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# DOING BUSINESS IN NEW ZEALAND

FORTUNE MANNING LAWYERS





## Buying and Investing in New Zealand

### Overseas Investors

Foreign investors are welcomed in New Zealand and generally investing here is relatively easy. Foreign investment in certain assets is restricted by the Overseas Investment Act 2005 ("OIA") which requires the investor to obtain consent.

Consent under the OIA is required where the investor if the investment is in one of the following:

1. Sensitive land (this covers a wide range of land, namely non-urban areas greater than 5 hectares, or any land that includes or adjoins bodies of water or other sensitive areas such as land administered by the Department of Conservation;

2. Business assets or securities with a value greater than \$100M NZD; or
3. Fishing quotas.

In order to obtain consent, the overseas investor will have to meet the investor criteria under the Act, displaying their commitment to the investment as well as demonstrating that the purchase will bring benefits to New Zealand great than those which would result from the current ownership.

If you are an overseas investor considering investing in New Zealand, we are able to assist you in preparing an application for approval by the Overseas Investment Office (OIO).



## Establishing a business in New Zealand

There are a variety of options available to people wishing to set up a business in New Zealand including but not limited to:

- Forming a New Zealand company;
- Establishing a limited partnership;
- Establishing a joint venture; or
- Registering a New Zealand branch or forming a New Zealand subsidiary.

The Companies Act 1993 is the legislation relating to companies and how they are to function. Every New Zealand company requires at least one New Zealand resident director or one Australian director, provided that the director is also a director of an Australian company).

Each option has particular implications relating to liability and tax and should be decided upon depending on the circumstances.

All New Zealand businesses are subject to trading laws such as the:

- Fair Trading Act 1986;
- Sale of Goods Act 1908;
- Contractual Remedies Act 1979; and
- Consumer Guarantees Act 1993.



## Contract Law in New Zealand

New Zealand contract law will largely give effect to the intentions of the contracting parties. Our law is composed primarily of common law principles. However there are certain statutes that regulate matters such as misrepresentations, contractual mistakes and the protection of consumers. Some of the important statutes include the following:

### The Sale of Goods Act 1909

This statute regulates contracts for the sale of commercial goods unless the parties clearly specify that they do not intend it to apply.

### The Contractual Remedies Act 1979

This statute allows a party to a contract to cancel it for breach, repudiation or pre-contractual misrepresentations. Damages and other categories of relief may be recoverable in such circumstances.

### The Credit Contracts and Consumer Finance Act 2003

This statute protects consumers under credit contracts. The Act provides that, regardless of the terms of the contract, protections under the Consumer Protections in New Zealand will apply.

### The Contractual Mistakes Act 1977

This provides relief when a party has entered into a contract due to a mistake of fact. The Act allows the courts to grant relief, make orders for compensation, and vary or cancel the contract.

### The Illegal Contracts Act 1970

This Act provides that contracts which are illegal at law or equity will have no effect. It gives the courts the power to make a variety of orders, which includes amending the contract.

### The Electronic Transactions Act 2002

This statute gives electronic signatures, in most instances, the same status as paper signatures.

### The Minor's Contracts Act 1969

This Act provides that a contract with a person under the age of 18t cannot be enforced against that person.

*It is also important to note that the majority of contracts can be concluded orally, however there are some that must be written. These include contracts involving land, mortgages, guarantees, and employment agreements*

# Emigrating to New Zealand

## Visas

New Zealand's immigration policy provides a number of pathways for people to visit, work and live in New Zealand. Visas are available for those coming to New Zealand for employment or for those intending to settle permanently in New Zealand and invest or set up a business.

### Work visas

Australian and New Zealand citizens do not require a visa to work in New Zealand. However, an approved work visa is mandatory for citizens of any other country.

Work Visas are typically issued for a 3 year period, but this period can be extended in certain circumstances.

To apply for a work visa, applicants will need to provide:

- evidence of their job offer in New Zealand;
- evidence provided by their employer that persons already in New Zealand are unable to fill the position; and
- meet certain health and character requirements. In certain circumstances, the applicant's partner and children can be included in the application.



## Entrepreneur Work Visa

The Entrepreneur Work Visa provides a pathway for self-employment in New Zealand. The purpose of the visa is to promote the establishment of new and innovative businesses in New Zealand.

The Entrepreneur Work Visa provides the ability to work in New Zealand for up to 3 years.

Once the applicant has successfully run their business for two years, they can apply for residency under the Entrepreneur category.

To qualify for the Entrepreneur Work Visa, applicants must:

- have a satisfactory business plan;
- have sufficient funds for your maintenance and accommodation in New Zealand;
- meet health, character and English language requirements; and
- satisfy Immigration New Zealand (INZ) that you are genuinely interested in establishing a business in New Zealand.

## Investors

New Zealand immigration policy also provides a pathway for those with the ability to invest in New Zealand who are seeking residency. There are two categories of investors:

### Investor Plus (Investor 1 Category)

Under this category, individuals must make a \$10million in New Zealand over a three year period and spend a minimum of 44 days in New Zealand in the last 2 years of the investment period.

### Investor 2 Category

Under this category, investors must satisfy the following criteria:

be under 65 years old

have at least three years business experience;

- have NZ\$1.5 million invested in New Zealand for a minimum of four years;
- have additional settlement funds of NZ\$1 million ; be a competent user of English;
- and be willing to spend at least of 146 days in New Zealand in each of the last three years of the four year investment period.

Applicants under both categories must meet health and character requirements.

## Employees of Relocating Businesses

Employees of business relocating to New Zealand can apply to accompany the business to New Zealand.

Applicants must meet health, character and English language requirements to qualify, and must be considered essential to the operation of the business by the Chief Executive Officer

### Additional Requirements

For most visa categories, applicants will also need to meet medical, criminal and English language criteria:

### Medical

Applicants intending on being in New Zealand for longer than six months may be required to provide a chest x-ray certificate.

Those intending to enter New Zealand for longer than 12 months must complete a full medical assessment and submit a doctor's certificate as part of the application



### Police

Applicants intending on staying in New Zealand for over 24 months must provide a police certificate from their country of citizenship and from any country in which they have lived for five or more years since the age of 17.

### English language

English language requirements for each category vary and change from time to time.

## Citizenship

To apply for New Zealand citizenship, applicants must have been resident in New Zealand for 5 years or more, have no criminal convictions and have been present in New Zealand for a minimum of:

- 1,350 days during the five years immediately preceding the application, and
- 240 days in each of these five years.

