**Jurisdiction:** New Zealand

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## 1. What are the main reasons foreign investors invest in your jurisdiction?

New Zealand has a market-focused economy which encourages foreign investment, not only through its laws, but indirectly through government policy and its foreign exchange and financial markets. This is evidenced by the significant level of foreign investment in New Zealand's stock exchange and in New Zealand property.

## 2. What foreign investment legislation is in place in your jurisdiction (e.g. Foreign Investment Law or Foreign Investment Catalogue)? Please provide a brief overview of such legislation.

While there are very few restrictions imposed on foreign companies as to the type of business operations permitted in New Zealand, foreign investment is controlled in New Zealand by the Overseas Investment Act 2005 (OI Act) and the Overseas Investment Regulations 2005 made pursuant to the OI Act (OI Regulations). In essence, they regulate investment by overseas persons in New Zealand's sensitive land, significant business assets and fishing quota.

The definition of an "overseas person" is set out in section 7 of the OI Act and includes any:

- individual not a New Zealand citizen and not ordinarily resident in New Zealand;
- body corporate incorporated outside New Zealand or any New Zealand subsidiary owned 25% (per cent) or more by any such body corporate;
- body corporate of which 25% (per cent) or more of any class of shares is held by an overseas person;
- body corporate of which the power to control the composition of 25% (per cent) or more of the governing body of the body corporate is held by an overseas person; and
- body corporate of which the right to exercise or control the exercise of 25% (per cent) or more of the voting power at any meeting of the body corporate is held or owned 25% (per cent) or more by an overseas person.

The definition of "sensitive land" is set out in full in Part 1, Schedule 1 of the OI Act. Examples of sensitive land include any:

- non-urban land that exceeds five hectares;
- land on islands which is not the main islands (North Island and South Island), and other islands listed in Part 2 of Schedule 1;
- the foreshore and seabed; and
- land greater than 0.4 hectares which adjoins sensitive land.

The definition of "significant business assets" is set out in section 13 of the OI Act. Examples include:

- establishing a new business for a period exceeding 90 days in any year (either on its own or in partnership with another person) where the total expenditure expected to be incurred in setting up the business exceeds NZ$ 100 million;
- acquiring 25% (per cent) or more ownership or control of the securities of a New Zealand company where the value of the securities, the consideration for the transfer, or the value of the assets of the New Zealand target

company, and any 25% (per cent)* or more subsidiaries, exceed NZ$ 100 million;

- increasing the proportion of ownership or control of the securities of such a company where the overseas person already has 25% (per cent) or more ownership or control; and
- acquiring property (including goodwill and other intangible assets) used in carrying on a business in New Zealand where the consideration provided for the acquisition exceeds NZ$ 100 million.

Note that these thresholds are increased for Australian investors. Specifically, NZ$ 516 million in the case of Australian non-government investors and NZ$ 108 million for Australian government investors.

Where consent is required for an investment, it may only be given if the "investor test" is satisfied by the applicant. This test includes that the overseas person or, if that person is not an individual, the individuals with control of the relevant overseas person, must:

- have business experience and acumen;
- have demonstrated financial commitment;
- be of good character; and
- not be an individual of the kind referred to in the Immigration Act 2009 ss 15 or 16 (which lists persons not eligible for exemptions or permits under the Act, usually because of criminal or terrorist records).

There are additional criteria that are required to be satisfied by the applicant as set out in the OI Act and OI Regulations.

### 3. What restrictions are placed on foreign investment? Does this differ at local levels of government?

As noted above, the OI Act places restrictions on investments by overseas persons in relation to sensitive land, significant business assets and fishing quotas. Each of these investments require consent under the OI Act.

The restrictions under the OI Act are consistent across all levels of the New Zealand government.

### 4. What are the most common business vehicles for foreign investors? How long do they take to be set up? What are the key requirements for the establishment and operation of these vehicles?

Overseas companies or investors may establish their presence in New Zealand through:

- registering in New Zealand as a branch of an overseas company or enterprise;
- establishing a local subsidiary in New Zealand (as a limited liability company);
- the acquisition of a New Zealand registered company, which would become a subsidiary of the overseas company;
- establishing a limited liability partnership or general partnership;
- creating a trust; or
- pursuing a joint venture.

#### Incorporating a limited liability company

The most common type of investment vehicle used in New Zealand is a limited liability company. In order to incorporate a company in New Zealand, the proposed company must have:

- a unique company name;
- one or more shares;
- one or more shareholders, having limited or unlimited liability for the obligations of the company; and
- at least one director who must be either a New Zealand or an Australian resident. In the case of an Australian resident director, they must also be the director of a company in Australia (excluding a branch).

While there are a number of steps required to incorporate a New Zealand company with the New Zealand Companies Office (being the Government agency responsible for administering New Zealand's business registers), the process itself is relatively straightforward.

Outside of special circumstances, a New Zealand company can typically be incorporated in one to two weeks. The key steps to incorporate a company include:

- reserving a company name;
- providing company contact details;
- providing the names, date of birth, addresses of all of the directors and shareholders (and, in most cases, evidence of such);
- providing the country of origin, company registration number or identifier and address of the ultimate holding company (if any); and
- providing the Companies Office with signed consent forms from the proposed director(s) and shareholder(s) of the company.

### Financial reporting for companies

Financial reporting in New Zealand is relatively straightforward for most small to medium-sized companies. Companies are generally not required to prepare full, general-purpose financial statements unless they fall within certain categories. These categories include:

- "large" companies;
- public companies;
- "large overseas companies" that carry on business in New Zealand;
- companies with more than 10 shareholders, unless the company has opted out of compliance; and
- companies with fewer than 10 shareholders if the company has opted into compliance.

Large companies, public companies and large overseas companies will be required to file their financial statements with the New Zealand Companies Office. The financial statements filed with the Companies Office are registered and are publicly available on the Companies Office website.

All companies, regardless of size and shareholder numbers, are required to file an annual return with the New Zealand Companies Office (confirming the information provided to the Companies Office is up-to-date) by the end of the company's filing month.

## 5. Under what circumstances are foreign investments subject to government approvals? What is the process and timeline for such approvals?

As discussed in respect of questions 2 and 3 above, foreign investors must obtain consent under the OI Act for transactions which involve sensitive land and significant business assets.

Applicants are expected to complete the application template provided by the Overseas Investment Office (the regulatory unit within Land Information New Zealand, tasked with the administration of the OI Act) (OIO). The application and its supporting information must be submitted electronically.

The OIO will review the application, before making a recommendation on whether the application should be permitted to the relevant Minister. In assessing the application, the OIO will consider both the investor and the investment itself, including the benefits it will bring to New Zealand. The Minister of Finance, the Minister of Land Information (for sensitive land applications), and the Minister of Primary Industries (for fishing quota applications) make the final decision on whether to allow a proposed investment to proceed and are not bound by the OIO's recommendations.

The timeframe for obtaining OIO consent will vary depending on the kind of application made. On average, it takes approximately 105 working days from start to finish. The timeframe for significant business asset applications are the longest, as it takes approximately 120 working days. These timeframes exclude days where the OIO has put the application on hold while:

- the OIO is waiting for the applicant to provide further information;
- the OIO is consulting with a third party about the application; or

- the recommendation is with the Ministers for decision.

### 6. What sectors are heavily regulated or restricted in your jurisdiction, if any? Conversely, what are some of the more open or unrestricted sectors, if any?

Despite welcoming foreign investment, New Zealand was considered the most restrictive country in the 2017 OECD Foreign Direct Investment Regulatory Restrictiveness Index. In particular, the following sectors / industries are considered to be heavily restricted in New Zealand:

- primary industry;
- fisheries;
- air; and
- telecommunications.

Generally speaking, New Zealand's financial markets (equity, debt, futures and options) are principally regulated by industry regulators via a layer of statutory regulation. Securities and stock exchanges are required to be registered and are regulated by the Financial Markets Authority. Currently, New Zealand has one registered exchange, the New Zealand Exchange Limited, which operates the main stock exchange (known as the NZSX), a debt market (known as the NZDX) and an alternative exchange (known as the NZAX) for smaller issuers.

Due to New Zealand's unequivocal policy on free trade, foreign companies investing in certain sectors in New Zealand, such as tourism or the exportation of locally manufactured goods (which directly contribute to foreign exchange earnings), are particularly welcomed by the New Zealand government through such bodies as Tourism New Zealand and New Zealand Trade and Enterprise, which provide assistance in these areas. Some regional authorities also provide limited assistance to investors in their particular area.

### 7. Are there any restrictions on doing business with certain countries or territories in your jurisdiction? (For example, sanctions.)

New Zealand does not have its own legislation that imposes standalone sanctions. However, as a UN Member State, New Zealand implements the sanctions the UNSC imposes under the United Nations Act 1946.

### 8. What grants or incentives are on offer to foreign investors, if any?

Aside from the New Zealand Screen Production Grant (which incentivises international production to take place in New Zealand), there are limited grants or incentives on offer to foreign investors specifically.

Foreign investors may also apply to Callaghan Innovation, a Crown entity of New Zealand, which offers government funding and grants. To apply for research and development grants, the business must be either registered under the Companies Act 1993 or the Limited Partnerships Act 2008.

### 9. Are there any free trade, special economic or industrial zones in your jurisdiction and what are their requirements?

New Zealand does not have any specific free trade, special economic or industrial zones.

### 10. What are the main taxes that could apply to foreign investors in your jurisdiction? (For example, Personal Income Tax, Corporation Tax, Value Added Tax and Social Security Payments.)

#### Income tax

As a general rule, residents in New Zealand are taxed on their worldwide income, whereas non-residents are only taxed on income derived from New Zealand sources. Individuals are treated as New Zealand tax residents if they:

- have a permanent place of abode in New Zealand, whether or not they have such an abode outside New Zealand;
- are physically present in New Zealand for more than 183 days within any 12-month period; or
- are away from New Zealand in the service of the New Zealand government.

Companies are treated as New Zealand tax residents if:

- they are incorporated in New Zealand;
- they have their head office situated in New Zealand;
- they have their centre of management in New Zealand; or
- control of the company by their directors is exercised in New Zealand whether or not decision-making by their directors is confined to New Zealand.

New Zealand residents pay the following rates of tax:

- income up to NZ$ 14,000 — 10.5% (per cent);
- income from NZ$ 14,001 up to NZ$ 48,000 — 17.5% (per cent);
- income from NZ$ 48,001 up to NZ$ 70,000 — 30% (per cent);
- income of NZ$ 70,001 or more — 33% (per cent); and
- all companies pay a flat rate tax of 28% (per cent).

If New Zealand is a party to a double tax agreement with a foreign country, then the rate New Zealand imposes on dividend income is generally 10% (per cent), with the maximum being 15% (per cent).

### Goods and Services Tax

Goods and services tax (GST) is payable at the rate of 15% (per cent) on the value of any goods or services supplied in New Zealand by a GST-registered person. It is an indirect consumption tax based on a value-added principle.

GST is levied on goods and services supplied by a person carrying on a taxable activity. GST is also levied on imported goods. Persons who are registered for GST must charge GST on all of their taxable supplies (or sales) and can claim a credit for any GST paid on expenditure incurred in carrying on their taxable activity. The net difference results in either a payment to or a refund from the New Zealand Inland Revenue Department.

## 11. What are some of the employment regulations in your jurisdiction that foreign investors should be aware of? Is it possible to secure residency permits or work visas for foreign nationals under investment?

New Zealand's employment relations are based on a legislative minimum code. The Employment Relations Act 2000 is the main piece of employment legislation and requires the employee and employer to deal with each other in good faith. It oversees matters of employment, including:

- minimum terms and conditions in employment agreements;
- collective bargaining; and
- processes and remedies for unjustified dismissals and unjustified actions during employment (in New Zealand, an employer must justify every employee's dismissal).

There are further statutes which provide minimum entitlements for employees, including the following:

- the Human Rights Act 1993 which prohibits discrimination on a wide range of grounds;
- the Minimum Wage Act 1983 which establishes minimum working wages;
- the Equal Pay Act 1972 which prohibits unequal payment for work of substantially the same type for men and women;
- the Holidays Act 2003 which provides sick leave, bereavement leave, annual holidays and statutory holidays;

- the Parental Leave and Employment Protection Act 1987 which provides parental leave;
- the Wages Protection Act 1983 which sets out how wages must be paid and how deductions (for example, union-related deductions or Kiwisaver, New Zealand's superannuation scheme) are taken from an employee's wages; and
- the Health and Safety at Work Act 2015 which sets requirements to keep people in the workplace safe.

Residence permits and visas are required for potential migrants who wish to settle permanently in New Zealand. New Zealand residence permits and visas may be obtained through the 'Investor' category (in which an applicant may qualify for residence on the basis of investments made in New Zealand). To be eligible for the 'Investor' visa classes, the applicant must either have at least NZ$ 10 million to invest into New Zealand for a three-year period or be an experienced business person who has a minimum of NZ$ 3 million in available funds or assets to invest into New Zealand over four years.

If an "Investor" residence application is approved, the applicant must retain the investment funds in an acceptable investment for three years for Investor Plus (Investor 1 Category) or four years for Investor (Investor 2 Category). The principal applicant must meet the requirements for the minimum amount of time spent in New Zealand (44 or 146 days) each year in years two, three, and four of the four-year investment period for 'Investor' migrants, or in years two and three of the three-year investment period for 'Investor Plus' migrants.

There are two ways an applicant may qualify for residence under the "Entrepreneur" category by:

- establishing or purchasing a business in New Zealand; and
- being self-employed in that business for the last two years; and
- that business to have significantly benefited New Zealand; or
- the applicant investing NZ$ 0.5 million or more into its business; and
- creating a minimum of three new full-time jobs for New Zealand citizens or residents.

## 12. Can foreign investors acquire real property and land in your jurisdiction? Are there any restrictions or limitations?

As set out in respect of questions 2 and 5, the acquisition of "sensitive land" by an overseas person requires consent under the OI Act. The OI Act is currently under review by the New Zealand government and is expected to be amended with further restrictions. The most significant change proposed is to include residential land in the definition of "sensitive land", so that residential properties and land may only be acquired by foreign investors in very limited circumstances.

The New Zealand government is also looking to introduce a further set of conditions which the Minister must be satisfied with before approving an OI Act application. This may involve the applicant showing:

- its commitment to New Zealand and meeting the occupation and on-selling requirements; and
- that the investment has a substantial and identifiable benefit to New Zealand in that the transaction will or is likely to increase housing on the land.

## 13. Are there any processes in your jurisdiction that can block foreign investment under specific circumstances?

As set out in question 2, foreign investment can be blocked if the relevant Ministry does not approve it under the OI Act.

## 14. What foreign currency or exchange controls should foreign investors be aware of?

New Zealand has a largely unrestricted currency exchange regime. Almost all exchange controls were lifted at the end of 1984. Since March 1985, the New Zealand dollar, known as the "Kiwi", has been allowed to float freely. The absence of exchange controls has had significant effects on the New Zealand economy, including:

- all remittances of money can be made through registered banks (subject to United Nations sanctions, disclosures required under New Zealand's financial transactions reporting rules, and anti-terrorism financing rules);
- interest, profits and dividends earned in New Zealand can be freely remitted to non-resident persons (subject to non-resident withholding tax considerations and other taxation issues); and
- no approval is required in respect of the repatriation of non-resident capital, including gains or capitalized profits.

## 15. Are there any restrictions, approval requirements or potential penalties if a foreign investor withdraws their investment in your jurisdiction?

There are presently no restrictions, approval requirements or potential penalties if a foreign investor withdraws their investment in New Zealand.

## 16. What contract enforcement and investor protection mechanisms are in place in your jurisdiction, if any?

### Reciprocal Enforcement of Judgments Act 1934 (REJ Act)

For judgments that are from Australia, the United Kingdom or a country in which New Zealand has a reciprocal agreement with (which includes countries such as Hong Kong, Singapore and Malaysia), parties may register a foreign superior court judgment for New Zealand courts to enforce a judgment for money.

### Trans-Tasman Proceedings Act 2010 (TTP Act)

The TPP Act allows Australian judgments which are final and conclusive to be enforced in New Zealand. Unlike the REJ Act, the TTP Act allows judgments from lower courts (and tribunals in specific circumstances) to be enforced. Further, non-money orders may be enforced under the TTP Act.

### Senior Courts Act 2016

If the judgment was entered into in any Commonwealth court, and is a money order, a party may also file a memorial judgment in the New Zealand High Court, and the court may order for the judgment to be enforced in New Zealand.

If the country is not in the Commonwealth or does not have a reciprocal agreement with New Zealand, then the party may seek enforcement under the common law.

## 17. Does your jurisdiction have any bilateral or multilateral investment protection treaties with Asia-Pacific jurisdictions that are commonly used for investing into the country?

New Zealand has a number of free trade agreements in force, including:

- NZ-China Free Trade Agreement;
- NZ-Republic of Korea Free Trade Agreement;
- NZ-Australia Closer Economic Relations;
- ASEAN-Australia-New Zealand Free Trade Area;
- NZ-Hong Kong, China Closer Economic Partnership;
- NZ-Malaysia Free Trade Agreement;
- NZ-Singapore Closer Economic Partnership Agreement;

- NZ-Thailand Closer Economic Partnership Agreement;
- Economic Cooperation with the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and
- Trans-Pacific Strategic Economic Partnership Agreement.

## 18. What intellectual property rights protections are available in your jurisdiction to foreign investors?

New Zealand's intellectual property legislation is essentially derived from English legislation and common law. In accordance with the Berne Convention, to which New Zealand is a signatory, copyright vests as soon as the work is created and it does not need to be registered.

In 2012, New Zealand adopted the Madrid Protocol; this provides a single procedure for the registration of a trade mark in a country that is a party to the Madrid Protocol. In recent years, the New Zealand Government has been reviewing the copyright legislation in light of the new digital and electronic world.

Key legislation relating to intellectual property includes the:

- Copyright Act 1994 which grants copyright protection to original works;
- Trade Marks Act 2002 which provides a system of trade mark protection;
- Designs Act 1953 which provides an exclusive right to create a marketing advantage from the visual design of products; and
- Patents Act 2013 which provides a system for protecting patents. International protection requires registration of the invention in each country of use.

## 19. Are there any environmental policies and regulations that (potential) foreign investors should be aware of prior to or throughout the investment process in your jurisdiction?

The Resource Management Act 1991 sets out the laws relating to the use of New Zealand's natural resources and each decision made under the act must promote the "sustainable management of physical and natural resources". Each investment proposal will, therefore, need to be separately considered in the light of this legislation and applicable regional and district plans, and specialist legal and related expert advice.

New Zealand's environmental policies are also found in legislation, including:

- Hazardous Substances and New Organisms Act 1996 — regulating harmful substances affecting human safety and the environment;
- Heritage New Zealand Pouhere Taonga Act 2014 — promoting, protecting and conserving New Zealand's historical and cultural heritage;
- Conservation Act 1987— promoting conservation of indigenous biodiversity and history resources;
- Maritime Transport Act 1994 – regulating pollution from ships;
- Biosecurity Act 1993 — regulating exclusion, eradication and effective management of pests and unwanted organisms in New Zealand;
- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 – assisting with sustainable management of natural resources in the Exclusive Economic Zone; and
- Fisheries Act 1996 — managing fisheries in New Zealand's territorial sea and Exclusive Economic Zone.

A number of different regulatory bodies are involved with managing the New Zealand environment and ensuring statutory and policy compliance. Key regulatory bodies include:

- Parliamentary Commissioner for the Environment;
- Minister and Ministry for the Environment;
- Minister and Department of Conservation;

- Minister and Ministry for Primary Industries;
- Minister of Energy and Resources
- Ministry of Business, Innovation and Employment;
- Environmental Protection Authority;
- Maritime New Zealand;
- Heritage New Zealand Pouhere Taonga;
- Land Information New Zealand;
- local councils; and
- Environment Court.

### 20. Are there any government agencies or non-governmental bodies that (potential) foreign investors can turn to for more information on investment in your jurisdiction?

Investment New Zealand is a division of New Zealand Trade and Enterprise which is responsible for attracting and facilitating potential foreign investment opportunities in New Zealand. The division provides case management services, including:

- information on investment opportunities;
- assistance for companies during the investigation and due diligence phase;
- facilitating location visits by investment decision-makers;
- referring investors to independent professional advice; and
- attracting private organisations and agencies of central and local government to provide support where possible.

### 21. Have there been any recent proposals for reforms or regulatory changes that will impact foreign investment in your jurisdiction

#### Overseas Investment Amendment Bill

- Please refer to question 12 in relation to proposed changes that would mean that foreign investment into residential land will be subject to OI Act consent.
- The New Zealand Government is also looking to bring the forestry rights under the OI Act regime. Under the current proposal, applicants will require consent under the OI Act for the acquisition of forestry rights of more than 1,000 hectares per calendar year.

#### Anti-Money Laundering and Countering Financing of Terrorism

The New Zealand government has increased the reporting obligations within various professions, including:

- banks;
- lawyers;
- businesses that provide trust and company services;
- real estate agents;
- accountants;
- conveyancers; and
- high-value dealers.

These changes are to ensure those professions comply with more stringent processes to deter money laundering and the financing of terrorism. This will likely result in foreign investors being asked to provide material confirming their identities and information in relation to the source of funds and key people involved in the business when using these services in order for these professions to comply with their customer due diligence requirements.

### 22. Are there any other features regarding foreign investment in your jurisdiction or in Asia that you wish to highlight?

There are no further features regarding foreign investment in New Zealand we would like to highlight.

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