

New Zealand Limited Partnerships - some key benefits and issues to be aware of

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While it is still early days, given the possible privacy and potential reduced compliance costs, a LP structure may well become the overseas operator's investment vehicle of choice in New Zealand. Grant Dunn and Benjamin Sutton of Buddle Findlay explain.

The introduction of new Limited Partnership legislation in New Zealand in 2008 has generated interest from Australian companies with operations in New Zealand.

Features of a New Zealand Limited Partnership

A stated purpose of the Limited Partnership Act (the "Act") is to give the business community a flexible and internationally recognised business structure. Like regimes in Australia, the United Kingdom and the United States, the most recognisable feature of a Limited Partnership ("LP") is its hybrid nature. A LP can benefit from being taxed as a partnership while still providing the protection of limited liability. As with owning shares in a company, a limited partner may inject capital into the LP and rest assured that its liability for business debts is capped at the level of its committed investment. On the compliance side, a LP must have a partnership agreement, at least one general partner and one separate limited partner. While all partners' details must be registered, only details of the general partner will be made public thereby keeping the details of the underlying investor base confidential. Because it is relatively new, the New Zealand regime is considered to have cherry picked the best features of other regimes. For example, by way of contrast with the Australian LP regime, there are no limits concerning the duration of the partnership, the number of partners or the amount of investment required.

Disclosure and compliance

An interesting feature of New Zealand's financial reporting rules applicable to companies (which has proved to be of some annoyance to parent companies in Australia) is that foreign controlled New Zealand companies and offshore companies doing business in New Zealand are generally required to appoint an auditor and file audited accounts with the New Zealand Companies Office. This filing requirement has been seen to add a significant compliance cost in terms of internal administration and the external auditor itself. Also, as the audited accounts can be viewed by the public it means that trade competitors can monitor performance. Perhaps adding to the frustration is that generally, companies that are New Zealand owned do not have a such a burden and can keep their financial details hidden from competitors.

By contrast, under the Act a LP must prepare annual financial statements but unless the LP is a public issuer these do not have to be audited, registered or made public. It should be noted that if the general partner is a foreign controlled New Zealand company or an overseas company (which by performing the services of a general partner is deemed to be carrying on business in New Zealand) it will be required to file its own audited financial statements and audited group financial statements. The financial statements will need to consolidate the general partner's subsidiaries, which could include the LP itself, if the general partner "controls" the LP. However, the extent of this compliance requirement may be able to be reduced through careful structuring of the partnership agreement.

Such opportunities to reduce audit compliance costs may be of particular interest to Australian companies with operations in New Zealand. Also, the fact that not all information of the underlying business of the LP is made public may assist businesses looking to steer clear of having to reveal financial information to competitors.

Structuring the LP

Unlike limited partners who have limited liability, a general partner is jointly and severally liable with the LP for the debts and liabilities of the business. This level of unlimited liability perhaps creates a perception of greater risk in operating a LP as opposed to a company. However, such risk can be easily eliminated by appointing a limited liability company as the general partner of the LP - a perfectly acceptable structure under the Act. Additionally there is flexibility concerning what roles investors may have. While a limited partner and general partner cannot be the same person, there is no restriction on these partners being related parties - for example a limited partner may also be a shareholder of the general partner. Also, there is large degree of flexibility concerning offshore ownership as there is no requirement for partners to be New Zealand resident.

Other features to note

A LP must have a written partnership agreement conforming to a minimum content requirement - for example, there must be provisions dealing with entry and exit from the LP, partner meetings and entitlement to distributions. However, there is a substantial amount of flexibility afforded to what a partnership agreement may incorporate and like a company's shareholders' agreement (but unlike a registered constitution), privacy is maintained as a partnership agreement is not filed anywhere and will not be a publically available document.

It is worthwhile noting that generally in a partnership structure "flow through" tax treatment can remove a second layer of tax often struck in company structures. Unlike normal companies, partnership gains and losses can be attributed directly to the partners, whose personal tax status may govern how they will be taxed. While New Zealand based investors can see opportunities to attribute non-taxable capital gains and offset partnership losses against income from other sources, how overseas based limited partners may be taxed in their own jurisdiction will depend largely on the tax laws of their home country.

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