Securities Commission relating to the regulation of securities exchanges and the monitoring of securities markets. After a postponement, the rules governing the disclosure of securities holdings and trading by directors and officers of listed companies came into force in April 2004.

7. EMPLOYMENT LAW IN NEW ZEALAND

INTRODUCTION

Before looking at the current employment legislation in New Zealand, it is useful to briefly consider the evolution of New Zealand's labour laws through to the Employment Contracts Act, which radically rewrote New Zealand's labour laws for the "free market" 1990s. We then focus on the key aspects of the Employment Relations Act 2000.

THE FIRST 100 YEARS

New Zealand first attempted to establish an effective legal regime for industrial relations in the 1890s as a response to what the Government of the time considered to be "barbaric" strikes. Legislation was introduced to ban strikes and lock-outs. However, the law also encouraged the formation of unions and introduced a compulsory arbitration system.

This type of model, based on strong unions, centralised bargaining, and compulsory arbitration dominated the next 90 years. By the 1970s, New Zealand industrial relations systems were a complex assortment of collective bargaining structures. Union membership was mandatory if an employee was covered by an award or agreement. Those awards or agreements were frequently nation-wide, and were often finalised through compulsory arbitration.

Centralisation reached its peak by the early 1980s when the wages for each job classification were invariably tied to those of every other classification by a rigid system of relativity. The system failed to take into account basic economic factors with hugely damaging effects on New Zealand's economy.

The Labour Party introduced the Labour Relations Act 1987 ("LRA") in recognition of the need to free the economy from such an inflexible system. The key feature of the LRA was that it abolished compulsory arbitration. Other novel concepts included the shedding of restraints on union operation and organisation, a clear definition of when industrial action would be "lawful" and the introduction of open ended bargaining. However, the LRA still maintained compulsory unionism, and national awards and agreements remained the norm.

7.1 Employment Contracts Act 1991 ("ECA")

(a) By the early 1990s, the new market environment demanded decentralisation and labour market flexibility. The ECA was the National Party's radical response. The centralised model was completely scrapped for a "freedom of contract", "freedom of choice" model for employment relations.

(b) The ECA was introduced amidst a storm of protest lead by the union movement. For the first time in 100 years, unions were given no specific recognition. They were placed in the same position as any other advocate (or "bargaining agent") who wished to convince employees to utilise their services.

(c) In essence, two forms of employment contracts were recognised, individual and collective. Once negotiations were underway, there were some limits on attempts by employers to undermine the bargaining agent (if one had been appointed) and some limited access rights existed for bargaining agents, but only once bargaining was underway. However, in most respects, negotiations for individual or collective contracts were left entirely to the parties. There was no third party involvement to resolve contract deadlocks. "Freedom of contract" prevailed.

(d) Strikes were lawful but not if a collective employment contract was already in place. Strikes for multi-employer contracts were rendered unlawful. Sympathy strikes were also outlawed, as were demarcation disputes. Issues such as redundancy entitlements were also left entirely to the parties.

(e) However, one significant change introduced by the ECA which clearly benefited employees was the extension of the personal grievance provisions to every employee. Previously, these had only been available to union members, but the ECA recognised the right of any employee to challenge their dismissal (by virtue of a personal grievance claim).

7.2 Employment Relations Act 2000 ("ERA")

(a) The Employment Relations Act came into force on 2 October 2000 and represented another major re-haul of employment law, not only from the ECA but also from its pre-1991 antecedents.

(b) The Government's rationale was that the ECA did nothing to remedy the inherent inequality of bargaining power in employment relationships. Under the ERA, promoting collective bargaining through unions is considered the best way of redressing that imbalance.

(c) The ERA was amended in December 2004 by the Employment Relations Amendment Act (No. 2) 2004 ("ERAA"), with one of its aims being to further promote and strengthen collective bargaining. The ERAA's key amendments relate to the duty of good faith, collective bargaining, the test applied in assessing a claim for unjustified dismissal, and protection to employees where business undertakings are sold, transferred or contracted out. These changes are addressed in more detail below.

(d) Not only did unions and collective bargaining return as the centrepiece of New Zealand's industrial relations system under the ERA, but a statutory concept of good faith was introduced to apply to all aspects of the employment relationship (including, interestingly enough, to relations between unions). However, the ERA is not a return to the centralised system dominant in New Zealand for so long. There are no provisions for government wage fixing or compulsory arbitration; multi-employer collective agreements are lawful, but the only means to bring these about are by agreement; unions must compete amongst themselves for employees, and there is no compulsion on employees to join any union.

(e) The ERA deals with six key areas which are now analysed in more detail. These areas are:

(i) unions;

(ii) collective agreements and good faith;

(iii) strikes and lockouts;

(iv) individual agreements;

(v) dismissals; and

(vi) mediation and the Employment Relations Authority.

7.3 Unions

(a) A key objective of the ERA is to promote unions and collective bargaining. Consistent with this objective, the ERA specifically recognises unions as the only lawful representative of employees' collective interests. The ERA entitles unions to represent their members in relation to any matter involving their collective interests, and it also allows unions (and other representatives) to represent employees with respect to their individual rights (for example, at mediation and in court actions), provided that they have the employee's authorisation.

(b) Consistent with this key role for unions, a collective agreement can only be concluded by a union and an employer. Employees cannot band together to negotiate a collective agreement unless they have formed and registered as a union. Therefore, while union membership is voluntary, if an employee wants to be involved in a collective agreement and to bargain collectively, they must be a member of a union.

7.4 Access

(a) In order to facilitate union rights to represent employees, the ERA substantially increased rights of access to workplaces. As such, union representatives can enter workplaces for purposes relating to their "members' employment" and "union business".

(b) The right to access for union business is defined particularly broadly. For example, union representatives may access a workplace to provide employees (including non-union employees) with information about the union, to attempt to recruit employees to join a union, and to simply monitor compliance with a collective agreement or with employment legislation.

(c) The ERAA requires a discussion between an employee and his or her union representative to be of a "reasonable duration". A discussion is not a union meeting, and therefore it does not affect an employees' entitlement to attend union meetings.

(d) The only real limits on a union representative's access to a workplace are the requirements that access is sought at "reasonable times" during any period when employees are working, and reasonable health, safety, and security restrictions are not compromised when/if access if granted.

7.5 Union Meetings

The ERA requires employers to allow every union member to attend two paid union meetings (of two hours duration) each year, provided that the union follows certain notification and procedural criteria.

7.6 Collective Bargaining and Good Faith

As noted earlier, collective bargaining is one of the cornerstones of the ERA. An objective of the legislation is to build "productive employment relationships" through the promotion of collective bargaining. The ERA also introduces the concept of bargaining in good faith, outlines a detailed process for collective bargaining (including multi-party bargaining), and sets out the requirements for collective agreements, including their form, duration, context and application.

7.7 Good Faith Bargaining in the Collective Context

(a) The ERA specifically provides that the "duty of good faith" applies to collective bargaining. The core requirements of the duty can be summarised as:

(i) using best endeavours to enter into an agreement about the process for conducting bargaining as soon as possible after the initiation of bargaining;

(ii) meeting each other from time to time;

(iii) considering and responding to each other's proposal;

(iv) continuing to bargain on matters, about which the parties have not reached agreement, even where they have come to a standstill or reached a deadlock;

(v) recognising the role and authority of the other party to be a representative, and not bargaining, "directly or indirectly" with employees for whom the union acts, nor doing anything that is likely to undermine the authority of the union in the bargaining process; and

(vi) providing each other, on request, with information that is "reasonably necessary" to support bargaining claims or responses.

(b) For the purpose of collective bargaining, the duty of good faith means that an employer, among other things:

(i) must be prepared to meet with any union that acts for any of its employees where that union initiates collective bargaining;

(ii) must consider and respond to the other party's proposals; and

(iii) must not bargain about matters relating to terms and conditions of employment directly with the employees the union is representing, other than by agreement.

(c) A union and an employer that are bargaining for a collective agreement must conclude that agreement unless there is a genuine reason, based on reasonable grounds, not to do so. A genuine reason does not include opposition or objection in principle to bargaining for, or being a party to, a collective agreement, or disagreement about including a bargaining fee clause in a collective agreement under Part 6B.

(d) There is a duty on bargaining parties to provide "information that is reasonably necessary" to support or substantiate claims or responses. This means that in some cases, highly sensitive financial information may be called for (invariably by the union),on the basis that financial data is relevant to support a bargaining position. Should a dispute arise as to whether information is confidential, an "independent reviewer" must decide whether the information is confidential and, if so, to what extent the information supports a bargaining position.

(e) Of concern (at least to employers) is that the only statutory remedy for the disclosure of confidential information is a compliance order. Penalties cannot be sought.

7.8 Facilitated Bargaining

(a) The ERAA introduced the concept of facilitated bargaining. One or more matters relating to bargaining for a collective agreement may be referred to the Employment Relations Authority where one or more of the following grounds exist:

(i) in the course of the bargaining, a party has failed to comply with the duty of good faith, and the failure was serious and sustained, and undermined the bargaining;

(ii) the bargaining has been unduly protracted, and extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement;

(iii) in the course of the bargaining there have been one or more strikes or lockouts, and the strikes or lockouts have been protracted or acrimonious; or

(iv) in the course of bargaining, a party has proposed a strike or lockout which, if one were to occur, would be likely to affect the public interest substantially.

(b) The purpose of introducing facilitated bargaining is to provide a process that enables one or more parties to collective bargaining, who are having serious difficulties in concluding a collective agreement, to seek the assistance of the Authority in resolving the difficulties.

7.9 Passing On

It is not a breach of the duty of good faith for an employer to agree that a term or condition of employment for an employee should be the same or substantially the same as a term or condition in a collective agreement that binds the employer. However, it will be a breach of the duty of good faith for an employer to "pass on" those terms or conditions where:

(i) the employer does so with the intention of undermining the collective agreement; and

(ii) the effect of the employer doing so is to undermine the collective agreement.

7.10 Bargaining Fees

(a) A "bargaining fee", also known as an agency fee, is an amount payable by an employee to the union, when he or she is not a member of that union. The fee may be payable periodically or in a lump sum.

(b) A bargaining fee clause applies to "employees who are not members of a union" who perform work which is within the coverage clause of the collective agreement. The clause must specify the amount of the bargaining fee, and requires those employees to pay that bargaining fee. In the usual case, the fee will be payable periodically, not as a lump sum, although the method for deduction does not specify whether non-union employees might be subject to a lump sum deduction.

7.11 Strikes and Lockouts

(a) Participation in a strike or a lockout will be unlawful if it occurs while a collective agreement binding on the employees participating in the strike or lockout is in force (unless the strike or lock out is justified on the grounds of safety or health).

(b) A strike or lockout cannot occur during bargaining until the parties have been negotiating for a new collective agreement for at least 40 days. The strike or lockout must relate only to the bargaining for a new collective agreement. It cannot relate to a personal grievance, a contractual dispute, a freedom of association issue, or take place in an essential service unless certain notice requirements are met.

(c) The ERA prescribes stringent notice requirements for strikes in "essential services". Employees who are striking (or employers who are locking out) must give between three and 14 clear days notice of the industrial action (depending on which category of essential service they fall into). Notice must be given only if the proposed strike or lockout will affect the public interest, including public safety or health. Therefore, every time a party wishes to take industrial action in an essential service, it has to make an assessment of whether the public interest will be affected; if it decides it will not, no notice is required. This means that strikes or lockouts in essential industries could occur without warning, and the onus will then be on the other party to get an urgent injunction from the courts, if it believes the public interest is compromised.

(d) An employer cannot require non-striking workers to perform the work normally performed by strikers, nor employ another party to perform the work of the striking or locked out employees, unless that can be justified on grounds of safety or health.

(e) This stops an employer from bringing in casuals or contractors to keep a business running during a strike or lockout, and prevents an employer from requiring other workers to do the work of the strikers. The new legislation significantly increases the impact of a strike by introducing the possibility that the strike could shut down a business completely. It also makes a lockout significantly less attractive for an employer because outside labour cannot be engaged during the lockout.

(f) The employer can, however, use employees who agree to do the work of striking or locked out employees.

(g) Striking employees can be suspended, as can non-striking employees, where work is not available for them during the strike or lockout.

7.12 Individual Employment Agreements

(a) The ERA still allows an employee to negotiate an individual employment agreement provided the employer adheres to the procedural criteria set out in the Act. The ERAA extended the duty of good faith to the bargaining of individual employment agreements.

(b) In essence, individual agreements can exist only where:

(i) there is no applicable collective agreement; or

(ii) there is an applicable collective agreement but the employee is not a union member, in which case for the first 30 days of employment the individual agreement will comprise:

- the terms of the applicable collective agreement; and

- any other terms which are not inconsistent with the applicable collective agreement; or

(iii) the employee resigns from the union which is a party to an applicable collective agreement in which case the individual agreement will comprise:

- the terms of the collective agreement; and

- whatever terms the parties agree (with the exception that the employee cannot join another collective agreement until 60 days before the first collective is to due to expire); or

(iv) the applicable collective agreement expires, in which case the parties can agree to whatever terms of employment they wish.

(c) Individual agreements can contain whatever terms the parties can agree but must include:

(i) the names of employee and employer;

(ii) a description of the work to be performed;

(iii) an indication of where the employee will work;

(iv) an indication of the arrangements about hours and days of work;

(v) the wages or salary payable; and

(vi) a plain language explanation of the services available for the resolution of employment relationship problems, including telling the employee about the 90 days in which he or she should raise personal grievances.

7.13 Opportunity to Seek Advice

The ERA requires an employer to ensure that the employee has had a reasonable opportunity (in most cases likely to be five to seven days) to seek independent advice before the new employee signs an individual employment agreement, and any time the employer seeks to vary the individual employment agreement.

7.14 Cancellation of Individual Agreements under the ERA for Unfair Bargaining

The ERA also permits the Employment Relations Authority to cancel an individual employment agreement, order compensation be paid, or make any other order it thinks fit where the employer knows, ought to have known, or could reasonably have inferred that the employee was unable to adequately understand the provisions of an agreement. This inability to understand the agreement could be for a wide range of reasons, including age, sickness, disability, or because no chance was given to get independent advice.

7.15 Probationary Employment and Fixed Term Agreements

(a) Under the ERA, it is possible to employ a new recruit for a probationary period but it must be set out in writing and, even during the probationary period, an employee will still be entitled to all the usual protections of dismissal law.

(b) Any fixed term agreement entered into after 2 October 2000 will only be lawful if the employer has a genuine reason, based on reasonable grounds, for limiting the period of employment and the employer has told the employee when or how the employment will end and the reasons for it.

(c) Fixed term contracts have become commonplace in New Zealand for project type work, but cannot be used as a means to dismiss non-performing staff.

7.16 Employee Protection Provision

(a) The ERAA introduced the requirement of an "employee protection provision" in all employment agreements. An employee protection provision (or EPP) protects employees in situations where business undertakings are sold, transferred or contracted out. The ERAA separates New Zealand employees into two groups:

(i) specified categories of employees (such as cleaners, laundry workers and employees in food catering) have a statutory right to elect to transfer to the new employer as a result of the transfer of business undertakings;

(ii) for all other employees, the employment agreement must specify the process to be followed in cases of a contracting-out or transfer, including the procedure for consultation, offers of employment, and redundancies.

7.17 Dismissal Law

Although the ERA introduced some radical changes from the ECA, the personal grievance action (ie, the right to challenge the justification for a dismissal) has been retained largely in its previous form. However the right of employees to bring a personal grievance action has been enhanced in various ways. An employee can bring a personal grievance claim if he or she has been unjustifiably dismissed or disadvantaged in his or her employment. Pursuant to changes introduced to the ERA in December 2004 (by the ERAA), whether the dismissal or action causing disadvantage is justifiable is determined on an objective basis, and requires the employer to have acted in the way a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred. This test is distinct from the more subjective test that applied prior to the 2004 amendments to the ERAA.

7.18 Information to Employees

Employers must include in all employment agreements, a plain language explanation of the services available for the resolution of employment relationship problems, including a reference to the period of 90 days within which a personal grievance must be raised.

7.19 Exceptional Circumstances

(a) A personal grievance must be "raised" within 90 days of the cause of action arising unless there are "exceptional circumstances". The ERA adopts a liberal interpretation of "exceptional circumstances" (although it is still a high threshold), which includes the following:

   (i) where the employee has been so affected or traumatised by the matter that he or she was unable to submit the grievance; or

   (ii) where the employee reasonably relied on an agent and the agent unreasonably failed to submit the grievance; or

   (iii) where the employer failed to provide the requisite information; or

   (iv) where the employer failed to provide a statement of reasons for dismissal.

(b) The employee must also establish that the exceptional circumstances were the cause of the delay.

(c) Once these factors have been established, the Authority or the Court must consider whether, overall, it is "just" to bring an action outside the 90 day period. The Court's assessment of whether it is "just" involves assessing what is fair and reasonable under the circumstances.

(d) An overall limitation period of three years will apply to the raising of personal grievances, which is less than the six year period under the Limitation Act 1950.

7.20 No Wrongful Dismissal Actions

The ERA stipulates that if an employee who has been dismissed wishes to challenge the dismissal, or any aspect of it, the challenge must be brought in the Employment Relations Authority as a personal grievance. This section effectively removes the common law action of wrongful dismissal.

7.21 Reinstatement - The Primary Remedy

(a) Reinstatement has been made the primary remedy, as it was under the LRA. Any employee who is found to be unjustifiably dismissed and seeks reinstatement must be reinstated unless there are compelling reasons why it is not possible.

(b) The Authority also has the power to order interim reinstatement at any time where an employee has raised a personal grievance, without the need for the parties to first attend mediation.

7.22 Mediation and the Employment Relations Authority

(a) Two new institutions were created under the ERA, the Mediation Service and the Employment Relations Authority.

(b) The focus of the ERA is on "resolving" employment problems as quickly and as close to the point of origin as possible. The ERA aims to achieve this by promoting mediation in every instance. One of the aims is to reduce the amount and cost of litigation by providing easy access to services to help the parties sort out their differences.

7.23 Mediation Services

(a) Mediation is the primary tool for resolution of "employment problems". The Authority and Court are directed to consider the appropriateness of the parties attending mediation at all stages.

(b) With the consent of the parties, a mediator may make a decision on how to resolve a problem. Such a decision is final and binding and enforceable by the parties. There is no power of appeal or review from the mediator's decision. However, in practice, it is rare to give the mediator this type of power.

7.24 Employment Relations Authority

(a) The Employment Relations Authority has significantly greater jurisdiction, including jurisdiction which was previously vested in the Employment Court, High Court and District Court.

(b) The Authority is an investigative body that resolves "employment relationship problems" by establishing the facts and making a determination according to the substantial merits of the case, without regard to technicalities. It aims to promote good faith behaviour, andis required to act as it thinks fit in equity and good conscience, but may not do anything that is inconsistent with the ERA or with the relevant employment agreement. There is no similar quasi-judicial body in New Zealand which has the same investigative powers.

(c) Before taking any steps to investigate a matter, the Authority is required to first consider whether the parties have used mediation and, if they have, whether their attempt was adequate. The Authority can direct the parties to mediation either before it investigates a matter or during the course of any investigation.

(d) In essence, the process for resolving employment relationship problems is for the Authority to call the parties together (after an initial telephone conference) and for the relevant witnesses on each side to make statements under oath. The "investigator" then questions the witnesses, with cross examination conducted at the discretion of the Authority. The only role of the lawyer or advocate present is to suggest lines of enquiry to the investigator and to then make any submissions on law at the end of the proceedings.

(e) The Authority does not adopt an adversarial approach but investigates the substantial merits of the case in a "user friendly" and non-legal style.

7.25 Appeals From the Authority

(a) Parties who are dissatisfied with a determination from the Authority may "elect" to have the matter heard by the Employment Court. The party can elect whether or not it wants to have the hearing "de novo" (ie. a full hearing of the case again, including calling witnesses) or as an appeal.

(b) Where a de novo hearing is sought, the Authority must submit a report to the Court setting out whether the parties have facilitated/obstructed the Authority's investigation and acted in good faith during the investigation.

7.26 Supporting Legislation

The ERA is supported by various statutes which set a "minimum floor of rights". Some of the key statutes are:

(a) **Human Rights Act 1993**

(i) It is unlawful to discriminate on the grounds of discrimination listed in the Human Rights Act 1993 ("HRA"). These grounds include sex, marital status, religious belief, colour, race, ethnic or national origin, disability, age, political opinion, employment status, family status, and sexual orientation.

(ii) The Act applies to all aspects of the employment relationship including advertising, recruitment, and the provision of goods and services. For example, it is unacceptable to ask applicants to complete a form that includes categories such as sex or age, unless these are genuine requirements of the position. However, it is generally acceptable to ask relevant questions about education, experience, certain criminal convictions, driving record, tobacco use, or bankruptcy.

(iii) As the ERA does not address discrimination in recruitment or offers of employment, the HRA is an important piece of complementary legislation. The HRA also contains detailed provisions dealing with racial and sexual harassment.

(b) **Privacy Act 1993**

(i) The Privacy Act 1993 ("PA") came into force after the ECA and has proved to be a significant piece of legislation in New Zealand. The PA establishes 12 Information Privacy Principles which set out broad rules that deal with personal information.

(ii) The PA grants employee's access to their personnel files and impacts on prospective employers seeking information about a job applicant.

(iii) Employers must ensure that information collected on a potential employee is correct before it is used, and that applicants have an opportunity to correct anything that is inaccurate. In addition, personal information collected for one purpose cannot be used for another, unrelated purpose without the permission of the individual.

(iv) An employer must obtain permission from a potential or actual employee before viewing his or her criminal record, and may not inquire into any convictions that have been removed from the potential or actual employee's criminal record under the Criminal Records (Clean Slate) Act 2004.

(v) In terms of providing confidential information when bargaining for collective agreements under the ERA, parties need to be aware of the provisions of the PA.

(c) **Holidays Act 2003**

(i) The Holidays Act 2003 governs the provision of holidays and leaves of absence. The Act guarantees workers not less than four weeks annual leave per year. Annual holidays must be paid at the higher of an employee's average weekly earnings or his or her ordinary weekly pay at the time they go on leave. "Ordinary weekly pay" now includes all regular productivity or incentive based payments, as well as overtime and/or allowances if they are a regular part of pay.

(ii) The pay rate for public holidays must be the same as the employee's "relevant daily rate". In addition, all employees (including salaried and casual) must be paid time and a half of their relevant daily rate for all hours they are required to work on a public holiday. Where the public holiday falls on a day that an employee would have ordinarily worked (and they did, in fact, work on that day) he or she is also entitled to an alternative day off, in lieu of the public holiday.

(iii) Workers are further entitled to five days of sick leave and three days of bereavement leave per death of an "immediate" family member, plus one day of leave for certain other bereavements.

(d) **Parental Leave and Employment Protection Act 1987**

(i) The Parental Leave and Employment Protection Act 1987 guarantees employees with more than one year of service the protection of their position (in most cases) for up to 52 weeks, when on parental leave.

(ii) A maximum of 14 weeks paid parental leave is provided by the Government (not employers) to all employees who have worked for the same employer or have been self-employed for an average of at least 10 hours per week for the previous six or 12 months. The paid entitlement from the Government is approximately $375 per week (gross). Employees or self-employed persons who assume the care of a child with a view to adoption will be similarly entitled.

(iii) In addition to the maximum 14 weeks of paid parental leave, eligible employees may take extended (unpaid) leave up to a maximum total entitlement (including paid leave) of 52 weeks.

(e) **Health and Safety in Employment Act 1992**

(i) Health and safety in New Zealand workplaces is governed by the Health and Safety in Employment Act 1992, the purpose of which is to encourage the prevention of harm to people at work and to others in the vicinity of places of work. The HSEA, which moved away from the prescriptive rules of previous legislation, has created one single reference point for the duties owed regarding work-related health and safety.

(ii) The Act places duties on employers, employees, the self-employed, and others who manage or control hazards. The Government's Occupational Safety and Health ("OSH") administers and enforces the HSEA in the workplace, with the exception of the maritime and aviation sectors, which are administered and enforced by Maritime New Zealand and the Civil Aviation Authority, respectively.

(f) **KiwiSaver**

(i) The KiwiSaver Act 2006 came into force on 6 September 2006, with an implementation date of 1 July 2007. The purpose of the KiwiSaver Act is to "*encourage a long term savings habit and asset accumulation*" via KiwiSaver schemes. The KiwiSaver Act applies to those new employees who are subject to the automatic enrolment rules, existing employees (and the self-employed) who elect to opt in and all employers who are New Zealand residents or carrying on business from its fixed establishment in New Zealand.

(ii) All new employees (there are some exceptions including certain casual workers) aged between 18 and the age of eligibility for New Zealand Superannuation (currently 65 years), will automatically be enrolled in a KiwiSaver scheme (but can choose to "opt out"). In addition any existing employees can choose to "opt in" to a KiwiSaver scheme.

(iii) Employee contributions to a KiwiSaver scheme will be deducted from the employee's gross salary or wages at the rate of 4% or 8% at the employee's option (with some transitional provisions applying).

(iv) Legislation has been introduced which means that, from 1 April 2008, employers are required to contribute to participating employees' KiwiSaver schemes. Contributions commence at 1% of the employee's gross salary or wages, rising by 1% per annum until 2011, when they will reach, and remain, at 4%.

(v) Employers can obtain more information from the Inland Revenue's website: www.ird.govt.nz/kiwisaver. Employers can also encourage their employees to look at www.kiwisaver.govt.nz for information about their options in relation to KiwiSaver schemes.

8. LAND TRANSFER IN NEW ZEALAND

8.1 Sale of Land

New Zealand conveyancing law is purchaser friendly. The general law of contract applies to create a binding obligation between the vendor and the purchaser, once a sale and purchase agreement has been entered into.

8.2 Formation of Contract

It is not essential for the conveyance of an interest in land by sale to be preceded by an executory contract. An executory contract is, however, usually entered into because of the advantage to each party of having the other party bound before the arrangements prior to settlement are embarked upon.

If the shared intention to enter into a binding contract is at issue, courts will start from the assumption that such an intention does not exist unless each party has signed a formal contractual document.

The absence of signed writing does not void a contract for the sale of an interest in land, however, it will render the contract unenforceable by action.

The writing must identify:

(a) the parties;

(b) the price;

(c) the interest in land being sold; and

(d) any other express material terms.

The requirement for certainty as to price is satisfied if the contract provides either a formula for calculation or a machinery for ascertaining the price. A contract to purchase land "at a fair price" or "at a reasonable valuation" provides a sufficiently certain formula.

8.3 Contingent Conditions and Cancellation

Contingent conditions require the parties to act reasonably to procure and not hinder the fulfilment of the condition. A party in breach of this obligation may not invoke the non-fulfilment of the condition as a ground for cancellation. In fact, such failure will constitute a breach of the contractual obligation.

Cancellation may, however, be effected by the failure of a purchaser to pay a deposit promptly when it falls due. An entitlement to cancel may be lost by waiver. An election to cancel must be communicated to the purchaser.

From the time an unconditional contract for the sale and purchase of land comes into existence, the vendor holds the land as constructive trustee for the purchaser of the land. The vendor as constructive trustee is bound pending settlement to care for the property. In other respects the property is at the purchaser's risk, subject to any contrary contractual provision.

8.4 Caveats

A purchaser under a valid contract not subject to a contingent condition is entitled to protect his or her interest by lodging a caveat against the vendor's title. A purchaser under a conditional contract may have a corresponding right, particularly if the condition is a condition subsequent and a court would order specific performance subject to its fulfilment.

9. MAORI LAND LAW

9.1 Introduction

The purpose of this section is to overview the Maori Land system and how it is different from the General Land system in New Zealand and provide a brief outline of the main Maori Land holding entities.

The information contained in this section is not intended to be comprehensive and advice should be sought from a Simpson Grierson specialist on a case by case basis.

9.2 Background to the Maori Land System

Approximately 5% of the land in New Zealand and 15% of the land in the North Island of New Zealand is classified as Maori Freehold Land.

(a) **Types of Maori Land**

The main types of Maori Land are:

(i) "Maori Freehold Land";

(ii) "General Land Owned by Maori"; and

(iii) "Maori Customary Land".

This section focuses on Maori Freehold Land being land which has been determined to be such by the Maori Land Court. Once land is designated as Maori Freehold Land then to change the status will require a Maori Land Court Order.

(b) **Te Ture Whenua Maori Act/The Maori Land Act 1993**

The key distinction between Maori Land and General Land is that dealings with Maori Land are governed by the Te Ture Whenua Maori Act/Maori Land Act 1993 ("TTWM") and administered by the Maori Land Court.

A key objective of TTWM is to promote the retention of Maori Freehold Land and to facilitate the occupation, development and utilisation of that land for the benefits of its owners and their families (whanau and hapu). The tension between retention and development is apparent in a number of areas. For example, additional mandatory processes and processes have to be followed before Maori Freehold Land can be alienated by way of sale or the grant of long term leases.

(c) **The Dual System**

Maori Freehold Land is dealt with through both:

(i) the Maori Land Court in accordance with TTWM; and

(ii) Land Information New Zealand (**LINZ**) in accordance with the Land Transfer Act 1952.

This creates a dual system in terms of recording dealings involving Maori Freehold Land.

(d) **The Maori Land Court**

The Maori Land Court [**MLC**] exercises jurisdiction (legal authority) over Maori Freehold Land pursuant to TTWM and associated rules and regulations. It oversees the determination of issues relating to Maori Freehold Land and also administers Maori Freehold Land. To this end, it is responsible for the maintenance of a register of Maori Freehold Land. This register of land plus information on Maori Freehold Land holding entities or individuals is now available on line.

Unlike the LINZ registration system the Maori Land Register is not an indefeasible system. Accordingly MLC entries for a particular piece of land or details in relation to the holders of interests in the subject Maori Freehold Land need to be carefully checked.

(e) **Types of Maori/Land Holding Entities**

The three main organisational structures by which Maori Freehold Land is held/owned are:

(i) "Maori Land Trusts";

(ii) "Maori Incorporations"; and

(iii) "Multiple Ownership" (land held by individuals).

This section focuses on the most common commercial organisational structures which are "Maori Land Trusts" (and in particular Ahu Whenua Trusts) and "Maori Incorporations".

Dealings with Maori Freehold Land that is owned by Multiple Owners (land held by individuals) can be very complicated and is outside the scope of this overview. When dealing with Multiple Owner Maori land separate specialised advice needs to be sought.

9.3 Maori Land Trusts

Maori Land Trusts are conceptually similar to general or common law trusts, however they are created by the Maori Land Court and are subject to TTWM.

Under TTWM there are 5 types of Maori Trusts. From a commercial perspective the most common is the "Ahu Whenua Trust". Ahu Whenua Trusts are designed to allow trustees to conduct business in relation to the Maori Freehold Land held by the Trust while also meeting the beneficial owners cultural needs.

(a) **How are Ahu Whenua Land Trusts Governed?**

(i) ***Vesting Order:*** The MLC will have issued a "vesting order" vesting the subject Maori Freehold Land into the name of the trustees.

(ii) ***Trust Order:*** The MLC contemporaneously issues a Trust Order – the constitutional document for the trustees. The Trust Order sets out the objectives of the Trust, identifies the land it owns and sets out the powers, obligations and rights of the trustees and beneficial owners.

(iii) An Ahu Whenua Trust is a legal structure designed to own land, shares and other assets for the benefit of the beneficial owners of the assets. Owners share in the Trust Land and other assets in proportion to their interest in the Land. An Ahu Whenua Trust acts through its trustees.

(iv) ***Role of Trustees:*** The role of the trustees is to carry out the terms of the Trust Order and provide proper administration and management of the assets of the Trust in accordance with the Trust Order and the provisions of TTWM.

In most instances the trustees make binding decisions by a majority vote. Certain decisions of the trustees have to be noted with the MLC (eg entering into a lease greater than 3 years). However if the trustees wish to enter into a long term lease (greater than 52 years) or sell or gift the Maori Freehold Land vested in them, then TTWM requires the trustees to obtain a defined level of consent from the owners.

9.4 Maori Incorporations

Maori Incorporations are conceptually similar to companies and were originally designed to facilitate the commercial development and utilisation of the subject Maori Freehold Land. However a Maori Incorporation holds land vested in it on trust for the owners who retain a beneficial interest (and thus a link to the ancestral land). Each owner holds a defined number of shares.

(a) **How Are Maori Incorporations Governed?**

(i) ***Incorporation Order**:* Maori Incorporations are constituted by an Incorporation Order of the Maori Land Court. The Incorporation Order will describe all the land and property owned by the Maori Incorporation. Maori Incorporations are bodies corporate with powers to do and suffer all things body's corporate may lawfully do and suffer. **Note:** If the Maori Incorporation was in existence prior to 1 July 1993, then its "objects" must be checked as prior to 1 July 1993 the objects of a Maori Incorporation could be quite restrictive. To take advantage of the greater freedom under TTWM to engage in a wider range of commercial and other activities the old objects may **have to** be changed.

(ii) ***Constitution:*** Every Maori Incorporation has a constitution governing day to day operation of the Incorporation (eg the process to be followed when convening meetings of shareholders). The standard form constitution (which in the absence of a "tailor made" constitution is the constitution) is set out in the Maori Incorporations Constitution Regulations 1994.

(iii) ***Committee of Management:*** A Maori Incorporation acts through a Committee of Management, usually of between 3 and 7 persons.

(iv) ***Role of Committee of Management:*** The Committee of Management are appointed at an annual general meeting of shareholders. Under the 'deemed' constitution appointments are for a period of three years or as otherwise determined by a special resolution of the shareholders.

(v) The Committee of Management is responsible for the administration of the Incorporation's assets. Committees of Management make decisions binding on the Incorporation on a majority basis. However, in certain situations TTWM requires a special resolution of shareholders to be passed. For example, to approve the grant of a long term lease (greater than 52 years) or a proposal to sell or gift Maori Freehold Land.

(vi) ***Special Resolutions:*** Certain matters must be dealt with by way of a special resolution of shareholders. Special resolutions require 21 days advance notice. Special Resolutions are filed with the MLC.

9.5 Registration Of Maori Freehold Land in the General Land Registration System

Once surveyed Maori Freehold Land can also be registered under the LINZ land registration system and a certificate of title issued. However, for historical reasons a reasonable proportion of Maori Freehold Land has not been surveyed and/or registered in the LINZ land system and thus is not the subject of a certificate of title issued pursuant to the Land Transfer Act 1952. In the past this has created difficulties when dealing with Maori Freehold Land eg supplying a registerable security (mortgage) over the subject land in order to obtain a bank loan. However, the MLC has initiated a project to bring all Maori Freehold Land into the LINZ land registration system. We understand satisfactory progress is being made with this project.

10. PERSONAL PROPERTY SECURITIES ACT 1999

The Personal Property Securities Act 1999 ("PPSA") regulates, to a large extent, the enforcement of security interests over personal property. Consequently, the PPSA has a major impact on financing and corporate insolvency in New Zealand and for anyone who has dealings with entities or personal property in New Zealand.

10.1 Aim of the PPSA

The PPSA is intended to apply to all "security interests" in "personal property". In general, "personal property" can be considered to be any property (for example, goods, intangibles, shares, negotiable instruments, money) other than land.

"Security interest" is defined by using an "in substance" test and essentially means an interest in personal property created or provided for by a transaction that in substance secures payment or performance of an obligation without regard to:

(a) the form of the transaction; and

(b) the identity of the person who has title to the property.

The form of documentation used, or the structure of the transaction, will largely be irrelevant under the PPSA. It should also be noted that certain transactions which may not traditionally be thought of as being "security" are nevertheless deemed to be "security interests" for PPSA purposes. These are leases of goods for a term of more than one year, transfers of accounts receivable and commercial consignments. There are some specific exclusions to the ambit of the PPSA, the principal ones being:

(a) security interests arising by statute or operation of law;

(b) most rights of set-off, netting or combination of accounts;

(c) most interests in land;

(d) mortgages of ships exceeding 24 metres; and

(e) a transfer of a right to payment that arises in connection with an interest in land unless the right to payment is evidenced by an investment security.

10.2 New Concepts

The PPSA introduces two new concepts which are vital for the determination of priorities (whether between competing security interests, or between a security interest and a third party such as a purchaser). These concepts are "attachment" and "perfection":

(a) a security interest generally "attaches" in relation to property where there is a signed (or otherwise assented to) security agreement which contains an adequate description of the property, and where value has been provided by the secured party and the debtor has acquired rights in the property;

(b) a security interest is "perfected" where attachment has occurred, and where the secured party has taken consensual possession of the property or has registered a valid financing statement in relation to the property on a public register known as the Personal Property Securities Register. Registration is likely to be the method of perfection in the vast majority of cases.

10.3 Priority Rules Under the PPSA

The general rules determining priority between competing security interests in the same property are that:

(a) a perfected security interest has priority over an unperfected security interest; and

(b) as between two or more continuously perfected security interests, the first in respect of which:

  (i) a valid financing statement has been registered; or

  (ii) consensual possession has been taken,

  will have priority.

There are a number of exceptions to these general rules.

The major exception to the general priority rules is that relating to a purchase money security interest ("PMSI"); that is in broad terms where the debt is used to acquire the personal property the subject of the security interest.

A PMSI which is perfected within relevant timeframes, will take priority over a non-PMSI (even if the non-PMSI was perfected prior to the PMSI).

In addition to the special priority rules relating to PMSIs there are a number of miscellaneous priority rules relating to:

(a) after acquired property;

(b) proceeds of collateral (whether those proceeds of the property are cash or other personal property);

(c) future advances;

(d) accessions (personal property attached to other personal property, for example an engine put into a motor vehicle);

(e) processed or commingled goods;

(f) transfers of collateral;

(g) collateral which is returned to the debtor or goods which are in the possession of a bailee.

The PPSA also provides statutory rules to allow third parties (such as purchasers and lessees) to acquire interests in personal property free of security interests. These rules are very important to lenders as they determine the circumstances in which a lender's security interests will be extinguished without its consent.

There are also a number of miscellaneous rules whereby various third parties can acquire property free of security interests or have priority over competing security interests including relating to the priorities of liens over goods, holders of money, creditors receiving payments of debts, purchasers of negotiable instruments, investment securities, chattel paper and negotiable documents of title, security interests in crops, assignments of accounts receivables and execution creditors.

Although a security interest is not rendered void for non-registration of a financing statement, it will be prejudicial to its priority position. Financing statements can also be invalid where they contain a defect, irregularity, omission, or error which is seriously misleading. There are also various interests against which a secured party, even where it is the holder of a perfected security interest, can practically do little to protect itself.

10.4 Enforcement

Part 9 of the PPSA, which deals with enforcement of security interests by the secured party, potentially applies to all security interests other than:

(a) those in certain consumer goods; and

(b) the three "deemed" types of security interest (discussed above).

Security agreements can modify some of the provisions of Part 9 and a lender's security agreement can (and should) provide for remedies (particularly receivership) in addition to those provided for in Part 9, and for the negation of certain provisions of Part 9.

The remedies for a secured party with priority over all other secured parties provided for in Part 9 when the debtor is in default are:

(a) the secured party may take possession of, and sell, the property;

(b) the secured party may take the collateral in satisfaction of the secured obligation; or

(c) where the collateral is an account receivable, an investment security, money or a negotiable instrument, the secured party may apply the collateral to satisfy the secured obligation.

A secured party with priority over all other secured parties may also take possession of, and sell, collateral when the collateral is "at risk", regardless of whether there is a default.

Each remedy is subject to its own particular requirements in relation to such matters as the giving of notice, related duties and accounting for proceeds.

11. DISPUTE RESOLUTION

Arbitration is available as an alternative means of dispute resolution in New Zealand. This is governed by the Arbitration Act 1996 which promotes consistency between arbitral regimes based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law in 1985. Arbitration is becoming a major facet of commercial litigation in New Zealand.

Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the agreement is contrary to public policy or under any other law, such a dispute is not capable of determination by arbitration.

The court will appoint arbitrators and umpires when the parties to a dispute cannot agree on an appointment and arbitration is the nominated vehicle to resolve the dispute between the parties.

The court must stay court proceedings if a party to an arbitration attempts to litigate a matter which is within the scope of an arbitration agreement.

The High Court will enforce the awards of arbitrators as though they are judgments of the court. However, the decision of an arbitrator is subject to judicial review if reasons are given and the point at issue is not solely one of law.

It is common practice for commercial agreements to contain specific provisions referring disputes on amending the agreement to arbitration. Arbitration provides a private means of resolving disputes between commercial entities. Even though the New Zealand courts have developed the "Commercial List" (refer to Section 2.4), arbitrations can provide a more expeditious means of resolving disputes between parties than resorting to the court process.

Mediation, as a means of dispute resolution in New Zealand through independent mediation and negotiation institutions, is still in its infancy.

There are various specialist courts that will determine disputes between the parties. These include, for example, the Employment Relations Authority and the Employment Court for any dispute concerning employment relations, and the Environment Court which determines resource management matters. The activities of both Courts are subject to review by the High Court of New Zealand or the Court of Appeal.

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