

## NEW ZEALAND FAMILY LIMITED PARTNERSHIPS

For various reasons the common law trust does not always provide the best solution for international private wealth structuring.

Where the client is resident in a civil law country then a trust may not be recognised or enforced under the laws of that country. In such cases a civil law foundation can sometimes provide a workable solution to some, but not always all, of the client's requirements.

Furthermore, anti-avoidance tax rules have put increasing pressure on the use of trusts as a tool for international tax planners. For example, in the United Kingdom alone trusts intended to benefit the children of a settlor are subject to a 20% inheritance tax charge on trust property settled on the trust which exceeds the current threshold of £325,000 as well as ongoing 10 yearly charges of 6% of the net asset value of the trust fund.

The Family Limited Partnership ("**FLP**") is an increasingly attractive alternative to the trust, foundation and even "offshore" investment holding company because it can offer similar (and often enhanced) levels of flexibility, confidentiality, asset protection and estate planning opportunities. FLPs are generally well recognised in civil law countries and may, in some circumstances, be more tax efficient.

If an FLP is established in an appropriate jurisdiction then it may not be subject to tax in that jurisdiction.

### Limited Partnerships in New Zealand

The Limited Partnerships Act 2008 established a legislative and regulatory regime for the formation and registration of limited partnerships in New Zealand ("**NZ**"). The NZ FLP is a welcome companion to the NZ "foreign" trust and further enhances the credentials of NZ as a wealth structuring jurisdiction of choice for discerning high net worth individuals and their advisers.

### NZ as a wealth structuring jurisdiction

Private banks and trust companies resident in "offshore" financial centres are increasingly faced with obstacles when structuring for their international clients due to negative perception and, in some cases, "blacklisting" by central governments, revenue authorities and supra-national organisations such as the G20, OECD and FATF. Harsh and often unfair measures are taken against "offshore" financial service providers to punish their "tax haven" status and the perceived lack of transparency in the "offshore" financial centres.

Unfortunately, this also has the effect of preventing quite legitimate wealth structuring using many of these very reputable, well regulated and fiscally transparent jurisdictions.

On the other hand, certain common law jurisdictions, such as NZ are not subject to any of the punitive measures nor negative perceptions affecting the "offshore" jurisdictions.

NZ has grown in prominence as an international wealth structuring jurisdiction over recent years for a variety of reasons including its tax neutrality as regards "foreign" trusts and limited partnerships and its economic and political stability. NZ is a respected OECD and FATF member jurisdiction with a solid commercial, professional and judicial framework.

### Key features of the NZ Limited Partnerships regime

An NZ FLP 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 in NZ an NZ FLP may exist in perpetuity.



## Excellence in offshore services

An NZ FLP 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 non-resident 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 FLP and is jointly and severally liable with the NZ FLP for all the debts and liabilities of the NZ FLP. 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 FLP.

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 FLP. 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 FLPs 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 FLP
- 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 FLP. Conversely, LPs do not owe fiduciary obligations unless specifically imposed by the partnership agreement.

A NZ FLP 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 FLP. Similar to companies, third parties contracting with the GP need not inquire as to the limits of the NZ FLP's authority.

Both the GP and the LP can contribute to the NZ FLP. 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 FLP 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 and can provide for effective succession planning from one generation to the next – particularly in the context of a family business empire. As the next generation gains more experience in the family business their respective shares in the NZ FLP can be increased or varied at the discretion of the family patriarch or matriarch.

## Taxation of Limited Partnerships in NZ

NZ FLPs are fiscally transparent for NZ tax purposes and are not taxed at the partnership level. The individual partners are only taxed on their share of the NZ FLPs net income.



## Excellence in offshore services

Generally, the NZ FLP 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 FLP - provided that the income does not have an NZ source.

For the income not to have a NZ source it is normal for the NZ FLP's assets to solely comprise investments held outside of NZ.

### Practical uses

A family patriarch, matriarch or other donor of assets resident in, for example, the United Kingdom ("**Donor**") may wish to protect assets, preserve confidentiality and otherwise provide for future generations of the family by forming an NZ FLP through a NZ trust company or law firm ("**NZ Service Provider**").

The NZ Service Provider would then incorporate a NZ limited liability company to be the GP which would in turn establish the NZ FLP.

Through regular contact with the NZ Service Provider, or even by having some formal control over the GP, the Donor can determine the investment strategy and distribution policy of the NZ FLP. As the limited partnership is a contractual arrangement there are no issues as regards "sham" or "alter ego" which can arise in relation to trusts.

The limited partnership agreement can provide for the limited partnership to be wound up after a certain period, on the occurrence of a certain event (such as the death of the Donor), or allow for the NZ FLP to exist in perpetuity.

The limited partnership agreement and the constitution of a corporate GP can set out a family investment strategy and a management process that can be maintained over several generations. The board of directors of the GP can be provided by the NZ Service Provider and/or the Donor and members of the family.

The NZ FLP will then execute the investment strategy, for example, through an investment holding company in the British Virgin Islands, an investment management account in Singapore, a bank account in Switzerland or real property holdings in Spain. It is important to remember that there should be no income earning assets situated in NZ. Otherwise tax will be paid on that income in NZ.

The members of the family would normally be the LPs - either directly or through companies or trusts in which they have interests. The partnership agreement should be specific to the individual circumstances of the family and provide for how, when, to whom and in what proportions distributions can be made to the LPs. Normally family members will be restricted as to transfers of their partnership interests outside of the family.

The tax laws to which the Donor and the LPs are subject will change constantly. It is therefore essential that tax advice be taken in all relevant jurisdictions and on a regular basis. However, as the NZ FLP is essentially a "pass through" vehicle each family member LP will be taxed only on the distributions it receives from the NZ FLP in the jurisdiction(s) to which she or he is resident for tax purposes.

There will be no tax payable in NZ unless there is income earned in NZ.

### A safe and practical alternative

Today traditional "offshore" solutions face increasing challenges and unprecedented levels of scrutiny. A NZ FLP established and administered in an OECD and FATF member trust jurisdiction such as NZ can offer broadly the same tax, succession planning and asset protection benefits for the discerning client searching for a cross-border wealth management solution.