



March 08

NZ LAW UPDATE

KOREA AND NEW ZEALAND – MOVING TOWARDS A FREE TRADE AGREEMENT

A joint study commissioned as part of a strategic partnership by New Zealand and Korea, which was adopted by both countries in December 2006, considers a Free Trade Agreement (FTA) would bring substantial economic benefits to both countries.

Both countries rely strongly on trade, and are proponents of an open trading environment. New Zealand's total trade with Korea was worth \$2.7 billion in the year till June 2007.

"The study concluded that the growing and strongly complementary relationship shows that, under an FTA, consumers in both countries stand to gain from increased opportunities for trade, investment, knowledge transfer, and the productivity gains that come from a closer trade relationship". Trade Minister Mr Phil Goff said.

The next step is when the two governments meet this April to explore the study's findings with the researchers and to consider what actions should follow.

OVERSEAS INVESTMENT ACT 2005 – REGULATION 28 AMENDED

A new regulation was introduced in March this year to bolster the factors Ministers may take into account when deciding whether to grant or refuse consent to overseas investment in sensitive land. Regulation 28 is amended by the inclusion of the following:

"(h) whether the overseas investment will, or is likely to, assist New Zealand to maintain New Zealand control of strategically important infrastructure on sensitive land."

The relevant Ministers must consider all of the factors in Regulation 28, in addition to the factors set out in section 17(2) of the Act, to determine which factor or factors (or parts of them) are relevant to the overseas investment. If the relevant Ministers consider a factor to be relevant, they must consider that factor in assessing the benefit of the overseas investment to New Zealand.

As a result of the law change, it will make it harder for the Canada Pension Plan Investment Board to succeed in its current bid for a 40% shareholding in Auckland International Airport Ltd, which is the owner of New Zealand's largest international airport.

In recent developments the Board has announced that if it is successful, it's prepared to lower some of its shareholder voting powers from 40% to less than 25%.

Despite the law change Finance Minister, Dr Cullen said the move was very unlikely to affect New Zealand's international reputation as a destination for foreign investment and nothing in the law prevents foreign entities from bidding for Auckland Airport or other New Zealand assets.

LIMITED PARTNERSHIPS LEGISLATION – BILLS TO OBTAIN ASSENT

Legislation that gives effect to new regulatory and tax rules for limited partnerships and updates the tax rules for general partnerships passed its final stage in Parliament on 12 March 2008.

The passing of the limited partnerships legislation (the Limited Partnerships Bill and the Taxation (Limited Partnerships) Bill) is hailed as being one of the most significant developments in corporate law since the Companies Act 1993. The legislation is aimed at meeting international expectations and to attract and encourage overseas and local investors. There are a number of specific benefits to investors in New Zealand and a flow through treatment for taxation.

Limited partnerships are widely used internationally for investing into another country, particularly in relation to private equity and venture capital investment. Previous barriers to investment into New Zealand are removed in two ways – firstly, by the provision of separate legal entity status for limited partnerships and secondly, by making it possible for foreign investors to have their gains and losses recognised for tax purposes in their own countries.

Some of the key features of the legislation include:

Limited Partnership Agreement

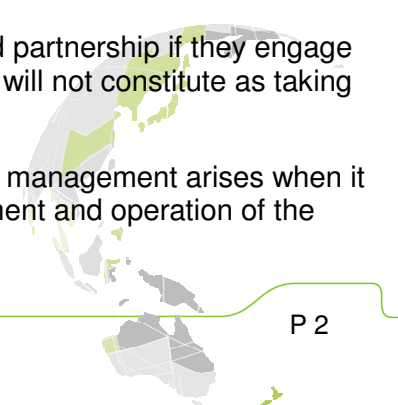
- All limited partnerships must have a written agreement covering specified points. It is recommended that a detailed agreement is preferable to one that only covers the specified points, as the Act is not completely comprehensive. Reliance on a standard form agreement could give rise to costly litigation and uncertainty for participants.
- A limited partnership can be formed for any business purpose, with the exception of insurance and banking, by registration at the Companies Office.

Limited Partners – General Partners

- A Limited Partnership must contain general partners, who are liable for all debts and liabilities of the partnership and limited partners, who are only liable to the extent of their contribution of the partnership.
- Any legal person, partnership under Partnership Act 1908 or an overseas limited partnership may be a limited or general partner.
- The general partner's function is to manage the business of the limited partnership.
- The limited partner must not take part in management of the limited partnership and it may, but is not obliged to, provide money or assets to fund that business.

Control Rule

- Limited partners will be held responsible for the debts of the limited partnership if they engage in management. A schedule of activities in the legislation, list what will not constitute as taking part in management.
- However, uncertainty as to whether a limited partner is engaged in management arises when it exercises a veto, voting and other control rights over the management and operation of the



limited partnership. It has been seen in other jurisdictions with a schedule, that uncertainty may occur and a continued need to update the schedule may result.

Taxation

- A flow-through tax treatment will be applied for all partnerships deriving income, expenses, rebates, losses and tax credits proportionate to their share of partnership income.
- Foreign partners would not be taxed on their proportionate share of foreign sourced income.
- The current approach of applying controlled foreign company rules to partnerships is retained.
- Non-resident partners subject to non-resident withholding tax at the domestic rate or the applicable treat rate on any New Zealand sourced dividends, interests or royalties.

DISCLAIMER

This publication is necessarily brief and general in nature. You should seek further information before taking any action in relation to the matters dealt with in this publication. If you have any questions on the matters discussed in this update please contact the New Zealand Mackrell partner, Brian Joyce at Clendons North Shore by email brian.joyce@clendonsnorthshore.co.nz or phone 64 9 377 8419

