Doing business in New Zealand

A guide for investors

March 2024

chapman tripp

We make every effort to ensure the accuracy of the information provided but it should not be relied upon as a basis for making business decisions as circumstances, business conditions, government policy and interpretation of the law may change.

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About Chapman Tripp

Chapman Tripp, New Zealand's leading law firm, can offer you a national, full service team. Established in 1876, we have a reputation for excellence and a long track record of delivering innovative, commercial solutions which respond to the individual needs of our clients.

Our advice is clear and commercial. We help you mitigate risk and maximise your investment through all phases of your business venture – from evaluating potential investment opportunities and acting on acquisitions through to advising on the most efficient way to structure your business, the day-to-day operational issues you need to be aware of and, should it eventuate, how to achieve a successful exit strategy.

We also help you to make sense of the New Zealand regulatory and cultural environment. We will represent your business interests to relevant regulatory bodies, including the Overseas Investment Office, and will guide you through the resource management consent process and the best approach for dealing with Māori law.

Chapman Tripp has an international client base and has been involved in some of the most high profile Overseas Investment Office applications of recent times. We play a key role in mergers and acquisitions, banking, financing, insolvency, restructuring, procurement processes, large scale infrastructure projects and dispute resolution.

We have more than 50 partners and around 200 legal staff with offices in Auckland (the economic centre of New Zealand and home to more than a third of the population), Wellington (the seat of government) and Christchurch (the South Island's commercial hub).

This guide is designed to provide the prospective investor with an introduction to New Zealand's legal framework. The information is accurate at the time of publication but is necessarily high level and generic so should not be relied upon as a basis for decision-making.

We recommend you speak to us about your investment requirements before making any decisions so that we can provide you with advice that is specific to your needs.

You can read more about Chapman Tripp at chapmantripp.com.

"Our advice is clear and commercial. We help you mitigate risk and maximise your investment through all phases of your business venture."

NZ Law Awards 2023:
M&A Deal of the Year
Equity Market Deal of the Year
Mid-Market Deal of the Year
Project Finance Deal of the Year

KangaNews Awards 2023:
New Zealand Law Firm of the Year

Australasian Law Awards 2023:
New Zealand Deal Firm of the Year

Chambers Asia Pacific Awards 2021:
New Zealand Law Firm of the Year

NZ Lawyer:
Two Senior Associates recognised as Rising Stars

New Zealand at a glance

Geography

New Zealand is situated in the South Pacific Ocean, with a land area equivalent to Japan or Britain. We have one of the largest exclusive economic zones in the world at 4.1 million square kilometres.

New Zealand consists of two main islands – the North Island and the South Island. It has a temperate climate and offers a high quality of life with clean air and easy access to nature.

Population

The resident population is just over 5 million, one third of whom live in Auckland.

New Zealand is a nation of migrants, with one of the most ethnically diverse populations in the world and a large "ex-pat" community that provides important international linkages.

Culture

New Zealand culture values fairness, ingenuity, practicality, modesty, restraint and informality. English is the everyday language but Māori and sign language are also recognised as official languages.

We aspire to be a multi-cultural society but accord a special significance to Māori culture, reflecting that Māori are the indigenous people of this land.

Political and legal system

New Zealand is consistently rated in the top four by Transparency International for freedom from corruption. We have a common law legal system based on the British model, with an independent judiciary.

New Zealand has a stable parliamentary democracy with a proportional voting system which usually (but not always) produces coalition governments. The two major parties, which would generally lead a coalition government, are National at the conservative end of the spectrum and Labour at the liberal end.

Currently, we have a National Party government, forming a coalition with ACT and New Zealand First.

The British sovereign is the titular Head of State and is represented in New Zealand by a Governor-General.

Economy

New Zealand is a safe place to invest and was regularly ranked first of 190 economies for ease of doing business in the World Bank's now discontinued *Doing Business* report.

Major exports include dairy products, meat, timber and minerals. We also have developing industries in export education, boat building, IT, horticulture, wine and film.

Our stock exchange is the first in the world to open trading each day – two hours ahead of Sydney, three hours ahead of Tokyo, four hours ahead of Beijing, 12 hours ahead of London and 17 hours ahead of New York.

The currency is based on the New Zealand dollar, which is freely floated against all major currencies.

Free trade agreements

New Zealand supports trade liberalisation and is party to a large number of free trade agreements, including with Australia, China, the EU, the UK, Hong Kong, Chinese Taipei, South Korea, ASEAN, Singapore, Thailand, Malaysia, Brunei and Chile. We are also signatories to the Comprehensive and Progressive Trans-Pacific Partnership and to the Regional Comprehensive Economic Partnership (RCEP).

Information on New Zealand's international trading agreements can be found on the Ministry of Foreign Affairs and Trade website: mfat.govt.nz

Want to know more?
Go to:
newzealand.com or
newzealandnow.govt.nz/investing-in-nz or nzte.govt.nz/page/invest-or-raise-capital-with-nzte

Overseas investment in New Zealand

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Key points

- New Zealand recognises the positive economic and social contribution foreign investment brings to New Zealanders.
- New Zealand consistently ranks highly as an attractive investment destination, with various studies identifying the ease of doing business, low level of corruption, high quality of regulations, adherence to the rule of law, significant investor protections, and protection of personal freedoms accorded to investors in New Zealand.
- Not all overseas investments into New Zealand require consent or notification. Like most other countries, however, New Zealand does require overseas persons to obtain consent for, or to notify certain types of investments.
- Even if consent is not required, an investment into critical or strategically important business can require notification for consideration under the national security and public order regime.

When is consent required?

Overseas Investment Office (OIO) consent may be required if the target business possesses any of the following:

- significant business assets – where the cost of an acquisition, or the value of the applicable New Zealand assets, exceeds NZ$100 million. Non-government investors from all Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) countries have a higher threshold, and Australia has a special arrangement under the CER Investment Protocol)
- an interest in sensitive land, or
- fishing quota.

The definition of sensitive land is very detailed and requires careful checking and analysis from qualified advisers. In particular, land may be "sensitive" if it adjoins certain types of land or is "associated" with other land already controlled by an overseas person.

Residential land

The sale of residential property, including lifestyle blocks and unit titles, is restricted to:

- New Zealand citizens and persons "ordinarily resident in New Zealand" (which, in this context, means holding a permanent resident visa, having resided in New Zealand for at least a year and having been present in New Zealand for at least 183 days in the past year)
- individuals who obtain consent on the basis that they are acquiring a home to live in and have made a commitment to reside in New Zealand, and
- investors who can demonstrate through obtaining OIO consent that they will be developing the land and adding to New Zealand's housing supply, or using the land for a non-residential use or for a residential use that is incidental to the investor's core business.

Exemptions are available for Australians and Singaporeans under New Zealand's treaty obligations with these jurisdictions.

The National-led Government has promised legislation this term to make it easier for overseas investors to invest in Build-to-Rent projects in New Zealand.

Consent criteria

In general, all applicants (including persons with control of the applicant if the applicant is an entity) are required to meet a bright-line investor test comprising a closed list of character and capability factors.

The character factors include:

- convictions resulting in imprisonment
- corporate fines, in New Zealand or overseas, and
- being ineligible to come to New Zealand.

The capability factors include:

- prohibitions on being a director, promotor, or manager of a company
- penalties for tax avoidance or evasion, and
- unpaid tax of $5 million or more.

A national interest assessment may be applied to transactions involving strategically important businesses, an overseas government investor, or an area of specific national interest. This assessment, which is applied infrequently, is designed to ensure that overseas investments in sensitive and high-risk assets are not contrary to New Zealand's national interests.

Certain investments have additional criteria that must be met for consent to be granted (see the following table). We recommend you check with a qualified adviser on these requirements.

Sensitive land	To obtain consent, the overseas investor will need to demonstrate that the purchase will bring benefits additional to the status quo. These benefits are assessed against a variety of economic, social and conservation factors. Benefits need to be proportionate to the nature of the investment being made (so more minor transactions do not require such a high threshold) All residential land, including "lifestyle," is included in the sensitive land category.
Farm land	Farm land must be offered on the open market before a sale to an overseas person can be entered into. Exemptions from this requirement can be obtained, but only in special circumstances and at the discretion of the relevant Minister. The overseas investor will need to show that the benefits to New Zealand arising from the investment are substantial, including employment, new technology and business skills, increased productivity, increased exports, processing of primary products and a reduced risk of illiquid assets, and local oversight and participation. The type and level of benefits required mean it is difficult for an overseas investor to obtain consent to buy farm land without substantial enhancements proposed.
Fresh or seawater areas	These include marine or coastal areas, riverbeds or lakebeds that form part of sensitive land. The fresh or seawater areas of the sensitive land must be offered to the New Zealand Government as a part of the OIO consent application process.
Residential land	For transactions involving residential land (which is not otherwise sensitive), the overseas investor will need either to satisfy the benefit to New Zealand criteria or one of four alternative tests: a commitment to reside in New Zealand, increased housing supply, non-residential use or incidental residential use.
Leases	Leasehold interests in sensitive residential land for a remaining term of more than three years, including renewals, and more than 10 years, including renewals, for otherwise sensitive land will require consent. Prior leased interests may need to be included in this calculation.
Forest land	Overseas investors wanting to buy forest land – being land over five hectares devoted principally to forestry – will need to satisfy either the benefit to New Zealand criteria or one of two alternative streamlined tests: the special forestry test or the modified benefits test, both of which involve replanting after harvest. The OIA also covers the acquisition of forestry rights over 1000 hectares per annum. Land to be converted into forestry must meet the benefit to New Zealand test (rather than the special forestry test).
Strategically important business	Transactions involving a strategically important business (such as military or dual-use technology, ports or airports, electricity, water, telecommunications, and financial market infrastructure) are subject to a national interest assessment taking into account a range of factors, the importance of which can vary depending on the investment.

Off-shore transactions

Transactions occurring outside New Zealand may still require OIO consent if the target business has interests in land or other assets in New Zealand. OIO implications for off-shore transactions should be assessed early in the transaction process to ensure that OIO timeframes do not cause unnecessary delays.

Consent application process

The consent application process is administered by the OIO and governed by the Overseas Investment Act 2005 (the Act) and accompanying regulations.

The overall consent decision rests with the relevant Ministers. The OIO assesses the consent applications and makes recommendations to the Ministers. For certain applications the OIO itself makes consent decisions under delegated authority from the Ministers. National interest assessments are made by the Minister of Finance and are not delegated.

We recommend that potential investors engage New Zealand legal counsel early in the investment process to assess whether consent is needed and to ensure that there are no unnecessary delays. An application for consent can require preparing a large amount of information on the investor and the plans for the investment.

Assessment times can be found at https://www.linz.govt.nz/overseas-investment/discover/our-assessment-process/assessment-timeframes

The formal assessment timeframes were introduced in November 2021. The OIO can pause an application timeframe and also extend the timeframe. We can advise you on timeframe risks when advising on specific transactions.

Consent conditions

Consent will be granted subject to various conditions with which the applicant must comply and against which applicants must report. Often the conditions will reflect the nature of the benefits claimed to support the transaction in the consent application. Standard conditions include a requirement to dispose of the interest if consent conditions are not met.

Class exemptions

The requirements for consent do not apply to certain situations covered by class exemptions including:

- transfers within 75% wholly owned groups
- where there is no increase in ultimate overseas ownership and control
- acquisition of redeemable preference shares
- security arrangements in the ordinary course of business that secure payment or performance of an obligation, and
- underwriting of an issue of securities in the ordinary course of business, provided that the position is held for less than six months and voting rights are not exercised.

Establishing a business in New Zealand

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Key points

- Overseas persons can directly own assets and operate businesses in New Zealand or establish subsidiary entities to own assets and operate businesses in New Zealand.
- Overseas companies and limited partnerships that intend to carry on business in New Zealand need to register with the New Zealand Companies Office within 10 days of starting business in New Zealand.
- Overseas entities will need to obtain a New Zealand tax number and, depending on the volume of business, may be required to register for the Goods and Services Tax.

Unlike other countries, the Companies Register maintained by the New Zealand Companies Office is publicly available, including information regarding directors and shareholders, such as their full legal name and residential address.

Types of business entities in New Zealand

Overseas investors can undertake business in New Zealand through various structures:

- branches
- subsidiaries
- limited partnerships, and
- joint ventures/general partnerships.

Establishing a New Zealand branch

An overseas company that carries on business in New Zealand must be registered on the Companies Office Overseas Register within 10 working days of business commencing. Business is carried out in New Zealand if an overseas company:

- establishes or uses a share transfer office or a share registration office in New Zealand, or
- administers, manages, or deals with property in New Zealand as an agent, personal representative or trustee, whether through its employees or an agent or in any other manner.

The New Zealand component of business operations is governed by New Zealand law. The New Zealand Branch remains the same legal entity as the overseas company, and there is no sheltering of liability.

Establishing a New Zealand subsidiary company

A New Zealand company is a separate legal entity responsible for its own assets and liabilities. There is no restriction on the size of a company's share capital. There are no residency restrictions on shareholders.

Key points to note

- Every New Zealand company requires at least one New Zealand resident director or one Australian resident director who is also a director of an Australian company. As long as this requirement is fulfilled, a New Zealand company may have any number of overseas directors.
- Directors must comply with their duties under the Companies Act 1993. There is no requirement for a company to have a company secretary.
- The Companies Office may require a certified proof of identity (e.g. passport) and a certified proof of residential address (e.g. utilities bill) for overseas directors when registering a company.
- Every New Zealand company requires a New Zealand registered office address/address for service.

We can assist and put you in touch with providers of professional director and registered office services in New Zealand.

Establishing a limited partnership

The rules governing limited partnerships in New Zealand are similar to those applying in other jurisdictions, including Delaware, Australia and the Channel Islands. The distinctive feature of the limited partnership model is that it acts as a look-through vehicle for income tax purposes while affording the protections of limited liability to its members. A limited partnership must have at least one general partner and one limited partner, who cannot be the same person. A general partner is jointly and severally liable with the limited partnership and any other general partners for the unpaid debts and liabilities of the limited partnership. A general partner can be an overseas company provided it is registered in New Zealand with at least one director who lives in New Zealand or who lives in Australia and is a director of an Australian company.

A limited partner has the protection of limited liability, but must not take any part in the management of the limited partnership. A limited partner can be an overseas person.

Entering a joint venture/ general partnership

Joint ventures for a particular project can be carried out by a company, a limited partnership or an unincorporated contractual joint venture.

A general partnership is not a separate legal person and each partner is jointly and severally liable for the debts of the partnership. Responsibilities and liabilities can be allocated according to a partnership deed, but partners do not enjoy the protection of limited liability. For this reason, some investors prefer to pursue joint ventures through a special purpose vehicle company or limited partnership.

Branch, subsidiary or limited partnership?

There are advantages to each of the three options, depending on the circumstances.

	Branch	Subsidiary	Limited partnership
Liability	Because the branch is legally the overseas company, there is no sheltering of liability.	A special purpose subsidiary may help ring-fence liability. But in practice, unless the subsidiary is substantial in its own right, any significant commercial dealings may need to be guaranteed by the overseas parent.	The general partner (which may be a company) manages the business and can be liable for any debts and obligations which the limited partnership itself is unable to meet. The limited partners are passive investors and their liability is limited to the amount of capital they agree to contribute.
Tax	The branch will generally be considered to be non-resident for tax purposes, with the effect that the overseas company will have to pay any tax obligations incurred in New Zealand but may also be able to include the branch activities in the tax return filed in the home jurisdiction of the head office.	The subsidiary is a New Zealand tax resident and will be subject to New Zealand tax on the subsidiary's worldwide income. Losses cannot be offset against any income of the overseas parent and cannot usually be claimed in the parent's home jurisdiction.	Limited partners are treated as holding the assets of the limited partnership and personally derive the income and deductions. This enables them to distribute capital gains among themselves tax free and to pass through tax losses (although only to the extent of that limited partner's exposure to the loss).

Overseas Investment Act Consent

Establishing a new business may be subject to the Overseas Investment Act (see the *Investing in New Zealand* section for more detail).

Buying and developing real estate in New Zealand

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Key points

- All titles in New Zealand are registered at Land Information New Zealand. "Freehold" title is the most common. Particular care needs to be taken when dealing with "leasehold" or "unit title" properties.
- When purchasing property in New Zealand, it is usual to sign a sale and purchase agreement that is conditional upon the purchaser carrying out a due diligence investigation and being satisfied with the results of that investigation.
- Overseas investors (unless from Australia or Singapore) need government consent under the Overseas Investment Act to buy "sensitive" land or any other property where the consideration is over $100 million. See the *Investing in New Zealand* section for more detail.

Registered title system

New Zealand uses the Torrens land registration system under which most parcels of land have their own titles showing dimensions and location, ownership and other interests affecting the land. The government guarantees the accuracy of titles, which can be searched by the public for a nominal fee.

Chapman Tripp provides a full title searching service.

The primary attraction of the Torrens system is that dealings can be conducted in reliance on a single title, rather than on a succession of title deeds. New Zealand has converted almost all titles, plans and instruments into an electronic format, allowing real-time searching and electronic registration of all land title and surveying transactions.

Under New Zealand law, buildings and other improvements permanently attached to the land form part of the land itself and pass with ownership of the land, unless the seller and buyer agree otherwise.

Dealings with land are registered electronically against the title.

Forms of title

In New Zealand there are three main forms of title.

Freehold – this is the most common (and best) form of title available in New Zealand.

Leasehold – the purchaser of a leasehold property acquires the benefit of a lease of the property (as opposed to the freehold). Leasehold title is particularly prevalent within the Auckland waterfront area. The term and rental structure of these leases can vary significantly. Particular care needs to be taken when acquiring leasehold property, especially when the lease reserves an annual rent that is subject to review under the terms of the lease.

Unit Title – unit titles are similar to other forms of title save that they are limited to a defined part of a building or property. They are the most common form of title for apartment buildings (with each individual apartment comprising a single unit title). Most unit titles are freehold but it is not uncommon to find leasehold unit titles within the Auckland waterfront area. A purchaser of a unit title property automatically becomes a member of the "body corporate". The body corporate effectively governs the building under the terms of the Unit Titles Act 2010, with a particular focus on the management and maintenance of common property (such as lobbies and lifts) and the structural elements of the building as well as common building services. Before entering into an agreement to purchase a unit title property, the vendor is obliged to provide the purchaser with a pre-contract disclosure statement which contains information on the unit title being purchased (including the amount of the "levies" payable to the body corporate to cover the cost of the insurance of the building as well as its management and maintenance).

Contracts for sale and purchase of land

To be enforceable under New Zealand law, a contract for the sale and purchase of land must be in writing and signed by the parties involved or their authorised agents. Once signed, an agreement for sale and purchase becomes legally binding on all parties.

Sale and purchase agreements can be made subject to conditions which are designed to protect either the seller or the buyer. Common conditions are the buyer raising finance and the buyer being satisfied with the results of the due diligence investigation (see below).

You should always obtain legal advice before entering into a sale and purchase agreement. However, particular care needs to be taken before entering into an agreement to purchase:

- a commercial property (which, depending on size and value, may be subject to fairly significant legal negotiation), or
- a residential property that is to be developed by the vendor (commonly referred to as buying property "off the plans").

Where a real estate agent is engaged by a seller to effect a sale, commission is payable by the seller. There is no stamp duty.

Due diligence

Due diligence is a fundamental component of the process of acquiring property in New Zealand. Depending on the nature of the property being acquired, due diligence commonly entails engaging a lawyer to review:

- the title to the property and (in the case of commercial property) the terms of any leases
- council records for the property in the form of a "LIM" report to identify the following types of issues:
  - any enforcement action being taken by the council for non-compliance with statutory or regulatory requirements
  - any outstanding code compliance certificates in respect of any building work undertaken at the property (see section below on building works)
  - the existence of a building warrant of fitness which is required for most buildings other than stand-alone houses (see section below on building works)
  - any relevant records held by the council regarding the property (for example the existence of any contamination or geotechnical issues or whether the building has been identified as "earthquake prone")
  - any rates arrears.

In addition, you will need:

- a registered valuer to undertake a valuation of the property, and
- a building inspector/engineer to review the condition of the building and identify any defects or maintenance issues (see also the comments below about the "seismic rating" of commercial buildings).

Seismic rating of commercial buildings

As a result of the Christchurch earthquakes of 2010 and 2011, purchasers of commercial buildings will now usually include the seismic rating of those buildings as part of their due diligence investigation.

All new buildings in New Zealand are required to be constructed to 100% of the current building code (often referred to as "New Building Standards" or "NBS"). However, older buildings are unlikely to have been constructed to 100% of NBS, either because of the lower building standards applying at the time the building was constructed or because of poor design or workmanship.

An older building with a seismic rating of less than 34% of NBS is classified as "earthquake prone" and will be subject to statutory requirements for seismic strengthening works. Particular care needs to be taken with heritage buildings and buildings constructed before 1976, which are more likely to be earthquake prone.

Typically, most investors in commercial property in New Zealand look for a seismic rating of at least 67% of NBS. A rating of less than 67% can have an impact on the value of the property and also the ability to attract or retain tenants. Most major corporates in New Zealand will refuse to lease property in New Zealand if it has a seismic rating of less than 67%.

There are two main types of report issued by engineers to assess the seismic rating of a building:

- an "ISA" (or "Initial Seismic Assessment"), a very high level desktop study that is not always accurate and should be treated with caution, and
- a "DSA" (or "Detailed Seismic Assessment") which is usually more accurate but will generally cost more than an ISA. However, care still needs to be taken to review the report to identify any limitations on the scope of the investigations undertaken by the engineer.

If the engineer's report was obtained by the vendor, the purchaser should consider requiring either that the engineer confirm in writing that the purchaser may rely on the report or that the report be re-addressed to the purchaser.

Residential property – tax considerations

Generally, gains from the sale of residential properties purchased:

- on or after 27 March 2021 and held for less than 10 years, or
- between 29 March 2018 and 26 March 2021 and held for less than five years

are taxed at the owner's standard income tax rate under the "bright-line test".

Residential property acquired on or after 27 March 2021 may be subject to a shorter five year bright-line period if the land qualifies as "new build land" (generally property where a new abode/residence was added to the land on or after 27 March 2020).

Exemptions (and in some cases, apportionment) may apply if the property is:

- the seller's main home
- inherited from a deceased estate
- sold as part of a relationship break down or
- transferred between certain associated persons (e.g., from a settlor to a family trust).

Gain from sale of a property held for longer than the relevant bright-line period (five years or 10 years) may still be taxed if the Inland Revenue Department (IRD) considers that the seller acquired the property for a purpose or intention of resale, or if one or more of the specific land taxation provisions applies (for example, if the seller carried on, or was associated with someone who carried on, a business of land dealing, land development or building at the time of acquiring the property and sells that property within 10 years).

Residential Land Withholding Tax (RLWT) applies where the seller is an offshore person and the residential land is sold within the relevant "bright-line" period. RLWT also applies to sales by New Zealand entities that are ultimately more than 25% owned or controlled by offshore persons. (For more detail, refer to the section on *New Zealand's cross-border tax regime*.)

Residents must provide an IRD number as part of the usual Land Information New Zealand transfer process. Non-residents must also provide a New Zealand IRD number as well as a home jurisdiction tax number together with another form of identification – such as a passport. In order to obtain an IRD number, a non-resident will need a fully functional New Zealand bank account or confirmation from a New Zealand reporting entity that customer due diligence has been completed in accordance with New Zealand anti-money laundering (AML) legislation.

Resource Management Act

The Resource Management Act 1991 is New Zealand's principal statute relating to the use of land, water, minerals, the coast, air and physical resources. The Act has major implications for all property developments, be they commercial, industrial or residential in nature, and for infrastructure and utilities. A new development may require a number of consents under the Act before it can go ahead.

Controls on property development are administered by local government authorities and are expressed through a range of publicly notified plans. These include regional plans, district plans, and some national level plans. Plans set out rules for activities depending on the nature, scale and location – for most developments above a certain size this includes the requirement to obtain resource consent. At the district level, these rules are largely based on the zoning of the relevant land. Parties seeking consent to proceed with a development must follow the procedures set out in the relevant plan. This may involve public participation in the resource consent process, through notification of the consent application.

Privately owned land may also be designated in the applicable district plan as being required by the government or other competent designating authority for a public work (including compulsory acquisition if necessary). The current market value of the land would be paid as compensation.

The Act is proposed for replacement but will remain largely in effect for several years. For more detail, refer to the *Environment and resource management law* section.

Building works

The Building Act 2004 is designed to regulate and control building work and the use of buildings. Every new building and most substantial alterations or additions to existing buildings will require a building consent. Multiple-use approvals are available for group home builders who build homes throughout New Zealand using the same or similar plans.

Following completion of any work pursuant to a building consent, a code compliance certificate (or "CCC") should be obtained. When purchasing a building in New Zealand, a key item that should be checked during the due diligence investigation is whether there are any outstanding code compliance certificates for building work carried out at the property. This can be verified by engaging a lawyer to review an up to date "LIM" report for the property.

Most types of property (other than stand-alone houses) are also required to hold a building warrant of fitness (or "BWOF") that is issued annually confirming that certain building systems and services (mostly related to life safety, such as sprinklers, lifts and fire alarms) comply with certain Building Act criteria. The existence of a BWOF should be checked during the due diligence investigation by reviewing an up to date "LIM" report for the property.

Allied to the Building Act is the Building Code. This sets criteria to ensure buildings are safe, sanitary, have adequate means of escape and, in the case of public buildings, have access and facilities for disabled persons. Existing buildings, which are being altered, may require upgrading in the course of the alterations in order to comply with these criteria as nearly as is reasonably practicable. Buildings considered earthquake prone may also be required to be upgraded.

The Act imposes restrictions upon occupation of a building where public areas of that building are subject to building works for which a code compliance certificate has not yet been issued.

Māori land claims

Land claims by Māori, the indigenous people of New Zealand, are governed by the Treaty of Waitangi Act 1975. Under the Act, grievances are heard by the Waitangi Tribunal which can then make recommendations to the government regarding the resolution of those grievances.

Recommendations for the return of land to Māori are generally applicable only in respect to land owned by the government or State-Owned Enterprises. Privately owned land is not subject to return to Māori ownership unless the title to the land has been specifically endorsed to that effect (and, even then, current policy is not to exercise that right). If it was exercised, the current market value would be paid.

For more information on Māori rights under the Treaty, refer to our *New Zealand Māori and the Treaty of Waitangi* section.

Environment and resource management law in New Zealand

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Key points

- The Resource Management Act 1991 (RMA) is the primary instrument of environmental regulation in New Zealand but is marked for replacement.
- The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 extends a variant of the RMA into the sea and seabed 12 to 200 nautical miles offshore from New Zealand.
- New Zealand's climate change response is delivered through an Emissions Trading Scheme.

The Resource Management Act

The Resource Management Act 1991 regulates all uses of land, water and air, out to the edge of the 12 nautical mile coastal limit. It is largely administered by local government through resource consents granted, or withheld, under statutory and publicly notified district and regional plans, and some national level documents.

District plans control the use of land. Regional plans control the use of water, coastal matters and the discharge of contaminants.

These plans classify activities as:

- permitted (not requiring resource consent)
- controlled, discretionary or non-complying (a resource consent is required and, where granted, will often be subject to specific conditions designed to mitigate any adverse environmental effects), or
- prohibited (will not be consented).

Applications for resource consent are generally made to the relevant local authority. Depending on the type of activity, the application may be heard without public notification, on a publicly notified basis, or with limited notification to affected parties only.

Applicants must provide a comprehensive assessment of the environmental impact of the proposal or use. Rights of appeal can generally be exercised by the applicant, or by anyone who has made a submission on the application to the Environment Court.

The RMA has a range of penalty and enforcement provisions. Directors and senior managers can be found personally liable for any acts or omissions by the company.

Central government can also provide national direction through National Policy Statements, National Planning Standards and National Environmental Standards.

Under the RMA, polluters who contaminate land can be liable. But owners or occupiers of contaminated land can also face enforcement action for that contamination (even if it is historic contamination caused by a previous polluter).

Fast track option

The Government has introduced a Fast Track Approvals Bill, now before the select committee for public submissions, to speed infrastructure and economic development. Projects that are accepted into the process must be approved within six months of being referred to an expert panel.

The new regime will allow the fast tracking of:

- Resource consents, notices of requirement, alterations to designations and certificates of compliance under the Resource Management Act 1991
- Marine consents under the Exclusive Economic Zone and Continental Shelf Environment Effects Act 2012
- Section 61 land access arrangements under the Crown Minerals Act 1991
- Applications for archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014
- Concessions and other permissions under the Conservation Act 1987 and Reserves Act 1977
- Approvals under the Wildlife Act 1953
- Aquaculture decisions under the Fisheries Act 1996.

It will also provide a more efficient mechanism for Public Works Act 1981 processes.

The Exclusive Economic Zone and Continental Shelf

The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) extends a variant of the RMA to the EEZ and applies to activities such as seismic surveying and cable laying, seabed mining and the construction and installation of oil and gas rigs. It also anticipates possible future uses, including deep sea aquaculture, carbon capture and storage, and marine energy generation.

The permitting authority is the Environmental Protection Authority (EPA), which must issue a decision on publicly notified applications within six months of receiving the application if a hearing is held, or within 90 working days if no hearing is held. The EPA must issue a decision within 70 working days of receiving a non-notified application. These timeframes are subject to any approved time extensions.

The EEZ Act identifies various factors that should drive the EPA's decision-making. Several of these reflect environmental or biodiversity values but they also include the economic benefit to New Zealand and the efficient use and development of New Zealand's mineral resource.

ppeal rights are to the High Court and are limited to points of law. The maximum penalty for breach of a marine consent is $10 million.

The Emissions Trading Scheme

The Emissions Trading Scheme (ETS) is the key delivery mechanism for New Zealand's commitments to emission reduction, legislated for through the Climate Change Response (Zero Carbon) Amendment Act 2020.

The Zero Carbon Act:

- establishes a net zero emissions target (allowing for forestry offsets) by 2050 for all greenhouse gases, except biogenic methane which is to be brought within a range of 24% to 47% below 2017 levels by 2050, and
- creates an independent Climate Change Commission which is responsible for preparing five-year emissions budgets and advising the Minister on the quantity of emissions to be permitted within each budget period.

The ETS covers forestry, stationary energy (including coal and gas mining and importation and geothermal electricity generation), industrial processes, liquid fossil fuels, synthetic gases, and waste. Although it was designed as an "all gases, all sectors" scheme, agricultural methane emissions are not yet covered.

The incoming National-led Government plans to defer the entry of agriculture into the ETS until 2030 but will require farm level emissions reporting from 2025, and the emissions reduction policies applying to the sector remain a key political issue.

ETS participants are required to surrender sufficient New Zealand Units (NZUs) each year to meet their emissions liabilities. These may be acquired either at quarterly government-run auctions or on the secondary market (for example by buying units from registered forest owners).

Currently emissions-intensive, trade-exposed industries receive a free allocation, but this programme is being progressively phased down. The Government is also placing, and will continue to place, price and volume controls on the NZUs available at each auction.

These, and other structural ETS reforms since 2020, have contributed to significant increases in the price of NZUs. As at August 2023, the NZU spot price on the secondary market was above $60 (compared to around $25 in 2020).

For more information, go to: climatechange.govt.nz/emissions-trading-scheme

Minerals regime

Access and rights to prospect, explore and mine New Zealand's extensive petroleum and mineral estate are governed by the Crown Minerals Act 1991 (CMA) and by the Minerals Programme and the Minerals Programme for Petroleum issued under it.

Acquisition of permits is through an annual Block Offer process.

The CMA has recently been amended to increase the obligations on the petroleum sector with respect to financial and legal responsibility for decommissioning of petroleum infrastructure and wells.

All petroleum, gold, silver and uranium deposits (including under the sea) are the property of the Crown (Government). No person may prospect, explore for, or mine, government-owned minerals without an appropriate permit.

Evaluation criteria for oil and gas exploration under the allocation system must meet health, safety and environmental requirements and the applicants must engage with indigenous communities. Permits can be granted for up to 15 years and give the holder exclusive rights to explore in the designated area. An exploration permit does not automatically confer mining rights. These must be applied for separately.

Return to the government is through a royalty regime, although there is provision in the Act for the government also to participate in any given permit and thus derive a fair financial return through that avenue. The current policy is not to exercise this right.

All transfers of, or other dealings with, a permit interest require the consent of New Zealand Petroleum & Minerals.

For more information, go to: www.nzpam.govt.nz

Te Iwi Māori and Te Tiriti o Waitangi

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Key points

- Māori are the indigenous people of Aotearoa New Zealand (referred to as Aotearoa throughout this section).
- Aotearoa has no written constitution, but Te Tiriti o Waitangi 1840 (Te Tiriti) and the English version, the Treaty of Waitangi (the Treaty), are a part of the foundational law of the country, as recognised in a number of statutes, court decisions and common law principles in Aotearoa.
- Te Tiriti is, in essence, an agreement between the British Crown and Māori. While the meaning of Te Tiriti and the Treaty is the subject of much debate, due to significant differences between them, they are the foundation for a partnership based on mutual duties to act reasonably, honestly and in the utmost good faith.
- The British Crown did not honour the Treaty, with the result that Māori collectives (called iwi or hapū) have suffered significant grievances. A political process was developed in the 1990s to negotiate and settle these grievances. The settlement packages include cultural and commercial redress.
- These settlements have helped to finance the creation of iwi corporations and contributed to the "Māori economy", which was valued at $68.7 billion as at 2018.
- Iwi corporations often look to maximise returns from settlement assets through joint venture arrangements with overseas investors.
- Māori have a relationship of kaitiakitanga (stewardship) with land, water and other phenomena which should be considered when doing business in Aotearoa.
- Many pieces of legislation include a statutory requirement to consult Māori on the basis of Te Tiriti, including the Local Government Act 2002 and the Resource Management Act 1991.

Te Tiriti o Waitangi

Te Tiriti was signed on 6 February 1840 by representatives of the British Crown and many, but not all, Māori iwi and hapū. Waitangi Day, observed on 6 February each year, is a public holiday to honour the signing of Te Tiriti.

Most rangitira Māori (leaders) signed Te Tiriti, the version written in Māori, which differs in many important respects from the English text.

Some of the significant differences are that Te Tiriti ceded to the British Crown kāwanatanga (governorship) while retaining tino rangatiritanga – absolute sovereignty of Māori over their whenua (land and water), kāinga (homes), and taonga (valued items or phenomena).

The Treaty, by contrast, expressed a cession of sovereignty to the Crown while guaranteeing to Māori "exclusive and undisturbed possession of their lands, forests, fisheries and other properties".

Due to the inconsistences between the two versions, the courts of Aotearoa do not seek to enforce the actual wording of Te Tiriti or the Treaty. Instead, they seek to recognise the principles of the Treaty as first laid out by the Court of Appeal in a landmark judgment in 1987 (New Zealand Māori Council v Attorney-General). The Court found that the Treaty imposes a duty on both the Crown and Māori to act in the spirit of partnership envisaged by the original signatories, and that both Treaty partners must act reasonably, honestly and in the utmost good faith.

While neither Te Tiriti or the Treaty are enforceable as an international treaty or statute law, their principles have become much more relevant through developments in case law and because the Government legislated in 1985 to enable the Waitangi Tribunal to investigate historical breaches of Te Tiriti dating back to 1840.

Many other pieces of legislation have also created a statutory requirement to consult Māori on the basis of Te Tiriti, including the Local Government Act 2002 and the Resource Management Act 1991.

Treaty settlement process

Since 1840, the Crown has repeatedly breached Te Tiriti, creating significant grievances for iwi and hapū with devastating economic and cultural repercussions across multiple generations.

The Waitangi Tribunal, created by and governed through the Treaty of Waitangi Act 1975, conducts comprehensive inquiries into Māori Tiriti-based claims, both historical and contemporary, and is usually limited to making non-binding recommendations to the government regarding the resolution of those grievances.

These claims often relate to land. Generally, the Tribunal cannot recommend the return of privately owned land to Māori and cannot recommend the Crown to acquire privately-owned land. The Tribunal can make a binding recommendation relating to Crown-owned forest land and lands previously owned by a State Owned Enterprise which have a “section 27B” memorial noted on the title.

If the Waitangi Tribunal did make such a recommendation, the owner would be compensated by the government of the day. To date, the Waitangi Tribunal has only ever made one binding recommendation for resumption of land and in that case, the Māori claimants and the Crown negotiated a settlement.

Historical claims are negotiated and finalised with the government of the day. Some iwi and hapū choose to go straight into negotiation with the Crown. Others prefer to go first through a Waitangi Tribunal hearing process and to use the ensuing report as the basis for direct negotiations with the Crown.

Iwi and hapū receive settlement of their historic grievances with the Crown in the form of cultural and commercial redress. Commercial redress is usually determined by the negotiation of a quantum amount, followed by iwi or hapū purchasing Crown lands with that money.

It may also include valuable rights of first refusal for between 50 to 170 years (in some cases, longer) over surplus Crown lands, usually within the traditional area of the iwi or hapū.

Some iwi and hapū have used settlement monies to create large, asset-rich Māori corporates, the three largest of which are now valued at over $1 billion each. These are now significant players in the Aotearoa economy.

Te Ōhanga Māori – the Māori economy

Te Ōhanga Māori is broadly defined as those privately or collectively owned businesses that have links to Māori ancestors. Its financial value has been assessed at $68.7b as at 2018, comprising: $47.7b Māori-owned businesses and $21b in Māori trusts, incorporations and other entities.

A large proportion of the asset base in Te Ōhanga Māori has been created outside the Treaty settlement context through independent and private Māori businesses, entities, whānau (families) and households.

Māori control 50% of the fishing quota and own around 40% of forestry in Aotearoa. Some of these holdings were established through the ‘Sealords Deal’ in 1992 (the Treaty settlement relating to Māori fishing rights) and the ‘Treelords Deal’ in 2007 (the Treaty settlement under which the Kaingaroa Forest was transferred from the Crown to central North Island iwi). Māori also own 30% of lamb, sheep and beef production and 10% of dairy and kiwifruit production.

Iwi and hapū corporations have sought to maximise the returns from their asset base through joint ventures and other partnerships with investors who can bring capital, value-added processing, employment opportunities, and market access. China has been a particular focus for these activities.

Taxation within New Zealand

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Key points

- New Zealand has a broad-based income and consumption tax system. This includes withholding taxes on many cross-border payments and a robust general anti-avoidance rule.
- The primary revenue sources are: income/company tax, a consumption tax on goods and services (GST) and local authority rates.
- Capital gains tax, stamp duty, gift duty and death duties are not payable in New Zealand.

Income tax

For individuals and companies defined as "resident" in New Zealand, income tax is generally imposed on worldwide income. Non-resident individuals and companies are taxed only on New Zealand-sourced income, and their tax liability may be reduced by the provisions of an applicable Double Tax Agreement.

Individuals are regarded as resident for income tax purposes if they have a permanent place of abode in New Zealand or are present in New Zealand for more than 183 days within any 12-month period. New migrants and, in certain cases, returning New Zealanders who have not been resident for tax purposes in New Zealand for at least ten years, can qualify for temporary transitional residence status. A transitional resident is exempt from New Zealand income tax on their foreign-sourced income other than income from employment or the supply of services for a period of four years after they meet the test for New Zealand tax residency.

A company is regarded as resident in New Zealand if it:

- is incorporated in New Zealand
- has its head office in New Zealand
- has its "centre of management" in New Zealand, or
- is controlled by its directors in New Zealand.

Income tax is imposed at 28% on companies and unit trusts (which are treated as companies under New Zealand tax law). Individuals (both resident and non-resident) are taxed progressively at between 10.5% and 39%, with the 39% rate cutting in at taxable income over $180,000. As noted above, non-residents are taxed only on their New Zealand-sourced income.

For individuals, assessable income includes (among other items) salary and wages, bonuses, other employment benefits or remuneration, partnership income and investment income. For salary and wage earners, tax is deducted at source by the employer through the Pay As You Earn (PAYE) system. The amount of tax deducted will depend on the gross salary or wage paid to the employee. Non-cash benefits provided to employees are subject to fringe benefit tax (FBT) which is payable by the employer.

For companies, net taxable income generally corresponds with accounting profit or loss. However, adjustments are commonly required in relation to:

- the timing of income and expenditure recognition
- bad debts
- capital receipts and depreciation rates, and
- various provisions and reserves.

New Zealand does not currently have a broad-based capital gains tax. In certain circumstances, however, capital gains are taxed. In particular, the proceeds from the sale of real or personal property (including shares) may be subject to income tax (for example, where the dominant purpose of the initial purchase was to resell the asset at a profit).

Special provisions apply to residential properties other than the person's main home.

Generally, gains from the sale of residential properties purchased:

- on or after 27 March 2021 and held for less than 10 years, or
- between 29 March 2018 and 26 March 2021 and held for less than five years,

are taxed at the owner's standard income tax rate under the "bright-line test".

Residential property acquired on or after 27 March 2021 may be subject to a shorter five year bright-line period if the land qualifies as "new build land" (generally property where a new abode/ residence was added to the land on or after 27 March 2020).

Exemptions (and in some cases, apportionment) may apply if the property is:

- the seller's main home
- inherited from a deceased estate
- sold as part of a relationship break down, or
- transferred between certain associated persons (e.g., from a settlor to a family trust).

Gains from sale of a property held for longer than the relevant bright-line period (five years or 10 years) may still be taxed if the Inland Revenue Department (IRD) considers that the seller acquired the property for a purpose or intention of resale, or if one or more of the specific land taxation provisions applies (for example, if the seller carried on, or was associated with someone who carried on, a business of land dealing, land development or building at the time of acquiring the property and sells that property within 10 years).

Residential Land Withholding Tax (RLWT) applies where the seller is an offshore person and the residential land is sold within the relevant "bright-line" period. RLWT also applies to sales by New Zealand entities that are ultimately more than 25% owned or controlled by offshore persons. (For more detail, refer to the section on *New Zealand's cross-border tax regime*.)

Residents must provide an IRD number as part of the usual Land Information New Zealand transfer process. Non-residents must also provide a New Zealand IRD number as well as a home jurisdiction tax number together with another form of identification – such as a passport. In order to obtain an IRD number, a non-resident will need a fully functional New Zealand bank account or confirmation from a New Zealand reporting entity that customer due diligence has been completed in accordance with New Zealand anti-money laundering (AML) legislation.

Treatment of tax losses

If a resident company or a New Zealand branch of a non-resident company incurs a tax loss, that loss can generally be carried forward indefinitely to offset future New Zealand net income and shared between group companies, provided a certain level of shareholder continuity (or in the case of group companies, common ownership) is maintained, or the business continuity test is met.

The business continuity test allows a company to carry forward losses arising from the 2013-14 and subsequent income years following shareholder continuity breach, provided there has been no major change or cessation in the nature of the business activities carried on by the company during the relevant period, unless the change is a permitted major change. Permitted major changes are, more or less, changes:

- made to increase the efficiency of a business activity
- made to keep up to date with advances in technology
- caused by an increase in the scale of a business activity, and
- caused by a change in the type of products or services produced or provided.

Specific anti avoidance rules (described as "anti-injection" rules) target schemes involving the acquisition of a business with losses (relying on the business continuity test to carry forward those losses) and diverting income or expenses between that company and its associates. Another specific anti-avoidance rule prevents a business from changing its activities before a change in ownership for the purpose of meeting the business continuity test.

Individuals and trusts can also carry forward tax losses, but these losses cannot be shared with other entities. There are also rules that apply to "ring-fence" losses from residential property, which will only be available to offset future income from residential property (including a taxable gain on sale). The rule is designed to prevent property investors from using excess deductions to reduce tax on other income.

Taxation of dividends paid by resident companies to residents

Dividends paid by resident companies to resident shareholders are, in most instances, taxable to the shareholder. However, dividends paid between New Zealand resident companies that are part of the same wholly-owned group are generally exempt (subject to certain other requirements).

To avoid the double payment of tax on the same income (i.e. by the company and the shareholder when the company's income is distributed as a dividend), imputation credits may be attached to dividends paid by resident companies (to both residents and non-residents). Imputation credits received by resident shareholders (companies and individuals) are offset against any tax payable on their income, including tax on dividends received.

A dividend paid by a resident company to a resident is generally subject to a 33% withholding tax. If the dividend is fully imputed (i.e. imputation credits are attached at the maximum rate) only a residual 5% withholding tax will be imposed (i.e. the 33% tax liability is reduced to 5% by the 28% tax paid by the company).

Individuals who pay tax at the top 39% marginal tax rate are required to personally account for an additional 6% tax on fully imputed dividends (this tax will not be collected through the withholding tax system).

Portfolio Investments Entities (PIEs)

Investment entities which are tax resident in New Zealand can take advantage of New Zealand's PIE tax regime. Broadly speaking, to qualify as a PIE, they must be widely held (or owned by widely held vehicles) with no investor holding more than 20% of any investor class, and the PIE not holding more than 20% of any company or unit trust it invests into (subject to some exceptions).

A PIE is exempt from tax on gains from the sale of shares in New Zealand resident companies, and in Australian companies that are listed on certain approved indices of the Australian stock exchange.

PIEs are not taxed like companies. Instead, their income is taxed only once – either to the PIE if the investor is an individual or trustee (other than a trustee of a unit trust or charitable trust), or to the investor if the investor is a company or another PIE. For individuals, the PIE pays tax at more or less the investor's marginal tax rate, with a cap of 28%.

Non-resident investors in certain PIEs bear no New Zealand tax on foreign-sourced income.

Goods and Services Tax (GST)

GST is a value-added tax charged at 15% on the supply of most goods and services in New Zealand.

New Zealand suppliers of goods and services are required to register for GST if they carry on a taxable activity through which they will make taxable supplies of more than NZ$60,000 per year. A person carrying on a taxable activity can voluntarily register for GST even if under this NZ$60,000 threshold.

Foreign suppliers may also be required to register for GST if they make supplies of services to New Zealand residents (excluding GST-registered businesses) which exceed NZ$60,000 per year.

Foreign suppliers of goods valued at NZ$1,000 or less are required to register for New Zealand GST if total sales to New Zealand residents (excluding GST-registered businesses) exceeds the NZ$60,000 threshold. Electronic marketplaces are required to register for GST (rather than the actual supplier) if the applicable goods are supplied through the marketplace to New Zealand customers.

Certain supplies of goods and services can be either exempt from GST (e.g. financial services) or zero-rated (e.g. certain "exported" services and supplies wholly or partly consisting of land).

Local government rates

Rates are the main source of local government revenue. These are calculated as a percentage of the value of land and/or capital improvements.

New Zealand's cross-border tax regime

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Key points

- New Zealand's cross-border tax regime seeks to ensure that tax on income which is taxable in New Zealand is paid in New Zealand while avoiding situations where income is subject to double taxation.
- The regime is orthodox in international terms.
- New Zealand is party to 40 tax treaties or double tax agreements (DTAs).

DTAs

New Zealand has entered into 40 DTAs to reduce the incidence of double taxation and to provide more certainty for taxpayers operating in more than one jurisdiction. New Zealand is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the MLI) which modifies the terms of many New Zealand DTAs (with varied impacts, depending on the DTA).

For the full list of DTAs, refer http://taxpolicy.ird.govt.nz/tax-treaties.

Foreign tax credits are generally available to New Zealand residents for foreign income tax on income derived from countries or territories outside New Zealand. The availability and quantum of the foreign tax credit is subject to certain limitations but does not depend on New Zealand having entered into a DTA with the particular country or territory concerned.

Taxation of overseas investments by New Zealand residents

The taxation of equity investments by New Zealand residents in non-New Zealand companies is governed by the Controlled Foreign Company (CFC) and Foreign Investment Fund (FIF) regimes.

Subject to certain exceptions, a New Zealand resident investor is taxed on income attributed from a CFC or FIF, even though that income may not be received by the New Zealand resident investor.

CFC

Subject to a number of exceptions, the New Zealand investor will be taxed each income year on its proportionate attributed share of all net passive income of the CFC in that year. Net passive CFC income broadly comprises rent, royalties, certain income related to telecommunications services, income from offshore insurance businesses, life insurance policies, disposals of revenue account property, base company services income, certain dividends and interest, less related expenses. Attributed CFC income does not include "active" income. No attribution of passive income is required if the CFC's passive income is less than 5% of its total income.

FIF

The New Zealand resident shareholder will be taxed each income year on income attributed from a FIF, calculated using one of five calculation methods. These methods are:

- fair dividend rate method
- cost method
- comparative value method
- deemed rate of return, and
- attributable FIF income method.

Income from FIFs is generally calculated either using the fair dividend rate method or the comparative value method. The fair dividend rate method taxes the shareholder each income year on deemed income of 5% of the value of the investment at the start of the year. The comparative value method taxes appreciation during the year plus distributions. There are exemptions from both the CFC and FIF regimes for investment in certain Australian companies.

Taxation of payments to non-residents

Payments of dividends, interest and royalties to individuals or companies not resident in New Zealand are generally subject to non-resident withholding tax (NRWT). The rate of NRWT imposed depends upon the type of payment and whether a double tax agreement is in place:

	Double tax agreement countries	Other countries
Dividends*	0-15%	0-30%
Interest**	10-15%	15%***
Royalties	5-15%	15%

* A 0% rate of NRWT applies to fully imputed dividends paid to a non-resident shareholder holding a 10% or more direct voting interest in a New Zealand company or holding less than 10% but whose post-treaty rate is less than 15%. A 0% rate of NRWT also applies to a fully imputed non-cash dividend. To the extent the dividend is not fully imputed, NRWT will be required to be withheld at 30% (reduced to 15% for countries New Zealand has a double tax agreement with; and to lower rates under some treaties for substantial shareholdings).

** In some cases, NRWT applies at the rate of 0%. See discussion below.

***Where interest is paid to a non-resident and a resident (jointly) the applicable rate of NRWT will be higher than 15%.

In the case of interest paid to non-associated persons, dividends, and certain royalty payments, NRWT is generally a final tax for New Zealand tax purposes.

The Foreign Investor Tax Credit (FITC) regime supplements the NRWT regime. It effectively eliminates the monetary effect of NRWT on imputed dividends paid to a non-resident shareholder who holds a direct voting interest in a New Zealand company of less than 10% where the post-treaty tax rate (the rate after taking into account any applicable DTA) for the initial dividend is 15% or more.

The FITC regime achieves this by providing a tax credit to the New Zealand resident company, which the resident company must use to fund an additional “supplementary dividend” to the non-resident (which is equal to the NRWT payable where the dividend is fully imputed). This ensures that the non-resident shareholder is in a no less beneficial position than a New Zealand resident shareholder receiving the same dividend.

In respect of interest payments made by an approved New Zealand borrower (Approved Issuer) to a non-associated non-resident lender, the NRWT rate can be reduced to 0%, provided certain conditions and registration formalities are satisfied. Approved Issuers must generally pay a levy (Approved Issuer Levy or AIL) equivalent to 2% of the interest payment.

Interest paid on certain qualifying widely held bonds may be eligible for a 0% rate of NRWT without the payer having to pay AIL.

Withholding payments are deducted at the rate of 15% from non-resident contractors for certain work or services performed in New Zealand (this rate increases to 20% where the non-resident contractor is a company and does not provide a prescribed withholding declaration to the payer prior to the payment being made). An exemption certificate removing the need for the withholding deduction can be granted by the IRD in certain circumstances. This is not considered a minimum or final tax. It is credited against any final income tax liability the non-resident contractor may have in New Zealand, and is refundable to the extent of any excess.

Residential Land Withholding Tax

The sale of residential property in New Zealand by offshore persons, or by New Zealand entities ultimately more than 25% owned or controlled by offshore persons, is subject to Residential Land Withholding Tax (RLWT) if the property was acquired on or after:

- 29 March 2018 through to 26 March 2021 and sold within five years, or
- 27 March 2021 and sold within five years if the entire property qualifies as "new build land" or sold within 10 years for all other properties.

RLWT is generally withheld by the seller's conveyancing agent on the lower of 39% of the seller's gain (28% where the seller is a company) or 10% of the total purchase price.

RLWT is not a final tax – the seller is required to file a New Zealand tax return and can claim a credit for RLWT withheld against tax payable. Certificates of exemption are available for developers, dealers and builders and for sellers who have used the property as their main home. (Refer also to the section on *Buying and developing real estate in New Zealand*.)

Transfer pricing and thin capitalisation

New Zealand's transfer pricing regime seeks to protect the New Zealand tax base by ensuring that cross-border transactions are priced (at least for tax purposes) on an arm's length basis. Rules supplementing the standard transfer licensing regime can require adjustments to credit ratings when determining pricing of related party lending.

New Zealand also has thin capitalisation rules which, broadly speaking, disallow certain interest deductions for a foreign owned New Zealand group (if their debt to asset ratio, excluding non-debt liabilities, exceeds 60%) or for New Zealand residents with an income interest in a CFC or who control a resident company with such an interest (if their debt to asset ratio exceeds 75%).

Import duties

Import licensing, once a common means of sheltering New Zealand producers, no longer exists in New Zealand, with tariffs now the principal form of protection.

Over recent years, there has been a steady reduction of tariff rates for goods imported into New Zealand. Tariff rates vary from item to item and depend upon the country of origin, with preferential rates being applied to Australia, Canada, "least-developed countries", "less-developed countries" and Pacific Forum countries. Items that are outside the scope of local manufacturing are generally duty free or may qualify for a duty concession.

Where New Zealand is party to a free trade agreement (FTA), the FTA will address in detail the tariffs applicable between the two countries.

GST is also charged on any goods that are imported into New Zealand. An input tax credit can be claimed for this GST (meaning no net cost arises) where the importer is GST-registered and is acquiring the imported goods for the purpose of making supplies which are subject to GST.

OECD BEPS Project

New Zealand has followed many of the recommendations resulting from the OECD's Base Erosion and Profit Shifting (BEPS) work. This includes ratifying the OECD multilateral instrument (MLI) and changes made to New Zealand's DTAs and domestic tax law (including rules dealing with transfer pricing, thin capitalisation, permanent establishments and hybrid instruments/entities).

The OECD and the Government have sought public comment on a number of alternative proposals to address the growing challenges of taxing the digital economy. In particular, work is underway seeking global consensus on fundamental changes to profit allocation and nexus rules to expand taxing rights to jurisdictions where digital services are consumed.

The OECD announced in October 2021 that agreement has been reached by over 130 member jurisdictions on the design for the taxation of in-scope multinational enterprises and that the rate of a global minimum corporate income tax will be 15% under the proposed Global Anti-Base Erosion (GLoBE) rules ("Pillar Two"). Further work on these measures is underway, with detailed technical guidance released in March 2022 and implementation expected in the coming years.

Draft legislation has been introduced that, if enacted, would permit the introduction of the GloBE rules in New Zealand by Order in Council once the Government is satisfied a critical mass of jurisdictions has adopted the GloBE rules.

The Government signalled in 2020 an intention to implement a unilateral digital services tax (DST) if progress on a multilateral solution (through "Pillar One" of the OECD's BEPS work) is not forthcoming. There has been no subsequent update from the Government in relation to a DST since then. Given the Government's comprehensive implementation of the OECD's BEPS recommendations, and general public sentiment, we expect changes to New Zealand's rules are on the horizon.

Contract law in New Zealand

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Key points

- New Zealand contract law is light handed, allowing contracting parties to contract on commercially agreed terms.

- Most contracts can be concluded orally. Contracts involving land, mortgages, guarantees, extended consumer warranties, credit contract disclosures or employment agreements must be written.

Relevant laws

While New Zealand's contract law is primarily based on common law principles, various statutory overlays apply.

Consumer protection legislation

If one party to a contract is a consumer, certain consumer protections will apply regardless of the terms of the contract (see the *Consumer Protections in New Zealand* section for details).

Credit contracts with consumers are subject to the Credit Contracts and Consumer Finance Act 2003 (see the ***Consumer Protections in New Zealand*** section).

Contract and Commercial Law Act 2017

The Contract and Commercial Law Act 2017 (CCLA) provides that:

- various terms are read into contracts for the sale of commercial goods unless the parties clearly intended otherwise, including terms relating to when title and risk will pass, and implied guarantees of fitness for purposes and merchantability
- contracts with a person under the age of 18 cannot be enforced against that person, subject to certain specific exceptions and the court's discretion
- a party may cancel a contract for breach, repudiation or pre-contractual misrepresentations (if prescribed criteria are satisfied), and/or recover damages. The courts also have the power to grant other types of relief under the CCLA
- contracts that are illegal at law or equity will be of no effect and the courts have the power to make a variety of orders, including amending the contract. Unreasonable restraints of trade and penalties are examples of illegal contracts at law. This is broadly consistent with other jurisdictions that share an English common law heritage, and
- the courts may grant relief, including to cancel the contract, vary the contract or make orders for compensation in limited circumstances where a party can establish it entered into the contract as a result of a genuine mistake of fact.

New Zealand does not have any separate laws or regulations for contracts involving foreign-owned entities.

The CCLA also gives electronic signatures the same status as paper signatures, provided the technology used to produce the signature meets certain statutory criteria as to reliability, traceability and tamper-detection. Powers of Attorney, wills and other testamentary instruments, negotiable instruments and bills of lading cannot be made or signed electronically.

Consumer protections in New Zealand

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The principal pieces of consumer legislation are the:

- Fair Trading Act 1986
- Consumer Guarantees Act 1993
- Credit Contracts and Consumer Finance Act 2003, and
- Privacy Act 1993.

Fair Trading Act 1986

The Fair Trading Act applies to anyone "in trade". It prohibits:

- engaging in conduct that is likely to mislead or deceive
- engaging in conduct that is liable to mislead as to the nature, manufacturing process, characteristics, suitability for purpose, or quantity of goods or services
- engaging in misleading conduct in relation to employment that is or may be offered to a person
- making false, misleading or unsubstantiated representations in respect of goods or services, and
- including or enforcing any terms in a standard form consumer contract that have been declared unfair by a court, in accordance with the Fair Trading Act.

These prohibitions apply whether the activity is intentional or not.

From 15 August 2022 the Fair Trading Act will extend the prohibition on including or enforcing unfair contract terms to certain "small trade" standard contracts (being contracts where the annual value is $250,000 or less), and will prohibit unconscionable conduct in trade.

The Fair Trading Act sets information and safety standards for some types of products, including children's nightwear, baby walkers and bicycles. It also deals with miscellaneous consumer protection matters such as layby sales, direct (door-to-door or telephone) sales, extended warranty agreements, auctions, and product recalls. It prohibits various types of unethical commercial behaviour including falsely applying trade marks, falsely offering prizes, bait advertising, and pyramid selling.

The Fair Trading Act is enforced by the Commerce Commission and gives consumers and businesses direct rights of action. Suppliers of goods and services to consumers cannot contract out of the Fair Trading Act, and business-to-business contracts can only exclude the Fair Trading Act in specific circumstances.

Breaching the Fair Trading Act can attract both civil and criminal penalties. Penalties include:

- fines of up to $200,000 per offence for an individual and $600,000 per offence for a company
- orders for payment of the equivalent revenue or commercial gain earned from certain offending
- corrective advertising orders
- contract rectification, and
- compensation payments to affected parties.

Consumer Guarantees Act 1993

The Consumer Guarantees Act:

- provides consumers with certain minimum guarantees in relation to the quality, suitability and other aspects of goods and services, and a basic guarantee as to title to goods
- where goods or services fail to comply with one or more of those guarantees, gives consumer remedies against suppliers and (in the case of goods) against the original manufacturer.

The Act defines a consumer as a person who "acquires goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption" and who does not hold him or herself out as acquiring the goods or service for the purpose of resupplying them in trade, using them in a manufacturing process or repairing the goods in trade.

This means that in many cases the Act may apply to business-to-business transactions involving consumer goods and services. Contracting out is permitted for business-to-business transactions, but only where certain statutory criteria are met.

Breach of the statutory guarantees in the Act may give rise to a right to damages, including for consequential losses sustained as a result of the breach of guarantee, and the right to cancel a contract and be refunded any amounts paid.

A consumer must first request the supplier or manufacturer to rectify any breach of the statutory guarantees. If the supplier or manufacturer does not satisfactorily remedy the defect, the consumer may bring a claim to the Disputes Tribunal, or the High Court or District Court, depending on the value of the claim.

The Consumer Guarantees Act does not contain offence provisions. However, it is an offence under s13(i) of the Fair Trading Act for suppliers of goods and services to attempt to contract out of the Consumer Guarantees Act.

Credit Contracts and Consumer Finance Act 2003

Providing credit at the consumer level through credit contracts and hire purchase agreements is regulated by the Credit Contracts and Consumer Finance Act (CCCFA). The CCCFA sets out disclosure requirements for contracts, allows debtors to have the terms of a contract changed for hardship reasons and allows the courts to re-open and vary "oppressive" contracts. The CCCFA requires repossession agents to be licensed and prohibits lenders taking security over certain "essential" goods or particular types of documents.

Lenders are required to exercise care, diligence and skill in dealing with consumers and to comply with certain specific lender responsibilities. The responsible lending code provides guidance on how lenders can comply with these principles.

Privacy Act

The Privacy Act 2020 governs the collection, use, storage and disclosure of "personal information", which includes any kind of information about an identifiable individual. Personal information is not limited to information that is inherently private or sensitive, such as health or financial information.

The Act applies to individuals, public agencies and private enterprises alike who are resident in New Zealand, present in New Zealand when collecting or holding the information, or where information is held or collected in the course of carrying on business in New Zealand.

The Act does not use the same definition of "carrying on business" as the Companies Act, and the Privacy Commissioner will likely take a broad view as to whom the Act applies. The Act refers to all entities or persons subject to the Act as "agencies".

The Act centres on a set of "Information Privacy Principles", which are similar to those in equivalent Australian legislation. Summarising broadly, key principles include that:

- an agency must not collect personal information except for a lawful purpose, and then only where necessary for that purpose
- when collecting personal information, unless defined exceptions apply, an agency must collect the information directly from the individual, and must take reasonable steps to ensure the individual is made aware of the collection and provided with certain details about who is collecting the information and for what purpose
- an agency must not collect personal information by unlawful means, or by means that are unfair or intrude to an unreasonable extent upon personal affairs
- an agency holding personal information must ensure that the information is protected by reasonable security safeguards against loss, unauthorised access/use/modification/disclosure, and other misuse
- individuals have certain rights to know what personal information an agency holds about them, and to request correction of that information
- before using personal information, an agency must take reasonable steps to ensure the information is accurate, up to date, complete, relevant, and not misleading
- an agency must not keep personal information for longer than is required for the purposes for which the information may lawfully be used

- an agency must not use or disclose personal information except on the specific grounds defined in the Act, for example, where the use or disclosure is one of the purposes for which the information was collected, or where the agency believes on reasonable grounds that the individual has given his or her authorisation, and
- an agency must not disclose personal information outside of New Zealand unless the information will be subject to broadly comparable protections as provided by the Act or, where this is not the case, the person has been so advised and has consented to the disclosure.

The Act requires agencies to report privacy breaches to the Privacy Commissioner and to affected individuals where it is reasonable to believe the breach has or may cause serious harm to affected individuals. Failure to report a notifiable privacy breach to the Privacy Commissioner without reasonable excuse is a criminal offence punishable by a fine of up to $10,000.

A breach of the Information Privacy Principles does not automatically give rise to a right to damages or other mandatory or injunctive remedies. These remedies are available only where:

- the Privacy Commissioner has issued an enforcement notice against an agency, the agency has failed to comply with that notice and the Privacy Commissioner enforces that notice through the Human Rights Review Tribunal (in which case failure to comply is a criminal offence and an agency is liable for a fine of up to $10,000 as well as costs or other orders), or
- the complainant or the Privacy Commissioner takes the complaint to the Human Rights Review Tribunal, the breach constitutes an "interference with privacy" and the Tribunal awards costs or makes orders.

Complaints are investigated in the first instance by the Privacy Commissioner, and may be referred to the Director of Human Rights Proceedings if the Commissioner is unable to facilitate a settlement. An individual may bring proceedings in the Tribunal in his or her own name only if the Commissioner has considered the matter and declined to pursue it further.

Retail regulation

Many other laws and regulations affect the operation of retail businesses, including:

- smoke free legislation
- restrictions on the sale of alcohol
- restrictions on shop trading days
- weights and measures standards
- food safety and labelling legislation
- restrictions on sending commercial or advertising/promotional messages by email, text (SMS), fax or other electronic means, and
- the medicinal cannabis regulations administered by the Medicinal Cannabis Agency.

Other regulations

New Zealand law regulates a number of other activities and goods and services, including gambling, prize draws and promotions, which must be authorised by the Gambling Act 2003.

You should seek specialist advice if you plan to provide any kind of gambling activity or games of chance as a primary or ancillary part of your proposed business or where you offer prizes in exchange for the purchase of goods or services.

Employment and health and safety law in New Zealand

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Key points

- The Employment Relations Act 2000 is the primary piece of legislation regulating the workplace in New Zealand.
- Fewer than 20% of employees belong to unions. Unionism is strongest in the public sector, the meat industry and the waterfront. Strike action is not common and tends to be localised.
- New Zealand has 12 public holidays and employees are entitled to four weeks' paid annual leave a year, after 12 months' employment.

The Employment Relations Act

All employment relationships are governed by the Employment Relations Act 2000 (including senior and executive employee relationships). Independent contractors are not covered by the Act, but the Courts and the Inland Revenue Department can examine the "true nature" of the relationship to determine whether the person is a contractor or an employee.

Agreements under the Employment Relations Act must be in writing and may be individual (between an individual employee and the employer) or collective (between one or more unions and one or more employers). Employers must hold a signed copy of employment agreements.

Union membership is not compulsory but all collective agreements must be negotiated and concluded with a union.

Good faith

The parties to an employment relationship must not do anything to mislead or deceive each other. They must be "active and constructive" and "responsive and communicative" in their dealings with each other.

Bargaining must be conducted in good faith. Employers and employees/unions must, at a minimum, come to the bargaining table, listen and respond to what the other party puts forward.

Employers proposing to act in a way that may have an "adverse effect" on their employees, such as a proposal to disestablish the employee's role, must provide information about the decision and consult with their employees in good faith before the decision is made (subject to genuine although strict confidentiality exceptions).

Sale of a business/contracting out

When engaging in a sale, merger or contracting out arrangement, as well as complying with the good faith/consultation requirements described above, an employer must negotiate with the proposed purchaser/new employer in relation to the employees. Such negotiations must include discussion about who will be offered employment with the new employer, and on what terms and conditions.

The Act also provides that “vulnerable employees” (primarily cleaning and food catering workers) are entitled to transfer to the new employer as of right and to bargain for redundancy payments with the new employer if their services are not required.

Termination

Most individual employment agreements are indefinite (i.e. they continue until terminated) but the law also recognises casual and fixed term employment arrangements. Fixed term agreements are lawful, but subject to certain restrictions.

The employee can end an indefinite employment arrangement by giving the specified notice period. However, an employer can terminate an employee’s employment only after following a prescribed legal process and only for genuine substantive reasons such as redundancy, misconduct, poor performance, abandonment or incapacity.

An employee has 90 days following any termination to raise a personal grievance claim against the employer.

Employers can take on new employees for a 90 day trial period, provided this is agreed in writing between the parties at the time of hiring. There are strict requirements regarding trial period clauses (for example, agreements with trial clauses must be signed before the employee starts work).

There is no statutory right to redundancy compensation in New Zealand and other than in very limited circumstances, compensation is only payable if it is provided for in the employment agreement.

Dispute resolution

The Act encourages mediation as the primary means of settling employment disputes. If mediation is unsuccessful, the parties may have their dispute decided by the Employment Relations Authority, an investigative body. If still unsatisfied, parties have a right of appeal to the Employment Court.

Very often, employment disputes are solved in mediation and do not proceed to litigation.

Strikes and lockouts

The only lawful strikes or lockouts are those that relate either to bargaining for a collective agreement or to health and safety issues.

When a strike occurs, an employer can only use existing employees to perform the work of the striking employees, and then only if the existing employees agree to perform the work. External workers may only be employed when the work is necessary for public health and safety reasons.

Unions

Only a small proportion of New Zealand businesses have a union presence. However, unions may try to recruit members at work and are entitled to enter workplaces for union-related purposes.

Where there is a collective agreement in place, or collective bargaining has been initiated, the union does not need to seek the employer’s consent before entering the worksite. Unions must exercise these access rights reasonably, and employers cannot unreasonably refuse entry.

Working conditions

Every employee in New Zealand is entitled to a number of basic rights.

- The Minimum Wage Act 1983 prescribes statutory minimum wages for adult employees, employees who are starting out (under 20 years of age and meeting specific criteria) and employees who are training (20 years and over and attending an approved training course). These rates are reviewed annually.
- The Holidays Act 2003 provides all employees with up to 12 statutory holidays a year (if the day is otherwise a working day for the employee), time and a half for working on a public holiday, four weeks’ paid annual leave after 12 months employment, and, after six months’ employment, 10 days’ sick leave per year, bereavement leave of three days for a miscarriage or still birth and on the death of close relatives, one day on the death of any other person, and 10 days’ leave for victims of family violence.

- The Parental Leave and Employment Protection Act 1987 provides for both parents to take specified periods of parental leave (unpaid) on the birth or adoption of a child. Primary caregivers are entitled to up to 26 weeks' government-funded paid parental leave to a maximum amount (which is reviewed regularly) or to 100% of the parent's previous weekly earnings, whichever is the lower. The scheme allows the mother of the child to claim the paid leave or transfer the payment to the child's other parent, including same sex partners.
- KiwiSaver is the New Zealand government's superannuation scheme. Employers are required to contribute 3% of employees' gross earnings to an employee's chosen KiwiSaver scheme. All new employees must be automatically enrolled in KiwiSaver but they can choose to opt out in the first six weeks. Existing employees can choose to join KiwiSaver at any time. Total remuneration approaches (where employer contributions are deducted from the employee's salary) are generally permitted.

Discrimination

Under the Human Rights Act, discrimination in employment on the basis of an employee's (or prospective employee's) sex, marital status, religious beliefs, ethical beliefs, colour, race, ethnic or national origin, disability, age, political opinions, employment status, family status, sexual orientation or union involvement is subject to legal sanction.

Payroll tax

In addition to KiwiSaver contributions and Accident Compensation Corporation (ACC) levies (see below), employers in New Zealand are required to deduct "Pay As You Earn" payroll tax (PAYE). Deductions are made on a payday basis (which may be weekly, fortnightly, monthly or more often if the employer has multiple paydays) and the employer has informational reporting obligations that are typically due within two working days of each payday. The PAYE withheld must generally be remitted to Inland Revenue. Inland Revenue may also require other deductions such as payments towards student loans or child support.

Health and safety

The Health and Safety at Work Act assigns responsibility for workplace safety to "officers" and employing entities.

Officers are directors and very senior managers which, in the majority of cases is likely to be just the Chief Executive. They have a positive duty of due diligence to "take all reasonable steps" to ensure that the entity (defined as the Person Conducting a Business or Undertaking, PCBU) is fulfilling its obligations under the law.

The PCBU is required to ensure the health and safety of all who work for it or could be put at risk by that work. This requires that it put in place processes to eliminate or – if elimination is not possible – minimise safety risks so far as is reasonably practicable.

All PCBUs have the right to appoint workers' health and safety representatives and/or health and safety committees. PCBUs employing more than 20 employees or with a moderate or higher risk profile are required to do this at the request of the workforce. For smaller businesses in low-risk industries, it is optional.

Accident compensation

The Accident Compensation Act 2001 provides a statutory no-fault scheme under which cover is available to those suffering personal injury, and legal claims are prohibited.

Coverage is broad based and includes most physical injuries, regardless of whether they occur in the workplace or elsewhere. Unless sustained as the victim of a crime, pure mental injury is not covered by the scheme.

Compensation for injuries can take the form of payments for loss of earnings, health care treatment, rehabilitation, an independence allowance for disability, funeral expenses and death benefits for dependents. The scheme is funded from a number of sources, including levies on employers (linked to the amount of wages paid, with levy rates determined on the basis of injury rates in the relevant industry), levies on employees, taxes on vehicle registration and taxes on petrol.

Another option is the ACC's accredited employer programme under which employers can elect to pay a reduced levy in return for funding all or a share of any compensation entitlements incurred at their workplace. To be accepted for the programme, the employer must satisfy a number of criteria, including a minimum level of safety expertise and financial solvency.

Accident compensation benefits, but not earnings-related compensation, are available to non-residents who are injured while in New Zealand.

Anti-trust, competition law in New Zealand

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Competition and anti-trust law in New Zealand is administered through the Commerce Act 1986 (Commerce Act). This:

- prohibits restrictive trade practices
- regulates business acquisitions, and
- allows price controls to be imposed in certain industries.

Restrictive trade practices

The Commerce Commission (Commission) is charged with administering the Commerce Act. Part 2 of the Commerce Act prohibits certain restrictive trade practices including:

- contracts, arrangements or understandings which have the purpose, effect, or likely effect of substantially lessening competition in a market
- price-fixing, restricting output and market-sharing arrangements among competitors. There are certain exceptions to these prohibitions, including for collaborative conduct that is not carried on for the dominant purpose of lessening competition between the parties, where the conduct is reasonably necessary for the purpose of the collaboration
- resale price maintenance arrangements by which suppliers of goods set and enforce sale prices to be charged by re-sellers, and
- misuse of market power. That is, where a person with substantial market power engages in conduct that has the purpose, effect or likely effect of substantially lessening competition in a market in which that person supplies or acquires goods.

In relation to the last bullet point above, the effects-based test replaced a test requiring a "taking advantage of market power" for an anti-competitive purpose on 5 April 2023 in a change long advocated by the Commission on the basis that it would capture more conduct than the previous prohibition.

Engaging in a prohibited practice may result in a penalty of:

- up to NZ$500,000 for individuals, and
- for a body corporate, the greater of NZ$10 million or either three times the value of any commercial gain resulting from the contravention (if it can be easily ascertained) or 10% of the turnover of the body corporate and all its related bodies corporate.

Intentional cartel conduct is a criminal offence with a maximum term of imprisonment of seven years following passage of the Commerce (Criminalisation of Cartels) Amendment Act 2019.

As of 5 April 2023, the cartel provisions also extend to land covenants (i.e. restrictions on land titles to prevent the land being used to compete with the landowner's business).

There is a clearance process under which an entity can apply to the Commerce Commission to test whether the collaborative activity exception applies.

There is also the ability to seek authorisation, on public benefit grounds, of arrangements that might otherwise be unlawful (including by reference to the misuse of market power provision).

The Commission has the power to conduct market studies in the public interest, on its own initiative or when required by the Minister – for example, where there is reason to suspect market failure.

Business acquisitions

Part 3 of the Commerce Act prohibits the purchase of shares in or assets of a business where the acquisition would have (or would be likely to have) the effect of substantially lessening competition in a market.

A would-be acquirer in a transaction which may raise competition concerns may seek pre-transaction clearance from the Commission which, if granted, immunises the deal from challenge by the Commission or third parties. The clearance regime is voluntary and it is common for mergers to proceed on a non-notified basis.

The Commission aims to decide straightforward clearance applications within 40 working days of the application being registered. However, depending on the scale and complexity of the transaction, this timeframe can increase significantly. A recent clearance application took almost 12 months from the date of registration until the ultimate decision was made.

Businesses should seek advice on the likely timing of a clearance application process and the potential implications of this prior to entering into the formal clearance regime.

In assessing whether a merger is likely to substantially lessen competition, the Commission will analyse the merged firm's ability to raise prices and/or reduce product quality or service, relative to what would have occurred without the acquisition. Relevant to this enquiry are the market share of the merged entity, the market shares of other participants, the likelihood of new entry, the merged entity's relationship with suppliers and purchasers, and whether there are features of the market which are suggestive of the potential for collusion and discipline.

The Commission uses non-binding concentration indicators to identify transactions that are less likely to raise competition concerns. These apply if, after the acquisition:

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

Before relying on these "indicators", it is wise to seek specific advice and carefully consider the relevant market definitions and dynamics. It is also worth noting that they are only a starting point for the analysis and that falling outside them will not necessarily mean that an acquisition will be judged to lessen competition. For example, market shares may be high but the conditions of entry or expansion may be benign.

Maximum penalties for an acquisition in breach of the Commerce Act are:

- NZ$500,000 for individuals, and/or
- For a body corporate, the greater of NZ$10m or either three times the value of any commercial gain resulting from the contravention (if it can be easily ascertained) or 10% of the turnover of the body corporate and all its related bodies.

An order may also be made requiring divestment of specified assets or shares (which can potentially include unwinding the merger).

Price control

Part 4 of the Commerce Act contains a mechanism to impose price control on the providers of particular goods and services in circumstances where there is limited competition. There are no restrictions on the industries to which Part 4 may apply.

Industries currently subject to Part 4 regulation are airports, electricity lines services and the gas industry (under the Commerce Act 1986).

Specific legislation regulating competition in particular industries applies in the case of:

- telecommunications (under the Telecommunications Act 2001)
- dairy (under the Dairy Industry Restructuring Act 2001)
- fuel (under the Fuel Industry Act 2020), and
- groceries (under the Grocery Industry Competition Act 2023).

Intellectual property in New Zealand

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Key points

- New Zealand's intellectual property laws are derived from English legislation and common law.
- They reflect international norms, the TRIPS Agreement and New Zealand's World Trade Organisation obligations.
- Principal statutes are the Copyright Act 1994, the Patents Act 2013 and the Trade Marks Act 2002.

Copyright

The Copyright Act grants exclusive rights to:

- copy a work
- issue copies of the work to the public
- play, perform or show certain works in public
- "communicate" the work
- make an adaptation of the work, and
- authorise any of these activities.

Works that can be subject to copyright include: literary works, computer programmes, dramatic works, artistic works (which may include drawings, moulds, dyes etc. for utilitarian items such as machinery or clothing), musical works, sound recordings, films and broadcasts, including over the Internet.

To qualify for protection, a work must be "original".

In accordance with the Berne Convention (to which New Zealand is a signatory) copyright exists as soon as the work is created. A work does not need to be registered to gain protection in New Zealand (and we have no Copyright Register).

New Zealand is in the throes of a copyright review in which officials are considering root and branch reform. This would also incorporate any changes required by international agreements New Zealand has signed. A free trade agreement in principle agreed this year between New Zealand and the UK includes a provision to extend the term of copyright protection by 20 years.

The copyright in literary, dramatic, musical and artistic works generally lasts for the life of the author plus 50 years. The term for communication works, films, sound recordings and typographical works is 50 years.

The copyright term for industrially applied three-dimensional works is usually 16 years. Protection for industrially applied "works of artistic craftsmanship" lasts for 25 years.

Public performances of various kinds may also be the subject of separate protection given in certain circumstances to performers (but not in the performance of sporting activities). In addition, the Copyright Act protects "moral rights" which, (depending on the circumstances) may include: a right to be identified as the author, a right to object to derogatory treatment of a work, and a right against being falsely attributed as the author of a work.

Under New Zealand law, moral rights are not assignable. They can, however, be waived.

Patents

Protection under the Patents Act 2013 allows the owner of a patented invention to prevent others from exploiting – e.g. making, using or selling – it for 20 years from the date of the patent.

A patent will be granted where the Commissioner of Patents is satisfied "on the balance of probabilities" that the application meets the requirements under the legislation. The most important of these are that the invention meets a universal or absolute novelty test and involves an inventive step (meaning that it is not "obvious").

Certain things are excluded from patentability, including methods of medical treatment of human beings by surgery or therapy, a method of diagnosis practised on human beings, and inventions the commercial exploitation of which would be contrary to public order or morality.

"Embedded software" may be patented. "Swiss-type" patent claims in the pharmaceutical area are possible.

Various procedures are open to third parties wishing to object to or oppose a patent, both before and after grant. These include asking for a re-examination.

Registered designs

New and original industrial designs are registrable under the Designs Act 1953 if their shape, configuration, pattern, or ornamentation has visual appeal. The period of protection is for an initial five years, with rights of renewal for two further five-year periods.

Because the Copyright Act protects industrially applied artistic works and useful articles in New Zealand, some businesses are content to rely on copyright law only (although there are advantages to gaining registration under the Designs Act).

Trade marks

Registration of a trade mark under the Trade Marks Act 2002 gives the proprietor the exclusive right to use the trade mark in relation to the goods and/or services for which it was registered.

The Act permits comparative advertising involving registered trademarks, except where the advertisements are "unfair" to the reputation of the mark. The Act also contains "anti-dilution" provisions to prevent unfair use of well-known registered marks in relation to goods and services which are dissimilar to those for which the mark is registered. Marks involving Māori language or symbols must be referred to a special committee for consideration before they are eligible for registration.

The Madrid Protocol allows for a multi-country trade mark application process.

Company names

A company name will not be approved if it is identical (or nearly identical) to an existing company name. Registering a company or reserving a company name gives no right to use the name as a trade mark, and provides no defence to infringement of third party trade mark rights. (This is also the case in respect of domain names.)

Domain names

Regional domain names, such as ".co.nz" and ".govt.nz", are registrable in New Zealand. New Zealand courts have protected businesses against "cybersquatting" in some instances. There is also now a dispute resolution service operated by the Domain Name Commission, similar to the UK Nominet service.

Passing off

The law of passing off may also be invoked to protect business goodwill and is frequently used for the protection of trade marks (whether or not registered), names, logos, packaging designs and shapes. The principles are similar to those that have been developed in English and Australian common law. This law is augmented by a consumer protection statute, the Fair Trading Act 1986, which may capture misleading conduct in trade involving trade marks (see the *Consumer Protections in New Zealand* section).

Parallel importation

Importers can import lawfully made goods from foreign countries in commercial quantities without infringing the copyright of the "official" distributor in New Zealand, or of the overseas manufacturer. However, the prohibition against importing pirated goods, made without the copyright owner's consent, remains in force.

Confidential information

New Zealand law protects confidential information relating to trade secrets, such as business methods and industrial processes. As with passing off, the principles are similar to those that have been developed in English and Australian law. Non-disclosure agreements (NDAs) are useful for providing contractual rights to prevent disclosure of confidential information and can be used to supplement common law rights.

Financial services in New Zealand

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Key points

- New Zealand has a highly developed financial services regulatory regime, with comprehensive licensing requirements.
- New Zealand is favourably regarded for its "ease of doing business".
- New Zealand operates an open foreign exchange system.

Overview of licensing, registration and compliance requirements

Licensing is required for registered banks, insurers, non-bank deposit-takers, fund managers and derivatives issuers (in respect of products offered to retail investors), certain supervisor trustees, financial advice providers, discretionary investment management service (DIMS) providers, providers of crowd funding and peer-to-peer lending services, operators of financial product markets (such as a stock exchange) and auditors.

Financial services providers must register on the Financial Service Providers Register. Those who provide retail services need to join an approved dispute resolution scheme.

A range of disclosure, money handling, financial reporting and other conduct obligations also apply.

Foreign financial service providers who provide financial services from offshore solely to wholesale clients (such as investment businesses, fund managers, large companies, government entities and certain eligible investors) are relieved from registration and licensing requirements.

A financial institution which is engaged in certain financial activities in New Zealand must comply with the requirements of New Zealand's anti-money laundering and countering financing of terrorism legislation.

Banks

Any financial institution, aside from a registered bank, that carries on any activity in New Zealand, directly or indirectly, with a name or title that includes "Bank", "Banker" or "Banking" must be authorised to use that name in New Zealand by the Reserve Bank.

Overseas banks may use restricted words when carrying on activities in New Zealand only if they register as registered banks or are authorised by the Reserve Bank (but only to the extent of the authorisation). The Reserve Bank has published guidance notes on the use of restricted words by overseas banks, and a class authorisation for overseas banks undertaking banking and lending, financial advisory services, capital and debt market issuances, and foreign exchange and derivative market activities for wholesale customers.

Registered banks are subject to the full regulatory oversight (including prudential supervision) of the Reserve Bank. Only financial institutions that can demonstrate an ability to carry on their business in a prudent manner, and which have appropriate standing and repute, are permitted to be registered as banks in New Zealand. The Reserve Bank takes into account both qualitative (the applicant's financial standing and ability to manage its business prudently) and quantitative (key prudential requirements) criteria.

Overseas banks must have the approval of, and comply with, the prudential requirements of their home supervisor to conduct banking business in New Zealand.

Non-bank deposit takers

Anyone who takes deposits or offers debt securities to retail investors and carries on the business of borrowing and lending money must be licensed as a non-bank deposit taker by the Reserve Bank. Relief can be obtained for overseas banks in some circumstances.

Non-bank deposit takers must comply with a range of prudential obligations under the applicable legislation.

Insurers

All insurers and reinsurers carrying on insurance business in New Zealand must be licensed by the Reserve Bank. Licence obligations include:

- maintaining solvency and filing solvency statements in accordance with standards prescribed by the Reserve Bank
- having an appointed actuary
- obtaining, publishing and disclosing to New Zealand policy holders and the Reserve Bank current financial strength ratings (i.e. a credit rating) from an approved rating agency, and
- establishing and complying with "fit and proper" policies for directors and senior officers.

Life insurers must maintain at least one statutory fund that relates solely to the insurer's life insurance business and is available to meet life insurance liabilities.

Generally, an overseas entity carrying on business in New Zealand will not be able to use a name or title including the words "insurance", "assurance", "underwriter" or "reinsurance" (or similar words), without an exemption from the Reserve Bank.

Offering investments in New Zealand

Various obligations apply to how financial products are created, promoted and sold to both retail and wholesale investors in New Zealand. These include:

- disclosure requirements when making a regulated offer (refer to the Investing in New Zealand's capital markets section)
- fair dealing rules which prohibit disclosure that is likely to mislead or deceive the public (these apply to both retail and wholesale offers)
- registration and governance requirements for managed investment schemes, debt securities, KiwiSaver and superannuation schemes
- financial reporting obligations for issuers, fund managers, registered banks, insurers and other licensed entities. Each reporting entity must prepare audited financial statements (or group financial statements, if it has any subsidiaries) and register these with the New Zealand Companies Office, and
- investor money handling rules for offers of derivatives to both retail and wholesale investors.

Managed/collective investment schemes

If a managed investment scheme is offered to retail investors in New Zealand, it will need to be registered in New Zealand. Registered managed investment schemes are highly regulated and must comply with specific registration, disclosure and governance requirements. The manager of the scheme must be licensed and an independent licensed supervisor (trustee) must be appointed.

If the scheme is marketed solely to wholesale investors in New Zealand, it will not need to be registered but will still be subject to fair dealing provisions.

The Trans-Tasman mutual recognition regime allows Australian offerors to use their Australian Product Disclosure Statements (PDS) and prospectuses in New Zealand, without requiring that the manager be licensed. Certain warning statements and local filings are required.

The Asia Regional Funds Passport allows offerors from New Zealand, Australia, Japan, South Korea and Thailand to offer products to investors in each other's countries. To qualify, various criteria must be met, including that the fund must have US$500 million under management and US$1 million of equity, and the offering document must be compliant with the laws of the home country. Other requirements include that the fund manager must be licensed in their home jurisdiction and comply with New Zealand disclosure requirements, and the Financial Markets Authority (FMA) must provide sign-off to confirm compliance with the passport rules.

Financial Service Providers Register

Anyone who is in the business of providing financial services to persons in New Zealand or is a reporting entity under New Zealand's anti-money laundering laws must generally register on the Financial Service Providers Register (FSPR)

This includes financial advisers, banks, securities issuers, fund managers, custodians, money managers, credit contract providers, credit card providers, travellers cheque providers, currency exchanges, insurers, trustees, listed companies, issuers of derivatives to the public, payment providers, and foreign exchange dealers.

To prevent misuse of the FSPR, registration is not permitted in certain circumstances, including merely because the FSP's financial services are accessible by (and not provided to) persons in New Zealand, if the FSP has wholesale clients only and does not have a New Zealand place of business, or if the services provided to persons in New Zealand are below the threshold specified in regulations.

Registration on the FSPR is not a licence or an endorsement by the FMA.

Depending on the nature of the financial services offered by the registered entity in New Zealand, it may also need to obtain a market services licence.

If financial services are provided to retail clients, the FSP must also join an approved dispute resolution scheme.

FSPs may be deregistered from the FSPR if their registration is likely to damage the integrity or reputation of New Zealand's financial markets, or to create a misleading appearance regarding the extent to which the FSP:

- provides, or will provide, financial services in New Zealand
- provides, or will provide, financial services from a place of business in New Zealand, or
- is, or will be, regulated by New Zealand law.

FSPs are required to give specific warnings and information in relation to their registration, non-compliance with which will be a ground for deregistration.

The FSPR Registrar has powers to require the provision of information to assess whether the registration requirements are, and continue to be, met and to deregister FSPs for failure to provide that information.

Financial advisers and discretionary investment managers

FSPs providing advice on financial products or investment planning services to retail clients in New Zealand must:

- obtain a financial advice provider licence from the FMA
- comply with legislative duties and obligations when giving regulated financial advice
- comply with disclosure requirements prescribed in regulations, and
- comply with the Code of Professional Conduct for Financial Advice Services, which comprises nine standards relating to ethical behaviour, conduct and client care, and competence, knowledge and skill.

Discretionary investment managers must be licensed by the FMA (if they are providing a retail service) and meet certain disclosure requirements and duties.

Reduced requirements apply in relation to services provided to wholesale clients (such as investment businesses, fund managers, large companies, government entities and certain eligible investors).

Brokers and custodians

Brokers and custodians who carry on the business of receiving and holding, paying or transferring client money or client property (known as a "client money or property service") must comply with certain disclosure and conduct obligations.

Fewer conduct obligations apply if the services are provided only to certain wholesale clients.

Foreign exchange market

There are no restrictions on the buying and selling of foreign currencies. The New Zealand banking system offers a full range of foreign exchange services including spot, forwards, futures, options and the more sophisticated derivative products. Issuers of derivatives to retail clients must be licensed.

New Zealand operates a very open regime. Borrowers may raise finance on and off-shore and in the currency of choice. Banks are actively engaged in the provision of short and medium-to-long term debt to the consumer, commercial and corporate sectors. Market forces determine the level of interest rates.

Repatriation of funds

There is no restriction on the repatriation of capital or earnings of a New Zealand business to overseas investors. This includes the remitting of dividends, profits, interest, royalties, management fees, etc. In many cases, however, non-resident withholding tax will be required to be deducted from those payments. For more information on New Zealand tax, please refer to the section on *New Zealand's cross-border tax regime*.

Anti-money laundering legislation

The New Zealand anti-money laundering and countering financing of terrorism (AML/CFT) regime requires all domestic entities, and those overseas entities carrying on business in New Zealand and engaged in certain financial activities in the ordinary course of that business to:

- carry out various levels of customer monitoring and due diligence, identity verification, suspicious activity reporting, auditing and record keeping in accordance with the AML/CFT legislation
- undertake and prepare a written risk assessment of the risk of money laundering and the financing of terrorism that it may reasonably expect to face in the course of its business, and
- establish, implement and maintain an AML/CFT compliance programme under the administration of a dedicated compliance officer.

Other regulations

New Zealand also has rules regarding:

- registration as an overseas company when a foreign company is carrying on business in New Zealand
- compliance with FATCA (Foreign Account Tax Compliance Act), AEOI (Automatic Exchange of Information) and Common Reporting Standards (CRS), and
- registration and establishment of limited partnerships.

This summary is necessarily generalised. There may be exceptions depending on your particular circumstances. We suggest you seek advice before proceeding with any proposal.

Investing in New Zealand's capital markets

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Key points

- New Zealand has a stock exchange which comprises two main securities markets – the NZX Main Board and the NZX Debt Market operated by NZX.
- The Takeovers Code restricts investors and their associates from holding or controlling more than 20% of the voting rights in a "code company", which includes listed companies.
- The Overseas Investment Act also applies to investments in New Zealand listed companies.
- There are laws against insider trading and market manipulation, which are enforced by the New Zealand Financial Markets Authority.

Capital markets in New Zealand

NZX operates the two main capital markets in New Zealand:

- the NZX Main Board, New Zealand's principal market for equity securities, with around 180 issuers, which allows investors to trade in some of New Zealand's largest and most well-known companies, and
- the NZX Debt Market, which allows investors to trade in a wide variety of debt securities, including New Zealand government bonds.

NZX also operates the NZX Equity Derivatives Market.

New Zealand's capital markets are well regulated, with developed and comprehensive rules applying to issuers and market participants. NZX is primarily responsible for regulating the markets and is a member of the World Federation of Exchanges. NZRegCo, an independently governed entity, is responsible for this regulatory function on behalf of the NZX. The New Zealand Financial Markets Authority, the government regulatory agency, also regulates the markets operated by NZX and NZX itself, as the licensed market operator.

Takeovers Code and Overseas Investment Act

All listed companies are subject to the New Zealand Takeovers Code, which regulates changes in the voting rights of "code companies".

A code company is any New Zealand company that is listed or which has 50 or more shareholders and 50 or more share parcels and is at least "medium sized" (assets of more than $30m or revenue of at least $15m).

The Takeovers Code restricts a person, together with its associates, from holding or controlling more than 20% of the voting rights in a code company or increasing a holding or control that is already above 20%.

The Takeovers Code permits a person, together with its associates, to hold or control voting rights above the 20% threshold in certain circumstances, including a full or partial takeover offer. The procedure for undertaking a takeover offer is detailed in the Takeovers Code and includes a number of specific timing and disclosure requirements. The Takeovers Panel is the regulatory body responsible for administering the Takeovers Code.

In addition, the Overseas Investment Act may apply to investments in New Zealand's capital markets. See the *Overseas Investment in New Zealand* section for further details.

Insider trading and market manipulation

New Zealand has insider trading laws that prohibit investors trading where they hold information that is not generally available and which a reasonable person would expect to have a material effect on the price of the quoted securities, regardless of the source of that information.

Passing on such information to another person or advising a person to hold or trade securities while holding such information, known as "tipping", can also breach New Zealand insider trading laws.

New Zealand has a general prohibition against market manipulation, which captures a range of behaviours such as publishing a false or misleading statement that is likely to affect trading in quoted securities or doing something that creates a false or misleading appearance of trading.

A breach of the insider trading or market manipulation laws can result in civil or criminal liability for the person responsible, as well as possible accessory liability for others involved in the contravention.

Fundraising in New Zealand

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Key points

- Issuers are required to prepare and register a "Product Disclosure Statement" in order to offer financial products unless an exclusion or exemption is available (such as for offers to wholesale investors).
- Listing on one of the markets operated by NZX may be undertaken in conjunction with a fundraising offer, generally using the same document.

Making an offer in New Zealand

New Zealand's securities laws are set out in the Financial Markets Conduct Act, which is enforced by the Financial Markets Authority.

Generally, issuers are required to prepare and register a Product Disclosure Statement or "PDS" before offering financial products in New Zealand. The PDS sets out key information for retail investors about the financial products on offer and has strict content requirements that depend on the type of financial product being offered. For offers of debt securities and managed investment products, external supervisor and licensing obligations also apply.

Outside the heavily regulated PDS, the advertising regime is flexible and does not place any specific content restrictions upon advertisements, other than requiring the inclusion of certain disclaimers and that no information, image or sound is inconsistent with the content of the PDS (for advertising released after the PDS has been registered).

Exclusions and exemptions

There are a number of exclusions under the Financial Markets Conduct Act, including bright-line tests that provide clarity as to when New Zealand investors are eligible to be offered financial products without any disclosure documentation, or with limited disclosure. This includes offers to wholesale investors, same class offers, and dividend reinvestment plans (subject to certain conditions).

Another exclusion is for crowdfunding, which allows issuers to raise up to $2 million in a 12 month period through a crowdfunding offer with reduced disclosure requirements. These offers have to be made through a licensed crowdfunding platform, of which there are a number currently operating.

If an investor wishes to make an offer in New Zealand but is unable to fit within one of the exclusions or class exemptions, it is possible to apply for a bespoke exemption from the New Zealand Financial Markets Authority.

New Zealand and Australia have a mutual recognition regime for the offering of financial products, which enables an offer made in one country to be easily extended to the other country.

Fair dealing and other potential liabilities

The Financial Markets Conduct Act prohibits issuers and others engaging in conduct or making statements that are misleading or deceptive in relation to financial products. This has a broad application, although attracts civil liability only.

Issuers, and their directors, undertaking a regulated fundraising offer are subject to potential criminal liability for serious misconduct and civil liability for less serious misconduct.

Listing

In conjunction with capital raising, an issuer may wish to list on one of the markets operated by NZX (see the *Investing in New Zealand's capital markets* section for more details). Generally, the document used for fundraising can also be used for listing purposes. Otherwise, a separate compliance listing document can be prepared.

The process to apply for listing is relatively straightforward, although there are certain timetable requirements that must be borne in mind.

The key requirements when seeking a listing on the NZX Main Board are to have an anticipated market capitalisation of at least $10 million and a spread of at least 20% of the class of equity securities to be quoted held by at least 100 persons not affiliated with certain company insiders (or an appropriate spread to ensure a sufficiently liquid market).

There are no spread requirements for the NZX Debt Market but the nominal amount of securities to be quoted must be at least $10 million.

Insolvency in New Zealand

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Key points

- Whether you are starting a new business in New Zealand, investing in an existing business, or dealing with other New Zealand-based parties, there's always a risk that an involved party will become insolvent.
- Receivership, liquidation, creditor compromises and voluntary administration are the most commonly used formal insolvency procedures for companies in New Zealand.
- Broadly, New Zealand's insolvency law respects security granted to creditors. By contrast, there are various ways in which unsecured debt can be compromised and subordinated.

Liquidation

A liquidator is usually appointed to a company by either its shareholders (usually a 75% majority is needed), or the Court, on the application of a creditor.

The principal duty of a liquidator is to take possession of, protect, realise and distribute company assets (or the proceeds of from sale of those assets) to the company's creditors. Liquidators in New Zealand have a statutory right to claw back preferential payments made by the company in certain periods preceding liquidation, or payments at undervalue. The liquidator then distributes all realisations to the creditors. Employees and the Inland Revenue Department (for some taxes) are paid before ordinary unsecured creditors.

Liquidation does not prevent secured creditors from exercising their rights over secured assets, although employees and the Inland Revenue Department are paid before general secured creditors from proceeds of inventory and receivables.

Liquidators' reports are publicly available through the on-line Companies Register.

Receiverships

A receiver recovers the company's assets in order to repay the secured creditor. They have power to manage the company and deal with its assets. A receiver owes only limited duties to other parties, such as unsecured creditors. Typically, receivers are appointed by a creditor with security over all a company's assets, although appointments can be over an individual asset. A contractual right to appoint receivers is necessary. Shareholders or directors of a company cannot appoint a receiver, but may ask a secured creditor to appoint a receiver.

Receivers are not agents of the creditors who appointed them. Rather, except in liquidated companies, they are agents of the company. Receivers' reports are also available on-line.

Voluntary administration

Voluntary administration provides a mechanism for the administration of the business, property and affairs of a company that is, or may become insolvent. The objective of voluntary administration is to maximise the chances of the company, or as much as possible of its business, continuing in existence or, where that is not possible, to produce a better return for the company's creditors and shareholders than would result from the immediate liquidation of the company.

Voluntary administration imposes a moratorium period, generally of around five weeks but this can be extended, during which time, the enforcement of charges is prevented as are taking possession of property, court proceedings, enforcement proceedings or the making of demands under a guarantee.

The moratorium gives the voluntary administrator an opportunity to develop a rescue plan which must then be adopted at a meeting of creditors. A special majority of creditors is required; 50% by number and 75% by value (of those voting).

Compromise

In addition to the above formal procedures, it is routine in New Zealand for companies facing difficulties to seek to compromise with their creditors. Those compromises can be informal, i.e. created by a simple contract, or they may be more formal. The Companies Act has procedures by which all creditors can be bound to a compromise if a majority of creditors vote in favour of it. Again, 50% by number and 75% by value (of those voting) must vote in favour for a majority.

Personal Properties Securities Act (PPSA)

New Zealand's PPSA regulates all security interests in personal property. "Security interests" include traditional securities interests (mortgages, fixed and floating charges, pledges and liens) as well as in-substance security interests (such as conditional sale agreements, retention of title provisions and leases of 12 months or more).

A key feature of the PPSA is that its application is not affected by a secured party having title to the security collateral. A debtor with rights in personal property can grant a security interest in that property even though it has no title to the property (such as where the property is subject to a retention of title clause or held under a lease).

The PPSA determines the priority of any security interest taken over personal property. In general, a perfected security interest has priority over an unperfected security interest. Perfection is usually achieved by registration on the Personal Property Securities Register (an on-line register). Priority between perfected security interests is determined by which secured party is first to either register, or take possession of the collateral. There are important exceptions to the order of priority, however.

Failure to register a security does not invalidate that security, but it may prejudice its priority position.

Personal insolvency – bankruptcy

Bankruptcy proceedings are governed by the Insolvency Act 2006. Bankruptcy affects an individual's legal status. Its consequences include: vesting the bankrupt's property in the Official Assignee; the bankrupt being limited in the business activities he or she can undertake; and the Official Assignee being entitled to recover assets that the bankrupt has transferred before the bankruptcy. A corporation, association or company incorporated or registered under any Act may not be adjudicated bankrupt.

Regulation of insolvency practitioners

Insolvency practitioners must be licensed by an accredited body under the Insolvency Practitioners Regulation Act 2019 and registered on a public register maintained by the Registrar of Companies. To obtain a licence, applicants must have the requisite qualifications and meet a "fit and proper person" test. Licences must be renewed every five years, with renewal dependent upon meeting ongoing competence requirements.

Resolving disputes in New Zealand

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Key points

- New Zealand has a common law system and an independent judiciary.
- New Zealand has a hierarchy of courts running from the District Court to the High Court, the Court of Appeal and the Supreme Court.
- Civil disputes are often solved by negotiation or mediation between the parties.

Legal system

New Zealand's common law system is similar to that in England and has familiarity with most international legal structures – especially in the finance and corporate law areas. New Zealand has a single legal profession in which members commonly hold a practising certificate as both a barrister and solicitor.

Judges are appointed by the Governor-General on the advice of the Attorney-General and have a strong tradition of judicial independence. Their appointments are open-ended.

Hierarchy of courts

The District Court is the court of first instance for most criminal prosecutions and many civil cases. In criminal cases, whether the District Court has jurisdiction often depends upon the nature and seriousness of the alleged offence. In civil cases, the District Court will have jurisdiction if the amount in dispute is NZ$350,000 or less. Above that amount, the claim must be advanced in the High Court. The High Court also has exclusive jurisdiction in certain matters as directed by statute, e.g. under the Companies Act 1993.

There is generally one right of appeal – from the District Court to the High Court or from the High Court to the Court of Appeal. Second appeals require the leave of either the court appealed from or the court appealed to. All appeals to the Supreme Court require the leave of that court.

The Supreme Court does not entertain appeals for the sole purpose of error correction, and will generally not grant leave unless the appeal involves:

- a matter of general or public importance
- a substantial miscarriage of justice, or
- matters of general commercial significance.

The Court of Appeal is therefore the final appellate court for most cases.

Outside the general court structure are a range of specialist courts and tribunals. These include the Employment Relations Authority and the Employment Court, the Environment Court and the Taxation Review Authority.

In New Zealand, Prosecution Guidelines do not permit a prosecutor to initiate or to invite a "plea bargain" in any criminal proceeding. However, it is permissible for a defendant to propose an arrangement under which a guilty plea will be entered either to some existing or amended charges, on the basis that other charges will be withdrawn or reduced.

Alternative dispute resolution for civil disputes

Civil disputes are often resolved by negotiation directly between the parties or by mediation. Such resolution may occur at any time, whether before or after judgment in any proceeding, but most often resolution occurs before trial (or, in some cases, shortly after a trial has begun).

It is a requirement for many civil proceedings in the District Court that the parties first attend a judicial settlement conference before a trial is allocated.

Civil disputes may also, with the agreement of the parties, be resolved by private arbitration (usually pursuant to an arbitration clause in a commercial contract). The New Zealand courts are strongly supportive of arbitration and will assist where necessary in the establishment of arbitral tribunals, interim orders and enforcement. New Zealand's Arbitration Act 1996 is based on the internationally recognised Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law.

International dispute resolution

Chapman Tripp regularly acts in international commercial arbitrations and can assist with drafting arbitration clauses, urgent applications linked to such arbitrations, and enforcement of arbitral awards.

We also advise on all aspects of international trade and investment agreements, including resolving disputes through the architecture provided by those agreements. New Zealand is a strong advocate for free trade and is a signatory to a number of trade and investment treaties. Many of those agreements include investor-state dispute settlement mechanisms, including the Comprehensive and Progressive Trans-Pacific Partnership Agreement.

Emigrating to New Zealand

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New Zealand has a reasonably open door immigration policy, particularly for skilled migrants and for entrepreneurs with the resources and capital to contribute to the economy by setting up a business in New Zealand.

New Zealand residence

The main paths to New Zealand residence are through the following categories:

- Investor
- Entrepreneur
- Skilled Migrant
- Work to Residence, and
- Family.

Chapman Tripp advises individuals and their families wanting to migrate here under the Investor and Entrepreneur categories. For all other applications, we have specialist independent immigration advisers with whom we work on a regular basis and whom we would happily recommend.

For more information go to the Immigration New Zealand website at: www.immigration.govt.nz

Only solicitors and licensed immigration advisers are legally able to give immigration advice in New Zealand. It is important that you establish the credentials of your adviser as Immigration will not generally accept applications where the advice has come from someone either unlicensed or not specifically exempted from holding a licence. This requirement applies also to advice given from off-shore.

Tax residence

Residence for income tax purposes is distinct from, and does not depend on, a person's immigration status. Once a person becomes "resident" in New Zealand for income tax purposes, income tax is generally imposed on that person's worldwide income.

Individuals are regarded as tax resident if they have a permanent place of abode in New Zealand or are present in New Zealand for more than 183 days within any 12-month period. Under the day count test, a person will be treated as becoming tax resident on the first day of the 183 days they are present in New Zealand.

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