



March 2010

NZ LAW UPDATE

OVERSEAS INVESTMENT OFFICE AND CHINESE BID FOR NZ DAIRY

A recent application by Chinese owned Hong Kong listed company, Natural Dairy NZ Holdings Limited to the Overseas Investment Office (“OIO”) for approval of a deal, reportedly including the purchase of some thirty (30) New Zealand dairy farms worth more than NZ \$206 million, is causing concern in New Zealand. The Chinese company has announced that the purchase is part of a NZ \$1.5 billion intended acquisition of land, stock and milk production plants in New Zealand. Twenty-two (22) of the dairy farms being purchased total 800 hectares of land.

To understand the impact of this application, it assists to consider that in the period January to December 2009, the OIO has granted:

- 158 approvals involving assets totalling \$NZ 7,868,610,769 (gross value of consideration).
- 130 approvals involving the purchase of 265,266 hectares (gross land area).

If approved, the acquisition will be the largest proposed investment since the attempt by the Canadian state pension fund to purchase shares in the Auckland International Airport.

The OIO is involved in the process, as it is responsible for administering the Overseas Investment Act 2005, and applies key criteria contained in the Act when considering the Chinese company’s application. This application needs approval as it triggers the following criteria:

- The purchaser is an entity that is an “overseas person”
- The land is “sensitive land”

Both overseas person and sensitive land are terms that are defined in the Act.

The OIO must carry out an assessment of whether there will be a substantial and identifiable benefit to New Zealand, which includes a consideration of a number of factors including:

- The prospect of economic benefits:
 - Job creation and preservation of existing jobs
 - Increased investment for development purposes;
- Protection of indigenous fauna and vegetation;
- Protection of trout, salmon, wildlife and game;

- Protection of historic sites; and
- Protection or improvement of walking access to the land.

As part of a current heated debate, considerations concerning the implications of the free trade agreement between China and New Zealand and how it is to operate in practice and environmental/political issues such as food security, are very much in the fore front of discussion.

FREE TRADE AGREEMENTS

India

India and New Zealand are to commence negotiations towards a free trade agreement. India is one of New Zealand's fastest growing markets, with New Zealand exports having tripled over the last decade, but there are currently high barriers facing New Zealand exporters to India. Bilateral trade between India and New Zealand in 2009 was NZ\$985 million.

Trans Pacific Partnership ("TPP")

Negotiations for an eight-nation free trade deal, which includes the United States, are presently underway. The parties to the TPP include Australia, Brunei Darussalem, Chile, New Zealand, Peru, Singapore and Vietnam. Other Asia-Pacific countries are also expected to join as the negotiations progress.

DOUBLE TAX AGREEMENTS ("DTA")

New Zealand and Belgium

An update to the 1981 DTA between New Zealand and Belgium is currently becoming closer to completion with the signing of the amending protocol by both countries in December of last year.

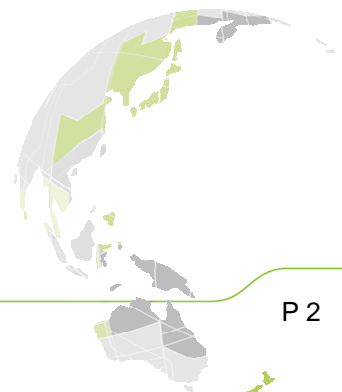
The changes to the second protocol are mainly technical matters to ensure the DTA remains relevant to the tax laws in each country. It also includes updating the exchange of information provisions in the DTA to meet new international standards.

New Zealand and Australia

The new DTA between Australia and New Zealand came into force on 22 March.

The main features of the DTA include:

- lower withholding taxes on dividend and royalty payments between the two countries; and



- making pensions that are tax-free in one country also exempt in the other when recipients move across the Tasman.

CARTEL CRIMINALISATION IS A DISTINCT POSSIBILITY

The Government is currently consulting on whether cartel conduct should be criminalised. In doing so, New Zealand would align itself with its key trade and investment partners such as the United States, United Kingdom, Canada, Australia, Japan and Korea who have also criminalised cartel conduct.

The Organisation for Economic Co-Operation and Development (OECD) defines four types of hard-core cartel conduct, they are:

- price fixing
- bid rigging
- market allocation; and
- output restrictions.

Currently, there are civil sanctions for hard-core cartels, which are prohibited and are unlawful under the Commerce Act 1986. The appropriateness for the introduction of criminal sanctions is at issue given that Australia has recently introduced criminal penalties for cartels and it would be in line with the drive to harmonise the laws between the two countries. Balancing this are considerations as to whether the gains would outweigh the costs for enforcement, would it provide certainty to businesses and individuals, avoid stifling competition and accord fair treatment to suspects under the New Zealand Bill of Rights Act.

Submissions are being currently sought in order to consider a number of issues raised in the discussion paper prepared by the Government.

DISCLAIMER

This publication is necessarily brief and general in nature. You should seek further information before taking any action in relation to the matters dealt with in this publication. If you have any questions on the matters discussed in this update please contact the New Zealand Mackrell partner, Brian Joyce at Clendons North Shore by email to brian.joyce@clendons-ns.co.nz or phone 64 9 377 8419

