

Russell  
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# Investing in New Zealand

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2019





## Introduction

This is a basic guide for those wishing to invest in New Zealand and provides a high-level summary of key topics that investors should be aware of, including New Zealand's overseas investment, competition law, taxation and employment regimes.

The information in this guide is correct as at March 2019.

Anyone considering investing in New Zealand should seek advice from Russell McVeagh on the specific details of their proposed investment.

This publication is intended only to provide a summary of the subject covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this publication without first obtaining specific professional advice. If you require any advice or further information on the subject matter of this newsletter, please contact the partner/solicitor in the firm who normally advises you, or alternatively contact one of our specialist listed at the end of this publication.

## About Russell McVeagh

Widely regarded as New Zealand's premier law firm, Russell McVeagh is committed to operating on the cutting edge of legal practice. With an impressive track record of attracting clients from throughout Australasia and internationally, the firm acts for 6 of the NZX 10 companies, many of New Zealand's major corporates, including numerous energy and utilities companies, all of New Zealand's retail banks, and New Zealand's largest company and largest listed company.

All of our practice groups are respected as leaders in the market and we assist clients with their most complex, challenging and high-profile transactions. Russell McVeagh continues to be on almost every major transaction in the country (conflicts aside). Find out more about our Expertise on our website.

We employ approximately 330 staff and partners across our Auckland and Wellington offices, and our lawyers are the best in their fields and recognised internationally for their expertise.

Our specialist lawyers broadly operate in the following teams:

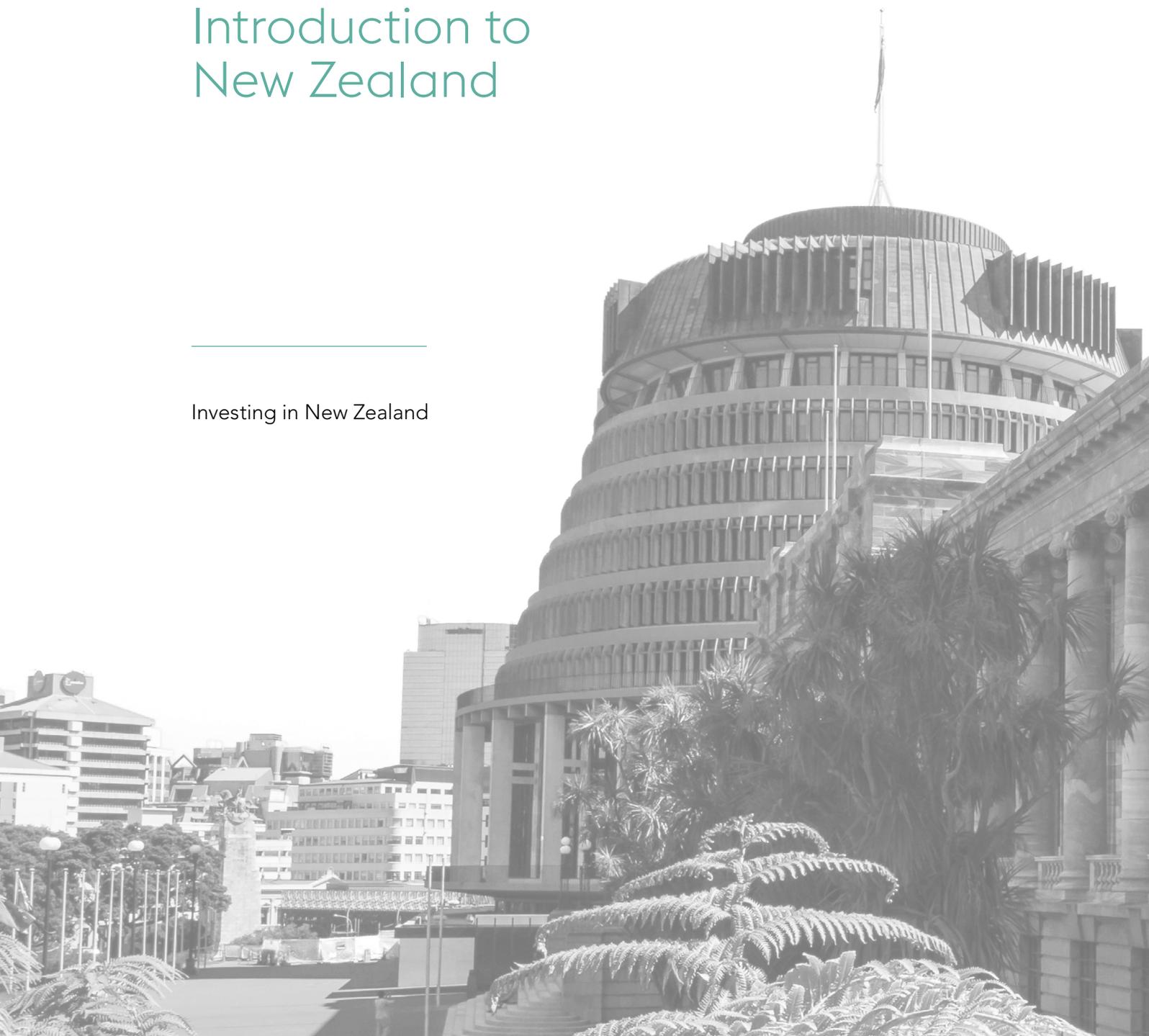
- (a) Banking and Finance;
- (b) Competition, Regulatory and Public Law;
- (c) Corporate Advisory;
- (d) Employment;
- (e) Environment, Planning and Natural Resources;
- (f) Litigation;
- (g) PPP/Infrastructure;
- (h) Property and Construction;
- (i) Tax; and
- (j) Technology.

SECTION 1

# Introduction to New Zealand

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Investing in New Zealand



## 1. Introduction to New Zealand

### Legal system

- 1.1 New Zealand has a common law legal system. As well as legislation made by Parliament and local rules made by local councils, the law is also made up of the common law, which is developed by judges as they make decisions in different cases. Legislation made by Parliament will always override common law.
- 1.2 The court system is a hierarchy of courts that includes two appeal courts (the Court of Appeal and the Supreme Court), whose decisions are binding on courts below them in the hierarchy.

### System of government

- 1.3 Although the British Queen remains New Zealand's head of state, New Zealand is a completely independent self-governing democracy. New Zealand adopted the Westminster system of government when it was a British colony and does not have a written constitution or a federal system.
- 1.4 Legislation is made by a single unicameral Parliament. All 120 members of Parliament are elected every three years using a Mixed-Member Proportional (MMP) electoral system, which was adapted from Germany's electoral system. MMP means that many political parties are represented in Parliament, and a stable Government with the confidence of a parliamentary majority is usually formed by multiple parties entering coalition and/or confidence and supply arrangements, led by either the centre-right National Party or the centre-left Labour Party.
- 1.5 Government in New Zealand is open, accessible and accountable. The regulatory environment is relatively stable. All laws and key government decisions are usually made after public consultation where any interested person is welcome to make a submission. However, on occasion laws are passed very quickly and with minimal public input.
- 1.6 The small size of New Zealand and its government makes it easy to gain access to and communicate with Ministers, their officials and members of Parliament. Also, the political parties in Parliament forming the Opposition ensure that the Government is accountable for its actions.
- 1.7 Government in New Zealand is based on the principle of the rule of law, which means that any decisions made by Government must be in accordance with the law. Decisions made unlawfully can be challenged in the courts.
- 1.8 There is also a system of local government. Each city and region has its own local council which governs local matters and makes local decisions, such as decisions about planning controls, permitted uses and zoning and construction permits. However, legislation made by Parliament will always override any local rules made by local councils.

### Investing in New Zealand

- 1.9 From 1984, New Zealand underwent an intense period of deregulation. Government subsidies were removed, import regulations liberalised, tariffs slashed, exchange rates freely floated (ie no exchange controls remain in place), controls on interest rates and

prices eliminated, and marginal rates of taxation reduced. New Zealand is now almost entirely unprotected by import controls and subsidies. Its agricultural sector is a world-leader in innovation, quality and efficiency and it manages to thrive against larger countries with very limited assistance from the Government.

- 1.10 New Zealand has strong trade relationships with Asia, the Pacific, the Americas and the European Union. It actively lobbies for free trade and the removal of anti-competitive restrictions. Significantly, in April 2008 New Zealand became the first country to negotiate a free trade agreement with China, and negotiations to “upgrade” that agreement commenced in April 2017. New Zealand has also recently been successful in negotiating the following free trade agreements and economic partnerships:
- (a) ASEAN-Australia-New Zealand Free Trade Agreement (2010);
  - (b) New Zealand-Malaysia Free Trade Agreement (2010);
  - (c) Closer Economic Partnership with Hong Kong (2011);
  - (d) New Zealand-Korea Free Trade Agreement (2014); and
  - (e) Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2018).
- 1.11 On 24 March 2017, New Zealand’s Ministry for Foreign Affairs and Trade set its trade policy for the next 10–15 years, which includes “continuing with urgency to build on our network of free trade agreements”. New Zealand is currently in the process of negotiating free trade agreements with:
- (a) 16 countries (being the 10 ASEAN countries along with Australia, China, India, Japan, Korea, and New Zealand) in the Regional Comprehensive Economic Partnership;
  - (b) India;
  - (c) the European Union;
  - (d) Russia, Belarus and Kazakhstan; and
  - (e) all members of the Pacific Islands Forum (being Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu) in the Pacific Agreement on Closer Economic Relations.
- 1.12 New Zealand has become an attractive destination for overseas investment because it is one of the most deregulated, and least corrupt, economies in the world. It offers sound economic practices with good opportunities for solid growth. Since October 2015, New Zealand has also implemented an “Investment Attraction Strategy” to attract more high-quality foreign business investment to New Zealand.
- 1.13 Like other developed countries, New Zealand has an established overseas investment regime which requires foreign investors to obtain approval for certain transactions. Not all transactions require approval and whether consent is required will depend on the type of investment, the amount of money involved and the sector invested in. Overseas investors must also comply with all relevant commercial law in New Zealand.

SECTION 2

# Overseas Investment Regime

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Investing in New Zealand



## 2. Overseas Investment Regime

### Introduction

- 2.1 The Overseas Investment Act 2005 (OIA) and the Overseas Investment Regulations 2005 (Regulations) establish the framework for the overseas investment regime in New Zealand. The Overseas Investment Office (OIO) oversees the regime and is responsible for assessing applications from overseas investors who intend on making substantial investments in New Zealand. Certain areas require experience, expertise and judgement from those preparing the application to ensure a timely and successful outcome for the investor.
- 2.2 Consent is not always required and the OIO has a broad discretion over whether to grant approvals. The key factors which determine whether consent is required are whether the applicant is an “overseas person” and whether the transaction will result in an overseas investment in significant business assets, sensitive land, (which includes residential land), farm land or fishing quotas.
- 2.3 The OIO’s processes and approach to applying the regime underwent a comprehensive review and overhaul between 2014 and 2017. The result is a much more robust regime that places a significant onus on overseas investors to prepare comprehensive applications that satisfy the requirements of the OIA and Regulations. Further, in August 2018, the Overseas Investment Amendment Act 2018 (Amendment Act) came into force. The Amendment Act made changes to the OIA, and in particular reformed the definition of “sensitive land” and introduced new restrictions in relation to “residential land” – see below.

### Overseas Persons

- 2.4 For the purposes of the regime, an overseas person is any person who is not a New Zealand citizen and is not ordinarily resident in New Zealand. This includes any body corporate that is incorporated outside New Zealand and any company, partnership, body corporate or trust which is 25% or more owned or controlled by overseas persons.

### Significant Business Assets

- 2.5 An overseas investment in “significant business assets” occurs where, as a result of the transaction:
- (a) an overseas person acquires a 25% or more ownership or control interest, or increases an existing 25% ownership or control interest, in the target company, and the value of the securities of the target company or the consideration provided, or the value of the target company’s assets in New Zealand, exceeds NZ\$100 million;
  - (b) an overseas person acquires assets in New Zealand and the total consideration provided exceeds NZ\$100 million; or
  - (c) an overseas person establishes a business in New Zealand where the business is carried on for more than 90 days in any year, and the total expenditure expected to be incurred, before commencing the business, in establishing the business, exceeds NZ\$100 million.

Note the limit of \$100 million referred to above may be set at a higher amount (currently NZ\$200 million) if the overseas person is domiciled in a country that has obligations to New Zealand under various international agreements, as set out in paragraph 2.25.

In addition, the above thresholds are significantly higher for Australian “non-government” entities (NZ\$530 million until 31 December 2019, adjusted upwards annually for inflation).

- 2.6 If consent is required for an investment in significant business assets, the OIO will grant approval if it is satisfied the overseas person or the individuals with ownership and control of the overseas person:
- (a) have the business experience and acumen relevant to that investment;
  - (b) have demonstrated financial commitment to the investment;
  - (c) are of good character; and
  - (d) are not individuals of the kind listed in sections 15 or 16 of the Immigration Act 2009, which includes persons who have been imprisoned, prohibited entry to, or deported from, New Zealand, who are suspected of having been involved in acts of terrorism, or who are likely to be a threat to security, public order or public interest.
- 2.7 The relevant business experience and acumen test applies to the individuals with control of the investment collectively and can usually be satisfied by showing that together the relevant individuals have experience in the relevant industry or investment, a business track record or general business experience and relevant qualifications. The experience and acumen required will depend on the nature of the investment (eg an acquisition of a lifestyle block will require different experience than acquisition of a large commercial business).
- 2.8 Applicants can usually demonstrate financial commitment to the investment through incurring due diligence costs, engaging advisers, expending resources negotiating and/or entering into transaction documents, or paying a deposit.
- 2.9 The “character” of the individuals with control over the investment is an area of focus for the OIO. Applicants are expected to identify up front and explain any matter relating to any individual with control that could potentially be relevant to an assessment of that person’s character, including mere allegations. This is a delicate area where experience and judgment are important.

### **Sensitive Land**

- 2.10 An overseas investment in “sensitive land” is the acquisition of a freehold interest in sensitive land, or a leasehold or other interest (including “profits á prendre”) in sensitive land where the lease or interest (including any renewals) has a term of three or more years, either directly or through acquiring an ownership or control interest of 25% or more in a person which owns or controls sensitive land. The categories of land considered sensitive are set out below.
- 2.11 Sensitive land is any land which:
- (a) is residential land;
  - (b) exceeds five hectares and is non-urban land;
  - (c) is on certain specified islands and is more than 0.4 hectares;
  - (d) is on other islands other than the North and South Islands;
  - (e) is part of the foreshore or seabed, or exceeds 0.2 hectares and adjoins the foreshore;

- (f) exceeds 0.4 hectares and is, or adjoins land that is:
    - (i) the bed of a lake;
    - (ii) held for conservation purposes under the Conservation Act 1987;
    - (iii) designated as a reserve, park for recreational purposes, or as an open space;
    - (iv) subject to a heritage order, or a requirement for a heritage order;
    - (v) a historic place, historic area, or wahi tapu area (sacred Māori land) or where there is an application for registration for those areas;
  - (g) exceeds 0.4 hectares and adjoins land:
    - (i) which is held for any scientific, scenic or historical reason, or is a nature reserve, regional park or listed as a reserve, park or other sensitive area under section 37 of the OIA; or
    - (ii) that itself adjoins a sea or lake, exceeds 0.4 hectares and is either an esplanade reserve, recreation reserve, road or Māori reservation: or
  - (h) is residential land.
- 2.12 Where foreshore, seabed, river bed or lake bed forms part of the “sensitive land” in question, that foreshore, seabed, river bed or lake bed must be offered for sale to the Crown by the current owner prior to the transaction proceeding.
- 2.13 If consent is required, in addition to the criteria listed under paragraph 2.6 above, the OIO will grant approval if it is satisfied that the:
- (a) overseas person or the individuals with ownership and control of the overseas company are either New Zealand citizens, ordinarily resident in New Zealand, or intending to reside in New Zealand indefinitely; or
  - (b) overseas investment will, or is likely to, benefit New Zealand (see paragraph 2.14 below) and, if the relevant land includes non-urban land which exceeds five hectares, then that benefit is substantial and identifiable. If the relevant land is residential (but not otherwise sensitive) land, the applicant must either meet the benefit to New Zealand test, or one or more of the residential land tests set out in paragraph 2.19 below.
- 2.14 In assessing “benefit to New Zealand”, the OIO must have regard to a number of specific factors, including:
- (a) whether the investment will, or is likely to, result in (among other things):
    - (i) the creation of new job opportunities in New Zealand;
    - (ii) the introduction into New Zealand of new technology or business skills;
    - (iii) increased opportunities for New Zealand exporters;
    - (iv) added market competition, greater productivity, or enhanced domestic services;
    - (v) a commitment by the investor to bring new capital into New Zealand for development purposes; and/or
    - (vi) increased processing in New Zealand’s primary products;
  - (b) in the case of rural land, whether mechanisms will be put in place to protect or enhance native flora and fauna, walking access to the land and/or historic heritage;

- (c) in the case of foreshore, seabed, river bed or lake bed included in the sensitive land, whether this land has been offered to the Crown; and
  - (d) certain other factors relating to consequential benefits to New Zealand.
- 2.15 An “investment plan” is required to be submitted with the application describing:
- (a) how the relevant land/assets are currently being used by the present owner;
  - (b) what the applicant plans to do with the assets;
  - (c) what will happen to the land/assets without the applicant’s investment (the “counterfactual”);
  - (d) the key differences between the applicant’s plans for the land/assets and the counterfactual scenario; and
  - (e) the key benefits to New Zealand that will arise from the applicant’s investment (addressing only those of the matters set out in the OIA and Regulations that are relevant to the particular investment).
- 2.16 Getting the “counterfactual” right is a key element of a sensitive land application. The applicant must consider whether the relevant interest in land will be sold to a New Zealand purchaser or another overseas person, or whether the status quo would remain or the business would be wound up. This needs to be well researched, reasoned and substantiated, and there is a rebuttable presumption arising from case law that the counterfactual would be a sale to a competent and adequately funded New Zealand purchaser.
- 2.17 The benefits to New Zealand that will occur as a result of the applicant’s investment must be in addition to what will happen in the counterfactual scenario and this must be substantiated by well-reasoned argument and analysis. Any commitments made in this respect by applicants will be made a condition of the OIO’s consent to the investment and fulfilment of those conditions will be monitored by the OIO enforcement team after completion of the investment. Statements made but not committed to will be disregarded by the OIO.

### **Residential land**

- 2.18 The Amendment Act introduced residential land as a new class of sensitive land. By reference to the relevant criteria, an overseas person will require OIO approval to acquire an interest in residential land. Residential land means land that is categorised as residential or lifestyle by the relevant local authority’s District Valuation Roll.
- 2.19 In order to obtain consent to acquire residential land, the person must demonstrate that:
- (a) one or more of the following tests are met:
    - (i) a commitment to reside, and become a tax resident in New Zealand; or
    - (ii) that they will increase the housing supply via their investment; or
    - (iii) they will be acquiring residential land for conversion to a non-residential use; or
    - (iv) the residential use is incidental to a relevant business use; or
  - (b) that the acquisition will be beneficial to New Zealand.

### **Farm land**

- 2.20 Farm land (or farm land securities) must generally be advertised on the open market. Farm land is defined broadly as land (other than residential (but not otherwise sensitive) land) that is used exclusively or principally for agricultural, horticultural or pastoral purposes, or for the keeping of bees, poultry or livestock. It can capture a wide range of agricultural land uses, from dairy farms, to greenhouses, orchards, vineyards. Where the overseas investment is of rural land (ie all non-urban land larger than five hectares other than forest land) then particular factors are given a higher relative importance when assessing the benefits of that overseas investment.

### **Fishing Quotas**

- 2.21 Commercial fishing in New Zealand is controlled by the Fisheries Act 1996 (Fisheries Act), which establishes a quota management system. No commercial fishing can be undertaken within New Zealand's territorial waters without the ownership of a fishing quota. The OIA and Regulations, in conjunction with the Fisheries Act, prohibit overseas persons from having an interest in a fishing quota or an interest through a business that, directly or indirectly, owns or controls a fishing quota, unless consent is obtained.

### **Forestry**

- 2.22 Overseas investments in freehold or leasehold land which is in plantation forest or to be converted to plantation forest, require consent. The Amendment Act extended this requirement to investments in more than 1,000 hectares of forestry rights in any year. An overseas person may purchase up to 1,000 hectares of forestry rights per calendar year, or any forestry right of less than three years duration, without approval.
- 2.23 The Amendment Act introduced two new consent pathways for forestry investments. The Amendment Act also extended the overseas investment regime to cover non forestry profits á prendre (effectively a right which allows a party to access land to harvest something or take natural resources from that land, for example a right to cut down trees or a right to mine minerals).

### **Exemptions**

- 2.24 The Regulations exempt specific classes of transactions or persons from the requirement for consent. These exemptions cover a range of instances where the nature of the interest does not warrant regulatory oversight (for example, mortgages in the ordinary course of business, custodian shareholding and transfers of certain types of sensitive land interests between overseas persons). Some of the exemptions require compliance with pre-conditions and reporting to the OIO. The exemptions have recently been extended and Treasury has indicated it will continue to expand the range of exemptions in response to issues raised by applicants and their advisers. The Amendment Act introduced various exemptions relating to residential land. Specifically, an overseas person will be exempt from applying for consent for a periodic lease of residential land where the term is less than three years (whether that residential land is otherwise sensitive or not). Additionally, exemptions for land that is residential, but is not otherwise sensitive, include:

- (a) a residential tenancy of residential land with a term of less than five years;
  - (b) dwellings in large apartment developments that are purchased off plans; or
  - (c) a hotel of more than 20 units or land to build a hotel or more than 20 units, provided that the overseas person enters into a lease-back arrangement with the developer.
- 2.25 In addition to the above, the Regulations provide exemptions or alternative thresholds for overseas persons that are individuals or enterprises with significant business assets from the following countries/separate custom territories: Australia, Brunei, Canada, Chile, China, Japan, Mexico, Singapore, Taiwan, The Republic of Korea, Viet Nam.
- 2.26 Generally, the thresholds for an overseas investment in significant business assets for individuals or enterprises from the above countries have increased from NZ\$100m to NZ\$200m. However, as previously referred to, the monetary thresholds for certain Australian investors are significantly higher.

SECTION 3

Competition  
Law

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Investing in New Zealand



### 3. Competition Law

#### Introduction

- 3.1 In New Zealand, the Commerce Act 1986 (Commerce Act) prohibits conduct that restricts or lessens competition. The Commerce Act is administered by the Commerce Commission (NZCC) which regulates restrictive trade practices and merger control. The purpose of the Commerce Act is to promote competition in markets for the long-term benefit of consumers in New Zealand. Breaches of the Commerce Act can result in significant civil pecuniary penalties, damages, and injunctions.

#### Restrictive Trade Practices

##### *Prohibited contracts, arrangements or understandings*

- 3.2 The Commerce Act prohibits contracts, arrangements or understandings that have the purpose, effect or likely effect of substantially lessening competition in a market. Depending on the effect (or intended effect) on competition, exclusive dealing arrangements, product tying arrangements, refusals to deal, loyalty rebates, or best price agreements may all be considered under this prohibition.

##### *Cartel agreements*

- 3.3 Cartel agreements between competitors are illegal in New Zealand. A cartel agreement can include any price fixing, output restriction, or market allocation agreement between competitors. The NZCC is not required to show that the agreement had any effect on competition in a market. So even a cartel agreement between the two smallest competitors in a market, or an attempt to reach a cartel agreement, will breach the Commerce Act.
- 3.4 Businesses must take care when communicating with competitors, including customers or suppliers who are potential competitors, and be careful when entering vertical relationships with competitors.
- 3.5 There are some limited exceptions to the cartel prohibition for agreements that occur in the context of a "collaborative activity" between competitors (akin to a joint venture exception) or in the context of vertical supply contracts. However, these exceptions are technical, and so reliance on them needs to be considered carefully.
- 3.6 There is currently a bill before parliament, that is expected to be passed into law shortly, that proposes the introduction of criminal sanctions for individuals found guilty of cartel conduct (including prison sentences of up to seven years).

##### *Misuse of market power*

- 3.7 Companies with a substantial degree of market power must take extra care. Refusing to supply on competitive terms, or aggressive responses to competitors' actions, such as selling below cost, or in some cases bundled discounts, may constitute a breach of the Commerce Act where the NZCC can show that the company would not have acted that way if it were subject to effective competition.

#### *Resale price maintenance*

- 3.8 Under the Commerce Act it is illegal for a person to set minimum, or specific, prices at which a reseller must resell that person's goods. Resellers must retain total discretion to sell stock at any prices. However, setting a maximum price is allowed, and recommended resale prices are permitted so long as they are a genuine recommendation (ie no steps are taken to induce a reseller to comply with a recommended price point).

#### *Jurisdiction*

- 3.9 The Commerce Act extends to international parties who engage in conduct outside New Zealand so long as:
- (a) the person is resident in, or carries on business in, New Zealand; or
  - (b) a person in New Zealand acts at their direction, and the conduct relates to New Zealand; or
  - (c) where any part of a prohibited act occurs in New Zealand (the Commerce Act deems the whole of that act to have occurred in New Zealand).
- 3.10 The conduct must affect "a 'market' in New Zealand, unless there is an allegation of misuse of market power, in which case an Australian market can also be relevant.

### **Business Acquisitions**

#### *The prohibition*

- 3.11 Section 47 of the Commerce Act prohibits business mergers or acquisitions that have, or would be likely to have, the effect of substantially lessening competition in a market in New Zealand. The NZCC considers a substantial lessening of competition to occur if a combined entity has a greater ability to increase prices or reduce the quality of its output without fearing a sufficient loss of sales volume such that the price increase or quality reduction would be unprofitable.

#### *Concentration indicators*

- 3.12 As a screening instrument, the NZCC has provided market share "concentration indicators" within which it does not consider a substantial lessening of competition is likely to occur. These concentration indicators are where the combined entity has:
- (a) less than 40% market share, unless the market is a "concentrated market" (the top three firms have a combined market share of 70% or more post-acquisition); or
  - (b) less than 20% market share if the market is a concentrated market.

#### *Clearances/Authorisations*

- 3.13 The NZCC recommends that a clearance is sought if a merger or acquisition is likely to exceed the concentration indicators above (unless other factors clearly point to an absence of competition concerns in the relevant market). The NZCC will grant clearance for a merger or acquisition where it is satisfied that the transaction would not be likely to substantially lessen competition in the relevant markets. A clearance will provide the applicants with immunity from proceedings under the Commerce Act in respect of the merger or acquisition. Acquisitions that have not been cleared or authorised prior to settlement cannot be cleared or authorised retrospectively.

- 3.14 Alternatively, parties may apply for an authorisation if they consider that the merger or acquisition may substantially lessen competition in a market, but nevertheless is likely to result in public benefits that outweigh that lessening of competition. This typically involves a more complex and lengthy process than a clearance application.
- 3.15 Where a transaction has been cleared or authorised, immunity from Commerce Act proceedings is valid for 12 months only. If the transaction is not completed within this timeframe, the parties must apply again for clearance or authorisation, or alternatively bear the risk of Commerce Act scrutiny.

*Due diligence*

- 3.16 Where a purchaser and target are direct competitors, confidentiality protocols will likely be required to ensure that the exchange of information through due diligence does not give rise to a breach of the Commerce Act.

SECTION 4

Takeovers  
Regulation

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Investing in New Zealand



## 4. Takeovers Regulation

- 4.1 The primary rules governing takeover activity in New Zealand are contained in the Takeovers Code (Code) and the Takeovers Act 1993 (Takeovers Act). The relevant regulator, the Takeovers Panel, has jurisdiction in relation to takeovers which are governed by the Code and has certain powers where it suspects a breach or intended breach of the Code.
- 4.2 It is also possible to obtain exemptions from the Code through exemption notices issued by the Takeovers Panel in relation to a specific transaction or a class of persons or transactions, where the broad and prescriptive nature of the Code results in unintended or unusual consequences or where compliance with the Code would not be possible.
- 4.3 In addition to the Code and the Takeovers Act, the Companies Act 1993 (Companies Act) provides for schemes of arrangement which are discussed in paragraph 4.9 below, and there are also a number of additional rules and laws which may be applicable, some of which are discussed below in paragraphs 4.10 and 4.11.

### Takeovers Code

- 4.4 The Code regulates the change in control of voting rights in “code companies”. The Code defines a “code company” to mean a company that:
  - (a) is a listed issuer that has financial products that confer voting rights quoted on a licensed market (as at March 2019, the principal markets which this applied to were the NZX Main Board, the NZX Alternative Market and the NXT Market, however the NZX Alternative Market and the NXT Market will be merged with the NZX Main Board from 1 July 2019); or
  - (b) was within paragraph (a) at any time during the period of 12 months before a date or the occurrence of an event referred to in the code; or
  - (c) has 50 or more shareholders and 50 or more share parcels.
- 4.5 For the purposes of the Code, a “company” is a company incorporated under the Companies Act. Therefore, the Code does not extend to overseas companies or other forms of business organisations such as unit trusts. However, the takeover provisions in the NZX Listing Rules (Listing Rules) will apply to those entities which are listed on the NZX but which are not code companies (including requirements to give certain notices and responses).
- 4.6 The “fundamental rule” in the Code prohibits any person:
  - (a) from acquiring more than 20% of the voting rights in the code company; or
  - (b) increasing an existing holding of 20% or more of the voting rights in a code company.

The fundamental rule extends to groups of people act who jointly, or in concert, or join together as associates or otherwise indirectly control the voting rights in a company, to prevent avoidance of the code.

- 4.7 The Code contains exceptions to the fundamental rule. A person may become the holder or controller of an increased percentage of the voting rights in a code company without contravening the fundamental rule:
  - (a) by an acquisition under a “full offer” made in compliance with the Code (ie for all of the voting securities of the code company);

- (b) by an acquisition under a “partial offer” made in compliance with the Code (ie for less than 100% of the voting securities of the code company);
- (c) by an acquisition of voting securities in the code company or in any other body corporate approved by ordinary resolution of the code company’s shareholders in accordance with the Code;
- (d) by an allotment of voting securities in the code company or in any other body corporate which is approved by ordinary resolution of the code company’s shareholders in accordance with the Code;
- (e) in accordance with the “5% creep” exception, which, in general terms, enables a person holding more than 50% but less than 90% of the voting rights in a code company to acquire up to an additional 5% in a 12 month period; or
- (f) if the person already holds or controls 90% of the voting rights in a code company.

4.8 The Code aims to ensure that all shareholders are treated equally in a takeover and are able to make informed decisions as to whether to accept or reject an offer. One way the Code seeks to achieve this aim is to require that certain information is sent to shareholders. For example, when a takeover offer is made, the target code company is required to commission an independent adviser’s report on the merits of the offer (a copy or summary of which must be provided to shareholders of the target company along with the target company statement (which contains the board’s recommendation to shareholders whether or not to accept the offer) that must be sent by or on behalf of the target company to its shareholders).

#### **Schemes of arrangement**

4.9 An alternative option to making a full takeover offer under the Code is to undertake a court-approved scheme of arrangement under Part XV of the Companies Act. A scheme of arrangement involving a code company is required to be notified to the Takeovers Panel, and approved by 75% of the votes of the shareholders of the code company entitled to vote (in effect this reduces the threshold for a full takeover from 90% approval under the code to 75% approval under the Companies Act). The court must be satisfied that the use of a scheme will not adversely affect the shareholders of the code company (as opposed to using the Code), or the Takeovers Panel must have provided a statement that it has no objection to the scheme.

#### **Other requirements**

4.10 Under the Financial Markets Conduct Act 2013, a person with a direct or indirect interest in 5% or more of a class of quoted voting products (effectively any security which is quoted and which carries voting rights, including securities convertible into such voting securities) of a “listed issuer” is required to disclose when it first obtains the substantial holding, any movement of 1% or more in that holding, and when it ceases to have a substantial holding. Disclosure must be made to NZX Limited (as operator of the licensed market) and to the listed issuer itself. Under a takeover, the offeror, and all other persons with a relevant interest, may be required to make substantial security holder filings during the offer period as offerees take up the offer.

- 4.11 Where a takeover or scheme of arrangements includes the offer of financial products in New Zealand (for example, as consideration for the offer), the disclosure requirements under the Financial Markets Conduct Act 2013 and related regulations will need to be considered, including as to whether an applicable exclusion to such disclosure requirements might apply.

SECTION 5

## Taxation

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Investing in New Zealand



## 5. Taxation

### Introduction

- 5.1 The New Zealand tax system includes the following direct and indirect taxes:
- (a) income tax;
  - (b) goods and services tax; and
  - (c) import tariffs and miscellaneous excise duties.
- 5.2 There is no general capital gains tax, although the definition of income includes profits and gains from certain transactions (notably involving personal property, land and financial arrangements) that would otherwise be capital in nature.
- 5.3 The income tax rate for companies (resident and non-resident) is 28%. Individuals are subject to taxation at progressive marginal rates, with the top rate (for income in excess of \$70,000) being 33%. Trustees (other than of unit trusts, which are taxed as companies) are taxed at 33% on trustee income.

### Income tax - principal features of corporate taxation

- 5.4 Companies resident in New Zealand pay tax on their worldwide income. Non-resident companies are subject to tax on any income derived from New Zealand. Income tax is levied on annual gross income less annual total deductions and any losses carried forward. The resulting net amount is the taxable income.
- 5.5 A full imputation system enables New Zealand resident companies to attach to dividends credits for tax paid by them. Dividends received by a New Zealand resident company from another New Zealand resident company (other than where those companies are wholly-owned) are assessable for tax. Imputation credits received with dividends may be used to offset the recipient company's tax liability.

### Income tax - taxation of foreign investment into New Zealand

#### *Withholding tax on dividends, interest and royalties*

- 5.6 Dividends, interest and royalties paid to non-residents are subject to New Zealand withholding tax. Dividends paid to non-residents are generally subject to non-resident withholding tax at a rate of 15% (to the extent fully imputed) or 30%, subject to the availability of tax treaty relief (described below). However, the rate of non-resident withholding tax for such dividends may be reduced to 0% where the dividend is fully-imputed and where the recipient has a 10% or greater direct voting interest in the payer. Further, if the non-resident holds a less than 10% voting interest, it may be entitled to a "supplementary dividend" which effectively nullifies the impact of non-resident withholding tax on fully imputed dividends.
- 5.7 The withholding tax rates for dividends described above are generally reduced to or capped at 15% in the case of persons resident in a country with which New Zealand has a double tax treaty. Lower dividend rates (typically 5%, or in some cases 0%) are available under certain of New Zealand's double tax agreements (DTAs) (including those with Australia, Canada, Hong Kong, Japan, Mexico, Samoa, Singapore, Turkey, the United States and Vietnam) provided certain criteria are satisfied.

- 5.8 For interest and royalties paid to non-residents, the rate of withholding tax under domestic law is generally 15%, although this may be reduced to 10% under an applicable double tax treaty. In addition, the rate of withholding tax on interest is reduced to 0% if the New Zealand borrower registers for and pays a deductible 2% levy known as the approved issuer levy (AIL), unless the interest is paid to a lender that is “associated” with the New Zealand borrower or, under recently enacted reforms, a group of non-resident lenders that act together and control the New Zealand borrower (targeted at joint venture or private equity situations).
- 5.9 Exceptions apply to interest paid to a non-resident in connection with a business it carries on through a New Zealand branch and in certain other cases to interest paid to a non-resident carrying on business in New Zealand as a registered bank.
- 5.10 Withholding taxes may also apply on payments to non-residents in certain other situations, including on payments to non-residents for services performed or for the use of personal property in New Zealand, or to the proceeds from a disposal of New Zealand residential land.

*New Zealand entities controlled by non-residents*

- 5.11 New Zealand businesses controlled by non-residents are subject to comprehensive transfer pricing and thin capitalisation rules. The thin capitalisation rules deny interest deductions based on a ratio of debt to assets (for inbound investment, deductions are generally denied if the New Zealand group’s ratio of total debt to total assets exceeds both an absolute 60% threshold, and a threshold of 110% relative to the worldwide group ratio).

*Base erosion and profit shifting*

- 5.12 New Zealand has recently enacted a range of reforms intended to implement the OECD’s proposals targeting base erosion and profit shifting (BEPS), including strengthening New Zealand’s thin capitalisation, transfer pricing and permanent establishment rules, and measures targeted at hybrid mismatch arrangements. New Zealand has also signed the OECD’s multilateral instrument, which amends certain of its DTAs to reflect OECD recommendations relating to anti-abuse rules, hybrid mismatches, preventing the avoidance of permanent establishment status, and dispute resolution, to the extent the relevant treaty partner also elects to include the relevant provisions.

**R&D tax credit**

- 5.13 The Government has recently released draft legislation to introduce a 15% tax credit that will be available, in respect of eligible research and development (R&D) expenditure, to businesses undertaking eligible R&D activities in New Zealand. Legislation implementing the R&D tax credit is expected to come into force from April 2019. The R&D tax credit can be applied against the person’s taxable income. However, to the extent a person has remaining R&D tax credits after reducing their taxable income to zero, the R&D tax credit can be cashed out (provided the person meets certain criteria and only to a limited extent), and otherwise carried forward subject to satisfying continuity of ownership requirements.

### **Income tax - taxation of employees**

- 5.14 Income tax is assessed on the gross income of employees. Tax payable by employees (together with certain other amounts including KiwiSaver employee contributions and ACC levies) is collected at source by the employer (this system is known as “pay-as-you-earn” or PAYE).
- 5.15 In some circumstances, tax is required to be withheld from payments to non-resident contractors for performing work or services in New Zealand or supplying the use of personal property or any other person’s services in New Zealand. The rate of withholding tax is generally 15%.

### **Taxation of trusts**

- 5.16 As a general rule, trust income is taxed either as beneficiary income (where distributed or applied for the benefit of beneficiaries within a certain period) or trustee income (to the extent not beneficiary income).
- 5.17 Where a trust has a New Zealand resident settlor, the trust is in effect treated as resident in New Zealand and its worldwide income is subject to tax in New Zealand. Where there is no New Zealand settlor of a trust (and even if there are New Zealand resident trustees), the income of the trust will generally (and provided the trust meets the disclosure requirements described below) only be subject to tax to the extent it has a New Zealand source or is derived as beneficiary income by a New Zealand resident beneficiary.
- 5.18 A set of disclosure rules applicable to foreign trusts was introduced in early 2017. The main obligations fall on New Zealand resident trustees of foreign trusts (including providing information relating to the settlor, beneficiaries and the trust deed). As part of the reforms, a register of foreign trusts will now be administered by Inland Revenue.

### **Goods and services tax and other indirect taxes**

- 5.19 New Zealand imposes a broad-based value added tax referred to as goods and services tax (GST) at the rate of 15% on the supply of all goods and services in New Zealand (subject to rules applying a zero-rate for certain transactions including exported goods and services and sales of land between GST registered persons, exemptions for financial services and the supply of residential accommodation, and certain other limited exceptions).
- 5.20 In the case of goods imported into New Zealand, GST is levied and collected by Customs together with Customs duty. An exception applies for the importation of low-value goods (generally, goods valued at approximately NZ\$400 or below). Parliament is considering proposals that would require offshore suppliers to New Zealand consumers to register and collect GST on low-value goods valued at or below \$1,000. The proposals would require, in some circumstances, electronic marketplaces and re-deliverers to register for and collect GST. The proposals if enacted would have effect from 1 October 2019.
- 5.21 Services imported into New Zealand may be subject to a “reverse charge”, which requires the New Zealand resident recipient of the imported services to self-assess GST in respect of those services. In addition, under recently enacted reforms, certain non-resident

suppliers of remote services (for example, certain services provided online) are required to register for and pay GST on services supplied remotely to New Zealand residents.

- 5.22 Other indirect taxes include Customs duty levied on certain goods imported into New Zealand, and excise duties levied on alcoholic beverages, tobacco products, and fuels. There are no gift, estate or stamp duties in New Zealand.

**Tax Working Group Final Report**

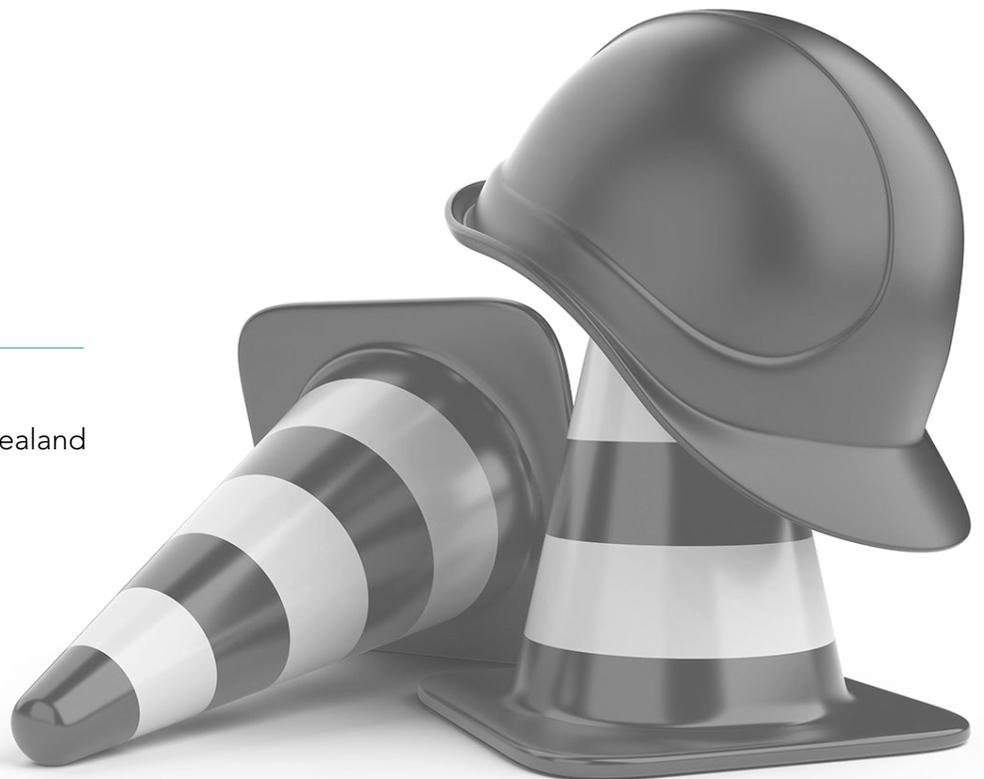
- 5.23 Following the 2017 election, the newly elected Government established a Tax Working Group (TWG) to recommend changes to New Zealand's tax system. The TWG released its final report in February 2019, in which it recommended that the Government introduce a comprehensive capitals gains tax. The Government is yet to formally respond to the recommendations of the TWG, and is not required to implement all (or any) of the recommendations contained within the report. Any changes that are enacted will not become effective until after the 2020 election. The parliamentary opposition has said that it will repeal any capital gains tax introduced by the Government if it wins the 2020 election.

SECTION 6

# Employment

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Investing in New Zealand



## 6. Employment

### Introduction

- 6.1 Employment law in New Zealand is governed by a number of statutes and by common law. The Employment Relations Act 2000 is the central piece of industrial legislation, and requires all parties to employment relationships (including employees, employers and unions) to deal with each other in good faith.
- 6.2 Under New Zealand employment law, the effect of an acquisition on existing employment relationships and employees' accrued entitlements differs depending on the nature of the acquisition.

### Asset purchase

- 6.3 Where a business, or part of a business, is acquired by way of an asset purchase, the employees do not automatically transfer with the business. Employment with the vendor company terminates on the grounds of redundancy and new offers of employment must be made by the purchaser if it wants any employees to transfer. Any entitlements triggered by termination of employment will be payable by the vendor to employees (this includes accrued holidays and any contractual entitlement to redundancy compensation). The Vendor is however usually able to avoid its redundancy obligations by ensuring an appropriate technical redundancy clause is included in employment agreements (a technical redundancy clause is a clause which provides that the vendor does not need to pay redundancy compensation to employees who are offered employment with the purchaser of the business on the terms required by the clause - employees who are offered employment on such terms but decline the offer are not entitled to redundancy compensation) and ensuring that a purchaser offers employment on the terms required. Furthermore, where employees are to transfer, other arrangements (eg in relation to other entitlements) are often negotiated between the vendor and purchaser as part of the sale and purchase agreement.
- 6.4 There are special statutory protections for specified categories of employees (or "vulnerable employees"). These employees primarily work in cleaning and food catering services, as well as some other types of work in specific industries. Unlike other employees, vulnerable employees have a right to transfer with the business on their existing terms and conditions of employment and with a recognition of continuous service (if a transferring employee is a member of a union and is covered by a collective agreement, the purchaser automatically becomes a party to that agreement). If the purchaser does not require the services of a transferring employee, the employee will have a right to bargain for redundancy entitlements from the purchaser. If requested, a vendor must disclose information about the number of, and costs associated with, vulnerable employees to an interested purchaser.

### Share purchase

- 6.5 In a share purchase situation, the employing entity remains the same so employment relationships continue. This means that the purchaser acquires all employees with the business on their existing terms and conditions of employment. All employment-related

liabilities are also acquired so a comprehensive due diligence process and warranties from the vendor will be particularly important with a share purchase.

- 6.6 If, following an acquisition, the purchaser wishes to vary employees' terms of employment, this can only be achieved with employees' consent. If the purchaser wishes to restructure the newly-acquired business, it is free to do so provided it complies with its duty of good faith. This typically requires consultation with employees before any decision is made which may affect the continuity of their employment. If a restructuring results in redundancies, employees' redundancy entitlements (if any) will be set out in their employment agreements. There is no statutory right to redundancy compensation in New Zealand.

#### **Accident Compensation Scheme**

- 6.7 New Zealand's Accident Compensation Scheme (ACC) provides comprehensive, no-fault personal injury cover for all New Zealand residents and visitors to New Zealand. It covers physical injuries sustained in New Zealand (by residents or non-residents) or sustained overseas (by persons ordinarily resident in New Zealand).
- 6.8 If the injury falls within the scope of "personal injury" it will be covered by ACC. However, injuries caused "wholly or substantially by gradual process, disease, or infection" are specifically excluded unless they are work-related, a treatment injury, or consequential on personal injury for which the person has cover, or are caused by treatment given for a personal injury.
- 6.9 The key feature of the ACC regime is that, if the personal injury is covered by ACC, the claimant is barred from suing for compensatory damages.

#### *Employer's Obligations*

- 6.10 An employer's main financial obligations are the payment of levies in respect of every employee to cover the cost of work accidents and the payment of 80% of wages for the first week an employee has off work as a result of a work-related personal injury.
- 6.11 An employer is required to pay a levy to fund the ACC Work Account, at a rate determined by the amount of earnings paid, estimated to be paid, or deemed to have been paid by that employer to its employees. Self-employed persons and private domestic workers must also pay a levy into the Work Account. The Work Account funds entitlements under the ACC regime for employees, private domestic workers and self-employed persons.
- 6.12 Employers can be accepted into the ACC Accredited Employers Programme which grants Accredited Employer status. This allows the employer to manage employee claims for workplace injuries, make cover decisions and determine what employees are eligible to receive. ACC Workplace Safety Management Practices and ACC Workplace Safety Discounts (in certain industries only) are also available if a business can demonstrate sound health and safety practices.
- 6.13 These levies are paid in respect of people employed under a contract of service. Independent contractors under a contract for services or commission or labour-only basis must make their own levy payments.

### **Health and Safety**

6.14 New Zealand has a heavily regulated health and safety regime. The governing piece of legislation is the Health and Safety at Work Act 2015 (“HSW Act”), compliance with which is actively monitored by the government regulator, WorkSafe. The primary duty of care under the HSW Act is that a person conducting a business or undertaking (“PCBU”) must ensure, as far as is reasonably practicable, the health and safety of any person is not put at risk from work carried out as part of the conduct of the business or undertaking. Fines for breaches of the HSW Act can be significant, with the maximum penalty for a company found to have exposed a worker to harm being NZ\$3 million. Directors are also subject to individual obligations and potential criminal liability for breach, including fines and imprisonment.

SECTION 7

# Corporate Structures

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Investing in New Zealand



## 7. Corporate Structures

- 7.1 There are a number of different corporate entities available to overseas investors looking to do business in New Zealand, including:
- (a) companies;
  - (b) trusts;
  - (c) limited liability partnerships; and
  - (d) partnerships.
- 7.2 Certain business associations, other than companies, are also permitted under New Zealand legislation. The Financial Markets Conduct Act 2013 governs the public offer of units in unit trusts, building societies are governed by the Building Societies Act 1965, and the Industrial and Provident Societies Act 1908 governs the establishment and operation of that form of business association.

### **Branch office or local subsidiary**

- 7.3 Foreign companies typically operate in New Zealand in one of three ways:
- (a) registration in New Zealand of the foreign company (or one of its subsidiaries) as a branch; or
  - (b) the acquisition or incorporation of a New Zealand company (or other corporate vehicle); or
  - (c) entering into a joint venture (whether incorporated or unincorporated) or partnership with or through a New Zealand entity.

The most commonly used vehicles are companies.

### **Companies**

- 7.4 Companies incorporated in New Zealand under the Companies Act have limited liability. The liability of each shareholder is limited to the amount of share capital they choose to invest in the company.
- 7.5 A company registered under the Companies Act must have at least one shareholder and one director. At least one director must live in New Zealand or an enforcement country (which currently only includes Australia). Where there is no New Zealand director, the Australia director must also be a director of an Australian incorporated company in order to meet the requirements. There is no requirement to have a company secretary.
- 7.6 A company may, but is not required to, have a constitution. The company, the board of directors, and each director and shareholder of a company have the rights, powers, duties and obligations set out in the Companies Act, except to the extent that they are modified in accordance with the Companies Act by the constitution of the company.
- 7.7 A company is deemed to have all the rights and powers of a natural person (except where these are specifically restricted in the constitution). There are certain provisions of the Companies Act that a company's constitution cannot contravene or modify.

### **Limited Partnerships**

- 7.8 From May 2008 it has been possible to establish a limited partnership in New Zealand. The limited partnership structure is essentially a hybrid between a company and a partnership. It is a separate legal entity yet is fiscally transparent for New Zealand tax purposes.
- 7.9 A limited partnership consists of at least one general partner and one limited partner. General partners manage the limited partnership and are liable for the debts and liabilities of the partnership. Limited partners are passive investors who are restricted from participating in the management of the limited partnership (with the exception of some permitted safe harbours). The liability of limited partners is generally limited to their capital contribution.
- 7.10 A limited partnership can be formed for any purpose, it has an indefinite lifespan if desired, and there are no limits on partner numbers or investment. It must have a written partnership agreement and be registered with the New Zealand Companies Office.

### **Other requirements**

- 7.11 All New Zealand-incorporated companies and limited partnerships are required to have a director (or general partner, in the case of a limited partnership) resident in New Zealand or Australia.
- 7.12 Information is also required to be provided as to the residential address and the date and place of birth of a company's directors (or general manager, in relation to limited partnerships), including proof of residency and identity. Details of any company's ultimate holding company must also be provided.

SECTION 8

# General Legislation Affecting Business Activities

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Investing in New Zealand



## 8. General Legislation Affecting Business Activities

- 8.1 Overseas investors must comply with other general legislation affecting business activities, including the:
- (a) Fair Trading Act 1986;
  - (b) Consumer Guarantees Act 1993; and
  - (c) Resource Management Act 1991.

### **Fair Trading Act 1986**

- 8.2 The Fair Trading Act 1986 is consumer protection legislation and contains broad provisions prohibiting conduct and representations which are likely to mislead or deceive consumers. The Fair Trading Act is enforced by New Zealand's Commerce Commission and it is not possible for businesses to contract out of this Act other than certain sections where both of the parties are "in trade" (and the contracting out must be fair and reasonable). The Fair Trading Act also prohibits unfair contract terms in standard form consumer contracts.

### **Consumer Guarantees Act 1993**

- 8.3 The Consumer Guarantees Act 1993 is also consumer protection legislation and it contains a number of obligations on both suppliers and manufacturers in relation to goods or services which are ordinarily purchased for personal or household use. The Consumer Guarantees Act sets out a number of statutory "guarantees" that the goods or services must comply with including as to title, acceptable quality, price and fitness for purpose. It is not possible for businesses to contract out of this Act unless the goods or services have been purchased for "business purposes" (and the contracting out must be fair and reasonable).

### **Resource Management Act 1991**

- 8.4 The Resource Management Act 1991 is New Zealand's principal legislation for environmental management. It determines how natural and physical resources in New Zealand (including land, water and air) can be used, developed or protected, and seeks to promote the sustainable management of those resources in a way which enables people and communities to provide for their social, economic and cultural wellbeing.
- 8.5 Local and regional councils have powers under the Resource Management Act to formulate policy and planning documents which govern the use and development of the resources within their areas. Councils have the ability to issue resource consents, which give permission (sometimes subject to conditions) for an activity that might affect the environment.

### **Statutory and regulatory controls**

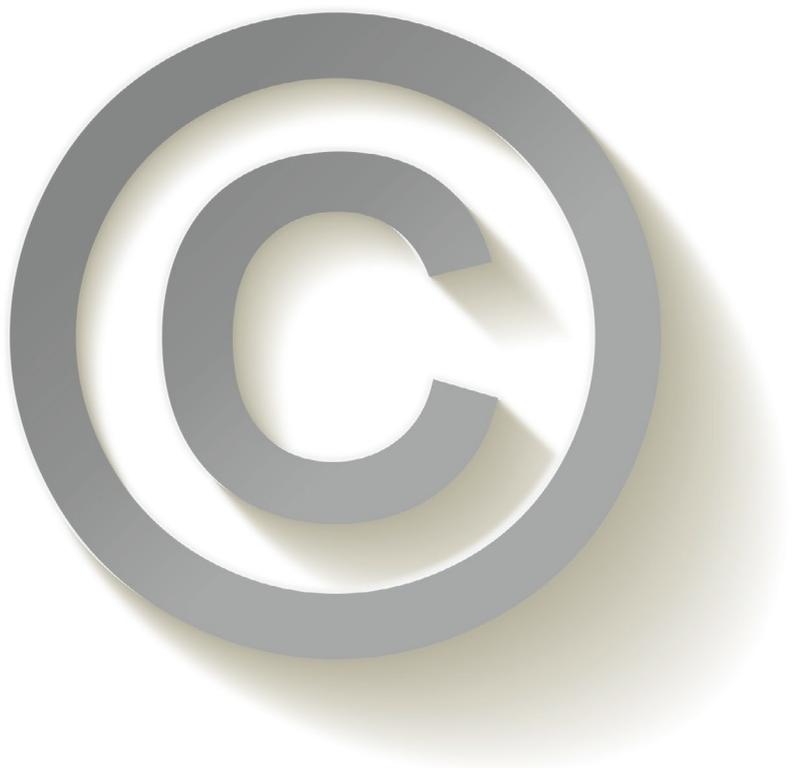
- 8.6 New Zealand has implemented a range of laws relating to anti-money laundering, countering financing of terrorism, and collection and exchange of tax information, reflecting international standards.
- 8.7 There are also statutory and regulatory controls imposed in respect of specific industry types. Examples can be found in the primary products field, energy resources, fisheries, forestry, insurance, banking, air services, professional bodies and the development of natural resources. Other industry groups are also governed by legislation, eg motor vehicle dealers, real estate agents and private investigators.

SECTION 9

Business Names,  
Trade Names,  
Trade Marks



Investing in New Zealand



## 9. Business Names, Trade Names, Trade Marks

- 9.1 There is no business name or trade name registration procedure in New Zealand similar to that existing in many countries. The only means of protecting a name, apart from the common law right of passing off, is by registering a trade mark or service mark, incorporating a local company or registering a branch of an overseas company with the name in question and then establishing goodwill in that name in New Zealand. Incorporation of a company or registration of a branch gives protection against incorporation of another company under the same name but it does not prevent another person trading under the name as a business name, or another company registering a similar name.

### **Fair Trading Act 1986**

- 9.2 The Fair Trading Act 1986 also provides a measure of name protection by proscribing misleading or deceptive business conduct. Individuals and companies can bring actions under it where it is likely that consumers may be likely to be misled or deceived. This can be invoked in circumstances similar to those which are found in a passing off action.

### **Trade marks/service marks**

- 9.3 There is provision under the Trade Marks Act 2002 for registration of trade marks and service marks in New Zealand. Trade mark registration only affords protection in respect of the same goods and similar goods to those in which a mark is registered. New Zealand follows the Nice classification system for classes of goods and services.
- 9.4 At present it takes approximately six months to complete registration of a trade mark and service mark. After filing the mark with the Intellectual Property Office of New Zealand (IPONZ), the application is reviewed and IPONZ will either provide notification of acceptance or a compliance report. If the mark is accepted, then it is advertised for 3 months in the official monthly journal and third parties may oppose its registration. If there is no opposition, then the mark is registered.
- 9.5 IPONZ will not generally permit registration of trade marks and service marks which are considered to be of a purely descriptive nature, as such marks are considered to lack the distinctiveness necessary for registration.
- 9.6 Once a trade mark or service mark is registered, unless it is owned by the New Zealand branch or subsidiary, a licence agreement should be entered into between the owner of the mark and the local user. Failure of the registered proprietor and its licensees to use the mark itself over an extended period (currently being three continuous years) in the relevant class of goods, may amount to abandonment of the mark.



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