

Russell  
McVeagh

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# Investing in New Zealand 2026

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# Contents

Introduction	Page 3
About Russell McVeagh	Page 4
New Zealand Key Statistics	Page 5

## Chapters

1. Introduction to New Zealand	Page 7
2. Partnering with Māori in Aotearoa New Zealand	Page 12
3. Overseas Investment Regime	Page 15
4. Corporate Structures	Page 28
5. Business Names, Trade Names and Trade Marks	Page 33
6. Takeovers Regulation	Page 35
7. Taxation	Page 38
8. Infrastructure	Page 44
9. Property	Page 48
10. Forestry	Page 52
11. Environment and Planning	Page 56
12. Capital Markets	Page 58
13. Financial Services and Funds Management	Page 62
14. ESG and Climate Change	Page 67
15. Competition Law	Page 70
16. Consumer and Privacy Law	Page 75
17. Employment	Page 77
18. Dispute Resolution	Page 80
19. Restructuring and Insolvency	Page 83

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# 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 12 March 2026.

If you're looking to invest or do business in New Zealand, we're here to help you navigate each step of the process. Please reach out to one of our experts listed in this guide or visit our website [here](#).

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## Why invest in New Zealand

New Zealand remains highly business ready by international standards, according to the World Bank's [Business Ready \(B READY\) 2025 report](#).

Its strongest performance is in Financial Services, scoring 84 out of 100 and placing it among the top-performing economies globally. New Zealand also performs strongly relative to other high income economies in areas such as Taxation, Dispute Resolution and Labour.

The report highlights New Zealand's strengths in public services and operational efficiency, supported by well-developed secured transactions frameworks and credit information systems.

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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 publication, please contact the partner/solicitor in the firm who normally advises you, or alternatively contact one of our specialists listed at the end of this publication.



### Top Tier Firm

Legal 500  
Asia-Pacific 2026



### RANKED TOP TIER ACROSS ALL PRACTICE AREAS

IFLR1000 2025

## 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 many of New Zealand's major corporates, including numerous energy and utilities companies, most of New Zealand's retail banks, and a number of New Zealand's largest listed and unlisted companies.

All of our practice groups are respected as leaders in the market. We assist clients with their most complex, challenging and high-profile transactions. You can find out more about our expertise on our [website](#).

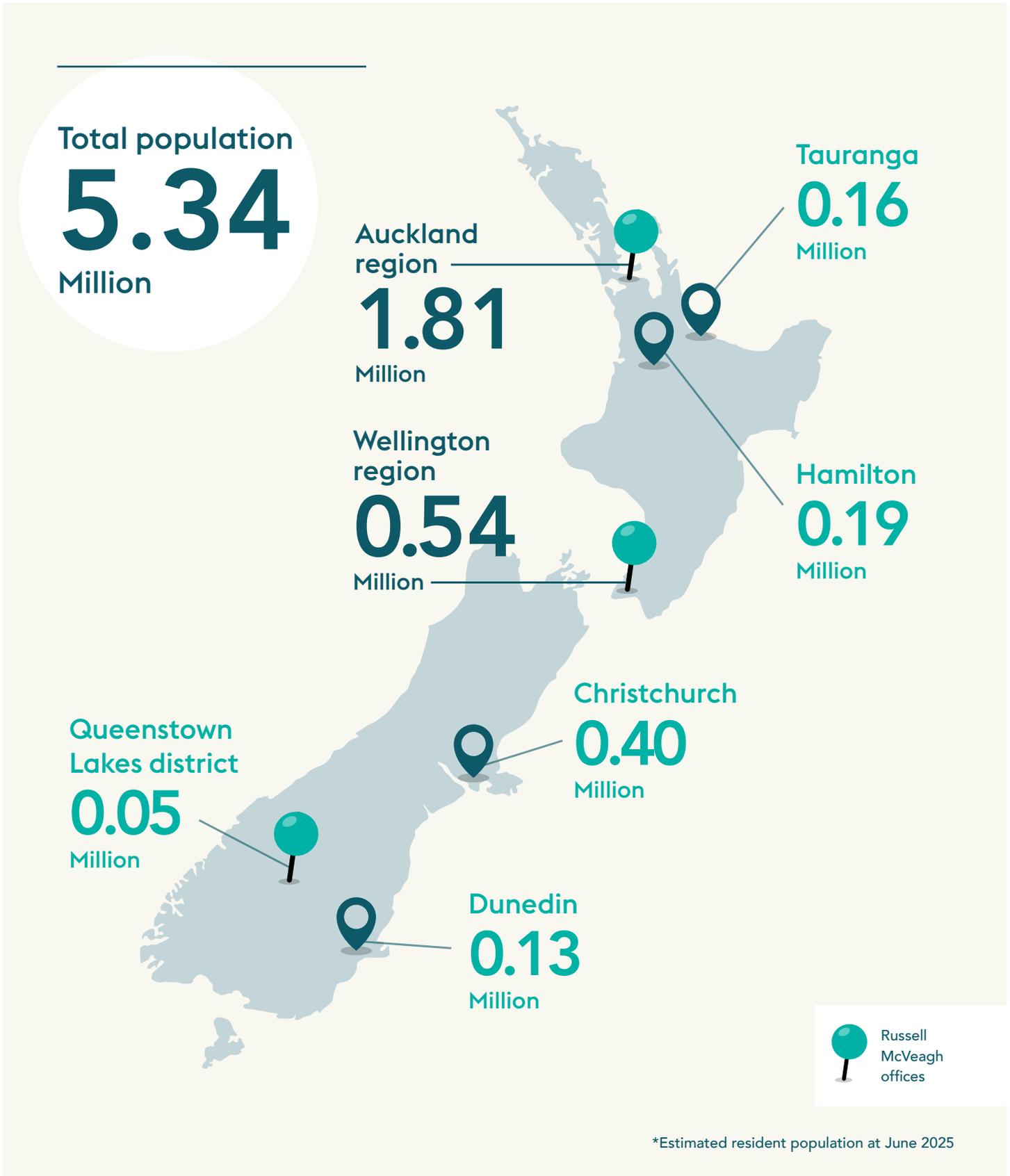
We employ over 350 staff and partners across our Auckland, Wellington and South Island offices. Our lawyers are the best in their fields and recognised internationally for their expertise.

### Our specialist lawyers broadly operate in the following teams:

- Mergers and Acquisitions and Corporate Advisory, including inbound Overseas Investment
- Banking and Finance
- Competition, Regulatory and Public Law
- Real Estate and Construction
- Environment and Planning
- Litigation
- Employment
- PPP/Infrastructure
- Tax
- Technology
- Intellectual Property
- Privacy, Cybersecurity and Data Protection

It is important to us that we deliver on our commitment to contribute to our communities, to ensure an open and collaborative workplace where our people can thrive, and to understand and manage our environmental impact. Our [2025 ESG Overview - Contributing to Aotearoa New Zealand | Te Whai Koha ki Aotearoa](#) aims to capture and share our firm's progress in these areas.

# New Zealand Key Statistics\*



\*Estimated resident population at June 2025

# New Zealand Key Statistics (NZD)

**GDP**  
**\$440**  
**Billion**  
Year ended  
September 2025

## Top Exports

Year ended  
September 2025



Dairy:  
**\$4.4B**



Travel:  
**\$3.3B**



Meat:  
**\$1.9B**



Fruits  
and nuts:  
**\$1.9B**



Wood  
products:  
**\$1.2B**

**Total exports**  
**\$111.6**  
**Billion**  
Year ended  
September 2025

## Exports by country (NZD)

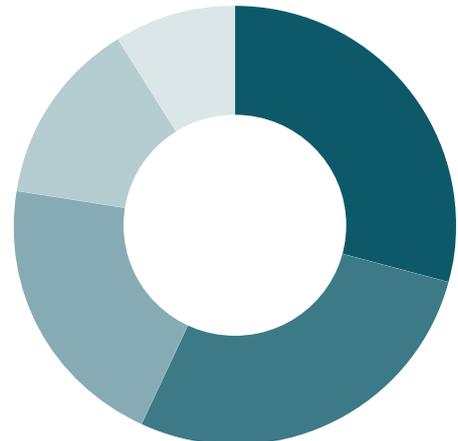
- China (\$22.8B)
- United States (\$17.5B)
- Australia (\$16.8B)
- Japan (\$4.6B)
- United Kingdom (\$4.0B)



**Total imports**  
**\$111.4**  
**Billion**  
Year ended  
September 2025

## Imports by country (NZD)

- China (\$18.2B)
- Australia (\$17.2B)
- United States (\$12.8B)
- Singapore (\$8.3B)
- Korea (\$5.5B)



## 01.

# Introduction to New Zealand



## Government and the law

Government in New Zealand is open, accessible and accountable with a stable regulatory environment. New Zealand is a multi-party democracy with an unbroken history of regular elections since 1854. As a constitutional monarchy, New Zealand recognises King Charles III as head of state, represented by the Governor-General. There are three branches of government: legislative (Parliament), executive (Prime Minister and Ministers) and judicial (Courts and Judges). The small size of New Zealand and its government makes it easy to communicate with Ministers, their officials and Members of Parliament.

New Zealand's legal system dates from 1840 when representatives of Māori and the Crown signed the Treaty of Waitangi. Since then, New Zealand has built a common law legal system that also reflects the special status of Māori as guaranteed by the Treaty of Waitangi.

## Key Contact



**Tim Clarke**

**PARTNER**

[tim.clarke@russellmcveagh.com](mailto:tim.clarke@russellmcveagh.com)

P +64 4 819 7532



**Petra Carey**

**PARTNER**

[petra.carey@russellmcveagh.com](mailto:petra.carey@russellmcveagh.com)

P +64 9 367 8831

New Zealand's laws are set out in:

- legislation enacted by Parliament (known as Acts);
- regulations made by the executive;
- bylaws made by local councils; and
- the common law, which is developed by judges as they decide different cases – however, Acts override the common law. While the courts interpret Acts, the courts cannot invalidate an Act, unlike in some common law systems (such as Canada or the United States).

## System of government

### Legislative branch

Legislation is made by a single unicameral Parliament. All 120 members of Parliament (“MPs”) are elected every three years using a Mixed-Member Proportional (“MMP”) electoral system, adapted from Germany’s electoral system. MMP means that many political parties are represented in Parliament. Controlling a majority in Parliament allows a government to be formed. Political parties will negotiate to form a Parliamentary majority. A Parliamentary majority is usually formed by two or more parties entering coalition and/or confidence and supply arrangements. Since the introduction of MMP, all governments have been led by either the centre-right National Party or the centre-left Labour Party.

### Executive branch

A system of Cabinet government with collective decision making by Ministers sits at the heart of executive government. The model is similar to Australia, Canada, Germany, Japan, and the United Kingdom. The head of government is the Prime Minister, who chairs Cabinet meetings. Ministers oversee portfolios and direct the public service. The Prime Minister and Ministers must sit as MPs, and they are accountable to Parliament for the performance of their duties and their departments.

A politically neutral public service supports the Prime Minister and Ministers. The public service advises Ministers and implements Ministers’ decisions. A chief executive (sometimes known as a Secretary or a Director-General) manages each department. The public service does not change with governments. Public service neutrality means officials, including department heads, must serve the Prime Minister and Ministers equally loyally and professionally, irrespective of the political parties in power.

### Judicial branch

The courts are an independent branch of government. Judges determine cases by interpreting and applying the law with evidence presented in court, without pressure or influence from other judges, or decisions of the other branches of government. Judges are appointed by the Governor-General on the advice of the Attorney-General (who, according to constitutional convention, will act independently from the Government when recommending an appointment). Judges have immunity from being sued for decisions made in their capacity as a judge and are protected from the removal of office (except on certain grounds and following a removal process through the Judicial Conduct Commissioner).

The court system includes the District Court, High Court and two appeal courts (the Court of Appeal and the Supreme Court). The decisions of higher courts bind lower courts. The rule of precedent requires legally similar cases to be decided in the same way to ensure consistency and certainty in the application of the law.

## Accountability of government

All laws and key government decisions are usually made after public consultation where any interested person is welcome to make a submission. However, Parliament can, where necessary, legislate quickly with minimal public input.

Also, the political parties in Parliament comprising the Opposition, and the need for Ministers to answer to Parliament, ensures that the Government is held continuously accountable for its actions.

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.

There is also a system of local government. Each region, city, and district have its own elected council which governs local matters and makes local decisions, such as decisions about planning controls, permitted uses and zoning, and construction permits. Legislation made by Parliament always overrides any local rules made by local councils.

## Te Tiriti o Waitangi – the Treaty of Waitangi

The Treaty of Waitangi / Te Tiriti o Waitangi, signed in 1840 between representatives of the British Crown and Māori rangatira (chiefs), is New Zealand's founding document. It establishes the framework for the relationship between Māori and the Crown and continues to influence law, policy and commercial activity.

Most rangatira signed Te Tiriti o Waitangi, the Māori-language text, which differs in important respects from the English version of the Treaty. Under Te Tiriti, Māori agreed to grant the Crown kāwanatanga (governance), while retaining tino rangatiratanga (authority) over their whenua (land), kāinga (homes) and taonga (valued resources and interests). By contrast, the English text records a cession of sovereignty to the Crown, while guaranteeing Māori "exclusive and undisturbed possession" of their lands, forests, fisheries and other properties.

Because of these differences, New Zealand courts do not seek to enforce the literal wording of either text. Instead, they recognise and apply the principles of the Treaty as developed by the courts, most notably in the 1987 Court of Appeal decision *New Zealand Māori Council v Attorney-General*, including the duty to act reasonably and in good faith, the duty of active protection of Māori interests, and the principle of partnership. The Treaty of Waitangi Act 1975 established the Waitangi Tribunal to inquire into claims that Crown acts or omissions are inconsistent with the principles of the Treaty, and in 1985 its jurisdiction was extended to include historical claims dating back to 1840. Treaty principles are also reflected in a range of other legislation, including the Local Government Act 2002, the Resource Management Act 1991 and the Climate Change Response Act 2002, which require decision makers to recognise Māori interests and, in some circumstances, to engage with Māori in decision making.

For investors, the Treaty is relevant in several ways, including:

- Regulatory processes involving land use, natural resources and infrastructure.
- The recognised rights and interests of iwi (tribes) and hapū (clans or descent groups) in specific geographic areas.
- The establishment and asset base of Māori commercial entities through Treaty settlements.
- Expectations of engagement with Māori as partners and stakeholders.

## Investing in New Zealand

### Strong trade relationships

New Zealand has strong trade relationships with Asia, the Pacific, the Americas, and the European Union. It advocates for free trade, the removal of anti-competitive restrictions, and the removal of all trade-distorting subsidies. As a founding member of the UN, the GATT, and the WTO, New Zealand has always supported a rules-based approach to international relations and trade.

### Investing

New Zealand has become an attractive destination for overseas investment because it is one of the most open, deregulated, and least corrupt economies in the world. It offers a stable economic and political environment and is recognised as being one of the easiest countries in the world to do business.

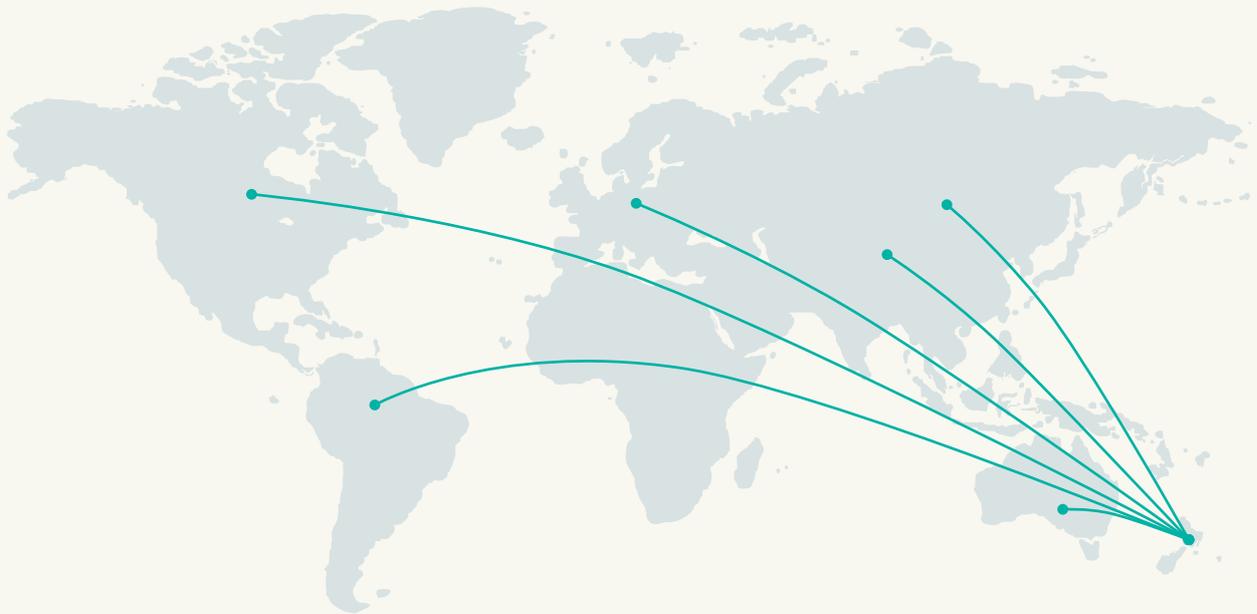
The current Government has embarked on a strategy of foreign investment as part of its “Going For Growth” approach. To date, it has created pathways supporting immigration of high net-worth individuals; established Invest NZ – an agency dedicated to working with foreign investors to attract foreign investment, hosted an international investment summit in March 2025, and supported Māori exports through its Accelerated Export Capability Programme.

### Overseas investment regime

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 nature and value of the investment. Overseas investors must also comply with all relevant commercial law in New Zealand. The Government has recently passed significant reforms to the overseas investment regime, which came into effect on Friday 6 March 2026. These reforms are discussed in the Overseas Investment Regime section.

## Free trade agreements and economic partnerships

New Zealand has entered the following free trade agreements and economic partnerships



### Asia-Pacific bilateral agreements

- Australia – New Zealand Closer Economic Relations (1983)
- New Zealand – Singapore Closer Economic Partnership (2001, upgraded in 2020)
- New Zealand – Thailand Closer Economic Partnership (2005)
- New Zealand – China Free Trade Agreement (NZCFTA) (2008, upgraded in 2022)
- New Zealand – Malaysia Free Trade Agreement (2010)
- Hong Kong China – New Zealand Closer Economic Partnership (2011)
- Korea – New Zealand Free Trade Agreement (2015)

### Other partners

- New Zealand – United Kingdom Free Trade Agreement (2022)
- New Zealand – European Union Free Trade Agreement (2024)
- New Zealand – United Arab Emirates Comprehensive Economic Partnership Agreement (2025)

### Multi-country agreements

- South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA) between New Zealand and Australia and the Pacific Islands Forum countries (Cook Islands, Fiji, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu) (1981)
- Trans-Pacific Strategic Economic Partnership (P4) with Brunei Darussalam, Chile and Singapore (2006)
- ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) (2010, upgraded 2025)
- Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation (2013)
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) with Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, the United Kingdom, and Viet Nam (2018)

- Pacific Agreement on Closer Economic Relations (PACER) Plus, ratified to date by Australia, Cook Islands, Kiribati, Niue, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu (2020)
- Digital Economy Partnership Agreement (DEPA) Modules with Chile, Singapore and South Korea (2021)
- Regional Comprehensive Economic Partnership (RCEP), with the 10 Association of Southeast Asian Nations (ASEAN) countries (Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam) along with Australia, China, Japan and South Korea (2022)

### Recent agreements that are not ratified

New Zealand also has several free trade agreements and economic partnerships that have recently been negotiated but have not been ratified. These include:

- New Zealand – Gulf Cooperation Council Free Trade Agreement (negotiations concluded on 31 October 2024)
- New Zealand – India Free Trade Agreement (negotiations concluded on 22 December 2025).

## 02.

# Partnering with Māori in Aotearoa New Zealand



## Introduction

The Māori economy represents a significant and growing share of economic activity in Aotearoa. Māori enterprises often pursue commercial returns alongside intergenerational, social, cultural and environmental objectives. As a result, partnerships with Māori entities may differ from conventional commercial arrangements in their governance, priorities and investment perspective. Understanding this context supports stronger relationships.

## Key Contacts

**Cath Shirley-Brown**

PARTNER

cath.shirley-brown@russellmcveagh.com

P +64 4 819 7354

**Natalie Steur**

PARTNER

natalie.steur@russellmcveagh.com

P +64 9 367 8832

**Emmeline Rushbrook**

PARTNER

emmeline.rushbrook@russellmcveagh.com

P +64 4 819 7864

**Helen Liava'a**

SENIOR ASSOCIATE

helen.liavaa@russellmcveagh.com

P +64 9 367 8025

## Te Ōhanga Māori - the Māori economy

The Māori economy is substantial and diverse. It includes iwi organisations, hapū entities, whānau-owned businesses, incorporations, trusts and Māori-owned corporates operating across sectors such as agriculture, forestry, fisheries, property, infrastructure, energy, tourism and professional services.

A significant portion of Māori economic assets are collectively owned and governed, often through post-settlement governance entities established following Treaty settlements. These entities typically manage assets on behalf of current and future beneficiaries and operate with a long-term investment horizon.

Common characteristics of the Māori economy include:

- A focus on intergenerational stewardship rather than short-term returns.
- Collective ownership structures and representative governance.
- A strong connection to land, water and natural resources.
- Integration of cultural values into commercial decision-making.

These characteristics shape how Māori entities assess risk, measure success and approach partnerships.

## Treaty of Waitangi settlements and post-settlement governance entities

Since the 1990s, the Crown has entered into settlements with iwi to address historical breaches of the Treaty of Waitangi. These settlements typically include financial and cultural redress and, in some cases, the return of land or statutory acknowledgements over specific areas.

Assets received through settlements are usually managed by post-settlement governance entities. These entities are often sophisticated commercial investors, with professional boards, management teams and diversified portfolios.

Investors may encounter post-settlement entities as:

- Co-investors in large-scale projects.
- Landowners or asset holders.
- Strategic partners with strong regional influence.
- Stakeholders in infrastructure and resource developments.

Understanding the mandate and accountability of these entities is critical. Their obligations extend beyond financial performance to include cultural integrity, beneficiary engagement and long-term sustainability.

## Regulatory and practical implications for investors

From a regulatory perspective, investors may encounter Māori interests through:

- Resource Management Act processes and consultation obligations.
- Overseas Investment Office assessments, particularly where sensitive land or assets are involved.
- Local government planning and infrastructure approvals.
- Sector-specific regimes, such as fisheries or forestry.

Early identification of Māori interests and proactive engagement can mitigate risk, reduce delays and improve project outcomes.

When approached thoughtfully, joint ventures with Māori can deliver strong commercial returns while contributing to sustainable development, social wellbeing and long-term economic resilience. Investors who recognise and respect this broader context are best placed to build enduring partnerships.

## Joint ventures and partnerships with Māori

Joint ventures with Māori entities are increasingly common, particularly in sectors such as property development, renewable energy, forestry, aquaculture and infrastructure. These arrangements can take many forms, from co-investment vehicles to long-term strategic partnerships.

### Key considerations for investors include:



#### Governance and decision-making

Māori entities may have layered governance structures reflecting accountability to beneficiaries. Decision-making timelines may differ from conventional corporate models, particularly for significant or long-term commitments.



#### Investment timeframes

Many Māori organisations prioritise enduring value over short-term gains. This can align well with infrastructure, real assets and sustainable development projects.



#### Cultural engagement

Meaningful engagement is not a one-off transaction. Building trust often requires time, face-to-face engagement and an understanding of tikanga Māori (customary practices), including protocols around meetings, introductions and decision-making.



#### Social and environmental outcomes

Investors should expect that social, cultural and environmental outcomes may be explicit objectives of the venture, and reflected in its reporting, performance metrics and governance arrangements.



#### Land considerations

Some Māori land is subject to specific statutory regimes, including Te Ture Whenua Māori Act 1993, which governs the use and alienation of Māori freehold land. This can affect leasing, financing and development structures.



#### Tax considerations

It is important that any joint venture or partnership arrangement is structured in a manner which is tax efficient for the relevant Māori entity, noting the intersection between Treaty of Waitangi settlement structures, Māori land law, charitable and social purpose objectives and specific Māori entity tax regimes.

## 03.

# Overseas Investment Regime

## Introduction

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, and in many cases deciding, applications from overseas investors who intend on making investments in New Zealand that are caught by one of the various pathways under the OIA. New Zealand’s overseas investment regime is one of the most complex in the world, however, well advised investors can expect to navigate it successfully in the vast majority of cases.

## Key Contacts

### REAL ESTATE



**David Butler**

**PARTNER**

david.butler@russellmcveagh.com

P +64 9 367 8390



**Anna Crosbie**

**PARTNER**

anna.crosbie@russellmcveagh.com

P +64 9 367 8140



**Sarah Blackmore**

**PARTNER**

sarah.blackmore@russellmcveagh.com

P +64 9 367 8057



**Natalie Steur**

**PARTNER**

natalie.steur@russellmcveagh.com

P +64 9 367 8832

### CORPORATE



**Ben Paterson**

**PARTNER**

ben.paterson@russellmcveagh.com

P +64 9 367 8334



**Cath Shirley-Brown**

**PARTNER**

cath.shirley-brown@russellmcveagh.com

P +64 4 819 7354



**David Hoare**

**PARTNER**

david.hoare@russellmcveagh.com

P +64 9 367 8343



**Mei Fern Johnson**

**PARTNER**

meifern.johnson@russellmcveagh.com

P +64 27 671 2344



**Sam Kember**

**SENIOR ASSOCIATE**

sam.kember@russellmcveagh.com

P +64 9 367 8116

### SOUTH ISLAND



**Tony Sycamore**

**PARTNER**

tony.sycamore@russellmcveagh.com

P +64 3 470 3724

The regime seeks to find the appropriate balance between encouraging beneficial overseas investment in New Zealand and protecting New Zealand's interests. OIO consent is not always required, but when it is required the application process is relatively intensive, and the time required to obtain consent (which can be anywhere from five business days to six months, or longer) will need to be factored into the relevant transaction's settlement timetable.

In December 2025, the Government passed the Overseas Investment (National Interest Test and Other Matters) Amendment Act 2025, which came into force on 6 March 2026, reforming the OIA and the Regulations. These reforms represent the most significant overhaul of New Zealand's overseas investment regime in over 20 years, and form part of the Government's broader strategy to promote overseas investment in New Zealand by making it easier to invest, while also ensuring New Zealand's national interests are protected where appropriate.

### What is captured by the overseas investment regime

The key factors that determine whether OIO 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, farmland and certain forestry rights); or
- fishing quotas.

Even in cases where OIO consent is not required under the usual significant business assets or sensitive land pathways, investors will still need to consider whether the transaction involves New Zealand land or assets that are used in a "strategically important business". If so, the transaction will be subject to a "national security and public order call-in power", which allows the Minister of Finance to call in the transaction for review and to block, impose conditions on, or unwind the transaction if the Minister considers it poses a significant risk to New Zealand's national security or public order.

### Overseas persons

Under the OIA, an overseas person includes:

- a. any person who is not a New Zealand citizen or ordinarily resident in New Zealand;
- b. any body corporate that is incorporated, registered or established outside New Zealand;
- c. any company, partnership, body corporate or trust, which is, in the case of any entities;
- d. referred to in (b) and (c), more than 25% directly or indirectly owned or controlled by overseas persons; and
- e. any managed investment scheme the manager of which is an overseas person.

Alternative tests apply to New Zealand incorporated and listed issuers and certain managed investment schemes.

### Significant business assets

An overseas investment in "significant business assets" occurs, in summary, where:

- in the case of an acquisition of securities, an overseas person acquires more than 25% ownership or control interest, or increases an existing more than 25% ownership or control interest to a 50% or 75% or more ownership or control interest, or to a 100% ownership or control interest, in the target entity, and:
  - the target is a New Zealand entity, and the value of the securities acquired, or the consideration provided for those securities, exceeds \$100 million;
  - the value of the target entity's assets in New Zealand, and the New Zealand assets of the target entity's more than 25% direct and indirect owned and controlled entities (regardless of where they are established) exceeds \$100 million;
  - the target entity has a more than 25% direct or indirect ownership or control interest in one or more New Zealand entities, which, directly or indirectly through their more than 25% owned or controlled entities (regardless of where they are established) have assets anywhere in the world the value of which exceeds \$100 million;

- an overseas person acquires assets in New Zealand and the total consideration provided (in aggregate in respect of related or linked transactions) exceeds \$100 million; or
- 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 \$100 million.

The \$100 million threshold referred to above may be set at a higher amount (currently \$200 million) if the overseas person is domiciled in a country that has obligations to New Zealand under various international agreements, as set out on [page 26](#) – under Exemptions. In addition, the above thresholds are significantly higher for Australian “non-government” entities (\$676 million for the year to 31 December 2026, adjusted upwards annually for inflation).

If consent is required by an overseas investor for an investment in significant business assets, the investor will need to meet the new consolidated national interest test described below.

## Sensitive land

An overseas investment in “sensitive land” is the acquisition by an overseas person, either directly or indirectly through an acquisition of securities, of a qualifying interest in “sensitive land”.

Qualifying interests include (but are not limited to) freehold title, leases with a total term (including rights of renewal and historic interests) of three years or more (for residential land) or 10 years or more (for other sensitive land) and certain profits à prendre with a total term of 10 years or more.

Easements are exempted interests in most cases, which means, for example, that easements secured for the purposes of wind farms should not require OIO consent. However, where the rights granted under an easement are so broad that, in fact, the owner no longer has enjoyment and control of the underlying land, OIO consent may be required – this may be the case for many large-scale solar projects due to the pervasiveness of the panels over the land.

Investments in securities will be treated as an investment in sensitive land requiring consent under the OIA where they result in the acquisition of a more than 25% direct or indirect ownership or control interest in an entity, or an increase in an existing more than 25% ownership or control interest to a 50% or 75% or more ownership or control interest, or to a 100% ownership or control interest, in an entity, where that entity has a qualifying interest in sensitive land.

“Sensitive land” includes (but is not limited to):

- residential land being land that is categorised as “residential” or “lifestyle” in the relevant local authority’s District Valuation Roll, and residential flats;
- non-urban land (eg farming or other agricultural or horticultural blocks) of more than five hectares; and
- land adjoining a variety of other types of land of a certain size (eg national parks, historic places, foreshore or land subject to heritage orders).

If consent is required by an overseas investor for an investment in sensitive land, the investor will need to meet the new consolidated national interest test described below, unless the sensitive land constitutes residential land or farmland, in which case alternative tests will need to be met.

***“The firm’s top-level technical skills are paired with its excellent commerciality. It is top of the market for handling incredibly complex and high-value matters.”***

Corporate and Commercial client feedback,  
Chambers and Partners 2026 Asia Pacific Guide

## National Interest Test

The recent reforms introduced a new primary consent pathway for all transactions involving “significant business assets” and “sensitive land”, other than farmland and residential land, and for fishing quota (for which the previous consent pathways remain). This singular national interest test replaced the former investor test, benefit to New Zealand test and national interest test that previously applied to these assets.

The introduction of this streamlined pathway represents a significant improvement for most investors. The starting assumption is that investment can proceed unless a national interest risk is identified, and the review period for most applications is now materially shorter than previous processing periods (discussed further below).

The new national interest test operates through a three-stage process:

### Stage 1: Initial National Interest Risk Assessment

The OIO will undertake an initial risk assessment to identify any potential national interest risks with the transaction. If the OIO has reasonable grounds to consider that the transaction may include a risk to New Zealand’s national interest, the transaction becomes a transaction of national interest and a Stage 2 national interest assessment will be required. If no potential national interest risks are identified, the OIO will grant consent at this stage.

The statutory timeframe for the OIO to complete the initial national interest risk assessment is 15 working days. However, the OIO has been directed to complete the review of least 80% of Stage 1 applications within five working days. The OIO consider that the majority of applications for significant business assets and non-farmland sensitive land are expected to be processed at this stage.

### Stage 2: Full National Interest Risk Assessment

Where Stage 1 identifies a potential national interest risk with the investment, or where the investment is automatically deemed a transaction of national interest (see below), the transaction will require a full national interest assessment as part of Stage 2 of the national interest test.

As part of a full national interest assessment, the OIO must consider a series of mandatory factors including risks to national security and public order, and whether risks can be managed by other regulatory regimes. The OIO may also consider non-mandatory factors such as investor characteristics (replacing elements of the former investor test), whether risks can be managed through conditions, and whether benefits of the transaction may offset identified risks.

Critically, the OIO cannot decline consent at Stage 2 and can only either grant consent to the investment, or refer the application to the Minister if there are reasonable grounds to consider the transaction may be contrary to New Zealand’s national interest, which forms Stage 3 of the national interest test.

### Stage 3: Ministerial Decision

Only the relevant Minister (not the OIO) can decline an investment under the national interest pathway. The Minister will consider whether the transaction is contrary to New Zealand’s national interest and must have regard to any relevant directions in the Ministerial Directive Letter as well as the mandatory factors above, and may consider the non-mandatory factors.

The statutory timeframe for the OIO and the Minister to complete the full national interest risk assessment, and if required, the ministerial decision, is 55 working days. This is in addition to the initial 15 working day risk assessment as part of Stage 1. However, the OIO has been directed to complete the review of least 80% of Stage 2/3 applications within half of the statutory review period. Note that if a transaction is automatically deemed a transaction of national interest and progresses directly to Stage 2 (without a Stage 1 risk assessment) the total review timeframe is 55 working days and does not include the initial 15 working day period.

## National interest test process

Stage	Timeframe	Fees <sup>1</sup>	Key Features/Powers
<b>Stage 1</b> Risk identification	15 working days Ministerial Directive target: 80% assessed within 5 working days	Application Fee: \$22,800	<ul style="list-style-type: none"> <li>OIO assesses whether the investment may give rise to national interest risk.</li> <li>If no risk is assessed, consent can be granted by the OIO (with or without conditions).</li> <li>No national interest risk management conditions can be imposed at this stage.</li> </ul>
<b>Stage 2</b> Risk assessment	55 working days Ministerial Directive target: 80% assessed within half of the statutory timeframe	Additional fee: \$83,700	<ul style="list-style-type: none"> <li>Applies where assessment is required as to whether the investment is contrary to the national interest (either following Stage 1 or if the transaction is a Transaction of National Interest (i.e. involves a SIB, a non-NZGI, or is called in by the Minister of Finance).</li> <li>OIO may grant consent (with or without conditions) or refer the matter to the Minister.</li> <li>OIO cannot decline consent at Stage 2 - only the Minister of Finance can decline (at Stage 3).</li> <li>Timeframes may be reduced in practice for repeat or low-risk investors.</li> </ul>
<b>Stage 3</b> Ministerial decision	55 working days (inclusive of Stage 2 timeframe), with potential 30 working day extension	No additional fees payable	<ul style="list-style-type: none"> <li>Minister of Finance determines whether to approve or decline consent (if referred).</li> </ul>

1. The OIO has indicated that it will review the fees applicable to each stage of the national interest assessment during 2026.

## Transactions of National Interest

A transaction will automatically be deemed a transaction of national interest, which will require a Stage 2 full national interest assessment, where the transaction:

- relates to land or assets used in a “strategically important business”; or
- will result in one or more “non-New Zealand government investors” from a single country acquiring a more than 25% direct or indirect ownership or control interest in the target business or assets.

A “strategically important business” is a business that is involved in ports, airports, electricity generation, distribution, metering or aggregation, provides a large or medium drinking water supply, provides a wastewater or sewerage network, or disposes of sewage or storm water, is involved in telecommunications infrastructure or services, is a New Zealand registered bank or involved in financial market infrastructure, is a media business with significant impact, or owns or controls high-risk critical national infrastructure.

The “non-New Zealand government investor” definition is complex, but in broad terms an entity will be considered a non-New Zealand government investor if it is, or its upstream owners are, more than 25% owned or controlled, directly or indirectly, by one or more government related entities (such as sovereign wealth funds, SOEs, public pension funds (national/federal, state or municipal) and/or their associated entities) from a single country. Due to the way the test applies at an entity level, even relatively widely held private equity funds and similar passive investment vehicles can be caught by this definition, thereby becoming a transaction of national interest and requiring a Stage 2 full national interest assessment.

The Minister of Finance also has residual discretion to call in and review any other investment that is the subject of an application for consent and which the Minister considers may pose risks to New Zealand's national interest, in which case such investment will become a transaction of national interest and require a Stage 2 full national interest assessment. Potential factors that could trigger this call in power include if the proposed investment:

- has foreign government or associated involvement that is below the 25% threshold but grants that government (or its associates, or both) disproportionate levels of access or control to sensitive New Zealand assets;
- would grant an investor significant market power within an industry or result in vertical integration of a supply chain; or
- is potentially inconsistent with government objectives, for example environmental or economic objectives.

## Investor test

Prior to the recent reforms, the investor test applied to all investments in significant business assets and/or sensitive land, regardless of the type of sensitive land. However, following the reforms, the investor test now only applies to investments in sensitive land that constitutes farmland or includes residential land (in addition to the other tests that apply to these investments), unless the investment is automatically a transaction of national interest (see above), in which case the investor test will not apply and instead the national interest test will apply (again, in addition to the other tests that apply to these investments).

The investor test is structured as a negative ‘bright line’ test, which is met if none of a list of “character” and “capability” factors are met or, notwithstanding that a factor is met, the OIO is nevertheless satisfied that the person is not unsuitable to own or control sensitive New Zealand assets. These factors are aimed at determining whether the relevant entities and persons are suitable to own or control sensitive New Zealand assets.

Each “relevant overseas person” and each “individual with control” in respect of the overseas investment must pass the investor test:

- The “relevant overseas person(s)” are the entity making the investment (eg the purchaser of the qualifying interest in sensitive land or business assets) and any upstream entities that will make or control key decisions in respect of the investment (such as the decision to enter into the transaction, any future decision to divest the investment, material capital and operating expenditure in respect of the investment, and day to day decision-making in respect of the investment).

- The “individuals with control” in respect of an overseas investment are the individuals who control the “relevant overseas person(s)” – usually the board of directors of those persons and may also include members of executive management with the power to make material decisions in respect of the investment.

Much of the OIO’s focus in respect of the investor test is on the ownership and control structure for the investment and identifying the correct entities and individuals who should be subject to the test.

The investor test will be met if each “relevant overseas person” and each “individual with control” meets the following character and capability factors:

#### Character factors

- has not been sentenced to imprisonment for a term of five years or more (at any time);
- has not been sentenced to imprisonment for a term of 12 months or more (within the last 10 years);
- if not an individual, has not been convicted of an offence for which the person has been sentenced to pay a fine;
- has not been ordered by a court to pay a civil pecuniary penalty in respect of a contravention of any enactment;
- has not had a penalty imposed for a contravention of the OIA or the Regulations;
- has not been the subject of any other proceedings commenced against the person for any offence, or contravention of an enactment, that carries a penalty corresponding to those listed above; and
- has not entered into an enforceable undertaking or an equivalent agreement with any regulator in respect of any contravention or alleged contravention of any enactment.

#### Capability factors

- is not prohibited from being a director, promotor, or manager of a company;
- has not been liable to pay a penalty for tax avoidance or evasion; and
- does not have outstanding unpaid tax of \$5 million or more.

If any of the above factors apply, the Investor Test may still be met if the OIO is otherwise satisfied that this does not make the investor unsuitable to own or control sensitive New Zealand assets.

#### Benefit Test

Where the investment constitutes an investment in sensitive land that is farmland, the investor will need to satisfy the OIO that the investment will result in a net benefit to New Zealand (“Benefit Test”). This is due to the special importance and significant economic and cultural value farmland has to New Zealand. As such, the investor must show that the benefit to New Zealand will be, or is likely to be, “substantial”.

Farmland is defined broadly as 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 and vineyards.

The Benefit Test assesses the likely benefits of a proposed overseas investment against seven broad categories, or “benefit factors”, when compared to the current state of affairs (at the earlier of the time the transaction is entered into or the date that the application for consent is made).

The seven categories of benefit factors are:

1. Economic benefits – for example (but not limited to): the creation of new jobs (or retention of jobs which would otherwise be lost); the introduction of new technology or business skills; increased productivity; increased export receipts; increased processing of primary products; and a reduced risk of illiquid assets.
2. Environmental benefits – for example (but not limited to): protection of indigenous flora and fauna; improved water quality; and erosion control.
3. Public access – to the sensitive land, or to the features giving rise to the sensitivity.
4. Protection of historic heritage – in or on the relevant land.
5. Advancing one or more significant government policies.
6. An increase in the oversight or participation (effectively interpreted by the OIO as ownership interests) by New Zealanders in the investment.
7. Other benefits that are likely to arise from the investment, but which do not fit within one of the other factors.

In assessing the benefits to New Zealand associated with an overseas investment, the economic benefit factors (in particular, the creation or retention of jobs, introduction of technology or business skills, increased export receipts, and increased processing of primary products benefit factors), and the oversight or participation by New Zealanders benefit factor are required to be given high relative importance.

To satisfy the Benefit Test, the investor must submit an “investment plan” along with its application, describing:

- the current state of the relevant land/assets, and how they are currently being used by the present owner;
- what the investor plans to do with the assets over a certain (eg three to five year) time horizon; and

- the net benefits to New Zealand that will arise from the investment when compared to the current state and use of the land/assets, with particular reference to the benefit factors above that are relevant to the investment and the investor’s investment plans.

The investor must be sufficiently certain of, and committed to, its investment plan to satisfy the OIO that the net benefits claimed by the investor are “likely” to occur. In practice, this means that benefits claimed by investors must be expressed as firm commitments for them to be given weight by the OIO. The OIO will make those commitments conditions of its consent to the investment. Fulfilment of those conditions will be monitored by the OIO’s monitoring and enforcement teams after completion of the investment, and annual progress reports are required to be submitted by the investor.

In assessing the benefits to New Zealand associated with an overseas investment, the OIO is required to take a proportionate approach, meaning that the benefits required to be established by an investor must be proportionate to the sensitivity of the land, the size and nature of the land, and the nature of the overseas investment (including the particular interest in land being acquired, eg leasehold or freehold).

To ensure that New Zealanders have been given sufficient opportunity to purchase the relevant farmland, farmland must generally be advertised on the open market before the overseas person enters into a transaction or arrangement (which includes the entry into binding heads of agreement) to acquire that land, although exemptions can be applied for in certain limited circumstances.

The Benefit Test may also apply to investments in residential land, where one of the residential land tests cannot be met (discussed further below). Where the Benefit Test is being applied to investments in residential land, the same seven categories of benefit factors are considered. However, the economic benefit factor and the oversight or participation by New Zealanders benefit factor are not required to be given high relative importance.

## Residential land

Residential land is land that is categorised as “residential” or “lifestyle” by the relevant local authority’s District Valuation Roll and residential flats.

To obtain consent to acquire residential land, an overseas person must demonstrate (and will be subject to conditions of consent requiring) that:

- if an individual, they will commit to reside, and become a tax resident, in New Zealand;
- housing supply will be increased as a result of the investment;
- the residential land is being acquired for conversion to a non-residential use;
- the residential use is incidental to a relevant business use; or
- that the acquisition will be beneficial to New Zealand (ie meet the [Benefit Test described on page 21](#)).

## Residential Land - Investor Visa Property Exemption

Following the recent reforms, a new exemption allows holders of Active Investor Plus, Investor 1, and Investor 2 residency visas to purchase or build one residential property in New Zealand, subject to the following conditions:

- The property must be valued at more than NZ\$5 million (including land value and, for new builds, construction costs).
- The property must be classified as “residential” or “lifestyle” on the local authority’s District Valuation Roll and must not otherwise be sensitive land (e.g., must not include more than 5 hectares of non-urban land, adjoin foreshore or seabed, or be on certain islands).
- The visa holder can only hold one property under this exemption at any time - to purchase another, the first must be sold.
- OIO consent is still required, but through a streamlined pathway expected to be decided within approximately five to 15 working days. Application fees are NZ\$2,040 for existing properties over NZ\$5 million and NZ\$3,500 for new builds.

- For new builds, conditions will apply requiring the house to be built, the combined costs to exceed NZ\$5 million, and reporting to the OIO on the build process.
- The purchase must not be contrary to New Zealand’s national interest (assessed in the same manner as the national interest test discussed above).

This exemption does not affect the general “foreign buyer ban” restrictions on overseas persons purchasing residential property, which remain in place for all other investors. The NZ\$5 million threshold is designed to target the ultra-luxury segment (representing less than 1% of New Zealand housing stock) and minimise impact on general housing affordability.

Notably, the purchase or build of a residential property under this exemption does not count towards the acceptable investments required for an Active Investor Plus visa application, it is additional to those investment requirements.

## Fishing quotas

Commercial fishing in New Zealand is controlled by the Fisheries Act 1996 (“**Fisheries Act**”), which establishes a quota management system. Most commercial fishing cannot 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. The criteria for consent for an overseas person to obtain an interest in a fishing quota is generally similar to the criteria for an investment in sensitive land, including that the Investor Test and the Benefit to New Zealand test must be met.

## Forestry

Overseas investments in forestry, such as the acquisition of a freehold or leasehold interest in bare land that is to be converted to plantation forest, the purchase of an existing forest, forestry lease or forestry right, or an investment in a forestry business, require consent under the OIA. An overseas person (together with its associates) may purchase up to 1,000 hectares of forestry rights per calendar year, or any forestry right of less than three years duration, without consent.

Prior to the recent reforms, a simplified Benefit Test applied to investments in forestry, where the land is already used, and will continue to be used, exclusively or nearly exclusively, for forestry activities (ie maintaining, harvesting or establishing a crop of trees), and there is a commitment to replant following harvest. However, following the reforms, forestry investors are now required to meet the consolidated national interest test (discussed above), unless the relevant land includes farmland (in which case the Benefits Test above will apply).

In addition to the national interest test, investment in forestry will also be subject to special conditions, which may include committing to maintain existing arrangements for supply of logs to New Zealand processors and existing environmental protections.

If the relevant land includes any existing homes on residential titles, those homes can either be retained for staff accommodation or removed for the purposes of the forestry business.

### Farmland to forestry conversions

While investments in existing forestry are now subject to the national interest test, farmland to forestry conversions will still have to satisfy the higher "farmland benefit" test.

Under the farmland Benefit Test, overseas investors must show the investment is likely to result in a "substantial" benefit to New Zealand measured against the seven benefit factors listed on [page 22](#) (with particular relative importance given to the economic benefit factor and the oversight or participation by New Zealanders benefit factor). However, investments in farmland for the purpose of forestry conversion have proved difficult, and there have been a number of decisions where such investments have been declined consent by the OIO on the grounds of failure to establish

sufficient benefits to New Zealand arising from the investment. Particular focus has been placed on Land Use Capability ("LUC") classifications (which are used to classify all rural land in New Zealand) with the more productive the farmland (LUC class 1-5 land), the more difficult it will be to satisfy the benefit to New Zealand test (ie the more substantial the benefits offered will have to be).

A summary of the changes to the ETS made by the Climate Change Response (Emissions Trading Scheme – Forestry Conversion) Amendment Act 2025, and the implications for farm-to-forest conversions, is included in [Chapter 10](#).

## National security and public order call-in regime

The OIA also contains a national security and public order ("NSPO") call-in regime, which applies to investments that do not otherwise require consent and that involve the acquisition of interests in "strategically important business" assets and infrastructure. Notification to the Minister of Finance (via the OIO) is mandatory for certain categories of strategically important business, and discretionary for other categories.

For the purposes of the NSPO regime, the definition of "strategically important business" ([see definition above](#)) is extended to include businesses that develop, produce, maintain or otherwise have access to data sets of "sensitive information" in respect of 30,000 or more individuals (generally accepted as New Zealand individuals only). "Sensitive information" includes genetic, biometric and health information, financial information of individuals used to determine an individual's financial position or credit score, and information that relates to the sexual orientation or sexual behaviour of individuals. This test will often be triggered in certain sectors (such as financial services (eg insurance) and health (eg medical practices)).

It is mandatory to notify the OIO of an investment in a business that researches, develops, produces, or maintains military or dual-use technology or is a critical direct supplier to the New Zealand Defence Force or a national intelligence or security agency. The dual-use technology provisions in particular can be problematic to interpret and apply in practice in certain sectors, particularly because it will catch various types of technology widely used in civilian contexts, such as encryption software.

It is recommended, but not mandatory, to notify the OIO of any other types of national security transactions (eg investments in businesses involved in ports or telecommunications or which hold qualifying data sets of “sensitive information”).

The NSPO regime applies regardless of the size of the original interest acquired (except where the target business is a media business or listed issuer) or the value of that interest. Subsequent additional or incremental increases in the investor’s ownership and/or control interest in the “strategically important business” will only be caught by the NSPO regime if:

- the acquisition results in the overseas person reaching or exceeding a 25%, 50% or 75% ownership or control interest, or reaching a 100% ownership or control interest;
- the acquisition is in securities of a different class to the class in which their existing interest is held; or
- the acquisition gives the overseas person or the associate (either alone or together with its associates) any or more disproportionate access to or control of a strategically important business.

If a mandatory or voluntary notification is made and the investor receives clearance, the investment will have “safe harbour” protection and will not be scrutinised again by the OIO. In the case where notification is voluntary, if an investor chooses not to notify the OIO of a national security transaction, the investment may be “called-in” and reviewed by the OIO at any later point. This could result in the transaction being unwound if the Minister of Finance deemed that necessary to protect against risks to New Zealand’s national security and public order. As such, it will be up to the investor to weigh the benefit of not notifying a transaction to the OIO

with the risk that the transaction be unwound in the future. Most investors choose to notify and obtain safe harbour protection.

Once a national security transaction is notified or called-in, the Minister will review the transaction for national security and public order risks. This is a higher threshold than the National Interest Test, and, as such, the vast majority of notified call-in transactions should proceed without intervention. However, if the Minister determines that the transaction gives rise, or is likely to give rise, to a significant risk to national security or public order, it may:

- impose any conditions on the transaction that it considers appropriate to manage those perceived risks (such as undertakings to ensure the security of sensitive information);
- prohibit the transaction from proceeding, if the Minister reasonably considers that the perceived risk cannot be adequately managed through the imposition of conditions; or
- if the transaction has already completed, require disposal of the relevant securities owned by the overseas person or associate, if the Minister reasonably considers that the perceived risk cannot be adequately managed through the imposition of conditions.

The recent reforms to the OIA introduced the discretion for the Minister to expand the list of “strategically important business” that are subject to the NSPO regime. While no expanded or new categories of “strategically important business” have yet been announced, this power allows the Government to rapidly respond to new potential national interest and public order risks and ensure that transactions involving businesses in such sectors or engaging in such activities to be screened by the OIO and the Minister.

## Exemptions

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 acquired does not warrant regulatory oversight (for example, mortgage security over land granted or enforced in the ordinary course of business, custodian/nominee shareholdings, transfers of certain types of sensitive land interests between overseas persons and issues of redeemable preference shares that are redeemable only for cash and do not carry voting rights). There are also exemptions for intra-group corporate restructurings.

Investors can apply for bespoke discretionary specific exemptions in circumstances where compliance would be impractical, inefficient, unduly costly or unduly burdensome and/or to allow for exemptions that are minor or technical. The recent reforms also introduced the ability for investors to apply for retrospective exemptions from the requirement for consent (where the transaction has inadvertently been implemented without consent being granted, and where it would have been appropriate for an exemption to have been granted if applied for prior to the transaction being undertaken). However, such exemptions are rare and, when applied for, are closely considered by the OIO.

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; and Vietnam. Generally, the thresholds for an overseas investment in significant business assets for individuals or enterprises from the above countries are \$200 million instead of the usual \$100 million. The monetary threshold for Australian non-Government investors is significantly higher (\$676 million for the year to 31 December 2026), and is inflation adjusted annually.

## Ministerial Directive Letter

As part of New Zealand's foreign investment regime, the Government publishes a Ministerial Directive Letter, which contains information on the Government's general policy approach to foreign investment and other matters, including relating to the OIO's functions, powers, and duties as regulator. The Ministerial Directive Letter is an important aspect of New Zealand's foreign investment regime, as it provides a mandatory direction to the OIO in terms of how the Government of the day expects the OIO to implement the Act and how to make decisions against the legislative framework.

The Government published an updated Ministerial Directive Letter on 6 March 2026 to coincide with the changes to the Act. The Directive sits within the Government's "Going for Growth" programme, which treats foreign capital as integral to New Zealand's productivity. The Directive resets the way the OIO will apply the Act, particularly when assessing applications under the new consolidated national interest test. It confirms the Government's pro-investment stance, promising faster, cheaper clearances for low risk deals, while sharpening scrutiny of transactions that could affect national security, public order or other core New Zealand interests.

The Directive provides further insight into how the OIO is expected to assess national interest risks under the new consolidated national interest test.

### Approach to national interest risk

In considering risks under the national interest test, the OIO should consider whether the risk is material to New Zealand as a whole, or related to national security and public order. The OIO should also consider risks that may adversely affect New Zealand's international relations or reputation, or that relate to land that may have national significance (for example, land with significant conservation value, Treaty of Waitangi claims, heritage places, or Wahi Taupu land).

### Transparency and track record

The Directive urges the OIO to show restraint when scrutinising investors under the national interest test. For New Zealand based investors or repeat investors with a strong compliance record, the OIO is expected to “consider options to reduce cost”, rely on the information supplied and limit verification work. By contrast, investors that have opaque ownership structures, newly-formed or foreign state linked should anticipate escalation to Stage Two.

### Focus on capacity to misuse the asset

Investor vetting is justified only if the target asset could be used in a way that could harm the national interest, for example, by disrupting essential services or giving access to sensitive data. Routine commercial assets should not trigger deep dives.

### Aggregation and foreign state influence

The OIO has been instructed to consider whether the transaction, in combination with existing foreign holdings, could consolidate influence in a critical sector. Foreign governments and their associates are singled out as potentially presenting heightened aggregation risks.

The Directive revokes all prior directives with effect from 6 March 2026. Investors should rely only on this new Directive when structuring or filing applications from that date.

### Watch this space

The reforms represent a significant shift in how the OIO will assess overseas investments, as well as a comprehensive change in the processes that apply to applications. We expect there will be a period of transition as the new processes and tests are implemented and applied, and will likely see a refinement in the OIO's process and the information that investors are required to provide as part of the application for consent.

The OIO will publish further guidance throughout the year on its expectations and how it will consider applications, particular under the national interest test, going forward.

***“Russell McVeagh has a deep commitment to its clients, combined with expert knowledge, great international connections and a willingness to always go above and beyond.”***

Corporate and Commercial client feedback,  
Chambers and Partners 2026 Asia Pacific Guide

## 04.

# Corporate Structures



## Introduction

Businesses in New Zealand are usually operated by an individual as a sole trader or through one of the following structures:

- companies (both limited liability and unlimited liability);
- trusts;
- partnerships (both limited and ordinary); and
- unincorporated joint ventures.

Foreign companies typically operate in New Zealand in one of the following ways:

- registration in New Zealand of the foreign company (or one of its subsidiaries) as an overseas company; or
- operating through a New Zealand incorporated company (or other corporate vehicle).

## Key Contacts



**Joe Windmeyer**

**PARTNER**

joe.windmeyer@russellmcveagh.com

P +64 9 367 8237



**Hannah Wilson**

**PARTNER**

hannah.wilson@russellmcveagh.com

P +64 9 367 8311



**Tom Gillespie**

**PARTNER**

tom.gillespie@russellmcveagh.com

P +64 9 367 8147



**Michael Loan**

**PARTNER**

michael.loan@russellmcveagh.com

P +64 4 819 7382



**Mei Fern Johnson**

**PARTNER**

meifern.johnson@russellmcveagh.com

P +64 27 671 2344

The choice of structure is often dependent upon factors such as:

- the taxation treatment; and
- the extent to which information about the entity will be publicly available.

## Companies

Companies are the most common business structure utilised in New Zealand. Companies in New Zealand are incorporated under the Companies Act 1993 ("**Companies Act**").

A company must have at least one shareholder and one director. All directors must be natural persons, not disqualified, and 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 Australian director must also be a director of an Australian incorporated company in order to meet this requirement.

Information is required to be provided as to the residential address and the date and place of birth of a company's directors, including proof of residence and identity. Directors' date and place of birth of information is not made public. Where a director resides overseas, the Companies Office may require verification of identity (eg a certified copy of passport) and proof of residential address (eg a copy of a utility bill). Details of any company's ultimate holding company must also be provided.

There is no requirement to have a company secretary.

A company may, but is not required to, have a constitution. The company, the board of directors, and each director has 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. There are certain provisions of the Companies Act that a company's constitution cannot contravene or modify. A company is deemed to have all the rights and powers of a natural person (except where these are specifically restricted in the constitution).

A company must have a registered office and an address for service in New Zealand but a physical place of business in New Zealand is not required.

The liability of shareholders may be either limited or unlimited. The majority of companies have shareholder liability limited to the amount unpaid on a share held by each shareholder (if any). However, an unlimited liability company may have different tax treatment for an overseas group. Shares are issued at fair value (which changes depending upon the company's performance) as opposed to a par value. A company may have different classes of shares.

Certain steps or approvals must be followed by a company when undertaking certain activities. Some activities (such as making a distribution to shareholders or giving financial assistance to acquire shares) require specific resolutions to be passed and certificates given by directors and a solvency test to be met. Some activities (such as a "major transaction", being an acquisition or disposal valued at more than half the company's assets before that transaction) require a "special resolution" (in essence, a 75% vote of shareholders or higher majority if prescribed by the company's constitution).

A company must maintain specific records (including a share register, director details and minute book) and file an annual return with the New Zealand Companies Office ("**Companies Office**"), which, amongst other things, confirms the details of its directors, shareholders and registered office.

"Large" companies (being companies in which the total assets exceed \$66m and/or total revenue exceeds \$33m in the previous two years, with a lower threshold applying to subsidiaries of overseas companies) are required by the Financial Reporting Act 2013 ("**FRA**") to be audited subject to limited exceptions. Whether or not a company has to file its financial statements with the Companies Office is determined by the FRA, the Companies Act, and the Financial Markets Conduct Act 2013 ("**FMCA**"). Audited financial statements need to be filed with the Companies Office by every "large" company in which the shares that in aggregate carry the right to exercise 25% or more of the voting power at a meeting of the company are held by:

- a subsidiary of a company incorporated outside New Zealand;
- a body corporate incorporated outside New Zealand; or
- a person not ordinarily resident outside New Zealand.

The FMCA also requires audited financial statements to be filed with the Companies Office by every “FMC reporting entity”, which includes an issuer of “regulated products” and persons

holding a licence issued under Part 6 of the FMCA (eg registered financial advice providers). Refer to [Chapter 13](#) for further information on New Zealand’s financial services legislation.

## Proposed reform

In August 2024, the Government agreed to progress a package of reforms modernising the Companies Act and other related corporate governance legislation. These reforms are intended to make New Zealand an easier and safer place to do business and will take place in two phases. The key proposed “Phase One” reforms include:

- modernisation, simplification and digitalisation of the Companies Act in order to reduce complexity and compliance costs;
- introduction of unique identifiers for directors, with the ability to specify an address for service rather than a residential address being publicly accessible; and
- amendments to improve the uptake of the New Zealand Business Number (NZBN).

The Companies (Address Information) Amendment Act 2025 is not yet in force but will be by 18 November 2026. This will allow directors of a company to make an application to the Companies Office to provide an alternative address to their residential address to be displayed on the Companies Register, where they submit a statutory declaration verifying that public availability of this address is likely to result in physical or mental harm to the director or a person with whom the director resides.

## Key features of a company in New Zealand



**At least one shareholder and one director** – must be a natural person, not disqualified.



**Director residency** – at least one director must live in New Zealand or Australia (and be a director of an Australian company).



**Constitution** – may be adopted (but is not mandatory).



**Registered office** – must be in New Zealand (but no physical place of business required).



**Shareholder liability** – can be limited or unlimited.



**Shares** – issued at fair value (no par value) and may have different share classes.



**Financial statements** – may be required to be filed with the Companies Office.

## Limited partnerships

The limited partnership structure is essentially a hybrid between a company and a partnership. The limited partnership is a separate legal entity yet is fiscally transparent for New Zealand tax purposes.

A limited partnership consists of at least one general partner and one limited partner, who cannot be the same person. General partners manage the limited partnership and are liable for the debts and liabilities of the limited partnership. For this reason, the general partner is typically a limited liability company. Where the general partner is a company, each director of the general partner is required to provide their date and place of birth (which will not be made public) and residential address.

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.

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 Companies Office. The partnership agreement is not made publicly available nor the identity of limited partners.

A "large" limited partnership (applying the same financial thresholds as described for a company above) is required to prepare audited financial statements. However, there is no obligation for these to be filed on a public register.

### Key features of a limited partnership



**General partner liability**  
– liable for the debts and liabilities of the limited partnership (and as a result, is typically a limited liability company).



**Separate legal entity** – but fiscally transparent for New Zealand tax purposes.



**At least one general partner and one limited partner** – no limits on partner numbers or investment.



**General partners** – responsible for management of the limited partnership.



**Limited partners** – passive investors, generally liability is limited to their capital contribution.



**Partnership agreement** – required to be filed with the Companies Office (but remains confidential).



**Financial statements** – not required to be publicly filed.

## Joint ventures

Joint ventures are typically entered into by two or more business entities for a limited time to carry out a specific project. The relationship between the participants in a joint venture is usually set out in a contract between them. Unincorporated joint ventures are not recognised as separate legal entities (and often what the participants call an unincorporated joint venture is in fact a partnership). If the joint venture is incorporated, then the laws applicable to that body corporate (usually an incorporated company) will apply.

## Trusts

Some businesses in New Zealand (particularly land-owning businesses) are run by the trustees of a trust, the beneficiaries of which are usually discretionary. These are often referred to as trading trusts. There is no register for these trusts and no filing requirements with the Companies Office. The trust will be governed by the terms of the trust deed. The Trusts Act 2019 governs all trusts in New Zealand and includes the duties of trustees.

## Other structures

Although certain other structures exist (for example, industrial and provident societies, incorporated societies and registered charities) they are not an available option for most businesses.

It is possible for a foreign business to operate through an agent in New Zealand, although the nature of the agency requires careful consideration as it may bring the foreign business into New Zealand's regulatory framework and into New Zealand's tax regime.

## Overseas companies carrying on business in New Zealand

The Companies Act requires that every overseas company that "carries on business" in New Zealand must register as an overseas company with the Companies Office, in accordance with the Companies Act.

Whether a company is deemed to be "carrying on business" in New Zealand is dependent on the extent of the company's New Zealand related activities. A company will be "carrying on business" in New Zealand if it establishes or uses a share transfer office or a share registration office in

New Zealand, or administers, manages, or deals with property in New Zealand as an agent, or personal representative, or trustee, and whether it does this through its employees or an agent or in any other manner.

A company will be more likely to be carrying on business in New Zealand if it:

- has a physical presence in New Zealand;
- has employees or representatives in New Zealand;
- conducts marketing activities in New Zealand or directly solicits business from persons in New Zealand;
- provides services to, or contracts with, persons in New Zealand; or
- is registered as a financial service provider under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

Whether a company is deemed to be "carrying on business" is dependent on the extent of its activities in New Zealand. The test is not exhaustive, and relatively minor activity in New Zealand could be sufficient for a company to "carry on business" in New Zealand.

Prior to "carrying on business" in New Zealand, an overseas company must reserve its name with the Companies Office and must file an application for registration within 10 working days of commencing business in New Zealand. Once the company is registered as an overseas company under the Companies Act, its compliance obligations will include:

- notifying the Companies Office of any changes to the directors or address within 20 working days of the change occurring, and of any change to the constitution within 10 working days of the change occurring.
- if it is a "large overseas company" (assets exceeding \$22 million or profits exceeding \$11 million for the last two years) it must also file certain financial reports; and
- an annual return (which confirms that the information registered in respect of the overseas company is correct as at the date of the return).

## 05.

# Business Names, Trade Names and Trade Marks



## Introduction

There is no business name or trade name registration procedure in New Zealand similar to that existing in many countries. Business or trade names can be protected by registering a trade mark or service mark and using that mark in New Zealand, or by 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 (and relying on the common law right of passing off or misleading and deceptive conduct under the Fair Trading Act, as a means of protection).

*“Given its depth of expertise and client base, Russell McVeagh has a great knowledge of intellectual property issues within our industry.”*

Intellectual Property  
client feedback, Legal 500  
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## Key Contacts



**Joe Edwards**

PARTNER

joe.edwards@russellmcveagh.com

P +64 9 367 8172



**Brigette Shone**

SPECIAL COUNSEL

brigette.shone@russellmcveagh.com

P +64 9 367 8892

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.

### Trade marks/service marks

There is provision under the Trade Marks Act 2002 for registration of trade marks and service marks in New Zealand. Trade mark registration affords protection in respect of the same goods and similar goods (and sometimes similar services) to those in which a mark is registered. New Zealand follows the Nice classification system for classes of goods and services.

At present, it takes approximately six months to complete registration of a trade mark and service mark. After filing the trade mark application 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 three months in the official monthly journal and third parties may oppose its registration. If there is no opposition, then the mark is registered generally within the next three to six months.

IPONZ will not generally permit registration of trade marks and service marks that are considered to be of a purely descriptive nature, as such marks are considered to lack the distinctiveness necessary for registration.

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.

***“Russell McVeagh provides expertise in both contentious and non-contentious IP issues, regularly advising clients on trade mark infringement disputes and IP licensing. The firm is adept at representing clients before all levels of the New Zealand court system and boasts some of the country’s most notable banks and broadcasters as part of its client roster.”***

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## 06.

# Takeovers Regulation



## Introduction

Takeovers in New Zealand can be effected through a takeover offer under the Takeovers Code (“Code”) or a court-approved scheme of arrangement under the Companies Act 1993 (“Companies 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 of the Code.

## Key Contacts



**Ian Beaumont**

**PARTNER**

ian.beaumont@russellmcveagh.com

P +64 9 367 8302



**Cath Shirley-Brown**

**PARTNER**

cath.shirley-brown@russellmcveagh.com

P +64 4 819 7354



**David Raudkivi**

**PARTNER**

david.raudkivi@russellmcveagh.com

P +64 9 367 8344



**Joe Windmeyer**

**PARTNER**

joe.windmeyer@russellmcveagh.com

P +64 9 367 8237

## Takeovers Code

The Code regulates the change in control of voting rights in “code companies”. The Takeovers Act 1993 (“**Takeovers Act**”) defines a “code company” to mean a New Zealand incorporated company (as defined below) that:

- is a listed issuer that has financial products that confer voting rights quoted on a licensed market (eg the NZX Main Board);
- 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
- has 50 or more shareholders and has total assets of at least \$30 million or total revenue of at least \$15 million.

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 as their Home Exchange (which require certain notice and pause requirements).

The core of the Code is its “fundamental rule”, which prohibits any person:

- from holding or controlling more than 20% of the voting rights in the code company; or
- increasing an existing holding or control of 20% or more of the voting rights in a code company.

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

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:

- by an acquisition under a “full offer” made in compliance with the Code (ie for all of the voting securities of the code company);
- 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);

- by an acquisition of voting securities approved by ordinary resolution of the code company’s shareholders in accordance with the Code;
- by an allotment of voting securities which is approved by ordinary resolution of the code company’s shareholders in accordance with the Code;
- 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
- by undertaking compulsory acquisition of all the voting securities of a code company if the person already holds or controls 90% or more of the voting rights in a code company.

The Code aims to ensure that all shareholders are treated equally in a takeover and can 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).

It is possible to obtain exemptions from the Code through exemption notices issued by the Takeovers Panel under the Takeovers Act 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. The Takeovers Panel also has enforcement powers under the Takeovers Act where a person may not have acted, may not be acting, or may intend not to act in compliance with the Code.

## Schemes of arrangement

An alternative option to making a full takeover offer under the Code is to undertake a court-approved scheme of arrangement under Part 15 of the Companies Act. A scheme of arrangement involving a code company is required to be approved by:

- 75% of the votes of the shareholders in each interest class entitled to vote and voting on the resolution; and
- a majority of the votes of all shareholders entitled to vote (irrespective of whether they do in fact vote).

In effect, if a party only wishes to acquire “all or nothing”, this reduces the threshold to acquire 100% of the voting securities from 90% (for example, by way of acceptances under a “full” takeover offer made under the Code, before the compulsory acquisition procedures in the Code can be invoked) to 75% approval of shares voting under the Companies Act provided such votes comprise more than 50% of all votes able to be cast on the resolution. The court cannot approve a scheme unless:

- it is satisfied that the use of a scheme will not adversely affect the shareholders of the code company; or
- the Takeovers Panel has provided the court with a statement that it has no objection to the scheme (“no-objection statement”).

As schemes of arrangement are regulated under the Companies Act, Code rules do not currently apply to schemes of arrangement (save to the extent that a no-objection statement is sought, as referred to above). However, the Takeovers Panel has published law reform recommendations to the Minister of Commerce and Consumer Affairs on the potential regulatory alignment between takeover offers and schemes of arrangement which included proposals for applying certain Code rules to schemes of arrangement involving Code companies, such as prohibiting misleading or deceptive conduct.

## Other requirements

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 product holder filings during the offer period as offerees take up the offer.

Where a takeover or scheme of arrangement 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 exemption to such disclosure requirements might apply (or a specific exemption may need to be sought).

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## 07.

# Taxation



## Introduction

New Zealand's tax policy settings have been stable during the past decade or so and (with some exceptions) are generally simpler than is the case in some jurisdictions. The two principal taxes are the income tax (which includes tax on the income of corporations) and the goods and services tax. Excise duties apply to a limited category of goods: certain fuels, tobacco and alcoholic beverages. New Zealand has a unitary (rather than a federal) system of government, and all taxes are levied by the central government (ie there are no separate state or provincial taxes, other than certain local or regional authority rates levied on the value of real property).

## Key Contacts

**Greg Neill****PARTNER**

greg.neill@russellmcveagh.com

P +64 9 367 8891

**Fred Ward****PARTNER**

fred.ward@russellmcveagh.com

P +64 9 367 8313

**Callum Burnett****Senior Associate**

callum.burnett@russellmcveagh.com

P +64 9 367 8080

New Zealand has a double tax agreement (“DTA”) network of 41 DTAs, covering almost all of our major trading partners. DTAs are currently in force with Australia, Austria, Belgium, Canada, Chile, China, the Czech Republic, Denmark, Fiji, Finland, France, Germany, Hong Kong, India, Indonesia, Ireland, Italy, Japan, the Republic of Korea, Malaysia, Mexico, the Netherlands, Norway, Papua New Guinea, the Philippines, Poland, the Russian Federation, Samoa, the Slovak Republic, Singapore, South Africa, Spain, Sweden, Switzerland, Taiwan (consistently with New Zealand’s one China policy, the parties to this DTA are the New Zealand Commerce and Industry Office and the Taipei Economic and Cultural Office in New Zealand), Thailand, Turkey, the United Arab Emirates, the United Kingdom, the United States of America and Viet Nam. New Zealand is also negotiating new DTAs with certain other jurisdictions, as well as replacement DTAs or protocols to DTAs.

New Zealand has no general capital gains tax, although the definition of income (subject to income tax) includes profits and gains from certain transactions (notably involving personal property, land and financial arrangements) that would otherwise generally be considered to be capital in nature. One of the important cases in which a capital gain is deemed to be income is the so-called “bright-line test”, applicable to the proceeds of sale of residential property. A gain made under circumstances where a residential property (other than the person’s principal residence) is bought and sold within two years (for property sold on or after 1 July 2024) is deemed to be income even if it would otherwise have been a capital gain.

New Zealand has no inheritance tax, wealth tax, gift tax, stamp duty or payroll tax. There are no current proposals to introduce such taxes.

The current Prime Minister and leader of the National Party (which is one of two major political parties in New Zealand and is currently in Government along with two minor party coalition partners) has ruled out introducing a capital gains tax under his leadership. However, ahead of the November 2026 general election, New Zealand’s largest opposition party, the Labour Party, has confirmed it will campaign on a form of targeted capital gains tax applying only to gains made on the disposal of residential and commercial investment properties (ie real property), at a flat rate of 28%. This proposal excludes all other asset

classes including the family home, farms, and personal property such as KiwiSaver (a form of national retirement savings account), shares and business assets, and would apply only to gains calculated from and realised after 1 July 2027.

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 \$180,000) being 39%. Trustees (other than of unit trusts, which are taxed as companies) are taxed at a flat rate of 39% on trustee income. Trusts with trustee income of \$10,000 or less continue to be taxed at 33%, and disabled beneficiary trusts are taxed at a flat rate of 33%. New Zealand resident individuals are generally subject to New Zealand tax on their worldwide income, with a credit being allowed for foreign tax. Individuals who become New Zealand tax resident for the first time or (in certain cases) after a period of at least 10 years as a non-resident, may qualify for transitional resident status. Transitional resident status applies for (approximately) the first four years during which a person is New Zealand resident, and provides an exemption from New Zealand tax for most non-New Zealand sourced income the person derives during that period.

### Income tax - principal features of corporate taxation

Companies resident in New Zealand generally pay tax on their worldwide income, the main exception being that a participation exemption applies to dividends received from a foreign company in which the New Zealand resident company holds a voting interest of at least 10%.

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 brought forward from prior years or offset from companies in the same group. The resulting net amount is the company’s taxable income.

A full imputation system enables New Zealand resident companies to attach credits for tax paid by them to dividends they pay, allowing the recipient shareholder effectively to offset tax paid at the company level against their personal liability for tax on the dividend. 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

Dividends, interest and royalties paid to non-residents are subject to New Zealand non-resident withholding tax. An exception for non-resident withholding tax applies to interest paid to a non-resident in connection with a business it carries on through a New Zealand branch. There is also an exception for interest paid to a non-resident carrying on business in New Zealand as a registered bank.

New Zealand does not have an exemption from interest withholding tax for widely held debt. There is, however, an option for borrowers to reduce the withholding tax rate to 0% by making certain registrations and paying a levy (known as the approved issuer levy [or "AIL"] in respect of interest paid to a lender that is not associated with the borrower (subject to certain exceptions)). The definition of association for this purpose is broad and includes the circumstance in which the borrower is owned by a consortium or other group of lenders that act together in respect of their ownership interests.

AIL applies at the rate of 2% of the amount of interest paid. It is payable by the borrower (and deductible against New Zealand income tax) and is a levy rather than a tax. Accordingly, it is unlikely to be creditable against foreign tax payable by the lender on its interest receipts.

For interest and royalties paid to non-residents, the rate of withholding tax under domestic law is generally 15%, although this is typically reduced to 10% under an applicable DTA. In the case of some more recently concluded DTAs, the rate in respect of royalties may be reduced to 5%.

Dividends paid to non-residents are generally subject to non-resident withholding tax at a rate of 15% (if the company paying the dividend attaches the full amount of imputation credits to the dividend, ie the dividend is "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.

If a non-resident shareholder holds less than 10% of the direct voting interests in the company paying the dividend, and the post-treaty non-resident withholding tax rate (in essence, the rate after applying any relevant double tax agreement) on that dividend is 15% or more, the company may also pay a "supplementary dividend" (being an additional cash amount paid at the same time as the dividend). The company can claim an income tax credit equal to the amount of the supplementary dividend paid. For a fully imputed dividend, the effect is that the combined New Zealand tax on the profits (company income tax plus non-resident withholding tax) does not exceed the 28% corporate income tax rate.

The withholding tax rates for dividends described above are generally capped at 15% in the case of persons resident in a country with which New Zealand has a DTA. Lower dividend withholding tax rates (typically 5%, or in some cases 0%) apply under certain of New Zealand's DTAs (including those with Australia, Canada, China, Hong Kong, Japan, Mexico, Samoa, Singapore, the Slovak Republic, Turkey, the United States and Viet Nam) in the case of dividends paid to a shareholder that is a company that meets the relevant minimum ownership requirement and certain other criteria.

Withholding taxes may also apply to payments to non-residents in certain other situations, including 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. In the case of payments for services performed or for the use of personal property in New Zealand, the rate of withholding tax is generally 15%. If the payer has not been notified of the non-resident contractor's name and tax file number, this rate may be increased to 20% (if the recipient is a company) or 45% (in other cases). In the case of the proceeds from a disposal of New Zealand residential land, the amount of withholding tax is the lowest of: i) 39% (for individuals) or 28% (for companies) of the profit on disposal; ii) 10% of the disposal price; and iii) if certain criteria are met, the disposal price less amounts required to discharge securities over the land and outstanding local authority rates.

DTA relief (if available) does not always apply at source in respect of these payments. Therefore, even if an amount may be fully relieved from New Zealand tax under an applicable DTA, the payer may be required to withhold tax nonetheless. A non-resident recipient of such payments may need to obtain an exemption from withholding if available (one ground for an exemption from withholding in respect of payments for services performed or for the use of personal property in New Zealand, is that the payments would be fully relieved from New Zealand tax under a DTA). Alternatively, the non-resident may need to file a New Zealand tax return and seek a refund of the tax withheld.

#### **Limits on deductibility of related party financing costs**

New Zealand entities controlled by non-residents are subject to comprehensive transfer pricing and thin capitalisation rules.

The thin capitalisation rules limit interest deductions based on a ratio of debt to assets. In the case of inbound investment, interest deductions are effectively denied to the extent the New Zealand group's ratio of total debt to total assets exceeds both an absolute 60% threshold and a threshold of 110% of the worldwide group's ratio.

The government has been consulting on reforms to the thin capitalisation rules that aim to ease the application of the rules in the context of infrastructure investments. It is unclear whether this reform will extend an existing infrastructure concession (available for certain co-investments with the government) or propose a more general rule. This proposal is expected to be introduced by 31 March 2026.

The transfer pricing rules may apply in respect of most cross-border related party supplies and include a set of highly prescriptive rules specifically directed at limiting the rate of interest payable on inbound related party debt. In certain circumstances, these rules may require debt to be priced on the assumption that the borrower has a deemed credit rating determined on the basis of the wider group's credit rating even if the deemed credit rating exceeds the borrower's actual credit rating. The rules may also require debt to be priced on a basis that ignores subordination or similar terms of the debt that would otherwise result in a higher arm's length interest rate.

#### **Base erosion and profit shifting measures**

New Zealand has enacted a range of reforms intended to implement the OECD's proposals targeting base erosion and profit shifting (BEPS), including strengthening the thin capitalisation, transfer pricing and permanent establishment rules, and measures targeted at hybrid mismatch arrangements. New Zealand has also signed and ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (also known as the multilateral instrument, or MLI), 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.

New Zealand has also enacted legislation to implement the OECD Global Anti-Base Erosion Pillar Two rules (GloBE rules), with certain of the rules (namely the "Income Inclusion Rule" and the "Undertaxed Profits Rule") commencing in New Zealand from 1 January 2025. The Domestic Income Inclusion Rule (DIIR), which applies when a New Zealand-headquartered multinational enterprise has undertaxed income in New Zealand, took effect from 1 January 2026. The GloBE rules are incorporated into New Zealand law by reference to the OECD Model Rules, commentary and published administrative guidance.

### R&D tax credit

New Zealand has a 15% tax credit that is available, in respect of eligible research and development ("R&D") expenditure exceeding \$50,000, to businesses undertaking eligible R&D activities in New Zealand (with up to 10% of eligible expenditure permitted to relate to offshore R&D activity). The R&D tax credit can be applied against tax on the person's taxable income. However, to the extent a person has remaining R&D tax credits after reducing tax on taxable income to zero, the R&D tax credit can be applied to satisfy certain of the person's other tax liabilities (for example, the person's income tax liability for a later year) subject to satisfying continuity of ownership requirements, and if any R&D tax credits remain after this, refunded (subject to certain limitations).

### Income tax - taxation of employees

Income tax is assessed on the gross income of employees. Tax payable by employees (together with certain other amounts including KiwiSaver employee and employer contributions, with ACC levies) is collected at source by the employer (this system is known as "pay-as-you-earn" or PAYE).

### Taxation of trusts

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 it is not beneficiary income).

A trust with a New Zealand resident settlor is effectively treated as resident in New Zealand, and consequently subject to tax in New Zealand on its worldwide income. In circumstances where a trust does not have a New Zealand settlor (and irrespective of whether the trust has a New Zealand resident trustee), the income of the trust will generally (and provided it meets the disclosure requirements described below) be subject to tax in New Zealand only to the extent it derives New Zealand-sourced income or derives beneficiary income on behalf of a New Zealand resident beneficiary.

A set of disclosure rules applicable to foreign trusts was introduced in early 2017. Non-compliance with these disclosure requirements may result in the trust being subject to New Zealand tax on its worldwide income. The main obligations fall on New Zealand resident trustees of foreign trusts (including providing information relating to the settlor, beneficiaries and the trust deed). One consequence of the reforms is that a register of foreign trusts is now administered by Inland Revenue.

## Goods and services tax

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).

In the case of goods imported into New Zealand, GST is collected by Customs together with any Customs duty. An exception applies in respect of low-value goods (generally defined as goods valued at \$1,000 or less). The low-value goods rules require non-resident suppliers to New Zealand consumers to register for and collect GST on low-value goods. The rules also require, in some circumstances, electronic marketplaces and re-deliverers of low value goods to register for and collect GST.

Operators of electronic marketplaces are also required to collect and return GST at the standard rate of 15% on supplies of certain "listed services" (including ride-sharing and ride-hailing, delivery services for beverages and food or accommodation provided through electronic marketplaces) that are performed, provided or received in New Zealand. In the case of suppliers selling or providing services through electronic marketplaces, these rules apply regardless of whether the underlying supplier would have been liable to charge GST on the supplies if supplied directly by them.

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, 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 from 1 October 2016.

***"The firm's tax team is deeply experienced and offers exceptional advice on potential commercial structures that minimises complexities and maximises value."***

Tax client feedback,  
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## 08.

## Infrastructure



## Introduction

New Zealand's infrastructure landscape is in a period of accelerated change. In recent years, New Zealand has seen the return of public-private partnerships ("PPPs"), a new market-led proposal framework, reforms to consenting frameworks and new investor-facing government bodies created, all with the aim of accelerating infrastructure delivery.

## Key Contacts

**Michael Loan**

PARTNER

michael.loan@russellmcveagh.com

P +64 4 819 7382

**Bevan Peachey**

PARTNER

bevan.peachey@russellmcveagh.com

P +64 9 367 8187

**Anna Crosbie**

PARTNER

anna.crosbie@russellmcveagh.com

P +64 9 367 8140

**Brian Clayton**

PARTNER

brian.clayton@russellmcveagh.com

P +64 9 367 8098

**Daniel Minhinnick**

PARTNER

daniel.minhinnick@russellmcveagh.com

P +64 9 367 8714

**Mei Fern Johnson**

PARTNER

meifern.johnson@russellmcveagh.com

P +64 27 671 2344

**Tom Hunt**

PARTNER

tom.hunt@russellmcveagh.com

P +64 4 819 7519

**Greg Neill**

PARTNER

greg.neill@russellmcveagh.com

P +64 9 367 8891

## Market context

Infrastructure has moved to the forefront of the political agenda in New Zealand. Long-standing underinvestment in infrastructure, and a growing recognition of the need for climate-resilient infrastructure, have highlighted the scale of investment required in the country. In response, the current Government has in recent years embarked on a programme of reform aimed at improving planning certainty, shortening approval timeframes and expanding funding and financing options.

Infrastructure demands in New Zealand are wide ranging, spanning transport and roading, electricity generation and transmission, digital infrastructure (including data centres), water infrastructure and social infrastructure such as hospitals and schools. As in many other countries, projects and opportunities in these sub-sectors are being shaped by demographic changes, digitalisation, the energy transition and climate change, all against the backdrop of tighter fiscal constraints in recent years.

There is also an increasing recognition of the need to look after existing infrastructure in New Zealand, with the Infrastructure Commission forecasting (in its 2026 National Infrastructure Plan) that renewals and maintenance will account for the majority of investment demand over the next 30 years.

## Regulatory environment

### Resource management reforms

Reducing regulatory hurdles for new and existing infrastructure has been a focus of the current Government. In the resource management space, the Government has:

- Introduced the National Policy Statement for Infrastructure 2025 (NPS-I), which provides national direction under the Resource Management Act 1991 (“RMA”) to support the efficient development, management and upgrading of infrastructure across New Zealand.
- Passed the Fast-track Approvals Act 2024 (“FTAA”), which creates an alternative consenting pathway under the RMA for projects delivering significant regional or national benefits. The regime streamlines the approvals process for projects, shortens statutory

timeframes and limits appeal rights. There are a number of large-scale infrastructure projects that have used, or are looking to use, the FTAA process.

- Strengthened existing national direction in relation to renewable electricity generation and electricity networks to better enable the establishment and consenting of these activities.
- Amended the RMA to introduce default consent durations of up to 35 years for renewable energy and certain long-lived infrastructure.

The above changes sit alongside a broader, systemic proposed reform of the environmental and planning legislative framework. This reform has been a significant policy issue in recent years for all political parties and is a key priority for the current Government. A replacement system that is more enabling of infrastructure and development has been proposed to be enacted before the end of the current parliamentary term.

### Overseas investment regime

The recent reforms to New Zealand’s overseas investment regime (summarised at [Chapter 3](#) of this guide) should ease the pathway to consent for many foreign investment transactions, including in the infrastructure sector. A key part of this is the shift in the starting presumption for many (but not all) in-scope transactions towards an approval of the investment in the absence of identified risks to New Zealand’s national interest, provided the transaction is not otherwise deemed to be a transaction of national interest (for example, due to the infrastructure asset in question constituting a “strategically important business” under the regime) and does not involve interests in farm land.

### Infrastructure Funding and Financing Act

The Infrastructure Funding and Financing Act 2020 (“IFFA”) was introduced to address structural constraints on infrastructure delivery. It enables infrastructure to be funded and financed through a special purpose vehicle (“SPV”), rather than on a local authority’s balance sheet, with the SPV’s debt being funded by levies on those who benefit from the infrastructure.

The Government is progressing a bill to amend the IFFA, which is aimed at removing barriers to uptake, enhancing the viability of the regime for a broader range of infrastructure projects and simplifying the levy development and approval process.

## Private investment in public infrastructure

### Funding and Financing Framework

The Government announced a new Funding and Financing Framework for infrastructure in December 2024. The objectives of the Framework are to broaden the funding base for investments and utilise private capital, where efficient, and to apply commercial disciplines to the Crown's approach to the provision of public capital.

### The Framework sets out the following key principles:

Crown funding and financing should only be sought when all other sources have been exhausted.

Crown capital should be deployed in optimal form.

Crown capital should be provided on the basis that it is recycled as soon as practical.

The Crown should actively manage the financial risks associated with its investments.

These principles recognise that the Crown operates within finite fiscal constraints and faces competing investment demands. The Framework elaborates that:

- the aim of the first principle is to maximise non-Crown revenue sources and attract private capital in delivering public infrastructure and services, where such partnerships provide good value for money; and
- external financing should not be used simply because it is available – for financing to be efficient, the pricing and terms must align with the risks transferred and non-financial benefits brought by external financiers.

### The Framework's objectives and principles come together in the decision-making process set out in the Framework, which involves the following stages:

- 01.** Assessing a project's standalone funding and financing potential (which could involve a beneficiary pays and/or private financing model) before using Crown funding.
- 02.** Developing the optimal solution to resolve any funding or financing gap, including the structure of any Crown funding.
- 03.** Actively managing the Crown's investments, including consideration of long-term implications and carrying out regular reviews.

## Public-private partnerships

The Government also launched a new framework for PPPs in November 2024, calling it a blueprint for future transactions. The current Government contemplates that PPPs may be available for certain large infrastructure projects, particularly where the PPP model can deliver long-term service performance, whole-of-life asset management and effective risk allocation.

Under a PPP in New Zealand, the Government enters into a long-term project agreement with a private sector SPV for the delivery of a service, where provision of the service requires construction of a new asset or enhancement of an existing asset. The SPV designs, builds, finances and maintains the asset over the contract term, with the Government retaining ownership and making periodic payments for the provision of services.

The Government set out a pipeline of potential PPPs at an investment summit in March 2025 and has already begun engaging with the market. Two new infrastructure projects, the Warkworth to Te Hana motorway (part of the Northland Corridor) and the Christchurch Men's Prison redevelopment, entered competitive PPP bid processes during 2025.

## Market-led proposals

New guidelines for market-led proposals were introduced in November 2024 as part of the Government's broader strategy to encourage private sector innovation and help address New Zealand's infrastructure deficit. The guidelines provide a structured pathway for private proponents to bring forward unsolicited infrastructure proposals for government consideration. Proposals are assessed against three core considerations:

- public interest – alignment with Government and community interests;
- exclusivity – justifying exclusive negotiations with Government; and
- value for money.

Overall, the framework signals an open and co-ordinated approach to engaging with private capital, while maintaining rigour to ensure proposals align with Government objectives and deliver public value.

## Key investor-facing Crown bodies

### NIFFCo

National Infrastructure Funding and Financing Limited ("NIFFCo") is the government's "shopfront" for private capital investment into public infrastructure. Established in December 2024, NIFFCo acts as the formal entry point for unsolicited market-led proposals and provides specialist expertise in funding, financing and PPP procurement. NIFFCo evaluates market-led proposals on behalf of the Crown and supports agencies where projects may benefit from private finance or alternative delivery models, promoting consistency and transparency in market engagement.

### Invest New Zealand

Invest New Zealand is an autonomous Crown entity established in July 2025 to attract and support foreign direct investment into New Zealand, including in infrastructure. Invest New Zealand is intended to streamline engagement with overseas investors and provide co-ordinated government support. While Invest New Zealand does not replace any formal regulatory or procurement processes, it is intended to enhance New Zealand's competitiveness as a destination for high-quality and long-term foreign investment.

## 09.

## Property



## New Zealand's Land Registration System

New Zealand's land title system is based around a centralised government-backed register – which is a form of the Torrens System also used in Australia, Canada and Ireland.

The register is publicly searchable for individual Records of Title which provide a survey description of the relevant land and state the current registered owner, the type of estate held (eg freehold or leasehold), and all current interests registered against the land (eg easements, land covenants and mortgages).

## Key Contacts

**Anna Crosbie**

PARTNER

anna.crosbie@russellmcveagh.com

P +64 9 367 8140

**Natalie Steur**

PARTNER

natalie.steur@russellmcveagh.com

P +64 9 367 8832

**David Butler**

PARTNER

david.butler@russellmcveagh.com

P +64 9 367 8390

**Ed Crook**

PARTNER

ed.crook@russellmcveagh.com

P +64 9 367 8452

**Sarah Blackmore**

PARTNER

sarah.blackmore@russellmcveagh.com

P +64 9 367 8057

**Doran Wyatt**

PARTNER

doran.wyatt@russellmcveagh.com

P +64 4 819 7300

New Zealand's land title register system is held in an electronic database maintained by the government department Land Information New Zealand/Toitū Te Whenua. Legal practitioners engage with the register through an online portal named Landonline – including to transfer ownership on settlement, to register a new interest against a record of title, or to subdivide an existing record of title. The digitalised nature of the system allows for these processes to be completed efficiently and securely.

The most common types of title are fee simple (or freehold) titles, and leasehold titles. Unit Titles are also common, especially in urban areas. This is a form of strata title granting exclusive rights to part of a building (eg an apartment) along with shared rights to use common areas (eg elevators).

### Unregistered interests

Certain types of unregistered interests in land are common in New Zealand. For example, many commercial leases are unregistered (for reasons set out below), and utility companies often hold unregistered easements while infrastructure is built, later converting these to registered easements.

As a general rule, an unregistered interest in land will be defeated by any registered interest, and, unless the future owner of the land is aware of the unregistered interest, it will not bind a future owner once the land is transferred.

Separately, certain infrastructure may be situated on land by way of rights implied by legislation. These rights may not be noted on the title.

### Māori land

The New Zealand legal system recognises that certain land owned by Māori is held in collective ownership, in accordance with Māori custom. As a result, Māori Land may have many recorded owners, or alternatively, the land may be held for the benefit of its owners by a trust or incorporation established under Te Ture Whenua Māori Act 1993.

Māori Land is subject to special protections. Generally, the freehold interest cannot be transferred, however, lesser rights can usually be acquired, including leasehold interests and forestry rights. Obtaining an interest in Māori Land may require consent of the Māori Land Court, a statutory body that exists to promote the retention, use, development, and control of Māori Land by its owners and future generations.

### Overseas investment regime

As an offshore individual or entity, investing in land in New Zealand, or acquiring certain interests in land (including some leases) may require the prior consent of New Zealand's Overseas Investment Office. Both direct investment and indirect investment (above a certain threshold) is captured. As such, legal advice should be sought at an early stage of any transaction involving New Zealand-based assets. New Zealand's overseas investment regime is discussed in further detail in [Chapter 3](#).

### Acquiring real estate

Contracts for the sale and purchase of real estate must be in writing and signed to be enforceable.

Sale and purchase agreements are typically based on a standard form of contract known as the ADLS Sale and Purchase Agreement (produced by the Law Association of New Zealand, previously known as the Auckland District Law Society Incorporated and approved by the Real Estate Institute of New Zealand).

While this agreement is generally used as a starting point for land transactions, various conditions and further terms will be inserted into the contract depending on the given circumstances. Common conditions include due diligence, subdivision (where part of a record of title is being acquired, discussed further below), and board approval.

Importantly, to ensure compliance with New Zealand law, certain sale agreements must be conditional on Overseas Investment Office consent, as explained further in [Chapter 3](#).

## Commercial leases

As with sale contracts, there is a general requirement that, to acquire a leasehold interest, the arrangement must be documented, in writing and signed (with an exception for leases with a term of less than one year, and certain leases without a fixed term).

Leases are generally documented using a Deed of Lease although this is frequently preceded by an Agreement to Lease, especially where there are conditions to be met before the lease term begins, such as landlord works to the premises.

Leases are often based on standard form documentation, with amendments to cater for the specific premises. Common lease forms include:

- The TLANZ / ADLS Lease, produced by the Law Association of New Zealand,
- The suite of leases produced by the Property Council of New Zealand (Retail, Office, Industrial, Multi-Sector)
- The Deed of Lease for Rural Land produced by Federated Farmers of New Zealand.

Institutional landlords may also present their own standard lease terms as a starting point for negotiations.

Most commercial leases in New Zealand are not registered. This is generally for reasons of confidentiality (as the register is publicly searchable) and due to the time and cost of formally surveying the premises (which is a requirement for registration).

For overseas investors, acquiring certain leasehold interests will require consent from New Zealand's Overseas Investment Office, as detailed in [Chapter 3](#).

## Seismic

New Zealand is subject to frequent seismic activity due to its location on multiple fault lines. As a result, the seismic resilience of buildings (and other improvements on the land) is a key consideration for both property investors and tenants.

New buildings must be constructed in accordance with Building Code requirements, including in respect of structural design. Existing buildings can also be assessed by engineers to determine the degree to which they meet current Building Code requirements, often referred to as the "New

Building Standard or NBS". This earthquake rating for buildings is described as a percentage of NBS.

If an existing building is assessed as being lower than 34% NBS, it can be classified as an earthquake prone building under the Building Act 2004. Earthquake prone buildings are placed on an online public register, with owners required to strengthen or demolish the building at their own cost. The timeframe for completing those works depends on the building's use and location, with areas of higher seismic risk having a shorter timeframe. Notwithstanding the statutory regime, institutional occupiers often require higher minimum NBS thresholds in leases, commonly in the 67% to 80% NBS range, reflecting separate health and safety risk assessments rather than any statutory minimum.

Deadlines to either strengthen or demolish buildings were materially extended in late 2024. Legislation enacted in November 2024 granted a four-year extension for remediation deadlines and required territorial authorities to reissue EPB notices and update the register for eligible buildings. For new EPB notices, the legislation restated baseline completion periods of seven years and six months or 15 years in high-risk areas, 12 years and six months or 25 years in medium-risk areas, and 35 years in low-risk areas, with special rules for heritage buildings.

More fundamental reform is now before Parliament. The Building (Earthquake-prone Buildings) Amendment Bill was introduced in December 2025 and is likely to be passed in 2026. The Bill would focus the EPB regime on higher-risk building types in medium and high seismic zones, remove earthquake ratings and percentage-NBS from the statutory EPB system in favour of a risk-based methodology with tiered remediation outcomes, and enable greater flexibility to reduce barriers to strengthening. It would also reclassify coastal Otago (including Dunedin) into the medium seismic zone and remove buildings in low seismic zones (including Auckland) from the EPB system altogether.

Until any amending Bill is enacted and commenced, the current framework continues to apply. That includes the use of percentage-based earthquake ratings for EPB purposes and the extended remediation deadlines described above. In transactions and leasing, parties should therefore continue to verify EPB status on the register, clarify the applicable seismic-risk area and any relevant remediation date, and model potential outcomes if the 2025 Bill is passed substantially as introduced.

## Subdivision

Subdividing land contained within a record of title requires engagement with New Zealand's planning laws set out in the Resource Management Act 1991 ("RMA").

The RMA requires that each local Council maintain a District Plan, which contains the local planning rules, including in relation to subdivision. Under the RMA, subdivision is presumed to be restricted (and will require an application for a "resource consent" from Council in order to subdivide) unless it is explicitly permitted by a district plan rule. Council will consider resource consent applications against the subdivision rules in the District Plan. A resource consent can be granted subject to certain conditions (including a requirement for physical works to be undertaken as part of the subdivision).

## Building regulations

Buildings (and other built structures) are regulated under the Building Act 2004.

A building consent is required prior to undertaking any building work (which includes new construction, as well as some alterations and demolition works). A building consent solely relates to ensuring that building work is undertaken in accordance with the standards set out in the New Zealand Building Code. Building work may separately require a resource consent under the RMA, which relates to local planning controls. Both the building consent and resource consent are obtained from the local Council.

On completion of any building work, a Code Compliance Certificate should be obtained from the local Council, confirming that the building works were completed in accordance with the building consent.

If a building contains certain specified systems (which includes fire sprinkler systems and alarms, lifts and escalators, emergency lighting, and mechanical ventilation and air conditioning systems), the owner must maintain a compliance schedule for those systems and procure an annual Building Warrant of Fitness confirming the specified systems are compliant.

## Compulsory acquisition

The Public Works Act 1981 ("PWA") sets out a pathway for central or local government to acquire private property for the purpose of completing public works (eg roading, schools and infrastructure).

The relevant acquiring authority will first seek to reach agreement with the owner to acquire the affected property (or an interest in the property, such as a lease or easement). If agreement cannot be reached, the PWA includes a process for the acquiring authority to compulsorily acquire the property (or interest) sought.

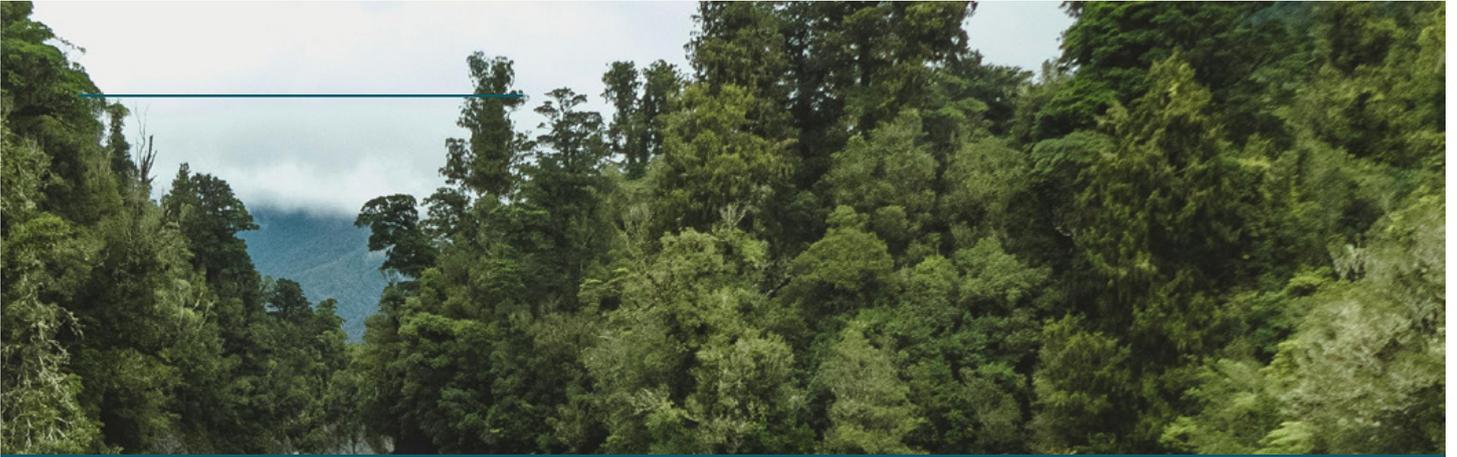
An underlying principle of the PWA is that a landowner is entitled to full compensation for their land to ensure that their financial position is no better or worse than before the compulsory acquisition took place.

***"The Russell McVeagh real estate team is exceptional. They deliver quality products and get the advice right."***

Real Estate client feedback,  
Legal 500 2026 Asia Pacific Guide

# 10.

## Forestry



### Introduction

Approximately 2 million hectares of land in New Zealand is utilised for plantation forestry, with the vast majority planted in radiata pine. In addition to traditional forestry activities, New Zealand's forests are recognised as having an important role in mitigating the effects of climate change and helping New Zealand achieve its international climate commitments.

New Zealand has a comprehensive Emissions Trading Scheme ("ETS"), under which plantation forests are "carbon sinks" and the primary source of "carbon credits", known as New Zealand Units ("NZUs"), which can be utilised to meet obligations under the ETS. This has resulted in a renewed interest in New Zealand forestry assets over recent decades.

### Key Contacts



**Sarah Blackmore**

**PARTNER**

sarah.blackmore@russellmcveagh.com

P +64 9 367 8057



**David Raudkivi**

**PARTNER**

david.raudkivi@russellmcveagh.com

P +64 9 367 8344

## Investing in forestry

Investors can obtain interests in forestry assets, or the carbon benefits of forestry, in a number of ways:

- **Freehold and leasehold interests:** Investors can acquire a fee simple (freehold) or leasehold interest in forestry land, including the trees on the land.
- **Forestry rights:** A land owner may grant a forestry right over their land to enable an investor to plant, manage and harvest forestry on the land over a specified period (ie one or more forestry rotations), effectively separating the ownership of the trees from the underlying land. One benefit of a forestry right is that the forestry right holder's interest can be registered against the record of title to the land without a requirement for the land to be formally surveyed, as is the case for registered leasehold interests.
- **Carbon leases:** A carbon lease allows a forest owner (whether the owner of a freehold, leasehold, or forestry right interest) to transfer their right to participate in the ETS (and collect NZUs in respect of the carbon sequestered) to a third party. The forest owner retains their interest in the trees and resulting forest produce.
- **Off-take agreements:** This is an agreement between a forest owner and an emitter under which the emitter obtains rights to purchase future NZUs at an agreed price. This allows an emitter to secure a supply of NZUs that the emitter can then use to offset future emissions. An off-take agreement may include a financing arrangement under which the emitter advances funds to the forest owner to establish the forest.

## Overseas Investment Regime

Investing in forestry may require the consent of New Zealand's Overseas Investment Office. An overview of New Zealand's overseas investment regime is included at [Chapter 3](#).

## New Zealand Emissions Trading Scheme

### Overview

The Climate Change Response Act 2002 ("CCRA") established New Zealand's ETS. The ETS is centred around NZUs that are traded on a "carbon market" (known as the "secondary market") between registered market "participants". In general terms:

- forest owners registered in the ETS can earn NZUs from the Government for the carbon sequestered by the trees on their land;
- forest owners registered in the ETS will be liable to surrender NZUs to the Government if the land is deforested (and not replanted within a certain time) and, in some cases (depending on the carbon accounting method used), when the forest is harvested; and
- certain emitters in other industries must surrender NZUs to the Government in respect of their carbon emissions, requiring these emitters to procure NZUs.

In order to obtain NZUs to be surrendered, participants (including both forest owners and emitters) can buy NZUs from each other on the secondary market, or purchase NZUs from the Government at quarterly auctions. These quarterly auctions allow the Government to regulate the price of NZUs by adjusting the number of NZUs released to the market each quarter.

Forestry participation in the ETS is monitored and enforced by Te Uru Rākau - The New Zealand Forestry Service, being a division of the Ministry of Primary Industries ("MPI").

### Forestry in the ETS

The CCRA distinguishes between land that was forest land before 1 January 1990 ("Pre-1990 Forest Land"), and land that was first established as forest after 31 December 1989 ("Post-1989 Forest Land").

The obligations are very different for each category. However, the common feature is that forest owners must surrender NZUs to cover their carbon emissions, as determined under the CCRA.

### Pre-1990 Forest Land

Participation in the ETS is mandatory for owners of Pre-1990 Forest Land. Pre-1990 Forest Land can be harvested and replanted without attracting liability. However, if more than two Ha of non-exempt Pre-1990 Forest Land is “deforested” in a five-year period (ie there is a change in land use), the forest owner (whether a freehold or leasehold owner, or a forestry right holder) must:

- surrender NZUs (ie “pay” for their emissions); or
- apply to offset their deforestation prior to deforesting, by establishing an equivalent forest elsewhere.

When forestry was brought into the ETS, owners of Pre-1990 Forest Land received a one-off allocation of NZUs under the Forest Allocation Plan. This was intended to mitigate the impact of the ETS deforestation rules, by offsetting the decrease in land value due to the decreased land-use flexibility.

Participants in the ETS do not receive NZUs for Pre-1990 Forest Land. The rationale is that these forests existed prior to the first commitment period of the Kyoto Protocol (2008 – 2012), and therefore do not contribute to New Zealand’s efforts to reduce carbon emissions. There is liability for deforesting Pre-1990 Forest Land, as doing so will increase New Zealand’s carbon emissions and affect New Zealand’s ability to meet the commitments under the Paris Agreement.

In most cases, liability for Pre-1990 Forest Land will run with the land. Both parties to a land transfer should have a clear understanding of the land’s ETS status (which is usually - but not always - registered in notices on the record of title), and the effect that any harvesting (whether before or after settlement) will have on the incoming owner’s ETS liability. If the new owner intends to clear the land and convert it to another use, the new owner will be required to pay any associated carbon liability (ie by surrendering NZUs).

### Post-1989 Forest Land

Post-1989 Forest Landowners (including leaseholders, or forestry right holders) may voluntarily become ETS participants, registering their forest as either:

- “Standard Forestry” if regular rotational forestry; or
- “Permanent Forestry” which requires the forest is not harvested for at least 50 years.

Two different “carbon accounting methods” are used to calculate the NZUs earned by a forest. These are:

- “Stock Change” where owners accumulate NZUs while their forest grows, but will need to account for liability by surrendering NZUs when they harvest their forest; and
- “Averaging” which takes into account the NZUs accumulated, and the NZUs that must be surrendered, over the full cycle from planting to harvest. NZUs are only earned up to the “average” level, in effect offsetting the peak NZUs accumulated during the forest’s growth, against the NZUs that must be surrendered on harvest.

All permanent forestry uses the stock change method of carbon accounting. Standard forestry might use either stock change or averaging, depending on when the forest was registered in the ETS, whether it is first rotation forest, and whether the owner may have elected to change carbon accounting method. All standard forestry registered in the ETS from 1 January 2023 uses the averaging carbon accounting method.

Where a new lease or forestry right is taken over Post-1989 Forest Land, the documentation should be clear on which party will be the ETS participant in respect of the land. If post-1989 Forest Land is bought or sold (or registered forestry rights or leases are assigned) participation in the ETS must be transferred between the relevant parties. Participants can withdraw from the ETS at any time but must first surrender the NZUs received for the land.

Accordingly, in any forestry transaction, it is important to determine which party is (or will be) the ETS participant, and to account for any future liability to surrender NZUs that will be assumed by that participant.

## Restrictions on Farm-to-Forest Conversion

The Climate Change Response (Emissions Trading Scheme – Forestry Conversion) Amendment Act 2025 came into force on 31 October 2025 and gave effect to the policy changes earmarked by the Government in late 2024, intended to limit how much farmland is converted to exotic forest.

### The CCRA now includes:

- A moratorium on registering exotic species of forest land in the ETS if planted on “restricted forest land”, being Post-1989 Forest Land that is LUC class 1 to 5 farmland (considered high-to medium-versatility farmland); and
- A national annual hectare limit of 15,000 hectares of exotic forest land registered in the ETS if planted on LUC class 6 farmland (on a “first-in, first served” allocation system).

The CCRA exempts certain types of Māori land, native forests, land already registered in the ETS from the definition of “restricted forest land” and provides a transitional exemption for those who can demonstrate that they had commenced the process of afforestation as at 4 December 2024.

The CCRA changes do however permit up to 25% of a farm’s LUC 1-6 farmland to be planted in forestry and registered in the ETS.

The right to apply to register up to 15,000 hectares of LUC class 6 farmland in the ETS each year nationally will be allocated by the Government through a ballot and permit system. There will be two ballots each calendar year, with the first ballot in 2026 having 7,500 hectares of LUC class 6 land available. If the hectares in the first ballot are not all allocated, they will be transferred to the second ballot in 2026.

Those successful in the ballot will be granted a permit which will be valid until 31 December of the third year after it was issued. Permits for LUC class 6 land may be in addition to the 25% allowance per farm noted above. We expect the first ballot to be in mid-2026.

As a consequence of the CCRA changes, evaluation of exotic afforestation opportunities in New Zealand will require careful consideration of the LUC of the land.

## Regulation of forestry activities

### Planning controls

Planning controls in New Zealand are generally administered at a regional or local level, with the relevant Council issuing a “resource consent” for certain activities, in accordance with the planning framework established by the Resource Management Act 1991.

In 2018 the Government introduced nationally consistent planning controls for forestry activities, which were updated in 2023. The current National Environmental Standards for Commercial Forestry (“NES-CF”) imposes national standards and consent requirements for the following forestry related activities: afforestation, pruning and thinning to waste, earthworks, river crossings, forest quarrying, harvesting, mechanical land preparation and replanting. Its purpose is to provide a nationally consistent approach to forestry activities.

Where there is an existing resource consent held for plantation forestry, this will continue to authorise the activity until the consent has been completed, lapses or expires. Following this, the plantation forestry activity must be performed in accordance with the NES-CF. This is the case for both regional and land use consents.

Further information in relation to the Resource Management Act 1991 and New Zealand’s system of planning controls can be found in [Chapter 11](#).

### Health and safety

Forestry is one of the most dangerous industries in New Zealand. Health and safety considerations are seen as a high priority both within the forestry industry, and by the Government’s health and safety regulator, WorkSafe.

Further information on New Zealand’s health and safety legislation can be found in [Chapter 17](#).

## 11.

## Environment and Planning



### Resource Management Act 1991

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.

### Key Contacts

**Daniel Minhinnick**

PARTNER

daniel.minhinnick@russellmcveagh.com

P +64 9 367 8714

**Simon Pilkinton**

PARTNER

simon.pilkinton@russellmcveagh.com

P +64 9 367 8374

**Allison Arthur-Young**

PARTNER

allison.arthur-young@russellmcveagh.com

P +64 9 367 8224

**Lauren Rapley**

PARTNER

lauren.rapley@russellmcveagh.com

P +64 9 367 8885

Regional and district plans promulgated under the RMA by district, regional and territorial authorities (ie councils) operate as “rulebooks” that specify objectives, policies and rules relating to land use, natural hazards, biodiversity, use of contaminated sites and the use of hazardous substances.

Plans categorise activities as either permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited. Permitted activities can be undertaken “as of right”, whereas other activities require a “resource consent” to be obtained from the relevant authority for the activity to be carried out lawfully (with the exception of the few activities classified as prohibited). Councils have the ability to issue resource consents, which give permission (subject to conditions) for an activity that might affect the environment. The onus is on the owner/occupier to ensure their activities have the necessary consents.

Land use and subdivision consents are attached to the land and transfer automatically to the new owner when land is sold. These activities are under the jurisdiction of district or city councils. Land uses are permitted (can be undertaken without consent) unless rules within a relevant plan or national environmental standard require consent to be obtained.

Other consents (ie water permits and discharge permits) are not automatically transferred when land is sold. These activities are under the jurisdiction of regional councils. These activities are not permitted without resource consent unless identified as a permitted activity under a relevant plan or national environment standard.

The RMA provides for the liability of a business and its owners, where legislative provisions, plan rules and/or conditions of resource consents are contravened. Liability may arise under the RMA if, for example, activities were undertaken by a business and its owners without, or in breach of, any resource consents required to undertake its operations. Under the enforcement mechanisms of the RMA, councils can issue abatement and infringement notices requiring unconsented activities to cease or seek orders from the Environment Court that require a person or entity to do a particular thing to remedy an actual or potential breach of the RMA.

Systemic reform of the environment and planning legislative framework has been a significant policy issue over the last five years for all political parties and is a key priority for the current Government. A replacement system that is more enabling of development and which includes greater protection of private property rights has been proposed to be enacted before the end of this parliamentary term. The reform processes will provide significant opportunities for input from stakeholders over the coming years on the direction and form of the new framework.

***“Russell McVeagh’s team  
are great to work with.  
They are open, friendly  
and have a can-do attitude.”***

Environment and Planning client feedback,  
Chambers and Partners 2026 Asia Pacific Guide

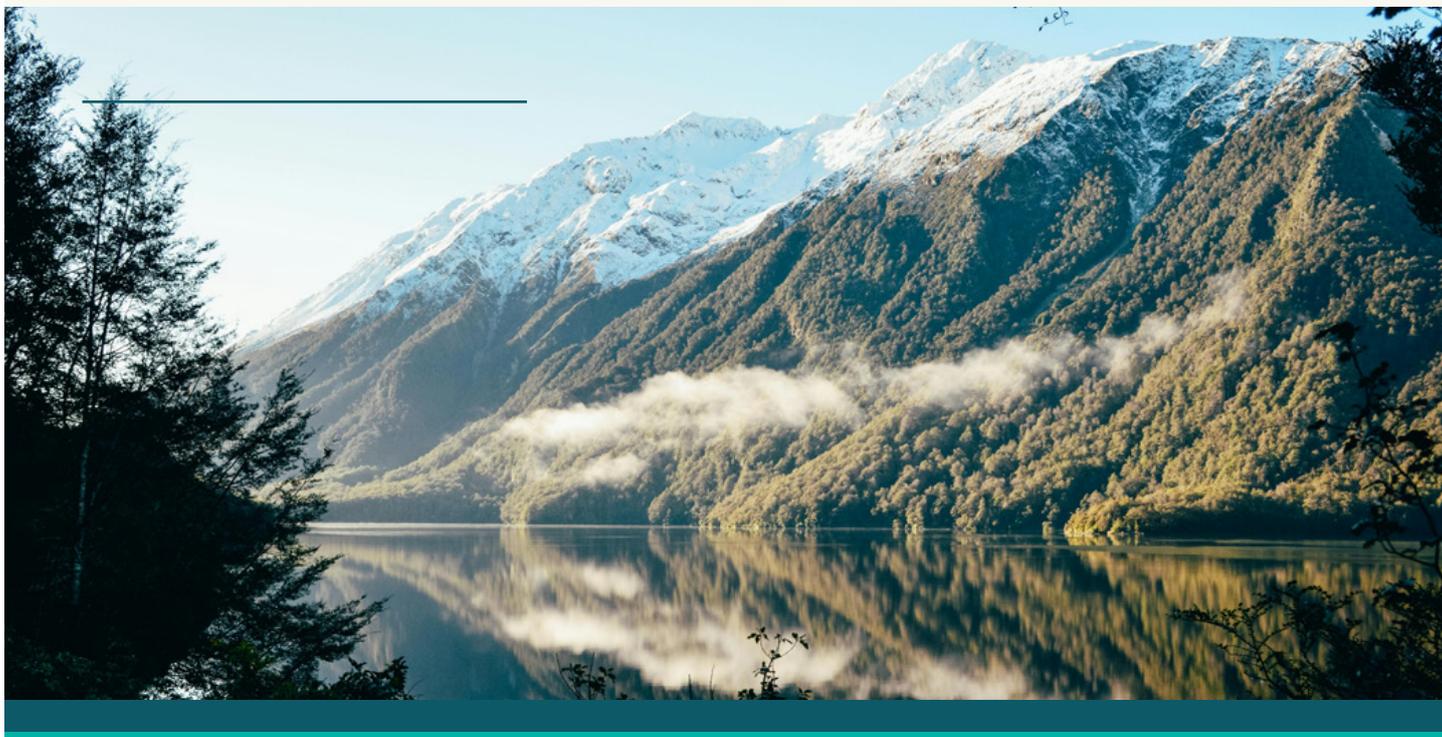
## Engaging with Māori

The RMA provides for the recognition of the relationship of Māori with their ancestral lands, water, wāhi tapu (sacred places) and other taonga (treasures). In practice, this means that investors in New Zealand should be aware that RMA-related processes may require engagement with the tangata whenua (local iwi/hapu). Successful engagement usually involves building early, transparent and face-to-face relationships with tangata whenua that recognises their role in the community and the value their local knowledge can add to achieving positive long-term outcomes. In many regions of New Zealand, local authorities and tangata whenua are negotiating or have agreed a Mana Whakahono ā Rohe (Iwi participation arrangement) to provide structure for tangata whenua involvement in RMA decision-making processes.

Further information on partnering with Māori in Aotearoa New Zealand can be found in [Chapter 2](#).

## 12.

## Capital Markets



### Introduction

New Zealand's capital markets are primarily regulated by the Financial Markets Conduct Act ("FMCA") and the Financial Markets Conduct Regulations ("FMCR") under the supervision of the Financial Markets Authority ("FMA") and, if the securities are quoted on one of the exchanges operated by New Zealand's primary market operator, NZX Limited ("NZX"), the NZX listing rules ("Listing Rules").

### Key Contacts

**Deemle Budhia**

PARTNER

deemle.budhia@russellmcveagh.com

P +64 9 367 8335

**Guy Lethbridge**

PARTNER

guy. lethbridge@russellmcveagh.com

P +64 4 819 7538

## FMCA

The FMCA regulates offers of securities (which are referred to as “financial products”) to the public in New Zealand. The four categories of financial product are: debt securities, equity securities, managed investment products and derivatives. The FMCA imposes disclosure and governance (for offers of debt securities and managed investment products) obligations on offerors of financial products. It also prohibits misleading and deceptive conduct and conduct constituting insider trading and market manipulation.

### Territorial scope

An offer of financial products is made in New Zealand if the offer is received by a person in New Zealand, regardless of where any resulting issue or transfer occurs and where the issuer or offeror is resident, incorporated or carrying on business. However, this will not be the case if the offeror of the financial products can demonstrate that they have taken all reasonable steps to ensure that persons in New Zealand (other than those to whom an applicable exclusion under the FMCA applies) may not accept the offer.

### Retail vs wholesale

There is a distinction in the FMCA between offers of financial products to wholesale and retail investors. Offers to wholesale investors are subject to less onerous regulatory requirements (in particular, disclosure requirements) than offers to retail investors.

A wholesale investor includes a person who falls within at least one of the following categories:

- “investment businesses”;
- people who meet specified “investment activity” criteria;
- “large” entities (those with net assets over \$5 million or consolidated turnover over \$5 million in each of the two most recently completed financial years);
- “government agencies”;
- “eligible investors” – who are people who certify that they are eligible to invest without the formal disclosure that would be provided in a product disclosure statement based on prior investing experience; and
- persons paying a minimum of \$750,000 for the financial products on offer.

If a person is not a wholesale investor, then they are treated as a retail investor for the purposes of the FMCA. An offer of financial products to at least one retail investor is known as a “regulated offer” and will be subject to regulatory requirements that are heavily prescribed under the FMCA and FMCR.

### Disclosure requirements

The disclosure obligations for regulated offers of financial products include:

- preparing and lodging a product disclosure statement (“PDS”) – this document will contain the key terms of the offer as well as other information prescribed under the FMCA and FMCR. A PDS is similar to what most jurisdictions would call a prospectus; and
- creating a register entry on the Disclose Register – the Disclose Register is an electronic database maintained on the New Zealand Companies Office website containing the details of regulated offers made in New Zealand. The register entry must contain all material information not contained in the PDS.

An offer made under an exclusion in the FMCA may still be subject to some disclosure requirements, depending on the nature of the exclusion.

### Quoted Financial Product Exclusion

The FMCA contains an exclusion from the regulated offer disclosure requirements for some class quoted financial products (“QFP”). This exclusion allows issuers to offer equity securities, debt securities or managed investment products of the same class as financial products that are quoted on a licensed market without having to comply with the disclosure requirements that apply to a regulated offer. The issuer must instead issue a “cleansing notice” to the market (which includes a confirmation that the issuer is complying with its continuous disclosure and financial reporting obligations), as well as a document setting out the terms and conditions applicable to the financial product.

### Mutual recognition regime

The FMCA and FMCR contain a recognition regime which applies to offers of financial products made in New Zealand by Australian offerors. Subject to a number of conditions, if an offer of financial products is regulated in Australia and the Australian offeror wishes to offer the financial products in New Zealand, the offer is exempt from the disclosure and governance requirements of the FMCA.

### Class exemptions

There are also some specific class exemptions which are issued by the FMA – for example, to allow New Zealand investors to participate in rights offers or exchange offers where they are shareholders in a company listed outside of New Zealand.

### Governance requirements

Regulated offers of debt securities and managed investment products must also meet the governance requirements set out in the FMCA and FMCR. These include:

- in the case of debt securities, having a trust deed for the debt securities and a licensed supervisor appointed under the trust deed; and
- in the case of managed investment products, having a governing document and both a licensed manager and licensed supervisor.

### Fair dealing

The FMCA also contains fair dealing rules that apply to all offers of financial products regardless of whether the offer is made to retail or wholesale clients. These rules prohibit misleading or deceptive conduct, and the making of false, misleading or unsubstantiated representations, in relation to any dealing in financial products.

### Insider trading

The FMCA prohibits a person in New Zealand who has material information relating to a listed issuer that is not generally known to the market from trading in financial products, disclosing that material information to another person, and advising someone to hold or acquire financial products. There are various exceptions or defences to these prohibitions, including Chinese wall defences, exceptions for underwriters and exceptions for information gleaned from one's own research and investigation.

### Market manipulation

The FMCA also prohibits a person from engaging in conduct that misleads (or attempts to mislead) the market. This includes spreading false market information or giving false impressions of market conditions.

### Substantial product holder disclosure

If a person has a "relevant interest" in listed voting securities at, or exceeding 5%, the person must immediately make disclosure using the prescribed form to both the NZX and the listed issuer. Thereafter, the person must disclose any change in the nature of their holding and any 1% movement in their holding.

## NZX

NZX operates the primary regulated exchange in New Zealand. The NZX has two main exchange boards: the NZX Main Board (for listed equities and funds) and the NZX Debt Market. NZX's rules and policies are contained in the Listing Rules, which govern how the NZX markets operate and the conduct of the NZX market participants.

The Listing Rules contain the eligibility requirements for issuers who wish to be listed on the NZX and for the quotation of securities on the relevant exchange board. They also prescribe ongoing requirements for listed issuers, which includes reporting and continuous disclosure obligations.

### Foreign Exempt Issuers

An issuer that is already listed on a recognised foreign exchange may be eligible for Foreign Exempt Issuer status. A Foreign Exempt issuer is deemed to comply with the Listing Rules as long as:

- the issuer remains listed on its home exchange; and
- all of the financial products of the issuer quoted on the NZX or NZDX remain quoted on its home exchange.

The foreign exchanges that are currently recognised by the NZX for the purposes of the Foreign Exempt Issuer regime are:

- Australian Securities Exchange (for equity securities, debt securities and funds);
- Hong Kong Exchanges and Clearing Limited (for equity securities);
- London Stock Exchange Group (for equity securities and funds);
- NASDAQ Stock Market (for equity securities);
- Singapore Exchange (for equity securities); and
- TMX Group Inc (for equity securities).

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## 13.

# Financial Services and Funds Management



## Introduction

The Financial Markets Conduct Act 2013 (“**FMCA**”) is the principal statute in New Zealand that regulates the issue and sale of financial products and the provision of certain market services in New Zealand. “Financial products” include equity securities, debt securities, managed investment products and derivatives.

## Key Contacts

**Dan Jones****PARTNER**

dan.jones@russellmcveagh.com

P +64 9 367 8410

**Sarah McQueen****SPECIAL COUNSEL**

sarah.mcqueen@russellmcveagh.com

P +64 9 367 8373

The Financial Markets Conduct Regulations 2014 (“**FMCR**”) set out additional regulations in respect of the FMCA regime. The FMCA also regulates misleading and deceptive conduct (in trade) in relation to financial products and financial services, dealings of financial products on markets, licensing of entities providing market services, the provision of financial advice and financial reporting.

An offer of financial products is made in New Zealand if the offer is received by a person in New Zealand, and applies regardless of where any resulting issue or transfer occurs and where the issuer or offeror is resident, incorporated or carrying on business.

The application of the FMCA is administered by the Financial Markets Authority (“**FMA**”) who has broad powers to monitor compliance, investigate and enforce conduct in New Zealand’s financial markets. The purpose of the regime is to facilitate the development of a fair, efficient and transparent market which allows investors to be confident in their investments.

## Managed investment schemes

Managed investment products are interests in a managed investment scheme and are defined as a type of “financial product” under the FMCA. The FMCA governs the way managed investment products are offered, promoted, issued and sold, and provides for the continued responsibilities of those who manage and supervise managed investment schemes.

For the purposes of the FMCA, a managed investment scheme is a scheme to which each of the following apply:

- the purpose or effect of the scheme is to enable persons taking part to contribute money, or to have money contributed on their behalf, to the scheme as consideration to acquire interests in the scheme;
- those interests are rights to participate in, or receive, financial benefits produced principally by the efforts of another person under the scheme; and
- the holders of those interests do not have day-to-day control over the operation of the scheme.

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## Retail investor and wholesale investor distinction

In New Zealand, the application of the FMCA differs depending on whether the offer of financial products is made to a wholesale or retail investor. The different legislative requirements for wholesale and retail investors in respect of offers of managed investment products are summarised in the table below.

Category	Retail investor	Wholesale investor
Definition	Any investor who is not a wholesale investor.	An investor who meets any of the following criteria: <ul style="list-style-type: none"> <li>• is an investment business;</li> <li>• is involved in investment activity with a value of over \$1 million in the previous two years;</li> <li>• has net assets exceeding \$5 million as at the end of the two most recently completed financial years;</li> <li>• is a government agency;</li> <li>• invests more than \$750,000; or</li> <li>• has certified that they have requisite experience in dealing in financial products.</li> </ul>
Disclosure requirements	Disclosure under Part 3 of the FMCA is required, including: <ul style="list-style-type: none"> <li>• preparing and lodging a product disclosure statement; and</li> <li>• maintaining a register entry of other material information on an online register maintained by the Registrar of Financial Service Providers.</li> </ul>	Disclosure under Part 3 of the FMCA is not required, however, there may be a requirement to include a warning statement in every document provided to the investor that contains the key terms of the offer of the financial products, depending on the category of wholesale investor.

Category	Retail investor	Wholesale investor
<b>Governance requirements</b>	<p>Part 4 of the FMCA applies, which includes:</p> <ul style="list-style-type: none"> <li>• having a manager and an independent supervisor, who must both be licensed by the FMA;</li> <li>• having a governing document which contains certain minimum content requirements set out in the FMCA; and</li> <li>• preparing and lodging a statement of investment policy and objectives.</li> </ul>	<p>Part 4 of the FMCA does not apply to managed investment schemes that only make offers of managed investment products to wholesale investors.</p>
<b>Ongoing compliance</b>	<p>Ongoing obligations under the FMCA apply, including custodianship requirements, reporting on limit breaks, pricing errors and related party transactions, financial reporting requirements and member reporting requirements (including an annual report).</p> <p>In addition, the “fair dealing” provisions in Part 2 of the FMCA will apply, which prohibit misleading or deceptive conduct, and the making of false, misleading or unsubstantiated representations, in relation to any dealing in financial products.</p>	<p>No ongoing reporting requirements, but the “fair dealing” provisions in Part 2 of the FMCA will still apply.</p>

## Other disclosure exemptions

In addition to the wholesale investor disclosure exemption, the FMCA provides for several exemptions to offer managed investment products with limited or no disclosure under Part 3 of the FMCA. These exemptions include offers to close business associates, to persons under control, and offers for no consideration. Furthermore, the FMA may grant a bespoke exemption from the disclosure provisions under Part 3 to any person, class of persons, transaction or class of transactions.

## Mutual recognition scheme

### Australian offerors

The FMCA and FMCR contain a recognition regime which applies to offers of financial products made in New Zealand by Australian offerors. Subject to a number of conditions, if an offer of financial products is regulated in Australia and the Australian offeror wishes to offer the financial products in New Zealand, the offer will be exempt from the disclosure and governance requirements of the FMCA, and will be able to use disclosure documents prepared under Australian law in New Zealand. The Australian offeror will, however, have ongoing filing obligations under the FMCR.

### Asia Funds Passport

The Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019 ("**Asia Region Funds Passport Regulations**") provides for a similar recognition regime for funds based in Australia, Japan, Korea and Thailand. The Asia Region Funds Passport Regulations provide that, subject to certain conditions, an overseas fund operator approved by the FMA to register an offer in New Zealand under the Asia Region Funds Passport is exempt from a number of requirements under the FMCA, including:

- most of the governance requirements under Part 4, including the manager licensing requirement and the requirement to have a licensed supervisor;
- all provisions relating to the transfer of transferable financial products;
- financial reporting obligations; and
- the licensing requirement for financial advice services, to the extent that:

- the operator or foreign passport fund provides a financial advice service in relation to offering managed investment products under a recognised offer; and
- that financial advice service is provided to or through a qualified distributor that is acting in relation to the offer.

However, the disclosure requirements under Part 3 of the FMCA will still apply to such offers, and the operator of the foreign passport fund will be required to comply with certain terms and conditions and notify specified matters to the FMA.

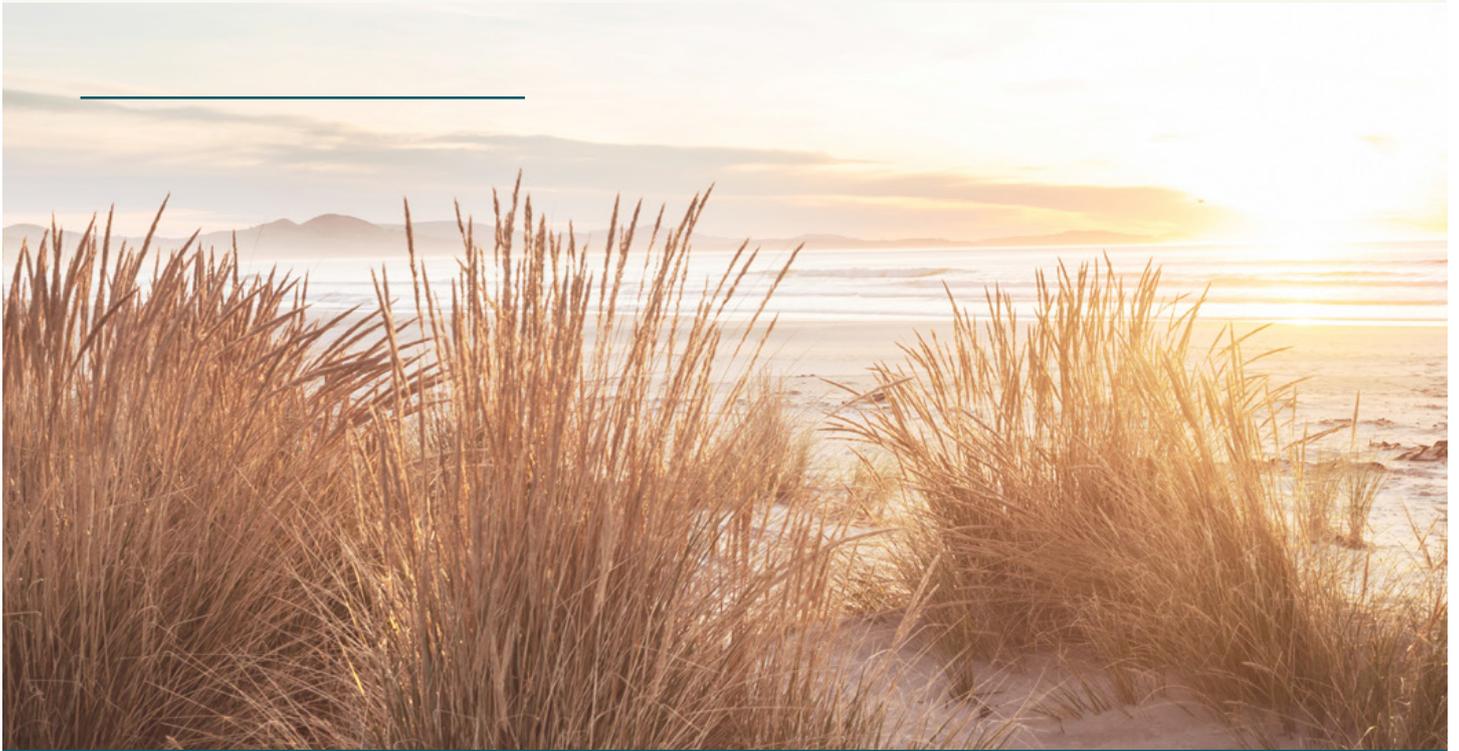
## Financial service providers

Any person providing financial services in New Zealand, or a reporting entity that provides financial services under the Anti Money Laundering and Countering Financing of Terrorism Act 2009, must be registered on the Financial Service Providers Register ("**FSPR**"). However, if the financial service provider ("**FSP**") is based offshore and has no place of business in New Zealand and only provides financial services to wholesale clients then, subject to certain exceptions, it will not be required to register. Additionally, if the FSP provides financial services to retail clients, it must also join an approved dispute resolution scheme. Being registered on the FSPR does not amount to an endorsement by the FMA or mean that the FSP is licensed or regulated in New Zealand.

The definition of FSP is very broad. An FSP is a person who provides or offers financial services, including financial advice services; managing other people's money; giving financial guarantees; offering financial products under the FMCA; acting as an issuer, supervisor or investment manager of any FMCA product; changing foreign currency, or providing forward foreign exchange contracts.

## 14.

## ESG and Climate Change



### Introduction

Like in many other jurisdictions, environmental, social and governance (“**ESG**”) issues are receiving increasing attention in New Zealand. While the term “**ESG**” can capture a wide range of matters (some of which are relevant to other sections of this guide), in this section we provide an overview of how New Zealand regulates matters relating to climate change and ESG reporting.

### Key Contacts

**Hannah Bain**

SPECIAL COUNSEL

hannah.bain@russellmcveagh.com

P +64 4 819 7865

**Hannah Wilson**

PARTNER

hannah.wilson@russellmcveagh.com

P +64 9 367 8311

## Overarching framework under the Climate Change Response Act 2002

The foundation of New Zealand's climate law is the Climate Change Response Act 2002 ("CCRA"), which sets out the overarching framework for the regulation of climate change in New Zealand.

The CCRA underwent substantial amendments in 2019, which saw New Zealand become one of the first countries in the world to legislate a domestic "net zero" target. This target is for New Zealand to reach net zero emissions of all greenhouse emissions other than biogenic methane by 2050.

New Zealand also has a separate biogenic methane target, which is to achieve a 10% reduction against 2017 levels by 2030 and a 14-24% reduction by 2050, with the latter target reduced in 2025 from the earlier target of 24-47% following a review of the target commenced by the current Government.

In addition to setting the domestic emissions reduction targets, the CCRA:

- sets out a framework for the setting of emissions budgets by the Government of the day and the preparation of national emissions reduction plans setting out the policies that will be implemented to achieve the emissions budgets;
- in relation to climate change adaptation, sets out a framework for the preparation of national climate change risk assessments and national adaptation plans; and
- establishes the Climate Change Commission, an independent Crown entity responsible for advising the Government on matters relating to climate change mitigation and adaptation and monitoring progress towards mitigation and adaptation goals.

## Emissions Trading Scheme

Introduced in 2008, the Emissions Trading Scheme ("ETS") is the primary policy tool for emissions reduction in New Zealand. The ETS is a market-based system that operates by charging emitters for the greenhouse gases they emit.

The ETS is generally referred to as applying to "all sectors" and "all gases", however, a notable exception is that agricultural emissions are not priced under the ETS. Provisions for the inclusion of agricultural activities in the ETS were originally intended to take effect from 2025 but were repealed before entering into force.

Organisations captured by the ETS (known as "participants") are required to acquire and surrender to the Government one "New Zealand Unit" ("NZU") for every tonne of carbon dioxide equivalent greenhouse gases emitted. NZUs can be acquired at quarterly auctions, on the secondary market, or in some cases through free allocation by the Government. In addition, participants can "earn" NZUs through removal activities, which most significantly includes afforestation. Please see [Chapter 10](#) for more information on how forestry assets can earn NZUs.

While the prior Government had signalled an intention to reform the ETS, including by considering whether the current like-for-like treatment of NZUs earned through forestry with other types of NZUs should continue, the current Government has largely reverted to the status quo. It has, however, made targeted amendments, including restricting registrations for whole farm conversions to exotic forestry and removing the requirement for ETS settings to align with New Zealand's nationally determined contributions under the Paris Agreement.

## Mandatory climate-related disclosures regime

New Zealand has introduced mandatory climate-related reporting under the Financial Markets Conduct Act 2013 ("FMCA") for certain large organisations, requiring them to report annually on their climate-related risks and opportunities for reporting periods commencing on or after 1 January 2023. The regime applies to large (determined by relevant thresholds) listed issuers, banks, insurers, building societies and credit unions. Managers of registered investment schemes are currently within scope of the regime, but are expected to be removed by legislation currently progressing through Parliament.

Entities captured by the regime, known as "climate-reporting entities" ("CREs") are required to prepare and lodge climate statements, in line with climate standards issued by the External Reporting Board ("XRB"). The ultimate aim of these standards is to support the allocation of capital towards activities that are consistent with a transition to a low-emissions, climate-resilient future and entities are required to report on matters relating to their climate-related governance, strategy, risk management, and metrics and targets.

While the XRB developed the climate standards broadly in line with the recommendations of the Taskforce on Climate-Related Financial Disclosures and with an eye on the development of other relevant international regimes, to date New Zealand has not adopted the IFRS Sustainability Disclosure Standards issued by the International Sustainability Standards Board (“ISSB”).

It remains to be seen whether the next few years will see a convergence with relevant international standards, however key developments to watch include:

- the legislative progress of proposals to raise the reporting threshold for listed issuers from \$60 million to \$1 billion, remove managers of registered managed investment schemes from the regime, and relieve directors of automatic liability for non-compliant disclosures; and
- potential future proposals to streamline reporting for entities that remain in scope, for example through mutual recognition of climate statements with Australia or further reforms to the Aotearoa New Zealand Climate Statements.

### Resource management system

The Resource Management Act 1991 (“RMA”) is an important aspect of New Zealand’s response to climate change. All persons exercising powers and functions in relation to physical and natural resources are required to have particular regard to the effects of climate change. The RMA also enables matters relating to climate change mitigation to be considered in the exercise of rule-making and consenting functions under the RMA. The Government has introduced two pieces of legislation to replace the RMA, which are expected to be enacted in 2026, with the new resource management system fully operational by 2029.

In 2024, Parliament’s Finance and Expenditure Select Committee undertook a cross-party inquiry into climate change adaptation, which recommended high-level principles for the design of a climate adaptation system for New Zealand. In 2025, the Government stated that it intends to introduce a Bill to Parliament to deal with climate change adaptation, although this is likely to be high level and will not resolve questions such as “who pays?”. The timing of any such Bill is currently unclear.

You can find more information about the RMA and the resource management system reforms in [Chapter 11](#).

### ESG reporting for listed companies

Companies with equity securities listed on New Zealand’s stock exchange (“NZX”) are required to follow the recommendations set out in the NZX Corporate Governance Code or explain why the relevant recommendation was not followed. The NZX Corporate Governance Code includes a recommendation that issuers provide annual non-financial disclosure, including in relation to ESG matters. The NZX has issued an ESG Guidance Note, which is designed to assist issuers to implement this recommendation. The ESG Guidance Note includes suggestions as to what issuers may want to report on, including the relevance of ESG factors to their business models and strategy, the ESG risks faced by the business and how they can identify, monitor and manage those risks. While the NZX Corporate Governance Code and ESG Guidance Note do not mandate a particular approach to ESG reporting, many New Zealand issuers adopt international frameworks such as Integrated Reporting and the Global Reporting Initiative.

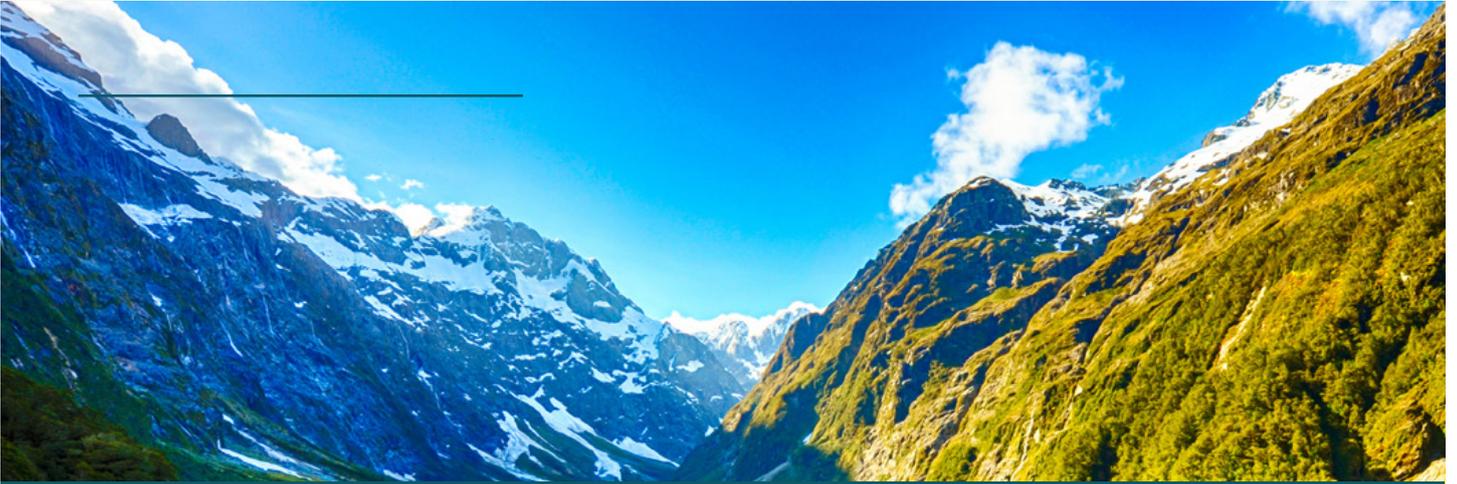
### Modern slavery reporting

Legislation has been introduced to Parliament that, if enacted, would require New Zealand entities and overseas companies carrying on business in New Zealand with consolidated annual revenue of \$100 million or more to prepare and publish an annual modern slavery statement. The statement would need to cover the entity’s structure, operations and supply chains, modern slavery risks and incidents, actions taken to prevent and address those risks (including complaints handling and remediation), how effectiveness is assessed, and any relevant training and consultation.

However, it is currently unclear whether and when this legislation will be passed, or what changes may be made to its proposals.

# 15.

## Competition Law



### Introduction

In New Zealand, the Commerce Act 1986 (“**Commerce Act**”) prohibits anti-competitive acquisitions, conduct and arrangements. The Commerce Act is administered by the New Zealand Commerce Commission (“**NZCC**”). 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 prison sentences, criminal fines, civil pecuniary penalties, damages, and/or injunctions.

### Key Contacts



**Bradley Aburn**

**PARTNER**

[bradley.aburn@russellmcveagh.com](mailto:bradley.aburn@russellmcveagh.com)

P + 64 9 367 8816



**Petra Carey**

**PARTNER**

[petra.carey@russellmcveagh.com](mailto:petra.carey@russellmcveagh.com)

P +64 9 367 8831



**Troy Pilkington**

**PARTNER**

[troy.pilkington@russellmcveagh.com](mailto:troy.pilkington@russellmcveagh.com)

P +64 9 367 8108

## Restrictive trade practices

Type of restrictive trade practice	Prohibited conduct	Penalties
Anti-competitive contracts, arrangements, understandings or covenants	Entering into or giving effect to arrangements, understandings or land covenants that have the purpose, effect, or likely effect of substantially lessening competition in a market.	For an individual, a maximum of \$500,000.  For a body corporate, the greater of: <ul style="list-style-type: none"> <li>• \$10 million; or</li> <li>• three times the commercial gain; or</li> <li>• 10% group turnover.<sup>1</sup></li> </ul>
Cartel contracts, arrangements, understandings or covenants	Contracts, arrangements, understandings, or land covenants containing "cartel provisions" (being provisions between two or more parties that fix prices, restrict output or allocate markets in relation to goods or services they supply or acquire in competition with each other) (a "cartel agreement").  Intentionally entering into or giving effect to a cartel agreement with a competitor is a criminal offence.  There is also a civil prohibition on cartel agreements (which does not require intentional conduct).	<b>Intentionally</b> entering into or giving effect to a cartel agreement is a criminal offence subject to: <p>a) <b>For an individual:</b></p> <ul style="list-style-type: none"> <li>• prison sentences of up to seven years; and/or</li> <li>• a criminal fine of up to \$500,000.</li> </ul> <p>b) <b>For body corporates, a criminal fine up to the greater of:</b></p> <ul style="list-style-type: none"> <li>• \$10 million;</li> <li>• three times the commercial gain; or</li> <li>• 10% group turnover.</li> </ul> <p>Individuals and body corporates can also be subject to the same civil pecuniary penalties as above even if conduct is not intentional.</p>
Misuse of market power	A firm with a substantial degree of market power engaging in any conduct that has the purpose, effect, or likely effect of substantially lessening competition in a market.	Individuals and body corporates are subject to the same pecuniary penalties as above.
Resale price maintenance	A supplier of goods requires, pressures or attempts to require a reseller to sell goods at or above a specified minimum price, whether directly or indirectly (for example, by threatening to withhold supply or penalising discounting).	Individuals and body corporates are subject to the same pecuniary penalties as above.

1. Under the Commerce Act, "turnover" means the total gross revenue received or receivable by a person (including all its interconnected bodies corporate) as a result of trading by that body corporate within New Zealand, during each accounting period in which the contravention occurred.

## Jurisdiction

The Commerce Act extends to international parties who engage in conduct outside New Zealand that affects a “market” in New Zealand so long as:

- the person is resident in, or carries on business in, New Zealand; or
- a person in New Zealand acts at their direction, and the conduct relates to New Zealand; or
- 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).

## Authorisation of restrictive trade practices

The Commission has the power to grant authorisation for all restrictive trade practices, where it considers the practice would result in a public benefit (such as economic efficiencies and non-economic benefits such as environmental, or health and safety) that outweigh the negative impacts on competition. The Commission also has the power to grant “provisional” authorisation (ie interim authorisation) for restrictive trade practices while its full authorisation decisions are pending.

## Exceptions to the cartel prohibition

There are some limited exceptions to the cartel prohibition, including for cartel agreements that occur in the context of:

- a “collaborative activity” between competitors (akin to a joint venture exception);
- vertical supply contracts; and
- a joint buying or promotion agreement between competitors, however this exception only applies to price fixing and no other forms of cartel conduct.

However, these exceptions are technical, and so reliance on them needs to be considered carefully.

The criminal regime has introduced a defence to criminal (but not civil) liability if the defendant reasonably believed that one of the specific exemptions to cartel liability applied. However, the defence will not apply if the defendant’s belief is based on “ignorance, or mistake, of any matter of law”. Therefore, to rely on the exception to criminal liability, it is necessary that an individual/business has considered the exceptions (the best evidence of this would be taking legal advice).

## Acquisitions of shares or assets of a business

### The prohibition

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:

- the merger removes a competitor that provided a competitive constraint, resulting in the ability for the merged firm to profitably increase prices (known as “unilateral effects”);
- the merger increases the potential for the merged firm and all or some of its remaining competitors to coordinate their behaviour so that output reduces and/or prices increase across the market (known as “coordinated effects”);
- the merged firm will acquire an unmatched portfolio of products that it can use to lessen competition in the market by bundling or tying products together across that portfolio, typically where the acquirer has a “must have” product in its portfolio (known as “conglomerate effects”); or
- the merged firm is obtaining an upstream or downstream business that it can use to lessen competition by cutting off access to inputs or customers from its competitors, typically where the acquirer has “market power” in one of those markets (known as “vertical effects”).

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### Overseas transactions

The prohibition can apply to mergers or acquisitions outside of New Zealand, where a merger or acquisition may affect a market in New Zealand irrespective of whether the parties themselves are a resident in, or carry on business in, New Zealand. Therefore, if an overseas business sells into New Zealand, and it is looking to acquire another entity in the same or a related industry that also sells in New Zealand, it is prudent to assess whether competition issues could arise under the Commerce Act.

### Acquisitions by an overseas entity in a New Zealand company

In certain circumstances, the NZCC can apply to the High Court for a declaration that an overseas acquisition has, or is likely to have the effect of, substantially lessening of competition in a market in New Zealand, where an “overseas person” acquires a “controlling interest” in a New Zealand undertaking. “Controlling interest” is defined as control of the board or 20% of the voting rights, issued shares or dividend entitlements. Following this declaration, the High Court could then order an undertaking to cease carrying on business in New Zealand, dispose of shares or assets, or take other action consistent with the purposes of the Commerce Act. At time of writing, the NZCC has not exercised this power.

### NZCC operates a “voluntary” notification regime

Unlike many other jurisdictions, there are no formal market share or revenue thresholds when the NZCC must be notified of an acquisition. Parties can (but are not obliged to) seek the NZCC’s clearance for a proposed acquisition. This puts the onus on the parties to self-assess whether a particular acquisition could potentially be regarded as having an adverse impact on competition. The NZCC has published market share indicators as an initial screen to identify acquisitions that are likely to warrant close consideration. These concentration indicators are where the combined entity will, post-acquisition, have:

- a market share over 40% in a non-concentrated market (ie where the three largest firms in the market post-acquisition have a combined market share of less than 70%);
- a market share over 20% in a concentrated market (ie where the three largest firms in the market post-acquisition have a combined market share of more than 70%).

The NZCC stresses that these indicators are only initial guides, and ultimately whether an acquisition gives rise to competition concerns will depend on the specific market dynamics.

If parties proceed with an acquisition without seeking the approval of the NZCC, and the NZCC considers that an acquisition could have an adverse impact on competition, the NZCC may choose to open an investigation, and it has a range of enforcement options at its disposal, including taking High Court proceedings to seek an injunction to prevent the acquisition occurring, pecuniary penalties, or divestment of assets. The maximum pecuniary penalty for individuals is \$500,000. On 5 May 2022, the maximum pecuniary penalty for anti-competitive mergers for businesses was increased to the greater of \$10 million, three times the commercial gain, or 10% of group turnover.

### Clearances/authorisations

A purchaser may seek formal clearance from the NZCC for an acquisition. Purchasers typically consider seeking formal clearance where an acquisition exceeds the concentration indicators, or where there are other factors that suggest potential material impacts on competition.

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 cannot be cleared retrospectively so clearance must be obtained prior to execution of a binding agreement that is not conditional on NZCC clearance.

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 (such as efficiencies, environmental, or health and safety benefits) that are sufficient to outweigh the competitive harm. This typically involves a more complex and lengthy process than a clearance application. Again, an authorisation cannot be sought retrospectively.

Once clearance or authorisation has been obtained, the transaction must be completed within 12 months for the immunity to be valid. If the transaction is not completed within this timeframe, the parties must apply again for clearance or authorisation, or alternatively bear the risk of NZCC scrutiny.

#### Due diligence

Where a purchaser and target are 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.

#### Review of the Commerce Act

On 16 September 2025, the Government announced wide-ranging reforms to the Commerce Act.

The Commerce (Promoting Competition and Other Matters) Amendment Bill, which has been introduced to Parliament, proposes a number of key reforms, including:

- an expanded definition of “substantial lessening of competition” (capturing conduct that creates, strengthens, or entrenches market power);
- enhanced powers for the NZCC to address “creeping” and non-notified acquisitions;
- limited scope for behavioural undertakings in merger cases;
- changes to the misuse of market power regime (including objective tests for predatory pricing); and
- new or streamlined mechanisms for approving certain collaborative conduct.

The Ministry of Business Innovation and Employment (“MBIE”) has indicated the Bill is expected to pass by mid 2026, with the reforms in force by the end of 2026. The Bill represents some of the most significant changes to the Commerce Act in decades and has potentially far-reaching implications for mergers and acquisitions, competitive conduct and collaboration between competitors.

***“Breadth of top clients means they can provide those clients with insights derived from dealing with the latest competition law issues to come before regulators and the Courts. Russell McVeagh provide excellent client service built on this position in the market.”***

Competition law client feedback,  
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# 16.

## Consumer and Privacy Law



### Privacy Act 2020

New Zealand's privacy laws are largely addressed by the Privacy Act 2020 ("Privacy Act"), which came into force on 1 December 2020. Businesses are required to comply with the Privacy Act if they collect, use, share or store personal information of customers, employees or any other persons. "Personal information" means any information about an identifiable individual.

### Key Contacts



**Joe Edwards**

**PARTNER**

joe.edwards@russellmcveagh.com

P +64 9 367 8172



**Liz Blythe**

**PARTNER**

liz.blythe@russellmcveagh.com

P +64 9 367 8145



**Brigette Shone**

**SPECIAL COUNSEL**

brigette.shone@russellmcveagh.com

P +64 9 367 8892

***“Russell McVeagh always provide trusted legal advice coupled with pragmatic commercial solutions that understand the markets we work in.”***

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#### Key changes introduced by the Privacy Act include:

- extraterritorial application to overseas agencies carrying on business in New Zealand;
- a mandatory breach notification system where businesses are required to report privacy breaches that are likely to, or do, cause serious harm;
- compliance notices from the Privacy Commissioner requiring businesses to take specified steps in relation to privacy breaches;
- sharing of personal information overseas is generally permitted only where businesses have ensured comparable privacy safeguards apply or obtained express authorisation from individuals after advising that comparable privacy safeguards do not apply;
- offences prohibiting impersonating individuals to obtain their information and destroying requested documents;
- requirements for notifications and authorisations where personal information is collected indirectly; and
- maximum fines for an offence to \$10,000.

New Zealand's privacy regime remains less prescriptive and onerous than laws such as the GDPR.

## Consumer Law

### Fair Trading Act 1986

The Fair Trading Act 1986 is consumer protection legislation and contains broad provisions prohibiting conduct and representations that are likely to mislead or deceive consumers and requires all representations to be substantiated (except for puffery). It also prohibits unconscionable conduct. It is only possible for businesses to contract out of this Act in limited circumstances, namely where both of the parties are “in trade” and it is fair and reasonable to do so.

Civil and criminal action can be taken under the Fair Trading Act. It is enforced by the NZCC.

The Fair Trading Act also prohibits unfair contract terms in standard form consumer contracts and “small trade contracts” (being where the contract does not comprise or form part of a trading relationship that exceeds an annual value threshold of \$250,000 (including GST, if applicable) when the trading relationship first arises).

### Consumer Guarantees Act 1993

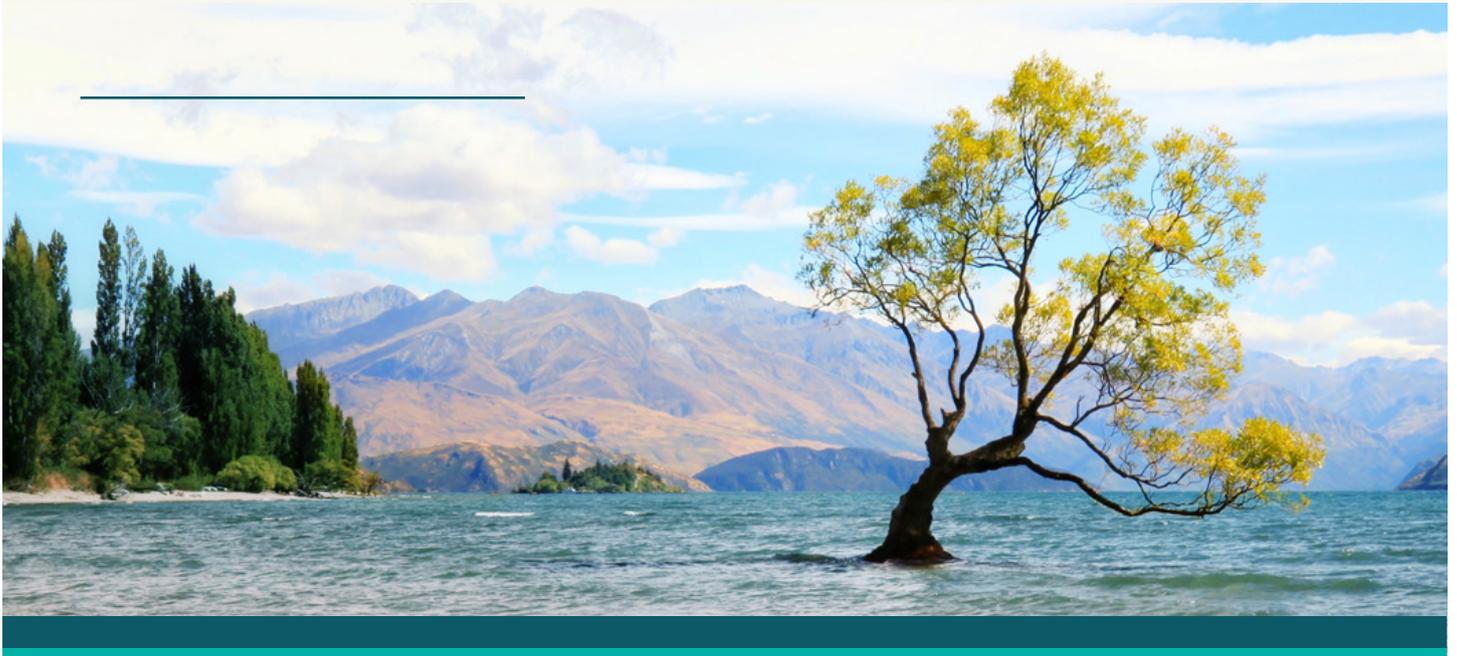
The Consumer Guarantees Act 1993 is also consumer protection legislation and it contains a number of obligations on both suppliers and manufacturers in relation to goods or services which are ordinarily purchased for personal or household use. The Consumer Guarantees Act sets out a number of statutory “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).

***“The Russell McVeagh technology team is outstanding. The quality of their work is consistently excellent.”***

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## 17.

# Employment



## Introduction

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 employment related legislation and requires all parties to employment relationships (including employees, employers and unions) to deal with each other in good faith.

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.

## Key Contacts

**Emma Peterson**

PARTNER

emma.peterson@russellmcveagh.com

P +64 9 367 8354

**Maddy Lister**

SENIOR ASSOCIATE

maddy.lister@russellmcveagh.com

P +64 9 367 8193

## Asset purchase

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 (with an exception, discussed below). Employment with the vendor company can be terminated on the grounds of redundancy and new offers of employment must be made by the purchaser to those employees it wants to employ. Any entitlements triggered by termination of employment will be payable by the vendor to employees unless agreed otherwise. This includes accrued holidays and any contractual entitlement to redundancy compensation.

There is no statutory right to redundancy compensation in New Zealand.

Employers who contractually offer redundancy compensation often include in employment agreements a “technical redundancy clause” which provides that the employer 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 (often expressed as on “substantially similar” or “no less favourable” terms and conditions). Employees who are offered employment on such terms but decline the offer are then not entitled to redundancy compensation.

There are special statutory protections for specified categories of employees (called “vulnerable employees”). These employees primarily work in cleaning, food catering and security 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 such 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 such a transferring employee, it is able to make them redundant post-transaction. A vendor must disclose information about the number of, and costs associated with, vulnerable employees to a purchaser.

## Share purchase

In a share purchase situation, the employing entity remains the same, so employment relationships continue. If, following such an acquisition, the purchaser wishes to vary employees’ terms of employment, this can only be achieved with each employee’s consent. However, 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 requires consultation with employees before any decision is made which may affect the continuity of their employment.

## Accident Compensation Scheme

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).

If the injury falls within the scope of “personal injury” it is likely covered by the ACC regime. 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.

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

An employer’s main financial obligations are the payment of levies in respect of every employee 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.

Both employers and employees (including the self-employed) are required to pay levies to fund ACC. An employer’s levy is determined by its total payroll and the industry it is in. An employee’s levy is 1.67% of total earnings until 31 March 2026, and 1.75% from 1 April 2026 – 31 March 2027 (inclusive of GST). It is deducted by an employer with income tax (PAYE).

Where eligible, 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. The effect of entry into the scheme is that the employer self-funds ACC for its organisation.

## Health and safety

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 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, so far as is reasonably practicable, that 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 recklessly exposed a worker to harm being \$3 million. Directors and other officers are also subject to individual due diligence obligations and potential criminal liability for breach, including fines and imprisonment.

*“From complex restructures and industrial relations to sensitive workplace investigations and high-stakes litigation, the team at Russell McVeagh bring a wealth of experience and insight.”*

Employment law client feedback,  
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## 18.

# Dispute Resolution



## Introduction

Disputes in New Zealand are typically resolved through the court system or an alternative dispute resolution process such as mediation or arbitration.

*“The Russell McVeagh team feel like they truly partner with their clients to achieve outcomes consistent with the clients’ overall business strategy and goals”*

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## Key Contacts



**Kirsten Massey**

**PARTNER**

kirsten.massey@russellmcveagh.com  
P +64 9 367 8893



**Chris Curran**

**PARTNER**

chris.curran@russellmcveagh.com  
P +64 4 819 7507



**Will Irving**

**PARTNER**

will.irving@russellmcveagh.com  
P +64 9 367 8252



**Nathaniel Walker**

**PARTNER**

nathaniel.walker@russellmcveagh.com  
P +64 4 819 7858



**Jeremy Upson**

**PARTNER**

jeremy.upson@russellmcveagh.com  
P +64 4 819 7501



**Marika Eastwick-Field**

**PARTNER**

marika.eastwick-field@russellmcveagh.com  
P +64 9 367 8838

## Court system

There are four main levels in the New Zealand court system. The courts with generalist jurisdiction, including in relation to most commercial matters, are:

- Te Kōti ā Rohe | the District Court. The District Court has jurisdiction to hear disputes with a value of up to \$350,000. A single judge sitting alone generally hears a proceeding in the District Court.
- Te Kōti Matua | the High Court. It is the highest court in which proceedings can be initiated. The High Court has general jurisdiction to hear civil disputes, including those with value over \$350,000. It also hears applications for judicial review of decisions by public decision-makers, and appeals from decisions of the District Court and other specialist courts and tribunals below it. A single judge sitting alone generally hears a proceeding in the High Court.
- Te Kōti Pira | the Court of Appeal. The Court of Appeal has jurisdiction to hear appeals from the High Court. A panel of three judges generally hears an appeal in the Court of Appeal.
- Te Kōti Mana Nui | the Supreme Court. The Supreme Court is New Zealand's highest and final court. It has jurisdiction to hear and determine any case on which it grants leave, generally on appeal from the Court of Appeal. For leave to be granted, the judges must be satisfied that it is necessary in the interests of justice for the court to hear and determine the appeal. A panel of five judges generally hears an appeal in the Supreme Court.

There is a variety of specialist courts and tribunals at the equivalent of the District Court or High Court level or below. Two of those more frequently encountered in commercial matters are the Environment Court and the Employment Court.

Generally, there is a single right of appeal from the decision of any New Zealand court or tribunal and any further appeal requires leave, though this varies depending on the court and the nature of the proceeding.

## Enforcement of foreign judgments

There are four formal methods of enforcing foreign judgments in New Zealand. The country in which the judgment was obtained, the date of the judgment, and the subject matter will determine which regime will apply:

- Judgments obtained in an Australian court may be enforced under the Trans-Tasman Proceedings Act 2010. This Act applies to all Australian judgments, except those relating to specifically excluded matters, and allows for streamlined enforcement in New Zealand as if the judgments had been obtained from a New Zealand court.
- Money judgments obtained in Commonwealth courts may be enforced under the Senior Courts Act 2016. This Act provides for money judgments to be registered with the New Zealand High Court and become enforceable as if obtained from a New Zealand court, subject to certain criteria.
- Foreign judgments from non-Commonwealth countries with which New Zealand has a reciprocal agreement may be enforced under the Reciprocal Enforcement of Judgments Act 1934. The countries to which this Act applies are set out within the Act and subsequent Orders in Council. The Act provides for money and non-money judgments to be registered in the New Zealand High Court and become enforceable as if obtained from a New Zealand court, subject to certain criteria.
- Judgments from countries with which New Zealand has no reciprocal agreement for enforcement (notably China, Russia, and the USA) may be enforced under the common law. This will require proceedings based on the foreign judgment to be issued in a New Zealand court. After obtaining a judgment that is enforceable in New Zealand, it is open to a judgment creditor to pursue any of the available enforcement options.

The enforcement of a New Zealand judgment outside New Zealand is subject to the law of the jurisdiction in which the judgment is sought to be enforced.

## Alternative dispute resolution

Disputes are often resolved through alternative (ie non-court) processes in New Zealand. Mediation and arbitration are the most common alternative dispute resolution mechanisms in New Zealand.

### Mediation

An independent and impartial mediator facilitates negotiation between the parties to explore whether the parties can find a mutually acceptable solution. The mediator remains neutral and cannot impose an outcome on the parties. If the parties are unable to reach agreement on how to resolve the issue, the matter remains unresolved. If the parties agree, their agreement may be recorded in writing by way of a binding and enforceable settlement agreement.

### Arbitration

An independent and impartial arbitrator hears the dispute and makes a binding award which can be enforced through the courts. The Arbitration Act 1996 governs arbitral proceedings in New Zealand. It is modelled on the UNCITRAL Model Law on International Commercial Arbitration. Unlike (generally) the Court process, the arbitration process is confidential. The High Court has jurisdiction to hear appeals against, or to set aside, arbitral awards in limited circumstances.

New Zealand is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**"). A valid arbitral award made in New Zealand can be enforced in any country which has also ratified the New York Convention, and vice versa.

***"They are excellent litigation strategists with superb attention to detail."***

Dispute Resolution client feedback,  
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## 19.

## Restructuring and Insolvency



### Introduction

New Zealand has long been regarded a creditor-friendly jurisdiction. New Zealand's varied corporate restructuring and insolvency toolkit includes a number of debtor-in-possession, court and insolvency procedures that can be used by debtors or creditors to restructure a business and/or maximise the return to stakeholders. These procedures are complemented by a strong rule of law and a licensed insolvency practitioner regime.

### Key Contacts

**Matt Kersey**

PARTNER

matt.kersey@russellmcveagh.com

P +64 9 367 8124

**Alex MacDuff**

PARTNER

alex.macduff@russellmcveagh.com

P +64 9 367 8231

## Informal options for debt restructuring

There are a range of informal techniques available to implement a debt restructuring which seeks to address the distress of a particular business. These can be employed separately, in combination with each other, or in combination with one or more of the insolvency processes outlined below. They include:

- rescheduling debts and amending other key terms of finance documentation;
- granting waivers of breaches of finance documents and/or agreeing a period of forbearance or standstill;
- debt trading or similar arrangements such as sub-participation;
- distressed M&A;
- structured or pre-pack business or asset sales (noting that New Zealand has no regulatory framework for pre-packs, unlike SIP 16 in the United Kingdom); and
- debt for equity transactions and credit bidding.

Directors of companies must also be aware that several specific duties apply when a company is facing financial difficulties. While New Zealand has no formal “safe harbour” for directors, they have time to take professional advice and explore realistic options that are available for a company. The duties of particular relevance near insolvency, which differ from those in some comparable jurisdictions, are that:

- directors must not cause or allow the business of the company to be carried on in a manner likely to create substantial risk of serious loss to its creditors; and
- directors cannot agree to the company incurring a new obligation unless they believe on reasonable grounds that the company will be able to perform the obligation when required.

Unlike some other countries, there are no restrictions on enforcing contractual provisions which provide for the termination of a contract on the insolvency of a party (“*ipso facto*” clauses). Depending on the terms of the contract, a carefully devised restructuring can avoid triggering such provisions.

## Receivership

Receivers are most often appointed to secured property under a security agreement. This security agreement will include the grant of security over all or part of the assets of the grantor and, commonly, will provide that a receiver can be appointed to those secured assets on default. Although receivers can also be appointed by the High Court pursuant to its inherent jurisdiction (and on its terms), this is rare in New Zealand and is typically only used where assets are at risk.

The receiver’s primary function is usually to manage and realise the secured assets (as agent for the grantor) for the benefit and in the repayment of the secured creditor. The receiver’s powers derive from the default powers in the Receiverships Act 1993 and the security agreement under which they are appointed. These powers will commonly include an ability to do anything that the grantor could do regarding the secured assets (and the receivers have associated duties). A receivership generally ends when secured assets are realised or the security is otherwise redeemed through repayment in full. Unless it is in liquidation or voluntary administration, the company will then return to the control of its directors.

## Voluntary administration

Voluntary administration is an alternative process to an immediate liquidation where there is a prospect of preserving, and implementing the recovery of, the going concern of the debtor company. Administrators can be appointed by the company’s board, a creditor with security over all or substantially all of the assets of the company, or a liquidator. An administrator can also be appointed by application to the High Court (including by a creditor) if it is just and equitable to do so, or if the company is or may be insolvent and administration is likely to result in a better return than liquidation. The administration process is subject to the supervision of the High Court.

Administration results in an immediate statutory moratorium preventing enforcement action or the taking of possession of property in the possession of the company, with limited exceptions. Creditors ultimately vote on whether the company should be liquidated or a deed of company arrangement (“DOCA”) should be entered into. If neither of those outcomes receive the approval of 50% in number of voting creditors representing at least 75% of the value of voted debt, the company will be returned to its directors. A DOCA is a flexible tool to facilitate a debt restructuring which binds all affected creditors. Typically, the terms of the DOCA must deliver a better outcome for creditors than an immediate liquidation.

### Creditors’ compromise

A debtor company seeking to restructure its debts may make a proposal to its creditors in accordance with the procedure set out in Part 14 of the Companies Act 1993. This debtor-in-possession process culminates in a meeting of notified creditors who vote on the debtor company’s proposal, which may include a rescheduling of indebtedness and/or a compromise of claims. If approved by the same thresholds as for voluntary administration, all notified creditors will be bound by the compromise. While there is no automatic moratorium on creditor action when a proposal is issued to creditors, the High Court has jurisdiction to establish a moratorium on the terms it thinks appropriate.

### Schemes of arrangement

Debt restructurings can be implemented by scheme of arrangement, which follow the same procedure as schemes of arrangement in Australia and the United Kingdom. Whilst shareholders’ (members’) schemes are commonly used to implement complex corporate transactions, they have been rarely used in New Zealand to implement compromises between creditors. Creditors are split into classes based on their legal rights against the company, and the scheme will be effective if:

- in respect of each class of creditors (if there is more than one), the scheme is approved by more than 50% in number of creditors representing at least 75% of the value of debt of those creditors voting in that class; and
- the High Court sanctions the scheme.

### Liquidation

Liquidation is the process by which the assets of a company are realised and their proceeds distributed to creditors in accordance with the statutory priority under the Companies Act 1993. For that reason, it almost always results in the deregistration of the company at the end of the liquidation. Liquidators can be appointed to a body corporate (including companies and limited partnerships) by shareholders (by special resolution), the company (on the occurrence of an event in the constitution), or by various stakeholders (including the company, a director and creditors) by application to the High Court. As with voluntary administration and creditors’ compromises, the High Court has a supervisory jurisdiction in respect of liquidations. Pending the appointment of liquidators, it is possible for interim liquidators to be appointed to a company if the court is satisfied that it is necessary or expedient for the purpose of maintaining the value of assets owned or managed by the company (with powers limited to that purpose).

Liquidation culminates in the liquidators making a distribution to unsecured creditors on a (largely) rateable *pari passu* basis, after paying the liquidators’ costs and expenses and the claims of secured creditors. Some classes of creditors (for example, employees and the Commissioner of Inland Revenue), have limited preferential status over other creditors.

## Statutory management

Statutory management is a unique Crown power in New Zealand's restructuring and insolvency landscape which has come into recent spotlight with the Crown's use of the power in 2024 over a high-profile property development group. The power arises under various legislation, including the Overseas Investment Act 2005.

Statutory management is an option of last resort which is used infrequently in complex insolvencies where a company / group of companies is, or may be:

- operating fraudulently or recklessly, and
- it is desirable that statutory managers be appointed to limit the risk of further deterioration in the financial position of the company, to limit or prevent fraudulent activity being carried out and/or to enable the affairs of the company to be dealt with in a more orderly or expeditious way.

Moratorium provisions freeze the company's position allowing the statutory manager to deal with a company's assets instead, including by restricting a secured creditor's ability to enforce its security over those assets.

## Cross-border insolvencies

New Zealand has incorporated the UNCITRAL Model Law on Cross-Border Insolvency into domestic legislation under the Insolvency (Cross-border) Act 2006 ("**ICBA**"), largely without amendment. The ICBA facilitates the local recognition of foreign insolvency proceedings. This supplements the pre-existing principle of comity which is based on private international law and has been developed by the common law. Relief for foreign insolvency proceedings differ depending on whether the proceedings were commenced in the country where the company has its centre of main interests (which results in automatic relief, such as a stay on execution and proceedings) or a country where it has an establishment, conducting non-transitory economic activity (where relief is discretionary).

Further, a foreign court with jurisdiction over an insolvency proceeding may request the aid of the High Court under the ICBA. There is also provision in the ICBA for the High Court to co-operate with foreign courts or foreign representatives either directly or through an insolvency administrator.

Finally, the High Court has jurisdiction to place a company incorporated outside of New Zealand into liquidation. This power is discretionary, but typically requires connection with New Zealand.

***"Russell McVeagh is a highly impressive team. It has astute commercial operators who are able to think outside the box to provide solutions that work for all parties."***

Restructuring and Insolvency client feedback,  
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# Russell McVeagh

## Auckland

Level 30, Vero Centre, 48 Shortland Street  
PO Box 8, Auckland 1140, New Zealand, DX CX10085  
Ph +64 9 367 8000 F +64 9 367 8163

## Wellington

Level 24, NTT Tower, 157 Lambton Quay  
PO Box 10-214, Wellington 6011, New Zealand, DX SX11189  
Ph +64 4 499 9555 F +64 4 499 9556

## Queenstown

The Mountaineer, Level 1, 32 Rees St  
Queenstown, New Zealand  
Ph +64 3 477 8863 F +64 3 477 7558

[russellmcveagh.com](http://russellmcveagh.com)

