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Investing in Aotearoa New Zealand

February 2024

Contents

Introduction
About Simpson Grierson

01.
Introduction to Aotearoa New Zealand

02.
Overseas investment regulation

03.
Mergers & acquisitions

04.
Competition and antitrust

05.
International trade

06.
Financial services regulation

07.
Structuring a business

08.
Buying, selling and leasing property

09.
Use and development of property

10.
Fund raising and capital markets

11.
Contract law and consumer protection

12.
Data privacy

13.
Workplace relations

14.
Intellectual property

15.
Tax

16.
Insolvency

17.
Climate change law and policy

18.
Doing business with Māori organisations

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This guide introduces you to New Zealand's business and trading environment, with a particular focus on legal and regulatory matters intended to assist with initial enquiries about investing in New Zealand. It is updated regularly.

The information in this guide is necessarily general, and should not be relied upon as a basis for making business decisions. Your business needs and specific circumstances must be considered, and government policy, market conditions and relevant laws may have changed since the guide was last updated.

Josh Cairns
Banking & Finance
DD +64 4 924 3409
M +64 21 828 158
josh.cairns@simpsongrierson.com

Andrew Matthews
Corporate & Commercial
DD +64 9 977 5402
M +64 21 420 072
andrew.matthews@simpsongrierson.com

Tara Wylie
Real Estate
DD +64 9 977 5291
M +64 21 774 153
tara.wylie@simpsongrierson.com

Barney Cumberland
Tax
DD +64 9 977 5155
M +64 21 497 462
barney.cumberland@simpsongrierson.com

About Simpson Grierson

Simpson Grierson is one of New Zealand's leading full service commercial law firms. We have three offices, in Auckland, Wellington and Christchurch.

We have extensive experience in helping offshore investors with New Zealand investment projects. We help 'end to end' – from evaluating an investment opportunity, assisting with the acquisition process and integration issues, through to navigating operational issues that arise day to day. Ultimately, we will help you maximise the value of your investment.

We have acted on some of the largest offshore investments made in New Zealand recently (read more here). We deal regularly with the Overseas Investment Office and other regulatory bodies commonly involved in investment transactions in New Zealand. We have excellent long-standing relationships with New Zealand's leading corporate finance and accountancy firms, investment banks and other advisors.

We have specialist expertise in New Zealand's planning and resource management consenting process, employee relations laws, intellectual property matters, financial services regulation and licensing requirements.

We also have excellent international connections. We are New Zealand's only member of Lex Mundi, the world's leading association of independent law firms. Our partners include members of the International Bar Association and the Inter-Pacific Bar Association.

Please get in touch if we can assist you. We would be delighted to talk to you.

> *A top tier corporate practice, Simpson Grierson is able to pull together a very strong legal team with expertise in all areas, such as IPOs, M&A, private equity and corporate restructuring. It also maintains a strong inbound investment practice, advising both offshore PE funds (principally UK, US and Australian) and MNCs who are seeking to invest in New Zealand's industries.*
>
> **Legal 500, 2022**

> *Simpson Grierson's strong practice handles the full range of corporate matters on behalf of leading international and domestic companies. Home to a substantial offering of IPO, M&A, private equity and corporate restructuring knowledge, with experience in high-profile transactions across a wide range of industries. Often instructed by prominent funds, private equity firms and international corporates on inbound investment into New Zealand.*
>
> **Chambers and Partners, 2022**

> *One client describes the Simpson Grierson team as one that "goes beyond the legal advisory role to play a more business partnership role and offer strategic advice". The client goes on to say they value its "pragmatic approach to tackling and resolving issues" and provision of "plain, concise advice rather than long-winded legalese."*
>
> **Chambers and Partners, 2022**

> *Another client, having noted that the team is very good, continues: "They explain the legal issues and concepts very well and also the potential traps and pitfalls - all in layman's terms. They are clearly very experienced in this area and knew what the hurdles would be before they appeared."*
>
> **Chambers and Partners, 2022**

Section 1 Introduction to Aotearoa New Zealand

Geography

Aotearoa New Zealand (**New Zealand**) is a Pacific archipelago, made up of two main islands (the North and South Islands), Stewart Island (at the bottom of the South Island), and many smaller islands.

The main centres are Auckland, Hamilton, Tauranga and Wellington in the North Island, and Christchurch and Dunedin in the South Island. Most of New Zealand's residents live in these main centres. Outside the main centres, the country is sparsely populated.

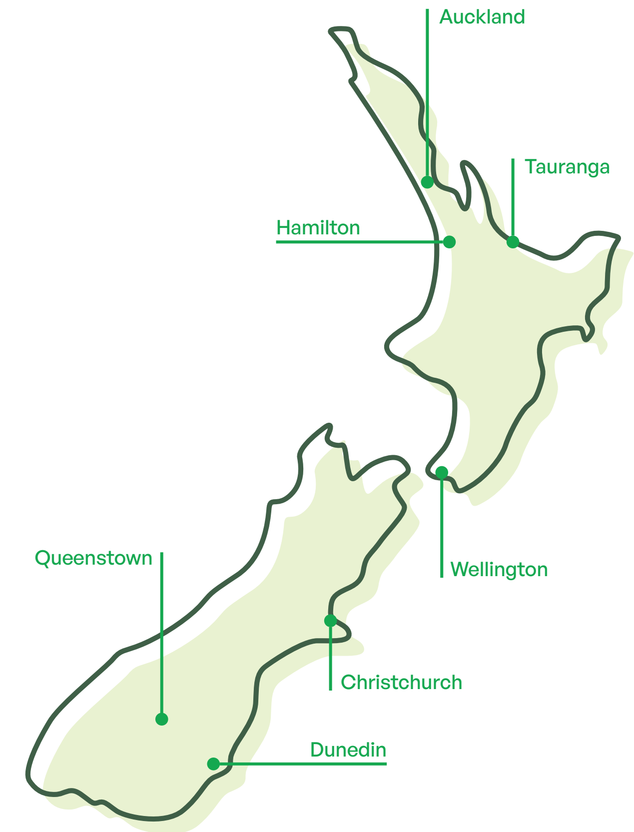
New Zealand has a temperate climate. The warmest summer months are typically January to March. New Zealand's time zone is GMT +12 hours.

Population and culture

New Zealand has a population of around 5 million, and is a culturally diverse nation. Traditionally, New Zealand culture has reflected a blend of New Zealand-European (descended from predominantly British settlers arriving from the 1800s onwards) and Māori – New Zealand's indigenous people. New Zealand is also home to large Pasifika, Chinese, Indian, English, South African and Korean communities. Nearly one third of the population was born overseas.

The official languages are English, Te Reo Māori (the Māori language) and New Zealand Sign Language. English is the principal spoken language. Te Reo Māori is spoken regularly in some local communities and has recently experienced a resurgence.

New Zealand has a culture of innovation and New Zealanders are famous for having a 'can-do' attitude. 90% of the population are active internet users. New Zealanders generally enjoy a high standard of living.



Business landscape

New Zealand is regarded as having one of the lowest levels of corruption in the world. The country is consistently ranked highly for this and was second equal in the Corruption Perceptions Index published in 2022.

Auckland, Wellington and Christchurch are the main centres of business. Auckland – home to around 35% of the country's population – is the largest regional economy, generating nearly 38% of New Zealand's GDP. Wellington is the seat of government, and where the New Zealand Stock Exchange and government sector organisations are based. Christchurch is the South Island's main business hub, with a strong focus on agriculture and primary industries.

Tourism is traditionally New Zealand's biggest export industry, representing about 3% of GDP. Agricultural exports account for approximately 5% of GDP. New Zealand has a thriving innovation and investment community, particularly focused on agri-tech and bio-tech products and services.

New Zealand is a signatory to the Paris Agreement, and steps have been taken towards prompting or requiring businesses to reduce carbon emissions and otherwise adapt to the challenges presented by climate change (discussed more in Section 17).

International trade

New Zealand's main trading partners are China, Australia, the EU, the United States and Japan.

New Zealand is a strong proponent of free trade. It has bilateral trade agreements with Australia, China, Hong Kong, UK, Malaysia, Singapore, South Korea, Taiwan and Thailand. It is also party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CPTPP**) with, among others, Brunei, Canada, Japan, Malaysia, Mexico and Singapore.

New Zealand is currently negotiating a number of new free trade agreements, including with India, and the Latin American regional group made up of Chile, Colombia, Mexico and Peru. A free trade agreement with the EU has been concluded but is not yet in force.

Monetary policy

The New Zealand dollar is the unit of currency, freely floating against all major currencies.

The Reserve Bank of New Zealand is the central bank and controls monetary policy. Under current policy, the Reserve Bank's mandate is to maintain price stability by keeping inflation between 1% and 3%. New Zealand's Official Cash Rate is currently at 5.5%.

There are no restrictions on the flow of capital or earnings of a New Zealand business to overseas investors. Profits, dividends, interest, royalties and management fees can be moved freely into or out of New Zealand, although some payments to other jurisdictions may be subject to non-resident withholding tax and sanctions.

Government

New Zealand is a "Westminster style" parliamentary democracy, and constitutional monarchy (similar to the UK). The government is led by the Prime Minister. New Zealand governments are generally centrist, leaning either slightly left or slightly right. General elections are held every three years.

New Zealand has a unitary system of government. This means that while there is a division of power between central and local governments, local government bodies derive their powers from the central government.

Local government consists of democratically elected regional councils and territorial authorities, who are primarily responsible for planning and environmental management, local public services and local transport.

New Zealand provides state access to education, health services and social welfare. These services, as well as the justice system and national transport infrastructure, are all centrally managed.

Legal system and courts

The legal system is based on the English 'common law' system, and many New Zealand laws are based on English or Australian law.

New Zealand's hierarchical court system is made up of the Supreme Court (the country's highest court), the Court of Appeal, the High Court, and various subordinate courts and tribunals. Judges and judicial officers are appointed non-politically and under strict rules to maintain judicial independence.

Although New Zealand has a statutory Bill of Rights, this does not have constitutional superiority over other statutes, and no court has power to overrule statute.

A unique feature of New Zealand's legal system is the "no fault" accident compensation scheme. Under this scheme, plaintiffs cannot sue for losses arising from personal injury in New Zealand (except in very rare cases). The scheme covers treatment costs for all personal accidental injuries suffered in New Zealand, whether work-related or otherwise, and including injuries suffered by non-residents.

Section 2
Overseas investment regulation

We urge every foreign investor to seek specialised advice before taking any active steps towards an investment in New Zealand.

Overseas investments in "sensitive" assets must have consent

The basic rule is that an **"overseas person"** seeking to acquire either **"sensitive land"** or **"significant business assets"** must have consent from the Overseas Investment Office (**OIO**) before the investment in question can proceed.

- The consent process requires the investor to submit a detailed application, in a prescribed form. The overseas person must demonstrate that they have the relevant business experience, are financially committed and of good character. If the application concerns sensitive land, the applicant must also demonstrate that the investment will bring a net benefit to New Zealand.
- The applicant must pay a filing fee. Filing fees range between NZ$33,800 and NZ$146,200 depending on the transaction.
- The processing time for an application depends on the nature of the application, taking at least one month for business asset transactions and at least three months for most land transactions.
- Consents are given subject to certain conditions, which the applicant must ensure are met. A common condition is that the investor continues to be of good character.
- Penalties for non-compliance include fines of up to NZ$10 million for businesses and NZ$500,000 for individuals for proceeding with an overseas investment without obtaining the required consent. In cases of serious non-compliance, the OIO is able to seek court orders requiring an investor to dispose of assets.

Transactions contrary to the national interest

Consent to a transaction is not likely to be given where it is decided that the transaction is contrary to the national interest.

The test is largely discretionary but certain factors are deemed relevant when the OIO exercises its discretion. This includes whether the target is a "strategically important business", or if the investor is owned or controlled by a foreign government. Strategically Important Businesses (**SIB**) include businesses involved in ports or airports, power generation, water infrastructure, telecommunications, financial market infrastructure, or media businesses with a significant impact.

Call-in power

Even where a transaction does not require consent, if it is an "overseas investment in Strategically Important Business assets" the relevant government minister can review the transaction, apply conditions, and even prohibit or insist the transaction be unwound.

An overseas investment in SIB assets is the acquisition by an overseas person of:

- any securities in a person who is directly or indirectly carrying on a SIB (noting that there are specific rules for media business and listed issuers); or
- property in New Zealand used in carrying on a SIB.

In most circumstances, an "overseas investment in SIB assets" may be notified to the relevant government minister in advance, to seek a pre-approval, which would grant a "safe harbour" from later government intervention. Where the acquisition relates to military or "dual use" technology or is of an entity which has been named as a "critical direct supplier", the transaction must be notified.

Key terms

The tests for whether a particular investment requires consent are complex. An outline of key terms is below, but there is more detail that is relevant. Exemptions apply in some cases.

Overseas Persons

- a natural person who is not a New Zealand citizen or ordinarily resident in New Zealand
- a body corporate incorporated outside New Zealand
- a New Zealand body corporate that is more than 25% owned by an overseas body corporate
- a body corporate that is more than 25% owned or controlled by an overseas person (or persons)
- unincorporated bodies (including partnerships, JVs, trusts and unit trusts) where certain (equivalent) overseas ownership or control thresholds are exceeded.

Associates of overseas persons are also captured.

Sensitive Land
Includes freehold land, a leashold interest in residential land of three years or more, a profit, a prendre (including a forestry right) or leasehold interest in non-residential land of 10 years or more (including rights of renewal) in land that:

- is non-urban land (including rural or farm land) with an area of more than 5 hectares
- is on certain islands
- includes or adjoins marine and coastal areas or lakes, national or regional, parks, conservation areas, areas of historic significance or wahi tapu
- residential land, being property categorised as "residential" or "lifestyle" under the relevant district roll.

Acquisition of 25% or more in an entity that holds an interest in sensitive land is also considered an acquisition of sensitive land, and requires consent.

Significant Business Assets

- acquiring more than a 25% stake (or increasing an existing 25% or more stake) in a New Zealand business or assets for consideration exceeding NZ$100m
- acquiring more than a 25% stake (or increasing an existing 25% or more stake) in any body corporate that has NZ assets valued at more than NZ$100m within its corporate group (including all entities in which a 25% or more stake is held)
- acquiring any property (including intangible assets) for more than NZ$100m
- establishing a business in New Zealand where the expenditure expected to be incurred exceeds NZ$100m.

The NZ$100m threshold is increased for some investors:

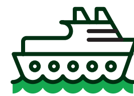
- NZ$560m for certain Australian non-government investors (subject to GDP adjustment each year)
- NZ$200m for certain countries that have free trade agreements with New Zealand.

Residential Land

An overseas person seeking to acquire residential land will need OIO consent to do so. Special consent pathways exist for persons looking to acquire residential property to live in. Australian and Singaporean investors will not need OIO consent to acquire residential land, as long as that land is not sensitive for a different reason.

Forestry

Acquisition of forestry rights of more than 1000 hectares in a calendar year is an acquisition of "sensitive land" requiring consent. Special statutory tests apply to the acquisition of forestry assets.



Waterways, Foreshore or Seabed

Land including or adjoining the marine and coastal area or the bed of a lake, and certain islands, is sensitive land. Acquisition of such land by an overseas person will require consent. The New Zealand government has a right of first refusal to acquire parts of sensitive land that include fresh or seawater areas.

Farm Land

If an overseas person wishes to acquire farm land, or shares in a company that owns farm land, a contract to acquire that land cannot be entered into unless the land has first been advertised for sale on the open market in New Zealand, for no less than 30 business days.

Section 3 Mergers & acquisitions

Overview

There are a number of ways in which an overseas investor can acquire a New Zealand business or entity. The investor could aquire the company itself, or just the business assets. The acquisition structure will depend on various factors, such as: whether the target is a private (closely held) or public entity; whether regulatory approvals are required; tax matters; and the accounting treatment of the acquisition.

The most common means of acquisition in New Zealand is by private treaty, between vendor and purchaser. However, if the target is listed on the New Zealand Stock Exchange, or is a private entity above a certain size and number of shareholders, then the acquisition must be done by way of a takeover offer, or through a scheme of arrangement.

Private treaty

If the Takeovers Code does not apply (see further below), the parties can agree by private treaty the terms on which a company's shares, or its business assets (as appropriate), will be bought and sold. The terms are usually set out in a sale agreement recording the assets being sold, the price – including how purchase price is calculated – and all other conditions of sale.

Overseas investors can generally expect the terms of a sale and purchase agreement in New Zealand, whether for shares or assets, to be similar to those of an equivalent transaction conducted in Australia or the UK. Use of warranty and indemnity insurance is not unusual.

Takeovers

If an investor wishes to acquire the shares of a company listed on the New Zealand Stock Exchange (see further below), or the shares of a company above a certain size, that acquisition must be done in accordance with New Zealand's takeovers regime, set out in the Takeovers Code.

The regime applies to any "code company", being a company that:

- is listed on a New Zealand stock exchange (or has been listed in the previous 12 months); or
- has 50 or more shareholders holding voting rights and 50 or more share parcels, and is at least "medium sized".

A company will be "medium sized" if, together with its subsidiaries, it has total assets of at least NZ$30 million and/or it has total annual revenue of at least NZ$15 million (including its subsidiaries) based on latest annual accounts.

The Takeovers Code's "fundamental rule" prohibits any person and its associates from acquiring more than 20% of the voting rights in a Code company, or increasing its shareholding beyond 20% of the voting rights.

There are some exceptions to the fundamental rule (set out in the Takeovers Code), including:

- a full or partial offer made in accordance with the provisions of the Takeovers Code;
- an acquisition or allotment approved by an ordinary resolution of shareholders of the code company in accordance with the provisions of the Takeovers Code; and
- an increase, of up to 5% a year, by a person holding between 50% and 90% of the voting rights in a code company.

Beyond 90% control, the Takeovers Code provides a right (and obligation at the option of outstanding holders) to acquire the remaining voting control in the target company compulsorily.

The Takeovers Code specifies the rights and obligations of both the bidder and the target entity in relation to an offer made in relation to a code company. Key timetable drivers will be how both bidder and target approach the offer and their respective strategies employed along the way, and whether the transaction requires approval from the Overseas Investment Office, or any other regulator.

Third party interests in New Zealand assets

A properly secured interest of a third party over shares or assets will be registered on the New Zealand Personal Property Securities Register (or, in respect of real property, on the title to that property). The basic rule is that a duly registered security interest has priority over an unregistered security interest, and priority between registered interests is determined by order of registration.

These security records are publicly available on electronic platforms, enabling overseas investors to obtain an early snapshot of interests registered against particular shares or assets. The New Zealand regime with regard to personal property is similar to that in Australia and Canada.

Schemes of arrangement have become a popular alternative to conducting a takeover offer under the Takeovers Code. There are three general reasons for this:

Lower approval threshold: A resolution of shareholders approving a scheme will be passed if 75% of votes cast at the relevant scheme meeting vote in favour of it, so long as (in the case of a Code company) this also represents at least 50% of the total outstanding votes. This can make it easier to acquire 100% of a company, than achieving the required 90% acceptance required under a takeover offer to trigger the compulsory acquisition threshold.

Greater certainty of outcome: The outcome of a scheme of arrangement can be made more certain in that the offer is either accepted or rejected by shareholders (meaning the transaction either proceeds or it doesn't), and the timetable can be more certain.

Greater flexibility: There may be greater flexibility in a scheme of arrangement than would otherwise apply under the Takeovers Code – eg in relation to different forms of consideration, and differential treatment of shareholders.

Schemes of arrangement

A scheme of arrangement is essentially a contract between the target company and its shareholders and/or creditors to reconstruct the company's share capital, assets or liabilities. This can include transferring the shares to a third party.

A scheme of arrangement occurs only by virtue of statute, and the process is strictly regulated by the Companies Act 1993. A scheme requires complete co-operation between bidder and target, as the target company involved must create the documents setting out the terms of the scheme, call a meeting of shareholders to vote on whether to approve the scheme, and ultimately to apply to the High Court to have the terms of the scheme approved. Transaction timelines can be affected by Court timetabling, and by whether the transaction requires approval from the Overseas Investment Office, or any other regulator.

Section 4 Competition and antitrust

The rules relating to when a transaction will or may substantially lessen competition are complex. It is essential for any investor considering a merger or collaboration with a competitor business to seek legal advice early in the process.

New Zealand's competition law regime

New Zealand's competition law regime is set out in the Commerce Act 1986. The Commerce Act prohibits conduct that restricts competition (restrictive trade practices) and any acquisition that leads to a substantial lessening of competition in the relevant New Zealand market.

Restrictive trade practices include:

- **cartel conduct** – where two or more competitors agree not to compete with each other by price fixing, restricting output or allocating markets. There are some exceptions to the prohibition on cartel conduct for legitimate commercial purposes such as "vertical supply contracts" or "collaborative activities";
- **contracts, arrangements or understandings** that have the purpose or likely effect of substantially lessening competition in a relevant market. Examples include certain long term exclusive supply contracts, depending on market conditions;
- **misuse of market power** – this could include conduct designed to drive a competitor out of business or to prevent new competitors from starting up. In April 2023, this test changed to prohibit businesses with substantial market power from engaging in conduct that has the effect of substantially lessening competition; and
- **resale price maintenance** – when a supplier of goods enforces, or tries to enforce, a minimum price at which the reseller must on-sell those goods.

A "contract, arrangement or understanding" does not need to be a formal, written contract in order to breach the Commerce Act. A "gentlemen's agreement" or "nod and a wink" may be sufficient.

The Commerce Commission is the regulator responsible for investigating and enforcing competition law breaches in New Zealand.

There are significant penalties for engaging in restrictive trade practices. Penalties for an individual can be up to NZ$500,000. Penalties for a company can be up to the greater of NZ$10 million, three times the value of any commercial gains resulting from the contravention and 10% of the turnover of the entity (and its group). Those who engage in cartel conduct commit a criminal offence carrying a prison term for individuals of up to 7 years and / or a fine of up to NZ$500,000.

Mergers or business acquisitions that substantially lessen competition

The Commerce Act prohibits mergers and acquisitions that would have, or would be likely to have, the effect of substantially lessening competition in a market.

The Commerce Commission assesses mergers using the substantial lessening of competition test. This test asks whether a merger is likely to substantially lessen competition in a relevant market by comparing the likely state of competition in that market if the merger proceeds with the likely state of competition if the merger does not proceed.

Mergers between competitors are more likely to result in a substantial lessening of competition.

A merger between competing businesses could substantially lessen competition in a market if, for example:

- the merger removes a competitor that provided a competitive constraint, resulting in the ability for the merged firm to profitably increase prices; or
- 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.

A merger between firms that are not competitors is less likely to result in a substantial lessening of competition than a merger of competitors. However, a substantial lessening of competition is still possible if:

- the merger gives the merged firm a greater ability and/or incentive to engage in conduct that prevents or hinders rivals from competing effectively; or
- the merger increases the likelihood of coordinated behaviour among firms.

The Commerce Commission has adopted certain "concentration indicators" to give guidance as to whether a business acquisition is unlikely to substantially lessen competition in a market. These are where, post-merger, either:

- the three largest firms in the market have a combined market share of less than 70%, and the merged entity will have less than 40% of market share; or
- the three largest firms in the market have a combined market share of 70% or more, and the merged entity will have less than 20% of market share.

These "concentration indicators" are not hard and fast rules, and cannot be entirely relied on when assessing the competitive effects of a merger.

The relevant "market" is a market in New Zealand for the relevant goods and services, as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.

The prohibition on anti-competitive mergers applies to all mergers that affect a market in New Zealand. This includes a merger that takes place outside New Zealand involving non-New Zealand firms, provided the merger affects a market in New Zealand.

Voluntary notification regime for mergers and acquisitions

There is no mandatory requirement to notify the Commerce Commission of a proposed merger or acquisition.

However, if it is uncertain whether a merger would substantially lessen competition in a market, parties can apply for clearance or authorisation from the Commerce Commission.

In relation to a clearance:

- The Commerce Commission must clear any mergers that it considers would not be likely to substantially lessen competition in a market.
- If the Commerce Commission grants a clearance, the merger is protected from legal action under New Zealand's competition laws.
- Clearance for an international merger given by offshore anti-trust regulators does not protect the transaction in New Zealand.
- The clearance process requires the investor to submit an application in a prescribed form that sets out the key competition issues, the rationale for the merger and evidence that the merger will not breach the Commerce Act. Current filing fees for a clearance application are NZ$3,680.
- Businesses contemplating a merger should seek legal advice. The Commerce Commission encourages businesses to discuss their plans with it before they file for a clearance, and can provide guidance on potential areas of concern.
- Once an application is filed, the Commerce Commission has 40 working days to make its decision. This timeframe is often extended – typically it takes around three to four months from filing to obtain clearance.

The Commerce Commission can also authorise a merger that would result in a substantial lessening of competition, if the public benefits resulting from the merger are found to outweigh the competitive harm. Current filing fees for an authorisation application are NZ$36,800.

Clearance and authorisation applications can only be granted before a transaction is completed. It is quite common for acquisition agreements to be subject to a Commerce Act condition.

Proceeding with an anti-competitive merger without the necessary clearance or authorisation risks enforcement action, which can result in a lengthy investigation and significant penalties, or a Court reversing a merger by ordering divestment of assets or shares.

Section 5 International trade

Importing goods

Tariffs are New Zealand's main trade protection mechanism, and are imposed on a range of products. No import licences are required. Parallel imports of nearly all goods are permitted.

New Zealand is a party to the Agreement Establishing the World Trade Organisation.

Other than tariffs, no other charges (including import licences) apply exclusively to imported products. Goods and Services Tax (GST) (discussed further in Section 15), is generally charged on goods imported into New Zealand (but may be recoverable by business importers).

All goods imported into New Zealand (and intended for sale in New Zealand) must comply with relevant product labelling requirements. There are general requirements that product labelling is not misleading or deceptive. Specific labelling requirements apply in relation to food, food supplements, drugs and animal products (discussed further in Section 11).

The Trade (Anti-dumping and Countervailing Duties) Act 1988 regulates dumping of products on the New Zealand market, protecting domestic manufacturers from unfair competition by overseas suppliers.

International sale of goods

New Zealand is a party to the United Nations Convention on Contracts for the International Sale of Goods 1980 (**Convention**). The Convention regulates all aspects of international sales contracts and applies to contracts for the sale of certain goods when:

- both parties are from countries that are parties to the Convention; or
- the party contracting with a New Zealand entity is from a country that is not a party to the Convention, but the contract is governed by New Zealand law.

Parties can explicitly contract to exclude the Convention.

Sanctions

As a United Nations (**UN**) Member State, New Zealand is bound to implement sanctions imposed by the United Nations Security Council. New Zealand currently has regulations implementing UN sanctions on a number of countries including North Korea, Iran and Somalia. There are also wide-ranging sanctions in place in relation to certain Russian, Belarusian and Iranian individuals/entities – imposed under the Russia Sanctions Act 2022.

New Zealand's trading relationships

Australia

CER (1983)
The Australia and New Zealand Closer Economic Relations trade agreement (**CER**) established a single economic market between New Zealand and Australia.

CER Investment Protocol (2013)
This Investment Protocol made it easier for Australians to undertake large scale investments in New Zealand. The Protocol raised the consent threshold that would otherwise apply under New Zealand's overseas investment regime (in Section 2), increasing the regulatory consent threshold for acquisition by an "Australian non-government investor" of "significant business assets" from NZ$100 million to NZ$586 million (as at 1 January 2023).

Trans-Tasman Mutual Standards
The Trans-Tasman Mutual Recognition Regime allows a product produced in, or imported into, and legally sold in Australia to be sold in New Zealand and vice versa. The regime applies also to offers of securities. The Joint Food Standards (2002) allows food products to be manufactured in Australia or New Zealand to a single standard.

Other Bilateral Agreements

New Zealand also has bilateral agreements with China, Hong Kong, Malaysia, Singapore, South Korea, Taiwan, Thailand and the United Kingdom. New Zealand has signed a free trade agreement with the European Union (**EU**), which is awaiting ratification by the New Zealand Government.

Multi-Lateral Agreements

New Zealand also is a party to the following multilateral agreements:

AANZFTA
With Australia, Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

TPSEP
With Brunei, Chile and Singapore.

CPTTP
With Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore and Vietnam.

RCEP
With Australia, Brunei, Cambodia, China, Indonesia, Japan, South Korea, Laos, Myanmar, Malaysia, the Philippines, Singapore, Thailand and Vietnam.

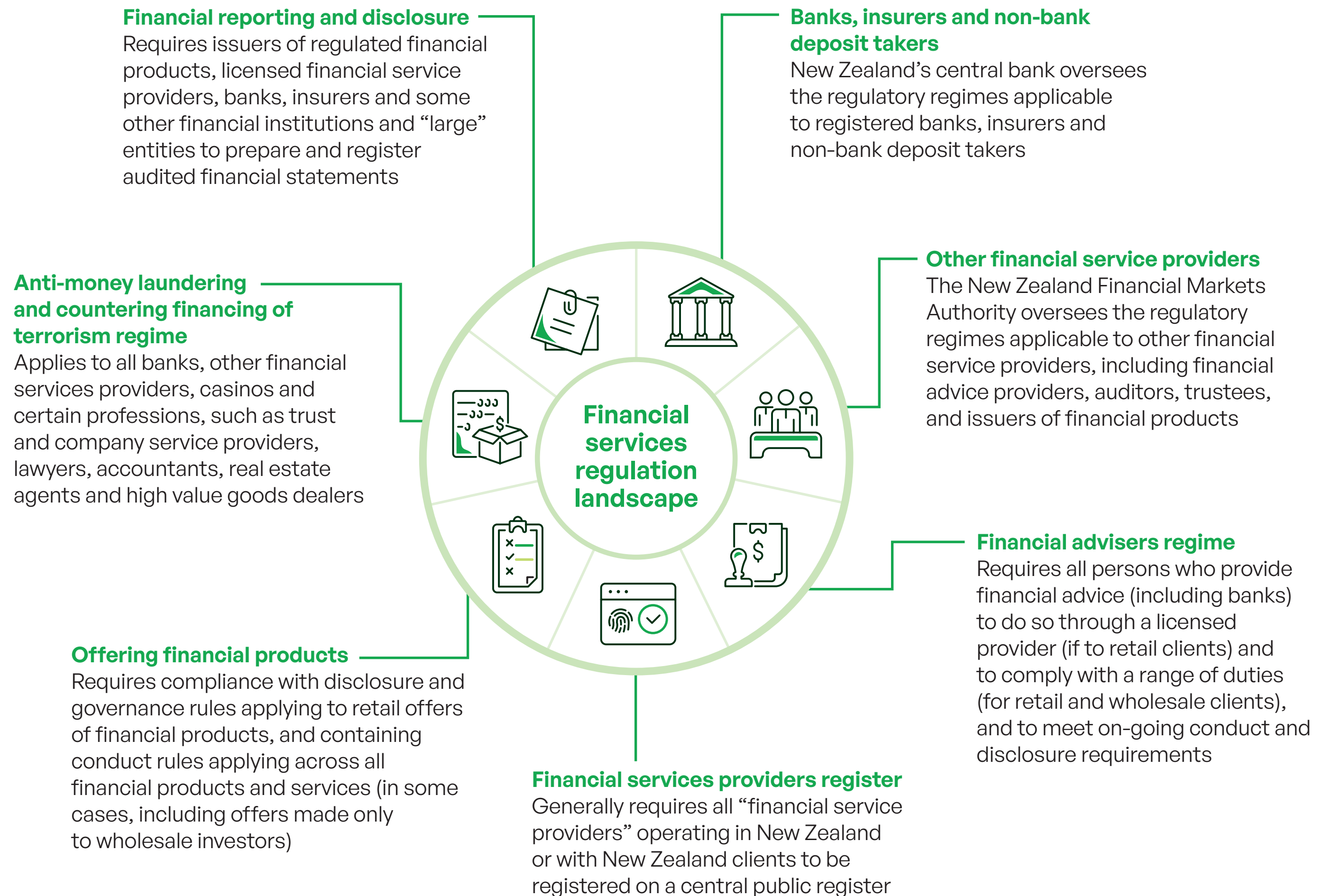
DEPA
With Chile and Singapore.

PACER
With Australia, the Cook Islands, Kiribati, Nauru, Niue, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu.

Section 6
Financial services regulation

New Zealand has a well-developed financial services regulatory regime, with comprehensive licensing and other requirements applicable to banks and to all other market participants who offer or provide financial products or services in New Zealand.

The principal elements of New Zealand's regulatory regime for financial service providers (each discussed further below) are:



Banks, insurers and non-bank deposit takers

Central bank

New Zealand's central bank is the Reserve Bank of New Zealand (**RBNZ**). The RBNZ's role is to:

- formulate and implement monetary policy to maintain price stability;
- promote the maintenance of a sound and efficient financial system; and
- meet the public's currency needs.

The RBNZ has responsibility for supervising all banks in New Zealand, and must be able to respond to financial distress or bank failure, where a bank's financial condition poses a serious threat to New Zealand's financial system.

The RBNZ is also responsible for regulation, licensing and oversight of finance companies, insurers, building societies and credit unions. It operates New Zealand's wholesale payment and settlement systems. The wider bank payment system is operated separately.

Registered banks

Any bank operating in New Zealand must be registered (under the Reserve Bank of New Zealand Act 1989). There are over 20 registered banks operating in New Zealand, most of which are overseas owned.

Registered banks are subject to full regulatory oversight, and prudential supervision, by the RBNZ. Any financial institution wishing to become registered as a bank in New Zealand must demonstrate an ability to carry on business in a prudent manner, and have appropriate standing or repute. Any overseas bank conducting banking business in New Zealand must have the approval of its home supervisor to do so, and comply with all of its home supervisor's prudential requirements.

Any financial institution carrying on any activity in New Zealand with a name or title that includes "bank", "banker" or "banking" cannot do so (lawfully) without either registering as a bank, or being separately authorised by the RBNZ to do so.

Insurers

Any entity carrying on an insurance or reinsurance business in New Zealand must, under the Insurance (Prudential Supervision) Act 2010, be licensed to do so by the RBNZ. Only an entity carrying on a licensed insurance business in New Zealand may include "insurance", "assurance", "underwriter" or "re-insurance" (or similar words) in its name, unless it has a specific exemption from the RBNZ.

Entities seeking a licence to conduct insurance business in New Zealand (including overseas insurers) must meet all prescribed criteria. Once licensed, the entity must be able to meet on-going obligations (including maintaining solvency; having an appointed actuary; maintaining and disclosing financial strength ratings from an approved rating agency; and maintaining and complying with 'fit and proper' policies for directors and senior officers).

The RBNZ is responsible for regulation and oversight of all licensed insurers, and is empowered to investigate insurers and take action to manage insurers in financial distress.

Non-bank deposit takers

A "non-bank deposit taker" (**NBDT**) is someone who takes deposits or offers debt securities to retail investors in New Zealand and carries on the business of borrowing and lending money, and/or is in the business of providing financial services. NBDTs include finance companies, building societies and credit unions. NBDTs must be licensed by the RBNZ, and are subject to on-going governance, disclosure and liquidity requirements.

Other regulated financial services

From 2025, registered banks, licensed insurers and, licensed non-bank deposit takers in the business of providing one or more relevant services will need to hold a financial institution licence to continue operating, if that service is received by a consumer in New Zealand.

To qualify for the licence, institutions will need to have a fair conduct programme and institutional measure to ensure a fair conduct principle is observed when dealing with consumers across the product lifecycle.

The New Zealand Financial Markets Authority (**FMA**) oversees the regulatory regimes applicable to certain other regulated financial services. Those financial services may be subject to registration, licensing, disclosure, governance, reporting and/or other regulatory requirements. The financial services regulated by the FMA include:

- financial advice providers;
- brokers and custodians;
- providers of investment management schemes or services;
- fund managers;
- derivatives issuers;
- supervisor trustees;
- crowd funding providers;
- peer to peer lenders;
- financial product market operators; and
- auditors.

In many cases, compliance requirements are greater if a product or service is offered to the retail market, and much less (or not applicable) if offered only to the wholesale market.

Financial advisers regime

The FMA is responsible for granting financial advice provider licences and for supervising licensees.

Persons providing regulated financial advice to retail clients must be, or be engaged by, a licensed financial advice provider. Individuals who are engaged by a licensed financial advice provider must be qualified to do so (which may require personal registration). Providers and advisers must comply with a range of duties, some for all clients whether retail and wholesale, and some only applying when advising retail clients.

Financial service providers register

Anyone in the business of providing a "financial service" to clients in New Zealand must generally, in addition to any other registration or licensing requirements, be registered as a "financial services provider" (**FSP**) on the Financial Service Providers Register (**FSPR**). Registration is intended to enable the public to search the register and find out basic information about any given FSP. If financial services are provided to a retail client, the provider must also join an approved dispute resolution scheme.

The requirement to register on the FSPR applies primarily to financial service providers that have clients (and a place of business) in New Zealand, but also applies to some others, such as financial service providers who are a reporting entity under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Registration on the FSPR does not amount to a 'licence to operate' or any endorsement by the Financial Markets Authority. There are also certain limitations on FSPs promoting their registration on the FSPR (eg in an advertisement or on their website), which may require the FSP to provide a prescribed disclaimer that explains it is not licensed by the FMA to provide the financial service, and its legislation on the FSPR does not mean it is subject to active regulation or oversight by the FMA.

Certain financial service providers are not required to (and cannot) register on the FSPR, for example if they provide financial services solely to off-shore clients, or do not have a place of business in New Zealand and provide financial services solely to wholesale clients in New Zealand.

Offering investments in financial products

Anyone seeking to create, promote and sell financial products in New Zealand must do so in accordance with the Financial Markets Conduct Act 2013. Financial products include four categories: debt securities, equity securities, managed investment products and derivatives.

The principal obligations include:

- **disclosure rules** when making a "regulated offer" of financial products in New Zealand. The obligations are much greater for an offer to retail investors (see further in Section 10).
- **fair dealing rules** prohibiting conduct that is likely to mislead or deceive. These rules apply whether the financial products are being offered to wholesale or retail investors. These rules also apply to the promotion, and/or supply of financial services.
- **registration and governance** requirements in relation to managed investment schemes, debt securities and managed investment schemes (including superannuation schemes and Kiwisaver schemes).
- **financial reporting requirements** (in addition to company reporting requirements provided for in the Companies Act) issuers of regulated financial products, most licensed financial service providers, listed issuers, registered banks, insurers and certain other licensed entities must prepare audited financial statements, and register them with the Companies Office.
- **licences** are required and certain rules apply in relation to any offer of derivatives or discretionary managed investment services to retail clients, or if acting as a manager of a registered investment scheme (other than a restricted scheme). A licence is also required for crowd funding platforms, and can be obtained, but is not required, in respect of a peer to peer lending service.

Anti-money laundering and countering financing of terrorism regime

Money laundering and financing terrorism are illegal in New Zealand. The key money laundering and countering financing of terrorism rules are set out in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**). Breaches can give rise to both civil and criminal liability.

The AML/CFT regime includes customer due diligence, reporting and record-keeping duties, and wide surveillance and enforcement powers. The AML/CFT Act applies to financial institutions (broadly defined) and also to casinos, accountants, lawyers and conveyancing practitioners, trust or company service providers, real estate agents and high value dealers (eg auctioneers and bullion dealers). It also applies to the racing industry. AML/CFT Act reporting entities also have reporting obligations relating to Russia sanctions.

Supervision and enforcement

Responsibility for oversight and enforcement of the financial services sector in New Zealand is shared between various regulators.

The RBNZ regulates and supervises registered banks, licensed insurers and NBDTs. The FMA regulates in relation to the financial services sector generally. NZX Ltd, as operator of the New Zealand Stock Exchange also has a regulatory and supervisory role in relation to certain on-market matters, and the Takeovers Panel is responsible for oversight and enforcement of the Takeovers Code (each discussed in more detail in Section 3). The Department of Internal Affairs supervises AML/CFT Act compliance for reporting entities who are not under the oversight of the RBNZ or the FMA.

Section 7 Structuring a business

When either acquiring a business in New Zealand or creating a new business to be run in New Zealand, investors will need to determine how best to structure the business.

Common New Zealand business structures

Offshore entities commonly conduct business in New Zealand through:

- local subsidiary companies;
- branches of overseas companies;
- limited partnerships; or
- agency arrangements.

Each of these common structures is outlined briefly below.

Establishing a local subsidiary company

Incorporating a company in New Zealand is generally a quick and simple process. It can be completed online, through the New Zealand Companies Office website: www.companies.govt.nz (**Companies Office**).

Once a name has been reserved and appropriate documents are lodged, incorporation can be confirmed within a matter of hours. This process may be delayed if a proposed director and/or shareholder is based overseas – see further below.

Incorporation requirements

- The registered office (and address for service) must be in New Zealand. The company does not need to have a physical place of business in New Zealand.
- The company must have at least one shareholder, and at least one director who lives in New Zealand, or who lives in Australia and is a director of a company registered in Australia. Every director and each initial shareholder must give written consent (in a prescribed form).
- The date, place of birth and residential address of each proposed director, and details of the proposed company's ultimate holding company (if any), must be provided to the Companies Office.
- If a proposed director and/or shareholder is based overseas, the Companies Office may require additional evidence to verify identity and to confirm consent to own and manage the company.
- There is no need for a formal constitution (New Zealand's equivalent to articles of association or corporate bylaws). The rights and obligations set out in the Companies Act apply by default. A company is free to adopt a constitution modifying certain rules that would otherwise apply. A well-drafted constitution is usually desirable to permit a number of corporate actions that are not otherwise authorised under the Companies Act.

Annual compliance requirements - New Zealand registered company

New Zealand registered companies must satisfy certain basic annual compliance requirements (eg filing annual returns, confirming basic company details, and holding annual meetings of shareholders).

Certain, generally larger, companies must also prepare audited financial statements, and companies which are more than 25% overseas owned must file them with the Companies Office.

Directors and officers of a New Zealand company must comply with New Zealand company law requirements, including those in the Companies Act, such as meeting the requirements of the various directors' duties. Directors and officers must also meet any relevant requirements under the Financial Markets Conduct Act.

The tax rules that apply to New Zealand-registered companies are explained in Section 15.

Establishing a New Zealand branch of an overseas entity

An overseas entity can conduct its business in New Zealand through a branch office, without incorporating a local subsidiary.

An overseas company that is "carrying on business" in New Zealand must register as an "overseas company" with the Companies Office and meet the compliance requirements that apply to overseas companies under the Companies Act (see further below).

There is no “bright line test” for whether an overseas company is carrying on business in New Zealand. In every case the question will be decided on the facts, in light of all the surrounding circumstances. Relevant factors include:

- having a physical place of business in New Zealand;
- having employees in New Zealand;
- maintaining bank accounts in New Zealand;
- having a degree of regular involvement in transactions in New Zealand; or
- having some other form of “permanence” in New Zealand.

The existence of one of these factors alone may not be determinative, but the more factors that exist the more likely it is that a business is being carried on in New Zealand.

There is no requirement for an overseas company carrying on business in New Zealand to have a New Zealand resident director. It must however have a principal place of business in New Zealand and a person authorised to accept service on its behalf in New Zealand.

Annual compliance requirements – overseas company

An overseas company carrying on business in New Zealand must file an annual return with the Companies Office confirming certain company particulars.

Certain, generally larger, entities must prepare and file audited financial statements with the Companies Office. If audited financial statements are required, they must be audited by a “qualified auditor” and comply with New Zealand GAAP. These financial statements must also include separate financial statements for any large NZ branch. An overseas company may file financial statements prepared in accordance with the financial reporting requirements of its country of incorporation, if the Companies Office is satisfied that:

- the statements comply with the requirements of the law in force in the country where the overseas company is incorporated; and
- those requirements are substantially the same as those in New Zealand.

The tax rules applicable to overseas companies which operate a branch in New Zealand are explained in Section 15.

Establishing a limited partnership

New Zealand’s limited partnership regime is based on the limited partnership regime operating in the US (Delaware Model). It is governed by the Limited Partnerships Act 2008 (**Limited Partnerships Act**).

Key features of a limited partnership

A limited partnership:

- enjoys separate legal personality;
- must have at least one general partner and one limited partner (who cannot be the same person at the same time);
- must have at least one general partner who lives in New Zealand (and, if the general partner is a New Zealand company, then the company must have at least one director who lives in New Zealand, or lives in Australia and is a director of a company registered in Australia);
- the general partner is responsible for the day to day management of the LP, and is liable for all of the LP’s debts and liabilities, to the extent the LP cannot pay those debts and liabilities;
- each limited partner (generally a “silent” investor) is liable only to the extent of its capital contribution to the LP;
- limited partners (who wish to preserve their limited liability status) must not be involved in the management of the LP, although there are certain specified activities in the Limited Partnerships Act, in which the limited partners may participate and still retain their limited liability protection;
- can have an indefinite lifespan (if desired); and
- has “flow-through” income tax treatment, so that LP profits and losses are attributed directly to the partners and taxed accordingly (rather than being taxed at LP level).

An LP is created upon registration with the Companies Office. It must have, and will be governed by, a partnership agreement (which does not need to be filed publicly) and by the Limited Partnerships Act.

Annual compliance requirements – limited partnership

An LP must file an annual return to the Companies Office confirming certain particulars. Larger LPs (or those that “opt in” voluntarily) must also prepare audited financial statements and distribute them to each general partner and limited partner within five months after balance date. If, as is usually the case, the general partner is a New Zealand registered company, it must meet the compliance requirements applicable to a New Zealand registered company.

Agency arrangements

An entity that conducts only a small amount of business in New Zealand may wish to appoint a local agent rather than establishing a branch, subsidiary company or limited partnership.

Agency appointments can be informal or can be recorded in a more comprehensive written agreement between the parties, and in either case are capabale of termination at short notice. New Zealand agency law (the principles of which are largely similar to those applicable in the UK and Australia) will typically govern the relationship unless the parties agree to the contrary.

A local agent may benefit from employment rights depending upon the nature of the relationship and the terms of the appointment. Care is required to ensure that any agency arrangement does not, over time, result in the relevant principal being deemed to be carrying on business in New Zealand (in which case the requirement to register in New Zealand would be triggered). Potential New Zealand tax implications also need to be considered.

Section 8
Buying, selling and leasing property

Purchasing land in New Zealand

There is no restriction on who can own land in New Zealand, subject to any requirement for consent under New Zealand's overseas investment regime (discussed in Section 3).

Residential land is "sensitive land" under the overseas investment regime, which means that 'overseas persons' wishing to purchase residential land in New Zealand must obtain consent to buy or build a home to live in. Overseas buyers can also obtain consent to buy residential land with the intention of developing and selling housing on that land.

Foreign individuals and companies can purchase land without a local partner.

Land ownership based on registration

Land ownership in New Zealand is based on a centralised and electronic land registration system. Central to this system is a publicly searchable register that records all material facts about any given land title, including ownership, registered mortgages, caveats and easements. The register is held by Land Information New Zealand (or **LINZ**). Registration is quick (often same day).

Once information is accepted by LINZ for registration against a land title, the validity of information appearing on that register is guaranteed. A purchaser of land in New Zealand is therefore able to rely on the information recorded on that public register.

Registration of a property transfer will typically require the purchaser to provide a tax payer identification number (called an IRD number). The process for applying for, and obtaining, an IRD number can take some time and should be started well before the proposed date for transferring ownership.

Leasing

Leases of land in New Zealand must be in writing and signed by the parties to the leasing arrangement. As a matter of practice in New Zealand, leases are not typically registered.

Generally, the express terms of the lease will govern the relationship between the parties. Tenants do not have statutory rights to prolong the terms of a lease beyond the term provided for in the lease (including any renewals). Further, tenants are not entitled to compensation at the end of a lease term unless that is provided for expressly in the terms of the lease – and such a term would be unusual in the New Zealand market.

Sale of land

Purchasing land in New Zealand is fairly straight-forward. Many agreements to sell land are recorded on standard form documentation.

The general law of contract applies once a sale and purchase agreement has been entered into. Once the parties enter into an agreement to sell and purchase land, that agreement becomes legally binding between the parties. The seller cannot (without breaching the contract) then accept a higher offer from another purchaser. However, conditions for the benefit of either party can be included in an agreement.

No stamp duty is payable on the transfer of land in New Zealand.

Taxation of gains on disposal

New Zealand does not have a general capital gains tax.

However, gains on the disposal of land that is held, or deemed to be held, on revenue account may be taxed under New Zealand's land disposal income tax rules.

In addition to catching property dealers, developers and the like, New Zealand's land disposal income tax rules include specific provisions targeted at residential land. The provisions effectively deem residential land to be held on revenue account if it is sold or disposed of within a prescribed period after its acquisition (generally five years for 'new builds', 10 years for other land), subject to certain exclusions (eg in relation to selling/disposing your main home). From 1 July 2024, this will reduce to two years.

Residential land witholding tax (**RLWT**) may also apply where an offshore individual or entity is selling/disposing of residential land within the applicable prescribed period after its acquisition, unless the offshore person obtains an RLWT certificate of exemption.

Tax matters are discussed further in Section 15.

Compulsory acquisition

The government and local authorities in New Zealand have a right to compulsorily acquire property from private owners in certain circumstances.

If a property, or portion of a property, is required for certain public works (eg roads, public transport, schools and critical infrastructure), the Public Works Act 1981 gives the Crown (acting through the relevant Government department and local authorities) the right to acquire that property. The acquiring authority will usually seek to negotiate the terms on which the land will be acquired, including the price. If no such agreement can be reached, the local authority has the power to take steps to compulsorily acquire the property. The owner of the property is entitled to “full compensation” for the property being acquired.

Section 9
Use and development of property

Land use regime in New Zealand

The use to which land in New Zealand can be put, and the extent to which it can be developed, will depend on the environmental laws and planning instruments that apply to the land in question.

The Resource Management Act 1991 (**RMA**) is the primary environmental and planning legislation in New Zealand.

The RMA is largely implemented by two tiers of local authorities, each responsible for making the subordinate planning documents applicable to their respective function and geographic area. Generally, environmental matters affecting discharge to air, land and water, and taking and using water, are controlled by Regional Councils (through their regional plans). Land use and subdivision is controlled by City and District Councils (through their district plans). Some activities may be carried out as of right (as a "permitted activity") and any other activities will require approval (by way of a resource consent) whether from the Regional Council, or City or District Council.

Any construction or alteration of a building must comply with the Building Act 2004 and the associated Building Code.

Zoning and land use regulation

Land use and subdivision of land is controlled by the zoning and associated planning rules set out in the relevant district plan.

Each district plan divides the relevant district into certain zones (eg Industrial, Residential, Mixed Use), with different land use, planning and sub division rules applicable to each zone. Zoning rules will determine matters such as site size, site coverage, building density, height requirements and certain minimum building ratios. Any proposed use of the land or sub division that goes outside the rules applicable to the relevant zone can only proceed with a resource consent from the relevant City or District Council.

Environmental controls

A range of environmental matters are controlled, under the RMA, by the relevant regional plan including:

- discharge of contaminants to air, land or water;
- water quality and quantity, including taking and using water;
- soil conservation;
- natural hazards;
- aquatic ecosystems; and
- biodiversity.

Regional plans include rules relating to matters such as those above (and many other matters), which apply across the region affected by the relevant regional plan.

No person may use land, water, air or the coastal marine area in a manner that contravenes a rule in a regional plan without holding a resource consent.

Resource consents

Under the relevant regional and district plans, activities are either "permitted", or classified into a hierarchy of activity types for which the assessment of a resource consent application becomes increasingly stringent: "controlled", "restricted discretionary", "discretionary" and "non-complying".

Resource consents can take the form of land use consents, subdivision consents, water permits, coastal permits, and discharge permits, depending on the nature of the proposed activity.

Consents are granted by the relevant local authority, either the District Council (for land use and subdivision matters) or the Regional Council (for environmental matters).

Whether or not a consent is granted is a matter for the relevant local authority to determine, at its discretion. The level of discretion that the local authority may exercise, and the stringency of the tests an applicant must meet in order to obtain consent, depends on the nature of the consent sought. The relevant local authority also has wide powers to impose conditions on any resource consent it grants.

There is no stated time frame for the completion of the consenting process. Applications can take months and sometimes (in contested situations) years to conclude.

The consenting process starts with an application to the relevant local authority (in the required form and with all necessary supporting information). The local authority will then decide whether the owners of adjacent land should be notified of the application, and whether the general public should be notified also. The RMA guides the local authority on how to make these decisions. Any person who is served a copy, or notified, of the application may make submissions in respect of that application.

An applicant for a resource consent, and anyone who has made a submission in respect of an application, has a right of appeal to the Environment Court from a local authority's decision on a resource consent application. Alternatively, an applicant may request that an application proceeds directly to the Environment Court.

Penalties for breach of RMA

A person who breaches the RMA (eg by undertaking an activity not permitted by the relevant planning document and without a resource consent) commits an offence.

Non-compliance with the RMA is a strict liability offence. A person, if convicted of an offence, can be subject to a maximum fine of NZ$300,000 plus NZ$10,000 per day for continuing offences, and a prison term of no more than two years. A company, if convicted of an offence, can be subject to a maximum fine of NZ$600,000 plus NZ$10,000 per day for continuing offences.

Liability is not limited to the party that actually commits the offence. The RMA extends liability to any party who allows the offence to take place. Therefore, if a body corporate, trust, company employee, or contractor is convicted of an offence against the RMA, a director, trustee, or any person concerned in the management of that party can also be held liable for that offence.

Building regulations

Regulation of the construction of buildings and other structures in New Zealand is provided for in the Building Act 2004 and the associated Building Code. The Building Code deals with, among other things, requirements for buildings to be earthquake resilient to certain levels.

Any proposed construction of or alteration to any building or structure in New Zealand must be carried out in accordance with a building consent, issued by the relevant local authority (in accordance with the Building Act 2004). Buildings or alterations, once completed, must be confirmed as compliant with the building consent and the Building Code by issue (by the local authority) of a Code Compliance Certificate.

Section 10
Fund raising and capital markets

Private equity and venture capital

New Zealand has an active private equity market. There are several New Zealand-based private equity funds all seeking quality investment opportunities, plus a number of Australian and other offshore funds who also regularly look for investments in New Zealand. There is also a growing number of venture capital funds (both New Zealand-based and offshore) looking for quality early stage investment opportunities, and an active "angel" investment market.

The New Zealand government actively supports the private equity and venture capital industry by co-investing with private investors through New Zealand Growth Capital Partners.

More information about the New Zealand private equity and venture capital market is available from the New Zealand Private Capital website here.

Offering securities in New Zealand

Offers of securities (and other financial products) in New Zealand are regulated by the Financial Markets Conduct Act (**FMC Act**), and overseen (and enforced) by the FMA. The term "financial products" extends to debt securities, equity securities, managed investment products and derivatives.

The basic rule is that any securities (or any other financial product) can only be offered to the public in New Zealand if the issuer of the securities has prepared a Product Disclosure Statement (or PDS) that complies with the requirements of the FMC Act and associated regulations.

A security will be treated as being "offered" in New Zealand if the offer is received by a person in New Zealand, unless the issuer took reasonable steps to ensure that persons in New Zealand cannot accept the offer. The disclosure rules will therefore apply to any applicable offer of financial products, whether made by a New Zealand or offshore-based entity.

A PDS, if required, must include certain prescribed information about the products being offered and the issuer. The rules stipulating the contents of a PDS are strict and detailed. There are also restrictions on the length, content and format of a PDS. A business seeking to issue debt securities or managed investment products must comply with additional requirements in relation to external governance and licensing.

There are a number of exclusions to the disclosure requirements, depending on the nature of the investor being targeted, and/or the type of offer being made. An offer to which an exclusion applies can either be made without disclosure documentation, or with a reduced level of disclosure.

Common disclosure exemptions provided by FMC Act

- Offers to wholesale investors, including:
  - A person whose principal business is the business of investment.
  - A person who meets certain investment criteria relating to portfolio or trading size.
  - Persons who invest in offers with a minimum NZ$750,000 subscription requirement.
  - A person who is "large" (net assets exceeding NZ$5 million or total consolidated turnover exceeding NZ$50 million in the two most recently completed financial years).
- Offers to close business associates.
- Small offers of debt or equity securities to no more than 20 investors in a 12 month period, raising less than NZ$2 million in total.
- Offers to employees under certain employee share schemes.
- Offers to existing shareholders under a rights issue or other entitlement offer, or under a dividend reinvestment plan.
- Offers made as part of a takeover bid (made under the Takeovers Code) or a court-approved scheme of arrangement.
- The FMA is also able to grant individual exemptions from the requirements of the FMC Act.

If securities are offered or allotted in breach of the FMC Act, the issuer may be required to pay compensation or face pecuniary penalties. In some instances there can be criminal liability.

Mutual recognition arrangements

New Zealand and Australia have a mutual recognition regime for the offering of financial products. An issuer is able to offer certain specified financial products (including equity securities and managed investment products) in both countries using one disclosure document prepared in accordance with the regulations of its home jurisdiction.

New Zealand is also a member of the Asia Region Funds Passport (**ARFP**) scheme, with Australia, Japan and Thailand. This regime seeks to reduce regulatory duplication for operators of eligible collective investment schemes ('passport funds') by establishing a standardised set of requirements across each of the member countries. A passport fund established and regulated in the home economy can be offered to investors in all other member economies without the need to go through a full regulatory approval process.

Listing on the New Zealand stock exchange

An entity seeking to raise capital through an issue of securities in New Zealand may also wish to list on New Zealand's stock exchange (referred to as 'NZX'), operated by NZX Ltd. Equity and debt securities, and interests in funds, can be traded on the NZX Main Board in accordance with the NZX Listing Rules.

A company can list on the NZX in two ways:

- A "primary listing" – designed for companies that intend to be listed on the NZX and comply with the NZX Listing Rules.
- A "foreign exempt listing" – allows companies already listed on certain recognised overseas exchanges (as their home exchange) to list on an NZX market, without needing to comply with the majority of the NZX Listing Rules.

The listing process is fairly straightforward. Generally, the document used to provide the required disclosure for fundraising purposes can also be used for listing purposes. There are certain market capitalisation and spread requirements, and timetabling requirements.

Once listed, an issuer must comply with on-going corporate governance, disclosure and reporting requirements, set out in the NZX Listing Rules (or equivalent rules in its home jurisdiction) and, in relation to financial reporting, the FMC Act.

Market conduct rules

New Zealand law prohibits insider trading and market manipulation. New Zealand law also prohibits issuers of financial products and others from engaging in conduct or making statements in relation to financial products that are misleading or deceptive (or likely to mislead or deceive).

The market conduct rules are set out in the FMC Act. Breach of these rules carries civil and, in some instances, criminal liability.

Section 11 Contract law and consumer protection

Contract law

There is relatively little regulation of contracting in New Zealand.

New Zealand contract law is based on English common law principles, subject to certain statutory parameters.

Parties are generally free to contract on their own terms, subject to the law applying to contracts generally and various mandatory statutory requirements applicable to supply of certain goods or services, or certain types of contracts. These include:

- certain **trade practices requirements** irrespective of the terms of the contract (discussed further below);
- certain **consumer protection measures** also irrespective of the terms of the contract (discussed further below);
- **credit contracts with consumers** are regulated by the Credit Contracts and Consumer Finance Act 2003;
- mandatory **food labelling requirements**, and **minimum standards for certain foods**, and also for medicines, animal products and food supplements (discussed further below);
- **certain contracts must be in writing**, including those involving interests in land, employment, and mortgages; and
- the Contract and Commercial Law Act 2017 provides **default statutory remedies** in specific situations, largely codifying and replacing common law rules. For example:
  - allowing parties to **cancel a contract for misrepresentation** (in certain circumstances, and provided that the terms of the contract do not provide for their own cancellation regime), and gives the courts power to grant a wide variety of relief;
  - providing for certain consequences in relation to contracts that are **frustrated**;
  - allowing courts to grant relief in limited circumstances if a party can establish that it entered a contract due to a genuine **mistake**; and
  - stipulating that a contract is generally **unenforceable against a minor** (being a person under the age of 18 years), but enables the Court to enquire into the fairness and reasonableness of the contract entered into and make orders.

New Zealand contract law applies to overseas-owned entities in the same way it applies to New Zealand entities. Other than the requirement to obtain consent under the overseas investment regime in some instances, there are no separate requirements for contracts involving New Zealand entities that are foreign owned. The governing law of a contract between an overseas-owned entity and a New Zealand entity will be determined by the terms of the contract, interpreted in light of the usual common law "conflict of laws" principles.

Trade practices and consumer protection regime

New Zealand's trade practices and consumer protection regime is primarily reflected in three statutes:

- **Commerce Act 1986**, dealing with competition law matters.
- **Fair Trading Act 1986**, prohibiting (among other things) conduct that is misleading and deceptive.
- **Consumer Guarantees Act 1993**, setting out minimum statutory guarantees relating to supply of consumer goods and services.

There are also minimum standards that apply specifically to the content and labelling of food products, set out in the **Australia New Zealand Food Standards Code (Food Standards Code)**. Similar standards and labelling requirements apply to food supplements, medicines and medical devices, and animal products.

The trade practices and consumer protection regime set out in the Fair Trading Act and Consumer Guarantees Act, and New Zealand's food standards and labelling regime are discussed more below. A brief discussion of New Zealand's competition laws (provided for in the Commerce Act) is in Section 4.

Fair Trading Act

The Fair Trading Act's principal requirements include:

- prohibiting conduct in trade that is misleading or deceptive or likely to mislead or deceive, and misleading representations in trade (whether the conduct was deliberate or accidental);
- requiring compulsory disclosure of consumer information relating to the supply of goods and services and product safety;
- prohibiting unsubstantiated claims about a product or service;
- prohibiting unfair contract terms in standard form consumer and trade contracts, and terms found to be unfair will not be enforceable (in the case of trade contracts, if entered into, renewed or varied on and from August 2022);
- mandatory product safety standards in relation to specific products, including baby walkers, children's clothes, cots, bicycles and sunscreens; and
- specific rules concerning employment advertising, pyramid selling schemes, bait advertising, offering gifts and prizes, and referral selling.

Businesses dealing with consumers cannot contract out of their obligations to those consumers under the Fair Trading Act, and the relevant requirements will apply irrespective of any express contract terms saying otherwise. However, businesses providing goods and services to other businesses are permitted to dis-apply the Fair Trading Act's requirements in relation to those trading relationships to a certain extent.

Failure to comply with these requirements carries the risk of various civil remedies (including fines and court orders) and, in some instances, criminal sanctions.

Consumer Guarantees Act

The Consumer Guarantees Act sets out a series of guarantees which apply to all sales to consumers of goods or services in New Zealand of a type ordinarily acquired for personal or household use. The Act does not apply to commercial products (goods normally bought for business use, eg manufacturing equipment, or services normally carried out for a business).

The guarantees create a minimum standard of quality that businesses selling such goods or services must meet, including:

- being of acceptable quality;
- being fit for a particular purpose (when the consumer has informed the supplier about that purpose);
- matching a description;
- ensuring spare parts are available;
- complying with a sample or demonstration model (where relevant); and
- timely delivery.

If goods or services do not meet the statutory guarantees, the affected consumer may seek redress from either the supplier or manufacturer of the goods or services.

Suppliers of relevant goods or services cannot contract out of the Consumer Guarantees Act unless the goods or services are being sold for business purposes.

Food standards and food labelling

Food products (including supplements and dietary supplements) must be labelled correctly, and meet relevant content requirements.

Content and labelling requirements will depend, in large part, on how the food product is classified (eg sports foods, infant formula, dairy products, alcoholic beverages etc).

A business is free to determine how it wishes to classify a food product (whether manufactured or pre-packaged), but must then ensure that their food products, as classified, meet relevant content and labelling requirements set out in the Food Standards Code. This Code regulates (amongst other things) levels of particular ingredients and prohibited ingredients in a wide range of product categories. It includes general provisions applicable to all foods and individual food standards affecting particular types of food.

Businesses that sell or manufacture food must also comply with:

- Food Act 2014;
- Weights and Measures Act and Regulations;
- Fair Trading Act 1986 (in particular, in relation to product efficacy and origin claims);
- sector-specific requirements (eg dairy, meat, wine etc); and
- export requirements.

Regulators

The Commerce Commission is the regulatory body responsible for administering New Zealand's trade practices and consumer protection regime (ie Commerce Act, Fair Trading Act, Credit Contracts and Consumer Finance Act). The Commerce Commission actively monitors business conduct in New Zealand to check compliance, and has the power to bring proceedings for breach in its own right. Breaches carry civil and criminal liability.

Regulation and oversight of the food standards and labelling regime is split between two bodies. The Ministry of Primary Industries is responsible for enforcing compliance with the Food Standards Code as well as the Food Act more generally. The Commerce Commission is responsible for monitoring and enforcing the elements of the Fair Trading Act that apply to food products (misleading and deceptive conduct, efficacy, composition and origin claims).

Section 12
Data privacy

Privacy regime in New Zealand

New Zealand law controls the collection, storage and security, accuracy, retention, use and disclosure, by any agency, of "personal information".

The Privacy Act 2020 (**Privacy Act**) is the primary statute dealing with data privacy in New Zealand.

The Privacy Act is mainly concerned with privacy of individuals, focusing on specific personal information, about living individuals. This Act does not deal with broader aspects of privacy, such as any right to be left alone or freedom from intrusion (eg by the media), or with data privacy about legal persons who are not living individuals.

Key elements

Personal information

"Personal information" is the cornerstone of New Zealand's data privacy regime. Personal information is any information about an identifiable individual. The test for whether an individual is identifiable is whether there is a reasonable chance that the individual could be identified from the information in question, on its own or when linked with other information.

"Information" is a broad concept, not statutorily defined. It includes any document (including anything written, recorded, visual images or electronic information), and extends also to CCTV footage and biometric data.

Information Privacy Principles

'Information Privacy Principles' lie at the heart of New Zealand's privacy regime. These are a set of 13 principles dealing with the collection, storage and security, accuracy, retention, off-shoring, use and disclosure of personal information.

Any "agency" operating in New Zealand, irrespective of home jurisdiction must comply with the information privacy principles when dealing with personal information. The regime is not prescriptive about specific compliance requirements. Every agency must determine for itself how it will comply.

Extra-territorial effect

New Zealand's data privacy rules apply beyond New Zealand's territorial borders. The Privacy Act will apply to all actions taken by a New Zealand agency in relation to personal information it collects or holds, whether that agency is acting inside of New Zealand and regardless of where the information was collected or is held, or where the individual concerned is located.

The Privacy Act will also apply to overseas agencies in relation to any action taken in the course of carrying on business in New Zealand.

Privacy Commissioner

The Privacy Commissioner has responsibility for oversight and enforcement of the Privacy Act. Breach of the Privacy Act's requirements can result in fines (up to a maximum of NZ$10,000), and both civil and criminal liability.

Mandatory data breach reporting

If an agency suffers a privacy breach that has caused, or is likely to cause, serious harm to affected individuals, it must report the breach to the Privacy Commissioner and to the affected individual (unless an exemption applies).

"Privacy breach" means unauthorised or accidental access to, or disclosure, alteration, loss, or distruction of personal information, or an action that prevents the agency from accessing the information on either a temporary or permanent basis.

Impact of GDPR in New Zealand

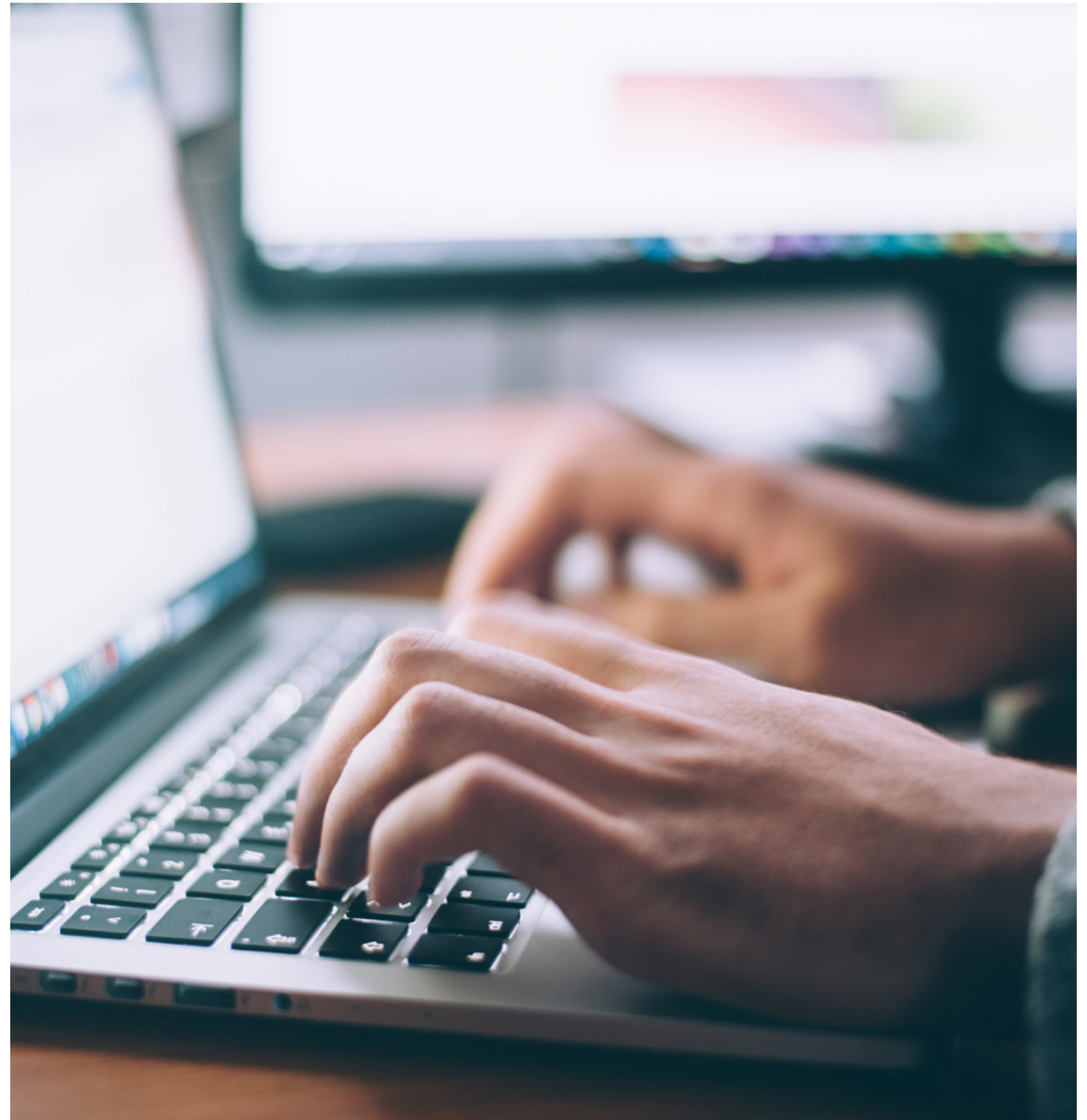
The EU General Data Protection Regulation (**GDPR**) has extra territorial effect so may apply to businesses in New Zealand. GDPR is distinct from and will generally go above and beyond the requirements of New Zealand's privacy laws, without necessarily dealing with the New Zealand requirements.

Businesses operating in New Zealand will be captured by the GDPR if they:

- have a branch or subsidiary in the EU;
- offer goods or services, paid or free, to data subjects in the EU;
- monitor the behaviour of data subjects in the EU (such as using cookies for behavioural-based advertising); or
- process personal data regarding individuals who are within the EU on behalf of another organisation.

A party acquiring a New Zealand entity that does business in the EU should be aware there is significant potential exposure under the GDPR if the target is not GDPR compliant.

Businesses operating in New Zealand should be aware that even if they already have GDPR compliant privacy policies in place, there are still specific requirements under New Zealand privacy laws that must be met. Privacy policies must be checked to ensure they are compliant with New Zealand privacy laws.



Section 13
Workplace relations

Anyone considering an investment in New Zealand will need to understand the basic principles of New Zealand's employee relations laws. Some elements are unique to New Zealand and may prevent an entity from proceeding as they would expect to proceed in their home jurisdiction, particularly in an M&A context.

Overview of workplace relations in New Zealand

- The Employment Relations Act 2000 (**ERA**) is the principal statute governing the employment relationship for all persons employed within New Zealand. Individual employment agreements must be in writing and include minimum specified clauses.
- Some workplaces also engage 'independent contractors' whose terms of engagement are as set out in the relevant contract. Contractors are not protected by the ERA and other legislation intended to provide benefits to employees, but are subject to the privacy, accident compensation and workplace health and safety rules. The law also recognises 'triangular' employment relationships where a third party may be joined as a party to claims brought by workers performing work under their direction or control (eg labour hire, secondments, agency temps).
- The New Zealand workforce is not heavily unionised. Less than 20% of employees belong to unions, generally in the public sector, the waterfront, and manufacturing industries.
- Employees are entitled to four weeks of paid annual leave (after 12 months of employment), and also minimum entitlements to paid sick leave, bereavement and family violence leave after six months of employment. Termination of employment must follow a fair process and be for justified reasons (for example, redundancy or serious misconduct). Employers, employees and unions are subject to a duty of good faith in relation to the employment relationship.
- There are comprehensive workplace health and safety workplace accidents are compensated through New Zealand's 'no fault' accident compensation scheme.

Employment relationships

The ERA covers matters including collective, individual and fixed term employment agreements; collective bargaining and union related issues; flexible working arrangements; and personal grievances. Independent contractors are not protected by the ERA, but courts will assess a contractor arrangement to determine whether the real nature of the relationship is an employment relationship and so covered by the ERA (and other employee-related legislation).

Some aspects of employment relations set out in the ERA, and which are unique to New Zealand, are explained briefly below.

Duty of good faith

The duty of good faith requires parties to an employment relationship to:

- not mislead or deceive each other;
- be active and constructive; and
- be responsive and communicative in their employment relationship.

An employer proposing to make a decision that will, or may, have an adverse effect on the continuation of an employee's employment (such as a restructure or sale of the business) must give each affected employment relevant information about the proposal, and an opportunity for that employee to comment on the proposal before any decision is made.

Unions

Unions are entitled to represent their members in relation to any matter involving their collective interests, including negotiating a collective employment agreement and representing their members' individual rights (eg at mediation and in court actions).

Union membership is voluntary but, if an employee wants to be party to a collective agreement and to bargain collectively, the employee must be a member of a union. New employees coming within coverage of a collective agreement are covered by it for the first 30 days, and there are certain notice and administrative requirements that apply during this period.

If an employee is not a member of a union, each employee will negotiate an individual employment agreement with their employer.

Trial period

Employers are able to engage new employees on a trial period of up to 90 calendar days. During this trial period, an employee may be dismissed with notice and cannot raise a personal grievance on the grounds of unjustified dismissal. The employee may, however, raise a personal grievance on other grounds, such as disadvantage, discrimination or harassment. A trial period arrangement must be in writing that meets certain form requirements, and signed by the employee.

Employee protection provision

All employment agreements must contain an "employee protection provision", covering what will happen to the employee after a business is sold, another company takes over a contract, or workers are moved to a new employer.

There are special protections for "vulnerable" employees – which includes those providing cleaning, catering, security and laundry services. In certain restructuring situations, "vulnerable" employees usually have the right to choose to be transferred to the new employer, on the same terms and conditions of employment with continuity of service, including their leave and other entitlements.

Transferring employees in a business sale

Asset sale

Unless an employee comes within a specified category of employee (as set out above), it is not possible under New Zealand law to transfer or assign an employment relationship to a new employer in a business sale, even if the new employing entity is within the same wider group.

As such, New Zealand law requires that the vendor terminate the employment of its employees (following consultation), on the basis that they become redundant upon the transfer of assets to the purchaser. Fresh offers of employment can then be made by the purchaser (and accepted) in order to effect the 'transfer' of employees, but the purchaser has the ability to choose which employees it wishes to offer employment to, and on what terms, subject to negotiations with the vendor. There are various statutory requirements for consultation and dealings with affected employees, the majority of which will fall on the vendor.

Share sale

Such issues do not arise in the event of a share sale where an employee's employment is unaffected because the employer remains the same both before and after the transaction has been completed. As a result, the employment agreements governing the terms and conditions of the employment relationship continue to apply and there is no break in the continuity of employment.

All employees who are currently employed by the vendor will be 'acquired' by the purchaser, and there is no ability for the purchaser to elect which employees it wishes to offer employment to, or to unilaterally change the terms of their employment.

Terminating employment

As a general rule, employment may only be terminated for cause in New Zealand, so employers cannot terminate "at will". Causes for terminating employment are limited, including poor performance, repeated misconduct, serious misconduct, redundancy and medical incapacity.

Any dismissal must be substantively justifiable, and procedural fairness is an important concept. The ERA stipulates the minimum process steps required. An employee who considers that they have been unjustifiably dismissed or disadvantaged in their employment is able to bring a 'personal grievance' claim against the employer. A personal grievance must be raised within 90 days, except for sexual harrasment personal grievances, which have 12 months.

If the matter proceeds to litigation (the Employment Relations Authority initially, and then the Employment Court – which have exclusive jurisdiction to hear employment-related matters), reinstatement of employment is the primary remedy, but remedies can also include various forms of financial compensation.

Redundancy compensation

There is no compulsory redundancy compensation regime in New Zealand. An employer is only required to pay compensation on redundancy if it has been specifically agreed between the employer and the employee in the employment agreement.

Holidays and leave

There are minimum statutory leave entitlements provided under the Holidays Act 2003 (**Holidays Act**), which include:

- public holidays (12 days through the year);
- four weeks' annual leave following 12 months' continuous employment;
- three days of bereavement leave on the loss of a close family member and on the end of a pregnancy by reason of miscarriage or stillbirth (and one day in other cases following six months' continuous employment);
- 10 days' sick leave per year, following six months' continuous employment.

The Holidays Act also allows 10 days of leave a year for victims of family violence or people caring for affected children. Some employers also provide long service leave, but on a voluntary basis.

The Holidays Act is notoriously difficult to interpret and apply. Many workplaces have found that payroll systems do not calculate all leave entitlements correctly, leaving employers in breach of the Act's requirements. A Government-established Holidays Act Taskforce recently completed a review of the Holidays Act, and its 22 recommendations were accepted by the Government in 2021. New legislation is expected to be introduced into Parliament in 2023. Non-compliance with the Holidays Act is frequently a material issue arising from legal due diligence in relation to an M&A transaction.

Other legislation affecting employee relations

Other New Zealand legislation relevant to a workforce and employee relations includes laws regulating privacy of personal information (discussed further in Section 12), equal pay, parental leave, minimum wage/wages protection, minimum working conditions, human rights and protection for whistle-blowers.

Workplace health and safety

Workplace health and safety laws are set out in the Health and Safety at Work Act 2015 (**HSW Act**). The HSW Act's key focus is on ensuring everyone in the workplace takes responsibility for health and safety at work.

A person conducting a business or undertaking (**PCBU**) – usually a business entity, not an individual – has a primary duty of care under the HSW Act. The PCBU must ensure, so far as is reasonably practicable, the health and safety of workers who work for the PCBU, workers whose activities are influenced or directed by the PCBU, and other persons.

Officers of the PCBU have personal liability and must exercise due diligence to ensure the PCBU complies with its duties under the HSW Act. An officer will generally be anyone who is able to direct the conduct of the whole of the PCBU, such as a director or chief executive.

Regulations accompanying the HSW Act cover areas such as asbestos, major hazard facilities, geothermal operations, mining and quarrying operations, general risk and workplace management and worker engagement, participation and representation.

Accident compensation

New Zealand has no workers' compensation scheme, and there is no ability for a person who suffers an injury in New Zealand (at work or elsewhere, and however it arose) to bring any claim for compensation in respect of that injury.

Workplace accidents are instead covered by the ACC Act (discussed briefly in Section 1). Personal injury costs are met by the Accident Compensation Corporation (**ACC**) and not the employer (except in relation to a workplace injury, where the first week of compensation is paid by the employer). Both employers and employees contribute towards the costs of the accident compensation scheme through levies.

Superannuation and KiwiSaver

Participation in superannuation schemes is not compulsory in New Zealand. Some employers provide superannuation benefits to employees, but usually in the form of subsidies to a third party superannuation scheme. Proprietary superannuation schemes are not common in New Zealand, and defined benefit schemes are now rare.

All employees are eligible to participate in KiwiSaver – a voluntary and work based Government sponsored retirement savings initiative (governed by the KiwiSaver Act 2006). Participants in KiwiSaver must contribute a minimum of 3% of their gross salary or wages to a superannuation scheme of their choice, and employers must make a contribution of 3% on behalf of all participating employees. New employees are automatically enrolled in KiwiSaver, unless limited exceptions apply. An employer must provide information about how employees can opt out.

Employment related tax obligations

New Zealand employers and overseas employers with a sufficient presence in New Zealand are also required to deal with employment-related withholding and similar taxes in relation to monetary and non-monetary benefits provided to their employees.

Tax matters are discussed further in Section 15.

Section 14 Intellectual property

New Zealand has a well developed system of intellectual property rights, which are governed by statute, case law, and international agreements.

Overview

New Zealand's intellectual property regime includes registered and unregistered rights. Trade marks, patents, designs and plant variety rights can be registered with the Intellectual Property Office of New Zealand (**IPONZ**), which maintains a register of these rights and interests. Copyright is protected by statute, and not able to be registered.

New Zealand is also a signatory to a number of international intellectual property treaties and conventions, including the Paris Convention, the Patent Co-operation Treaty, the Berne Convention, TRIPS (Trade Related Aspects of Intellectual Property Rights), the Singapore Treaty, and the Madrid Protocol.

Trade marks

Trade marks can be registered in 45 classes of goods or services consistent with the internationally adopted Nice Classification System (12th edition). Registrations are held by IPONZ. The IPONZ registration database can be searched publicly.

A trade mark registration is valid for a term of 10 years from the date of application. Registration can then be renewed, in perpetuity, for successive 10 year periods. A trade mark can be removed from the register for non-use if it is not used for a continuous period of three years.

The Madrid Protocol is in force in New Zealand. This allows entities in other Madrid Protocol countries to file international trade mark registrations designating New Zealand as a country to which trade mark protection would extend. New Zealanders can also file international registrations designating one or more overseas Madrid Protocol countries.

Copyright and designs

New Zealand copyright law protects original works, including original artistic, literary, dramatic, or musical works (in all their various forms), from being copied. The period of protection for literary, dramatic, musical, and artistic works under New Zealand law is the life of the author plus 50 years.

Other works, such as sound recordings, films, communication works, and computer generated works, generally are protected for 50 years from the end of the year in which the work was made or made available to the public. Protection for industrially applied works lasts for 16 years (or 25 years in some cases), depending on the nature of the work.

Copyright protection exists under the Copyright Act 1994. There is no form of registration of copyright in New Zealand.

The appearance of an article can also be protected by registering a new and original design under the provisions of New Zealand's design legislation. The maximum period of protection for registered designs is 15 years.

Patents

New Zealand patent law (set out in the Patents Act 2013) is generally in line with international trends, providing a system for the filing, examination, and grant of protection for patent applications. The period of protection for patents in New Zealand is a maximum of 20 years.

To be granted a patent, the proposed invention must:

- be a manner of manufacture;
- be new; and
- involve an inventive step.

Patentability is examined in accordance with absolute (or worldwide) novelty. Both inventive step and utility are examined. A patent must be inventive "on the balance of probabilities".

Pre-grant opposition processes are available at any time before grant, and a potential opponent can request re examination both before and after grant.

Passing off and the Fair Trading Act

The common law tort of "passing off" and provisions of the Fair Trading Act 1986 also provide general protection against misleading conduct in the course of trade. The misleading use of trade marks, get up and other indicia which cause damage to another trader's reputation or goodwill may give rise to liability.

More detail about the Fair Trading Act is in Section 11.

Other rights

Other New Zealand legislation provides protection for the following intellectual property rights:

- plant varieties;
- layout designs;
- geographical indications (although only in relation to wine and spirits); and
- ambush marketing.

Section 15 Tax

Overview of taxation in New Zealand

New Zealand has a "broad base low rate" (**BBLR**) taxation system. The principal forms of taxation are:

- Income tax (including related withholding taxes), with a corporate tax rate of 28% and a top personal tax rate of 39%
- Goods and services tax (**GST**), with a standard rate of 15%.

Despite its BBLR taxation system, New Zealand is unusual in that it does not currently have any general capital gains tax, stamp duty (or similar transaction tax), gift duty or estate or death duty.

New Zealand's income tax system (like Australia's) is also unusual in that it operates a comprehensive dividend imputation (or franking) regime, enabling a shareholder to enjoy a tax credit for underlying corporate tax attached to dividends they receive.

New Zealand maintains an orthodox residence and source approach to income taxation, generally taxing residents on their worldwide income, but taxing non-residents only on income with a New Zealand source.

New Zealand's tax rules are, by international standards, relatively simple and the local tax authority, Inland Revenue, generally maintains high standards of fairness and probity in administering the tax system.

Income tax – general

Scope of income tax

New Zealand income tax is generally imposed on the world wide income of New Zealand residents. Income of non-residents is also subject to income tax to the extent that income has a New Zealand source. This is (subject to any relief or reduction by operation of any applicable double tax agreement (**DTA**) (discussed further below).

"Income" includes most receipts on revenue account as well as some gains that would be classified as capital gains in other jurisdictions.

Taxable income and tax rates

Companies (including New Zealand subsidiaries and branches of foreign companies) and other business taxpayers are taxed on their taxable income, after taking into account their allowable deductions, net losses, and any tax credits.

The corporate tax rate is 28%, whereas graduated tax rates apply to individuals' income (10.5%, 17.5%, 30%, 33%, and 39%) and the trustee income tax rate is 33% (increasing to 39% from 1 April 2024).

Deductions

Taxpayers carrying on a business are generally entitled to deductions against assessable income for operating expenditure and interest incurred in the business, subject to thin capitalisation and transfer-pricing constraints (discussed further below). Business taxpayers are also generally entitled to depreciation deductions based on the cost of capital assets used in the business.

Net losses

Net losses incurred in a tax year may be used to offset net income in a future tax year, so long as they can be carried forward.

Net losses can generally be carried forward by non-corporate taxpayers without restriction.

For companies to carry forward net losses, either 49% shareholder continuity or business continuity (ie no major change to the company's business) must be maintained.

Company income tax

Income tax residence

A company is resident in New Zealand for income tax purposes if:

- it is incorporated in New Zealand;
- its head office is in New Zealand;
- its centre of management is in New Zealand; or
- New Zealand is the place from which the directors exercise control of the company (whether or not exclusively).

If a company is resident in New Zealand and also resident in another country with which New Zealand has a DTA (discussed further below), the "tiebreaker" provisions in that DTA will determine where the company is considered resident for the purpose of applying that DTA.

Corporate dual residence is generally undesirable under New Zealand domestic tax rules (eg subject to a proposed change for New Zealand/Australia dual resident companies, a dual resident company that is deemed non-resident in New Zealand for the purposes of a DTA cannot operate an imputation credit account under the imputation system).

A New Zealand resident company is liable to income tax on its profits (after taking into account any deductions, losses and credits) at the rate of 28% (as noted above).

Dividend taxation and the imputation system

Company dividends are taxable to the recipient and "dividend" is widely defined to include most benefits provided by a company to a shareholder or any associate of a shareholder.

The dividend imputation system allows companies to pass on the benefit of income tax paid at company level as tax credits attached to dividends, to offset tax on the dividend.

Dividends with imputation credits attached are referred to as "imputed" dividends.

Imputation credits can be used by New Zealand resident shareholders to offset their income tax liabilities (including the liability for the dividend received).

Credits attached to dividends paid to one company by another can be used to offset the recipient company's tax liability and credited to that company's imputation credit account for subsequent distribution to the recipient company's shareholders.

Non-resident withholding tax (**NRWT**) on dividends paid to a non-resident shareholder by a resident company is zero-rated to the extent that the dividend is fully imputed, if the non-resident shareholder has:

- a 10% or more direct voting interest in the resident company; or
- less than a 10% direct voting interest in the resident company, and a DTA applies and limits the New Zealand tax rate on the dividend to less than 15%.

Non-resident shareholders with a less than 10% interest in the resident company receiving an imputed dividend may receive a supplementary dividend under the foreign investor tax credit (**FITC**) regime, providing effective relief from NRWT on the dividend.

NRWT may apply to non-imputed dividends paid to non-resident shareholders (eg dividends sourced from a capital profit of the New Zealand resident company). However, most of New Zealand's DTAs will limit the rate of NRWT to 15% (the domestic law rate for non-imputed dividends being 30%) and, in some cases, to 5% or 0%.

Inter-company dividends

Dividends paid between New Zealand resident members of a wholly-owned group are generally exempt. Those received by a New Zealand company from a foreign company are generally exempt also. Inter-company dividends are otherwise generally taxable.

Branch taxation

New Zealand branch operations of a non-resident company are liable to income tax on branch profits at the rate of 28%, unless New Zealand has a DTA with the jurisdiction in which the head office is located, and the New Zealand branch is not a "permanent establishment" for the purposes of that DTA, which would be unlikely. The taxable income of a New Zealand branch takes into account any deductible loss or expenditure directly attributable to the branch operations.

Income tax paid by branches is a final tax. No withholding tax is payable on subsequent repatriation of the after-tax profit overseas.

Thin capitalisation

New Zealand's thin capitalisation rules limit tax deductions for interest in certain circumstances, and the rules have been tightened as part of New Zealand's response to the OECD's base erosion and profit shifting (**BEPS**) project.

The thin capitalisation rules apply to any non-resident company or to a New Zealand resident company if it is controlled by a single non-resident (or group of associated non-residents) or by a group of non-residents "acting together". A company will be denied a deduction for interest to the extent that its New Zealand group's ratio of debt to assets exceeds:

- 60%; and
- 110% of its world-wide group debt to asset ratio.

The thin capitalisation rules also apply to non-resident individuals, other non-resident entities and New Zealand trusts controlled by non-residents, which entities may be entitled to interest deductions in relation to New Zealand investments.

Transfer pricing

New Zealand has a comprehensive transfer pricing regime dealing with cross border transactions between associated parties. The regime incorporates most OECD mandated BEPS measures.

A further "restricted transfer pricing" rule determines the allowable interest rate on inbound related party debt. A New Zealand borrower that is determined to be at a "high risk of BEPS" will have its credit rating used for transfer pricing purposes restricted to a maximum of two notches below its worldwide group's credit rating. Also, any loan features not typically found in third-party debt will be disregarded in calculating the allowable interest rate on related party debt. The restricted transfer pricing rule generally only applies when the New Zealand taxpayer has related party borrowings over NZ$10 million.

Other BEPS measures

Two further rules are in place as part of New Zealand's response to the OECD BEPS project.

Under a BEPS related anti-avoidance rule, a non-resident entity is deemed to have a permanent establishment in New Zealand if:

- it belongs to a global group with at least €750 million in annual turnover; and
- a related entity carries out sales related activities for it in New Zealand under an arrangement with a more than merely incidental purpose of tax avoidance.

There is also a comprehensive set of rules to reduce the unintended tax advantages that result from hybrid instruments and entities in cross-border arrangements.

Unit trusts, superannuation funds, and other managed investment vehicles

Unit trusts are deemed to be companies for income tax purposes. Widely held superannuation funds are generally subject to tax at 28% on their net income. Employer contributions to superannuation schemes are subject (with certain exceptions) to employer superannuation contribution tax (**ESCT**).

Some New Zealand resident widely held unit trusts, superannuation funds, and other investment vehicles are able to elect into the portfolio investment entity (**PIE**) tax regime. PIE status has certain tax benefits including an ability for the PIE's income to be taxed by reference to investors' marginal tax rates (with a 28% cap) and an exemption from tax on New Zealand and some Australian share trading revenues.

Further, for PIEs meeting certain criteria, New Zealand tax on foreign sourced income attributable to non-resident investors is exempt, while tax on certain New Zealand-sourced income is imposed at concessionary rates. A PIE otherwise pays tax at 28% on all income, including foreign sourced income, attributable to non-resident investors in the PIE.

Withholding taxes

Resident Withholding Tax (RWT)

Interest and dividend income paid to a New Zealand resident taxpayer is subject to RWT (unless the recipient has RWT-exempt status, and subject to certain other exemptions). RWT can also apply to a payment to a non-resident in limited circumstances.

RWT is deducted at the following rates:

- 45% on interest if the interest payer does not have the payee's IRD number;
- 10.5%, 17.5%, 30%, 33% or 39% on interest paid to individuals;
- 28%, 33% or 39% on interest paid to companies; and
- 33% on all dividends (except to the extent imputed).

Non-Resident Withholding Tax (NRWT)

New Zealand sourced dividends, interest, and royalties paid to non-residents are subject to NRWT, but NRWT is zero-rated in some cases.

The rate of NRWT is:

- 30% in respect of dividends, other than "fully imputed" dividends, for which either the rate is 0% or NRWT is relieved by the FITC regime (and the rate is in any event capped at 15% in most of New Zealand's DTAs and, in some cases, less);
- 15% in respect of interest (capped at 10% in most DTAs and, in some cases, reduced to 0%) unless the non-resident has a New Zealand branch, and subject to the approved issuer levy (**AIL**) regime (discussed further below); and
- 15% in respect of royalties (capped at 5%, 10%, or 15% in DTAs).

Non-resident Financial Arrangement Income tax rules apply to any interest-bearing loan between a non-resident lender and an associated New Zealand borrower. Those rules effectively require interest for which the borrower is entitled to a deduction to be treated as paid to the lender (or capitalised, not merely accrued), so that NRWT applies and must be paid.

The AIL regime may be utilised by a New Zealand tax resident borrowing from a non-resident, non-associated lender, by completing certain registrations. This reduces NRWT to 0% provided that AIL equal to 2% of the gross interest is paid.

Other withholdings

Income tax-related withholding tax or equivalent regimes also apply to other payments and benefits. In particular, the pay as you earn (**PAYE**) withholding tax, fringe benefit tax (**FBT**) and ESCT withholding tax regimes generally apply to monetary remuneration and other benefits provided by employers to employees.

The PAYE withholding tax regime also extends to various other payments to non-employees, such as directors' fees, honoraria, sales person commissions, and non-resident contractors' and entertainers' fees.

The DTA network

New Zealand has entered into DTAs with 40 trading partners and is continuing to develop its treaty network by negotiating new DTAs with trading partners, as well as revising existing DTAs. The DTAs are designed to remove the double taxation (ie tax applying in two jurisdictions in respect of the same income) which would, in their absence, be suffered by New Zealand residents investing overseas, and non-residents investing in New Zealand.

As a member of the OECD, New Zealand has adopted the OECD Model Convention as the basis of its DTAs, although it has made a number of reservations to the model.

New Zealand is also a party to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (**MLI**), which affects some of New Zealand's DTAs (eg the DTA with Australia).

DTAs have been entered into with Australia, Austria, Belgium, Canada, Chile, China, the Czech Republic, Denmark, Fiji, Finland, France, Germany, Hong Kong, India, Indonesia, Ireland, Italy, Japan, Korea, Malaysia, Mexico, Netherlands, Norway, Papua New Guinea, Philippines, Poland, the Russian Federation, Samoa, Singapore, South Africa, Spain, Sweden, Switzerland, Taiwan, Thailand, Turkey, the United Arab Emirates, the United Kingdom, the United States of America, and Vietnam.

New DTAs and revisions of existing DTAs are under negotiation.

New Zealand has an intergovernmental agreement (**IGA**) with the United States in relation to FATCA. Domestic legislation giving effect to the IGA has also been enacted.

No capital gains tax

There is no general capital gains tax in New Zealand. However, "income" for New Zealand income tax purposes includes amounts derived from certain transactions which would be taxed as capital gains in other jurisdictions. These transactions include the following:

- profits from the sale of land in certain circumstances;
- lease incentives, and surrender payments as well as lease transfer payments in certain circumstances;
- certain royalty payments; and
- certain gains in the value of "financial arrangements" under the accruals regime.

Goods and services tax (GST)

GST is a value added tax imposed on most supplies of goods and services in, or into, New Zealand.

The rate of GST is generally 15% of the value of a supply.

A supplier of goods and/or services must be registered for GST purposes and account for GST on their supplies if the annualised value of taxable supplies made by that supplier exceeds or is likely to exceed NZ$60,000 in a 12-month period. A person may also register voluntarily, provided they carry on a taxable activity (or intend to carry on a taxable activity from a specified date).

Voluntary registration is also available to certain non-residents not carrying on a taxable activity in New Zealand (to recover GST charged on acquisitions), provided certain requirements are met.

GST charged on supplies of goods or services is known as "output tax". A registered person's GST returns account for output tax charged on taxable supplies made by the person for the relevant return period, and claim deductions for GST charged on supplies acquired by the person (known as "input tax"). The net amount is paid to Inland Revenue or claimed as a refund.

In relation to supplies of goods and services into New Zealand, specific GST rules apply under which (in broad terms):

- offshore suppliers of "remote services" and low value imported goods (the current value threshold being NZ$1,000 or less) to New Zealand consumers may be required to register for GST purposes and account for GST on their supplies; and
- importers of goods are required to pay "import GST" on other imported goods (valued over NZ$1,000).

Some supplies – including supplies of longer-term residential accommodation and supplies of financial services – are exempt from GST (although some supplies of financial services will be treated as taxable, zero-rated supplies).

In addition, certain taxable supplies (including supplies of "going concern" businesses and supplies that include land between GST-registered parties, and exported goods and services) are zero rated (ie GST is reduced to 0%).

New GST rules have also been proposed for certain supplies arranged via digital apps or platforms (eg ride-sharing, deliveries, short-stay accommodation), to charge GST even if the underlying supplier's turnover would not otherwise require them to register and account for GST on their supplies.

Section 16 Insolvency

Overview

New Zealand has a number of insolvency and general company law procedures that can be used either to restructure a business and its finances or, where that is not possible, to maximise realisation for creditors.

Formal corporate insolvency law in New Zealand is governed primarily by the Companies Act, the Receiverships Act and common law. Matters of security and creditor priority are further governed by the Personal Property Securities Act, Property Law Act and Land Transfer Act, as well as the common law and numerous regulations.

The insolvency regime centres on two fundamental principles:

- **Hierarchy of Creditors**: creditors are generally ranked in a class hierarchy (secured creditors; preferential unsecured creditors; unsecured creditors; and shareholders); and
- **Pari Passu Principle**: distributions to creditors of a particular class are based on the proportion of their debt.

In addition to formal or court-supervised procedures, New Zealand is a flexible jurisdiction for consensual restructuring and corporate rescue. Debt for equity swaps, pre-packaged business transfers and credit bidding are all possible tools for restructuring debts or other investments.

Options for creditors and debtor companies

If a New Zealand company or other body corporate appears to be suffering financial difficulty, the debtor and creditors have a number of formal options to consider, for example:

- making an application to the High Court for the debtor to be put into **liquidation**;
- a debtor company's shareholders passing a special resolution (or, rarely, directors passing a resolution) to put the company into **liquidation**;
- a secured creditor appointing **receivers** over charged assets;
- entering into a Companies Act **creditors' compromise** with the debtor;
- creditors' **schemes of arrangement**; and
- a third party **administrator** being voluntarily appointed by the debtor's directors, by a qualifying secured creditor, or by the court.

Very rarely, the government will appoint a **statutory manager**, by making an Order in Council. This is only likely to occur where there is some need to protect the wider public interests.

A wide range of informal debt restructuring and work out tools are available in New Zealand, which may be used as alternatives to, or in combination with, the more formal procedures mentioned above. Creditors of distressed New Zealand businesses may consider:

- covenant or debt waivers;
- rescheduling debts or making other amendments to terms;
- trading in distressed debts;
- debt for equity swaps;
- pre-packaged business or asset transfers (potentially breaking up or spinning off profitable parts of a wider business);
- credit bidding (whether secured or unsecured and whether the debtor is in receivership or not); and
- challenging certain vulnerable antecedent transactions (see the comment about voidable transactions below) and potentially pursuing directors or other officeholders (in most cases this would be done through a liquidator or in the company's name by its receivers).

Liquidation – part 16 Companies Act

If a body corporate, such as a company or limited partnership, is insolvent, a creditor may apply for it to be put in liquidation.

Typically the first step towards liquidating a company is to serve a demand on the company under section 289 of the Companies Act (**statutory demand**). The statutory demand requires the debtor company to repay the debt, enter into a creditors' compromise, or otherwise enter into an agreement with the creditor in respect of the debt within 15 working days.

If the debtor fails to comply, or does not apply to the High Court to set aside the demand within 10 working days, it is deemed to be unable to pay its debts. On this basis, the creditor can apply to the Court for orders:

- putting the company into liquidation; and
- appointing a liquidator chosen by the creditor.

In addition to this more typical procedure, creditors can apply for appointment of an interim liquidator, although this is less common or a company's shareholders, or directors (if the company's constitution permits) can themselves resolve to put the company into voluntary liquidation.

A liquidator's powers are far reaching and include:

- taking over control of the company and its assets;
- realising the company's remaining assets, including claims against debtors of the company or against directors;
- requesting documentation from, and examining under oath, company directors, shareholders, lawyers or accountants;
- clawing back **voidable transactions** made to a creditor within a specified period prior to liquidation (two years for related party creditors, and six months for non-related creditors), where the creditor has received more than it would have received in the liquidation and resulting in an undue preference over other creditors; and
- issuing proceedings relating to transactions at an undervalue.

In the course of the liquidation, the liquidator may convene a creditors' meeting and is obliged to prepare and register regular (six monthly) reports. Creditors are to file their claims (proofs of debt) to the liquidator within the stipulated timeframe and have recourse (by Court application) if they are unhappy with the liquidator's decision.

Once the company's assets have been realised, the liquidators will make a distribution to unsecured creditors on a rateable (pari passu) basis. Some limited classes of creditors (for example, employees and the Commissioner of Inland Revenue) have preferential status ahead of unsecured creditors, up to set amounts.

At the conclusion of the liquidation, the company will be removed from the Register of Companies.

Receivership – Receiverships Act 1993

In New Zealand, receivers are usually appointed under a contract between a secured creditor and the debtor. Often, the parties will have entered into a General Security Agreement (**Security Agreement**), which provides the creditor with a security interest over the debtor company's assets and that has wide default provisions. Following an event of default, the creditor can appoint a receiver over all or some of the company's assets.

The receiver's primary function is usually to realise the assets secured by the Security Agreement, for the benefit of the secured creditor. During the course of the receivership, receivers stand in the shoes of the debtor company, in that they are typically empowered to do anything the company could do. It is possible for multiple receivers to be appointed at the same time, under different Security Agreements. It is also possible for a company to be in both receivership and liquidation at the same time.

The receivership is at an end once the relevant secured assets have been realised. The company will then return to the control of its directors, unless the company is already in liquidation.

Creditors' compromise – Part 14 Companies Act

A debtor company wishing to avoid being put into liquidation may make a repayment proposal to its creditors in accordance with the procedure set out in part 14 of the Companies Act, offering creditors less than the entire debt owed to them. Creditors then file proofs of debt and a meeting is convened to vote on the proposal.

If more than 50% of the creditors in number representing at least 75% of the value of debt vote in favour of the proposal, the compromise is passed and all creditors are bound by its terms. Creditors can oppose the compromise being binding on them (by Court application) on the basis of undue prejudice.

In addition to compromises under part 14 of the Companies Act, part 15 of the Companies Act provides for Court approved arrangements and compromises.

Voluntary administration – Part 15a Companies Act

A voluntary administration may be appropriate if the debtor company has prospects of recovery. Similar in some ways to a creditors' compromise under part 14 of the Companies Act, voluntary administration has the additional advantage of an immediate statutory moratorium that prevents unsecured creditors from taking enforcement action while the company is in voluntary administration (with limited exceptions).

Typically, the debtor company appoints an administrator and, after an initial creditors' meeting, a "watershed meeting" is convened within 25 working days. At the watershed meeting, creditors may vote on whether to enter into a Deed of Company Arrangement (**DOCA**). A DOCA is a contractual compromise reached between the debtor company and its creditors, which often allows the company to continue trading under the supervision of the administrator. Alternatively, creditors can vote to return the company to the control of the directors, or resolve that the company be placed into liquidation.

If the DOCA is executed, all affected creditors (including secured creditors who voted in favour of it) are bound by its terms, subject to relief being granted by the High Court.

Section 17 Climate change law and policy

Overview

New Zealand is a signatory to the Paris Agreement. The Climate Change Response Act 2002 provides the framework for New Zealand to develop and implement climate change policies in support of its Paris Agreement commitments.

A range of climate-change related economic initiatives are already in place, as part of the Government and industry response, and more measures will inevitably follow if New Zealand is to meet its Paris Agreement emissions reduction targets.

New Zealand also has a Climate Change Commission, a body mandated to provide independent advice to Government on emissions budgets, emissions reduction plans, and national climate change adaptation plans. It is also required to provide the related risk assessments and recommendations on the Emissions Trading Scheme (**ETS**) and policy settings. The Commission is likely to have an important influence on the development of Government policies aimed at creating a climate-resilient, low emissions New Zealand.

Emissions trading scheme

The ETS puts an economic cost on the emission of greenhouse gases across all sectors of the economy. The ETS requires certain mandatory "participants" to account for emissions, generally by surrendering New Zealand units (**NZUs**). The ETS also allows persons registering to carry out forestry on post-1989 forestry land to receive NZUs for removals of greenhouse gases.

NZUs are created by the Crown and, apart from issuing them for forestry removals, are also supplied by auction, and to emissions intensive trade exposed industry on a reducing scale to assist with the transition to a low-carbon future. NZUs are freely tradable in bilateral contracts or on a number of exchanges.

- **Forestry**: forestry owners can opt-in to the ETS if they are growing a forest species on land that is classified as post-1989 forest land. This means that they can receive NZUs for carbon removals (but also means they have an obligation to surrender NZUs in some circumstances). Owners of pre-1990 forest land have an obligation to surrender NZUs for deforestation of their forests. Some Crown funding is available for the planting of forests.
- **Dairy**: dairy farming in New Zealand is a major emitter of biogenic methane and nitrous oxide, both greenhouse gases, and so caught within the Paris Agreement emissions targets. Methane and nitrous oxide emissions are excluded from the ETS until 2025 but the industry has until then to agree with Government about how it will manage these emissions.

Regulatory and policy response to zero carbon target

The Climate Change Response Act sets a net-zero emissions target for 2050 in relation to all greenhouse gases other than biogenic methane, and a gross emissions reduction target for biogenic methane. This target will inform the settings in the ETS and provide economic pressure to reduce emissions and adopt low-carbon-intensive technologies.

The emissions reduction target is expected to drive further change within carbon-intensive sectors and industries:

- **Agriculture**: providing incentives to mitigate on-farm greenhouse gas emissions, likely to result in farm emissions measurement and compliance requirements, different farming practices, and investment in emissions mitigation technologies such as feeds that result in less methane output by ruminant animals;
- **Transport fuels and stationary energy**: making alternative technologies more competitive by lifting the price of carbon- based fuels, and the imposition of charges on high emission vehicles and the provision of a rebate for zero and low emission vehicles;
- **Industrial processes**: making traditional energy sources and processes more expensive and alternative energy sources and processes more financially attractive;
- **Waste**: providing price incentives to reduce waste;
- **Forestry**: encouraging continuous forestry for carbon sequestration.

Mandatory climate-change reporting

Certain entities with a public function, including certain lifeline utilities, must provide information about their climate-related risk on request of the Government.

Publicly listed companies and large insurers, banks and investment managers are required to produce public climate statements for financial years commencing in 2023 and onwards. Disclosure requirements have been developed by the External Reporting Board, based on the recommendations of the Task Force on Climate-related Financial Disclosures.

Resource management approvals

On projects of national significance, local authorities must take account of climate change-related factors when considering resource management consent applications.

Local authorities are also required to:

- have regard to emissions reduction plans and national adaptation plans when making and amending regional and district planning instruments; and
- consider discharges to air of greenhouse gas emissions.

These settings will therefore have an impact on ongoing and new activities on, or having an effect on, land, water and air.

Governance

Awareness of the impact of climate change related matters is also part of the wider governance landscape in New Zealand.

Directors of New Zealand companies and licensed persons in the financial services sector are subject to statutory directors' duties, set out in the Companies Act, including a requirement to act in the best interests of the company. The scope of that duty almost certainly now requires directors, when making decisions on behalf of the company, to consider the risks and opportunities presented by the physical and transition implications of climate change.

The RBNZ (New Zealand's central bank) has also recommended that the governance bodies of registered banks and insurers explore their internal climate risk strategies, reflecting its concern that the New Zealand financial system's awareness and management of climate risks is lacking.

Section 18
Doing business with Māori organisations

Growth of the Māori economy

Māori have become signficiant players in the New Zealand economy. As of 2022, the value of the Māori economy is estimated to be in the region of NZ$70 billion.

The Government has negotiated agreements with many Māori tribal groups (hapu/iwi), settling historical grievances arising from the British Crown's failure to honour the Treaty of Waitangi (New Zealand's founding constitutional document, signed in 1840 between the British Crown and a number of Māori chiefs). These settlements have resulted in many iwi holding significant financial assets and land, forming a catalyst for growth of the Māori economy.

Traditionally, Māori have focused their portfolios in primary industries, tourism and commercial property, but some Māori organisations are now diversifying into other private capital investments. Joint ventures between Māori organisations, and both domestic and overseas investors, are common.

Guiding commercial values

Māori organisations are not established solely for short-term profit. Generally, Māori approach business with a holistic, intergenerational focus, balancing financial imperatives with social, cultural and environmental aspirations.

Balancing these 'quadruple bottom lines' stems primarily from Māori cultural values (tikanga Māori), sourced in the Māori world view.

Tikanga Māori is part of what sets Māori and Māori business apart from the 'mainstream'. Tikanga Māori is an ethical framework lying at the heart of the Māori society, informing everyday decision making, reasoning and behaviour.

Some of the key tikanga principles applied to business are:

- **Tino Rangatiratanga** (Self-determination, authority and independence): This is a key principle that empowers Māori to make decisions for themselves.
- **Kaitiakitanga** (Guardianship): Māori have ancestrally rooted obligations to sustain and maintain balance of the environment, while providing for future generations. For some Māori businesses this means retaining ancestral land and control over natural resources, with long-term approaches to investment.
- **Whanaungatanga** (Kinship, or building and maintaining networks and relationships): In practice, this means developing deeper relationships to work harmoniously to achieve common goals. It imposes obligations to support wider stakeholders, or iwi members.
- **Manaakitanga** (Welcoming, caring for, and helping one another): This includes fostering of growth and potential of individuals or groups, and building unity through generosity.

Engaging with Māori business

An investor looking to engage with a Māori organisation will likely be asked how the proposed business venture will benefit Māori. For example, whether and how the proposed venture:

- affirms and develops Māori cultural identity;
- aligns with Māori obligations to the environment;
- creates economic wellbeing for Māori; and
- provides employment opportunities for the Māori community.

Anyone engaging with Māori organisations must also take care to observe the appropriate protocols, which carry great significance within Māori culture.

Cultural references
The Māori language and culture

Te reo Māori – the Māori language

Te reo Māori is an official language of New Zealand, and has recently experienced a resurgence in use. Part of the revitalisation stems from political action and growing acceptance of New Zealand's heritage and history. Today, you will see and hear Māori words in everyday public and social settings in New Zealand.

A visitor to New Zealand is not expected to be competent in Māori custom and protocol. But efforts to understand and participate in formalities are welcomed, and in most cases, encouraged.

Some basic greetings include:

- **kia ora** (pronounced 'key-oar-ah'): Hello / Hi
- **tēnā koe** (pronounced 'teh-nah kweh'): Hello to one person
- **tēnā kōrua** (pronounced 'teh-nah core-rua'): Hello to two people
- **tēnā koutou** (pronounced 'teh-nah-ko-toe'): Hello to three or more people

For more Māori greetings and phrases, click the link here.

Tikanga Māori – Māori customs and protocols

It is common for government and some non-Māori organisations to welcome guests (especially for the first time) by formal ceremonies in accordance with Māori customs, or tikanga.

- **Pōwhiri or mihi whakatau** (welcoming ceremonies) are in some instances a first opportunity for parties to meet face-to-face (kanohi-ki-te-kanohi), and may be hosted at a marae (a Māori meeting ground), or more commonly in an organisation's workplace.
- **Karakia** (prayers) are used to commence formalities to acknowledge deities (often in a non-secular manner) and the purpose of the day.
- **Mihimihi and pepeha** (acknowledgments and introductions) are then an opportunity for parties to express their heritage, relationships and purpose of meeting.
- **Waiata** (song) is also part of Māori custom and necessary to support those who are speaking on your behalf.

For general guidelines on tikanga Māori or customs and protocols, please read more at the link available here.

SIMPSON GRIERSON

simpsongrierson.com

Auckland
Level 27, 88 Shortland Street
Private Bag 92518
Auckland 1141
New Zealand
+64 9 358 2222

Wellington
Level 5, 40 Bowen Street
PO Box 2402
Wellington 6140
New Zealand
+64 4 499 4599

Christchurch
Level 1, 151 Cambridge Terrace
West End, PO Box 874
Christchurch 8140
New Zealand
+64 3 365 9914

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