

21 November 2008  
**Prospectus and Investment Statement**

 **ABN·AMRO** Craigs

Lead Manager

# Pohutukawa

PRIVATE EQUITY II LIMITED

For the offer of up to 120 million Shares at \$1.00 per Share



# Important Information

**Important Information** (The information in this section is required under the Securities Act 1978).

Investment decisions are very important. They often have long-term consequences. Read all documents carefully. Ask questions. Seek advice before committing yourself.

**Choosing an Investment** When deciding whether to invest, consider carefully the answers to the following questions that can be found on the pages noted below:

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In addition to the information under those headings, important information can be found in the other sections of this prospectus and investment statement (“Offer Document”).

**Engaging an investment adviser** An investment adviser must give you a written statement that contains information about the adviser and his or her ability to give advice. You are strongly encouraged to read that document and consider the information in it when deciding whether or not to engage an adviser.

Tell the adviser what the purpose of your investment is. This is important because different investments are suitable for different purposes, and carry different levels of risk.

The written statement should contain important information about the adviser, including

- relevant experience and qualification, and whether dispute resolution facilities are available to you; and
- what types of investments the adviser gives advice about; and
- whether the advice is limited to investments offered by 1 or more particular financial institutions; and
- information that may be relevant to the adviser’s character, including certain criminal convictions, bankruptcy, any adverse findings by a court against the adviser in a professional capacity, and whether the adviser has been expelled from, or prohibited from joining, a professional body; and
- any relationships likely to give rise to a conflict of interest.

The adviser must also tell you about fees and remuneration before giving you advice about an investment. The information about fees and remuneration must include –

- the nature and level of the fees you will be charged for receiving the advice; and
- whether the adviser will or may receive a commission or other benefit from advising you.

An investment advisor commits an offence if he or she does not provide you with the information required.

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## **Registered Prospectus And Investment Statement**

A signed copy of this Offer Document, together with copies of the documents required by section 41 of the Securities Act 1978, being the material contracts (as specified at paragraph 17 of the Statutory Information section of this Offer Document), were delivered for registration at the Companies Office at Auckland on 21 November 2008. This Offer Document is dated 21 November 2008.

## Highlights

To enable retail investors to participate in the New Zealand private equity market, Direct Capital Limited (“Direct Capital”) and ABN AMRO Craigs Limited (“ABN AMRO Craigs”) have established Pohutukawa II, the second private equity fund in the Pohutukawa series.

### Why Private Equity?

#### **Current market conditions present a compelling opportunity for private equity investors**

The existing credit crisis and weaker economic conditions are likely to lead to a reduced availability of credit. Many private companies are likely to raise equity to fund growth or working capital needs. These factors combined are likely to lead to greater investment opportunities for private equity investors like Pohutukawa II, with less competitive pressure on investment valuations. Also, businesses with private equity backing and strong balance sheets will be well placed to capitalise on investment opportunities to strengthen their competitive positions.

#### **Long term returns from diversified private equity funds in established markets have been superior to returns from listed equity indices**

In the US, UK and Europe, private equity returns have outperformed relevant equity market indices. This outperformance reflects private equity’s ability to perform detailed due diligence on investment targets, influence management and a company’s strategic direction, and provide the company with finance and resources for growth. Management usually has an equity stake in private equity backed companies which is intended to strongly align their interests with private equity investors. Further information on this point can be found in Section 4 “Why Invest in Pohutukawa II” at page 12 of this document.

#### **Investing in private equity greatly increases the choice of investment possibilities**

The private company market in New Zealand offers a broader reflection of New Zealand’s economy than the listed market. For every listed company in New Zealand there are approximately 180 unlisted businesses with 10 or more employees.<sup>1</sup> The unlisted business sector is also more diverse in terms of size, stage of development and the industries they operate in.

#### **Succession of privately owned companies presents an opportunity for private equity funds**

There is a large number of private companies in New Zealand that will need to address succession concerns in the short to medium term.<sup>2</sup> A significant portion of these private companies see private equity as a potential partner.<sup>3</sup>

#### **Private equity is becoming an increasingly important asset class for investors. Allocations of 5%–10% in institutional portfolios are commonplace**

Research indicates that an investment portfolio that includes both listed and unlisted investments is generally less volatile than a portfolio of only listed investments.<sup>4</sup> Increased portfolio diversification and a low correlation between private equity and other asset class returns reduces overall portfolio risk for an investor.

## Why Pohutukawa II?

### **Continuation of the private equity investment success of Pohutukawa I**

Established in 2004 with committed capital of \$53 million, Pohutukawa I is now close to fully invested having made 11 distinct investments and achieving a gross return (net of management fee) to 30 September 2008 of 19.5% per annum.<sup>5</sup> As at 30 September 2008 shareholders in Pohutukawa I have invested cash of \$0.70 per share, received cash distributions of \$0.33 per share and retain shares with net tangible assets of \$0.74 per share.<sup>6</sup> Pohutukawa II offers investors the opportunity to continue investing in, and maintain an exposure to, private equity as funds are remitted from Pohutukawa I in the future.

### **Like Pohutukawa I, Pohutukawa II will focus on investing in a diversified range of established businesses**

Pohutukawa II will primarily focus on expansion and buy-out investment opportunities in established businesses, building on the investment style that has proven successful for Pohutukawa I and Direct Capital since 1994. The investment focus will continue to be on mid-market businesses operating in sound industries, with an attractive operating history, proven management, sustainable competitive advantage and opportunities for growth.

### **Pohutukawa II has been structured to meet the unique requirements of retail investors resident in New Zealand**

Primarily structured for retail investors, the fund has a minimum application size of \$20,000 of which \$2,000 (plus the 2% Application Fee on the total subscription amount) is payable at the time of subscription. The balance of the subscription money is payable in tranches depending on the amount and frequency of investment by Pohutukawa II (upon a call being made on 30 days notice). Any residual balance up to the Issue Price is payable in full on the fifth anniversary of allotment under the Offer.

### **Pohutukawa II will achieve scale and diversity by co-investing alongside Direct Capital IV**

Pohutukawa II will co-invest alongside Direct Capital's latest institutional fund, Direct Capital IV, through a custodial structure. The combination of Pohutukawa II and Direct Capital IV will generate significant scale, enabling the Manager to invest in a more diverse range, and a greater number, of companies.

### **Pohutukawa II draws on the expertise of one of New Zealand's most successful private equity managers, Direct Capital Limited**

Direct Capital has been involved in raising and managing private equity funds in New Zealand since 1994. In that time Direct Capital has, through three funds, invested more than \$220 million of equity in 33 investments. Importantly, Direct Capital has an established track record of achieving attractive returns in private equity. Institutional funds Direct Capital I & II achieved annualised returns of 22.6% per annum<sup>7</sup>, and Direct Capital III has achieved returns of 32.6% per annum<sup>8</sup> (net of management and earnout fees).



Pohutukawa leaves live for two years...

- 1 Statistics New Zealand, February 2007.
- 2 The ANZ Privately-Owned Business Barometer 2008.
- 3 The ANZ Privately-Owned Business Barometer 2008.
- 4 "Why and How to Invest in Private Equity", European Private Equity & Venture Capital Association Paper, March 2004.
- 5 Calculated to 30 September 2008, based on calls and distributions since inception to 30 September 2008, and net tangible asset backing per share as at 30 September 2008.
- 6 Based on all calls and cash distributions since inception to 30 September 2008 and net tangible assets per share as at 30 September 2008.
- 7 Calculated by taking the cash flows since inception of Direct Capital in 1994 from all Realised Investments of Direct Capital I and Direct Capital II funds managed by it and/or its related companies to date (last realisation in 2008) and then deducting management fees equivalent to those which apply to Pohutukawa II. Historical performance is however no guarantee of future performance, which may be less than or exceed historical financial performance.
- 8 Calculated by taking cashflows from inception of Direct Capital III in April 2005 to 30 September 2008 on all Realised Investments and net tangible assets as at 30 September 2008 of Unrealised Investments, net of Direct Capital III management fees and earnout.

# 01 Letter from the Chairman

21 November 2008

Dear Investor

The outlook for private equity investment opportunities in New Zealand is as strong as ever. The difficult economic conditions and tight credit markets create opportunities for strong, well capitalised businesses to consolidate their market positions. This environment is tailor made for well managed and capitalised private equity investors with the experience to identify and invest in the right companies.

With this in mind, the Directors of Pohutukawa Private Equity II Limited are delighted to be able to present this investment opportunity for retail investors to continue to participate in the New Zealand private equity market.

Pohutukawa II is modelled on the successful first Pohutukawa fund. The successful joint venture partnership of Direct Capital Limited and ABN AMRO Craigs Limited will continue to manage Pohutukawa II. The investment management is undertaken by the experienced team at Direct Capital.

Founded in 1994, Direct Capital retains its existing investment managers and founders Ross George, Mark Hutton and Bill Kermode and has strengthened its team of investment professionals further. Over the past fourteen years, Direct Capital has established a track record of successful private equity investments, that is evidenced by its strong returns from its first three institutional funds, all of which to 30 September 2008 have exceeded a 20% per annum return hurdle to investors. This track record highlights the benefit of Direct Capital's long term investment strategy, partnering with strong investee management teams, and investing in portfolio companies which ultimately provide strong investment returns from fully imputed dividends.

Pohutukawa II will primarily focus on expansion and buy-out investment opportunities in established businesses. As with the original Pohutukawa fund, the investment focus will continue to be on mid-market businesses operating in good industries, with a proven history, strong and capable management, a sustainable competitive advantage and opportunities for growth. These philosophies are consistent with Direct Capital's conservative investment approach.

Current market conditions are expected to lead to tighter credit availability over the medium term. This is likely to provide opportunity for equity investment at potentially lower valuations, as competition from debt based solutions, and larger international private equity players subsides. Additionally, recent studies show that a large proportion of New Zealand private businesses, which vastly outnumber the New Zealand listed market, have succession planning issues to address over the next few years.

Private equity is known to improve both the risk and return characteristics of a long term investment portfolio through improved diversification and lower volatility. It is fast becoming recognised as a mainstream asset class by institutional and sophisticated investors alike.

It is pleasing to offer retail investors in Pohutukawa II an enhanced cash flow call structure. The initial subscription will be \$0.10 in the dollar, with the remaining \$0.90 of capital to be called within five years of the closing of this Offer, at a minimum of \$0.10 per Share (or such lesser amount as fully pays up the Share), on 30 days notice as required. This change, when compared to Pohutukawa I (where \$0.40 was called initially), will have the effect of increasing the internal rate of return and cashflow to investors. Pohutukawa II will co-invest with Direct Capital IV, Direct Capital's latest institutional fund, in a fixed ratio based on respective fund sizes. This gives Pohutukawa II the benefit of scale, and certainty of investment in Direct Capital sourced transactions.

We are confident that the Pohutukawa II fund is well structured for retail investors, and that this, combined with the involvement of leading investment advisory firm ABN AMRO Craigs, and the experience and expertise of the Direct Capital investment team, positions Pohutukawa II as a premium investment product for New Zealand investors.

I recommend you consider Pohutukawa II for inclusion in your investment portfolio.

Yours sincerely  
POHUTUKAWA PRIVATE EQUITY II LIMITED



**John McDonald**  
Chairman

## 02 Key Terms of the Offer

- Legal Entities:** Pohutukawa Private Equity II Limited (“Pohutukawa II”) plus 25 special purpose Investment Companies
- Pohutukawa II Objective:** Through investment in selected unlisted businesses and special situations in New Zealand and Australia to achieve investment returns superior to those achieved by comparable listed company market indices
- Manager:** Pohutukawa II Management Limited (“the Manager”), a joint venture between Direct Capital and ABN AMRO Craigs
- Offer:** 60 million Shares at an issue price of \$1.00 per Share, with provision to issue up to a further 60 million Shares at \$1.00 per Share in oversubscriptions
- Shares on Offer:** Each Share comprises one ordinary voting share and 100 non-voting redeemable preference shares in Pohutukawa Private Equity II Limited together with one non-voting preference share in each of the Investment Companies
- Initial Subscription:** An initial subscription of \$0.10 per Share subscribed for is paid upon application (plus the 2% Application Fee on the total subscription amount)
- Further Calls:** The remaining \$0.90 per Share, being the balance up to the Issue Price, is payable in tranches. Calls will be for a minimum of \$0.10 per Share (or such lesser amount as fully pays up the Share) and will be subject to 30 days advance notice to the investor. The Board has complete discretion over all such calls, but will not make such a call (without the Manager’s consent) unless the proceeds of all previous calls has been invested or committed in full by Pohutukawa II or the Manager or otherwise expended on Pohutukawa II’s operating expenses. Any residual balance up to the Issue Price is payable in full on the fifth anniversary of allotment under the Offer
- The proceeds of the initial instalment, and each subsequent call, will be applied to successively pay up in full the non-voting redeemable preference shares in Pohutukawa Private Equity II Limited represented in each Share
- Minimum Investment:** 20,000 Shares (paid up on initial application to \$2,000), and thereafter in 5,000 Share increments (paid up to \$0.10 per Share), plus the Application Fee
- Application Fee:** An application fee of 2% of the total subscription amount is payable by the investors to the Lead Manager upon application. The Application Fee will be used to pay brokerage to NZX Firms
- Offer Closing Date:** The Closing Date of the Offer is 27 February 2009 (see Important Dates on page 8)
- Management Fee:** 2.25% (plus GST) per annum of Committed Capital payable quarterly in advance until all Committed Capital has been called or five years, whichever is earlier. Thereafter, the Management Fee will be 2.25% (plus GST) per annum of Invested Capital
- Investors who subscribe under the Offer for, and continue to beneficially hold, at least 1,000,000 Shares will receive an annual rebate from the Manager of an amount equal to 0.25% (plus GST if any) of that investor’s Committed Capital. The rebate will cease once all Committed Capital has been called



**Earnout Payment:** Pohutukawa II Investments Limited (a nominee of Direct Capital and ABN AMRO Craigs) is entitled to an earnout payment of 20% of the returns generated by Pohutukawa II. Payment of the earnout will not be made until investors have received preferential distributions in respect of the Shares equal to a pre tax compound annual return of 8%

Distributions from Pohutukawa II will therefore be made as follows:

- Firstly, 100% to investors until they have received an amount equal to the paid up issue price of all Shares plus a pre tax compound return of 8% per annum on such amount;
- Thereafter, 100% to Pohutukawa II Investments Limited until it has received an amount equal to a pre tax compound annual return of 2% per annum on the paid up issue price of all Shares; and
- Thereafter, 80% to investors and 20% to Pohutukawa II Investments Limited

For further details see Section 10 – Summary of the Management Agreement

**Application for Shares:** Application to subscribe for Shares pursuant to the Offer must be made on the Application Form in Section 16 of this Offer Document. All applications must be made in accordance with the application instructions set out on the reverse side of the Application Form

Applications must be accompanied by cheque payment for the initial instalment plus the Application Fee. Cheques should be made out to ‘The Pohutukawa II Share Offer’ and crossed ‘Not Transferable’

Duly completed Application Forms together with the appropriate payment must be lodged with any NZX Firm, invited organisations or the Lead Manager, in sufficient time to be lodged with the Share Registry prior to Closing Date

**Allocation of Shares:** Shares in the Offer have been reserved for clients of NZX Firms and other invited organisations. Any Shares in the Offer not taken up by these parties, together with the provision for oversubscriptions (of up to \$60 million), will form a public pool. If the Offer is oversubscribed, those additional applications will be met from the public pool. Applications for Shares from the public pool may be scaled. Scaling will be determined by the Board with recommendations from the Lead Manager and may not be pro rata. Pohutukawa II reserves the right to accept oversubscriptions

**Allotment of Shares:** Allotment is expected to take place on 3 March 2009 (subject to any extension of the Closing Date). The Directors of Pohutukawa Private Equity II Limited reserve the right to reject any application, or accept any application in part only, without assigning any reason for doing so. Any interest generated on subscription monies held by Pohutukawa II shall be for the account of Pohutukawa II, except as required by the Securities Act. Any surplus subscription monies will be refunded to applicants within five business days after allotment of Shares to successful applicants and will not carry interest

**Liquidity Review:** Capital will be returned to investors following the receipt of cashflows from individual investments by Pohutukawa II, which may arise from dividends, interest, repayments of loans or redeemable capital and, if and when, investments made by Pohutukawa II are liquidated. Further, where possible, shares in investments that list with the NZX (or other recognised exchanges) will be distributed directly to investors. The Board will review the liquidity position of Pohutukawa II no later than the 10th anniversary of the Closing Date

**Listing:** Listing of the Shares is not currently being sought. Whilst there will be no formal secondary market for the Shares, ABN AMRO Craigs will endeavor to match buyers and sellers of Shares on an informal basis. After consultation with the Manager, the Board can, by unanimous Board consent, list Pohutukawa II Shares with NZX at any time (subject to satisfying NZX Listing Rule requirements)

The Pohutukawa II structure also provides investors with the potential to obtain a direct shareholding in portfolio companies through an in specie distribution of an investee company's shares should that company undertake an initial public offering (IPO) and list on a recognised market

**Reporting:** Progress of Pohutukawa II, and updates on the performance of companies Pohutukawa II has invested in, will be provided on a half yearly basis. Other matters such as portfolio valuation, distributions and financial statements of Pohutukawa II will be provided through annual reports and newsletters, available on the website [www.pohutukawafund.co.nz](http://www.pohutukawafund.co.nz)

**Failure to Pay a Call:** If an investor fails to pay a call on any Share:

- interest will accrue on the unpaid amount at 4% per annum above the 90 day bank bill rate
- the Shares to which the call relates will be liable to forfeiture under the relevant constitutions
- Pohutukawa II may enforce the lien provided for in the relevant constitutions over all Shares held by that investor by disposing of such Shares and applying the proceeds towards the unpaid amount (with the Investor remaining liable for any shortfall after the sale or disposal of such Shares)

See Section 11 – Financial Information for further details

**No Guarantee:** No person referred to in this Offer Document guarantees the Offer, the Shares or the performance of Pohutukawa II

**Disclosure of Promoters:** ABN AMRO Craigs and Direct Capital are promoters of the Offer, and each hold (directly or indirectly) a 50% interest in the Manager, which is also a promoter

**Withdrawal of Offer:** The Board, in conjunction with the Lead Manager, reserves the right to withdraw the Offer at any time on or prior to the Closing Date without notice. If the Offer is withdrawn, all subscription monies will be refunded to applicants within five business days of the date the Offer is withdrawn. No interest will be paid to applicants on any subscription monies so refunded.

#### Important Dates

<b>Registration of prospectus</b>	<b>21 November 2008</b>
<b>Offer opens</b>	<b>27 November 2008</b>
<b>Closing Date</b>	<b>27 February 2009</b>
<b>Allocation and Allotment of Shares</b>	<b>3 March 2009</b>
<b>Posting of holder statements</b>	<b>5 March 2009</b>
<b>Mailing of refunds (if applicable)</b>	<b>by 6 March 2009</b>

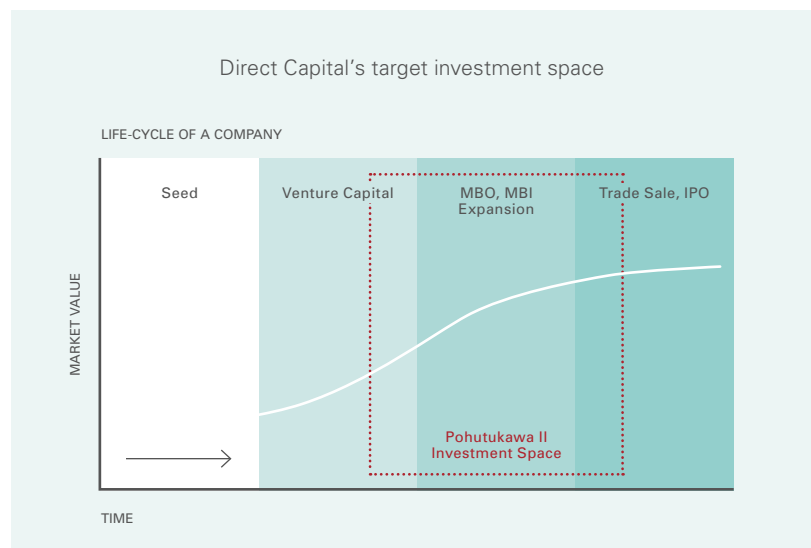
The Board, in conjunction with the Lead Manager, reserves the right to amend the offer timetable or withdraw the Offer at any time on or prior to the Closing Date without notice (refer to "Withdrawal of Offer" above).

## 03 Overview of Private Equity

**Private equity is an investment class that encompasses all types of equity investment into unlisted businesses and other special situations where the investment has the character of a private equity transaction. Unlisted businesses generally require access to investment capital to fund growth or to provide liquidity for existing shareholders. More specifically, unlisted companies may require private equity to expand or grow an established business either organically or by acquisition, to facilitate existing management to buy out an existing owner, to facilitate new management to buy into a business, or to allow existing shareholders to make a partial or full sell down of their holdings.**

Compared to investments in listed companies, private equity investments offer potentially higher returns and, being unlisted, do not exhibit daily volatility in value as listed companies do. Moreover, private equity funds can negotiate the terms of their investment based on detailed company information and access to key management. The Manager can also become actively involved in the strategy of the investee company through board representation, thereby increasing shareholder value.

Direct Capital's primary operating space is investments in companies with an enterprise value of between \$25 million and \$150 million, this space is commonly referred to as the mid-market. These are generally companies at a later stage in their life-cycle, including expansion stage, replacement capital and buy-in or buy-out transactions.

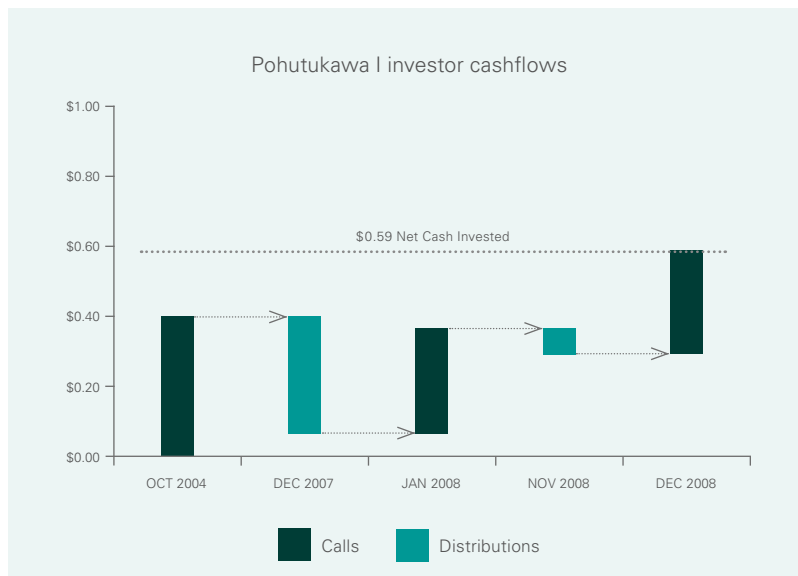


### How Private Equity Funds Operate

During the initial stages, investors in a private equity fund are called upon to provide portions of their Committed Capital as and when investments are made. These are known as draw downs or calls. Typically, calls from investors and new investments by the fund will be made over the first five year period of the fund's life.

As portfolio companies mature and distribute earnings or redeem capital, the fund will begin to make distributions to investors. In general, this will take a few years from the date of first investment and, as with calls, the timing and the amount of distributions to investors will be irregular. Funds generate positive net cashflows from portfolio company earnings and any liquidity events.

As shown below Pohutukawa I made its first distribution after approximately three years:



As distributions to investors normally commence before the whole commitment has been called, it is unusual for an investor to have the full amount of its committed capital outstanding at any particular time. For example, in Pohutukawa I, as a result of earlier investments and distributions, the maximum net cash contribution paid by investors as at December 2008 will be \$0.59 per \$1.00 invested. Globally, research has shown that private equity funds on average draw down around 67% of their total committed capital (net of distributions).<sup>9</sup>

## Global Private Equity Investment

The global private equity industry has grown significantly. The total value of private equity investments between 1970 and 2007 is estimated to be US\$3.6 trillion, of which more than US\$2.7 trillion (or 40%) occurred since 2001.<sup>10</sup> Globally, private equity invested US\$686 billion in 2007, up over a third on the previous year and more than twice the total invested in 2005.<sup>11</sup> The more established private equity markets of the US and UK continue to lead the rest of the world by together representing 80% of investments made globally during 2007 and 77% of funds raised.<sup>12</sup> While private equity investments have reduced in 2008, fund raising in the mid-market private equity space in Europe and the US has continued.

The Australian private equity market continues to develop with more than A\$22.3 billion<sup>13</sup> under management as at 30 June 2008, up from A\$7.1 billion<sup>14</sup> in 2003. In 2008 alone, A\$6.1 billion was raised by Australian private equity funds.<sup>15</sup>

<sup>9</sup> The investment behaviour of private equity fund managers, Stern School of Business, NYU, 2003.

<sup>10</sup> Globalisation of Alternative Investments, World Economic Forum 2008.

<sup>11</sup> Private Equity 2008, August 2008, International Financial Services London.

<sup>12</sup> Private Equity 2008, August 2008, International Financial Services London.

<sup>13</sup> Thomson Reuters & The Australian Private Equity and Venture Capital Association Limited Yearbook 2008.

<sup>14</sup> Thomson Financial & Australian Venture Capital Association Limited Survey Fiscal Year Ended 20 June 2003.

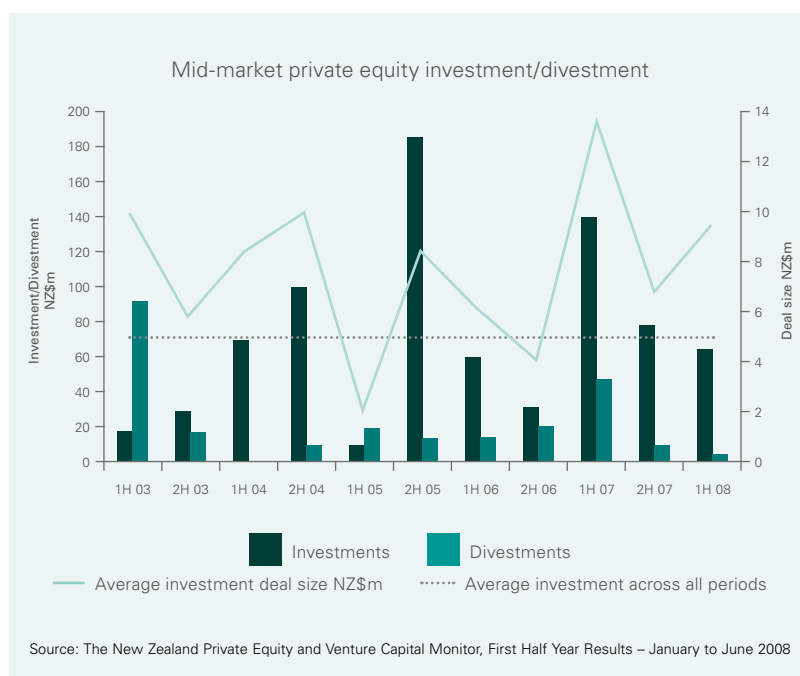
<sup>15</sup> Thomson Reuters & The Australian Private Equity and Venture Capital Association Limited Yearbook 2008.

<sup>16</sup> The New Zealand Private Equity and Venture Capital Monitor January to June 2008 (NZVCA and Ernst and Young).

## Private Equity in New Zealand

The New Zealand private equity industry was established in 1993. Since then the industry has grown to approximately 23 New Zealand Venture Capital Association (NZVCA) private equity members with total committed capital as at June 2008 of NZ\$2.6 billion.<sup>16</sup> During 2007, the total investment by private equity in New Zealand exceeded \$1.2 billion from 85 deals, up from \$88 million in 2003 from 51 deals.<sup>17</sup> Whilst the volume of top end private equity transactions has decreased during 2008, Pohutukawa II believes that the current market conditions will create opportunities for well run capitalised private equity funds in the mid market.

The mid-market segment has been referred to as the “strength of the New Zealand private equity market”.<sup>18</sup> The New Zealand mid-market private equity segment has continued to perform, with \$205 million invested in mid-market deals in 2007, and \$64.6 million in the first half of 2008.<sup>19</sup> Demand in the future for this segment appears to be underpinned by the need for succession planning by many New Zealand private business owners.<sup>20</sup>



The New Zealand market has developed a number of unique and positive characteristics as a result of the local market investor base, including the benefits of a long term investment strategy and investing in portfolio companies which ultimately provide strong investment returns from fully imputed dividends. The Pohutukawa II structure also provides investors with the potential to obtain a direct shareholding in listed portfolio companies via the amalgamation or in specie distribution (or both) of investment entities.

<sup>17</sup> The New Zealand Private Equity and Venture Capital Monitor 2007 (NZVCA and Ernst & Young).  
<sup>18</sup> The New Zealand Private Equity and Venture Capital Monitor January to June 2008 (NZVCA and Ernst & Young).  
<sup>19</sup> New Zealand Private Equity and Venture Capital Monitor 2007 and the New Zealand Private Equity and Venture Capital Monitor First Half Year Results January to June 2008 (NZVCA and Ernst & Young).  
<sup>20</sup> The New Zealand Private Equity and Venture Capital Monitor January to June 2008 (NZVCA and Ernst & Young).

## 04 Why Invest in Pohutukawa II?

**The rationale for investing in Pohutukawa II can be broken into five key themes. First, the current market environment presents appealing investment opportunities for private equity investors. Secondly, in the medium term private equity could benefit from the demand for succession planning. Thirdly, returns from private equity, over the medium to long term, have outperformed listed equities. Fourthly, private equity, and Pohutukawa II in particular, can invest in a much wider range of investment opportunities outside listed equities, bringing important diversification benefits to portfolio investors. Finally, as private equity now forms an established and growing part of most institutional investors' investment portfolios, it is equally appropriate for private investors.**

### Opportunities for private equity in the current environment

Companies that are experiencing strong growth, either in New Zealand or in international markets, often require additional investment to develop their business. Currently, the global credit crisis is restricting credit availability, a situation that is expected to continue. In this environment, growth companies will require additional equity capital for expansion.

Buy-out opportunities in the mid-market segment where Pohutukawa II will operate typically utilise less leverage than large private equity transactions. In the current market, buy-out opportunities for medium sized businesses will not be as exposed to the financing risk of larger transactions. Constrained credit conditions may also reduce offshore private equity funds' activities in New Zealand, reducing competition for transactions.

As a result of the factors above, investments completed during the current economic slowdown and into the next cyclical recovery may offer attractive entry values.

From an operating perspective, companies with access to private equity capital are well positioned to take advantage of industry opportunities such as industry consolidation or investment as they arise.

The Board believes that Direct Capital's consistent track record of conservative gearing policy, disciplined approach to valuation and track record of investment returns will provide a competitive advantage for Pohutukawa II in the current market.

### Business succession – Underpinning private equity growth in the medium term

In the short to medium term, many New Zealand businesses will need to address succession concerns. A recent ANZ study targeting New Zealand businesses with annual revenue of \$5 million to \$150 million identified that 59% of majority shareholders were aged 50 and above.<sup>21</sup> However despite succession being acknowledged as an issue by 63% of businesses, less than a fifth had any succession plan in place. This market dynamic, coupled with an increasing awareness in New Zealand of private equity, represents an ongoing opportunity for private equity funds in the mid-market; 53% of the participants in the study considered private equity as a preferred form of succession. Consequently, the Manager believes an increasing number of investment opportunities are likely to arise for private equity funds as owners seek to exit their business, or management seek to buy-in as part of a succession strategy.

21 The ANZ Privately-Owned Business Barometer 2008.

**Superior Returns –  
In established markets,  
returns from private equity have  
been superior to returns from  
listed equity indices**

Private equity in the US, UK and Europe is an established asset class with a well-developed track record of investment returns. Private equity returns since inception, which is a measure of the return an investor achieves if they invest from the start of the fund, have been attractive in established markets, averaging 16.0% per annum<sup>22</sup> for US-based private equity firms, 17.3% per annum<sup>23</sup> for UK based firms and 16.3% per annum<sup>24</sup> for European firms.

Over the medium and longer term, returns from private equity have outperformed those from listed equity indices in their respective markets, as shown below.

**Comparison of private equity returns to listed equities over the past 10 years**

COUNTRY & INDEX	10 YEAR HORIZON RETURN (ANNUALISED)
US – Private Equity and Venture Capital	10.6%
– S&P 500 Composite (Total Return Index)	6.6%
UK – Private Equity and Venture Capital	20.1%
– FTSE All-Share	6.2%
Europe – Private Equity (Buy-out funds)	16.7%
– FTSEUROFIRST 100 E (Total Return Index)	6.9%

Source: Datastream, National Venture Capital Association 2008 Yearbook, BVCA Private Equity and Venture Capital Performance Measurement Survey 2007, European Private Equity & Venture Capital Association 2007 (Press Release dated 19 June 2008).

The New Zealand private equity sector does not record returns data for the industry as a whole. However, Direct Capital has been actively investing in private equity in New Zealand since 1994. Direct Capital's Direct Capital I & Direct Capital II private equity funds generated annualised returns of 22.6%<sup>25</sup> and Direct Capital III has achieved returns of 32.6%<sup>26</sup> per annum to 30 September 2008 (after management fees and earnout). Pohutukawa I's gross return (net of management fee), to 30 September 2008, has been 19.5% per annum.<sup>27</sup>

As with all managed investments, private equity returns are affected by the investment skills and abilities of the fund manager. One of the core skills of successful private equity managers is the ability to select unlisted companies with strong fundamentals and growth potential. By investing in companies at a time of rapid change in their life cycle, and through the manager providing strategic skill and input, private equity investments are often able to generate returns above listed equities.

In addition, when making investments private equity investors access a greater depth of information than public equity investors. Access to this information, which includes detailed business plans and financial data, enables the private equity manager to thoroughly investigate potential investments (including legal and financial due diligence) and thereby reduce risk.

22 Pooled venture return, NVCA Yearbook 2008.  
 23 Net of management fees and carried interest (includes venture capital), BVCA Private Equity and Venture Capital Performance Measurement Survey 2007.  
 24 Buy-out funds only, European Private Equity & Venture Capital Association, press release on 19 June 2008.  
 25 Calculated by taking the cash flows since inception of Direct Capital in 1994 from all Realised Investments of Direct Capital I and Direct Capital II funds managed by it and/or its related companies to date (last realisation in 2008) and then deducting the management fee and earnout equivalent to those which apply to Pohutukawa II. Historical performance is however no guarantee of future performance, which may be less than or exceed historical financial performance.  
 26 Calculated by taking the cashflows from inception of Direct Capital III April 2005 to 30 September 2008 on all Realised investments and net tangible assets as at 30 September 2008 of Unrealised investments, net of Direct Capital III management fees and earnout.  
 27 Calculated to 30 September 2008, based on calls and distributions since inception to 30 September 2008, and net tangible asset backing per share as at 30 September 2008.

Private equity managers are able to participate actively in the management and strategic direction of companies in which they invest. Private equity managers often take board positions in portfolio companies, allowing them to advise companies on all aspects of their business and to better assess the ongoing risks and opportunities involved with their investment.

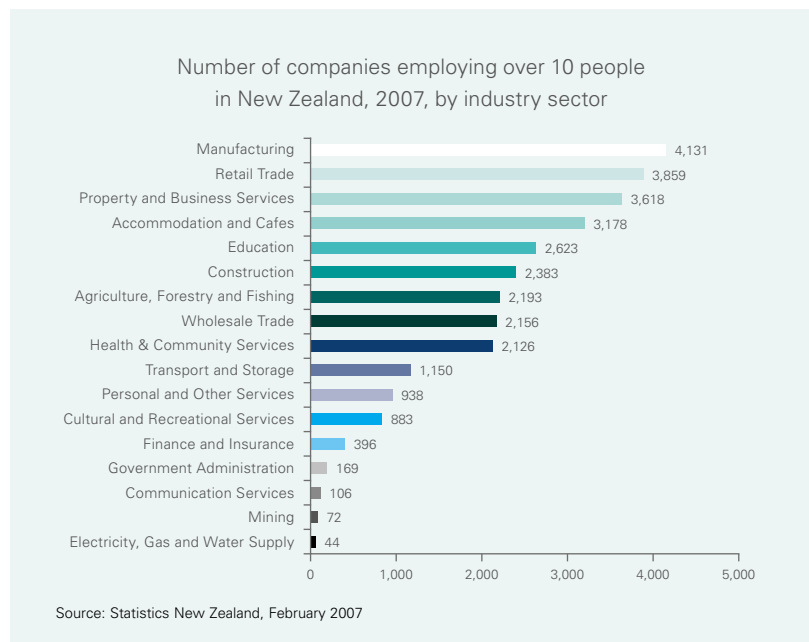
There is also a strong alignment of interest between managers of the business and the private equity shareholders. Often the management team owns a significant shareholding in the business alongside the private equity investor and is therefore incentivised to grow the value of the business.

For private companies, management is able to maintain focus on longer term strategic goals. In listed companies, short term issues are often visible to media and analysts, which invites scrutiny of the business in the public domain and may have an inappropriate influence on management's decision-making.

**Diversification – Investing in private equity greatly increases the choice of investment possibilities and can reduce portfolio volatility**

Studies indicate that within a balanced portfolio, the introduction of private equity alongside listed bonds and equities can further improve a portfolio's diversification.<sup>28</sup> This diversification benefit is derived from the fact that compared to listed equity investors, private equity firms have a much greater universe of assets from which to select, and secondly, lower correlation of returns between listed and unlisted investments with reduced portfolio volatility as a result.

The NZSX currently comprises around 160 listed companies. However, the wider unlisted segment better reflects the overall diversity of New Zealand's economy with private companies operating in a greater array of industries. In fact, in New Zealand, for every listed company there are approximately 180 unlisted companies that employ 10 or more people.<sup>29</sup> New Zealand has a large pool of private companies in the mid-market segment. Direct Capital estimates that 1,500 companies in New Zealand each have annual revenues of more than \$25 million.



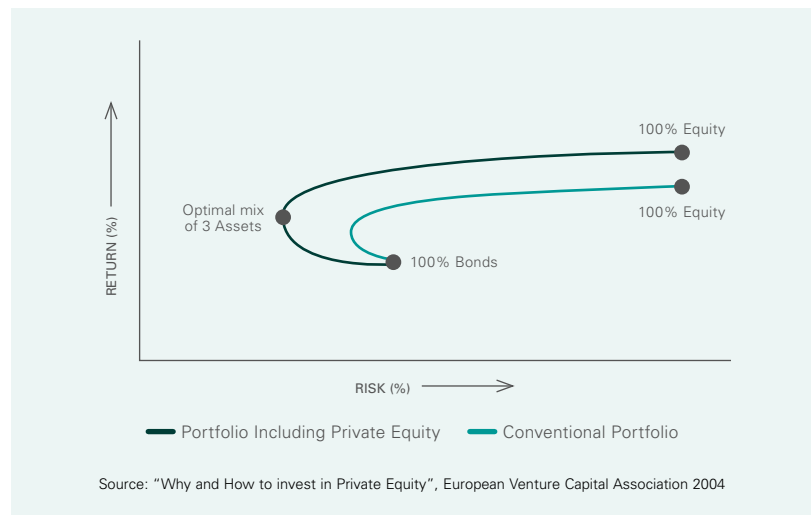
<sup>28</sup> "Why and How to Invest in Private Equity", European Private Equity & Venture Capital Association Paper, March 2004.  
<sup>29</sup> Statistics New Zealand, February 2007.



A large number of important sectors of the New Zealand economy are currently under-represented on the NZSX. These include the manufacturing, health, services and leisure sectors. Direct Capital has made successful private equity investments in all of these areas.

Moreover, by its nature, a fund structure results in a diversified portfolio, containing investments in a number of unassociated and uncorrelated companies. Therefore the risks associated with any one portfolio company are diversified with investors receiving an average of the returns of the portfolio.

As a result, adding private equity to a balanced portfolio can improve overall risk profile. This allows either a higher targeted return for the same level of risk, or a reduction to the level of risk whilst preserving the target rate of return, as shown in the chart below:



**Growing portfolio allocation – Private equity now forms an established and growing part of most institutional investors investment portfolios**

Institutional investors in the US generally allocate 7% of their portfolios to private equity, more than European and Japanese investors. However, between 2005 and 2007 portfolio allocations to private equity increased from 4% to 6% in Europe and from 2% to 4% in Japan.<sup>30</sup> A recent study reported that more than a third (38%) of global institutional investors in private equity plan to increase their allocation to the asset class over the next 12 months.<sup>31</sup>

New Zealand institutions also allocate a significant portion of their funds under management to private equity. For example, the New Zealand Superannuation Fund allocates 5% of its total portfolio to private equity.<sup>32</sup>

<sup>30</sup> Private Equity 2008, August 2008, International Financial Services London.

<sup>31</sup> Collier Capital Global Private Equity Barometer Summer 2008.

<sup>32</sup> <http://www.nzsuperfund.co.nz/index.asp?pagelD=2145831975> as at 1 October 2008, which notes a target Strategic Asset Allocation weight of 5% (with a range of 0-10%) for Private Equity.

## 05 Pohutukawa II Board of Directors

### Board of Directors of Pohutukawa Private Equity II Limited

The Board is responsible for appointing the Manager, monitoring the Manager's performance, reviewing Pohutukawa II's investment policy and criteria, and managing conflicts of interest between the Manager and Pohutukawa II. The Board of Pohutukawa Private Equity II Limited comprises four directors, two independents, one of whom is Chairman and two from ABN AMRO Craigs. For so long as it continues to hold not less than 50% of the issued shares in the Manager, ABN AMRO Craigs is entitled to appoint up to 50% of the directors of Pohutukawa Private Equity II Limited.

The constitution of Pohutukawa Private Equity II Limited permits the independent Directors to invest alongside Pohutukawa II, to a maximum of 2% (in aggregate) of the investment amount offered to Pohutukawa II, on the same economic terms and conditions of the investment as those on which Pohutukawa II is itself investing and subject to appropriate disclosures in accordance with the procedures set out in the constitution.



**John McDonald (Independent Chairman) BCA (Hons), BCom, CA, CMA**

John is a Company director and trustee who has more than 30 years experience in executive and management positions with the former Fletcher Challenge group of companies through to his retirement in 2001. He has considerable international experience in management, finance, corporate governance best practice and as a director and audit committee member of private and publicly listed companies.

John is currently a director of Air New Zealand Limited, Solid Energy New Zealand Limited, Dairy Equity Limited and Horizon Energy Distribution Limited. He is also Chairman of Pohutukawa Private Equity Limited.



**Maurice John Prendergast (Independent Director)**

Maurice is currently Chief Executive Officer for Pumpkin Patch Limited and has held this position since 1993. During this time, the Pumpkin Patch Group has grown extensively throughout the world under Maurice's leadership. Maurice brings international business experience with him along with a wealth of knowledge in logistics, technology, retail and global expansion. Maurice has held executive positions in accounting, distribution and property development in both New Zealand and Australia. He is also a director of Comvita Limited and a number of other private companies.



**Neil John Craig (Non Executive Director) BAgCom**

Neil is the founding principal and Executive Chairman of ABN AMRO Craigs, a NZX Participant Firm, a company he has been instrumental in building from a small regionally based sharebroking business in Whakatane to its current position as a leading New Zealand investment advisory firm. ABN AMRO Craigs has approximately 250 staff over 17 branches throughout New Zealand. Neil has a broad experience in private equity transactions, stock exchange listings, capital raisings and corporate activity for a wide range of companies. In a personal capacity Neil has been an active private equity investor for many years.

Neil is currently a director of Pohutukawa Private Equity Limited, the first Pohutukawa fund, as well as Comvita Limited (Chairman) and a number of privately held companies. He has previously been a Director of Mighty River Power Limited, New Zealand Stock Exchange and Trust Bank Bay of Plenty Limited.



**Frank Maurice Aldridge (Non Executive Director) BBS**

Frank is Chief Executive Officer of ABN AMRO Craigs, having been appointed in 2005, previously working for some eight years in various roles at ABN AMRO Craigs. During this time, Frank has been involved in all facets of private wealth management as well as a number of NZX listings and capital raisings. Prior to joining ABN AMRO Craigs, Frank worked at the New Zealand Stock Exchange.

Frank is on the board of a number of ABN AMRO Craigs subsidiaries and is also the Chairman of Priority One Limited, the Tauranga and Western Bay Economic Development Organisation, and a member of the Bay of Plenty Regional Governance Group.

**Board of Directors of Investment Companies**

The board of directors of each Investment Company will be appointed by Pohutukawa II Investments Limited (a nominee of Direct Capital and ABN AMRO Craigs) as the holder of the ordinary shares in each Investment Company. Under the Management Agreement, Pohutukawa II Investments Limited has undertaken to utilise its director appointment and voting rights in respect of Investment Companies as may be instructed from time to time by the Manager in a manner consistent with the Management Agreement and investment criteria.

## 06 The Manager

**Introduction Pohutukawa II has engaged Pohutukawa II Management Limited (“the Manager”) to manage the private equity fund, providing all day to day administration and investment management services.**

The Manager is a 50/50 joint venture between Direct Capital and ABN AMRO Craigs and will draw on the expertise of both its shareholders. The Manager has an Investment Committee which is responsible for all investment decisions for Pohutukawa II following review of detailed evaluations prepared by the Investment Management team. The Investment Committee comprises four representatives from Direct Capital including the chairman who has the casting vote, three representatives from ABN AMRO Craigs, and an independent Director of Pohutukawa II.

Direct Capital is a specialist private equity manager established in 1994 by founding directors Ross George, Mark Hutton and Bill Kermode. Today Direct Capital remains owned and managed by the three founding directors, and the broader investment management team of Tony Batterton, Gavin Lonergan and Simon Plowman also remains in place. It is envisaged that members of the investment management team may be invited to participate in Direct Capital’s 50% interest in the Manager to more closely align the interests of that team with the interests of Pohutukawa II.

From the outset Direct Capital has sought to provide a consistent strategy of long term growth, making investments based on sound business fundamentals and aimed at providing its investors with above market returns.

Funds managed by Direct Capital and/or its related companies have made 33 private equity investments totalling more than NZ\$220 million – making Direct Capital arguably the most active private equity manager in New Zealand. Direct Capital’s Direct Capital I & Direct Capital II private equity funds generated annualised returns of 22.6%<sup>33</sup> and Direct Capital III has achieved returns of 32.6%<sup>34</sup> per annum to 30 September 2008 (after management fees and earnout). Pohutukawa I’s gross return (net of management fee), to 30 September 2008, has been 19.5% per annum.<sup>35</sup>

ABN AMRO Craigs is one of New Zealand’s leading investment advisory firms with approximately 110 investment advisors and 17 branch offices throughout New Zealand. ABN AMRO Craigs is a Primary Market Participant of the NZX and is regulated by NZX Limited.

<sup>33</sup> Calculated by taking the cash flows since inception of Direct Capital in 1994 from all Realised Investments of Direct Capital I and Direct Capital II funds managed by it and/or its related companies to date (last realisation in 2008) and then deducting management fee and earnout equivalent to those which apply to Pohutukawa II. Historical performance is however no guarantee of future performance, which may be less than or exceed historical financial performance.

<sup>34</sup> Calculated by taking the cashflows from inception of Direct Capital III April 2005 to 30 September 2008 on all Realised Investments and net tangible assets as at 30 September 2008 of Unrealised Investments, net of Direct Capital III management fees and earnout.

<sup>35</sup> Calculated to 30 September 2008, based on calls and distributions since inception to 30 September 2008, and net tangible asset backing per share as at 30 September 2008.

## Transaction Generation

Direct Capital has developed a strong national and international network of associates and contacts. These include industry experts across a wide range of sectors, corporate executives, banks, a wide range of corporate advisory groups, accountants, lawyers, stockbrokers, financial institutions, and company owners and entrepreneurs.

Direct Capital is a recognised co-investment partner with both global and local private equity managers, and has invested alongside global partners such as Advent International, 3i plc, and inventages.

The Manager will also continue to use an established system of direct approach to targeted companies and will implement marketing programmes that position Pohutukawa II as the investor of choice in specific industry sectors. The Manager, through these networks and others, has access to a strong deal flow on both sides of the Tasman. Direct Capital is a member of the Australian Venture Capital Association Limited (AVCAL), both a member, and a key sponsor, of the NZVCA and would expect to see the majority of investment opportunities that circulate within New Zealand and Australia.

ABN AMRO Craigs is well placed to source investee opportunities for Pohutukawa II, given its focus on and knowledge of the capital markets for small to medium sized businesses. For many of the businesses that approach ABN AMRO Craigs for assistance in raising capital, an investment by Pohutukawa II is likely to be a suitable option. In addition, the presence of ABN AMRO Craigs investment advisers and branches throughout New Zealand and existing relationships with local owners of private businesses provides a valuable network for investment opportunities.

## Investment Evaluation

Building on their many years of investment experience, the executives of Direct Capital have developed and refined evaluation processes that use internationally accepted investment criteria and due diligence procedures. The investment team will typically complete due diligence directly so that subcontracting of tasks is generally limited to financial, legal and technical reviews.

The Manager expects to play a supportive role within its portfolio companies. The executives within the Manager who recommend a company for investment and lead the due diligence efforts will typically be responsible for monitoring, supporting, and providing liquidity in the investment.

## Investment Management Team

Direct Capital provides the investment management team and is responsible for bringing investments to the Investment Committee for review. The principal members of the investment management team are:

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### **Ross George LLB – Managing Director, Direct Capital**

Ross has been involved in the private equity and venture capital industry in Asia, Australia and New Zealand since 1987. He is a founding director and shareholder of Direct Capital. He is involved in all fund activities within Direct Capital, but in particular, with investor and governance issues. Ross played a key role in establishing the venture capital industry in New Zealand and was a driver behind the formation of the New Zealand Venture Capital Association.

Ross has acted as Direct Capital's representative on the boards of Direct Capital III portfolio companies Max Fashions (Retail) and New Zealand King Salmon (food).

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### **Mark Hutton B.Com – Director, Direct Capital**

Mark is a founding director and shareholder of Direct Capital and has an extensive background in private equity specialising in investment structures and implementing trans Tasman growth initiatives for portfolio companies.

Mark has acted as Direct Capital's representative on the boards of Direct Capital III portfolio companies Express Logistics (freight forwarding and logistics), Gluck (freight forwarding and logistics), Paper Coaters (packaging), GoBus (bus operator), Shears & Mac 4 (shop fitting) and New Zealand King Salmon (food) where he has developed a strong understanding for and track record of growing shareholder value.

Mark spent seven years in Europe with Gestetner Holdings Plc and was a director of Gestetner Securities BV, Monaco Branch prior to founding Direct Capital.

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### **Bill Kermod B.Sc (Hons), M.A. (Oxon) – Director, Direct Capital**

Bill is a founding director and shareholder of Direct Capital and has been involved in the New Zealand financial markets since 1984.

Bill has strong and wide-ranging experience in private equity, has been on the Investment Committee of all Direct Capital's private equity funds. Bill has acted as Direct Capital's representative on the board of Direct Capital III portfolio company NZ Pharmaceuticals (specialty chemicals). Previously Bill also acted on the boards of Ryman Healthcare (retirement village developers and operators, now NZX listed) and EziBuy (multichannel seller of apparel, homeware, and gifts).

Bill has also been a director of the TAB and the Public Trust Investment Board. In the 1980s, Bill established the currency and interest rate options business at DFC and negotiated its sale to the BNZ in 1990.

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### **Tony Batterton B.Com, CA. – Investment Director, Direct Capital**

Tony rejoined Direct Capital in 2004 and has 12 years private equity and investment banking experience. Tony's role at Direct Capital is to source and execute new investment opportunities and he has acted as Direct Capital's representative on the boards of Direct Capital III portfolio companies Max Fashions (retail), New Zealand Pharmaceuticals (specialty chemicals), Triton Hearing Clinics (retail and healthcare), Go-Bus (bus operator) and Rodd & Gunn (retail).

Prior to rejoining Direct Capital Tony spent five years in the United Kingdom where he worked in private equity and investment banking with HSBC Investment Bank.

Between 1996 and 1999 Tony was at Direct Capital as an investment analyst, and before that qualified as a Chartered Accountant with Price Waterhouse.



**Gavin Lonergan BBus, CA – Investment Director, Direct Capital**

Gavin is an Investment Director and has been with Direct Capital since 1998. A past chairman of the New Zealand Venture Capital Association, Gavin served on the council for five years.

Gavin manages origination and execution of new investments and is Direct Capital’s representative on the boards of Direct Capital III portfolio companies: Paper Coaters (specialist packaging) and Shears & Mac 4 (joinery and shop-fitting).

Prior to joining Direct Capital Gavin’s professional career was in telecommunications as an analyst with Clear Communications and British Telecom Plc in the UK, and before that was in banking.



**Simon Plowman B.Com – Investment Manager, Direct Capital**

Simon first joined Direct Capital in 1999 and rejoined the firm after a period working in the UK. Simon is responsible for assessing investment opportunities, valuation, due diligence, and transaction execution. Simon was Direct Capital’s representative on Direct Capital II’s portfolio company, Image Centre.

Simon worked at NTL in London for two years prior to rejoining Direct Capital. Before moving to the United Kingdom, Simon worked as an analyst in the New Zealand private equity industry for three years, for both Direct Capital and Carter Holt Harvey New Ventures.

The Manager will also draw on other executives within the Direct Capital group, including Philippa McCarthy and Rachel Davis, as required by the needs of Pohutukawa II.

**Investment Committee**

The Investment Committee comprises four representatives from Direct Capital, (Ross George, Mark Hutton, Bill Kermode, and Tony Batterton), three representatives from ABN AMRO Craigs (Neil Craig, James Beale and Bill Cunninghame) and an independent Director of Pohutukawa II, Maurice Prendergast.

Profiles of these members are included above, with the exception of James Beale and Bill Cunninghame whose profiles are detailed below:



**James Beale BCA – NZX Advisor**

James has been an ABN AMRO Craigs employee since early 2001 and has twelve years of finance industry experience in total. James began with ABN AMRO Craigs as a research analyst before moving into investment banking where he has headed the equity capital markets team for the last three years as a Director.



**Bill Cunninghame BA, LLB – NZX Advisor**

Bill joined ABN AMRO Craigs at the end of 2005 as an investment advisor and Director, Asset Management. Prior to that Bill had worked at what is now Goldman Sachs JB Were in NZ and New York, as a director, in research/sales on the wholesale desk and as an investment advisor in the retail business. He has 20 years experience in the finance industry.

## 07 Investment Track Record

### **Direct Capital will continue its investment management of the Pohutukawa private equity programme including Pohutukawa II.**

Over the past fourteen years, Direct Capital has established a track record of successfully making, managing and producing strong returns from private equity investments. The track record highlights the benefits of Direct Capital's long term investment strategy and investing in portfolio companies which ultimately provide strong investment returns from fully imputed dividends.

While relevant to an investor's assessment of the credentials and expertise of Direct Capital, the historical data provided is no guarantee of, or an indication of, Pohutukawa II's future financial performance.

### **Investment Programmes**

To date Direct Capital has successfully raised three private equity programmes and in total has raised more than NZ\$375 million for investment in private equity and early-stage investment.

Previous private equity programmes managed by Direct Capital include:

- In 1994 Direct Capital formed Direct Capital I. Direct Capital I was raised at a time when the private equity market in New Zealand was in its infancy. Direct Capital I was initially capitalised at NZ\$51 million primarily with institutional money from 16 Australasian financial institutions. In 1998 Direct Capital I was bought out by Emerald Capital.
- In 1998, Direct Capital established Direct Capital II, its second private equity programme with an open ended capital pool provided by institutions and high net worth individuals. This invested in excess of NZ\$35 million.
- In 2005, Direct Capital raised its third institutional programme, Direct Capital III. Pohutukawa I co-invests alongside Direct Capital III. This co-investment programme is most relevant to Pohutukawa II Investors as Pohutukawa II will follow very closely the successful model of Pohutukawa I. In particular, it retains the same investment team, will continue the same focus on mid-market expansion and succession stage investments, and will maintain the same focus on New Zealand and trans-Tasman growth opportunities.

### **Investor Base**

As an established private equity manager, Direct Capital has received investment from many of New Zealand's leading financial institutions, as well as global institutions seeking access to the New Zealand private equity market. These have included ING Peal, The New Zealand Superannuation Fund, Accident Compensation Corporation, AMP, AXA / Alliance Capital Management, and NZVIE.

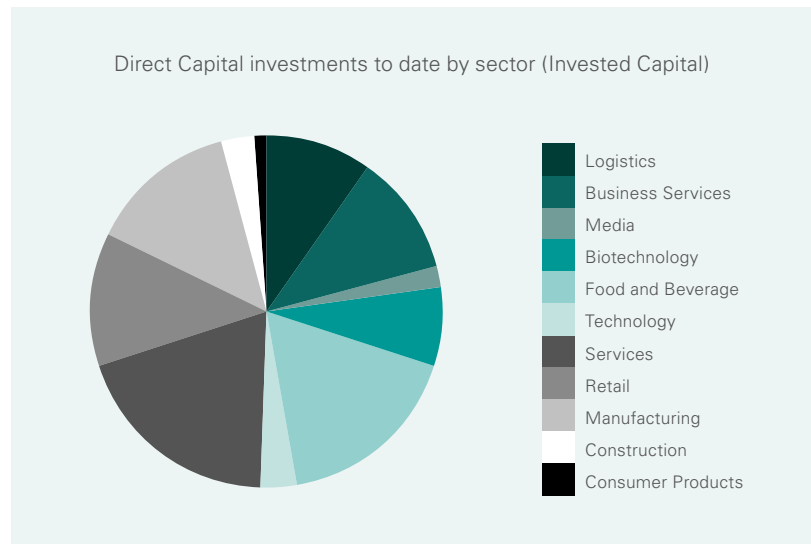


## Portfolio Track Record

Direct Capital III and Pohutukawa I have demonstrated strong results to date. Jointly, the programme has invested NZ\$79.8 million of the NZ\$118.5 million total capital pool available, into 11 companies. Pohutukawa I has achieved a gross return (net of management fee) of 19.5% per annum to 30 September 2008.<sup>36</sup>

Direct Capital continues to manage investments for the existing programmes under its management.

Direct Capital has invested in a wide range of private companies providing investors with a balanced and diversified private equity portfolio. Investments have covered much of the New Zealand economy including logistics, business services, media, pharmaceuticals, food and beverage, communications, services, retail, manufacturing, construction and consumer products. Many of these investments have been in industry leaders and household names not accessible through the listed equity markets and provided investors with a diversified portfolio not accessible through alternative sources.



Recent private equity transactions involving Pohutukawa I are set out in the following pages.

<sup>36</sup> Calculated to 30 September 2008, based on calls and distributions since inception to 30 September 2008, and net tangible asset backing per share as at 30 September 2008.

## New Zealand King Salmon: Food



Based in Nelson with farms in Marlborough and employing 415 staff, NZKS is New Zealand's largest integrated aquaculture company specialising in the farming and processing of Chinook salmon. With operations including breeding, farming, processing and distribution, the company has developed its business from a largely commodity reliant strategy to also include a strong domestic market. It has achieved premium price positioning in export markets along with a wide variety of value-added products such as smoked salmon, fillets, tailored portions and kebabs. It owns the strong consumer brands of Regal, Southern Ocean and Seasmoke.

### Investment Overview

Pohutukawa I invested in New Zealand King Salmon in September 2008. Direct Capital III and Pohutukawa I acquired a 45% shareholding in the company from its owners, the Malaysian based Tiong Group (one of the largest family companies in Malaysia with substantial global investments). Direct Capital achieved a lead position due to its well-known partnership model and Direct Capital's experience and reputation amongst institutional investors (with an IPO planned for 3–5 years).

### Rationale

The investment in NZKS offers a good exposure to the food commodity sector and leverages New Zealand's natural advantages in food production. Salmon consumption has grown strongly but remains well below competing proteins such as chicken, beef, lamb and pork. However, with strong consumer awareness of sustainability issues and the health attributes of salmon (which is rich in Omega-3), consumption is expected to continue growing at a significant rate and NZKS is well-placed to benefit from this. With a market leading position in New Zealand, there are significant barriers to entry and the company is diversified across product groups with balanced export and domestic markets.

### Status

The investment has only recently been completed but reflects the investment strategy of acquiring well-managed, mid-market New Zealand businesses that demonstrate strong market positions and significant growth opportunities.



## Max Fashions: Apparel Retail



Max Fashions was established in 1985 and is one of New Zealand's most recognised women's apparel labels, appealing predominantly to the 18-35 year old customer base. By 2005 when Direct Capital invested, Max had grown to 34 retail stores situated in leading shopping mall and high street sites across New Zealand. In late 2007 when Max was sold store numbers had been increased further to 39 and the Australian entry strategy was well advanced.

### Investment Overview

Direct Capital III and Pohutukawa I completed the buyout of Max in July 2005 acquiring a majority shareholding, with the balance of the shares owned by Max founder and managing director David Wright and other senior Max managers and directors.

### Rationale

The Max investment was a 'succession' transaction providing an orderly transition of the business to the senior management team however, the investment also supported a growth plan based on new store openings for the next three to five years, refurbishment of smaller/older sites in important locations to larger flagship stores, and growing sales per store through enhancements such as accessories. Plans for entering the Australia market were also advanced.

### Status

In late 2007 Max was acquired by former Direct Capital portfolio company Ezibuy Limited. Max produced a gross return of five times its original cost from both fully imputed dividends and capital gain from the sale proceeds.

## Express Logistics: Transport and Logistics



Established in 1989, Express has grown from a small firm providing basic international freight forwarding services in the New Zealand domestic market into a large scale integrated logistics service provider with operations on both sides of the Tasman. Today, Express offers clients a complete logistics management service, including couriers, third party warehousing and consulting. In addition Express provides system design and duty/tax advice for customers, which include global blue chip apparel customers.

### Investment Overview

In 2005, Pohutukawa I, along with Direct Capital III acquired a 50% shareholding in Express through a management buy-out in support of a succession plan from the founder Brendon Thomas and general manager Graeme Mann, to the next generation management team.

### Rationale

Logistics is a key sector of the economy with a natural hedge across export and import markets. The sector was identified as being highly fragmented across Australasia and Express represented an excellent opportunity to complete a roll-up strategy and build an attractive IPO prospect. The company is the largest mover of non-perishable freight across the Tasman. Growth opportunities exist through offering enhanced services to both existing and new customers and through developing new business on the Australian trade lanes, particularly from Asia.

### Status

Focussed on a strategy of building a large trans-Tasman logistics business, the company has, since investment, grown its Australian business organically through new branches in Perth and Queensland. The company has also completed 5 acquisitions, primarily focussed on building the Australian business. Reflecting this strategy, the company has also appointed an Australian based chairman to its board.



## New Zealand Pharmaceuticals: Specialty Chemicals



NZP manufactures specialty chemicals (pharmaceutical intermediates) for some of the world's leading pharmaceutical companies. NZP's core competence is in the manufacture of these chemicals under Good Manufacturing Practice (GMP) conditions which ensures its products conform to pharmaceutical industry quality assurance standards. Almost all NZP's revenues are achieved from export markets.

### Investment Overview

Consistent with the strategy of acquiring New Zealand mid-market companies with management to facilitate ownership succession, Direct Capital III and Pohutukawa I acquired a 51% shareholding in NZP with the remaining 49% held by management and staff of NZP and strategic investor Shin Nippon Yakugyo, a Japanese specialty chemicals trading business. Financing also facilitated the capital expenditure funding to build a new factory to manufacture glycotherapeutic intermediates (a fast growing category of the global pharmaceuticals market).

### Rationale

The investment was designed to introduce a cornerstone shareholder to the company to support the new plant construction and strengthen the planned IPO of NZP within a suitable timeframe. Business growth was expected to be organically focussed.

### Status

Since investment, NZP has successfully completed the establishment of its new \$10 million production facility, which opened in February 2007. The company has also continued to grow its product base, doubling the number of products generating revenues of \$1m or greater, since 2005.

# GoBus Limited: Transport



GoBus is a leading provider of public transport services in the Waikato and Bay of Plenty regions, providing urban, school and charter/tour bus services. GoBus was formed in 2003 from the amalgamation of four local bus companies 'Blue Worth', 'Simpson', 'Hodgson' and 'HCB'. The Company now employs over 460 people, and operates a fleet of more than 410 vehicles, 4 workshop facilities and 8 depots around the greater Waikato region.

### Investment Overview

Pohutukawa I and Direct Capital III completed the investment in December 2007, acquiring a shareholding of 79% with the balance held by other founding shareholders and the GoBus management team.

### Rationale

The public transport sector has several positive fundamental drivers influencing growth including demographic trends, socio-behavioural trends, and increasing government support and investment. In addition, the defensive nature of the public transport industry (which includes long term government contracts) was appealing to Direct Capital in the context of a weakening NZ economy. Significant opportunities to grow GoBus were identified, in both the urban and school bus areas. The acquisition was a typical succession mid-market buy-out deal which facilitated a change of ownership.

### Status

Since investment, the company has been very active in growing the business, tendering for a number of new long term contracts from the Ministry of Education and extending its urban service operations to neighbouring centres such as Hawkes Bay. The company has established itself as the 3rd largest operator in New Zealand. Other highlights include the appointment of a new managing director and an independent chairman.



# Paper Coaters Group Limited: Packaging



Paper Coaters is one of Australasia's leading manufacturers of coated packaging material that combines a base product such as paper or film with polymer or foil laminates. Paper Coaters has a strong market presence in food packaging, industrial packaging, and building products and its trans-Tasman business represents 65% of total revenue.

## Investment Overview

Direct Capital III and Pohutukawa I acquired the business with the senior management group as part of a succession plan for the previous owner. Combined, Pohutukawa I and Direct Capital III have a shareholding of 83.2%.

## Rationale

Direct Capital was attracted by the company's market position in a defensible, capital-intensive and specialised area of manufacturing. The company has a very capable management team and had demonstrated a strong ability in building a trans-Tasman business. The company had also demonstrated a track record of consistent earnings growth and was well-placed to continue developing its business in the Australian market.

## Status

Since investment, and consistent with the investment strategy of building a substantial trans-Tasman specialist packaging business, Paper Coaters has acquired Trans Tec. The acquisition broadens the company's product range and further strengthens its Australian revenue base which now represents more than 65% of total revenues. The company has also appointed an Australian based independent chairman.



## Innovair Group Limited: Consumer Goods



Innovair is probably best known for its consumer branded pest control product, RoboCan. RoboCan is an automatic insect control system which uses natural pyrethrum to control and repel a large range of insects using the company's patented, MicroMist™ technology. The dispenser manufacturing base was in China whereas the refill can manufacture was in Australia. Innovair had sales and marketing operations in both New Zealand and Australia where it had expanded after achieving considerable success in New Zealand.

### Investment Overview

Direct Capital III and Pohutukawa I acquired a 28.5% shareholding in the company to fund its planned international expansion, particularly into the Australian market.

### Rationale

While the industry is dominated by large multinationals utilising handheld spray can products and baits, Innovair has made strong inroads into the market with its technology based competitive advantage.

### Status

In May 2008 the company received an offer for 100% of the business from US multinational, SC Johnson, owner of the Raid consumer brand. While the investment by Direct Capital was intended to fund the company's international expansion, the existing shareholders supported the sale of the business. This resulted in a very good return, and while the final proceeds are subject to various vendor warranty undertakings, it is anticipated that the investment will realise in excess of four times the original investment.

**Innovair**



## 08 Pohutukawa II Investment Strategy

**Investment Objectives** Pohutukawa II aims to provide shareholders with returns in excess of those normally earned from comparable listed market indices, by investing into businesses in New Zealand and Australia that do not have ready access to the capital markets.

By this means, Pohutukawa II also seeks to provide retail investors with access to investment opportunities not normally available to them and, thereby, increase portfolio diversification.

**Investment Strategy** It is the aim of the Board of Pohutukawa II to pursue a relatively conservative private equity investment strategy consistent with the strategy of funds previously managed by Direct Capital. Pohutukawa II's investment focus will therefore be on the provision of capital to established businesses operating in the mid-market with strong growth opportunities and the ability to generate sustainable positive cash flows. This will be achieved through an emphasis on:

- opportunities to provide expansion capital to companies with attractive growth prospects;
- management buy-out or buy-in opportunities;
- acquiring shares from existing shareholders as part of a succession strategy, recapitalisation or replacement capital; and
- transactions to take publicly listed companies into private ownership.

The Manager will seek to add value through providing strategic, financial and governance expertise and will typically exert influence through representing Pohutukawa II on the board of each investee company.

**Investment Criteria** The Board has developed the following investment criteria to guide the Manager and ensure that Pohutukawa II builds a portfolio of investments that is diversified in terms of sector, stage of development and location. Investment attributes will focus on industry strength, market position, competitive advantage and in particular, quality of management. The Board may modify this investment criteria from time to time.

### **Sectors**

Pohutukawa II will seek to invest in a wide range of sectors including manufacturing, service, consumer products, distribution, tourism, food, agribusiness and retail.

Pohutukawa II will cap exposure to any one sector at 25% of Committed Capital.

### **Size of Investments**

Pohutukawa II will adopt prudential limits and will cap single investments into any one company or group of related companies at 20% of Committed Capital.

Where the prospective investment is too large or would exceed Pohutukawa II's desired exposure to an individual investment or industry segment, the Manager may seek to co-invest with others.

**Geographic Scope**

Pohutukawa II will seek to make investments in New Zealand and Australia. It is expected that the majority of Pohutukawa II's investments will be in New Zealand. Businesses that have a strong trans-Tasman opportunity will also be a key focus.

**Stage of Development**

Pohutukawa II will focus on expansion, buy-out / buy-in, private placement, pre IPO and private investment in public equities ("PIPE") situations. It may elect to participate in Early Stage Investments but will limit this exposure to 10% of its Committed Capital.

**Investment Horizon**

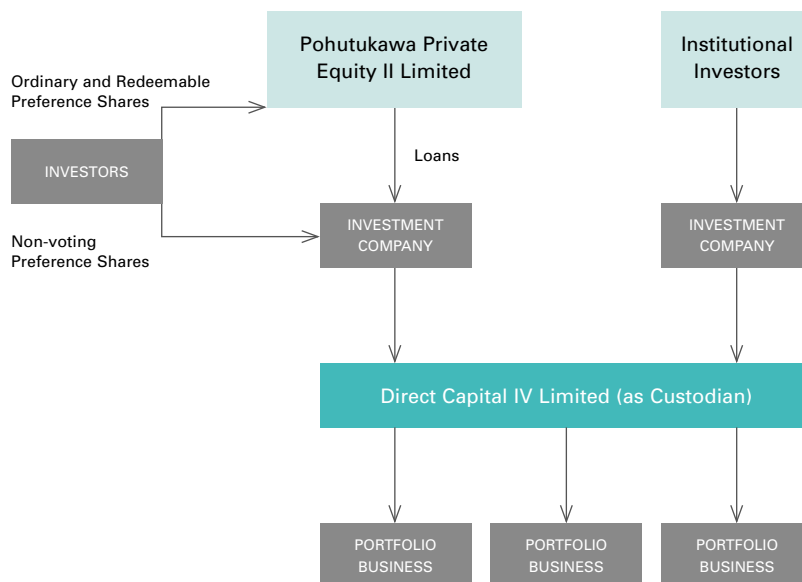
Pohutukawa II will typically invest in businesses as a long term investor. This investment approach distinguishes it from other private equity funds that have a greater focus on exit strategies.

**Borrowing**

Pohutukawa II will not use term debt to leverage its investment portfolio. Debt can be utilised only when a call has been approved by the Board. The amount of debt is restricted to the call that is approved and unpaid, and the term cannot exceed 90 days. However, Pohutukawa II portfolio companies may contain debt.

## 09 Structure, Governance and Reporting

Pohutukawa II intends to co-invest with Direct Capital IV in each investment in proportion to the level of Committed Capital of each of Pohutukawa II and Direct Capital IV. The structure is shown schematically as follows:



The Pohutukawa II structure consists of Pohutukawa Private Equity II Limited and 25 Investment Companies.

Each Share held by investors comprises one ordinary voting share (nil issue price) and 100 non-voting redeemable preference shares of one cent each in Pohutukawa Private Equity II Limited, together with one non-voting preference share (nil issue price) in each of the 25 Investment Companies. Pohutukawa II will issue up to 60 million Shares in this Offer at an issue price of \$1.00 per Share (with provision for Oversubscriptions of up to an additional 60 million Shares at an issue price of \$1.00 per Share).

Pohutukawa II's investment in specific portfolio businesses will be via one of the 25 Investment Companies formed for this purpose.

To fund investments, Pohutukawa Private Equity II Limited will provide advances as required to each Investment Company. Until it is required for investment in a portfolio business, subscription money received by Pohutukawa II will be held in interest bearing deposits as approved by the Board.

By investing through Investment Companies, Pohutukawa II is able to provide a more effective mechanism for delivering investment returns to investors on an investment by investment basis.

To facilitate co-investment alongside Direct Capital IV, a custodial vehicle acting as bare trustee, Direct Capital IV Limited, will hold legal title to Pohutukawa II's investments at the direction of the Manager.

As investee businesses distribute earnings, return capital or are themselves realised by the Investment Companies, proceeds will typically be returned directly to investors other than to allow 100% of Committed Capital to be invested in portfolio companies. The original cost of the investment will be returned to investors by redemption of the redeemable preference shares they hold in Pohutukawa Private Equity II Limited. Capital gains will be returned to investors who hold preference shares in the Investment Companies by way of distributions on liquidations of those Companies.

## Governance and Management

Ordinary shares held by investors in Pohutukawa Private Equity II Limited confer normal voting rights on the investors. The preference shares held by investors in both Pohutukawa Private Equity II Limited and the Investment Companies will confer no voting rights.

Pohutukawa II Investments Limited, an entity nominated by Direct Capital and ABN AMRO Craigs, will hold all the ordinary voting shares in each of the Investment Companies and will exercise these rights on the instruction of the Manager in accordance with the Management Agreement and the Pohutukawa II investment policy and investment criteria.

Pohutukawa Private Equity II Limited will retain a separate Board to ensure best practice corporate governance and that the shareholders' interests are held paramount. For so long as it holds at least 50% of the issued shares in the Manager, ABN AMRO Craigs will be entitled to appoint up to 50% of the directors of Pohutukawa Private Equity II Limited. All other directors of Pohutukawa Private Equity II Limited can be appointed or removed by ordinary resolution of the investors.

The Board will set the investment policy and criteria, and will review the performance of the Manager from time to time and will report to the shareholders on the content of this review. It will review the capital adequacy of Pohutukawa II, be responsible for shareholder reporting and set timely shareholder meetings of Pohutukawa II.

The Directors of each Investment Company can be appointed or removed only by Pohutukawa II Investments Limited (being the holder of the ordinary shares in the Investment Company). Under the Management Agreement, Pohutukawa II Investments Limited has agreed to exercise such director appointment rights at the instruction of the Manager.

The Manager is a 50/50 joint venture between Direct Capital and ABN AMRO Craigs, both of whom provide services to the Manager on a contract basis. Direct Capital provides investment management services. ABN AMRO Craigs provides fund raising, cash management, administration, investor communication, investment sourcing, and divestment assistance. The Investment Committee of the Manager is responsible for all investment decisions, subject to compliance with the investment policy set by the Board.

<b>Reporting</b>	<p>The Manager will keep the Board informed of the progress of Pohutukawa II and its investments.</p> <p>Information regarding the performance of Pohutukawa II and the companies Pohutukawa II has invested in will be provided to investors on a half yearly basis.</p> <p>All other information such as portfolio valuation, audited financial statements of Pohutukawa II, and distribution statements will be provided to investors through an annual report. Information maybe restricted by confidentiality agreements with Pohutukawa II's portfolio businesses.</p> <p>Half yearly and Annual reports will be distributed via email to all shareholders in Pohutukawa II (unless a physical copy is requested by the investor). Pohutukawa II also intends to make all general information on Pohutukawa II, as well its reporting, available on the website <a href="http://www.Pohutukawafund.co.nz">www.Pohutukawafund.co.nz</a>.</p>
<b>Notification and Registration of Holdings</b>	<p>The Share Registry for Pohutukawa II will be maintained by Link Market Services Limited ("Link Market Services"). Holding statements will be sent to all successful investors by Link no later than five days from the date of Allotment.</p>
<b>Operational and Financial Policies of Investment Companies</b>	<p>The constitutions of each Investment Company specify that the operational and financial policies of that Investment Company are those set out in this Offer Document and/or as determined by the Board of Pohutukawa Private Equity II Limited.</p>
<b>Restrictions to the Alteration of Constitution</b>	<p>The shareholders may alter the constitution of Pohutukawa Private Equity II Limited by special resolution. In addition, any alteration to the clauses of the Pohutukawa Private Equity II Limited constitution concerning the Board's power to make calls and to appoint the directors of that company require the approval of 75% of Pohutukawa Private Equity II Limited's shareholders and the written approval of ABN AMRO Craigs.</p>
<b>Application of the Management Agreement to the constitutions of Investment Companies</b>	<p>In accordance with the constitutions of the Investment Companies, the board of each Investment Company may only issue shares and the relevant constitution may only be altered in compliance with the applicable requirements of the Management Agreement, including the obligation on part of Pohutukawa II Investments Limited to:</p> <ul style="list-style-type: none"> <li>– not vary or amend the terms or rights of any shares in an Investment Company;</li> <li>– not to issue any equity security, or transfer any of the shares that it holds in any of the Investment Companies to any other party;</li> <li>– not to amend the constitution of any Investment Company; and</li> <li>– utilise its power to appoint directors and its voting rights in respect of Investment Companies in accordance with the instructions of the Manager, in a manner consistent with the Management Agreement,</li> </ul> <p>unless permitted to do otherwise by way of ordinary resolution of the board of directors of Pohutukawa Private Equity II Limited.</p>

## 10 Summary of the Management Agreement

### The Manager's Responsibilities

Under the Management Agreement Pohutukawa II appoints the Manager as sole and exclusive provider of investment management and administrative services to Pohutukawa II, and the Manager is given broad powers to deal with and manage (including without limitation by buying and selling) the property of Pohutukawa II as agent of Pohutukawa II. The Manager is responsible for all investment and divestment decisions, subject to compliance with the investment policy set by the Board.

Each of the Manager, Direct Capital and ABN AMRO Craigs has agreed that it will not provide investment management and/or administrative services to any other equivalent private equity fund resident in New Zealand and owned directly or indirectly by "members of the public" (as that term is interpreted and applied for the purposes of the Securities Act 1978), until Pohutukawa II has invested 70% of Committed Capital.

The Manager is authorised to incur costs and expenses on behalf of Pohutukawa II in the conduct of its investment management and administration roles, and can delegate functions outside its areas of core competency and expertise to third parties; and more generally hire advisers and other specialists to supplement its work (for example, in the context of due diligence investigations).

### Management Fee

In return for managing Pohutukawa II and the investments it makes, the Manager is paid an annual management fee. The Manager will use the annual management fee to meet its own operating expenses but is entitled to be reimbursed for third party expenses it incurs on behalf of Pohutukawa II.

The Management Fee negotiated by the Board is considered to be in keeping with industry norms.

From the Closing Date for the Offer until all capital has been called or the date five years from the date of allotment under the Offer, whichever is earlier, the Manager will receive an annual fee equivalent to 2.25% plus GST of Committed Capital. Thereafter the Manager will receive an annual management fee based on 2.25% plus GST of Invested Capital. In the event that Pohutukawa II has written down an investment (and the management fee has reduced as a consequence) and the relevant investment is then sold or otherwise liquidated at a value higher than that written down amount, the Manager shall be entitled to a make good payment to reduce or (if the sale proceeds exceed original cost) eliminate the fee reduction. The annual management fee is calculated and paid quarterly in advance to the Manager on the first Business day of each financial quarter of Pohutukawa II.

Investors who subscribe under the Offer for, and continue to beneficially hold, at least 1,000,000 Shares will receive an annual rebate from the Manager of an amount equal to 0.25% (plus GST if any) of that investor's Committed Capital. The rebate will cease once all Committed Capital has been called.

## **Term of the Management Agreement**

The Management Agreement continues until each of the companies comprising Pohutukawa II are liquidated, unless terminated earlier as a consequence of the occurrence of an insolvency event, or an act of negligence, material breach or serious misconduct on the part of a party. Also, the Manager may resign its appointment by giving 180 days written notice, not to be given before the third anniversary after allotment under the Offer. In addition, Pohutukawa II may terminate the Management Agreement if any four members of the Manager's Investment Committee (excluding any independent director of Pohutukawa II appointed to that committee) resigns or otherwise ceases to be actively involved in management and review of Pohutukawa II's investments and is not replaced with individuals approved by Pohutukawa II.

Upon early termination of the agreement each of Pohutukawa II and Pohutukawa II Investments Limited may require Pohutukawa II Investments Limited to sell the ordinary shares it holds in each Investment Company to Pohutukawa II (or its nominee) at 75% of fair value (if termination occurs as a result of an insolvency or default event on the part of, or resignation of, the Manager), or 100% (otherwise) of fair value, of such shares. Pohutukawa II can, at its option, fund the purchase price of such ordinary shares out of unallocated funds or uncalled capital, or defer payment until investments are realised or distributions on them received, or the ordinary shares are sold to a replacement manager.

## **Co-Investment**

The Manager (or each of Direct Capital and/or ABN AMRO Craigs, or their nominees, in its stead) has the right to co-invest with Pohutukawa II, on the same terms, in any investment undertaken by Pohutukawa II (or the Manager on its behalf), to a maximum of 10% of the investment amount offered to Pohutukawa II.

Pohutukawa II may in addition co-invest in investment opportunities in which other funds managed by Direct Capital participate, and will be afforded a participation opportunity proportionate to the proportion which Committed Capital bears to the aggregate funds managed by Direct Capital and its associated parties. The Manager may sell any of Pohutukawa II's investments in Portfolio Companies in combination with other sales only on the same terms by other funds administered by Direct Capital and its associated parties, in proportions reflecting the respective amounts invested in the relevant entity by vending parties.

The board of directors of Pohutukawa Private Equity II Limited will receive quarterly reports as to any co-investment or divestment undertaken by the Manager (or Direct Capital, ABN AMRO Craigs or their nominees) with Pohutukawa II, or by Pohutukawa II with other funds managed by Direct Capital and in this manner will monitor compliance by relevant entities with the above procedures.

## **Earnout Payment**

Pohutukawa II Investments Limited (a nominee of Direct Capital and ABN AMRO Craigs) is entitled to an earnout payment of 20% of the returns generated by Pohutukawa II, but payment of the earnout will not be made until investors have received preferential distributions in respect of the Shares equal to a pre tax compound annual return of 8%.

Distributions from Pohutukawa II will therefore be made as follows:

- firstly, 100% to investors until they have received an amount equal to the paid up issue price of all Shares plus a pre tax compound return of 8% per annum on such amount;
- thereafter, 100% to Pohutukawa II Investments Limited until it has received an amount equal to a pre tax compound annual return of 2% per annum on the paid up issue price of all Shares; and
- thereafter, 80% to investors and 20% to the Pohutukawa II Investments Limited.

There is no provision for clawback of any earnout payment made if aggregate payments over the life of Pohutukawa II exceed the payment that would have been due if a single cumulative calculation had been made on the termination date of the management agreement. This could occur if, for example, the Pohutukawa II Investments Limited receives an earnout payment in respect of an early distribution which would not have been due if later events (for example, unsuccessful investments) had been taken into account.

The share of Investment Company distributions to Pohutukawa II Investments Limited is aimed at aligning the interests of Pohutukawa II investors, Direct Capital and ABN AMRO Craigs.

## **Custodian Agreement**

The Custodian Agreement appoints Direct Capital IV Limited to act as agent and bare trustee of Pohutukawa II and to hold legal title to Pohutukawa II's investments, at the direction of the Manager. The purpose of the custodial structure is to facilitate co-invest alongside other Direct Capital IV investors.

## **Indemnity**

Pohutukawa II has agreed to indemnify the Manager, and its officers, employees, advisers and agents, against losses and costs incurred by reason of the Manager performing its obligations under the Management Agreement except those resulting from the gross negligence, fraud, dishonesty or wilful default of an indemnified party.



## 11 Financial Information

**Taxation** The investment criteria for Pohutukawa II is to invest in companies with an objective of long term growth and to maximise dividend yield, wealth creation and provide regular returns to investors. The Board of Pohutukawa Private Equity II Limited has a stated intention to invest on capital account, although it has the ability to acquire shares with a dominant purpose of resale, profits from sale of which would be separately treated as taxable income.

Pohutukawa II expects to receive dividend payments from the businesses it invests in, and expects to distribute these payments, to the extent they are not used to meet management expenses or debt servicing, to its shareholders. Dividend payments received from companies subject to New Zealand tax may have imputation credits attached, which can be passed on to investors. No imputation credits currently arise to New Zealand investors from payment of Australian tax by investee companies. To the extent they are not fully imputed, dividends paid by Pohutukawa II will be subject to resident withholding tax.

Pohutukawa II will be managed such that any capital gains are not expected to be taxed in the hands of passive investors who did not purchase their Shares for the purpose of resale or as part of a profit making scheme.

**Application Fee** An Application Fee of 2% of the total subscription amount for the Shares is payable by investors to the Lead Manager upon application. The Application Fee will be used to pay brokerage to NZX Firms and other organisations approved by the Lead Manager.

**Issue Expenses** An amount equal to 0.5% of Committed Capital will be paid by Pohutukawa II to the Lead Manager on account of preliminary and issue expenses associated with the Shares being offered. Issue expenses in excess of this amount will be met by the Lead Manager and any surplus will be retained by the Lead Manager as a fee.

**Distributions** Pohutukawa II expects to earn interest from cash held on deposit, and receive dividends and other distributions from the businesses they invest in, as well as capital gains when they divest from investee businesses.

Each portfolio investment made by Pohutukawa II will be made through a separate Investment Company formed for the purpose. Upon a realisation of its investment in a particular investee business, the Investment Company through which Pohutukawa II invested will be liquidated and the net proceeds will be returned to investors via their preference shareholdings in the Investment Companies and their redeemable preference shareholding in Pohutukawa Private Equity II Limited, subject to allowing 100% of Committed Capital to be invested in portfolio companies. The earnout is to be paid to Pohutukawa II Investments Limited in respect of their ordinary shares as per the constitution. The calculation is detailed in Section 10: Summary of the Management Agreement.

Distributions by Pohutukawa II will be lumpy and investors should not expect any significant distributions during the first three years after the Closing Date.

**Valuations** The Manager may revalue an asset held by Pohutukawa II at any time, at its discretion.

Valuations will be completed annually and will be completed on a prudent basis. The valuation principles adopted will be in accordance with those set out by the industry body AVCAL.

Until a valuation is made in accordance with the above principles the value of an asset will be taken to be at cost. Unlike many listed investment entities revaluation of the underlying asset will not result in an increase in the management fee payable.

**Deal Referral and  
Co-investment with other  
private equity funds  
managed by The Manager**

Direct Capital is involved in managing and co-managing other private equity funds, currently Pohutukawa I, Direct Capital III, BioPacificVentures, TMT and is establishing Direct Capital IV. The management agreement requires that Direct Capital apportions investment opportunities amongst such funds it (or its associated or related parties) is managing or co-managing on a basis that is pro-rata to the committed capital of each such fund subject to the exception noted below.

Direct Capital is involved in managing and/or co-managing a number of funds that are sector specific. Within their specific sectors these funds have a first right of refusal when an investment opportunity is sourced by Direct Capital.

Direct Capital is currently involved in the co-management of TMT Ventures, a fund focused on early stage investments in telecommunications, media and technology. Direct Capital is also involved in managing BioPacificVentures, which specialises in the convergence of food and health with a focus on prevention, nutrition, food technology and agbiotech.

Subject to the foregoing, Pohutukawa II will have the chance to co-invest alongside Pohutukawa I, Direct Capital III, Bio Pacific Ventures, TMT and future funds on all deals.

The Board will monitor the co-investment policy and its implementation by the Manager on behalf of the investors in Pohutukawa II.

**Obligation to pay  
Subscription Monies**

The subscription price of the Shares is payable in tranches.

When investors make an application for Shares, they subscribe for all Shares applied for, and also make a commitment to meet the total subscription price of \$1.00 per Share. The amount payable upon application represents the initial subscription of \$0.10 per \$1.00 on Shares applied for, plus the full application fee of \$0.02 per Share.

Subsequent calls will be made in respect of the remaining subscription price of \$0.90 per Share allotted.

The remaining \$0.90 per Share, being the balance up to the Issue Price, is payable in tranches. Calls will be for a minimum of \$0.10 per Share (or such lesser amount as fully pays up the Share) and will be subject to 30 days advance notice to the investor. Any residual balance up to the Issue Price is payable in full on the fifth anniversary of allotment under the Offer. The Board has complete discretion over all such calls, but will not make such a call (without the Manager's consent) unless the proceeds of all previous calls has been invested or committed in full by Pohutukawa II or the Manager or otherwise expended on Pohutukawa II's operating expenses.

The proceeds of the initial instalment, and each subsequent call, will be applied to successively pay up in full the non-voting redeemable preference shares in Pohutukawa Private Equity II Limited represented in each Share.

**Investor Default  
on a Call**

If an Investor does not pay a call on committed funds on the due date the following consequences apply:

- the Investor will be liable to pay a default rate of interest on the amount that remains unpaid, at a rate of 4% per annum above the 90 day bank bill rate;
- the Board will give the investor a further notice demanding payment after the date the notice is served;
- if the investor fails to pay within 5 working days of such notice, the Board may resolve that the Shares in respect of which payments have been called but are unpaid will be forfeited (forfeited shares); Pohutukawa II may (but is not obliged to) sell the forfeited Shares. Pohutukawa II has no duty to the holder of the forfeited shares to seek a buyer for such shares or in respect of any consideration obtained, however any such consideration so received (less any costs of disposal) shall be returned to the holder of the forfeited shares; and
- alternatively, Pohutukawa II may enforce the lien provided for in its constitution over all Shares held by the investor and apply the proceeds towards the outstanding call and any interest on the outstanding call (with the investor remaining liable for any shortfall after the sale or disposal of such Shares and any surplus proceeds of sale, less any costs of disposal, being returned to the investor).

**Accounts**

Pohutukawa II's annual accounts will be prepared in accordance with the Financial Reporting Act 1993 and audited.

**Set Off**

Pohutukawa II may choose to apply sums payable to investors from the income or realisation of investments against outstanding capital calls rather than return capital and then make a capital call.

**Borrowing Powers**

Pohutukawa II will not borrow, other than in respect of borrowings with a maturity date not in excess of 90 days (provided that in no case shall such borrowings exceed unpaid calls approved by the Board).

Pohutukawa II may provide guarantees or other equivalent measures of performance as credit support for the benefit of an investee business with the prior consent of the Board.

**Transferability  
of Shares**

Transfers of Shares will be subject to Board approval. In certain circumstances, the Board may not approve the transfer of Shares; for example if the transfer were to impact negatively on Pohutukawa II's tax position.

## 12 Risks

Private equity investment offers the potential for superior returns but also carries with it inherent risks. Investors should seek independent investment and taxation advice before they invest in Pohutukawa II.

This Offer Document does not take into account the personal circumstances, financial position or investment requirements of any one person in particular. It is therefore imperative that before making investment decisions, investors give consideration to the suitability of Pohutukawa II in light of their investment needs, objectives and financial circumstances.

The following risk factors, as well as others described elsewhere in this Offer Document, should be carefully considered before investing in Pohutukawa II.

### General Risks

#### Macroeconomic Factors

The investments made by Pohutukawa II will be subject to both domestic and international economic forces which are beyond the control of the Manager. Macroeconomic fluctuations will produce changes in the market prices of securities and the cost and availability of debt securities employed in private equity transactions. These fluctuations may impact on the value of the investments made through Pohutukawa II.

#### Country Risk

As Pohutukawa II has the capacity to be exposed to businesses that have some proportion of their operations outside New Zealand, some investment will be exposed to country risk. Investors should be aware of the potential impact on asset prices of political and sovereign risk, expropriation and regulatory differences in the enforcement of contracts.

#### Currency Risk

Where company revenues and costs are denominated in currencies other than New Zealand dollars, and where Pohutukawa II acquires assets with offshore divisions, final returns calculated in New Zealand dollars will be impacted by currency fluctuations.

#### Legislation

Changes in legislation or Government policy including that applying to taxation, accounting and the environment, could have an impact on the operations, earnings and performance of Pohutukawa II or on distributions to investors.

### Specific Risks

#### Company and Sector Risk

The performance of businesses that Pohutukawa II invests in may be less than expected as a result of unforeseen developments such as unexpected changes in technology or competition that results in product obsolescence, changes in personnel or operating systems or changes in market conditions. There is a risk that some of Pohutukawa II's investments may not return some or all of the capital invested in them.

### **Key Personnel Risk**

The kind of investments undertaken by Pohutukawa II may place a heavy reliance on key management or operational personnel of the businesses in which Pohutukawa II invests. The performance of these companies and of the investments in them may be affected by the loss of key company personnel.

### **Dilution of Investment**

After an investment has been made by Pohutukawa II, and if Pohutukawa II does not take-up any further investment rights, an investee company may seek further funding, from a source other than Pohutukawa II, which could dilute or devalue Pohutukawa II's equity position in the company.

### **Competition for Investment Opportunities**

The popularity of private equity as an investment class is increasing and there is increased competition for investee opportunities as a result. Pohutukawa II may not be able to find suitable businesses to invest in and may not be able to put together the diversified portfolio of later stage investee businesses that it plans to. As a consequence, returns earned by Pohutukawa II may be lower and risks may be higher.

### **Rate of Investment**

Pohutukawa II may take longer to invest in investee businesses than the 3–5 years anticipated by the Manager. This risk is partly mitigated by staging the payment of subscription capital and adopting a minimum call size to \$0.10 per Share.

### **Due Diligence**

Some investments may be made based on limited due diligence and on publicly available information. This may increase the risks to Pohutukawa II associated with those investments.

### **Investee Funding**

The performance of the businesses in which Pohutukawa II invests will depend on the availability of appropriate debt funding. If the availability of debt funding to these businesses is restricted, Pohutukawa II might not be able to successfully complete a transaction or might be required to invest more equity potentially reducing the Fund's return on equity. Pohutukawa II may invest in businesses which have a high level of debt. Highly geared transactions involve significant risk, including risks associated with interest rate fluctuations. The obligation to make interest payments on borrowed money may reduce the businesses' ability to pay dividends and increases the chance of insolvency.

### **Liquidity and Instalment Default**

Investing in Pohutukawa II requires a long term commitment with no certainty of return. Many of Pohutukawa II's investments will be highly illiquid and there can be no assurance that Pohutukawa II will be able to realise such investments. In addition there is no ability to withdraw capital from Pohutukawa II and there is no formal market for the Shares. Whilst ABN AMRO Craigs will endeavour to match sellers and buyers of the Shares on an informal basis, there may not be any buyers or sellers of the Shares and/or the price of the Shares may be different to the assessed value of the underlying investments. Listing of the Shares is not currently being sought. To facilitate liquidity, after consultation with the Manager, the Board can, by unanimous Board consent, apply to list with NZX at any time.

If a significant number of investors do not meet their irrevocable undertaking to subscribe for unpaid Shares when required to do so, Pohutukawa II's capacity and ability to invest quickly will be adversely affected.

### **Early Stage Investment**

Pohutukawa II may invest up to 10% of funds raised in the Offer in early stage businesses which may have an increased risk of failure.

### **Limited Number of Investments**

Pohutukawa II will invest in a limited number of investments. Accordingly, the performance of Pohutukawa II could be significantly adversely affected by the negative performance of any single investment.

In the event that a single investment fails, generally the losses associated with the failure are ring-fenced to the portion of capital invested in that investment and therefore do not impact the returns of other Pohutukawa II investments.

### **Reliance on the Manager**

Investors will have no opportunity to control day to day operations, including investment and disposition decisions, of Pohutukawa II. They must rely on the ability of the Manager in identifying, structuring, managing and liquidating potential investments. Investors are reliant on the key personnel in the management team. The performance of Pohutukawa II could suffer if the Manager ceases to be involved in the management of Pohutukawa II or its investments. Similarly, the performance of Pohutukawa II could be affected by a significant loss of key personnel or underperformance by the Manager.

### **Inability to Meet Investment Objective**

There is no guarantee that Pohutukawa II will execute its strategy successfully or achieve its investment objective. Failure to do so could negatively impact Pohutukawa II's performance. The possibility of partial or total loss of Pohutukawa II's capital exists.

### **Termination of Management Agreement**

In certain circumstances the Management Agreement can be terminated (see page 37). In addition, the Manager may resign. In either circumstance, an alternative manager will need to be appointed by Pohutukawa II. There is no guarantee that a replacement manager with equivalent credentials and expertise will be appointed in that circumstance. In addition, if the Management Agreement is terminated the Manager can require Pohutukawa II to purchase the Management's ordinary shares in the Investment Companies at fair value (or a discount to that where the Management Agreement is terminated for cause). Pohutukawa II will need to fund this purchase (from uncalled capital and/or available cash or distributions, as and when received) or by selling such shares to a replacement manager. There is no guarantee that the price at which such shares are sold to a replacement manager will be equal to (or greater than) the purchase price of such shares paid by Pohutukawa II.

### **Competing Mandates**

Persons associated with the Manager may have competing mandates. In such circumstances, the Manager will generally invest on a basis that is pro-rata to the committed capital of each fund under its management as set out in Section 11 – Financial Information on page 39.

## **Past Performance**

The Manager is a new company formed for the purpose of managing Pohutukawa II and has no operating history. The past performance of funds managed by persons associated with the Manager are not necessarily a guide to the future performance of Pohutukawa II. Similarly, the past performance of companies in which Pohutukawa II invests is not necessarily a guide as to the future performance of these companies or any future investments by Pohutukawa II.

## **Taxation**

The following information is of a general nature only. Tax consequences will to some extent depend on individual circumstances, and investors should seek advice from their own tax advisor as to the consequence of an investment in Pohutukawa II.

Earnings from any Australian investments are not expected to be subject to New Zealand tax. Accordingly, such earning will not give rise to imputation credits.

Any gain realised on sale by an Investment Company of its shares in an investee company will be subject to New Zealand tax if:

- The gain is derived from the carrying on of a business by Pohutukawa II (for this purpose all the Investment Companies are treated as one entity);
- The shares were acquired by the Investment Company with a dominant purpose of resale; or
- The sale is part of a profit-making undertaking or scheme.

It is not possible to predict with certainty the result of application of these tests. The tests are highly fact specific, and the result will depend not only on the companies' current intentions, but also on the actual operation of Pohutukawa II in the future.

If Pohutukawa II realises an Australian investment by way of a direct sale of shares in an Australian company, Australian capital gains tax (of 30%) will not apply to any gain on sale, unless: (a) Pohutukawa II and its associates own more than 10% of the company; and (b) 50% or more of the company's value is attributable to Australian real property.

Tax laws are subject to change, potentially with retrospective effect.

## **Performance of the Underlying Investee Companies**

The returns to investors in Pohutukawa II will be influenced by the performance of the underlying investments and hence the factors influencing the financial position of those entities.

## **Consequences of Insolvency**

Investors will not be obliged to pay any additional money in excess of the Offer Price to any person in the event of insolvency of Pohutukawa II or any of the Investment Companies. All claims of creditors or other parties against Pohutukawa II or any of the Investment Companies rank ahead of the claim of investors in the event of any liquidation or winding up of Pohutukawa II or any of the Investment Companies. All investors rank equally upon a winding up or liquidation of Pohutukawa II or an Investment Company, in each case for an equal share per Share of any surplus assets of Pohutukawa II or the Investment Company, after payment or discharge of other claims. No other persons currently rank equally with, or behind, such claims.

## General

No guarantee can be given in respect of the future earnings of Pohutukawa II or the earnings and capital appreciation of Pohutukawa II's investments.

This list is not exhaustive and potential investors should read this Offer Document in full and, if they require further information on material risks, seek professional advice.

Investors are strongly advised to regard any investment in Pohutukawa II as a long term proposition and to be aware that, as with any equity investment, substantial fluctuations in the value of their investment may occur.

## Risk Mitigation

While the above risks cannot be fully mitigated, the Manager, through its experience with Pohutukawa I and Direct Capital's industry experience, utilises processes and techniques to minimise the risks inherent in private equity investment.

Where appropriate the Manager will seek to mitigate the risks involved in Pohutukawa II through:

- **Diversification:** the Manager will aim to invest in a portfolio of investments which are across a range of sectors and in businesses at different stages in their development.
- **Due Diligence:** the Manager, to the extent possible, will perform due diligence on the investee company. Further the Manager will aim to negotiate and document terms with investee companies which reduce the risks of investment, which may include warranties and indemnities, insurance, earnout provisions, or clawbacks.
- **Borrowing:** Pohutukawa II will have no power to borrow, other than in respect of borrowings with a maturity date not in excess of 90 days (provided that in no case shall such borrowings exceed unpaid calls approved by the Board).
- **Governance:** where possible the Manager will seek board representation on its portfolio companies, allowing the Manager to actively monitor its investments and seek to take a role in the strategic direction of a portfolio company.





**Pohutukawa draws on the  
expertise of one of  
New Zealand's  
most successful private  
equity managers,  
Direct Capital Limited**

*The Pohutukawa can grow up to 20 metres high and live for 1,000 years.*

## 13 Answers to Important Questions

What sort of investment is this?

### Description of Securities

The Offer consists of a total of 60 million Shares to be offered for subscription by Pohutukawa II. Pohutukawa II may accept over subscriptions of up to a further 60 million Shares. A description of the Shares is set out in Section 9 – Structure, Governance and Reporting, on page 33. Each “Share” consists of one ordinary share and 100 redeemable preference shares in Pohutukawa II Private Equity Limited together with one preference share in each of the 25 Investment Companies.

Who is involved in providing it for me?

### The Issuers

Names of each of the Issuers are set out in Clause 3 of Section 14 – Statutory Information, on page 53. The address of each of the Issuers is c/- ABN AMRO Craigs Limited, ABN AMRO Craigs House, 158 Cameron Road, Tauranga.

The Issuers are newly incorporated companies that have not carried on any business activities to date.

The intended activities of the Issuers are set out in Section 8 – Pohutukawa II Investment Strategy on page 31.

### The Promoters

The promoters of the Offer for the purposes of the Securities Act 1978 are Pohutukawa II Management Limited and each of its directors (other than directors of the Issuers) being Ross Andrew George (Auckland) and Kenneth Christopher Phillip (Papamoa), Direct Capital Limited and each of its directors (other than directors of the Issuers) being Ross Andrew George (Auckland), and William James Kermode (Auckland), and ABN AMRO Craigs Limited and each of its directors (other than directors of the Issuers) being Simon Christopher Allen (Auckland), James Bruce Miller (Auckland), Michael John Caird (Wellington), Ronald Phillip Lewis (Dunedin), Thomas Peter Davies (Rotorua), William Turnbull Stevens (Auckland) and Grahame Henry Fawcett Pratt (Camberley, Australia). Each director of Direct Capital can be contacted at Direct Capital at the address set out in Section 17 – Corporate Directory. Each director of the Manager and ABN AMRO Craigs can be contacted at ABN AMRO Craigs at the address set out in Section 17 – Corporate Directory.

How much do I pay?

Applications must be for a minimum of 20,000 Shares at an issue price of \$1.00 per Share thereafter in multiples of 5,000 Shares. \$0.10 of the Share issue price is payable on application along with a \$0.02 per Share Application Fee to cover the cost of brokerage, as further described in Section 2 – Key Terms of the Offer, on page 6. The remaining \$0.90 per Share, being the balance up to the Issue Price, is payable in tranches. Calls will be for a minimum of \$0.10 per Share (or such lesser amount as fully pays up the Share) and will be subject to 30 days advance notice to the investor. Any residual balance up to the Issue Price is payable in full on the fifth anniversary of allotment under the Offer.

Application for Shares must be made in accordance with the application instructions set out in the Application Form. In particular, payment must be made by cheque made out in favour of “The Pohutukawa II Share Offer” and crossed “Not Transferable” and completed Application Forms (together with a total payment of \$0.12 per Share) should be mailed or delivered to the NZX Firm through which the application was obtained, to the Lead Manager or to Link Market Services Limited.

All application fees are inclusive of GST, if any.

## What are the charges?

In return for the performance of its duties as Manager of Pohutukawa II, the Manager is entitled to be paid a Management Fee. In addition Pohutukawa II Investments Limited is entitled to an “earnout”. Further details of both of these are set out in Section 10 – Summary of the Management Agreement on page 36.

In addition to the issue price for the Shares each applicant is required to pay an application fee of \$0.02 per Share applied for. The application fee is payable upon application and will be used to pay brokerage to NZX Firms and advisors approved by the Lead Manager.

An amount equal to 0.5% of Committed Capital will be paid by Pohutukawa II to the Lead Manager on account of preliminary and issue expenses associated with the Shares being offered. Issue expenses in excess of this amount will be met by the Lead Manager and any surplus will be retained by the Lead Manager as a fee.

## What returns will I get?

The return investors will be entitled to receive on their investment in Shares will be amounts received on dividends paid by an Issuer, repayments of capital by an Issuer, liquidation of Issuers (whether in cash or in specie) and if investors sell the Shares, the difference between the issue price and the eventual sale price of the Shares, after taking account of transaction costs and taxes (where relevant).

The key factors that determine the returns to investors are set out in Section 2 – Key Terms of the Offer, Section 9 – Structure, Governance and Reporting, Section 11 – Financial Information and Section 12 – Risks. Returns to investors may also be affected by relevant taxes.

No returns are promised to investors. There is no specified frequency, nor are there any specified dates for liquidations, repayments of capital and/or payments of dividends. In the case of liquidations, repayments of capital or payments of dividends, the relevant Issuer is the person legally liable to pay the returns. There will be no established market for sale of Shares.

**The Issuers believe that they are unable to reliably predict future returns, and investors should rely on their own judgement or on independent advice as to the likely level of returns.**

## What are my risks?

The principal risks of an Investor’s subscription money not being recovered in part or whole by a Investor, or an Investor not receiving the returns referred to under “What returns will I get?” above are set out in Section 12 – Risks, on page 42. Applicants should also review the potential risks raised in the taxation summary set out in Section 11 – Financial Information, on page 39. No Investor will at any stage be required to pay more money in respect of a Share than the amounts set out under “How much do I pay?” above.

It is possible that an Investor will receive, in total, less than the amount of the issue price paid up by that Investor if the returns produced by Pohutukawa II (after deducting all relevant fees, costs and expenses) are negative.

No Investor will or may be liable to pay money to any person as a result of the insolvency of any Issuer (other than any amounts of the issue price of Shares uncalled, or called but unpaid). In a liquidation situation, an Investor’s claim on the assets of the Issuers will rank behind the claims of any secured and unsecured creditors the Issuers may have. Holders of Shares will rank equally among themselves in the event of liquidation or winding up.

**Can the investment be altered?**

The terms and conditions on which the Shares can be purchased (including the amounts payable by subscribers) but excluding the application fee can only be altered by amendment to this Offer Document. Details of any such amendment must be filed with the Registrar of Companies.

**Pohutukawa Private Equity II Limited**

The shareholders may alter the constitution of Pohutukawa Private Equity II Limited by special resolution. In addition, any alterations to the clauses of the constitution concerning the Board's power to make calls and to appoint the directors of that company require the approval of 75% of Pohutukawa Private Equity II Limited's shareholders and the written approval of ABN AMRO Craigs.

**Investment Companies**

Pohutukawa II Investments Limited may alter the constitutions of the Investment Companies by special resolution subject to restrictions on alteration of class rights of investors under Sections 116 and 117 of the Companies Act 1993 and certain other restrictions set out in the Management Agreement.

The Board, in conjunction with the Lead Manager, reserves the right to withdraw the Offer at any time on or prior to the Closing Date without notice. If the Offer is withdrawn, all subscription monies will be refunded to applicants within five business days of the date the Offer is withdrawn. No interest will be paid to applicants on any subscription monies so refunded.

**How do I cash in my investment?**

Investors may sell their Shares to another person (subject to the discretion of the Directors) subject to compliance with Pohutukawa II's constitutions, applicable securities laws and regulations, the Takeovers Code and the Overseas Investment Regulations, and the continuation of an active trading market. While in the opinion of each of the Issuers there is unlikely to be an established market for such sales, ABN AMRO Craigs will endeavour to assist Share transfers where appropriate (subject to group tax considerations).

Each Share includes 100 redeemable preference shares in Pohutukawa Private Equity II Limited and one preference share in each Investment Company. The redeemable preference shares may be redeemed in accordance with their terms by the relevant Issuer.

Sales of Shares may be subject to brokerage charges.

**Who do I contact with enquiries about my investment?**

Enquiries about the Shares should be directed in writing to:

Pohutukawa II Management Limited  
ABN AMRO Craigs House  
158 Cameron Road  
PO Box 13155  
Tauranga

Attention: Peter Lalor  
Phone: (07) 577 6049

**Is there anyone to whom I can complain if I have problems with the investment?**

Complaints about the Shares may be made in writing to:

Pohutukawa Private Equity II Limited  
ABN AMRO Craigs House  
158 Cameron Road  
PO Box 13155  
Tauranga

Attention: Peter Lalor  
Phone: (07) 577 6049

There is no ombudsman to whom complaints about the Shares can be made.

**What other information can I obtain about this investment?**

### **The Offer Document**

Other information relating to the Shares is contained or referred to in this Offer Document. Investors are advised to read the rest of this Offer Document carefully.

Additional copies of this Offer Document may be obtained from ABN AMRO Craigs, free of charge, at the addresses set out in the Section 17 – Corporate Directory. This Offer Document and other documents of, or relating to, the Issuers may be viewed on the Companies Office website at [www.companies.govt.nz](http://www.companies.govt.nz) or during normal business hours at the registered office of the Issuers which is set out in the Section 17 – Corporate Directory. Where relevant documents are not available on the Companies Office website, a request for the documents may be made by contacting the Companies Office Contact Centre on 0508 266 726.

### **Annual Information**

Each Investor is entitled to receive notice of general meetings of Pohutukawa II and to receive the following additional documents:

- a half yearly report of Pohutukawa II;
- distribution statements, when a distribution is paid by Pohutukawa II or the Issuers; and
- an annual report of Pohutukawa II including consolidated financial statements of Pohutukawa II.

## 14 Statutory Information

The following includes, but is not limited to, particulars given pursuant to the First Schedule to the Securities Regulations 1983. The numbering used for the principal paragraphs in this section corresponds with the clause numbering used in that Schedule.

### 1. Main Terms of Offer

#### Issuer

The Issuers of the Shares are Pohutukawa Private Equity II Limited and each of the Investment Companies (details of which are provided on page 53 of this document). The registered office of all of the Issuers is stated in the Section 17 – Corporate Directory.

#### Description of Securities Offered

The securities being offered are Shares in the Issuers. A fuller description of the Shares is set out in Section 9 – Structure, Governance and Reporting.

#### Maximum Number

The number of Shares being offered is 60 million (being 60 million ordinary voting shares and 6,000 million non-voting redeemable preference shares in Pohutukawa Private Equity II Limited and 60 million non-voting preference shares in each Investment Company) subject to an over-subscription allotment of 60 million Shares. Accordingly, the maximum number of shares on offer is 120 million shares. The ordinary shares in Pohutukawa Private Equity II Limited have no nominal value and the redeemable preference shares in Pohutukawa Private Equity II Limited have a nominal value (issue price) of \$0.01 each. The preference shares in the Investment Companies have no nominal value (issue price).

#### Price or Other Consideration

The Shares are being offered at a price of \$1.00 per Share. \$0.10 per Share is payable upon application.

The remaining \$0.90 per Share, being the balance up to the Issue Price, is payable in tranches. Calls will be for a minimum of \$0.10 per Share (or such lesser amount as fully pays up the Share) and will be subject to 30 days advance notice to the investor. Any residual balance up to the Issue Price is payable in full on the fifth anniversary of allotment under the Offer. The Board has complete discretion over all such calls, but will not make such a call (without the Manager's consent) unless the proceeds of all previous calls has been invested or committed in full by Pohutukawa II or the Manager or otherwise expended on Pohutukawa II's operating expenses.

The proceeds of the initial instalment, and each subsequent call, will be applied to successively pay up in full the non-voting redeemable preference shares in Pohutukawa Private Equity II Limited represented in each Share.

In addition to this, an application fee equal to \$0.02 per Share is also payable to the Lead Manager upon application. This fee will be used to pay brokerage to NZX Firms. Additional details are set out in Section 2 – Key Terms of the Offer.

## 2. Name and Address of Offeror

As the Shares are not previously allotted securities, the Issuers are also the offerors, and therefore the disclosure requirements of Clause 2 of the First Schedule to the Regulations are not applicable.

## 3. Details of Incorporation of Issuer

### Date and Number

All of the Issuers were incorporated in New Zealand under the Companies Act 1993. Their dates of incorporation and registered numbers are set out in the table below:

COMPANY	DATE OF INCORPORATION	REGISTERED NUMBER
Pohutukawa Private Equity II Limited	4 November 2008	2181924
Pohutukawa Alpha Limited	4 November 2008	2181841
Pohutukawa Beta Limited	4 November 2008	2181854
Pohutukawa Gamma Limited	4 November 2008	2181843
Pohutukawa Delta Limited	4 November 2008	2181855
Pohutukawa Epsilon Limited	4 November 2008	2181842
Pohutukawa Zeta Limited	4 November 2008	2181867
Pohutukawa Eta Limited	4 November 2008	2181857
Pohutukawa Theta Limited	4 November 2008	2181870
Pohutukawa Iota Limited	4 November 2008	2181858
Pohutukawa Kappa Limited	4 November 2008	2181844
Pohutukawa Lambda Limited	4 November 2008	2181845
Pohutukawa Mu Limited	4 November 2008	2181846
Pohutukawa Nu Limited	4 November 2008	2181859
Pohutukawa Xi Limited	4 November 2008	2181865
Pohutukawa Omicron Limited	4 November 2008	2181847
Pohutukawa Pi Limited	4 November 2008	2181848
Pohutukawa Rho Limited	4 November 2008	2181863
Pohutukawa Sigma Limited	4 November 2008	2181869
Pohutukawa Tau Limited	4 November 2008	2181864
Pohutukawa Upsilon Limited	4 November 2008	2181866
Pohutukawa Phi Limited	4 November 2008	2181861
Pohutukawa Chi Limited	4 November 2008	2181856
Pohutukawa Psi Limited	4 November 2008	2181862
Pohutukawa Omega Limited	4 November 2008	2181860
Pohutukawa Alpha-Pi Limited	4 November 2008	2181853

### Place File Kept

The public file relating to each of the Issuers can be viewed on the Companies Office website at [www.companies.govt.nz](http://www.companies.govt.nz). Where relevant documents are not available on the website a request for the documents can be made by contacting the Companies Office Contact centre on 0508 266 726.

## 4. Principal Subsidiaries of Issuer

None of the Issuers have any subsidiaries or assets at the date of this Offer Document.

## 5. Directorate and Advisers

### Details

The names of the Directors of Pohutukawa Private Equity II Limited and their technical or professional qualifications are set out in Section 5 – Pohutukawa II Board of Directors on page 16 and in Section 6 – The Manager on page 18. The Directors of Pohutukawa Private Equity II Limited can be contacted at the registered office of the Issuers, which is set out in the Section 17 – Corporate Directory.

The Director of each of the Investment Companies is currently Mark Robert Hutton, whose technical and professional qualifications are set out in Section 6 – The Manager on page 18. The sole Director of each Investment Company can be contacted at the office of the Issuers, which is set out in the Section 17 – Corporate Directory.

#### **Executive Directors**

No Director is an employee of any of the Issuers.

#### **No Bankruptcy**

No Director of the Issuers has been adjudged bankrupt during the five years preceding the date of this Offer Document.

#### **Advisers**

The names of the Issuers' auditor and securities registrar, the Lead Manager and solicitors who have been involved in the preparation of this Offer Document, are set out in Section 17 – Corporate Directory.

#### **Organising Participant**

The organising participant for this Offer is ABN AMRO Craigs Limited, the address of which is set out in Section 17 – Corporate Directory.

#### **Experts**

There are no experts named in this Offer Document.

### **5A. Restrictions on Directors' Powers**

The Issuers' constitutions impose the following modifications, exceptions and limitations on the powers of the Directors:

- Limitations on the Directors' powers to alter investors' rights and enter major transactions, reflecting the provisions contained in Sections 117 and 129, respectively, of the Companies Act 1993;
- Limitations on the Directors' ability to issue shares, except in certain circumstances permitted by the Issuers' Constitutions; and
- Limitations on the Directors' ability to alter the operating or financial policies of the Investment Companies from those described in this Offer Document.

The Companies Act 1993 contains a number of other provisions, which could have the effect or consequence, in certain circumstances, of restricting the powers of the Directors. Such provisions are common to any company registered under the Companies Act 1993.

### **6. Substantial Equity Security Holders of the Issuer**

#### **Names and Shares Held**

As at the date of this Offer Document, Pohutukawa Private Equity II Limited has 100 ordinary shares on issue, which shares are held by the Manager. Immediately after the Offer, Pohutukawa Private Equity II Limited intends to buy back and cancel these 100 shares.

As at the date of this Offer Document, each of the Investment Companies has 100 ordinary shares on issue, which are held by Pohutukawa II Investments Limited.

#### **No Investor Liability**

Neither the Manager, Pohutukawa Private Equity II Limited, any promoter nor any Investment Company undertakes any liability in respect of, or guarantees, the Shares being offered under this Offer Document.



<b>7. Description of Activities of the Issuing Group</b>	None of the Issuers has yet commenced business or acquired any assets. The intended activities of the Issuers are set out in Section 8 – Pohutukawa II Investment Strategy on page 31 of the Offer Document.
<b>8. Summary of Financial Statements</b>	None of the Issuers have commenced business. Apart from costs incurred in incorporation and those relating to this Offer Document, none of the Issuers have acquired any assets or incurred any debts. Therefore, no historical financial statements have been prepared.
<b>9. Prospects and Forecasts</b>	<p>A statement as to the trading prospects of the Issuers is set out in Section 8 – Pohutukawa II Investment Strategy on page 31, Section 11 – Financial Information on page 39 and Section 12 – Risks, on page 42 of the Offer Document.</p> <p>The Issuers are exempt from providing a Prospective Statement of Cash Flows as set out under the “Provisions Relating to Initial Flotations” below.</p>
<b>10. Provisions Relating to Initial Flotations</b>	<p><b>Directors’ Plans</b></p> <p>During the year commencing on the date of this Offer Document the Directors plan to undertake private equity investments in accordance with the strategy set out in Section 8 – Pohutukawa II Investment Strategy on page 31. The sources of finance for these plans comprise the funds received pursuant to the Offer of Shares in this Offer Document.</p> <p><b>Use of Proceeds Not Limited to Stated Plans</b></p> <p>Notwithstanding the plan of the Directors, the proceeds of the Offer of Shares may be applied towards any other undertaking that the Issuers may lawfully engage in.</p> <p><b>Prospective Statements of Cash Flows</b></p> <p><b>Under the Securities Act (Pohutukawa Private Equity II Limited) Exemption Notice 2008, the Issuers and every person acting on their behalf are exempted (subject to certain conditions) from clause 10(1)(c) of the First Schedule of the Regulations. The Issuers have not provided a prospective statement of cash flows because the Directors do not believe that a meaningful prospective statement of cash flows can be provided. This is because forecasting the cash flow of the Issuers will necessarily involve predicting a number of factors outside the control of the Issuers. The Issuers advise that investors should regard investment in the Shares as high risk.</b></p> <p><b>Assumptions</b></p> <p>As there are no financial statements attached, there are no relevant principal assumptions.</p> <p><b>Minimum Amount Required to be Raised</b></p> <p>For the purposes of Section 37(2) of the Securities Act 1978, the minimum amount that, in the opinion of the Directors, must be raised by the issue of Shares under this Offer Document is \$20 million, being the total subscription amount payable on 20 million Shares.</p>
<b>11. Acquisition of Business of Subsidiary</b>	None of the Issuers in the five years preceding the date of this Offer Document have acquired any businesses or subsidiaries, and none of the Issuers plans to acquire any specific business or subsidiary at the date of this Offer Document.

**12. Securities paid up otherwise than in Cash**

The existing shares in each of the Issuers were issued upon incorporation for no consideration. None of the Issuers has otherwise allotted any securities otherwise than in cash.

**13. Options to Subscribe for Securities of Issuing Group**

No options have been granted, and it is not proposed to grant any options to subscribe for any shares in any of the Issuers.

**14. Appointment and Retirement of Directors**

**Existing Appointments**

None of the existing Directors have been appointed to the Boards of the Issuers in a manner which is materially different from that specified in Sections 153 and 155 of the Companies Act 1993.

**Retirement Age**

There is no retirement age for the Directors of the Issuers.

**Right to Appoint Additional Directors**

For so long as it holds not less than 50% of the issued shares in the Manager, ABN AMRO Craigs is entitled to appoint up to 50% of the directors of Pohutukawa Private Equity II Limited, and cannot vote on the election of any other directors of Pohutukawa Private Equity II Limited. ABN AMRO Craigs has appointed Mr Neil Craig and Mr Frank Maurice Aldridge pursuant to this right. Other than the foregoing, no person has any right to appoint any Director other than the holders of ordinary shares of the relevant Issuer by ordinary resolution or the Directors acting as a board of the relevant Issuer.

**Right to Appoint Directors to Investment Companies**

The Directors of each Investment Company can be appointed or removed only by Pohutukawa II Investments Limited (being the holder of the ordinary shares in the Investment Company), under the Management Agreement, Pohutukawa II Investments Limited has agreed to exercise such director appointment rights at the instruction of the Manager.

**Alternate Directors**

Each Director has power to appoint an alternate director, who may be any person not disqualified by the Companies Act 1993 and who is approved by a majority of the other Directors. Unless otherwise provided by the terms of his or her appointment, an alternate Director shall have all the powers, rights, duties and privileges of a Director (other than the right to appoint an alternate Director).

**15. Directors Interests**

None of the Directors of the Issuers are entitled to any other remuneration from the Issuers, other than by way of director's fees (which in aggregate will amount to a maximum of \$100,000 per annum for Directors), fees paid to an independent director in his or her capacity as a member of the Investment Committee and reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as Directors. In addition Directors may from time to time, subject to appropriate disclosures in accordance with the procedures of the Companies Act 1993, provide consulting services to Pohutukawa II, on normal arms length terms.

### **Other Remuneration**

The Issuers have granted to the Directors an indemnity to the maximum extent permitted by the Companies Act 1993 and their constitutions, as further described under “Material Contracts” in paragraph 17 of this Section. The Issuers also have power to effect insurance for Directors and employees pursuant to the Companies Act 1993 and the Issuers’ Constitutions.

### **Material Transactions with Directors**

During the 5 years before the date of this Offer Document, no material transaction has been entered into between the Issuers and any Director or other person described in clause 15(4) of the First Schedule to the Securities Regulations.

## **16. Promoters**

The promoters of the Offer for the purposes of the Securities Act 1978 are Pohutukawa II Management Limited and each of its directors (other than directors of the Issuers) being Ross Andrew George (Auckland) and Kenneth Christopher Phillip (Papamoa), Direct Capital Limited and each of its directors (other than directors of the Issuers) being Ross Andrew George (Auckland), and William James Kermode (Auckland), and ABN AMRO Craigs Limited and each of its directors (other than directors of the Issuers) being Simon Christopher Allen (Auckland), James Bruce Miller (Auckland), Michael John Caird (Wellington), Ronald Phillip Lewis (Dunedin), Thomas Peter Davies (Rotorua), William Turnbull Stevens (Auckland) and Grahame Henry Fawcett Pratt (Cammeray, Australia).

Pohutukawa II has entered into a Management Agreement with the Manager dated 19 November 2008, and a Custodian Agreement with Direct Capital IV Limited and the Manager dated 19 November 2008. Details of the Management Agreement and Custodian Agreement are set out in Section 10 – Summary of the Management Agreement on page 36. As no property is acquired or disposed of pursuant to these agreement, none of the details prescribed in clause 16(2)(c) to (i) inclusive of the First Schedule to the Securities Regulations apply.

## **17. Material Contracts**

The Issuers have entered into the following material contracts (not being a contract entered into in the ordinary course of business) in the two years preceding the date of this Offer Document with the Manager:

- Management Agreement between each of the Issuers, Direct Capital, Direct Capital IV Management Limited, ABN AMRO Craigs, Pohutukawa II Investments Limited and the Manager dated 19 November 2008. Details of the Management Agreement are set out in Section 10 – Summary of the Management Agreement on page 36;
- A deed of Indemnity granted by Pohutukawa Private Equity II Limited in favour of each director of Pohutukawa Private Equity II Limited dated 19 November 2008;
- A deed of indemnity granted by each of Pohutukawa II and each Investment Company, in favour of the directors of each Investment Company dated 19 November 2008; and
- Custodian Agreement between Pohutukawa II, the Manager and Direct Capital IV Limited dated 19 November 2008. Details of the Custodial Agreement are set out in Section 10 – Summary of the Management Agreement on page 36.

- 18. Pending Proceedings** There are no legal proceedings or arbitrations that are pending or current at the date of registration of this Offer Document that may have a material adverse effect on any of the Issuers.
- 19. Preliminary and Issue Expenses** An amount equal to 0.5% of Committed Capital will be paid by Pohutukawa II to the Lead Manager on account of preliminary and issue expenses associated with the Shares being offered. Issue expenses in excess of this amount will be met by the Lead Manager and any surplus will be retained by the Lead Manager as a fee. No commission or brokerage is to be paid out of the issue expenses – brokerage is to be paid out of the Application Fee as set out on page 39.
- 20. Restrictions on Issuing Group** Other than the borrowing restriction disclosed under “Borrowing Powers” at Section 11, “Financial Information”, there are no restrictions, being restrictions that result from any undertaking given, or contract or deed entered into, by the Issuers that limit their ability to distribute profits or borrow.
- 21. Other Terms of Offer and Securities** All terms of the Offer, and all terms of the Shares being offered, are set out in this Offer Document except those implied by law, or contained in a document which is registered with a public official, available for public inspection and referred to in this Offer Document.
- 22–38. Financial Statements** There are no historical financial statements for the Issuers, as the Issuers have not commenced business.
- 39. Places of Inspection of Documents** The material contracts referred to above and the constitution of each of the Issuers may be viewed on the Companies Office website at [www.companies.govt.nz](http://www.companies.govt.nz) or during normal business hours at the registered office of the Issuers which is set out in the Directory. Where relevant documents are not available on the Companies Office website, a request for the documents may be made by contacting the Companies Office Contact Centre on 0508 266 726.
- 40. Other Material Matters** There are no other material matters relating to the offer of the Shares (other than matters elsewhere set out in this Offer Document).
- 41. Directors’ Statement** The Issuers have not commenced business or produced any financial statements, and therefore the requirements of clause 41 of the First Schedule to the Regulations are not applicable.
- 42. Auditors’ Reports** There are no historical financial statements for the Issuers, as the Issuers have not commenced business. In addition, the issuers have received an exemption from sub-clause 10(1)(c) of the First Schedule to the Securities Act Regulations 1983. Accordingly the auditor’s reports prescribed by this clause are not applicable.

This Offer Document is dated 21 November 2008.

A copy of this Offer Document has been signed by or on behalf of each of the Directors of the Issuers, the Promoters and each director of the Promoters (other than those directors who are also directors of the Issuers).

## 15 Glossary

<b>ABN AMRO Craigs</b>	means ABN AMRO Craigs Limited
<b>Application Form</b>	means an application form to subscribe for Shares in the Offer
<b>AVCAL</b>	means Australian Venture Capital Association Limited
<b>Board</b>	means the board of directors of Pohutukawa Private Equity II Limited
<b>Called Capital</b>	means the Committed Capital of Pohutukawa II less both uncalled capital and the original cost of investments to the extent realised and returned to investors
<b>Closing Date</b>	means 5pm on 27 February 2009
<b>Committed Capital</b>	means the product of the total issue price of \$1.00 per Share and the number of Shares issued
<b>Direct Capital</b>	means Direct Capital Limited and where applicable includes reference to its associated entities and investment team
<b>Direct Capital I</b>	means Direct Capital Partners Limited, established in 1994
<b>Direct Capital II</b>	means the private equity fund managed by Direct Capital for institutional investors known as Direct Capital II, established in 1998
<b>Direct Capital III</b>	means the private equity fund managed by Direct Capital for institutional investors known as Direct Capital III, established in 2004
<b>Direct Capital IV</b>	means the private equity fund managed by Direct Capital for institutional investors known as Direct Capital IV
<b>Directors</b>	means the directors of Pohutukawa Private Equity II Limited
<b>Early Stage Investments</b>	means investments into unlisted companies which are in an early stage of developing their business
<b>Invested Capital</b>	means the Committed Capital of Pohutukawa II less both the uncalled capital and the original cost of investments to the extent realised and returned to investors or written off
<b>Investment Companies</b>	means the 25 companies listed after Pohutukawa Private Equity II Limited in clause 3 of Section 14 – Statutory Information
<b>IPO</b>	means initial public offer of securities and, typically, listing the securities on a recognised stock exchange
<b>IRR</b>	means internal rate of return – the discount rate, expressed as an annual percentage, which, when applied to a series of cash flows, results in a net present value of zero as at the date of the calculation

<b>Issue Price</b>	means the issue price of \$1.00 per Share
<b>Issuers</b>	means Pohutukawa II and each of the Investment Companies
<b>Lead Manager</b>	means ABN AMRO Craigs Limited
<b>Link Market Services</b>	means Link Market Services Limited
<b>Manager</b>	means Pohutukawa II Management Limited
<b>NZX</b>	means NZX Limited
<b>Offer</b>	means the offer of Shares pursuant to this Offer Document
<b>Offer Document</b>	means this combined prospectus and investment statement
<b>Pohutukawa I</b>	means Pohutukawa Private Equity Limited and its associated investment companies, the first private equity fund established by ABN AMRO Craigs in 2004 and jointly-managed by ABN AMRO Craigs and Direct Capital
<b>Pohutukawa II</b>	means Pohutukawa Private Equity II Limited and, where applicable, its related Investment Companies
<b>Realised Investments</b>	means investments where a liquidity event has occurred and returns are measurable. This includes both sold and listed investments
<b>Regulations</b>	means the Securities Regulations 1983
<b>Securities Act</b>	means the Securities Act 1978 (as amended)
<b>Share</b>	means a stapled set of shares comprising one ordinary voting share and 100 non-voting redeemable preference shares in Pohutukawa Private Equity II Limited together with one non-voting preference share in each of the Investment Companies
<b>Share Registry</b>	means Link Market Services

**Current market conditions  
present a compelling  
opportunity for private  
equity investors**



*The Pohutukawa is the best known coastal tree of New Zealand, primarily for the profusion of red flowers produced.*



## 16 Application Forms

### Application Instructions

Read the Offer Document carefully before applying for Shares.

1. List your full name, contact address and telephone details. Applications must be in the name(s) of natural persons, companies or incorporated bodies. At least one full first name and surname are required for each natural person. Applications in the name of a minor, trust, fund or estate, business, firm or partnership, club or other unincorporated body cannot be accepted. In those cases, applications must be made in the name(s) of the person(s) who is (are) legal guardian(s), trustee(s), proprietor(s), partner(s) or office bearer(s) as appropriate. A maximum of three applicants may apply jointly.

Examples of correct form of registrable names:

TYPE OF INVESTOR	INSTRUCTION	CORRECT FORM
Individual	Use given name in full, not initials	John Joseph Jones
Company	Use company title, not abbreviations	ABC Limited
Trusts	Do not use the names of the deceased or trust name, use trustee(s) names; all trustees may apply as joint applicants	Susan Jones & John Jones/ Susan Jones Family A/C
Deceased Estates	Do not use the names of the deceased, use executor(s) personal names	Michael Jones Estate/ John Jones A/C
Partnerships	Do not use the names of the partnership, use partner(s) personal names	John Jones & Michael Jones/John Jones & Son A/C
Clubs/ Unincorporated Bodies	Do not use the name of a club etc, use office bearer(s) personal names	Susan Jones/ABC Tennis Association A/C
Superannuation Funds	Do not use the name of the fund, use the name of the trustee	John Jones Limited/ Super Fund A/C

2. Enter your Inland Revenue Department number. If it is a joint application, only one Inland Revenue Department number is required.
3. The minimum application amount under the Offer is 20,000 Shares at \$1.00 per Share (NZ\$20,000 of Committed Capital). The initial subscription of \$0.10 per Share (minimum NZ\$2,000) is payable with this Application Form (together with the application fee of \$0.02 per Share). Applications must be made in multiples of 5,000 Shares thereafter.
4. Sign and date the application form. The application form must be signed by each applicant. Companies must sign by authorised signatories of the company. The applicant only may sign the application form unless another person has been duly appointed as the attorney or agent of the applicant. If an attorney or agent signs, he/she must complete the relevant certificate on the bottom of the application. If signing as an attorney, you must enclose your power of attorney.

5. The completed application form, together with a cheque for the initial subscription and application fee, should be mailed or delivered to the Primary Market Participant whose stamp appears on the application form, or the Lead Manager, in time to be received by Link Market Services Limited no later than 5pm on 27 February 2009.
6. Cheques should be made out to “The Pohutukawa II Share Offer” and crossed ‘Not Transferable’. Cheques must be drawn on a registered New Zealand bank and not post-dated.

#### **Terms and Conditions of Applications**

- By signing the application form, applicants acknowledge that the application form was distributed with the Offer Document and that their application for Shares is made subject to the terms and conditions set out in the Offer Document.
- Upon receipt, application monies will be banked pending allotment/transfer. The banking of such monies shall not constitute allotment/transfer of any Shares.
- The Directors, in consultation with the promoters and Lead Manager, will allot/transfer Shares as soon as practicable after the Closing Date.
- The Directors in consultation with the Lead Manager reserve the right to allot/transfer Shares in full to any applicant, or to allot any lesser number, or to decline any application. Where the number of Shares allotted/transferred is less than the number of Shares applied for, or no Shares are allotted, surplus application monies will be refunded to the applicant, without interest, within 5 days of the Closing Date.
- Shareholding statements will be dispatched to Shareholders as soon as practicable after allotment/transfer but in any event no later than five business days after Closing Date.
- Applicants agree that once lodged with Pohutukawa II, applications for Shares cannot be revoked or withdrawn.



**OPTION 1 – My New Zealand Bank Account Details:**

Account Name(s)

Account Number

BANK                      BRANCH                      ACCOUNT NUMBER                      SUFFIX

**OPTION 2 – My Cash Management Account Details:**

Name of NZX Firm where Cash Management Account held

Cash Management Client Account Number

**4. SIGNATURE(S) OF APPLICANT(S)**

I/We hereby apply for the number of Shares shown above and agree to accept such Shares (or such lesser number as may be allotted) on and subject to the terms and conditions set out in the Offer Document dated 21 November 2008 and on the terms set out in the Application Instructions.

Signature of Applicant  Date  /  /

Signature of Applicant  Date  /  /

Signature of Applicant  Date  /  /

**Attorneys:** Please complete and sign the certificate of non-revocation below. Upon acceptance, in whole or in part, of an Applicant's offer to purchase Shares, the Issuer will transfer those Shares to the Applicant and will procure registration of the Applicant as the holder of those Shares, subject to all applicable laws. This Application Form must not be issued, circulated or distributed unless accompanied by the Offer Document.

**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**

I,   
(Name of Attorney)

of   
(Address and Occupation of Attorney)

**HEREBY CERTIFY:**

- THAT, by a Power of Attorney dated the  day of  ('Donor') appointed me his/her/its Attorney on the terms and conditions set out in the Power of Attorney.
- THAT I have executed the application for Shares printed on this Application Form under the Power of Attorney and pursuant to the powers thereby conferred on me.
- THAT at the date of this certificate I have not received any notice or information of the revocation of that Power of Attorney by the death (or winding up) of the Donor or otherwise.

Signed at

this  day of  20

Signature of Attorney

**CERTIFICATE OF NON-REVOCATION OF AGENCY**

Complete this section if you are acting as agent for someone

I,   
(Name of Agent)

of   
(Address and Occupation of Agent)

**HEREBY CERTIFY:**

- THAT, by an Agreement dated the  day of  ('Donor') appointed me his/her/its Agent on the terms and conditions set out in the Agreement.
- THAT I have executed the Application for Shares (and associated warrants) printed on this Application Form under the Appointment and pursuant to the powers thereby conferred on me.
- THAT at the date of this certificate I have not received any notice or information of the revocation of that Appointment by the death (or winding up) of the Donor or otherwise.

Signed at

this  day of  20

Signature of Agent

**ADDITIONAL APPLICATION TERMS**

By signing this Application Form, the applicant acknowledges that this form was distributed with the Offer Document dated 21 November 2008 and that offers to subscribe for Shares are upon and subject to the terms and conditions set out in the Offer Document. The applicant also acknowledges that he/she/they has/have read and understood the Offer Document. The applicant also acknowledges that the information supplied by him/her/they on the Application Form is true.

Each applicant acknowledges and understands that any Shares in Pohutukawa II that are issued to him/her/they will be issued partly paid at an issue price of \$1.00 per Share with an initial amount of \$0.10 per Share payable on application. In addition the applicant must pay an application fee of \$0.02 per Share on application. The remaining amounts due per Share allotted to applicants (representing \$0.90 per Share allotted) shall remain outstanding and unpaid. Holders will be liable to pay up such unpaid accounts in full when called upon to do so. For the purposes of section 50 of the Companies Act 1993, applicants consent to becoming the holder of Shares applied for by them (or such lesser number of Shares as may be allotted to them).

Each applicant acknowledges and confirms that none of Direct Capital, ABN AMRO Craigs, nor Pohutukawa II, nor the Manager nor their respective officers, directors, employees, advisers, associates or affiliates nor any member of the Board (each, 'relevant person') has made any warranties in connection with Pohutukawa II or the performance of Pohutukawa II and that he, she or they has/have not relied on the contents of any statement, representation, warranty, promise, undertaking or agreement, whether made expressly or by implication by any relevant person.

Each applicant hereby waives its rights (if it/they become(s) a Shareholder) to receive the annual reports and financial statements of each Issuer to the maximum extent permitted by law from time to time subject to such applicant receiving an annual report of Pohutukawa II and consolidated financial statements of Pohutukawa II. The applicant may (if it/they become(s) a Shareholder) revoke this waiver at any time by written notice to Pohutukawa Private Equity II Limited.

An application cannot be withdrawn or revoked by the applicant.

Pohutukawa II reserves the right to reject any application in whole or in part without giving any reason.

In the case of joint applicants, only the address of the first named of the joint applicants will be recorded by Pohutukawa II and all distributions, notices, etc, will be sent to the address of the first applicant.

Each applicant confirms that it is not resident in, or organised or incorporated under, the laws of the United States nor any other country or jurisdiction in which the offer or issue of the Shares would be unlawful.

Expressions defined in the Offer Document have the same meanings in this Application Form. This Application Form, offer, and any contract arising out of its acceptance is governed by New Zealand law.



**OPTION 1 – My New Zealand Bank Account Details:**

Account Name(s)

Account Number

BANK                      BRANCH                      ACCOUNT NUMBER                      SUFFIX

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Cash Management Client Account Number

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Signature of Applicant  Date  /  /

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I,   
(Name of Attorney)

of   
(Address and Occupation of Attorney)

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Each applicant acknowledges and confirms that none of Direct Capital, ABN AMRO Craigs, nor Pohutukawa II, nor the Manager nor their respective officers, directors, employees, advisers, associates or affiliates nor any member of the Board (each, 'relevant person') has made any warranties in connection with Pohutukawa II or the performance of Pohutukawa II and that he, she or they has/have not relied on the contents of any statement, representation, warranty, promise, undertaking or agreement, whether made expressly or by implication by any relevant person.

Each applicant hereby waives its rights (if it/they become(s) a Shareholder) to receive the annual reports and financial statements of each Issuer to the maximum extent permitted by law from time to time subject to such applicant receiving an annual report of Pohutukawa II and consolidated financial statements of Pohutukawa II. The applicant may (if it/they become(s) a Shareholder) revoke this waiver at any time by written notice to Pohutukawa Private Equity II Limited.

An application cannot be withdrawn or revoked by the applicant.

Pohutukawa II reserves the right to reject any application in whole or in part without giving any reason.

In the case of joint applicants, only the address of the first named of the joint applicants will be recorded by Pohutukawa II and all distributions, notices, etc, will be sent to the address of the first applicant.

Each applicant confirms that it is not resident in, or organised or incorporated under, the laws of the United States nor any other country or jurisdiction in which the offer or issue of the Shares would be unlawful.

Expressions defined in the Offer Document have the same meanings in this Application Form. This Application Form, offer, and any contract arising out of its acceptance is governed by New Zealand law.

## 17 Corporate Directory

### **Board of Directors of Pohutukawa Private Equity II Limited**

John McDonald  
Maurice Prendergast  
Neil Craig  
Frank Aldridge

The Directors can be contacted at  
Pohutukawa Private Equity II  
Limited's registered office address  
set out below.

### **Offices of Pohutukawa Private Equity II Limited**

ABN AMRO Craigs House  
158 Cameron Road  
Tauranga 3110  
PO Box 13155  
Tauranga 3141  
Phone: (07) 577 6049  
Fax: (07) 928 6443

### **Auditors**

KPMG  
35 Grey Street  
Tauranga 3110  
PO Box 110  
Tauranga 3140  
Phone: (07) 578 5179  
Fax: (07) 578 2555

### **Managers**

Pohutukawa II Management Limited  
ABN AMRO Craigs House  
158 Cameron Road  
Tauranga 3110  
PO Box 13155  
Tauranga 3141  
Phone: (07) 577 6049 or  
0800 272 442  
Fax: (07) 928 6443

### **Investment Manager**

Direct Capital Limited  
Level 6, 2 Kitchener Street  
Auckland 1010  
PO Box 6466, Wellesley Street  
Auckland 1141  
Phone: (09) 307 2562  
Fax: (09) 307 2349

### **Lead Manager & Organising Broker**

ABN AMRO Craigs Limited  
ABN AMRO Craigs House  
158 Cameron Road  
Tauranga 3110  
PO Box 13155  
Tauranga 3141  
Phone: (07) 577 6049 or  
0508 226 226  
Fax: (07) 571 8625

### **Share Registry**

Link Market Services Limited  
138 Tancred Street  
PO Box 384  
Ashburton 7740  
Phone: (03) 308 8887  
Fax: (03) 308 1311  
E-mail: [lmsenquiries@  
linkmarketservices.com](mailto:lmsenquiries@linkmarketservices.com)

### **Solicitors**

Chapman Tripp Sheffield Young  
Level 35, 23-29 Albert Street  
PO Box 2206  
Auckland 1140  
Phone: (09) 357 9000  
Fax: (09) 357 9099

