

ENTRY TO NEW ZEALAND



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GUIDE TO DOING BUSINESS IN NEW ZEALAND





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GUIDE TO DOING BUSINESS IN AUSTRALIA AND NEW ZEALAND

PREPARED BY MERITAS LAWYERS
IN AUSTRALIA AND NEW ZEALAND



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Guide to Doing Business in Australia and New Zealand

This publication has been prepared to provide an overview to foreign investors and business people who have an interest in doing business in Australia and New Zealand. The material in this publication is intended to provide general information only and not legal advice. This information should not be acted upon without prior consultation with legal advisors.

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The following currency notations are used in this book:

AUD Australian Dollar

NZD New Zealand Dollar

Please be aware that the information on legal, tax and other matters contained in this booklet is merely descriptive and therefore not exhaustive. As a result of changes in legislation and regulations as well as new interpretations of those currently existing, the situations as described in this publication are subject to change. Meritas cannot, and does not, guarantee the accuracy or the completeness of information given, nor the application and execution of laws as stated.

FROM THE EDITOR

This book is intended to provide practical and useful insights into the 10 most common questions facing foreign investors and businesses:

1. What role does the government play in approving and regulating foreign direct investment?
2. Can foreign investors conduct business without a local partner? If so, what corporate structure is most commonly used?
3. How does the government regulate commercial joint ventures between foreign investors and local firms?
4. What laws influence the relationship between local agents or distributors and foreign companies?
5. What steps does the government take to control mergers and acquisitions with foreign investors of its national companies or over its natural resources and key sectors (e.g., energy and telecommunications)?
6. How do labor statutes regulate the treatment of local employees and expatriate workers?
7. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?
8. What types of taxes, duties and levies should a foreign investor expect to encounter?
9. How comprehensive are the intellectual property laws? Do local courts and tribunals enforce them objectively, regardless of the nationality of the parties?
10. If a commercial dispute arises, will local courts or arbitration offer a more beneficial forum for dispute resolution to foreign investors?

Contributing to this book are the law firm members of the Meritas alliance in Australia and New Zealand. Each firm is comprised of local lawyers who possess extensive experience in advising international clients on conducting business in their respective countries. The firms were presented with these 10 questions and asked to provide specifics about their jurisdiction along with timely insights and advice. In a very concise manner, the book should provide readers with a solid overview of the similarities and differences, strengths and weaknesses of the states and territories of Australia and New Zealand.

*Matthew Hall, Partner
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TOP 10 QUESTIONS

1. WHAT ROLE DOES THE GOVERNMENT PLAY IN APPROVING AND REGULATING FOREIGN DIRECT INVESTMENT?

The New Zealand government regulates foreign direct investment primarily through the *Overseas Investment Act 2005* administered by the Overseas Investment Office (OIO). Generally, overseas investment in New Zealand is actively encouraged.

The OIO reviews applications by “overseas persons” seeking to make substantial investments, whether in land or otherwise. Investments below the set thresholds do not usually require OIO approval in New Zealand.

2. CAN FOREIGN INVESTORS CONDUCT BUSINESS WITHOUT A LOCAL PARTNER? IF SO, WHAT CORPORATE STRUCTURE IS MOST COMMONLY USED?

Yes. Overseas persons or foreign investors may conduct business in New Zealand without a local partner. However, there is a bill currently before Parliament which when passed, will require a company to have either a New Zealand resident director, or to appoint a New Zealand resident agent.

A locally incorporated subsidiary of a foreign company is the most commonly used corporate structure for conducting business in New Zealand by foreign investors (although registered branches may also be used).

3. HOW DOES THE GOVERNMENT REGULATE COMMERCIAL JOINT VENTURES BETWEEN FOREIGN INVESTORS AND LOCAL FIRMS?

Other than through specific financial reporting, taxation and overseas investment rules, the government does not regulate commercial joint ventures between foreign investors and local firms.

4. WHAT LAWS INFLUENCE THE RELATIONSHIP BETWEEN LOCAL AGENTS OR DISTRIBUTORS AND FOREIGN COMPANIES?

The law of contract and the Common Law regulate the relationship between local agents or distributors and foreign companies. Prices are expected to be set on an “arms-length” basis and where such pricing is not received, duties may be imposed.

5. WHAT STEPS DOES THE GOVERNMENT TAKE TO CONTROL MERGERS AND ACQUISITIONS WITH FOREIGN INVESTORS OF ITS NATIONAL COMPANIES OR OVER ITS NATIONAL RESOURCES AND KEY SECTORS (E.G. ENERGY AND TELECOMMUNICATIONS)?

Mergers with, and acquisitions by, foreign investors are regulated by a range of statutes including the *Companies Act 1993*, *Takeovers Act 1993*, and *Overseas Investment Act 2005* as well as through the Financial Markets Authority, the Commerce Commission and the New Zealand Stock Exchange. Relatively high thresholds are in place and it is generally only when those thresholds are exceeded that active government steps are taken.

The only specifically regulated national resource which places additional regulation on foreign investment is the fishing industry. Under these rules an overseas person is prohibited from having an interest in fishing quota or having interests in a business (where the overseas person owns a 25% or more interest) that owns or controls interests in fishing quota.

6. HOW DO LABOUR STATUTES REGULATE THE TREATMENT OF LOCAL EMPLOYEES AND EXPATRIATE WORKERS?

The *Employment Relations Act 2000* is the major statute governing the treatment of employees in New Zealand. Various other Acts must also be considered in dealings with employees such as *Holidays Act 2003* (which regulates annual leave and public holidays), *KiwiSaver Act 2008* (a quasi-superannuation scheme), *Privacy Act 1993* (in relation to personal information) and the *Accident Compensation Act 2001* (a no-fault insurance and compensation scheme for workplace injuries).

Expatriate workers are not treated any differently than New Zealand employees and are subject to the same laws in addition to being subject to immigration criteria which will generally require visas to entitle them to work. If a person is only in New Zealand for a short term or for a specific purpose, New Zealand employment law may not apply, but if the person is employed by an overseas company that is conducting business in New Zealand, local employment laws will almost certainly apply.

7. HOW DO LOCAL BANKS AND GOVERNMENT REGULATORS DEAL WITH THE TREATMENT IN CONVERSION OF LOCAL CURRENCY, REPATRIATION OF FUNDS OVERSEAS, LETTERS OF CREDIT AND OTHER BASIC FINANCIAL TRANSACTIONS?

There are no government-imposed controls on foreign exchange. New Zealand has a floating currency. Private companies and individuals may exchange the New Zealand Dollar (NZD) for foreign currencies, repatriate funds (subject to complying with company law regarding solvency, distributions and any tax payable), organise letters of credit and all other financial transactions simply and easily. The New Zealand banking system is extremely efficient and transparent with little government regulation. However the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* does impose some restrictions on transfer of money to detect and deter money laundering and the financing of terrorism.

8. WHAT TYPES OF TAXES, DUTIES AND LEVIES SHOULD A FOREIGN INVESTOR EXPECT TO ENCOUNTER?

The New Zealand taxation system is administered by the Inland Revenue Department. The general tax rate applicable for companies is 28% and most (there are some exceptions) goods and services sold in New Zealand attract a goods and services tax of 15%. Generally, interest, dividend and royalty payments to a nonresident (company/individual) are subject to nonresident withholding tax (NRWT) at between 5%-30%. New Zealand has double taxation agreements with various countries which limit the amount of NRWT that must be paid. There is no capital gains tax or stamp duty in New Zealand. There are very few import taxes or duties although there are some dumping and countervailing duties imposed. Depending upon the choices made by New Zealand employees of foreign businesses in New Zealand, the employer may be required to make compulsory KiwiSaver payments.

9. HOW COMPREHENSIVE ARE THE INTELLECTUAL PROPERTY LAWS? DO LOCAL COURTS AND TRIBUNALS ENFORCE THEM OBJECTIVELY REGARDLESS OF THE NATIONALITY OF THE PARTIES?

New Zealand has a comprehensive set of intellectual property statutes and regulations including the *Patents Act 1953* (to be replaced effective 13 September 2014 with the *Patents Act 2013*), *Copyright Act 1994*, *Trade Marks Act 2002*, *Design Act 1953*, *Layout Designs Act 1994* and *Fair Trading Act 1986*. There are functional and accessible government websites relating to each of these Acts. Nationality of the parties plays little or no role in enforcement by local courts.

10. IF A COMMERCIAL DISPUTE ARISES, WILL COURTS OR ARBITRATION OFFER A MORE BENEFICIAL FORUM FOR DISPUTE RESOLUTION TO FOREIGN INVESTORS?

Access to local courts or arbitration hearings are the same for local and foreign investors. There is no preferential treatment for or among investors in New Zealand. Whether formal court procedure or alternative dispute resolution methods would be appropriate will depend very much upon the nature of the dispute and any governing documentation.

ENTRY TO NEW ZEALAND

A visa or permit is not required to visit New Zealand if the visitor is an Australian citizen, British citizen, or a citizen of a country which has a visa waiver agreement with New Zealand (entitles up to a three-month visit). New Zealand has visa waiver agreements with 56 countries.

There are various classes of visa. Each class of visa has special conditions that must be met before the visa can be obtained. The type of visa applied for will depend on the reasons a person has for visiting New Zealand.

A person seeking to work in New Zealand must obtain a work visa. Work visas allow a person to work for a limited period, generally around three years.

WORK VISAS

There are a number of categories under which work visas are available including:

- **Essential Skills** – allows people to work temporarily in New Zealand in areas where people are needed to fill shortages and New Zealanders are not available.
- **Work to Residence** – allows people whose skills and talent are wanted to work in New Zealand and provides them with a way to get residence in New Zealand. There are four different options:
 - Talent (Accredited Employers) Work – for people with a job offer from an accredited employer.
 - Talent (Art, Culture and Sports) Work – for people with exceptional talent in their field of art, culture or sport.
 - Long Term Skill Shortage List Work – for people working in an occupation on the Long Term Skill Shortage List.
 - Entrepreneur Work Visa – discussed below.
- **Family Stream** – allows partners of New Zealand citizens or residence class visa holders, and the partners of people who hold work or student visas, to work temporarily in New Zealand.
- **Specific Purpose or Event** – allows people to come to New Zealand to work at a specific purpose or event for a particular period.
- **Horticulture and Viticulture Seasonal Work** – includes a number of special instructions related to horticulture and viticulture seasonal work (planting, maintaining, harvesting or packing crops).
- **Religious Work** – facilitates the entry of religious workers to provide New Zealand communities the opportunity to practice, maintain and advance their religious beliefs.

- **Crew of Foreign Chartered Fishing Vessels** – allows foreign crew on foreign chartered fishing vessels.
- **Students and Trainees** – allows certain overseas students and trainees to gain practical work experience in New Zealand as part of their studies.
- **Silver Fern Practical Experience** – for young, highly skilled people from overseas who hold a Silver Fern Job Search visa or a first Silver Fern Practical Experience visa who have found skilled employment in New Zealand.
- **Free Trade Agreement** – facilitates the entry of nationals of certain countries who are qualified and experienced in specific occupations and who have a genuine job offer in that occupation.

Work visas, regardless of type, require the person to satisfy certain criteria including basic health and character requirements and to have a passport valid for at least three months past the date the person is due to leave New Zealand. As well as these criteria, each category of visa has different specific criteria.

Entrepreneur Work Visa (EWV)

Persons having a minimum of NZD 100,000 capital investment (excluding working capital) and who seek to create business in New Zealand can apply for an EWV. This is a new visa category available beginning March 2014. It establishes a points-based system to actively assess potential business migrants and to choose those who can create high growth and innovative businesses. Points are given for:

- Business experience
- Employment creation
- Export potential
- Innovation
- Capital investment
- Age
- A plan to invest and reside outside of Auckland

RESIDENCY

To permanently live in New Zealand, or set up a business, a person will need to apply for residency. A person holding a Work to Residence Visa may apply for residency after holding the visa for 24 months.

The main paths to New Zealand residency are:

Skilled Migrant

This category works on a point system. Points are earned on the basis of qualifications, work experience or job offers in New Zealand. The person must be between 20–55 years old and satisfy the general requirements discussed above.

Entrepreneur

To be eligible to apply under the entrepreneur category, a person must have successfully established a business in New Zealand, been “self-employed” in that business for at least two years and the business must have benefited New Zealand.

Investor

There are two investor categories:

- **Investor** – This category requires an investment of NZD1.5 million for four years. The investor must spend at least 146 days in New Zealand each year in years two to four of the four-year investment period. The investor must be under 66 years of age, have at least three years business experience, meet the required English language skills and the health and character requirements.
- **Investor Plus** – This category requires an investment of NZD10 million for three years. The investor must spend at least 44 days in New Zealand each year in years two and three of the three-year investment period. There are no requirements as to age, business experience or English language, but the investor must meet the health and character requirements.

OTHER CATEGORIES - TEMPORARY VISAS

This category allows a person to live in New Zealand temporarily.

- **Student Visa** – a person coming to New Zealand to study on a full-time basis for more than three months will need a student visa which allows the person to study and work up to 20 hours per week.
- **Working Holiday** – there are a number of different working holiday schemes in place with varying requirements and time frames. Most working holiday visas require medical and chest x-ray certificates. Work must be on a casual basis.
- **Visitor** – temporary entry to New Zealand for holiday only.

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