

# THE LEGAL ENVIRONMENT FOR PETROLEUM EXPLORATION: AN OVERVIEW

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## Abstract

This paper is an overview of the New Zealand legal environment as it affects petroleum explorers and their operations in New Zealand. It includes a brief summary of the New Zealand legal system and identifies the business structures commonly used and recognised under New Zealand law. It continues with an outline of the significant legal requirements governing petroleum exploration, including the Crown Minerals Act (rights and obligations of permit holders), environmental and conservation laws, Overseas Investment Act and Regulations, Commerce Act, Fair Trading Act, taxation aspects of operations in New Zealand, the no-fault Accident Compensation scheme and other operational requirements. The paper concludes with comment on government participation, current government policy and the legal and administrative framework in which that policy is implemented.

## Introduction

The aim of this paper is to provide an overview of the New Zealand legal environment as it affects petroleum explorers and their operations in New Zealand. Necessarily, a paper of this nature can only be a summary, but it should complement some of the more detailed treatment of legal issues presented in this and other conferences. Although the title is similar to the paper which I presented to the 1991 Oil Exploration Conference, much of the content is quite different in detail because of the changes which have been implemented over the last three or four years.

Some comments are included on the regime which applies to overseas companies or investors doing business in New Zealand. These comments should also be helpful for those domiciled within New Zealand, in their understanding of some of the problems which may face co-venturers or contractors from overseas.

The theme for this conference refers to the post Maui challenge — investment and development opportunities. In view of the number of changes in the legal and related commercial environment over the last few years, explorers and investors are probably looking for a period of consolidation and certainty, to minimise the number of imponderables which they have to account for in their decision making. At the 1991 Oil Exploration Conference we were part way through this process of change, but we can now see how that legislation has been enacted and in some cases has been tested by practical experience in such diverse aspects as the taxation regime, the Resource Management Act as it relates both to exploration operations and to pipeline networks, the Crown Minerals Act and the development of a new minerals programme, the Health & Safety in Employment Act, and more recently the Companies Act. There are still changes in process and new regimes with which we are not yet fully familiar. In particular, there is the new Companies Act, which has been proposed for many years but has now finally been enacted. There is also a bill

before Parliament dealing with maritime and offshore pollution. The codes of practice under the Health & Safety in Employment Act have still to be developed, the electricity sector is still going through a restructuring process, and the impact which that and other changes may have on the perception of energy supply and demand in New Zealand are still quite uncertain, though perhaps less so than three years ago. There have also been a number of claims by Maori in respect of various natural resources, and some of these are being worked through into legal or political solutions.

The paper deals with the following general headings:

- an outline of the New Zealand legal system (as it affects petroleum exploration)
- a summary of the types of business structures and organisations recognised under New Zealand law, including a brief outline of the new Companies legislation
- a more detailed consideration of significant legal requirements and restrictions governing petroleum exploration
- some concluding comments

## New Zealand Legal System

The New Zealand legal system has its origins in the laws of England and still has a great deal in common with the common law systems of England, the Commonwealth (particularly Australia and Canada) and the United States of America. Naturally, although the system and the broad rules are similar to those of other jurisdictions, there are many matters of detail and local modifications introduced by statute — that is, by Act of the New Zealand Parliament, which consists of the elected representatives of the people.

Subsidiary to the statutes there is more detailed law, contained in Regulations and Orders in Council. These are public, legally binding documents, introduced by the Government of the day without parliamentary debate.

At a less formal level, but commonly having the force of law, is a whole range of political or administrative regulatory

powers for granting, and imposing conditions on, licences, consents or approvals.

All of these elements are present in the petroleum exploration regime. New Zealand's first Petroleum Act was passed in 1937. With effect from 1 October 1991, and subject to some transitional arrangements, the Petroleum Act has been replaced and superseded by the Crown Minerals Act 1991, and the Resource Management Act 1991, together with the later Health & Safety in Employment Act 1992 and various other Acts, regulations and rules.

The Crown Minerals Act now determines the ownership of petroleum in a natural reservoir and certain rights which may be granted to permit holders to explore for and mine that petroleum. Within the framework of the minerals programme, political and administrative matters are determined, such as the conditions to be attached to licences, work programme requirements, Crown participation and even the determination of whether or not to offer or grant a licence. The Resource Management Act is intended to govern in some detail the operational conditions within which exploration must be conducted. It regulates the impacts of exploration and development activities and establishes administrative bodies and procedures for land use, taking of water and control of discharges. It also introduces a new set of rules for authorising and protecting transmission pipelines.

Certain activities may fall within the jurisdiction of one or more specialist tribunals, such as local authorities (City or District Councils, Regional Councils) or the Planning Tribunal under the Resource Management Act or the Employment Tribunal and the Employment Court under the Employment Contracts Act.

## **Business Structures and Organisations**

### **Introduction**

As might be expected, business organisations and arrangements in New Zealand correspond closely to those in similar jurisdictions overseas. There are some particular provisions for regulating investments and operations in New Zealand by non-New Zealand participants.

### **Companies**

In late 1993 a major company law reform package was finally passed through Parliament. This package made some important changes to company law in New Zealand, which will be significant for all companies incorporated or registered in New Zealand, both existing and future companies, and also their shareholders, directors, managers and advisers. The significance of the company law regime is described more fully below.

### **Overseas companies**

Companies incorporated in overseas jurisdictions are generally recognised as legal entities in New Zealand. A company which is incorporated overseas and wishes to carry on business in New Zealand must register with the Registrar of Companies and provide certified copies of the constitutional documents of the company and details of its directors, secretary and any other officers. It must also provide the name and address of a person who is resident in New Zealand to accept the service of notices on behalf of the company. The company must file with the Registrar an annual return confirming or updating this information.

Under the new Companies Act, a company incorporated overseas may move its place of incorporation to New Zealand, if permitted to do so by its 'home country' law.

### **'Overseas Persons'**

For the purposes of the Overseas Investment Act and Overseas Investment Regulations, any person who is not a New Zealand resident and any company in which 25% or more of the voting capital is held or controlled by persons or companies overseas, will be an 'overseas person'.

Before an overseas person can establish or carry on business in New Zealand, purchase any business in New Zealand, takeover any New Zealand company or take up shares to be issued by any New Zealand company to the extent that the company would itself become an overseas person, the consent of the Minister of Finance must first be obtained. The Overseas Investment Regulations specify the threshold for consent requirements. Those and the requirements of the Overseas Investment Act are referred to later in this paper.

### **Partnership**

A partnership is 'the relationship which subsists between persons carrying on a business in common with a view to profit.' The consequences of that relationship, as between the parties themselves and with respect to persons outside the arrangement, are governed by the Partnership Act 1908.

I mention partnerships because they are a popular business structure, they do sometimes exist where the partners do not intend to be in partnership and considerable care needs to be taken in petroleum exploration projects to ensure that a partnership is not inadvertently created.

The existence of a partnership, and therefore the legal consequences, will be determined not merely by the intention of the parties but by the facts, the way in which the parties conduct themselves and whether or not the relationship fits into the definition.

The most important consequences, for present purposes, are:

- The partners are jointly and severally liable for all obligations of the partnership (that is, their obligations are not limited to a percentage interest in the enterprise, but may be unlimited).
- Any partner may bind all of the other partners in obligations to outsiders, even though as between the partners there is no authority to do so.
- A partnership is recognised as an entity for taxation purposes. It is not required to pay income tax but is required to file tax returns showing the net taxable income of the partnership and the distribution of it to the individual partners.

### **Joint venture**

The expression 'joint venture' is widely used to describe the contractual arrangements which are commonly entered into between participants in a petroleum exploration or mining project. In New Zealand most of the joint venture agreements are based upon the British National Oil Company model used in the North Sea, although there have been a number of other sources.

Notwithstanding their popularity, and the perceptions held by those in the petroleum industry and in other businesses about the nature of a joint venture, the concept is not explicitly recognised as a legal entity or a standard legal relationship. Because it is not governed by an existing set of legal rules, unlike a partnership or a company, the terms of a joint venture are undefined except to the extent that the

parties choose to define them. That is the purpose, of course, of the joint venture agreement.

This paper does not deal in depth with joint ventures. The topic is more fully covered in a paper which I delivered to the 1989 New Zealand Oil Exploration Conference, and that paper includes other references. For completeness of this overview a few of the main points are mentioned. There are some important characteristics which should be adhered to in the establishment and operation of a joint venture, which include:

- The arrangement is not intended to be a partnership, because the parties generally wish to avoid the consequences of being in partnership (i.e. joint and several liability; the apparent capacity of any one partner to bind all partners; the need for detailed taxation accounts which implies identical arrangements for claiming expenses).
- The parties generally participate in defined proportions and agree to hold assets and bear liabilities as tenants in common in those proportions.
- The collective enterprise is deliberately not intended to produce a profit, but to produce a specific asset (petroleum) which then becomes the property of the participants in shares.
- The participants should not be described, and particularly should not be held out to others, as 'partners'. Instead, the opportunity should be taken to make it clear to contractors that, although there are several participants, the relationship between them is not a partnership.

The expression 'joint venture' is found in several statutes, including the Commerce Act 1986 and the Goods and Services Tax Act 1986. However, none of those statutes gives any guide as to the meaning of the term.

#### **Permit holders or licensees**

Under the Crown Minerals Act the holders are jointly and severally liable for all obligations under the permit and the Act, which means that each holder may be held fully responsible for those obligations. The permit holders usually agree between themselves that they will bear those obligations in defined shares. However, in the absence of some agreement between the holders, there is no foundation for suggesting that the permit and the obligations under it are held in percentage interests.

Even if agreement is reached as between the permit holders that they hold specified percentage interests in the rights and obligations under the joint venture agreement and in any petroleum produced, those are arrangements between themselves and do not prevail over the Act as to the permit obligations. The references to the respective percentage interests of holders (which can be seen in the press, the Ministry's own records and publications and even on the permit itself) have no basis under the Petroleum Act or the Crown Minerals Act and are merely adopted as a matter of convenience to reflect the arrangements reached between the parties.

## **Company Law in New Zealand**

### **Introduction to reforms**

In the past, company law in New Zealand has been very closely modelled on company law in the United Kingdom. In September 1993, a number of new Acts were passed by Parliament to reform New Zealand company law, with effect from 1 July 1994.

The changes will affect all companies. Those companies which are formed after 1 July 1994 will adopt a new constitution from when they are formed. Existing companies will have a three year transitional period, during which some of the new provisions will apply from the outset and others will need to be adopted by the company or will be forced upon it at the end of the period.

### **Provisions relevant to all companies**

From 1 July 1994 all existing companies, and any new companies as they are formed, will be subject to certain new rules which directors and managers need to be familiar with. The duties owed by directors to the company and to the shareholders are now set out in the Companies Act. The definition of a director has been extended to include a range of people who influence decisions made in the name of the company. While the legal duties are not radically altered by the Act, they are now codified in one place (so that a defence that the duties were not understood is less likely to be successful). There are specific obligations for the directors to record certain decisions and the reasons for them. In addition to civil liability, directors may be liable for imprisonment or penalties of up to \$200,000 for breaching some of the specific provisions of the new Act.

Under the new Act, great importance is attached to the 'solvency' tests, which replace the previous 'capital maintenance' requirement. Thus, instead of being required to maintain share capital as a fund for the protection of creditors, a company must be able to pay its debts as they become due in the normal course of business and must have assets greater in value than the value of its liabilities, including contingent liabilities. Directors will be required to confirm and certify that they believe the company has satisfied the solvency tests at the time when certain commitments are made. Those commitments include any proposal to make a distribution to shareholders or acquire the company's own shares.

Existing companies will also be subject to modified rules giving additional rights to aggrieved minority shareholders and some simplifying of the rules relating to amalgamations of solvent companies, compromises between insolvent companies and their creditors and the process of liquidation.

### **New companies**

Companies formed after 1 July 1994 will be constituted more like some North American models than the traditional English model. The shares will not have a nominal or par value, and so cannot be issued at a premium or a discount. Shares must be issued at a fair value, though they may be issued partly paid.

A company need only have one shareholder, and the distinction between public and private companies is abolished.

Companies will no longer have a Memorandum and Articles of Association. Instead, each company will have a constitution, which can be in the form adopted by the shareholders or in terms implied by the new Companies Act. The company will need to adopt its own constitution if it wishes to take advantages of some of the features of the new Act.

A company will be able to purchase its own shares and give financial assistance for the purchase of its shares, if certain criteria are satisfied.

Important changes have been made to the accounting and reporting requirements. Larger companies are now subject to the Financial Reporting Act 1993, though smaller companies (not overseas owned, nor issuers of public securities) are exempt from many of the obligations under this Act. The new rules will require some companies to prepare a cash flow statement, and will give legal effect to 'generally accepted accounting practice', which will be financial reporting standards approved by a new 'Accounting Standards Review Board' established under the Act.

#### **New requirements for existing companies**

In addition to the new rules which apply immediately to existing companies, there is a transitional period of three years for existing companies to revise their constitutions and re-register under the new Act. Companies which do not re-register will automatically be reconstituted on 1 July 1997, with an implied constitution to comply with the new Act. Unfortunately, this form will be quite inappropriate for many companies, particularly those which are 'No Liability' companies or joint venture vehicles, so it will be imperative for all directors and shareholders to ensure that each company is reconstituted and reregistered in an appropriate way, before the end of the transitional period.

## **Significant Legal Requirements: The Petroleum Exploration Regime**

### **Background**

Petroleum exploration before 1991 was primarily governed by the Petroleum Act and by regulations and administrative decisions taken under that Act. That regime has now been replaced, except for some transitional provisions, primarily by the Crown Minerals Act, the Resource Management Act, the Health & Safety in Employment Act, and associated legislation and administrative procedures. However, those participating in exploration are also governed by the law of New Zealand as it affects their particular activities. Without attempting to deal with every issue, it should be helpful to indicate some of those which experience suggests are likely to be most relevant. The following sections of this paper give a brief overview of the main issues, including:

- those covered previously under the Petroleum Act, as they now appear in the new Acts
- other statutes and legal requirements of particular importance

The topics dealt with under the former regime have now been covered by several new provisions. Thus:

- Crown powers to levy royalties, modify work programmes, direct the refining of products, hold licence interests and direct unitisation arrangements are contained in the Crown Minerals Act
- the allocation of licences, mechanisms for changing Crown royalties, setting work programmes and regulating dealings with licences will be governed by the Crown Minerals Act 1991 and the Minerals Programme
- rights in respect of land access for exploration and compensation for land access or damage, are referred to in the Crown Minerals Act but will need to be incorporated in agreements with landowners
- the role of petroleum inspectors, regulation of mining practices and safety are covered by the Health and Safety in Employment Act and by Codes of Practice under that Act

- the preparation of reports, maintenance of geological records and provision of reports, samples and statistical information are covered by the Crown Minerals Act and the proposed Crown Minerals (Petroleum) Regulations
- authorisation for pipelines, pipeline easements, access and taking of land, are covered by the network operator provisions of the Resource Management Act

### **Transitional provisions**

Although the Crown Minerals Act provides a new framework for the grant of petroleum permits, every 'existing privilege' will continue to have effect as if the legislation had remained unchanged, subject to a small number of exceptions. In this context, 'existing privileges' include petroleum prospecting licences, petroleum mining licences and pipeline authorisations granted under the Petroleum Act.

The effect is that, generally, the holders of those existing privileges continue to have the same rights and obligations as before, and other persons having functions, powers or duties relating to the existing privilege will continue to have those functions, powers and duties.

The exceptions to that general statement arise under sections 107 and 108 of the Crown Minerals Act (as amended). Certain functions, powers and duties relating to the environmental supervision and enforcement will be exercisable by the relevant consent authority in accordance with the Resource Management Act. Certain functions relating to health and safety will be exercisable by an Inspector under the Health & Safety in Employment Act.

In addition, the bond held by the Secretary of Energy in respect of each licence may be claimed, in case of breach, by the appropriate consent authority (with priority as to one half) and by the Minister of Energy (with priority as to the other half).

Where a prospecting licence has been issued under the Petroleum Act and the holder applies for a mining licence, the application for a mining licence will be treated as an application for a mining permit under the Crown Minerals Act, and not an application under the Petroleum Act.

As an interim measure, until there is a minerals programme issued for petroleum, the Minister may not grant a petroleum exploration permit without first offering the permit for allocation by public tender and seeking applications under section 24.

## **The Crown Minerals Act**

### **Introduction**

Many of the provisions of the Petroleum Act and Petroleum Regulations have counterparts in the Crown Minerals Act or the Resource Management Act. The Crown Minerals Act applies in respect of all Crown owned minerals. With minor exceptions, no person may prospect or explore for or mine Crown-owned minerals without the necessary permit, or authority given by the holder of a permit. Compliance with the Crown Minerals Act does not remove the need to comply with all other relevant legal requirements.

The fundamental purpose of the Act is to provide a framework for the efficient allocation of rights in respect of Crown-owned minerals and for the Crown to obtain a fair financial return from its minerals. All petroleum existing in its natural condition in land is the property of the Crown, by virtue of section 10 of the Act. This continues the law as it was under the Petroleum Act from 1937.

The main provisions of the Act include:

- An obligation on all persons exercising functions and powers under the Act to '... have regard to the principles of the Treaty of Waitangi ...'
- The requirement for the Minister to issue a minerals programme, following a procedure which includes giving public notice, providing drafts for public comment and receiving submissions before promulgating the minerals programme. The minerals programme is intended to establish policies, procedures and provisions for management of the respective Crown-owned minerals, including provision for allocation of permits and a fair financial return to the Crown. The Minister may initiate proposed changes to the programme at any time, and must review the programme as a whole within every 10 years.
- The requirement that permits must conform with the Minerals Programme (if there is one) which is current at the time the permit is issued.
- New labels for the categories of permits and corresponding activities permitted under each: prospecting, exploration and mining. The rights associated with each and their respective durations are summarised below.
- Provisions for the Minister to revoke a permit for non-compliance, for a permit holder to surrender a permit, and mechanisms for transfers and other dealings with permits.
- Provisions for work programmes to be approved by the Minister as a pre-requisite for granting a permit. The Minister must consider the applicant's position and give reasons if a work programme is declined.
- Powers for the Minister to direct that petroleum be refined in New Zealand and to direct unit developments.
- Provisions regulating access to land, which are explained further below, with explicit provisions for compensation to land owners or occupiers.
- Provisions for permit holders to maintain, and provide to the Secretary of Commerce, records and of activities conducted under the permit.

### Mineral permits

Mineral permits may be granted by the Minister:

- in accordance with a minerals programme
- on the basis of allocations for public tender
- in response to an unsolicited application (in which the first applicant will have right of priority for consideration, unless there is another mechanism published before the application is made)

There are three categories of permit. They are:

1. A prospecting permit, which may be issued for 2 years and may be extended but only to a total of 4 years.
2. An exploration permit, which may be issued initially for 5 years and may be extended over half of the original land area to a total of 10 years. It may be further extended over sufficient land, for a sufficient period, to enable appraisal of a discovery.
3. A mining permit, which may be issued in respect of an identified discovery, initially for 40 years but extendable only if necessary to permit economic depletion of the resource.

Prospecting is defined to mean 'any activity undertaken for the purpose of identifying land likely to contain exploitable mineral deposits or occurrences' and includes geological, geochemical and geophysical surveys.

Exploration means 'any activity undertaken for the purpose of identifying mineral deposits or occurrences and evaluating the feasibility of mining particular deposits or occurrences..', and includes drilling.

Mining means '... to extract, by whatever means, a mineral existing in its natural state in land ...', but does not include prospecting or exploration. However, the holder of an exploration permit has a right to prospect and the holder of a mining permit has a right to explore or prospect within the licence area.

The Act includes rights for a prospecting permit holder to be granted an exploration permit, if the results of prospecting justify it, the proposed work programme is acceptable and the applicant has generally complied with the Act and the existing permit. Similarly, the holder of an exploration permit will be entitled to a mining permit in respect of any discovery, if the work programme is satisfactory and the other requirements of the Act have been met.

In granting a permit, the Minister may specify terms on which the Crown will be:

- entitled to participate in the permit (section 25); or
- entitled to payments for the issue of the permit, the rights granted under the permit or the minerals (section 34)

These powers of Crown participation have enabled the Crown to issue exploration permits on the basis of the former policy of retaining an 11% carried interest through exploration as well as a 12.5% royalty on production. However, other participation and revenue mechanisms are possible and the preliminary draft of the Minerals Programme includes some variations, described more fully below.

### Access to land

The Crown Minerals Act represents a significant departure from the previous rights given to the holders of mineral licences to obtain access to those minerals, even over private land. No permit gives a right of access to land, except for some minimum impact activities. Any existing statutory rights of access for minerals, reserved to the Crown, are now cancelled. Explorers and miners must now generally reach agreement with land owners and occupiers before entering any land, except for limited cases. The rules for land access now depend on:

- the class of land involved
- the class of activity involved
- the mineral for which the permit is issued (the rules for petroleum are slightly different from those for other minerals)

In brief, the 'special classes' of land are:

- conservation land or reserves
- land under crop
- land within 30 metres of a building, other signs of civilisation or indigenous forest
- land having an area of 4.05 hectares or less

In addition, special provisions apply to Maori land.

No entry is permitted on to these special classes of land, or on to Maori sacred land, without the consent of the owners. Special efforts must be made to notify and consult with the owners of other Maori land and notify the local iwi (tribal) authority.

Apart from the special classes of land, entry is permitted for minimum impact activity. Notice of the date of intended entry, the nature of the work and a contact telephone number

must be given to the owner and every occupier. Minimum impact activities are defined in a very limited way. Geological, geochemical and geophysical surveys are permitted, but the use of explosives is not.

For other activities, the holder of a petroleum permit has no right of access except in accordance with an access agreement which is:

- agreed between the permit holder and each owner and occupier of the land; or
- determined by an arbitrator in accordance with the Act (section 53)

For the special classes of land, an access arrangement cannot be determined by an arbitrator unless the landowner and any occupier and the permit holder agree or an Order in Council is made under section 66 declaring that the arbitrator may determine the access arrangement.

In respect of Crown land, the relevant minister may enter into an access arrangement. Offshore, that will be the Minister of Conservation within the territorial sea and the Minister of Transport (under the Continental Shelf Act 1964) outside the 12 mile limit. However, the Minister must in general consider the objects of the Act under which the land is administered and other matters mostly related to the Crown's holding of the land. Thus, the intentions behind the Crown Minerals Act and the minerals programmes will be of limited relevance. In addition, there is provision for access to be completely prohibited in respect of particular Crown land by Regulation or Order in Council (sections 62 and 105(n)).

Obviously, if it is necessary to go to arbitration for securing access arrangements the whole process can become very time consuming. Land owners and occupiers must be found and notified that the permit holder desires access. Only after 60 days (or in the case of a geophysical survey, 30 days), if there is no agreed access arrangement, can the permit holder seek to go to arbitration. There is a further 30 days while they agree on the appointment of an arbitrator, then either of them can apply to the Secretary of Energy. After that the Secretary is required to appoint an arbitrator, and then it will be necessary to organise and conduct the hearing.

When the access agreement has been settled, if it is of more than 6 months duration, the applicant must lodge it with the District Land Registrar for entry on the land transfer register.

In respect of access to farmland, for exploration work and for pipelines, there has been some degree of standardisation for many years between individual explorers or groups of explorers and groups of farmers. Since the introduction of the Crown Minerals Act, with the reduced rights for licensees to get access to land, the Petroleum Exploration Association of New Zealand and Federated Farmers of New Zealand have now developed a land access code. Although neither PEANZ nor Federated Farmers can ultimately bind their respective members to the form of a land access agreement, the code does incorporate a set of guidelines, which have been widely accepted by the representatives of rural land owners, petroleum companies and pipeline owners.

The code sets out procedures for petroleum companies to identify access requirements and the extent to which they may impact on a particular land owner or occupier, what steps can be taken to reduce or manage any particularly significant impact and an appropriate compensation formula.

## Pipelines

Part 2 of the Petroleum Act formerly provided for:

- the owners of authorised pipelines to acquire pipeline easements, with assistance from the Minister if agreement was not possible
- persons other than the holders of a pipeline authorisation to be permitted to have conveyed products which the pipeline could convey ('common carrier' provisions)

The operator of a transmission pipeline will now be regarded as a 'network utility operator' under Part VIII of the Resource Management Act. It may apply to the Minister for the Environment for approval as a 'requiring authority' for a particular network or project. If the Minister is satisfied that the approval is appropriate for carrying on the network or project and that the applicant is capable and responsible, the applicant may be approved as a requiring authority.

The requiring authority may give notice to the relevant territorial authorities of its requirements for designations in respect of land required for the pipeline, with supplementary information. Following a public hearing, the territorial authority can recommend that the requiring authority either confirms the requirement (with or without modifications) or withdraws the requirement. The requiring authority may then reject the recommendation (i.e. keep to its original requirement) or modify the requirement (consistent with the recommendation). The territorial authority must include the final form of the requirement (subject to the outcome of any appeal to the Planning Tribunal) in its district plan.

When the designation is in place, the requiring authority may proceed to acquire the necessary interest in the land. If it cannot achieve that by negotiation, it may apply to the Minister of Lands to have the land acquired under the Public Works Act and vested in the network utility operator. Obviously, any compensation payable by the Minister will be recoverable, with expenses, from the network utility operator.

The owner of any interest in land over which a designation has been made may require the network utility operator to acquire that land and give compensation.

The 'common carrier' provisions have not been reproduced. The government apparently expects section 36 of the Commerce Act 1986, prohibiting the abuse of a dominant position in a market, to provide adequate rights to those wishing to use pipelines belonging to others. This proposition has been the subject of intense debate in the telecommunications and electricity sections, as well as the oil and gas industry, including extended litigation and many research and conference papers.

In summary, it seems that the mechanisms relating to pipelines are very different from those which operated under the Petroleum Act, in addition to the more general impacts of the Resource Management Act on all projects. In particular, the numerous steps to get approval, followed by the various consultations with consent authorities and the need for notified public hearings, seem to be certain to extend the time frames between discovery of petroleum and operation of the pipeline.

## Registers and records

Under section 90 of the Crown Minerals Act, every permit holder must keep records and provide reports and information to the Secretary of Commerce. The Secretary may call for

a certified copy of any report made by or for the permit holder in respect of activities under the permit.

The Act was amended in 1993 to reduce the level of protection for confidential information in the hands of the Secretary. The information must be made available to anyone who seeks it, after the earlier of

- 5 years after the information was obtained by the permit holder; or
- the expiry or surrender of the permit or a subsequent permit to which the information relates

While the information is on closed file, the Minister of Energy may use it for exercising any power or performing any function 'conferred on the Minister under [the Crown Minerals] Act', but not for any other purpose without the consent of the permit holder. However, the Minister (and the information) is still subject to the Official Information Act, which means that it may be disclosed on request unless it is recognised as commercially sensitive, or meets one of the other exceptions to that Act.

## A Minerals Programme for Petroleum

The Minister of Energy is required by section 13 of the Crown Minerals Act to ensure that a Minerals Programme is issued in respect of any mineral which is likely to be the subject of an application for a permit, as soon as practicable. The Minister must issue the programme initially in the form of a draft, and to give notice identifying the contents of the draft Minerals Programme and indicating where the draft may be inspected and what requirements there are for making submissions. (section 16).

Forty days must be allowed for submissions, and anyone may make a submission. When the submissions have been considered, and the Minister has made decisions on them, the revised draft must again be published before the Minerals Programme is formally issued under section 18.

The purpose of the minerals programme is 'to establish policies, procedures and provisions to be applied in respect of the management of' the relevant mineral, in particular to provide for:

- the efficient allocation of rights to that mineral
- a fair financial return to the Crown

Section 15 provides that the Minerals Programme must include statements specifying:

- which mineral it applies to
- how the programme will differ in respect of different areas or categories of land
- to what extent prospecting, exploration or mining is to be permitted
- the policies and procedures to be applied in granting permits, including non-exclusive permits, rights to subsequent permits and work programmes
- policies for a fair financial return to the Crown
- reasons for and against the particular policies, procedures and provisions

Although the Minister of Energy must act consistently with the Minerals Programme, in performing functions under the Crown Minerals Act, other Ministers (such as the Ministers of Conservation and the Environment) do not appear to be bound by it.

The initial draft of the minerals programme for petroleum is a lengthy document, partly because it repeats a lot of the

material out of the Crown Minerals Act and partly because the structure of the document is quite repetitive. The significant points, which are likely to be carried forward into the draft to be formally published, include:

- the way in which the Minister shall have regard to the principles of the Treaty of Waitangi in preparing block offers and other proposals for permits which could raise new issues relevant to Maori
- identifying certain areas of land, and the procedures for identifying further areas, not available for petroleum mining
- an outline of procedures for petroleum exploration permit block offers
- procedures for granting petroleum mining permits
- the criteria for evaluating applications for prospecting and exploration permits, including the possibility of allocation by staged work programme bidding or by cash bonus bidding or by 'acceptable frontier offers' (with reference to the areas available for those offers)
- criteria for considering applications by permit holders for changing permits and work programme conditions
- criteria for allocating petroleum mining permits, including approvals for work programmes and grounds for withholding approvals and the area, duration and royalty provisions under mining permits
- procedures for making changes to mining permits
- procedures for requiring unit development
- procedures for administering transfers and other dealings with permits
- procedures for enforcing compliance with permits or revoking permits
- the proposed royalty regime

In essence, the proposed royalty regime would discontinue the existing 11% carried interest participation and 12.5% ad valorem royalty, which has applied to recent petroleum licences and permits, and replace that with a system which would levy the higher of a 5% ad valorem royalty or a 20% accounting profits royalty. These proposals may, of course, be modified for later drafts or the final Minerals Programme.

## Resource Management Act 1991

The purpose of the Resource Management Act is to promote the sustainable management of natural and physical resources. The scope of the Act is extremely wide. It replaced legislation relating to town and country planning, water and soil conservation, historic places, clean air, noise control and subdivision of land. The concepts of 'sustainable management' and 'environment' are widely defined, and all persons exercising functions and powers must:

- 'recognise and provide for' certain matters of national importance
- 'have particular regard to' certain subsidiary matters
- 'take into account the principles of the Treaty of Waitangi.'

Under the transitional provisions of the Resource Management Act, existing district and regional schemes, maritime schemes and codes of ordinances must be reviewed in due course and revised to comply with the new Act. There is provision for a hierarchy of policy statements and plans, so that decisions taken at the national or regional level will be binding on plans and resource consents granted at the local level. Certain activities are presumed to be allowed, unless prohibited by a particular plan, while other more

potentially harmful activities are presumed to be prohibited unless expressly allowed in a plan or a resource consent.

The Act provides for five categories of 'resource consent' to cover the various identified impacts. They are:

- **land use consents**, governing construction, excavation, disturbance to plants or animals or depositing any substance
- **subdivision consents**, governing subdivisions (including leases over 20 years)
- **coastal permits**, relating to the coastal marine area (from the high tide mark to the 12 mile limit)
- **water permits**, to take, use, dam or divert water or take heat or energy from it
- **discharge permits**, for the discharge of any contaminant — very widely defined — into water, onto land or into the air

Every person has a duty to avoid, remedy or mitigate any adverse effect on the environment, and there is an armoury of enforcement measures with substantial penalties for breaches of the Act. Penalties extend to 2 years imprisonment, fines up to \$200,000 and fines of \$10,000 per-day for continuing offences. Liability may be extended to employers for offences of their employees, to principals for offences committed by their agents, and to directors and persons concerned in the management of bodies corporate if the offence occurred with their authority, permission or consent.

There may be a defence where the apparent breach is a complete aberration and a sound compliance programme and compliance culture can be demonstrated. There are defences for actions taken to save or protect life or property, or for unforeseeable events which cannot be avoided, but in every case prompt and adequate remedial action must be taken.

There is a general regime for network utility operators, including pipeline operators, which will make it much more difficult than previously to acquire land for pipeline routes without negotiating easement arrangements with landowners. The same rules apply to operators of electricity, telecommunications and other networks.

For mineral prospecting and development, it will now be necessary to ensure that coastal, regional and district plans are drafted to permit (absolutely or conditionally) all of the activities which have a physical, social or environmental impact during operations. To the extent that those activities are not permitted, permit holders will need to seek resource consents such as:

- a land use consent (which may include conditions as to noise, light disturbances, transport densities)
- a water permit (to take water)
- discharge permits (to discharge water, drilling muds and cuttings, dust, the products of flaring petroleum and the discharge of any other 'contaminant' into air or water or onto land)

For offshore operations within the 12 mile limit it may be necessary to have a coastal permit. Beyond the 12 mile limit it has been necessary to apply for consents under the Marine Pollution Act. That Act is subject to a reform Bill which is currently before Parliament to make the rules applying over the continental shelf as close as possible to those under the Resource Management Act.

## Health and Safety in Employment

The Petroleum Act and related regulations included provisions for safe operations and the health and safety of employees. Those provisions were repealed by the Health & Safety in Employment Act 1992 (the HSE Act), which introduced a common regime for health and safety in places of work throughout New Zealand. As with the Resource Management Act, the HSE Act is designed to ensure that quality, performance based systems are in place for all operations, rather than prescribing detailed rules. The former specialist inspectors will now come under the auspices of the Department of Labour, but in many cases the same individuals with specific industry experience are auditing the safety systems of operators under the HSE Act. At present, the HSE Act provides only a broad framework which is intended to be supplemented by regulations and codes of practice. PEANZ has been involved in the development of a code of practice for the petroleum sector, which should be published in 1994.

The primary responsibility for providing a safe and healthy work environment is imposed on the employer. Employers are under a general duty to ensure that the work place is safe for employees and others in the vicinity. The first obligation is the four-step approach to hazard management. Those steps are:

- **Identification:** all hazards must be regularly and systematically identified. All significant hazards (as defined in the Act) must then be subject to the following steps.
- **Elimination:** all significant hazards must be eliminated if practicable.
- **Isolation:** where it is impractical to eliminate a significant hazard, it must be isolated, so that it will not cause harm, where practicable.
- **Minimisation:** where it is impracticable to eliminate or isolate a significant hazard, it must be minimised. All persons at risk (employees and others) must be protected and their exposure to the hazard monitored.

In addition to the hazard management functions, employers have specific obligations in respect of accidents. An accident is so defined that it may include a 'near miss', whether harm is actually caused to any person or not. Employers must keep a register of accidents and incidents, and must notify the Department of Labour as soon as possible of any accident or incident which causes or might have caused 'serious harm'. Where an accident involves serious harm, the accident scene may not be altered (with some exceptions) until permission is granted by the inspector. The exceptions are limited to those cases where it is necessary to save life or prevent further harm, to maintain access to essential services, to prevent serious damage or loss of property or where a police investigation is involved.

Employers are required to involve employees in the development of health and safety procedures — both the hazard management process and the development of emergency or contingency plans.

Other persons having duties under the Act include:

1. Principals, i.e. persons or companies who engage contractors to undertake work. The definition of principal is wide enough to extend to an operator or joint venture participant, who is required under the Act to take all practicable steps to ensure that no employee of a contractor or subcontractor is harmed while doing any work the

contractor was engaged to do. The phrase 'all practicable steps' is defined in the HSE Act, in terms which require a balance that is reasonably practicable in the circumstances, having regard to the consequences of inadequate protection, the state of knowledge about the potential harm and the means of limiting it and the availability and cost of protection. Although the notion of maintaining some balance is commendable, the criteria are still rather subjective.

2. Any person who 'controls a place of work' (and several people may exercise different levels or aspects of control).
3. Self-employed people (who have obligations to avoid harm to anyone, including themselves).
4. Employees (in respect of themselves and others).

Employment contracts should include provisions which require employees to obey safety directives and follow safety procedures. It is likely that employers' and principals' duties will be interpreted to include incorporating, and monitoring compliance with, these clauses in employment contracts.

In a similar fashion to several recent New Zealand Acts, the HSE Act attempts to put the responsibility for compliance on those who have or should have the means of ensuring that the requirements of the Act are met. There are provisions for inspectors to serve improvement notices, which draw attention to cases of non-compliance and call for them to be remedied. In more serious cases, the inspector may issue a prohibition notice which may require work to be stopped until the non-compliance is remedied.

Failure to comply with these notices or the other obligations under the Act (hazard management, accident reporting or the institution of safe practices) may lead to prosecution and liability under the Act. Several of the offences of non-compliance are 'strict liability' offences, which means that the prosecutor does not need to prove an intent to commit the offence or cause the harm. Simply proving that the offence was committed will lead to liability, unless one of the limited defences specified in the Act is available.

In general, a person charged will need to show a complete absence of fault — at least, to demonstrate that all practicable steps have been taken to avoid the harm which prompted the charge. The fact that one person has a successful defence does not necessarily mean that others are not liable. Thus, an employee who fails to follow correct procedures may be liable, even if the employer has taken all practicable steps to provide training and adequate systems. If a company fails to comply with the Act, then its officers, directors or agents may be prosecuted individually. To succeed with this type of 'due diligence' defence, each person charged will need to demonstrate that they had discharged their own obligations under the Act. Thus:

- employees will need to show that they took proper steps for the safety of themselves and others
- employers will need to show that their compliance and safety programmes were adequate and were implemented, and that they promoted a 'safety culture'
- principals will need to show that they made all practical enquiries about the safety programmes of their contractors and subcontractors, and should preferably be able to demonstrate a 'safety culture'.

## Other Significant Legal Requirements

### Physical and social environment

The cultural and spiritual values and traditions of the Maori people are receiving increasing statutory and political

recognition. The principles of the Treaty of Waitangi, entered into between representatives of the Maori people and of the British Sovereign in 1840, have in relatively recent times been given statutory significance. Those principles are now recognised in the Treaty of Waitangi Act 1975, the State Owned Enterprises Act 1986, the Conservation Act 1987, the Environment Act 1987, the Resource Management Act 1991, the Crown Minerals Act 1991 and others. Many petroleum explorers have in the past made a practice of consulting the interested Maori groups to ensure that their interests were not transgressed. Clearly both local and overseas contractors will need to plan early, take care and seek suitable guidance on these matters in the future.

Industrial relations is another matter on which local guidance needs to be sought. There is a legal framework which provides for such matters as the minimum levels of manning on vessels in New Zealand waters and the numbers and qualifications of personnel in a range of occupations. The Employment Contracts Act 1991 governs all employment contracts. The distinction between employees and independent contractors can be significant. In general, any proceedings arising from an employment contract will be under the exclusive jurisdiction of the Employment Tribunal and Employment Court, while independent contractors will be subject to the common law of contract. In respect of these formal requirements and the other informal but detailed codes of practice, operators who do not have extensive local experience are best to seek special guidance in this area.

Other New Zealand resources, particularly in construction industries relevant to a development, may be promoted for economic or social reasons. Generally, there is no difficulty importing resources which are not available in New Zealand, but it may be necessary to investigate the local market so that the need for imports can be demonstrated.

### Overseas Investment Commission requirements

Any 'overseas person' (as that term has already been described) must obtain consent from the Overseas Investment Commission before it can:

- establish or carry on a business in New Zealand where total establishment and operating costs are expected to exceed \$10 million
- acquire 25% or more of a New Zealand company, where the consideration for the share transfer or the value of the offeree's assets exceed \$10 million
- acquire assets in New Zealand where the total consideration payable is more than \$10 million

Consent is also required for any investment which results in the overseas person controlling 25% or more of the entity which they are to carry on business in, and any acquisition of assets for use in, 'sensitive' sectors (commercial fishing or on rural land). The \$10 million threshold does not apply.

There is no specific limit on the percentage of overseas investment which will be permitted in an exploration project. The policy may vary from time to time, but at present it permits an almost unrestricted participation in exploration by overseas explorers who can demonstrate an acceptable level of technical and financial competence. In most cases the original consent will only extend to development if the applicant can show that the extension is justified. Even New Zealand explorers should understand that, if they wish to farm-out licence interests or contract operational work to overseas persons, those persons will not be entitled to carry on business in New Zealand without the necessary consents.

It is open to argument that the mere ownership of an interest in a prospecting or exploration permit is not 'carrying on business', so that consent for merely owning a licence interest may not be required. However, the pragmatic view is that, since the consent is not normally difficult to obtain and is likely to be a prerequisite to participation in any development, then the consent should be applied for at an early stage.

### **Trade practices and competition**

New Zealand legislation relating to competition law and restricted trade practices is very similar to that in Australia. Both regimes have a lot in common with North America. The main statutes are the Commerce Act 1986 and the Fair Trading Act 1986. The Commerce Commission is a specialist investigating authority and tribunal charged with a range of administrative and enforcement functions under both Acts.

The Commerce Act prohibits the entering into or giving effect to contracts, arrangements or understandings which substantially lessen competition in a market. Exclusionary provisions in contracts, arrangements or understandings (generally collective boycotts by traders or suppliers directed at other traders or groups of traders) are also prohibited.

Collective price fixing arrangements are deemed to substantially lessen competition, and are thus prohibited under the more general provisions. There are exceptions for prices fixed within a joint venture or a joint buying and production arrangement.

These practices can be authorised by the Commerce Commission if a countervailing public benefit is shown. However, resale price maintenance is also prohibited and cannot be authorised.

The Commerce Act also prohibits a company which has a dominant position in the market from using that position for the purpose of:

- restricting entry into a market
- preventing or deterring competitive conduct in a market
- eliminating persons from a market

The Commerce Act places a significant limitation on any merger or takeover proposal. It is a breach of law to 'acquire assets of a business or shares if, as a result of the acquisition

- that person or another person would be, or would be likely to be, in a dominant position in a market
- that person's or another person's dominant position in a market would be, or would be likely to be, strengthened'

The initial responsibility of determining whether or not an acquisition will create or strengthen dominance rests upon the party concerned. The monetary penalties are significant and a wrong assessment of the effect of the acquisition could be extremely costly. The Act provides for monetary penalties of up to \$5 million for a company and \$500,000 for an individual.

The Commission may grant an authorisation if a dominant position would be created or strengthened, but with 'such a benefit to the public that it should be permitted.'

The Act extends to business dealings carried on outside New Zealand, to the extent that they involve a New Zealand resident or person carrying on a business in New Zealand and affect a market in New Zealand. The Act also applies to any person residing or carrying on business in Australia, to the extent that the conduct affects a market in New Zealand (other than a market exclusively for services).

The Fair Trading Act 1986 consolidated and revised the law on misleading advertising. It also prohibits misleading or deceptive conduct and false or misleading representations about goods or services. In addition, certain specific unfair trade practices are identified and prohibited, such as 'bait' advertising, where goods advertised are not available for supply, and use of physical force or coercion in the supply of goods and services.

Most breaches of the Fair Trading Act do not require an intention to deceive or mislead — the fact or likelihood of doing so will be a breach. Remedies may be sought by consumers or other traders, or initiated by the Commerce Commission.

### **Taxation**

Taxation of course permeates all investment and development planning. The income tax regime is dealt with more fully elsewhere, and seems to be perpetually under review. However, there are other aspects of taxation which justify a few brief comments on what are essentially operational rather than commercial matters.

Every employer in New Zealand must deduct from wages paid to employees a proper amount of tax and forward the amount to the Inland Revenue Department. If the employee claims not to be liable to tax in New Zealand, then that should be verified.

Payments to overseas contractors providing services in New Zealand will be subject to overseas contractors' withholding tax. The person paying the contractor must withhold 15% of the contract payment and forward it to the Inland Revenue Department. It should be understood that this is not a final tax, and in very many cases is far in excess of the overseas contractor's tax liability in New Zealand. It is held by the Inland Revenue Department as a credit against the contractor's ultimate tax liability, and if that liability is less than the amount held, the contractor can claim the excess back. Most contractors can in fact procure exemption certificates from the Inland Revenue Department and principals should endeavour to ensure that this procedure is adopted. There is certainly no justification, as some contractors would suggest, for simply adding 15% onto the contract charges as if that were a final tax.

Goods & Services Tax (GST) at 12.5% is payable on the supply of goods or services within New Zealand. It is a relatively uncomplicated value added tax, and business tax payers can claim back the GST content of their purchases of goods and services. The supply in New Zealand of almost all goods and services, except wages, salaries, certain financial services, and certain zero-rated services, is subject to GST at the standard rate of 12.5%. In the nature of things, most exploration participants purchase more in the way of goods and services than they sell. Thus it will generally be in their interests, if expenditures are at all significant, to register early (before the expenditure is incurred) with a monthly (the shortest) return period, in order to maximise the cash flow benefits to be obtained out of the refunds.

GST is payable on goods imported into New Zealand, at the time of import, unless the importer participates in the deferred payment scheme operated by the Customs Department. This scheme permits payment of GST on imports to be deferred for several weeks, so that if the timing is well managed, the payment may not be due to Customs until the refund from the Inland Revenue Department is available.

For joint venture operations, the Inland Revenue Department currently takes the view that most petroleum industry exploration joint ventures are not registrable as separate 'registered persons' for GST purposes. The explanation is that the joint venture does not, and does not expect to, supply goods or services. Each participant must register for GST purposes and the licence or permit operator, as their agent, accounts for the GST component of income and expenditure to the participants. They are then free to apply for refunds in their own way and must account to the IRD for any GST collected on their behalf by the operator. However, it appears that if any petroleum is found, even though owned by the participants, and traded by them separately, then the joint venture is liable to be registered.

Stamp duty is payable on conveyances of certain property. Assignments of interests in petroleum licences attract duty of 40 cents per \$100.00 of consideration or value of the property transferred.

#### **Accident compensation**

The Accident Compensation Scheme which operates in New Zealand is something of a novelty for overseas explorers and contractors. No action can be brought within New Zealand for death or personal injury arising out of an accident which is covered by the scheme. Compensation is paid to accident victims and medical and support expenses paid. Employers are required to participate by providing to the Accident Rehabilitation and Compensation Insurance Corporation details of their employees and by paying levies into the fund.

It must be appreciated that the Accident Rehabilitation and Compensation Insurance Act 1992 applies only within New Zealand. If an accident victim can bring a suit in some other jurisdiction and persuade the Courts in that jurisdiction that some other law should apply, then the domestic legislation in New Zealand would not necessarily bar the claim. That is really not a matter of New Zealand law but a warning against cancelling all workers compensation insurances on the reputation of our Accident Compensation Scheme. In addition, the reductions in classes of accidents covered and the levels of compensation mean that there may be new possibilities of common law actions for claims not covered by the scheme.

#### **Other operational requirements**

In undertaking exploration operations there are a range of other legal requirements to be met. The requirements of the Crown Minerals Act can be summarised as an obligation to keep the Ministry informed and get its consent to proposed operations. In addition the following matters come to mind:

- arrangements with Telecom Corporation for the use of communication facilities
- consent of Ministry of Transport for shipping movements
- consent of Airways Corporation of NZ Limited (formerly Civil Aviation Division, Ministry of Transport) for helicopter movements and landing pads
- notice to Fisheries Division of Ministry of Agriculture and Fisheries, for movements in the vicinity of fishing grounds
- import licensing and customs arrangements for the importation of supplies
- immigration formalities for bringing in expatriate workers

## **Comment: The Legal Environment for Investment and Development**

In recent years explorers in New Zealand have been subject to considerable uncertainty about the government's intentions in several major areas, in particular:

- the income tax regime as it applies to petroleum mining and exploration
- the implementation of Crown Minerals Act and the Resource Management Act
- the publication of the draft Minerals Programme
- the deregulation of the gas industry
- the deregulation of the electricity industry including the separation of the generation and transmission functions of Electricorp

There has now been some experience with the impact of the Resource Management Act and other rules relating to environmental matters. It is clear, whatever the scope of existing and future rules, that any operations will be open to scrutiny by a range of interest groups with the potential to subject a project to lengthy and expensive litigation and delays. The most successful way of limiting these costs and delays is probably to take a pro-active involvement in the development of national, regional and local policy statements and plans, so that the authorities and the community can take account of the industry's interests at an early stage.

The petroleum mining taxation regime appears to be more settled than it has for some time. However, there are still some uncertainties of interpretation in the application of the new rules, and the fiscal impact on individual transactions will continue to be a concern to some industry participants.

The delay in producing a draft Minerals Programme has been a source of some frustration. It would be a great help to have a clear and concise statement of policy covering the various issues contained in the programme. The withdrawal of the Crown from active participation (without contribution) in exploration joint ventures should remove a cause of irritation which has been felt for some time, about the Crown's apparently conflicting role as regulator and participant. The proper level for setting the new royalties may continue to be a matter for debate, and no doubt the accounting rules will require some further work, but at least the roles of the respective participants should be clearer.

There is still work to be done in finalising the Codes of Practice for Health and Safety in Employment regime. While these are important, and will no doubt take some time to get right, they do not seem to present the same potential for disruption as the changes which have already occurred.

Perhaps the greatest uncertainty still lies in the proposed deregulation of the electricity industry, and the impact which that may have on the New Zealand energy sector in general and on the petroleum industry in particular. The numerous proposals for change, and the limited progress which has been made over the last seven or eight years, make it quite impossible for explorers and producers interested in new fuel sources to develop any sort of planning over the time frames which need to be allowed for.

## **Conclusion**

There is a wide range of legal requirements which regulate the petroleum exploration industry in New Zealand at present, and these will undergo a continuous process of change.

However, most of the reforms which were proposed from the mid-1980s have now been implemented. In an industry where uncertainty and risk are higher than most, I hope that we can look forward to a more settled legal environment and concentrate on the business of finding and developing petroleum resources.

It is not clear whether the legal regime in New Zealand is any more difficult than elsewhere, although the difficulties arise in different ways. The most effective means for explorers or

contractors to minimise the adverse impact upon exploration of the legal requirements is to ensure that they have current information available to the organisation — whether internally, through experience, or externally, by employing advisors or contractors who are familiar with the industry and with local conditions. These include not only the 'professional' advisers, but those in fields such as industrial relations and employment, customs and suppliers of a range of goods and services.

#### **Author**

JOHN GAVIN ADLAM graduated in Law & Commerce from Victoria University of Wellington, New Zealand in the early 1970s and was admitted as a Barrister & Solicitor in New Zealand in 1974. He practised General and Commercial Law in New Zealand and in late 1980 took a position in the New Plymouth office of Watts & Patterson, in a team providing legal services to Shell BP & Todd Oil Services Limited, at that time operator of the Kapuni (Onshore) and Maui (Offshore) Fields, the only producing fields in New Zealand. He returned to Watts & Patterson (later Rudd Watts & Stone) in Wellington in 1983. Since that time he has advised a number of explorers, local and overseas, on licensing, farmouts and financing arrangements, joint venture agreements and drilling and other exploration operations; collaborated in presenting submissions on behalf of the petroleum industry on proposals for a new taxation regime and for resource management law reform; advised on the draft Minerals Programme and the new safety legislation and has also advised on commercial geothermal developments.