

September 09

NZ LAW UPDATE

MIGRANT INVESTMENT POLICY

A number of policy changes became effective on 27 July 2009. Their aim is to boost economic performance by making New Zealand more attractive for business and entrepreneurial migrants. The changes are designed to attract migrants who want to invest or set up business in New Zealand.

What were previously three policy categories have been re-engineered into two, with more relaxed rules around each category. The categories are referred to as "Investor Plus" and "Investor".

Under the Investor Plus category there is no requirement for the principal applicant or a member of the family to speak English and there are no age or business experience minimum requirements. What is required is the investment of \$NZ10 million in New Zealand for a minimum of three years and a requirement that the applicant spend 73 days in New Zealand in each of the last two years of the three year investment period. The applicants in this category and the "Investor" category must be healthy and of good character. There is no limit on the number of Investor Plus applications that can be considered.

The second category is more restrictive, but the investment fund minimum is \$NZ1.5million and \$NZ1 million in settlement funds. The applicant must be of an English speaking background or be able to pass the IELTS test (International English Language Testing System) with an overall band score of 3 or more or be a competent user of English. The family of the applicant must have the same level of English competency or pre-purchase ESOL tuition. The applicant must be 65 years of age or younger and have a minimum of three years' business experience. The applicant must maintain the investment funds in New Zealand for a minimum of four years and spend 146 days in New Zealand in each of the last three years of the four year investment period and (if required) complete 20 hours of English language tuition. There is a cap of 300 approved applications per year under this category.

A new Entrepreneur Policy will become effective from November 2009. This will enable a new category called "Entrepreneur Plus" which complements the existing Entrepreneur category. Entrepreneur Plus will enable residence for those applicants who can generate at least 3 fulltime jobs and invest \$NZ500,000 in their business.

The last revamp of the business migrant scheme was carried out in 2007 but only attracted 23 migrants through the policy changes. It will be interesting to review the statistics in two years time to see if the changes have brought increased migration.

CROWN RETAIL DEPOSIT GUARANTEE SCHEME

The scheme was initially established in October 2008 to maintain depositor confidence in a period of extreme financial market stress during the period between Parliaments.

The Crown Retail Deposit Scheme Act came into force on 13 September 2009 extending the scheme on changed terms and conditions until 31 December 2011.

The objectives of extending the scheme are to improve recoveries, avoid depressing an already fragile asset market and provide greater opportunity for a viable non-bank sector going forward. It provides more time for financial markets to stabilise and aligns the end of the New Zealand guarantees more closely with that of the Australian Guarantee scheme.

A list of approved institutions that are participating in the Crown retail deposit guarantee scheme and that have currently signed Crown deeds of guarantee or Crown deeds of nomination are available to view on The Treasury website. (<http://www.treasury.govt.nz/economy/guarantee/retail/approved>)

OVERSEAS INVESTMENT RULES TO BE SIMPLIFIED - UPDATE

The Government has announced in late July that it will be reviewing the Overseas Investment rules with the objective of simplifying the process to make it easier for overseas investors to invest in New Zealand while balancing the need to safeguard some of the country's sensitive assets.

Immediate changes were made to enable Ministers to delegate more decision making powers to the Overseas Investment Office, which will be able to decide all applications except for rural sensitive land or land adjoining waterways.

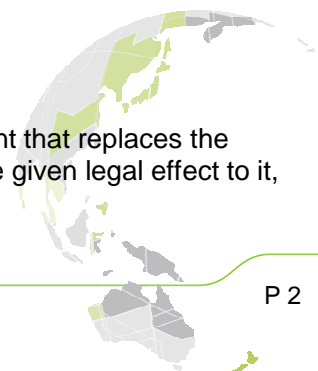
There is to be a review of the Act itself including

- refining the definition of “sensitive land”, which often captures unforeseen pieces of land such as inconsequential waterways adjacent to an industrial site.
- where the current legislation provides that certain land that must be offered back to the Crown by the vendor before the land can be sold to an overseas investors. The rules surrounding this process are seen as not transparent enough and give rise to confusion.
- the threshold for determining an “overseas person” – it is claimed to be set too low in capturing entities that have 25% or more under foreign control which does not always represent a controlling interest.

As 98% of the current applications by overseas persons are approved by the Overseas Investment Office, any reforms in these areas would be welcome to simplify and fast track the applications.

NEW DOUBLE TAX AGREEMENT WITH SINGAPORE

In August, New Zealand and Singapore signed a new double tax agreement that replaces the agreement signed in 1973. It will come into force when both countries have given legal effect to it, which is expected to be before the end of the year.



The agreement contains many changes and revises the limits for source country tax on dividends, interest and royalties.

Dividends were formerly taxed 15% which is lowered to 5% where the recipient is a company that owns, directly, shares representing at least 10% of the voting power in the payer, otherwise it will remain 15%. Interest is taxed at 0% where it is derived from a government body and 10% in all other cases. Royalties are taxed at 5% reduced from 15%.

Other key changes include:

- Changes to the “permanent establishment” definition.
- Provisions for the expanded exchange of information on tax matters between the two countries.
- Provisions that deal with the treatment of income from immovable property and gains from the alienation of movable and immovable property.

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 to brian.joyce@clendons-ns.co.nz or phone 64 9 377 8419

