



Clive Knauf & Associates

Investment Property – Non-resident Investors

COMPANIES

There are a number of factors to consider where a company is to own an investment property, and independent legal advice should be sought prior to purchase. In order to assist, we have summarized the major points for consideration.

Overseas Companies

a) Requirement to register

The Companies Act 1993 section 334(1), requires that an overseas company that carries on business in New Zealand must apply for registration (under the Act) within 10 days of commencing to carry on business.

Section 332 provides a meaning of “carrying on business”. This “includes a reference to an overseas company . . . administering, managing, or dealing with property in New Zealand as an agent, or personal representative, or trustee, and whether through its employees or an agent or in any other manner”.

The section goes on to state that an overseas company does not carry on business in New Zealand merely because it . . . invests its funds or holds property (in New Zealand).

Discussion with the Companies Office suggests that a company renting an investment property in New Zealand through an agent would be considered to be carrying on business, and would therefore be required to register. Similarly, an overseas company acting as corporate trustee of a trust, because it is the registered owner of a rental property, is required to register.

b) Registration Process

The registration process is relatively simple, however the name of the overseas company must first be reserved. There is then an application form which needs to be completed.

c) Ongoing Filing Requirements

Probably the most onerous and costly part is the ongoing requirement to file audited annual accounts with the Companies Office. While the annual filing fees themselves are not too expensive, (currently \$100) it is likely that most will consider the compliance cost overall of preparing, auditing and filing annual accounts for the New Zealand operation, and the company as a whole, (not to mention possible consolidated group accounts) to be more than can be justified unless several properties are involved.

Corporate trustees will be required to prepare and file “nil” audited accounts for the NZ branch, along with “nil” accounts for the Australian parent

d) Further Information

For more detailed information go to www.companies.govt.nz, under Information Library/ Financial Reporting Act 1993. Select the appropriate documents and they will be emailed to you.

New Zealand Companies

If a New Zealand registered company is to be formed, and 25% or more of the voting rights are owned by non-residents, then the company is required to file audited annual accounts with the Companies Office.

Please contact us if we can be of further assistance.

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