

NEW ZEALAND LIMITED PARTNERSHIPS AS VEHICLES FOR PRIVATE EQUITY / VENTURE CAPITAL INVESTMENT

The Limited Partnerships Act 2008 established a legislative and regulatory regime for the formation and registration of limited partnerships in New Zealand ("NZ"). The primary objective of the limited partnerships regime is to make it more attractive for venture capitalists to invest in private equity partnerships and funds which in turn provide much needed capital to NZ businesses.

Key features of the NZ Limited Partnerships regime

A NZ Limited Partnership is a separate legal person and has the legal capacity to exercise all the powers of a natural person or company, subject of course to the laws of NZ and any restrictions contained within the partnership agreement. Unlike trusts a NZ Limited Partnership may exist in perpetuity. NZ Limited Partnership is an incorporated entity, separate from its partners, having at least one general partner ("GP") and at least one limited partner ("LP"). Any person or body corporate (whether resident or nonresident of NZ) can be a partner, and there is no limit on the number of partners. The GP is responsible for the management and administration of the NZ

Limited Partnership and is jointly and severally liable with the NZ Limited Partnership for all the debts and liabilities of the NZ Limited Partnership. A GP is normally a limited liability company with no significant capital of its own and is not required to make a capital contribution to the NZ Limited Partnership. The LP's liability is similar to that of a company shareholder in that it is limited to its capital contribution. A LP that participates in the day to day management may lose its limited liability status and become jointly and severally liable for the debts and liabilities of the NZ Limited Partnership. There are, however, certain specified "safe harbour" activities in which an LP may participate without losing its limited liability. These activities are similar to those actions which normally require a special resolution by shareholders of a company. NZ Limited Partnerships must have a written partnership agreement which is similar to a contract made between the GP and each LP. The agreement must contain provisions which provide for such matters as:

- assignment and disposal of LP interests
- restrictions on activities that may be undertaken by the partners
- entitlements to distributions
- termination of the NZ Limited Partnership
- entry and exit of partners
- procedure as regards partnership meetings

The partnership agreement is not publicly registered. The GP owes specific fiduciary obligations to the NZ Limited Partnership. Conversely, LPs do not owe fiduciary obligations unless specifically imposed by the partnership agreement. A NZ Limited Partnership is formed on registration with the Registrar of Companies in NZ and not on the earlier signing of the partnership agreement.

The GP has the authority to bind the NZ Limited Partnership. Similar to companies, third parties contracting with the GP need not inquire as to the limits of the NZ Limited Partnership's authority. Both the GP and the LP can contribute to the NZ Limited Partnership. Capital contributions can take any form (including services) but loans are excluded as capital contributions. Partners who have made capital contributions are entitled to receive distributions. Payment of distributions is subject to a similar solvency test to that applied to companies. Registration details for the NZ Limited Partnership and the GP are publicly available from the Registrar of Companies. However, information about the LP is confidential and cannot be publicly accessed. The interests of the LPs can be very flexible depending on the partnership agreement.

Taxation of Limited Partnerships in NZ

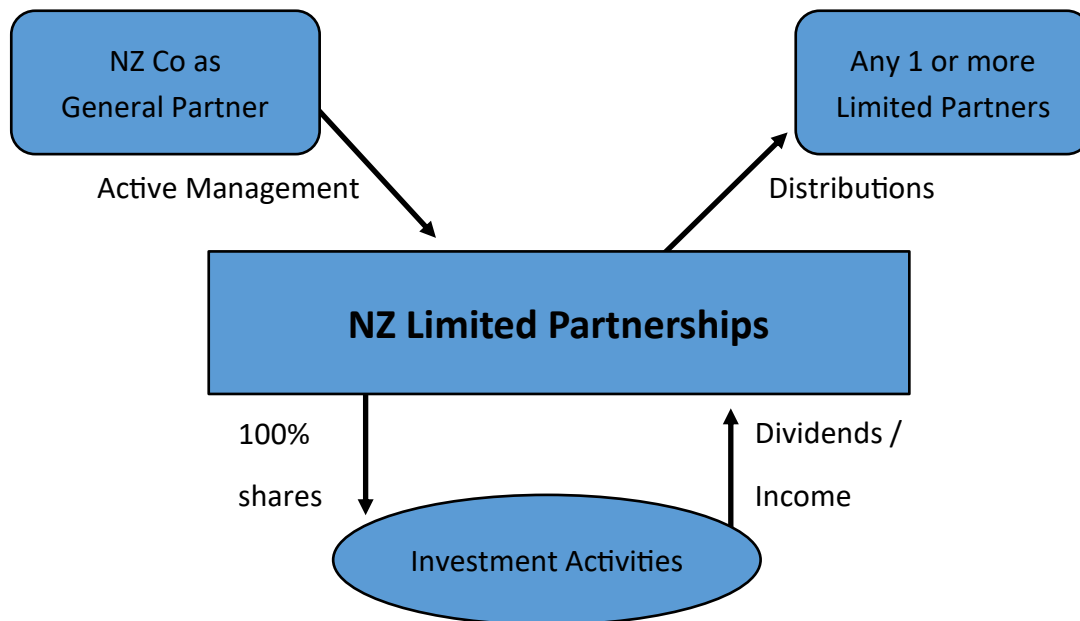
Of crucial importance for venture capitalists is that NZ Limited Partnerships are fiscally transparent for NZ tax purposes and are not taxed at the partnership level. All profits flow through the NZ Limited Partnership and are taxed in the hands of the LPs at the rates of tax applicable to them. Similarly all losses flow through the NZ Limited Partnership and are deductible against gross income earned by the LPs. Generally, the NZ Limited Partnership will be structured so that only the LPs are entitled to receive income. LPs who are not resident in NZ will not be subject to tax in NZ on their share of the income generated by the NZ Limited Partnership - provided that the



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income does not have an NZ source. This makes NZ Limited Partnerships particularly attractive for international wealth structuring or collective investment purposes as it can provide a tax neutral "venue" for investors from different countries. The diagram below illustrates a typical NZ Limited Partnership structure.

New Zealand Limited Partnerships as Vehicles for Private Equity/Venture Capital Investment



For further information, please contact Palladium.

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