

## PHIL CREAGH

[PARTNER]

LLB UNIVERSITY OF AUCKLAND 1981, BSC UNIVERSITY OF AUCKLAND 1977

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- Corporate and commercial law
  - Alternative assets (venture capital, private equity and investment funds)
  - Securities law
  - Major project development/infrastructure and logistics
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### HOW CAN PHIL HELP YOU?

Phil is a very senior resource for those requiring a noted advisor in the field of commercial and corporate law. He offers a particular focus on infrastructure and resort projects and work in the alternative assets area, as well as acquisitions and dispositions.

Phil also has particular expertise in the areas of securities issues, and gives advice on appropriate strategy and remedies in corporate and commercial dispute situations, forestry transactions, complex property developments, project financing and property related capital raisings, foreign investment work, specialist marina and other maritime real estate development work.

Phil has considerable recent experience in large scale infrastructure and logistic projects including acting on a number of significant transactions involving national or regional rail service arrangements, as well as the transport logistics solution for the export of coal from what will be the South Island's second largest coalmine of its type.

Phil also has an established client network throughout many Asian countries. He has advised significant Asian-region corporates on appropriate investment strategies and structures for investment in NZ and assisted NZ corporates and smaller investors, with investments, ventures and dispute resolution in Asia.

### SOME OF PHIL'S MAJOR PROJECTS

Phil has undertaken a variety of Commercial work including:

- Investment products/securities
  - Advising AMP Capital Investors on the establishment of new wholesale funds in New Zealand, including advice on appropriate structures to achieve tax and commercial efficiency
  - Providing advice, in support of the registration of an investment fund domiciled in Ireland. Advice here was as to the entire New Zealand regulatory framework relevant to the activities of a related public issuer in New Zealand, in particular matters relating to regulation of public securities offerings, registration of public issuers, the general business law relating to fair dealing, and numerous related matters relating to establishment of business in New Zealand



CONTACT PHIL

DDI +64 9 306 5791

MOBILE 021 905 866

PHIL@ACLLAW.CO.NZ



## [MAJOR PROJECTS continued...]

- The establishment for i-cap partners Limited of two New Zealand investment funds, a private equity fund and a mezzanine capital fund including all issues relating to advice on suitable offering structures, establishing the funds, advice in relation to all regulatory compliant issues, and preparing and registering prospectuses to achieve securities law compliance
- A number of debt based secured and unsecured bond issues including structuring, preparation of all structure documents including trust and supervision deeds and preparation of prospectus and related public offer disclosure documentation
- Advice in relation to a number of cross border public and wholesale security offers to be made within New Zealand including advising as to local compliance requirements, exemptions available for certain classes of offers within New Zealand, and providing local compliance advice and documentation such as prospectus “wrap arounds” and New Zealand complying investment statements
- Establishing the first two international points based time share schemes to operate in New Zealand

### ■ Acquisitions and divestments

- Acting for the controlling shareholder on the divestment of the national retail chain, the BBQ Factory. Phil’s role here was to advise throughout the transaction, including negotiating asset sale documentation, advise in relation to underwriting of the first stage purchase proposal, and then complete sale of the business through to the underwriter
- Acting for AMP Capital Investors on its joint venture investments and divestments in the retirement village sector
- Providing advice to Briscoe Group Limited in relation to the acquisition of approximately 30 Stirling Sports retail outlets throughout New Zealand, including playing a role in negotiating the key asset purchase agreement as well as in advising on the restructuring of existing store franchise arrangements
- Advising on the restructure of the Swiss Deli food manufacturing business including putting in place protective shareholders agreements
- Advising on a cornerstone capital placement structured by way of convertible preference shares in a New Zealand software company, the placement being to an NZ domiciled venture capital provider
- Leading the legal team for Briscoe’s bid to purchase the assets of Stirling Sports

### ■ Logistics and infrastructure

- Acting for Ports of Auckland Limited on all aspects of POAL’s carriage and rail service agreements with Toll Rail including having oversight of all aspects of POAL’s development of its Wiri inland port and rail shuttle and service agreements with Toll Rail servicing the Port of Auckland
- Acting for Pike River Coal Limited on a complex multi-modal transport services agreement under which our client outsourced all logistics and handling of coal and related products, over a long contractual term, by contract with a specially established services company established by a number of different sub-sector services providers
- Acting for a leading bidding consortium on the outsourcing tender for ONTRACK’s national rail maintenance agreement (ultimately insourced by ONTRACK)

### ■ Project work

- Acting as principal legal advisor for Tomorrow’s Manukau Properties Limited, a Manukau Council Controlled Trading Organisation that has been established to undertake a comprehensive development of the Flat Bush Town Centre in South Auckland
- Acting as lead adviser to the Bendemeer Farm Park development in Queenstown and the Tui Farm Park development in Canterbury

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## [MAJOR PROJECTS continued...]

- Acting as senior partner in a major contract for Fonterra establishing Fonterra's Global Customer Service Centre in all contractual arrangements with the lead contractor, Accenture
- Wellington wastewater project: representation of financier's interests in this build, own, operate, transfer NZ\$110 million Wellington project. Advising the project financier on terms and suitability of proposed BOOT contract documentation including construction and development elements and concession agreement
- Mt Eden Remand Prison: acting for a prequalified bidder to build and operate the Mt Eden Remand Prison
- Kinleith Mill Expansion Project: Primary legal advisor to Carter Holt Harvey Limited on a major equipment procurement and construction contract. Included preparation of an entirely new form of EPC contract applicable to this NZD\$350 million project, ultimately adopted by International Paper Company, as its new pro forma international EPC contract form
- Construction experience: 20 years of experience at the top end of project and commercial development contracting. Projects with prime responsibility for documentation include National Bank Centre Building (Auckland), Auckland Finance Centre, Takapuna Towers development, Mid City Retail Centre, Gulf Harbour Marine Village development, Centra Hotel construction and expansion, Majestic Centre development (Wellington), Trendwest new hotel development (Nadi, Fiji)
- Project Financing: 20 years' experience in property based project financing and property related capital raising including complex project financing and asset based securitisations
- Princes Wharf Development: Lead advisor role to Ports of Auckland included designing best asset holding and legal structure for development, handling international tender, sale and leasing documents

### ■ Marina and land structuring

- Specialist tax advice in relation to marina development projects including structuring and taxation related set-up advice, handling securities offering related issues, preparing and negotiating licence and other related rights, in relation to the Gulf Harbour Marina, the Westhaven Marina at Auckland, the Bayswater Marina development project, and the Ports of Auckland Hobson Marina project
- Handling legal work involved with the Ports of Auckland Westhaven Marina Expansion including legal structure and design and implementation, preparation of trust documentation, asset transfers, preparation and registration of a series of prospectuses, and obtaining Securities Act exemption notice
- Providing in 1992, as part of the acquisition of the Gulf Harbour Marina, advice in relation to steps necessary to ensure the marina project was brought into a complying situation having regard to requirements of the securities legislation, preparing and registering a series of prospectuses, liaising with and negotiating with the chosen statutory supervisor for that project and completion of the necessary deed of participation, and handling ongoing marina related compliance issues
- Handling, commencing in 1995, all aspects of the relicensing programme for the existing Westhaven Marina (other than a zone which was scheduled for redevelopment) including all structural elements, coordinating provisions of tax advice, preparing and registering a series of offer documents, obtaining Securities Act exemption notice
- Handling, with effect from 1996, similar functions in respect of a significant zone of the Westhaven Marina scheduled for total refurbishment and redevelopment including fundamentally the same functions as already described for the earlier two projects, as well as particular issues arising out of the rights of existing licensees to tenure in these areas, and as to project and construction documentation

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## [MAJOR PROJECTS continued...]

- Acting for Ports of Auckland in the international tender for redevelopment of Princes Wharf in Auckland involving advising on a suitable leasehold title structure, preparation of all ground lease and building sale documents, preparation of tender documents, preparation of due diligence materials and full supervision of the due diligence process, advice in relation to assessment of bids, and ongoing attendances in relation to the recently commenced development phase
- Acting in respect of the total development of the Bayswater Marina project, commencing in 1992 including establishing structure, coordinating provision of tax advice, preparing and registering a series of prospectuses, establishing trust documentation and specialised corporate documentation
- Acting for numerous overseas investors in majority property and business asset acquisitions in New Zealand including the acquisition of the Gulf Harbour Marina and related land development assets, Wellington's Mayfair House complex, Cecil Peak Station in the Queenstown area and numerous small commercial and rural properties
- Responsible for leading a project team undertaking a detailed due diligence investigation for an overseas client relating to the potential acquisition of a major portfolio of diverse New Zealand properties
- NZ adviser to Richina Pacific in relation to Richina's acquisition of an equity joint venture interest in the Beijing "Blue Zoo" Aquarium Project
- Advising a leading NZ food manufacturing company on a number of proposed production and manufacturing joint ventures in various parts of China
- Advising a leading NZ retail sector participant, The BBQ Factory, on its shift of New Zealand manufacturing capability to and establishment in Malaysia
- Acting for a participant in the dairy industry on establishment of a dairy production facility through a Chinese equity joint venture

## SEMINARS AND PUBLICATIONS

Identified as a Highly Recommended Real Estate and Construction practitioner in New Zealand by the 2003/04 edition of Global Counsel 3000

## WORK HISTORY

Partner, Anderson Creagh Lai (current)

Partner, Minter Ellison Rudd Watts (1988–2006)

Partner, Russell McVeagh (1985–1998)

Russell McVeagh McKenzie Bartleet & Co (1980–1985)

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