



Doing Business In New Zealand

ParryField
Lawyers 

Introduction

New Zealand is a beautiful country which welcomes foreign investment and immigrants. It offers a very high quality of lifestyle along with stunning natural beauty and a very clean environment.

Over the years we have helped many overseas companies and individuals with their investments here. As a result of that experience we have created this guide which is intended to provide an overview of the key aspects of investing and doing business in New Zealand.

As well as lawyers who have practised in other parts of the world such as England, Australia and Japan, we have lawyers who are native Chinese speakers in our team who commonly deal with overseas investors, immigration issues and Overseas Investment Office applications.

Grant Adams
Chair of Partners



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Doing Business in New Zealand

Aotearoa

Introduction to New Zealand

New Zealand (Aotearoa) is a diverse and multicultural island nation in the Pacific Ocean. It consists of two main islands apply named the North Island (Te Ika-a-Māui) and the South Island (Te Waipounamu). New Zealand has a population of 5 million. New Zealand is divided into six provinces and the capital city is Wellington, with the most populous and commercial capital Auckland. We at Parry Field are located in the beautiful garden city of Christchurch.

New Zealand is frequently ranked as having one of the most business-friendly environments in the world by institutions such as the World Bank. We also rank highly for ease of starting a business, buying property, paying taxes and protecting minority investors. New Zealand has achieved this status partly as a result of our stable political environment and legal systems.

Government Structure

New Zealand is a parliamentary democracy. New Zealand does not have states or provincial governments. The governing structure is modelled on the British system, which is based on the separation of powers. The institutions of government are divided into three branches:

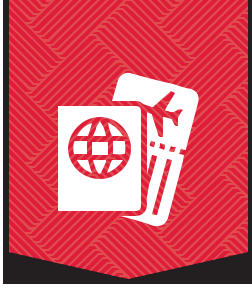
- Parliament
- Executive
- Judiciary

Parliament is democratically elected and comprises of elected members from different political parties. Parliament makes and passes all laws affecting the whole nation. The executive branch is made up of the Governor General (a representative of Queen Elizabeth II), the Prime Minister, cabinet ministers and government departments. The executive is responsible for drafting policies and laws, publishing laws and administering all legislation. The judiciary is comprised of judges and judicial officers, and is led by the Chief Justice. The judiciary applies the laws by hearing cases and giving decisions, they are also charged with balancing the power of the government with the rights and responsibilities of New Zealanders.

Legal System

New Zealand's legal system is based on the common law English system. The law can be developed from case law (the decision of the courts) and from legislation enacted by parliament.





Doing Business in New Zealand

Immigration

At time of writing, the COVID-19 Pandemic has meant New Zealand's borders restrictions have been increased. Accordingly, this guidance is applicable only once border restrictions are lifted. For updates regarding the COVID-19 restrictions please check with New Zealand Immigration's [website](#).

Introduction

The New Zealand Government encourages visitors to New Zealand whether on a short term basis or for permanent migration. Immigration New Zealand is the Government service which handles visas, work permits and immigration.

Long term and Work Visas

If you are looking to emigrate to New Zealand, there are a number of options to be aware of. As a starting point, the key criteria is the economic value a person can contribute by being granted temporary entry or permanent residence. The following are the key classes of visa:

Work visas: These visas allow a person to work for a limited period and are generally valid for up to three years. The categories of visa are wide ranging, and include essential skills work visas, skill shortage work visas, and talent (arts, culture, sports) work visas. To receive a work visa, there are certain requirements that need to be satisfied, such as basic health and character tests. Generally a New Zealand employer will also need to show that there are no New Zealanders who could do the same job that they have recruited the overseas applicant to do. Many of these work visas create great pathways to apply for permanent residence. Australians do not require a work visa.



Entrepreneur work visa: This visa is for experienced people who want to buy or establish a business in New Zealand. To qualify for this visa, you must meet the following requirements:

- Make a minimum investment of \$100,000 in your New Zealand business;
- Meet or exceed 120 points on the points scale (points given for [certain factors](#))
- Provide a business plan;
- Have not been involved in fraud or had a bankrupt business in the last 5 years; and
- Meet health, character, and English language requirements.

If approved, the initial work visa will last for 12 months, with an additional extension of 24 months once you've shown that you've adequately set-up your business. After obtaining your work visa, you will usually be entitled to apply for an entrepreneur residence visa once the business has been operating for a specified length of time.

Investor category visa: For experienced business people who have at least NZ\$3 million to invest in New Zealand, you can apply for an investor category residency. To do this you need to submit an “expression of interest” and meet certain criteria (including the usual health, character and language requirements). Every fortnight a selection of those applicants are chosen (up to 400 per year). Applications that qualify for more points are selected first.

Among other criteria, you must provide evidence that the funds are owned by you and are transferable. You then have 12 months to actually transfer the funds and put them in an acceptable investment in New Zealand.

Investor plus category visa: If you invest NZ\$10 million in New Zealand, then you can apply for this category of visa. The added benefit of meeting this ‘investor plus’ threshold is that you won’t have to spend as many days in New Zealand each year, when compared to the amount of days required under the regular investor category.

New Zealand residency: To apply for residency you need to come under one of the following categories:

- a) Skilled migrant: you qualify for points based on factors like age, work experience, and qualifications. Having a job offer for a skilled job will help to get the right number of points.
- b) Business migrant: you could qualify as an entrepreneur or as an investor (see above). You can apply for an entrepreneur residence category visa if your business creates at least three full time jobs and you invest \$500,000 in the business. Alternatively, you can apply for this category of visa if you have been self-employed in the business for two years and your business has significantly benefited New Zealand.

Visas and immigration rules are subject to change, so it is worth speaking with an expert in this area about a specific situation to determine what the best approach will be.

Short term visitors

Many countries have joined a visa-waiver program with New Zealand, which means that a visa will automatically be granted on arrival. The [list of such countries](#) should be checked before travelling, but examples include France, Germany, Hong Kong, Japan, South Korea, United States of America, and Singapore. Australians do not need a visa to travel. Of note is that a person may be asked to show they have tickets for onward travel and funds to maintain their time in New Zealand. A person who fills in a passenger arrival card is deemed to apply for a visitor visa. Under a visa waiver, visitors can spend up to 3 months in New Zealand, or if you are a British citizen, up to 6 months.

If a person does not automatically qualify for a visitor visa then they will need to apply for one. In doing so, they may be asked to prove they are in good health, are of good character, that a visitor visa will fit with the reason for coming to New Zealand, and that they are a temporary visitor. In addition, the applicant will need to provide proof of funds and an onward travel ticket. Such visas are valid for up to 9 months in an 18 month period. You can apply for another 3 months’ stay in certain circumstances, such as if you need more time to complete your tourist itinerary, so long as you have not worked, studied, or been sponsored during your stay.

New Zealand also offers special category visitor visas, allowing certain people to visit New Zealand for a short time. Examples of those eligible are visiting academics, those taking part in an approved sports or music event, and those travelling for business reasons. New Zealand is a member of the [APEC Business Travel Card Scheme](#), which allows certain business people who are members to have easier access to visit.



Doing Business in New Zealand

Business Entities

There are a number of business structures to choose from when doing business in New Zealand. Taxation and liability are often primary considerations when choosing which business structure to use.

Offshore entities often establish a New Zealand business by using one of the following structures:

- Registering a branch of an overseas company; or
- Establishing a local subsidiary company.

Other common business structures used in New Zealand include:

- Limited Partnership; and
- Joint Venture.

Each of these four structures will be addressed in turn:

Branch of an Overseas Company

An overseas company “carrying on business” in New Zealand must register as an overseas company with the New Zealand Companies Office. An overseas company wishing to register a branch in New Zealand must reserve its name with the Registrar of Companies and apply for registration. The same company name as registered in its home jurisdiction should be used. Of note is that a branch office will not incur New Zealand tax on repatriation of its profits to head office. A branch office is also not required to hold annual shareholder meetings under New Zealand law, but must still lodge annual returns with the Companies Office.

Incorporated Subsidiary Company

To incorporate a subsidiary company, a company name needs to be reserved and the registration process followed with the New Zealand Companies Office. An application for registration must then be lodged. A subsidiary company incorporated in New Zealand must have at least one director and one shareholder, but these can be the same person. Additionally, at least one director must either live in New Zealand, or live in Australia and be the director of a company registered in Australia. The subsidiary company must also have a registered office and address for service at a physical New Zealand address. Non-resident shareholders and directors are otherwise permitted. Additional evidence may be required by the Companies Office for any overseas shareholders or directors.

Limited Partnership

Limited partnerships in New Zealand are governed by the Limited Partnerships Act 2008. A limited partnership must have at least one general partner and one limited partner (who cannot be the same person at the same time). The general partner must either live in New Zealand, or live in Australia and be the director of a company registered in Australia.

The general partner is responsible for the day to day management of the limited partnership. They are also liable for all of the limited partnership’s debts and liabilities, to the extent that the limited partnership cannot pay those debts and liabilities. Conversely, limited partners are only liable to the extent of their

capital contribution to the limited partnership. A limited partnership must have an agreement with all the partners.

Joint Venture

A joint venture in New Zealand is an arrangement between two or more parties who combine together to invest capital or resources in a particular project. A joint venture can be carried out in one of three ways:

- By a company incorporated under the Companies Act;
- By a partnership (including a limited partnership); or
- By an unincorporated contractual joint venture.

An unincorporated joint venture involves the parties entering into a written joint venture agreement. The assets of an unincorporated joint venture are owned by the joint venture parties as tenants in common in the proportions agreed between them.

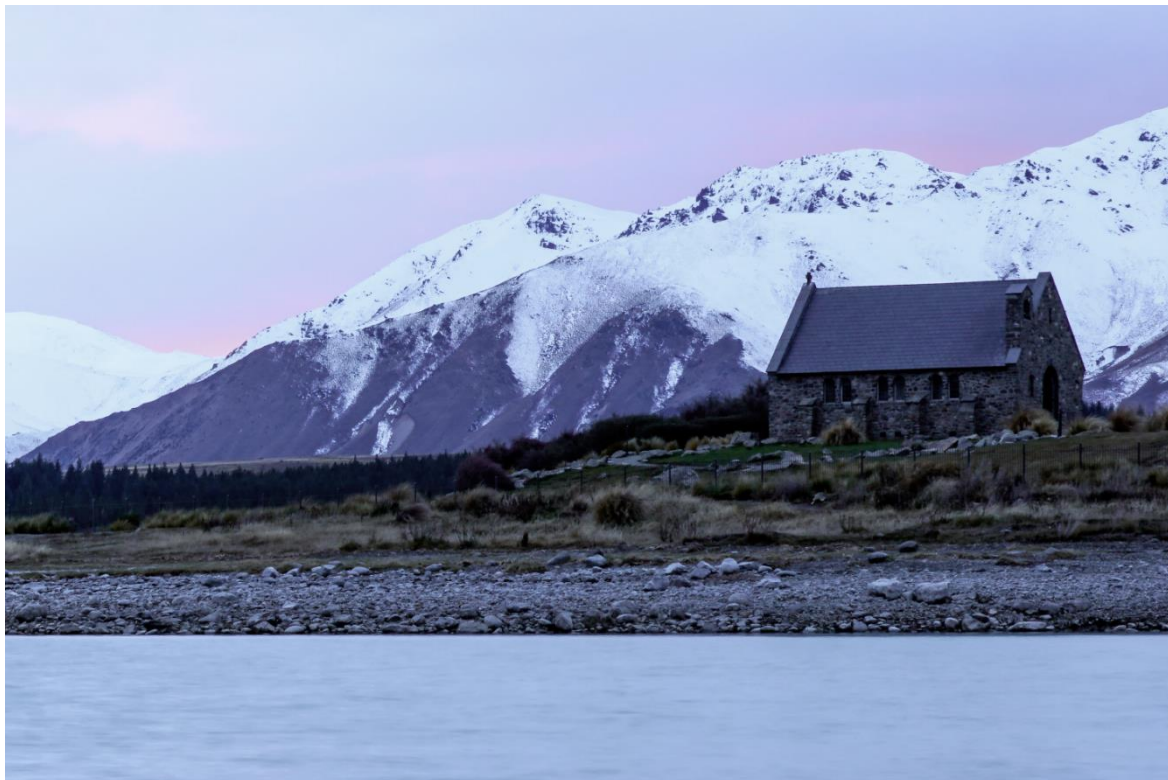
Legal advice is important to ensure the joint venture is not classified as a partnership.

Social Enterprise

Social enterprises are entities or business ventures that have a purpose driven focus. Social enterprise can be operated by societies, charities, trusts or be conducted through a co-operative. Some social enterprises operate through a non-profit model, and others deploy a profits model, but apply the profit to advance the purpose of the enterprise, not just to maximise the profits of shareholders. We have written extensively about the emerging social enterprise scene in New Zealand, and have experts who can assist. For more on social enterprises, please see the Social Enterprise in New Zealand, A Legal Handbook we have published [here](#).

US Persons

As a note we think it is important to mention that US Persons will need to take specific advice about their situation when setting up in New Zealand – there are specific rules that will apply.





Doing Business in New Zealand

Foreign Investment Policy

New Zealand is a small country with a small population for its size and as a result the government welcomes foreign investment as a way to develop the economy and boost the capability of New Zealand companies. This openness to foreign investment is shown by the different 'investor' visa types available for immigrants discussed earlier.

Introduction

There are a limited number of situations where the New Zealand Government may object to an investment by an overseas person. The test which is used relates to whether there is sensitive land or significant business assets being acquired. If certain criteria are met then there is a mandatory application process which must be followed by the overseas investor.

Whether or not consent is required will depend on many factors such as who the purchaser is, where their funding comes from, the amount of money being paid, the type of investment and sector it is in and whether any exemptions apply. Regulation is in the form of the Overseas Investment Act 2005 (OIA) which is administered and enforced by the Overseas Investment Office (OIO).

Overseas person

An "overseas person" is defined to be:

- a person who is not a New Zealand citizen or a person ordinarily resident in New Zealand; or
- an entity (partnership, trust, company) incorporated overseas or where an overseas person has more than 25% ownership or control.

Individual circumstances are likely to affect whether a person or entity will fall within those definitions. Even if the individual making the purchase is not an "overseas person" they may be an "associate" of an overseas person. That is, someone overseas is controlling their actions. If so, then approval will still be needed. The term "control" is given a very wide definition and can be specific or general, indirect or direct and whether actually legally enforceable or not. It is trying to capture the individual that is acting on behalf of someone else that is an overseas person.

What is consent required for?

The two main categories of investment that require consent are the proposed acquisitions by an overseas person of:

- Sensitive land; or
- Significant business assets.

Rules also apply to fishing quotas but these are not dealt with in this guide as they are less commonly seen.



Sensitive Land

Land will be sensitive if it meets certain criteria set out in the OIA. Before proceeding with an acquisition time should be taken to analyse whether it is:

- Five hectares or more of non-urban land (this covers most farms); or
- Land which is defined to be sensitive, such as land which:
 - is foreshore, seabed or one of certain named islands;
 - is greater than 4,000 square metres and contains (or adjoins) a reserve, lake or foreshore; or
 - has historical or conservation significance.

Farm land is a particularly sensitive potential acquisition which has seen significant media commentary in the last few years. If farm land is being acquired one unique criteria is that it must first have been offered on the market in New Zealand (there are procedures regarding this in regulations). As the list above indicates there are a number of different types of land which may require consent if an overseas person proposes to acquire them.

Significant Business Assets

The OIO has chosen the figure of \$100 million to assist in determining if an acquisition or investment is in a significant business asset. Consent will be required if an overseas person is looking to do any of the following:

- establish a new business at a cost of more than \$100 million;
- acquire a business if the value of the business exceeds \$100 million; or
- acquire 25% or more of a company where the value of the consideration or the assets of the target company and its subsidiaries exceeds \$100 million.

These monetary thresholds may be impacted by agreements with other countries. For example, the figure in 2020 is \$536 million for Australian non-government investors. For those countries which have signed up to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership the figure will be \$200 million.

Examination of Proposals

An application will need to include extensive information about the applicant and the proposed investment. If you are an overseas person then when you make an application you will need to satisfy both:

Investor Test: this requires applicants to show good character, that they have business experience, and are financially committed to that investment. (There has been publicity about this where the OIO approved an acquisition and it later emerged that the overseas persons involved had been convicted of offences in another jurisdiction). And;

Benefit to New Zealand Test: there are 21 criteria that the OIO will look at. Some of these include:

- whether there will there be creation of new jobs from the investment;
- access to the land by the public;
- additional investment to develop an acquisition;
- new technology that may be brought in; and
- protection of historic heritage or conservation areas.

The OIO is also interested in understanding the 'counterfactual'. That is, what would happen if this particular applicant did not make the investment? In particular, they will be interested in understanding the likelihood of someone else buying the property or business and whether they would invest (or not invest) further money in it.

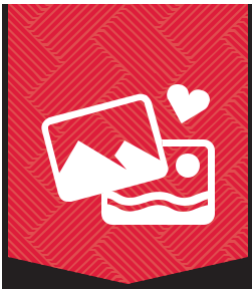
A consent which is granted will typically contain conditions which must be followed and also contain some requirements to report back to the OIO. If no consent is obtained and there is a breach which the OIO

becomes aware of then penalties can be applied such as divestment of the acquisition as well as fines and even imprisonment.

Timing Involved

The OIO prioritizes the applications received by considering risk and complexity factors associated with both the investor and the investment. They will then provide an estimate of how long it will take to make a decision. In 2018/2019, the OIO aimed to respond within 40 working days for Significant Business Assets applications and within 65 working days for Sensitive Land applications.

However, there is no statutory timeframe for the decision to be made so it could take less or more time, depending on the situation. The OIO may also ask questions of the applicant which can delay the process so it is really important to get the application right when it is first submitted. Approximately 25% of applicants are immediately rejected as they lack information or are of poor quality.



Urgent Changes to Overseas Investment Rules

Introduction

On 16 June 2020, the Urgent Matters Act 2020 came into force, bringing changes to overseas investment in New Zealand. The purpose of the new changes is to support the Government as part of its business response to the COVID 19 pandemic, to encouraging economic growth through investment. The changes are designed to simplify the process, while also ensuring the protection of New Zealand's national interests. The Act introduces four key changes, these changes impact overseas investors considering investing in New Zealand businesses.

Temporary Emergency Notification Requirements

Overseas investors will need to notify the OIO if their investments are 25% of a New Zealand business or its assets. The OIO will also need to be notified if ownership is increased beyond 50%, 75% or to 100%. There are no monetary thresholds.

Notification is not needed where the investor already has consent or requires consent under another criteria. Investors will need to fill in the [online form](#), at no cost, which asks for information such as the type of transaction, if there is a target entity and details of the investor. Once submitted, the application will be assessed to determine whether further assessment is needed or if the transaction can be approved.

Failure to notify can lead to serious implications, including civil penalties of up to \$10 million. However, this regime is intended to only apply for a limited time. The majority of transactions will be approved in 10 working days.

New National Interest Assessment

The OIO along with advice from the Minister of Finance are tasked with ensuring overseas investments are not contrary to the national interests of New Zealand. The question they ask is will: the transaction be contrary to the national interest? This test will be applied:

- if a notified transaction requires further assessment;
- if a consent application involves a strategically important business; or
- if the Minister of Finance wants more information.

OIO will look broadly at factors such as competition, social impacts, character of the investor, national security, public order, international relations, alignment with NZ values and interests as well as broader policy settings. As an example, they will look more closely at military technology investments.

Investments may have conditions attached, be prohibited or could proceed without conditions.

Simplified Screening

A key feature of this change is that certain low-risk transactions do not need consent (e.g. small increases in shareholding). The Act introduces automatic standing consents (ASC) that give unconditional consent to a transaction without requiring an application or fee. ASCs may apply to:

- entities that are not more than 50% owned by overseas investors;
- land adjoining sensitive land; and
- managed investment schemes and some debt transactions.

As an example, if an overseas person is buying land next to sensitive land, that may qualify for the ASC. Also, loans and debt can qualify for automatic consent.

Enforcement powers

Breaching the overseas investment rules is serious. The Urgent Matters Act grants the OIO stronger enforcement powers and increased maximum civil penalties. Penalties for individuals range from \$300,000 to \$500,000 and penalties for companies can reach \$10 million.

Overall it appears that the intention is to allow easier investment in New Zealand. However, as you can see from the detail in this short update it is worth speaking with advisors about the particular context as there are likely to be additional points to consider to ensure you qualify for the simpler regime. The changes are also subject to frequent review. For more information the OIO website has a lot more information. For example, the above is discussed in more detail [here](#).



Doing Business in New Zealand

Intellectual Property

The business environment in New Zealand is a combination of the public and private sector which are both integral to New Zealand's economy.

Intellectual Property Protection

Intellectual Property Protection is important in a global economy where there are emerging economies, advancing technologies and ever increasing trade deals made between nations. As such, New Zealand has incorporated legislation to protect intellectual property to incentivise businesses, inventors and individuals across all spectrums as well as complying with its international obligations as a signatory to the World Trade Organisation Agreement on Trade Related Aspects of International Property Rights and other various intellectual property related agreements.

Patents

Patents are governed by the Patents Act 2013 and are granted by IPONZ (Intellectual Property Office of New Zealand) which gives the patent owner exclusive right to make or sell an invention for the period of 20 years. The rationale for providing this exclusive monopoly is to incentivise inventors and stimulate economic growth.

The test for an invention to be patentable is as follows:

- a manner of manufacture within the meaning of section 6 of the Statute of Monopolies; and
- when compared with the prior art base;
 - is new;
 - involves an inventive step; and
 - is useful.

New: the new Act, unlike the former Act, extends the new requirement to anywhere in the world, which increases the threshold of what invention can pass the novelty test.

Inventive Step: means that the invention must not have been obvious to anyone else who has particular expertise in that same field in which the invention is created.

Usefulness: is judged by whether the invention has a 'specific, credible and substantial utility'.

The most obvious disadvantage of patenting an invention under the patent system is the requirement of complete disclosure of how the invention works and is made. Although the patent protects the invention for 20 years, when the 20 years has ended, competitors can use the disclosed information to make their own version of the invention.

New Zealand has a small population so the New Zealand patent system is dominated by overseas corporations to whom New Zealand patents are granted. The 2019/2020 figures state that 318 patents were granted to New Zealand residents compared with 6,161 patents that were granted to non-residents.

Some inventions are excluded from being patentable, because they are seen as contrary to public order or morality, for example, an invention that is a process for cloning human beings.

Furthermore in New Zealand there is also protection for Māori Traditional Knowledge in the form of the Māori advisory committee. This committee can advise if any invention seeking a patent that involves Māori Traditional Knowledge breaches the intellectual property rights of Māori.

Trade marks

Trade marks in New Zealand are governed by the Trade Marks Act 2002. This legislation protects registered trade designations and business goodwill. The reputation of businesses is inextricably linked with their trademark and trade name meaning that the Trade Marks Act 2002 and the common law principle of 'passing off' are more focussed on distribution and marketing the trademark.

Under section 5 of the Act, a trade mark is defined as 'any sign capable of being represented graphically; and distinguishing the good or services of one person from those of another person.' A sign includes a:

- brand,
- colour,
- device,
- heading,
- label,
- letter,
- name,
- numeral,
- shape,
- signature,
- smell,
- sound,
- taste,
- ticket,
- or word; and
- any combination of signs.

When a proprietor registers a trade mark under this legislation, they become entitled to the exclusive right to use that trade mark for the business that it was registered for i.e. trademarks are used to differentiate similar products and services between trading competitors.

Trade mark registrations are valid for 10 years and are renewable.

In New Zealand, IPONZ is the body which considers whether a trade mark meets the test of registration. The test is that if a trade mark seeking registration must be a sign under section 5 of the Act and have 'distinctive character' in relation to the products and services that it relates to under section 18. A mere description of the products and services will not be registrable as a trademark.

Passing Off and the Fair Trading Act 1986

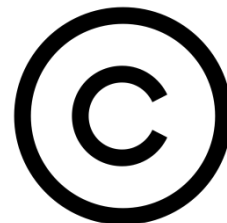
Passing Off is a common law action which protects business goodwill against misleading conduct by competitors. This action is used to protect the owners of registered and unregistered trademarks from competitors 'passing off' the trade mark as their own. The interpretation and application of this common law principle is derived from English and Australian case law, as well as case law in New Zealand.

Although the Fair Trading Act 1986 is consumer protection legislation, traders often bring actions under section 9 in conjunction with an action in 'Passing Off' against other traders for misleading and deceptive conduct to protect their registered or unregistered trade mark.

Copyright

Copyright is a property right which is governed by the Copyright Act 1994. Copyright does not protect mere expressions of thought and ideas. For something to be protected by copyright it must fall within a type of work. The types of work protected by copyright include:

- Literary works;
- Dramatic works;
- Musical works;
- Artistic works;
- Sound recordings and films;
- Communications works; and
- Typographical arrangements of published editions.



However, unlike patents and trademarks which are able to be registered, copyright inherently exists if a work is original. The longevity of copyright is usually calculated by the lifetime of the author plus 50 years,

depending on the type of work. This differs from many other jurisdictions which have shifted the duration of copyright protection to be the author's lifetime plus 70 years.

Design

Registered Designs are protected by the Designs Act 1953. Registration under the Act gives the owner of the design the 'exclusive right in New Zealand to make or import for sale or for use for the purposes of any trade or business, or to sell, hire, or offer for sale or hire, any article in respect of which the design is registered' (section 11(1)). In essence, the owner has the copyright of the design.

For a design to be registrable under the Act, it must be new or original, applied to an article, and applied by an industrial process, comprise of features such as shape or pattern and appeal to the eye.

The owner of a design registered under the Act enjoys protection for five years with rights of renewal for two additional five year periods. Fees are payable to be granted renewal rights.

In New Zealand, copyright protection can subsist in designs. Therefore, some businesses choose not to register their designs under the Designs Act 1953 and instead rely on Copyright law. However, the advantage of registering a design under the Designs Act 1953 is most obvious when it comes to enforcing rights against an infringement – particularly competitors' products. To show that a product is infringing the registered design, the owner needs to show that the infringing product is not substantially different from their design. This provides greater protection than copyright because a design can infringe on another even when created independently. Whereas, for a copyright infringement to be enforced, copying needs to be shown to have occurred. This can be difficult to prove.





Doing Business in New Zealand

Business Environment

Plant Variety Rights

The Plant Variety Rights Act 1987 gives the owner of a registered plant variety the exclusive right to create the variety for sale. It may be licensed, mortgaged or assigned to another person. The Act also gives the owner of fruit and vegetable varieties the exclusive commercial right to commercial production of that fruit or vegetable.

A grant under this Act gives the owner 20-23 years of exclusive protection depending on the type of plant from the date of application.

Trade Secrets

There is no specific legislation in New Zealand relating to trade secrets. It is because of this that different forms of protection have emerged such as copyright for computer programs. However, in New Zealand confidential information such as trade secrets are protected under the common law action – breach of confidence. This action also has been applied to employer and ex-employee relationships in New Zealand. This is similar to the law that has developed in England and Australia.

Privatisation

During the 1980s and 1990s, the New Zealand Government systematically privatised many state-owned assets on the advice of the New Zealand Treasury. The goal was to deregulate the economy and make government more efficient. The assets privatised crossed a range of industries including telecommunications, transport, the finance sector, the electricity and gas sector.

During the early 2000s many of these assets that were bought back by the New Zealand Government when the privatisation of these assets seemed to have failed. Privatisations ceased during this time. However, since 2008 until now, the policy of the current government is not to carry out a systematic privatisation of state-owned assets but to partially privatise some of them. For example, the Government owns the majority of shares in Air New Zealand as well as various energy companies such as Meridian Energy, Genesis Energy and Mercury Energy.

The goal of this current privatisation policy is to reduce the need to borrow, encourage economic growth and improve public services by providing the investment capital required to achieve this.

Banking Sector

The Reserve Bank of New Zealand is New Zealand's central bank established in 1934. The Reserve Bank's primary role is to manage monetary policy and maintain price stability. The Reserve Bank also has the sole right of issuing legal tender in New Zealand. The Reserve Bank is not privately owned, nor does it have any elements of private ownership. It operates under the authority of the New Zealand Government under the Reserve Bank of New Zealand Act 1989. The Reserve Bank has supervisory authority over the New Zealand banking system, but does not offer financial services to the public.

Combined, these four banks hold the majority of the public's loans, advances and mortgages. Apart from these four banks, New Zealand has 23 other registered banks. Most are subsidiaries of foreign parent company's which provides diversity in ownership and strong growth through offshore investors in the banking sector. Kiwibank is New Zealand's largest New Zealand owned bank. It was established in 2002 and is a subsidiary of the state-owned enterprise New Zealand Post Limited.

In New Zealand, the 'big four' banks that offer financial services are all Australian owned. They are as follows:

- ANZ – (Australia and New Zealand Banking Group);
- ASB – (Commonwealth Bank);
- BNZ – (Bank of New Zealand which is owned by National Australia Bank); and
- Westpac.

Competition policy

Competition policy is governed by the Commerce Act 1986. The goal of this Act is to promote competition within New Zealand markets for the ultimate benefits of consumers. Any conduct that restricts competition within these markets is prohibited under the Act. It also sets out the rules surrounding mergers and acquisitions which affect New Zealand markets. Prohibited activities under the Act include, but are not excluded too:

- Price fixing agreements between competitors;
- Taking any substantial amount of power in the market for an anti-competitive purpose; and
- Any purchase or arrangement of a business's shares or assets that causes a substantial lessening of competition in the market.

The Fair Trading Act 1986 was developed alongside the Commerce Act 1986 to protect consumers from unfair trade practices and misleading and deceptive conduct by traders.

The rules under the Commerce Act and Fair Trading Act are enforced and regulated by the New Zealand Commerce Commission.

Managed Investment Schemes in New Zealand

The Financial Markets Authority (FMA) is one of three important regulators of investment schemes and markets in New Zealand. The introduction of the Financial Markets Conduct Act 2013 has replaced earlier securities legislation and the FMA has received a wider scope of regulatory tools in which to regulate the New Zealand economy. The FMA's primary goals are to promote and facilitate the development of fair, efficient and transparent financial markets, and to promote the confident and informed participation of businesses, investors, and consumers.

Licensing and Registration

A requirement of the Financial Markets Conduct Act 2013 is that, to be authorised, a Managed Investment Scheme (MIS) must be registered. There are two types of MIS:

- **Open-ended** which includes KiwiSaver, Superannuation, workplace saving schemes, open-ended unit trusts.
- **Closed-ended** which includes forestry partnerships and property syndicates that invest in a single asset class.

To be regulated under this Act, a MIS must also have a licensed manager if it is the intention and/or requirement of the manager to make a regulated offer of managed investment products to retail investors and register a non-restricted MIS that the manager has been appointed to.

The rationale behind mandatory licensing of MIS managers is to raise industry standards, increase confidence in New Zealand's markets and outcomes for investors and consumers.

To be eligible to obtain a MIS manager licence, the business that is managed must meet the new minimum standards set out in the licensing guide under the Act.

Environmental laws

New Zealand's central environmental legislation is the Resource Management Act 1991. The purpose of this Act is to 'promote the sustainable management of natural and physical resources' (section 5). To fulfil this purpose, the Act gives the responsibility to local government in the form of city, district and regional councils to develop district and regional plans. These plans set out what activities are permitted, prohibited or require resource consents as a way to manage their environment and resources.

However, this Act is extensive and complicated. The Resource Legislation Amendment Act 2017 sought to streamline and standardise the planning process. It was intended to create national consistency making the process more simple and affordable for businesses and individuals to apply and obtain resource consents, while not compromising the country's commitment to the sustainable management of the environment.

However, the Resource Management Act 1991 remains controversial, with the National Party proposing to abolish the legislation.

Fuel Industry and Regulation

The oil industry is the country's largest source of energy and therefore has significant impact on the economy. The industry was deregulated in 1988. Examples of the consequences of deregulation included cessation of governmental involvement in New Zealand's oil refinery and removal of limits surrounding the importation of refined products.

New Zealand is a net importer of both crude and refined oil with it mainly coming from the Middle East, Russia and Asia. New Zealand's oil refinery is sufficient to meet the refining needs for the majority of the country's oil demands. The three largest oil companies in New Zealand are BP, ExxonMobil (Mobil) and Z Energy. Together, all three companies are majority stakeholders in the refinery. These companies are also the importers of oil. The New Zealand Government does not independently import fuel. Diesel and petrol are the main fuels consumed in New Zealand. The former being used for commercial land transport and the latter for private use.

However, New Zealand is also an exporter of oil. The oil produced in New Zealand is of a high quality and thus, more valuable to the economy to export rather than consume domestically. Australia is the main buyer of this oil.

The oil producing industry in New Zealand is regulated by legislation and Government agencies and local governments share the responsibility for regulating the industry and enforcing these regulations. Petroleum and mineral activities are carefully managed to lessen detrimental environmental effects and protect the health and safety of the workers in this industry.

Franchising In New Zealand

New Zealand is an energetic market to own and operate a franchised business in. New Zealand has the largest number of franchise systems per capita in the world. However, unlike Australia, New Zealand does not have any specific legislation governing franchises. Franchising in New Zealand is reliant upon normal contract laws and the voluntary Codes of Practice and Ethics put out by the Franchise Association of New Zealand (FANZ).

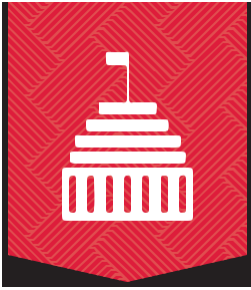
The main goals of the FANZ Code of Practice are:

- To encourage best practice throughout franchising;
- To provide reassurance to those entering franchising that those display the logo of the FANZ have met the relevant requirements;
- To provide the basis of self-regulation for franchising; and
- To display the effort within franchising to regulate itself.

Aspects of legislated principles found in Australian legislation are also found in the FANZ Code of Practice. Examples of what rules this code mandates include disclosure requirements, a cooling off period, dispute resolution procedure and a code of ethics.

Despite no legislation regulating franchises, FANZ is an advocate of and maintains very high standards for franchising practise. The existing laws provided under the Fair Trading Act 1986, the Commerce Act 1986 and the Contractual Remedies Act 1989 give adequate protection to franchisees as they carry out trade.

The overall turnover from New Zealand franchises is over \$27 billion with the annual sector growth estimated to be 13% as of 2017.



Doing Business in New Zealand

Government Initiatives & Incentives

The Government provides some initiatives and incentives for business in New Zealand. These include:

- NZTE Capability Development Vouchers which can be used towards capability development for your business;
- Research and Development funding and support;
- Financial guarantee products for exporters; and
- A New Zealand Screen Production Grant for international productions of film in New Zealand.
- The Regional Business Partner Network. Parry Field are a registered Service Provider under the Regional Business Partner Network. If you are looking to grow your business but require some support, you may qualify for vouchers to help pay for services. We can provide service in the following categories:
 - **Business Planning:** We can provide training for Directors of businesses who are looking at their plans and considering what changes they might need to put in place or those who are looking to start a business and are planning the first steps they need to take when it comes to legal structures.
 - **Capital Raising:** Growing your business is important and we can provide training around how business owners can raise funding for their venture, covering topics such as types of investors, due diligence processes, Financial Market Authority rules and documentation often needed, such as share Sale and Purchase Agreements and Shareholder Agreements.
 - **Governance:** It is important that you have all the right practices, processes and policies in place in order to guide your business in the right direction. Therefore, it is important to know and understand how to run a business, as well as the legal obligations that are associated with it. We can provide you with the knowledge of different legal structures that will assist you in deciding the best structure for the business based on what stage it is at. We will also assist with director duties, governance documents, explain how these work and the importance of having the right documents in place.



Doing Business in New Zealand

Taxation

Taxation Policy

New Zealand wants to encourage investment and so has a tax regime which compares favourably with other countries. The competitive and low-compliance tax system includes:

- No payroll tax;
- No social security tax;
- A recoverable Goods and Services (GST) tax; and
- Tax-deductible business expenses.

The tax system is overseen by the New Zealand Inland Revenue Department (commonly called the IRD) and the main legislation is the Income Tax Act 2007. The tax year in New Zealand runs from 1 April to 31 March. It is possible to apply for a non-standard balance date but that requires special approval from the IRD.

New Zealand income tax will be payable by non-residents of New Zealand on the income which is sourced in New Zealand and by New Zealand residents on their worldwide income.

As tax laws are complex, have strict penalties and can change from time to time consultation with a local specialist adviser is recommended in order to ensure the most effective tax structure is adopted for any investment into New Zealand.

Income Tax

Both resident and non-resident companies pay income tax at a flat rate of 28% on amounts received in income.

Individual residents pay tax at the following rates:

Taxable Income rates for the 2020-2021 Tax Year	Tax Rate
Up to \$14,000	10.5%
Over \$14,000 and up to \$48,000	17.5%
Over \$48,000 and up to \$70,000	30%
Remaining income over \$70,000	33%

The amount of tax to be paid on New Zealand sourced income by a non-resident will vary depending on the country where they are tax resident. This is due to the double tax treaties which New Zealand has with many other countries.

Capital gains tax

Traditionally there has been no all-encompassing capital gains tax on sale of land. However, a new tax was introduced in October 2015 aimed at cooling down the Auckland property market. This provides that if a property is purchased and then sold within 2 years then capital gains will be taxable (this does not apply to

the main home of a seller). In addition, foreign investors in property are required to register with the Inland Revenue Department and obtain an official tax number (a New Zealand bank account is required to obtain one).

While it is commonly said that New Zealand does not have a capital gains tax, this is not strictly true. There may need to be an accounting for profit made on the sale of assets – in other countries these might be taxed as capital gains. Specific advice should be sought on this in light of the detailed rules in the Income Tax Act 2007.

Goods and Services Tax (GST)

The GST rate is 15% and it is payable on the supply of goods and services in New Zealand.

Employer Obligations

- **PAYE Tax:** Employers must deduct “pay as you earn” tax from wages or salaries paid to employees.
- **ACC:** The Accident Compensation Corporation levy must be paid by employers to help cover cost of accidental injuries.
- **Fringe Benefit Tax:** Employers may have to pay fringe benefit tax where they provide employees with certain benefits such as using company cars or discounted goods or services. This tax is payable quarterly and is deductible from assessable income
- **Superannuation:** Employers are required to contribute to ‘Kiwisaver’ which is a superannuation scheme for workers. The amount that must be contributed is currently set at 3% of the employee’s salary.

Stamp Duty

In contrast to other jurisdictions like Australia, there is no stamp duty applicable in New Zealand.





Doing Business in New Zealand

Workplace Relations

The Employment Relations Act 2000 is the main legislation which governs employment law in New Zealand. Employees are protected by a minimum standard of statutory rights. This Act provides that all parties to an employment relationship owe a duty of good faith to the other party in that employment relationship.

Annual Leave

An employee is entitled to four weeks' paid annual leave at the end of each year of employment with any one employer.

Employees can ask (in writing) to cash-in up to one week of their annual holidays each year.

Casual employees and fixed term employees can usually agree to receive holiday pay on a regular basis as opposed to taking leave.

Bereavement Leave

After six months, employees are entitled to paid bereavement leave of:

- Three days on the death of a spouse/partner, parent, child, sibling, grandparent, grandchild, or spouse/partner's parent;
- One day if their employer accepts they've suffered a bereavement involving another person not included above.

Parental Leave

A primary carer may be entitled to take up to 18 weeks parental leave and receive parental leave payments during this period.

Unpaid Parental Leave

Employees who have worked for the same employer for an average of at least 10 hours a week for 12 months before their baby's due date may take up to 52 weeks extended leave.

Employees who have worked for the same employer for an average of at least 10 hours a week for 6 months before their baby's due date may take up to 26 weeks extended leave.

Right to Request Flexible Working Hours

All employees have a statutory right to request flexible working arrangements and all employers have a duty to consider seriously any requests.

Public Holidays

Employees are entitled to 11 public holidays off work on pay if they are days when the employee would normally work.

Employers and employees can agree to transfer the observance of a public holiday to another working day to meet the needs of the business or individual employees.

Minimum rates of pay

There are three minimum wage rates in New Zealand:

1. Adult minimum wage:

All employees aged 16 years and over must be paid at least the adult minimum wage rate, unless they are starting-out workers or trainees. From 1 April 2020 the adult minimum wage is \$18.90/hour. From 1 April 2021, the adult minimum wage will increase to \$20/hour.

2. Starting-out wage – starting-out workers are:

The starting-out minimum wage is \$15.12/hour from 1 April 2020. From 1 April 2021, the starting-out minimum wage will increase to \$16/hour.

Starting-out workers are:

- 16 and 17 year old employees who have not yet completed six months of continuous employment with their current employer;
- 18 and 19 year old employees who have been paid a specified social security benefit for six months or more and who have not yet completed six months continuous employment with any employer since they started being paid a benefit; and
- 16 to 19 year old employees who are required by their employment agreement to undertake industry training for at least 40 credits a year in order to become qualified.

3. Training minimum wage

All employees aged 20 years or over who are doing recognised industry training involving at least 60 credits a year as part of their employment agreement, in order to become qualified. The training hourly minimum wage rates are \$15.12/hour from 1 April 2016. From 1 April 2021, the training minimum wage will increase to \$16/hour.

There is no minimum wage for employees aged under 16 years.

Kiwisaver

It is not compulsory to participate in a superannuation scheme in New Zealand. Kiwisaver is a voluntary superannuation scheme that all employers must offer to their employees. The scheme is governed by the Kiwisaver Act 2006. Currently an employee can choose to contribute 3%, 4% or 8% of their pay. If an employee contributes to a Kiwisaver scheme an employer must make a contribution which is equal to 3% of the employees' pay.

Notice of Termination or Redundancy

The employment relationship can be ended in several ways such as resignation, retirement, dismissal or redundancy.

Dismissal: There must be a good reason for the dismissal and the dismissal must be carried out fairly. If an employment agreement does not have a notice period, then reasonable notice must be given.

Redundancy: Generally there is no right to redundancy compensation unless employers and employees and/or their union have agreed to it.

Resignation: Employees can resign at any time provided they give reasonable notice. The employment agreement should be checked to confirm notice periods.

Retirement: Employers cannot require employees to retire just because of their age unless the parties have a written employment agreement that was in force on 1 April 1992 and remains in force.

Trial Periods

Following the change introduced in May 2019, only employers who have 19 or fewer employees a can make an offer of employment that includes a trial period of up to 90 days. This trial period must be agreed in writing and negotiated in good faith as part of the employment agreement.

An employee who is dismissed before the end of a trial period can't raise a personal grievance on grounds of unjustified dismissal. An employee can raise a personal grievance on other grounds such as discrimination, harassment or unjustified action by the employer.

Termination of Employment

The Employment Relations Act gives all employees the right to pursue a personal grievance if they have any of the following complaints:

- Unjustifiable dismissal
- Unjustifiable action which disadvantaged the employee
- Discrimination
- Sexual harassment
- Racial harassment
- Duress over membership of a union or other employee organisation
- Employer's failure to comply with obligations relating to continuity of employment for employees affected by restructuring.

Unions

Employees have the right to decide whether they would like to join a union. It is illegal for an employer to put unreasonable pressure on an employee to join or not join a union.

Employers must, if asked, enter into bargaining for a collective agreement with that union.

Accident Compensation

There is no workers' compensation scheme in New Zealand. Instead, workplace accidents are covered by the Accident Compensation Act 2001 ("ACC"). Both employers and employees contribute towards the cost of this scheme through levies.

Health and Safety at Work Act 2015

The Health and Safety at Work Act 2015 came into force on 4 April 2016 (replacing older health and safety legislation). This Act places a primary duty of care on a "Person Conducting a Business or Undertaking" ("PCBU"). A PCBU has the primary duty of care for the health and safety of their workers.

An officer is a person who holds a very senior leadership position and has the ability to significantly influence the management of a PCBU. Every officer must exercise due diligence to ensure that the PCBU complies with their duties or obligations under the Act.

Workers must also take reasonable care for their own health and safety as well as take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons.



Doing Business in New Zealand

Dispute Resolution

Courts

New Zealand's legal system is based on the common law English system.

There are a number of general courts in New Zealand including the District Court, the High Court, the Court of Appeal and the Supreme Court. Most cases are dealt with by the District Court with the High Court handling more serious cases. The Court of Appeal and the Supreme Court are appellate courts. There are other more specialist courts in New Zealand including the Environment Court and the Employment Court.

Arbitration

Arbitration is a common form of dispute resolution in New Zealand. It is an alternative to court-based litigation. The process is usually quicker and more cost effective than going to court. In New Zealand, arbitration is governed by the Arbitration Act 1996. An arbitrator is appointed to hear and settle the dispute. An arbitrator's decision is final and binding on both parties.

Many commercial contracts in New Zealand contain a clause providing for the referral of any dispute arising from the contract to arbitration.

Disputes Tribunal

The Disputes Tribunal is an informal forum that can be used to resolve a wide range of smaller disputes. The Disputes Tribunal is governed by the Disputes Tribunals Act 1988. The Disputes Tribunal is more cost effective, quicker and informal than the court. There are no lawyers or judges in the Disputes Tribunal and disputes are heard by a trained referee.

At parry Field we have a highly experienced Dispute Resolution and Litigation team. Our team has experience in the New Zealand Courts at all levels, and most Tribunals. We are known for being effective and available to assist.



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