



Doing Business in New Zealand

Hesketh Henry - Supporting Your Investment in New Zealand

New Zealand is renowned for its excellent investment opportunities and stable economic environment. If you are considering investing in New Zealand for the first time, securing a trusted legal adviser is a crucial first step.

As one of New Zealand's leading and longest-established commercial law firms, Hesketh Henry has developed an outstanding reputation for advising international clients. Established in 1865, Hesketh Henry has a rich history of providing high quality legal services. Our team features several multilingual lawyers, and over the years we have fostered a network of local and international contacts. Hesketh Henry consistently provides comprehensive support to all of our clients.

At Hesketh Henry, we are dedicated to developing long-term relationships with our clients. The first step is to understand your needs, investment objectives, and strategies. We believe in building a relationship where you feel confident that your choice of law firm is the right one, that your concerns are understood and acted upon, and that you have an expert on your side who knows the law but speaks plainly.

Our team is approachable, easy to work with, and committed to your success. We pride ourselves on our expertise across various sectors, including mergers & acquisitions, inbound overseas investment, construction, insurance, real estate, forestry, trade & transport, employment, health & safety, privacy & data protection, and private wealth.

This document provides an overview of New Zealand's investment environment from a legal perspective. It is intended as a guide only and we encourage you to seek our advice before proceeding.

Contents

1.	ABOUT NEW ZEALAND	1
2.	ESTABLISHING AN ENTITY.....	1
3.	OVERSEAS INVESTMENT REGIME	4
4.	ACQUIRING LAND.....	5
5.	COMPETITION LAW.....	7
6.	TAXATION.....	7
7.	FINANCIAL SYSTEMS.....	10
8.	INSURANCE	12
9.	FORESTRY	14
10.	INTELLECTUAL PROPERTY	16
11.	CONSUMER PROTECTION	18
12.	EMPLOYMENT	20
13.	IMMIGRATION	23
14.	CONTRACTING	24
15.	DISPUTE RESOLUTION.....	24
16.	IMPORTANT NOTE	25

Doing Business and Investing in New Zealand

1. About New Zealand

- 1.1 New Zealand is a unique country. Its geographic and economic situation, together with its legal and financial system, make it stand out in the South Pacific. New Zealand's economy is market-focused. New Zealand encourages foreign investment not only through its laws but indirectly through Government policy, foreign exchange, and financial markets.
- 1.2 New Zealand lies in the south-west Pacific Ocean consisting of two large islands and a number of smaller islands. With a combined area of 268,000 square kilometres, New Zealand is similar to the size of the British Isles or Japan. The current population is approximately 5.3 million.
- 1.3 New Zealand is a parliamentary democracy with a centralised one-chamber Parliament situated in the capital city, Wellington. General elections are held every three years. Since 1996, the country has been subject to a mixed member proportional representation electoral system. The maximum number of parliamentary seats stands at 120, with a provision for "overhang" seats. This system was adapted from Germany's electoral system.
- 1.4 All legislation relating to the conduct of business and the operation of companies in New Zealand is enacted by New Zealand's Parliament and administered by Government agencies.
- 1.5 New Zealand's legal system is based on the common law, similar to England and many other western countries. Most criminal and smaller civil matters are dealt with by the District Court. The High Court largely attends to civil matters and more serious crimes. There are two appeal courts, the Court of Appeal and, in certain circumstances, the Supreme Court.

Te Tiriti o Waitangi

- 1.6 Māori are the indigenous people of Aotearoa New Zealand. Te Tiriti o Waitangi (Te Tiriti), signed on 6 February 1840 by the British Crown and many Māori iwi and hapū (collective groups of Māori), is a cornerstone of Aotearoa New Zealand's legal framework. Te Tiriti and its English counterpart, the Treaty of Waitangi, are foundational documents recognised in various New Zealand statutes, court decisions and common law principles.
- 1.7 The British Crown's failure to honour Te Tiriti has resulted in substantial grievances for Māori, prompting the establishment of a political process in the 1990s to address these issues. Settlements from this process have included cultural and commercial redress, contributing to a Māori economy valued at \$68.7 billion in 2018 (according to the Reserve Bank of New Zealand). Iwi corporations and entities, formed through these settlements, often engage in joint ventures with overseas investors. Additionally, Māori stewardship of land and resources, known as kaitiakitanga, is a crucial consideration for businesses operating in Aotearoa. Various laws, such as the Local Government Act 2002 and the Resource Management Act 1991, mandate consultation with Māori based on Te Tiriti principles.

2. Establishing an entity

- 2.1 Overseas companies and corporations can establish their presence in New Zealand by:
 - registering a branch of the overseas company in New Zealand;
 - incorporating a local subsidiary in New Zealand; or
 - acquiring a New Zealand registered company, which then becomes a subsidiary of the overseas company.
- 2.2 Individuals looking to conduct business in New Zealand may choose to do business in their own name in some circumstances, but will generally do so via a wholly owned company or through a limited partnership, a general partnership or a joint venture.

Registering a branch

- 2.3 A company incorporated in a country outside New Zealand must apply to register on the Companies Office Overseas Companies Register within ten working days of starting to carry on business in New Zealand. Whether a company is deemed to “carry on business” in New Zealand can be relatively complex in some cases.
- 2.4 Unlike subsidiaries, a branch of an overseas company is not a separate legal entity from its parent company, but is subject to New Zealand laws.

Incorporating a subsidiary

- 2.5 A subsidiary company incorporated in New Zealand is a separate legal entity with limited liability.
- 2.6 A subsidiary company incorporated in New Zealand must have at least one shareholder and one director. At least one director must be resident in either New Zealand or in an enforcement country, and the subsidiary company must have an address for service and a registered office at physical addresses in New Zealand.
- 2.7 Directors who are resident in an enforcement country must also be a director of a registered company (excluding a branch of an overseas company) in that country. Currently, the only listed enforcement country is Australia.
- 2.8 Unlike many other countries, New Zealand companies do not have a par or nominal value attached to their shares (see paragraph 2.17). There is no minimum requirement as to the value of a company's share capital. Company directors are required under the Companies Act 1993 (Companies Act) to determine the issue price for new shares and that the price is, in their opinion, fair and reasonable to both the company and its shareholders.
- 2.9 A company is deemed to have all the rights and powers of a natural person unless restricted under its constitution.
- 2.10 Overseas entities may also acquire a New Zealand registered company, which comes with several compliance requirements depending on the nature of the acquisition, the overseas entity and the New Zealand company. These compliance requirements are explained in greater detail at section 3 below.

Subsidiary or Branch

- 2.11 The decision whether to establish a branch of an overseas company by registering the overseas company in New Zealand or to incorporate or acquire a New Zealand subsidiary company will depend on legal, taxation and other commercial considerations (both in New Zealand and overseas). The following should also be considered:
- financial reporting requirements (as further detailed below);
 - there is more administrative work involved for a subsidiary as opposed to a branch because of legal requirements under the Companies Act, such as those requiring subsidiaries to keep records and statutory registers in New Zealand.
 - significantly, a limited liability subsidiary will have limited liability in respect of its New Zealand operations. A branch will not have limited liability in New Zealand because it will not have a separate legal identity from the overseas company.

We recommend that you seek advice on which entity best suits your circumstances.

Limited Partnerships

- 2.12 The Limited Partnerships Act 2008 governs the establishment and operation of limited partnerships in New Zealand. Limited Partnerships offer limited liability to investor partners while maintaining a separate legal personality for the partnership itself. Limited partnerships must, amongst other things:
- be registered with the New Zealand Companies Office;
 - include "limited partnership" or its abbreviation in their name;
 - have at least one general partner, who manages the business (this may be a company); and
 - have at least one limited partner, who does not participate in management.

- 2.13 A key feature of limited partnerships is "pass-through" tax treatment, meaning that for tax purposes, the assets and activities of a partnership will generally be treated as held and carried out by its partners (rather than the partnership itself). A Limited Partnership structure may be particularly attractive for venture capital and private equity investments.

Financial Reporting

- 2.14 Companies in New Zealand are not required to prepare full, general-purpose financial statements unless they are a:
- large company;
 - public company;
 - large overseas company that carries on business in New Zealand;
 - company with more than 10 shareholders, unless opted out; or a
 - company with fewer than 10 shareholders that has opted in.
- 2.15 A subsidiary of an overseas company will generally need to file financial statements if its assets were worth more than NZ\$22 million or if it recorded more than NZ\$11 million in revenue, over the past two accounting periods.

Company Legislation

- 2.16 If you decide to establish or acquire a company in New Zealand, New Zealand's company law will apply, principally comprised of the:
- Companies Act, which governs the formation and operation of companies in New Zealand; and
 - Financial Reporting Act 2013, which governs the financial reporting requirements of companies and other entities (see comments in paragraph 2.14).
- 2.17 New Zealand's Companies Act is unique in the following ways:
- there is no distinction between public and private companies;
 - a company need only have one shareholder and there is no concept of par value, nominal value or the maintenance of share capital;
 - companies are not required to have a constitution (similar to memorandum and articles of association), but a constitution may enable a company to adopt certain optional provisions under the Companies Act and provides greater clarity and certainty for the company. Without a constitution, the default provisions of the Companies Act will apply. Having a constitution is generally advisable;
 - before a company can make distributions to its shareholders and undertake certain other transactions, the company must satisfy a "solvency test" as detailed in the Companies Act;
 - subject to protections for shareholders and creditors, a company may buy its own shares and finance the acquisition of its own shares;
 - the approval of 75% of shareholders is required prior to the company entering into a major transaction (generally being a transaction that involves more than half the value of a company's assets); and
 - shareholders who vote against a major transaction that is approved by a 75% or more majority can in some circumstances require the company to buy back their shares.
- 2.18 The Companies Act also governs matters such as the powers of a company and its officers, the duties of directors, the conduct of meetings and liquidations.

Consents

- 2.19 Unless New Zealand's overseas investment thresholds are triggered (as detailed in section 3 below), generally the only Government consent that is required to establish your business in New Zealand is consent from the Registrar of Companies for the use of a chosen company name (both in the case of a subsidiary and a branch). Name approval will generally be readily available unless there is already an identical, or almost identical, name on the register.

3. Overseas Investment Regime

- 3.1 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 in New Zealand by overseas persons.
- 3.2 Some business transactions, such as investment in fishing quota, acquiring certain forestry rights or the purchase of certain sensitive real estate, will always require consent. Otherwise, consent is only required by an overseas person if a prescribed threshold is exceeded (generally NZ\$100 million). A more detailed discussion is set out in section 3 below.
- 3.3 The definition of an "overseas person" is set out in full in section 7 of the OI Act, but examples include 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 more than 25% by any such body corporate;
 - body corporate of which more than 25% of any class of shares is held by an overseas person;
 - body corporate of which the power to control the composition of more than 25% 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 more than 25% of the voting power at any meeting of the body corporate is held or owned more than 25% by an overseas person.
- 3.4 The definition of an "overseas person" excludes certain widely held body corporates that are both New Zealand incorporated and publicly listed in New Zealand, and certain management investment schemes if they are New Zealand listed, are 50% or more invested on behalf of New Zealanders and at least 25% of its products invested on behalf of overseas persons are widely held.

Significant Business Assets

- 3.5 Under the OI Act, overseas persons require consent from the New Zealand Overseas Investment Office (OIO) prior to making certain investments. Non-land investments requiring consent include:
- establishing a new business that operates for more than 90 days in a year with a set up cost of over NZ\$100 million (or an alternative prescribed amount);
 - acquiring more than 25% ownership or control of a New Zealand company where the company or the investment is worth more than NZ\$100 million (or an alternative prescribed amount);
 - increasing an existing more than 25% ownership or control to 50%, or a 50% ownership or control interest to 75%, or to 100% ownership or control interest, in such a company; and acquiring property (including goodwill and other intangible assets) used in carrying on a business in New Zealand for more than NZ\$100 million (or an alternative prescribed amount).
- 3.6 Where an overseas person acquires shares in an entity that owns or has an interest in land of a kind requiring overseas investment consent from the OIO the issues raised in Section 4 (Acquiring Sensitive Land), below, will also be relevant.
- 3.7 The generally applicable NZ\$100 million consent threshold for significant business assets not involving "sensitive assets" does not apply to certain investors from Australia, and the European Union:
- (a) **Australia:** the threshold for the period 1 January 2025 to 31 December 2025 is \$650 million for 'Australian non-Government investors' (being an Australian individual or an Australian entity that either carries on substantive business operations in Australia or in relation to one or more Australian or New Zealand individuals has more than 75% ownership or control interest and is not an Australian or foreign government investor). The amount is adjusted annually for inflation. The threshold for 'Australian Government investors' for the same period is \$136 million (being the Australian Government or an entity or branch located in Australia that is 25% or more owned or controlled by the Australian Government) but is also adjusted annually for inflation.

- (b) **European Union:** the EU-New Zealand Free Trade Agreement, which entered into force in May 2024, has increased the threshold for investments by investors from the European Union in significant business assets from NZ\$100 million to NZ\$200 million. This means that EU investors can now acquire up to NZ\$200 million worth of business assets or more than 25% ownership or control of such assets without requiring consent from the OIO, unless the investment also involves “sensitive land” or fishing quota.
- 3.8 Where OIO consent is required for an investment, it may only be given if certain criteria are satisfied by the applicant. The tests and criteria vary depending on the type of investment. Most consents require the investor to satisfy the “investor test”. The investor test assesses whether certain prescribed factors relating to a person’s character or capability apply to the overseas person or the individuals with control of the relevant overseas person who are not New Zealanders. An applicant passes the investor test if none of the factors are established or by providing sufficient evidence to show why triggering one or more of the factors does not make them unsuitable to own or control sensitive New Zealand assets.
- 3.9 The Government has also introduced a “national interest” test, which is applicable to transactions that involve “strategically important business” (broadly, these are sensitive and high-risk businesses relating to ports, airports, telecommunications and other critical infrastructure) and certain levels of investments by an overseas investor that is made by, or associated with, a foreign government. The Minister of Finance may decline consent to this type of overseas investment if the investment is considered contrary to New Zealand’s national interest. In applying the “national interest” test, a broad range of factors may be considered and will vary, depending on the nature and likely impact of the proposed investment.
- 3.10 The national Security and Public Order regime also applies to certain overseas investments, including investments involving specific military, dual-use technology or other critical direct suppliers. These kinds of investments are classified as overseas investments in “strategically important businesses” that do not otherwise require consent under the OI Act, and are required to be notified to the OIO. The Minister of Finance reviews these notifications and may impose conditions, prohibit the transactions and require the disposal of relevant assets, if the proposed transaction may give rise to a significant risk to national security or public order.

4. Acquiring Land

Consent to purchase

- 4.1 The OIO is also responsible for regulating the purchase of certain types of land in New Zealand. The particular types of land and interests in land that require OIO consent are set out in the OI Act. Examples include:
- residential land;
 - over five hectares of non-urban land;
 - land on most off-shore islands; and
 - land that includes or adjoins certain types of land such as marine and coastal areas, reserves or heritage areas that exceed certain area thresholds.
- 4.2 The purchase of commercial or industrial land in New Zealand is, subject to not being or adjoining sensitive land, generally not subject to many restrictions.
- 4.3 In relation to land (as detailed in paragraph 4.1 above) it is important to note that:
- the OI Regulations cover both rural and urban land; and
 - where an overseas person (or a person associated with an overseas person) purchases land adjoining land that is already owned by the overseas person, separate consent is required.
- 4.4 The criteria and test to be satisfied by an application for consent for overseas investment in sensitive land will depend on the purpose and type of land being acquired. In most cases, the applicant must meet the “investor test” (as described in paragraph 3.8 above).
- 4.5 Residential properties and land may only be acquired by foreign investors in limited circumstances. Consent options depend on the type of residential land (including whether or not the residential land

includes otherwise sensitive land) and the purpose of the investment. Consent options for residential land generally include:

- Consents for increased housing – residential land may be acquired for the development of new residential buildings under certain circumstances. This includes long-term accommodation facilities and associated development works.
- Consents for non-residential use – this involves using the residential land for non-residential purposes (e.g. building a shopping complex).
- Consents for incidental use – the use of residential land in support of the foreign investor's business (e.g. use of the land as buffer land).
- Consents for investment in apartments – exemptions and consent pathways are available for overseas persons buying apartments off large development plans for investment or residential purposes in certain circumstances.
- Consents for investing in hotel units – foreign investors may acquire hotel rooms and lease it back for hotel use in some circumstances.

4.6 To obtain consent for an overseas transaction in respect sensitive land (but not residential land), the investor will need to show:

- the overseas person, or if that person is not an individual, the individuals with control of the relevant overseas person, ordinarily reside in New Zealand or intend to reside in New Zealand indefinitely; or
- the "benefit to New Zealand test" is met. i.e. the proposed land investment (the subject of any application) will, or is likely to, benefit New Zealand.

4.7 Other criteria may also apply, including if the relevant land is or includes farm land. Farm land must generally be offered on the open market to non-overseas persons. Further, if the overseas investment in sensitive land is a transaction of national interest (as described in paragraph 3.9 above), the Minister of Finance may decline consent on the basis that the transaction would be contrary to New Zealand's national interests.

4.8 The "benefit to New Zealand" test includes an assessment of the following seven categories of benefit factors:

- economic benefits such as creation of new jobs, increased exports, the introduction of new technology and increased processing of primary products;
- environmental;
- benefits continued or enhanced access by the public within or over the sensitive land;
- continued or enhanced protection of historic heritage in or on the relevant land;
- giving effect to or advance a significant Government policy;
- prescribed oversight of, or participation in, the overseas investment by New Zealanders; and
- other consequential benefits to New Zealand.

4.9 If the overseas investment involves the extraction of water in bulk for human consumption, an additional factor to consider is whether the overseas investment will, or is likely to, result in a negative impact on water quality or sustainability.

4.10 The benefits outlined in a consent application will be compared with the current state of the land, its use, and activities conducted on it. The current state is assessed at either the time the transaction is entered into or the time the application is made, whichever date is the earliest. Consideration will be taken of the current state of the assets being acquired and how the proposed investment will provide benefit in New Zealand beyond the current state.

Torrens land registration system

4.11 New Zealand operates under the Torrens land registration system where each parcel of land generally has its own title that records dimensions and ownership. Titles are stored, searched and amended electronically. The New Zealand Government guarantees the accuracy of these electronic titles, which can be searched by the public for a small fee.

Contracts for the sale and purchase of land

- 4.12 A contract for the sale and purchase of any land must be in writing and signed by the parties involved to be enforceable.

Resource Management Act 1991

- 4.13 The Resource Management Act 1991 has combined the laws relating to the use of New Zealand's natural resources such as land, water, minerals, coastline and air. The purpose of the Act is to promote the "sustainable management of natural and physical resources". As such, any new major development relating to industrial property, for instance, must carefully consider the legislation and may require a number of consents before it will be permitted to proceed. Each investment proposal will, therefore, need to be separately considered in light of this legislation, applicable regional and district plans and specialist legal and related expert advice. The Government has recently introduced the Fast Track Approvals Bill to parliament. If passed, it will establish a fast-tracked approvals process for certain housing, development and infrastructure projects in New Zealand. The Government has also indicated its intention to replace the current Resource Management Act 1991 with new resource management legislation that prioritises property rights and positive environmental outcomes.

Building Act 2004

- 4.14 All buildings are regulated and controlled by the application of the Building Act 2004. The Building Act 2004 sets rules, standards and codes for the construction, alternation, demolition and maintenance of buildings in New Zealand.

5. Competition Law

- 5.1 Competition law in New Zealand is governed by the Commerce Act 1986 (**Commerce Act**). The New Zealand Commerce Commission (the **Commission**) is responsible for the administration of the Commerce Act.

Commerce Act

- 5.2 The Commerce Act prohibits certain anti-competitive behaviour and practices, including:
- mergers or acquisitions that would or would likely substantially lessen competition in a market.
 - collective behaviour by two or more persons or businesses that has, or is likely to have, the effect of substantially lessening competition. This may include cartel conduct; and
 - unilateral behaviour by a single person or business with a substantial degree of market power, taking advantage of that power for an anti-competitive purpose.
- 5.3 The Commerce Act provides a mechanism for seeking clearance from the Commission that a proposed acquisition will not result in a substantial lessening of competition and, therefore, will not constitute a breach of the Commerce Act. An authorisation may also be sought where, even though a particular transaction may be deemed to substantially lessen competition in the market, its benefits to the public outweigh its detriments.
- 5.4 The penalties for a breach are substantial by New Zealand standards, being NZ\$500,000 for individuals. For companies, penalties include the greater of NZ\$10 million or three times the commercial gain resulting from the breach, or 10% of the turnover of the company and its subsidiaries. The Commission also has power to unwind a transaction that is subsequently found to be in breach of the Commerce Act.

6. Taxation

Income Tax

- 6.1 Generally, residents in New Zealand are taxed on their worldwide income, whereas non-residents are only taxed on the income they derive from New Zealand.
- 6.2 Individuals are treated as New Zealand tax residents if they:
- have a permanent place of abode in New Zealand, whether or not they also have such an abode outside New Zealand; or

- are physically present in New Zealand for more than 183 days within any twelve month period.
- 6.3 Companies are treated as New Zealand tax residents if:
- they are incorporated in New Zealand;
 - they have their head office 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 (irrespective of whether or not decision-making by their directors is confined to New Zealand).
- 6.4 As of 31 July 2024, New Zealand residents pay the following rates of tax:
- for individuals (subject to certain provisions relating to low income families):
 - up to NZ\$15,600 – 10.5%;
 - from NZ\$15,601 up to NZ\$53,500 – 17.5%;
 - from NZ\$53,501 up to NZ\$78,100 – 30%;
 - from NZ\$78,101 up to NZ\$180,000 – 33%; and
 - from NZ\$180,001 or more – 39%; and
 - for most companies, a flat rate of tax of 28% applies; and
 - a withholding tax applies to non-residents who receive certain types of non-resident withholding income derived from New Zealand, namely interest, dividends and royalties.
- 6.5 The following exceptions should be noted in respect of non-resident withholding tax:
- most of the double tax agreements to which New Zealand is a party provide that the maximum withholding tax rate that New Zealand can impose on dividend income is 15%;
 - most of the double tax agreements to which New Zealand is a party provide a maximum withholding tax rate on interest and royalties of 10%;
 - in certain circumstances, a levy of 2% of any interest payments may be paid instead of paying non-resident withholding tax (see paragraph 6.7 below); and
 - special rules apply to payments made to related overseas parties.
- 6.6 New Zealand has entered into double tax agreements with a number of countries including Australia, Austria, Belgium, Canada, China, Chile, Czech Republic, Denmark, Fiji, Finland, France, Germany, Hong Kong, India, Indonesia, Ireland, Italy, Japan, Korea (Republic of), Malaysia, Mexico, Netherlands, Norway, Papua New Guinea, Philippines, Poland, Russian Federation, Samoa, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand, Taiwan, Turkey, the United Arab Emirates, the United States of America, the United Kingdom and Vietnam.
- 6.7 If funds are borrowed by a New Zealand resident company from a non-resident not associated with the New Zealand resident company, the interest payable to the non-resident lender can be paid free of non-resident withholding tax, provided that a levy of 2% on the interest payable is paid by the New Zealand resident company. However, the New Zealand resident company must have obtained approved issuer status from the Commissioner of Inland Revenue. To the extent that the approved issuer levy is not paid on any interest payment, non-resident withholding tax is payable.
- 6.8 Transfer pricing and thin capitalisation rules also apply. The two main features are:
- the transfer pricing regime requires that an arm's length price be applied to any supply of goods and services to and from New Zealand between associated parties; and
 - under the thin capitalisation regime, non-resident/s who own or control 50% or more of a New Zealand company may only be entitled to deduct interest expenditure on borrowings to the extent that total debt does not exceed 60% of total assets.

Goods and services tax

- 6.9 Goods and services tax (GST) is payable at the rate of 15% on the value of most goods or services supplied in New Zealand by a GST registered person. GST is an indirect consumption tax based on a value-added principle.
- 6.10 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 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 generally results in either a payment to or a refund from the New Zealand Inland Revenue Department.
- 6.11 The following supplies are generally exempt from GST:
- financial services;
 - residential rentals;
 - penalty or default interest;
 - donated goods and services supplied by a non-profit body; and
 - fine metals.
- 6.12 There are some supplies that may be subject to GST at a rate of 0% including:
- certain exported services, such as legal services;
 - exported vessels (ships);
 - supplies to foreign-based pleasure craft;
 - some imported services;
 - online sales to overseas customers;
 - temporary imports, such as certain goods imported for repairs or maintenance;
 - transport people to or from New Zealand;
 - taxable activities disposed of as "going concerns"; and
 - a supply from one GST registered person to another GST registered person, which includes land, where the person who has acquired the land has the intention of using it to make taxable supplies and the land will not be used as a primary residence of that person or an associated person.
- 6.13 A limited range of goods are subject to further indirect taxation in the form of an additional sales tax, for example, motor vehicles, fuel, alcohol and tobacco.

Customs and excise duty

- 6.14 The Government also taxes specified imported goods by way of customs and excise duty. The rates vary widely according to the country of origin of the goods and the type of goods being imported. Any business venture that involves the importation of goods, the exportation of components to be assembled overseas, or the re-importation of the made-up product should be carefully checked with the New Zealand Customs Department.

Fringe benefit tax

- 6.15 It is a requirement to pay fringe benefit tax (FBT) on the value of fringe benefits provided by employers to their employees. Fringe benefits may include the private use or enjoyment of a motor vehicle (including its availability for use), subsidised or discounted goods and services and low-interest loans made to employees.

Stamp duty

- 6.16 Stamp duty is not payable in New Zealand on transactions. Accordingly, transactions involving transfers of land, leases, share transfers and securities are free from stamp duty.

Capital gains

- 6.17 Some capital gains on certain land transactions may be taxable, for instance, where land has been acquired by persons carrying on the business of dealing in land, for that purpose. Gains on share transactions are also taxable where the person making the gains is deemed to be a share trader or the shares were acquired for the purpose of resale.
- 6.18 Gains made from the sale of a residential property within a certain time of purchase will be taxed. Any capital gains made from the sale of a residential property that was purchased after 1 July 2024 and sold within two years of purchase may be taxed.
- 6.19 Exceptions may apply if the residential property is the seller's main home, if it was transferred as part of a relationship property settlement or if it was inherited from a deceased estate.

Gift duty

- 6.20 No gift duty is payable in New Zealand.

Death duties

- 6.21 No estate or death duties are payable in New Zealand.

7. Financial Systems

Banking and financial services

- 7.1 Most commercial banking services are provided by the major registered trading banks, namely, ANZ Bank New Zealand Limited, ASB Bank Limited, Bank of New Zealand, Kiwibank Limited, The Hongkong and Shanghai Banking Corporation Limited and Westpac Banking Corporation. These banks offer a variety of services. Most financial accommodation is secured by way of security over the company's assets, and often personal guarantees from major shareholders are required.
- 7.2 There are also a wide range of other financial lending or related financial service institutions such as building societies, merchant banks, finance companies, trustee companies and insurance companies. Legislation has been enacted to promote confidence and participation in financial markets by investors and institutions, and to promote a sound and efficient non-bank financial sector. The legislation establishes a registration system for financial service providers. The main aims of the legislation are to:
- identify financial service providers;
 - allow more effective monitoring and evaluation of financial service providers;
 - provide easy access to information about financial service providers;
 - assist in meeting New Zealand's anti-money laundering obligations;
 - ensure that controlling owners, directors and senior managers of financial service providers do not have certain criminal convictions, are not bankrupt and are not the subject of a management ban under companies, securities or consumer legislation;
 - establish a comprehensive industry-based dispute resolution system to improve consumer access to redress in the financial sector.
- 7.3 The major commercial banks also provide other common commercial services, including letters of credit, bills of exchange, commercial bill facilities, term loans and foreign exchange.

Reserve Bank

- 7.4 The Reserve Bank of New Zealand (Reserve Bank) is New Zealand's central bank and operates under the Reserve Bank of New Zealand Act 2021 and other ancillary legislation.
- 7.5 The Reserve Bank has many functions, including:
- (a) formulating and implementing monetary policy through the monetary policy committee;
 - (b) supervising, regulating and monitoring banks and other financial institutions;
 - (c) analysing and publishing information and statistics relating to New Zealand's financial system;
 - (d) monitoring New Zealand's currency;

- (e) co-operating with other stakeholders in the financial sector;
 - (f) reviewing the law, policies and practices relevant to its functions;
 - (g) performing other functions as required by the Minister of Finance and relevant legislation.
- 7.6 The Reserve Bank must carry out its functions in accordance with three main objectives, which can be summarised as:
- maintaining price stability;
 - maintaining and protecting the stability of New Zealand's financial system; and
 - otherwise acting as New Zealand's central bank.

Financial markets

- 7.7 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 (FMA), which operates under the Financial Markets Authority Act 2011. Currently, New Zealand has one licenced stock exchange operated by NZX Limited, which operates the Main Board (NZSX) and the NZX Debt Market (NZDX). The FMA are responsible for regulating financial markets and the conduct of financial market participants.

Financial Markets Conducts Act 2013

- 7.8 The Financial Markets Conduct Act 2013 (FMC Act), administered by the Ministry of Business, Innovation, and Employment (MBIE), and enforced by the FMA, provides a framework for the regulation of New Zealand's financial markets. The FMC Act governs how financial products are established, promoted and sold, with the primary aim of promoting fair, efficient and transparent financial markets. The FMC Act also specifies the ongoing responsibilities of those in the financial industry who offer, promote, deal and trade in financial products, and regulates the provision of some financial services.
- 7.9 The FMC Act includes mandatory disclosure requirements for most issuers who offer financial products. In most circumstances where an offer is made, a product disclosure statement tailored to retail investors must be prepared in accordance with prescribed content requirements and provided to potential investors. Various exceptions may apply, such as where shares are only offered to wholesale investors.
- 7.10 The Financial Markets (Conduct of Institutions) Amendment Act 2022 will amend the FMC Act on 31 March 2025 by, amongst other things:
- (a) introducing a new regime requiring financial institutions such as banks and insurers to obtain and maintain a market services licence with the FMA;
 - (b) mandating the establishment of fair conduct programmes, which promote the fair treatment of consumers; and
 - (c) regulating volume or value target-based sales incentives to prevent conflicts of interest.

Takeovers Act 1993

- 7.11 New Zealand has a takeovers regime governing changes of control in Code companies, which generally include companies listed on a registered stock exchange and companies with more than 50 shareholders.
- 7.12 Under the Takeovers Act 1993 and the Takeovers Code (Code), individuals are restricted from holding or controlling 20% or more of the voting rights in a Code company, unless a prescribed exception applies. Exceptions include "full" or "partial" offers made in compliance with the Code.
- 7.13 The Code requires all shareholders to be treated equally in relation to major share transactions, including as to price. If a shareholder holds or controls more than 50%, it may creep up to 5% per year. Beyond 90%, compulsory acquisition provisions apply. The Code also prohibits defensive tactics. The penalties for breaches of the Code are fines up to NZ\$500,000 for individuals and NZ\$5 million for body corporates, per breach.

Financial Service Providers (Registration and Dispute Resolution) Act 2008

- 7.14 The Act requires all financial service providers to register with the Companies Office on the Financial Service Providers Register. If serving retail clients, the Act also requires financial service providers to join a dispute resolution scheme approved by Consumer Protection (part of MBIE). A financial service provider could be a bank, insurance company, or investment advisor.

Exchange regime

- 7.15 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.
- 7.16 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 UN sanctions, disclosures required under New Zealand's financial transaction 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 discussed in section 5 above); and
 - no approval is required in respect of the repatriation of non-resident capital, including financial gains or capitalised profits.
- 7.17 New Zealand does, however, have foreign investment control under the OI Act and the OI Regulations. These controls have already been discussed in detail in section 3 above.

Personal Property Securities Act 1999

- 7.18 The Personal Property Securities Act 1999 (PPSA) prescribes a system for the recognition and regulation of security interests in personal property. A "security interest" is generally an interest in personal property created or provided for by a transaction that secures payment of money or performance of an obligation. This includes, for example, a retention of title clause in terms of supply, and a lease or bailment of a term of one year or more.
- 7.19 All security interests are ranked in accordance with statutory priority rules. The general principle being that security interests registered on the Personal Property Securities Register (www.ppsr.govt.nz) take priority over unregistered interests. Between registered interests, in general, the security interest registered first in time will have priority. In a situation where a company goes into receivership or liquidation, the company's assets will be distributed in accordance with the priority of the registered interests. There are however, some exceptions to this rule. Where goods are supplied and the security interest is taken solely for securing the obligation to pay all or part of the collateral's purchase price, this is a "Purchase Money Security Interest", which confers a "super priority" over the particular goods.

Anti-Money Laundering and Countering Financing of Terrorism Act 2009

- 7.20 This Act places obligations on "reporting entities" (which includes financial service providers such as banks, insurers, intermediaries, lawyers, accountants, real estate agents and casinos) to detect and deter money laundering and the financing of terrorism. The requirements include undertaking risk assessments and customer due diligence (including customer identification verification). It provides a risk-based approach to dealing with money laundering and terrorism financing, including a supervision, monitoring and enforcement regime. The Act's enforcement regime includes civil and criminal offences.

8. Insurance

- 8.1 New Zealand hosts a blend of local and international insurers, with key contributions from government entities like the Accident Compensation Corporation (ACC) and the Natural Hazards Commission (NHC). The Reserve Bank oversees prudential regulation under the Insurance (Prudential Supervision) Act 2010 (IPSA), and the FMA manages conduct regulation under the Financial Markets Conduct Act 2013. The dual regulatory approach aims to ensure insurers remain financially stable and treat customers fairly, fostering overall trust in New Zealand's insurance industry.

Insurance (Prudential Supervision) Act 2010

- 8.2 Insurance (Prudential Supervision) Act 2010 (**IPSA**) establishes a framework that facilitates the prudential supervision of insurers in New Zealand by, amongst other things:
- (a) requiring all insurers operating in New Zealand to be licensed with the Reserve Bank;
 - (b) providing for significant fines to be imposed on unlicensed insurers;
 - (c) mandating that solvency standards, regularly reviewed by the Reserve Bank, are met and maintained;
 - (d) requiring all insurers to provide the RBNZ with a written “Fit and Proper Policy” that most directors and officers of the insurer must comply with; and
 - (e) requiring licenced insurers to implement and take practicable steps to comply with a risk management programme.
- 8.3 In this context, prudential supervision refers to the protection of policyholders, and the maintenance of public confidence in New Zealand’s financial system. IPSA seeks to enable this by empowering the Reserve Bank to oversee that insurers are operating in a prudent manner, and that the interests of policyholders are protected.

Financial Markets Conduct Act 2013

- 8.4 Most insurers are also required to register with the FMA under the FMC Act by applying for and being issued a market services license in respect of specific services. In most cases, insurers who provide advice on contracts of insurance in the ordinary course of business will need to hold a licence.
- 8.5 As contracts of insurance are generally considered to be a financial product, the FMC Act also establishes a comprehensive regulatory framework that enables the FMA to regulate the conduct of insurers. For example, insurers have a duty to prioritise client interests and must not mislead, deceive, or make unsubstantiated claims about the insurance products or advice they offer. The FMC Act also requires insurers to make disclosures to their clients, with the aim of ensuring clients understand the advice they are given.

Financial Service Providers (Registration and Disputes Resolution) Act 2008

- 8.6 As mentioned at paragraph 7.14, financial service providers, including most insurers and insurance brokers, are additionally required to register on the Financial Service Providers Register. Registration applies an additional layer of regulation and oversight, with insurers being unable to register if one of its directors, controlling owners, or senior managers is disqualified for being bankrupt, convicted of a prescribed offence, or prohibited from being the director of a company. The Act also requires all insurers and insurance brokers who offer services to retail clients to be registered with an approved dispute resolution scheme. Mandatory dispute resolution for small entities and individual customers enhances their ability to seek redress.

The Accident Compensation Act 2001

- 8.7 New Zealand's compensation system for personal injury is unique. The Accident Compensation Act 2001 is a no-fault accident scheme that has been in place in New Zealand since 1974. Compensation for work-related and non-work related injuries is provided by the New Zealand Government through the Accident Compensation Corporation. The effect of this system is that no person has the right to sue for personal injuries suffered in New Zealand, except in very limited cases.

Natural Hazards Insurance Act 2023

- 8.8 The Natural Hazards Commission (NHC), established by the Natural Hazards Insurance Act 2023, offers coverage for damage done by natural hazards to residential land and buildings in New Zealand after 1 July 2024. The NHC is funded through a levy paid by insurers, which is ultimately charged to clients as part of their premium. Generally, claims can be handled directly by an insurer (rather than the NHC itself) because cover is only provided when damage is done to residential buildings that have been insured for fire damage. The Natural Hazards Insurance Act 2023 mandates that insurers must maintain a code of insured persons rights that allows claims to be settled fairly and promptly.
- 8.9 For natural hazard damage done to residential land and buildings prior to 1 July 2024, the Earthquake Commission Act 1993 will apply, and will provide cover in a substantially similar manner.

9. Forestry

- 9.1 New Zealand has approximately 1.8 million hectares of productive plantation forest (according to the Ministry for Primary Industries), the majority of which is radiata pine. New Zealand's forestry industry produces timber and other forest products and carbon benefits.
- 9.2 Typically, investments in New Zealand forests will take one of the following forms;
- (a) buying land to establish a forest or land with existing forest;
 - (b) leasing land to establish a forest or leasing an existing forestry operation; or
 - (c) acquiring a forestry right, which is a right to plant, maintain and harvest trees on somebody else's land, whether to establish a forest or an already established existing forest. The Forestry Rights Registration Act 1983 allows for the creation and registration of forestry rights over land.

Overseas Investment

- 9.3 Foreign investment is controlled in New Zealand by the Overseas Investment Act 2005 (OI Act) and the Overseas Investment Regulations 2005 (OI Regulations). Overseas investments in New Zealand forests may require the consent of the Overseas Investment Office (OIO) under the OI Act. The overseas investment regime is discussed more generally in sections 3 and 4 above.
- 9.4 The acquisition by an overseas investor of freehold or leasehold interests (exceeding 10 years duration) in non-urban land of more than five hectares, which typically applies to forest land, will require the consent of the OIO.
- 9.5 An overseas investor acquiring an interest in an existing forestry operation may be able to obtain consent by the OIO applying the Special Forestry Test, if applicable.

Special Forestry Test

- 9.6 To meet the Special Forestry Test, the land must be existing forest land, the investor must use the land exclusively, or nearly exclusively, for forestry activities, must replant that land after harvesting and must not live on the land. The investor must also put in place certain arrangements around public access to the land, protection of habitat for indigenous plants and animals, protection of historic places and log supply arrangements.
- 9.7 If an investment does not meet the requirements of this test, such as where the investor is acquiring farm-land to convert to forest, the investor will be required to meet the benefit to New Zealand test or the farmland benefit test, discussed in section 3 above.

Emissions Trading Scheme

- 9.8 A key policy tool in New Zealand's response to climate change is the New Zealand Emissions Trading Scheme (ETS), established under the Climate Change Response Act 2002 to help New Zealand meet its net-zero emissions targets. Emitters who fall within the scheme are required to surrender one greenhouse gas emission unit, called a New Zealand Unit (NZU), for every tonne of emissions they produce. Plantation forestry is included in the scheme by offering carbon sequestration. Investors who own or have rights in eligible forests may be able to participate in the scheme and earn NZUs, which can be sold on a trading market.
- 9.9 The two types of forest land under the Climate Change Response Act 2002 are Pre-1990 Forest Land and Post-1989 Forest Land.

Pre-1990 Forest Land

- 9.10 Owners of land that was forest land (as defined in the Climate Change Response Act 2002) prior to 1 January 1990 and was still forest land on 31 December 2007 (Pre-1990 Forest Land) are automatically participants in the ETS and have obligations not to deforest their land. Owners of this land may have received a one-off allocation of NZUs when the land was brought into the ETS but will not receive an ongoing allocation of NZUs.
- 9.11 If Pre-1990 Forest Land is harvested it must be replanted in forest within the timeframes and criteria set out in the Climate Change Response Act 2002. If the owner of Pre-1990 Forest Land "deforests" that land by converting it from forestry to some other land use they may incur obligations to repay NZUs. Owners of Pre-1990 Forest Land who have not received any NZUs would, in this circumstance, need to acquire those NZUs from somewhere else such as the trading market or Government auction.

- 9.12 Liability to surrender NZUs generally belongs to the owner of land. When acquiring land with existing forest a thorough examination should be undertaken to determine whether the land includes Pre-1990 Forest Land and whether any action has been taken, such as recent harvesting, that might result in a liability accruing under the ETS.

Post-1989 Forest Land

- 9.13 Owners, lessors or forestry right holders in respect of forest land that was not established forest land on 31 December 1989 (Post-1989 Forest Land) and meets certain requirements under the Climate Change Response Act 2002, may register as participants in the ETS voluntarily and earn NZUs either as:

- (a) Standard forestry, which generally applies to commercial forests subject to regular harvesting and replanting; or
- (b) Permanent forestry, which is forest that will remain in permanent forestry for at least 50 years and will not be clear-felled.

- 9.14 Owners of Post-1989 Forest Land have various obligations including:

- (a) completing and filing emissions returns, which are a report about the changes in carbon in the participating forest, and an assessment of how many NZUs will be earned or must be surrendered;
- (b) collecting and keeping records about any calculations of carbon changes in the forest and any harvesting and replanting undertaken;
- (c) notifying Te Uru Rākau – New Zealand Forestry Service of changes in ownership of forest and harvesting (where applicable); and
- (d) completing measurements at specific locations where Post-1989 Forest Land exceeds 100 hectares in size.

- 9.15 Only one participant may be registered in the ETS in respect of the same forest land. The owner of forest land cannot register in the ETS at the same time as the lessee or forestry right holder in respect of that same forest land. Any lease or forestry right in respect of forest land should set out which party has the right to register as a participant in the ETS in respect of the forest land.

Planning rules

- 9.16 The Resource Management Act 1991 regulates management of natural and physical resources in New Zealand. The effects of activities are managed through a hierarchy of planning documents, which are generally administered at a local level by district and regional councils. The National Environmental Standard for Commercial Forestry (NES-CF), is a national level planning document aimed at managing the environmental effects of plantation forestry. The latest version was introduced in 2023, in response to public concerns about the conversion of farmland into forestry and the associated effects on the environment. The NES-CF introduces national standards in relation to eight core commercial forestry activities, which are:

- (a) afforestation (planting new forest);
- (b) pruning and thinning to waste (selective felling of trees where the felled trees remain on site);
- (c) earthworks;
- (d) river crossings;
- (e) forestry quarrying (extraction of rock, sand, or gravel within a plantation forest or for operation of a forest on adjacent land);
- (f) harvesting;
- (g) mechanical land preparation; and
- (h) replanting.

- 9.17 The NES-CF gives local authorities powers in relation to where forests are located and granting afforestation consents, including the ability to consider erosion risk, slash risk, the effect on ecosystems and freshwater and other social and economic effects before granting consent.

- 9.18 For more detailed discussion of the Resource Management Act 1991, see paragraph 4.13.

10. Intellectual Property

10.1 Intellectual Property in New Zealand is protected through a combination of statutory rights and rights at common law and in equity. New Zealand's intellectual property legislation is largely derived from English legislation and common law. However, other jurisdictions such as Australia and Canada have also influenced New Zealand case law.

10.2 New Zealand is also party to various international agreements that influence intellectual property laws in New Zealand. Examples include the World Trade Organisation's Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, and General Agreement on Trade and Tariffs (GATT).

Copyright

10.3 The Copyright Act 1994 (Copyright Act) gives copyright protection to the creators of original works of literary, dramatic, musical or artistic works, sound recordings, films, communication works and typographical arrangements of published editions. Copyright subsists in any work to which labour, skill or independent judgement has been expended and does not require that the expression of an idea should be in an original or novel form.

10.4 Copyright attaches to the work itself and vests in the author or creator, unless the author has been commissioned to create the work or creates the work in employment. In accordance with the Berne Convention, to which New Zealand is a signatory, copyright automatically vests in the author or creator once the work is created and there is no need to register copyright in New Zealand.

10.5 The owner of the copyright in a work has the exclusive right to do the following acts in New Zealand in relation to the work:

- copy the work;
- issue copies of the work to the public;
- perform, play or show the work in public;
- communicate the work to the public;
- make an adaptation of the work; or
- authorise another person to do any of these acts.

10.6 An infringement of copyright is actionable by the copyright holder. Copyright owners may obtain an injunction to prevent copyright infringement. Additionally, if copyright infringement has occurred, the owner of the copyright can bring proceedings against the infringer and seek damages.

10.7 There are exemptions from the exclusive rights of copyright holders that act as defences to actions of copyright infringement. Examples include copying or using the original work for the purpose of criticism, review or news reporting or copying or using the original work for educational purposes or for the purpose of research or private study.

10.8 The copyright in literary, dramatic, musical and artistic works generally lasts for the life of the author plus 50 years. Other copyright works such as industrially applied works have much shorter terms of protection. Although a copyright notice © is not required in New Zealand, it is desirable to display the notice for better international protection under international conventions.

10.9 Copyright is considered personal property and may be assigned or licenced by the owner. Moral rights (e.g., right of attribution, right of integrity and right against false attribution) exist and cannot be assigned, although they may be waived.

Trade marks

10.10 In New Zealand, the Trade Marks Act 2002 (Trade Marks Act) provides a system of trade mark protection to registered trade marks. The Trade Marks Act gives the owner of a registered trade mark the exclusive right, subject to certain exemptions, to use that trade mark in relation to the goods and services that it is registered for.

10.11 The registration of a trade mark under the Trade Marks Act is effective for a period of ten years commencing at the date of registration. Trade marks may be renewed for further periods of ten years with the onus being on the applicant or owner of the trade mark to renew the trade mark before the expiry date.

- 10.12 The owner of a registered trade can bring a civil action in the High Court for trade mark infringement. If an application is made to the court for relief, the court may grant an injunction or damages or an account of profits.
- 10.13 New Zealand is a party to the Madrid Protocol, a treaty administered by the World Intellectual Property Office. As a result, New Zealand businesses can secure protection over their trade marks in more than 100 participating countries by filing an application through the Intellectual Property Office of New Zealand.

Designs

- 10.14 Registered design protection under the Designs Act 1953 (Designs Act) provides an exclusive right in the visual design of products. A registered design prevents others from using the design without consent. Registering a design gives businesses a marketing advantage in the visual design of its products.
- 10.15 A registered design must be novel and have some visual appeal rather than be entirely related to the use or function of the product. Shapes, configurations, patterns or ornaments applied to an article by an industrial process and having visual appeal are permitted designs that may qualify for registration.
- 10.16 Under the Designs Act, the period of protection is for an initial five years, with rights of renewal for two further five year periods. International protection requires registration of the design in each country of use.

Patents

- 10.17 Patents protect new inventions. An invention must be original, useful and something that is not obvious to anyone trying to achieve the same purpose and who has knowledge in the subject area.
- 10.18 New products, manufacturing processes, chemical compounds and biotechnology can all be patented. Medicines and machines are other inventions that can be patented. Inventions that are contrary to public order or morality are not patentable e.g., inventions that are processes for cloning human beings or modifying the germ line genetic identity of human beings.
- 10.19 Applying for a new patent registration is an effective strategy where an invention is significant and may result in long-term commercial gains. The patent gives an exclusive right to manufacture, sell, import and use the patented invention for a twenty year period. After that time, anyone is free to use the invention.
- 10.20 International protection requires registration of the invention in each country of use.

Business and company names - passing-off

- 10.21 Although a company name can be registered under the Companies Act 1993, this gives no right to the exclusive use of the name as a trade mark. There may, however, be passing-off issues to consider if a company trades under a brand name or trade mark that is also a registered company name.
- 10.22 Passing-off is generally concerned with protecting business goodwill. The purpose of a passing-off action is to prevent unfair competition between businesses that can result when one business seeks to benefit by usurping another's reputation or goodwill. While the Fair Trading Act 1986 similarly prohibits misleading and deceptive conduct in trade, it focuses largely on consumer protection. Passing-off on the other hand is concerned more with unfair business competition and focuses on business or trade protection. The two actions are often invoked together.

Web or domain names

- 10.23 The country code top-level domain (ccTLD) designated for New Zealand is .nz. The Domain Name Commission (**DNC**) oversees the .nz domain name space and enforces the .nz rules that govern its use. Registration of .nz domain names are generally on a "first come, first served" basis. DNC also administers the New Zealand Dispute Resolution Service, which provides a mechanism for parties to resolve disputes arising in relation to a domain name in the .nz domain name space.
- 10.24 It is no longer unusual for domain names to be the subject of applications for registration as a trade mark. When accepting a domain name for trade mark registration, the focus is on any identifier that is the distinctive portion of the mark, as opposed to the standard address code matter, for example, www., .com and in New Zealand, .co.nz.

- 10.25 The Courts in New Zealand have considered domain name issues, in particular, protecting businesses against cybersquatting.

Parallel importation

- 10.26 The Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998 has relaxed the parallel importing laws in New Zealand and amended the definition of an “*infringing*” copy under the Copyright Act 1994.
- 10.27 Articles that are not infringing copies when and where they are manufactured will not be infringing copies in New Zealand when they are imported. However, non-genuine or pirated goods are still prohibited from being imported and the penalties have been increased under the amended legislation. Parallel imported goods are sometimes confused with pirated and counterfeit goods. Parallel imported goods are legitimately manufactured goods that are sourced from an authorised or licensed overseas supplier rather than the owner of the intellectual property right in the importing country. Pirate or counterfeit goods, on the other hand, are infringing manufactured goods that are produced without the authorisation of the owner of the intellectual property right.

11. Consumer Protection

Fair Trading Act 1986

- 11.1 The Fair Trading Act 1986 (**FTA**) is the main consumer protection legislation in New Zealand. The purpose of the FTA is to contribute to a trading environment in which the interests of consumers are protected, businesses compete effectively, and consumers and businesses participate confidently. The FTA applies to anyone in trade.
- 11.2 Key features of the FTA include:
- (a) a general prohibition of persons in trade engaging in misleading or deceptive conduct;
 - (b) a prohibition of persons in trade engaging in conduct that is unconscionable;
 - (c) a prohibition of persons in trade against making false representations and unsubstantiated claims and carrying out certain unfair practices such as bait advertising, harassment and coercion;
 - (d) consumer rights in relation to laybys, telemarketing, door to door sales, warranties and auctions;
 - (e) enabling courts to make a declaration that a term in a standard form consumer contract is considered “unfair” and stop the term being relied on; and
 - (f) enabling the making of regulations prescribing consumer information standards, product safety standards and service safety standards in respect of goods or services. Examples of consumer information standards include care labelling, clothing and footwear country of origin labelling, food country of origin labelling, fibre content labelling, water efficiency labelling and used motor vehicles.
- 11.3 The Commerce Commission is the regulatory body responsible for enforcing the FTA. Consumers can make a complaint to the Commerce Commission, which will take action depending on the circumstances of the case. The Commerce Commission can take a range of actions including issuing compliance advice letters, warning letters or applying to the court for an injunction to stop a person from breaching the FTA.
- 11.4 The Commerce Commission may also enforce the provisions of the FTA by way of criminal or civil proceedings. This can result in penalties and orders to the infringing individual or business. Examples include:
- (a) fines of up to NZ\$200,00 (in the case of an individual) and NZ\$600,000 (in the case of a company);
 - (b) orders for payment of any commercial gain resulting from the breach.
 - (c) orders to disclose information;
 - (d) orders to publish corrective statements; and
 - (e) orders declaring all (or part) of a contract is void.

Consumer Guarantees Act 1993

- 11.5 The Consumer Guarantees Act 1993 (CGA) creates statutory guarantees to protect consumers when purchasing goods and services. The CGA applies to the supply of goods or services by persons in trade to a consumer. The CGA is not restricted to the supplier of goods and services, but also targets other parties in the supply chain, including manufacturers and distributors.
- 11.6 A *consumer* is a person who acquires goods or services of a kind ordinarily bought for their personal, domestic or household use, but not for resale, use in production or, in the case of goods, repair to goods or fixtures on land.
- 11.7 The CGA serves two primary purposes: (1) it establishes statutory guarantees in relation to the quality, fitness for purpose and price of goods and services (among other guarantees) and (2), gives consumers remedies such as repair, replacement and refunds when suppliers or manufacturers fail to comply with the guarantees.
- 11.8 In addition to remedies of repair, replacements and refunds, a consumer may seek damages for reasonably foreseeable losses resulting from the failure of goods or services to meet a statutory guarantee.
- 11.9 There are only limited circumstances where the CGA can be contracted out of. Attempts to contract out of the CGA as between a person in trade and a consumer are prohibited and may lead to substantial fines. Contracting out is prohibited in business to business transactions if certain conditions are met.

Privacy Act 2020

- 11.10 The Privacy Act 2020 (**Privacy Act**) protects the privacy of individuals in relation to the collection, storage, use, access, correction and disclosure of personal information about them. Personal information is any information about an identifiable individual.
- 11.11 The Privacy Act applies to individuals and public and private sector agencies in New Zealand when collecting or holding personal information. The Privacy Act also applies where overseas agencies collect or hold personal information whilst carrying on business in New Zealand. In business, the application of the Privacy Act arises in areas such as sales and marketing, credit control and employment.
- 11.12 The Privacy Act establishes 13 Information Privacy Principles (IPP) to assist with the protection of personal information. The IPPs are:
 - (a) **Purpose for collection:** Personal information can only be collected for lawful purposes connected with a function or activity of an organisation and collection is necessary for that purpose;
 - (b) **Source of personal information:** Personal information must be collected directly from the individual concerned;
 - (c) **Collection:** When collecting personal information, organisations must take reasonable steps to inform the individual concerned about the purpose, who will receive it, whether it is mandatory and the consequences of not providing the personal information;
 - (d) **Manner of collection:** Organisations may only collect information in a lawful, fair and reasonable manner;
 - (e) **Storage and security:** Organisations must have proper safeguards in place to protect personal information from loss, unauthorised access, use, modification or disclosure, and other misuse;
 - (f) **Access:** Individuals are entitled to know if an organisation is holding any personal information about them and to access that information;
 - (g) **Correction:** Individuals can request that personal information held by an organisation is corrected;
 - (h) **Accuracy:** Agencies must take steps to ensure that personal information is accurate, up to date, complete, relevant and not misleading before disclosing the information;
 - (i) **Retention:** Organisations must not keep personal information for longer than is required for the purposes for which the information may be lawfully used;

- (j) **Limits on use:** Organisations can only use personal information for the purposes it was collected;
 - (k) **Limits on disclosure:** Agencies must not disclose personal information unless it is in line with the purpose for which the information was originally collected;
 - (l) **Disclosure outside of New Zealand:** Agencies can disclose personal information to overseas organisations if the organisation is subject to the Privacy Act or comparable privacy laws to the Privacy Act, or the organisation is satisfied that the personal information will be adequately protected; and
 - (m) **Unique identifiers:** Agencies may only assign identifiers when necessary for their function.
- 11.13 Additionally, the Privacy Act gives the Privacy Commissioner the power to issue Codes of Practice in relation to the IPPs. At the time of publication there are six codes of practice: the Civil Defence National Emergencies (Information Sharing) Code 2020, Credit Reporting Privacy Code 2020, Health Information Privacy Code 2020, Justice Sector Unique Identifier Code 2020, Superannuation Schemes Unique Identifier Code 2020 and the Telecommunications Information Privacy Code 2020. A Biometrics Privacy Code is also currently being developed.
- 11.14 Organisations that are collecting or holding personal information are required to have a designated privacy officer who understands their organisation's obligations under the Privacy Act.
- 11.15 The Privacy Act requires organisations to notify any privacy breaches, which have or are likely to cause an individual serious harm, to the Privacy Commissioner and any affected persons as soon as practicable after becoming aware of the breach. The failure to notify the Privacy Commissioner of a breach is an offence under the Privacy Act and the organisation may be liable for a fine up to \$10,000.
- 11.16 IPPs themselves are not enforceable in court. If someone believes a breach of an IPP has occurred, they can lay a complaint with the Privacy Commissioner. The complainant does not have to be an individual affected by the breach. The Privacy Commissioner has the discretion to investigate the complaint. If the Privacy Commissioner cannot arrange a settlement, they can refer the matter to the Human Rights Review Tribunal, which has the authority to award damages or issue corrective orders.

Other Regulations

- 11.17 Many other laws and regulations assist with the protection of consumers in the New Zealand market including the Contract and Commercial Law Act 2017, Credit Contracts and Consumer Finance Act 2003, Commerce Act 1986 and the Gambling Act 2003.

12. Employment

Minimum Code

- 12.1 New Zealand legislation provides a number of minimum statutory entitlements for employees:
- The Employment Relations Act 2000 (ER Act) provides a good faith framework for employment relationships, provides for collective bargaining, sets minimum requirements for employment agreements and provides remedies for unjustified dismissal and unjustified actions during employment;
 - The Holidays Act 2003 provides employees with minimum holiday and leave entitlements including sick leave, bereavement leave, family violence leave, annual holidays of four weeks per annum and public holidays;
 - The Parental Leave and Employment Protection Act 1987 provides for up to 52 weeks of parental leave. This period includes paid leave of 26 weeks. The period of paid parental leave is funded by the New Zealand Government. In most situations the employer must keep the employee's position open, and a temporary replacement may be obtained;
 - The Human Rights Act 1993 prohibits discrimination on a wide range of grounds, including sex, race and disability. There is no retirement age in New Zealand. The Human Rights Act 1993 prohibits sexual and racial harassment;
 - The Minimum Wage Act 1983 establishes minimum wages for employees;

- The Equal Pay Act 1972 prohibits unequal payment for work of substantially the same type for men and women;
- The Wages Protection Act 1983 sets out how wages must be paid and sets out the limited circumstances in which deductions can be made from an employee's wages;
- The Privacy Act 2020 governs how personal information is collected, stored, accessed, used and disclosed; and
- The Health and Safety at Work Act 2015 sets requirements to keep the workplace safe.

Employment Relations Act 2000

- 12.2 The ER Act is a key piece of legislation in employment law in New Zealand. It recognises unions and focuses on the employment relationship rather than on the employment agreement. The ER Act includes a key principle that parties to employment relationships must deal with each other in good faith. This applies in all dealings between an employer, an employee and a union.
- 12.3 Although there are certain minimum statutory conditions, the majority of terms and conditions of employment can continue to be negotiated directly between an employer and an employee (an individual employment agreement) or an employer and a registered union on behalf of a group of employees (a collective agreement).
- 12.4 The ER Act promotes collective bargaining between unions and employers and requires bargaining in good faith. A collective agreement is a contract between an employer and a union. An individual that is a member of a union may negotiate additional individual terms provided that they are not inconsistent with the collective agreement.
- 12.5 The ER Act requires written employment agreements. Employers are required to keep a signed (or intended) copy of the employment agreement or the current terms and conditions of employment that make up the employee's individual terms and conditions of employment. There are minimum requirements as to what the parties must include in an employment agreement.

Types of Employees

- 12.6 The majority of employees will be on a permanent employment agreement where the employee's employment continues for an indefinite duration, until terminated in accordance with the employment agreement and employment legislation.
- 12.7 Fixed term employment agreements are permitted, but are regulated. At the time of entering into the agreement, an employer must have genuine reasons based on reasonable grounds for bringing the agreement to an end at the close of a specified date or period, on the occurrence of a specified event or at the conclusion of a specified project. The reasons and ways in which employment will end must be recorded in the employment agreement. There can also be casual, as and when required, employment agreements. These are akin to a series of short, fixed term agreements, and must comply with the requirements for fixed term employment.

Trial Periods

- 12.8 Trial periods are permitted, but are strictly regulated. A trial period is for a specified period not exceeding 90 days, and must be recorded in the employment agreement, and signed by the employee before the employee commences work. If an employer dismisses an employee during a trial period, the employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.

Problem Resolution

- 12.9 Under the ER Act an employment relationship problem includes a personal grievance, a dispute, and any other problem relating to or arising out of an employment relationship. There can also be other claims raised, such as breach of contract or breach of good faith.
- 12.10 The ER Act supports and promotes successful employment relationships, and the parties to an employment relationship are usually required to attempt to resolve employment relationship problems through a government-funded mediation process before proceeding to the Employment Relations Authority (which investigates and makes determinations on employment relationship problems). There is a right of appeal to the Employment Court.

Health and Safety

- 12.11 The primary purpose of the Health and Safety at Work Act 2015 (Health and Safety Act) is to encourage participants in business to take responsibility for the management of health and safety at work. The primary duty falls on a person/entity conducting a business or undertaking (PCBU) to ensure, so far as reasonably practicable, the health and safety of its workers and/or the safety of any other person who may be put at risk by the work. A PCBU includes:
- (a) a company;
 - (b) partnership;
 - (c) other entity; or
 - (d) an individual,
- regardless of whether the PCBU acts for profit or not.
- 12.12 The Health and Safety Act requires that "Officers" of a company (including directors, partners or those who occupy a position that allows them to exercise significant influence over the management of the PCBU) exercise due diligence to ensure that the PCBU complies with its duties under the Health and Safety at Work Act.
- 12.13 The duties imposed on a PCBU include providing and maintaining a safe work environment without risks to health and safety, safe systems of work, safe use of substances, and the provision of training, instruction and supervision that is necessary to protect all persons from risks to their health and safety arising from their work. PCBUs must also consult, cooperate and coordinate with other PCBUs that have a duty in respect of the same work or workplace. PCBUs have a general obligation to engage with workers on health and safety matters, and allow opportunities for workers to participate in improving work health and safety.
- 12.14 A breach of the Health and Safety Act may result in significant penalties, including fines, reparations and imprisonment. These penalties can be awarded against the PCBU and/or its Officers, depending on what duty has been breached.

Redundancy

- 12.15 Genuine redundancy is a legitimate cause for termination of employment in New Zealand. Redundancy can occur where an employee's position is superfluous to the needs of the business. There must be genuine business reasons for the redundancy that can be justified in accordance with the ER Act. The employer must not make an employee redundant for other reasons such as poor performance, incompatibility or misconduct.
- 12.16 The employer is required to consult with any potentially affected employees before any decision is made. Notice of termination must be given. There is no statutory entitlement to redundancy compensation. However, if the relevant employment agreement states that the employee is entitled to redundancy compensation then this must be paid (unless there is a technical redundancy provision in the employment agreement that applies).
- 12.17 A redundancy may also arise in a restructuring situation. The ER Act defines restructuring and includes selling or transferring an employer's business (or part of it) to another person.
- 12.18 In a restructuring situation, employment ends with the current employer due to redundancy and the potential new employer has the option of whether to offer the employees employment or not (except for certain classes of employees who are protected under the ER Act as set out below). A redundancy situation will not occur if only the shares of a company (as opposed to the assets) are being purchased, as the employees continue to be employed by the same company.
- 12.19 The ER Act specifically deals with the transfer of employees. Affected employees are divided into two categories under the ER Act:
- employees who provide certain services, in specified sectors, facilities or places of work, commonly referred to as vulnerable employees (and who are generally those employed in the cleaning services, food catering services or services in the security sector); and
 - other employees.
- 12.20 Vulnerable employees have a right to transfer to a new employer on the same terms and conditions of employment. For employees that are not vulnerable employees, the employer must negotiate with

the potential new employer about the prospect of employing its employees. An employee protection provision is required in every employment agreement and relates to negotiations and processes to be followed between the employer and the potential new employer about the affected employees.

KiwiSaver

- 12.21 KiwiSaver is a Government initiative involving employers, scheme providers and several Government agencies. This is governed by the KiwiSaver Act 2006. This voluntary long term savings initiative is designed to help New Zealanders increase their financial independence and save for their retirement.
- 12.22 KiwiSaver members build up their savings account through regular contributions of their gross salary or wage. KiwiSaver members making contributions to their account are also entitled to a compulsory employer contribution equal to 3% of the employee's gross salary or wage.

Contractors

- 12.23 Contractors have a different legal status to employees. The statutory test for defining whether a person is an employee involves an examination not just of the agreement, but of the real nature of the relationship. Therefore, regardless of what the written agreement says, if the relationship is actually one of employment, the employer will be liable for all employee entitlements and for any actions that may have otherwise been permissible under a contractor / principal relationship as opposed to an employee / employer relationship.

13. Immigration

- 13.1 The migration of people into New Zealand is controlled by the New Zealand Government through Immigration New Zealand. The applicable regulations are subject to relatively frequent change.
- 13.2 Under New Zealand law, only licenced immigration advisors and lawyers can provide New Zealand immigration advice.

Entry requirements

- 13.3 As a general rule, foreign visitors to New Zealand (except Australians) must arrange a current visa before they enter New Zealand. Nationals of certain countries may visit for up to three months without a visa if they hold a valid NZ Electronic Travel Authority, which must be obtained before arriving in New Zealand.
- 13.4 The types of visas that are likely to apply to migrants are:
 - resident visa – for those wishing to reside in New Zealand permanently;
 - entrepreneur work visa – for those wishing to own and operate their own business in New Zealand (up to three years).
 - active investor plus visa – for those who will invest NZ\$15 Million or the weighted equivalent in acceptable investment in New Zealand.
 - work visa – for those wishing to work in New Zealand on a temporary basis (up to three years with further extensions possible);
 - visitor visa – for the purposes of a temporary visit only and not work (up to nine months with a possible further extension of three months); or
 - student visa – for temporary study (available for the duration of any study course that is longer than three months).

New Zealand residence

- 13.5 The policy objectives for New Zealand's immigration system are set by the New Zealand Government. Objectives influencing New Zealand's immigration policies and settings include using immigration for economic growth, managing border security and meeting international relationships and humanitarian objectives.
- 13.6 Resident permits and visas are required for potential migrants who wish to settle permanently in New Zealand. Pathways to New Zealand residence include the following:
 - Skilled Migrant;
 - Family;

- Investor; and
- Entrepreneur.

14. Contracting

- 14.1 Contract law in New Zealand broadly follows common law principles. Commercial parties are generally able to contract freely, subject to some court and legislative interventions. The main legislation relating to commercial contracting is the Contract and Commercial Law Act 2017 (**CCLA**). If a party to a contract is a consumer, then that contract will also be subject to consumer protection legislation, discussed in section 11 of this guide.

Contract and Commercial Law Act 2017 (CCLA)

- 14.2 Introduced in 2017, the CCLA consolidates several commercial statutes and among other things provides that:
- (a) contracting parties may confer contractual benefits on third parties, enforceable by the specified third party, if certain requirements set down in the CCLA are met;
 - (b) implied terms for certain contracts, such as commercial contracts for the sale of goods, which have several implied conditions and warranties such as that the seller has the right to sell the goods, the buyer will have quiet possession of the goods, the goods are free from charges and encumbrances, goods are of merchantable quality and goods are reasonably fit for purpose made known;
 - (c) a code for whether “mistake” in a contract qualifies for relief and sets out the type of relief the Courts may provide;
 - (d) illegal contracts have no effect, and the Courts may grant relief to a party to such a contract;
 - (e) a contractual party may cancel a contract and/or seek to recover damages if:
 - (i) the other party repudiates or breaches that contract or induced them to enter that contract by misrepresentation; and
 - (ii) certain statutory criteria are met.
 - (f) equal treatment to documents signed using electronic means and meeting certain requirements to paper documents, enabling the use of electronic technology in transactions. Certain legal documents must still be signed by wet ink to be valid.

Fair Trading Act 1986

- 14.3 The Fair Trading Act 1986 (**FTA**) applies to any legal person who is “in trade” and relates to all aspects of the promotion and sale of goods and services (see also paragraph 11.1). The protections in the FTA are generally directed at consumers. However, the FTA now includes an unfair contract terms regime that also applies to standard form “small trade contracts”.
- 14.4 Small trade contracts are standard form contracts between parties who are both in trade, but form part of a trading relationship of less than \$250,000 in any 12-month period. Examples of terms that could be considered unfair include those that exclude the ability of one party to take legal action against another party. The unfair contract terms regime empowers the Commerce Commission as regulator to seek a ruling that a term in a standard form take-it-or-leave-it contract is unfair. Once a term has been declared unfair, a business is prohibited from using it.
- 14.5 The FTA, as it applies to consumers is discussed further in section 11 of this guide.

15. Dispute Resolution

New Zealand’s Legal System

- 15.1 A sound and predictable legal system is an essential requirement for any significant investment in a foreign country. New Zealand’s laws have largely derived from the United Kingdom. Similarly to the United Kingdom, New Zealand has a common law jurisdiction with its civil laws comprising of judge-made laws and statutes enacted by New Zealand’s one-chamber Parliament.
- 15.2 More recently, New Zealand has drawn upon other countries, particularly Commonwealth countries such as Australia and Canada, to formulate its statutes. For instance, New Zealand’s Companies Act

1993 and Personal Property Securities Act 1999 have a distinct North American flavour, and the Fair Trading Act 1986 and Commerce Act 1986 closely follow Australia's Competition and Consumer Act 2010.

- 15.3 At the heart of New Zealand's business laws is a sound contract law structure that closely mirrors the systems of other well-developed nations. In essence, commercial promises will be enforced or the failure to perform them will be compensated. A range of widely accepted defences exist but, in general, it can be said that these follow commercial common sense.

New Zealand Judicial System

- 15.4 New Zealand's courts are well-run and, compared to the courts of many other nations, are efficient and effective. There are no known cases of corruption by judges of any court. Judges are appointed by the Attorney-General, rather than by election. They are generally drawn from a respected group of highly experienced lawyers who have expressed their interest in judicial appointment.
- 15.5 New Zealand has four main tiers of court: the District Court (for disputes up to NZ\$350,000), the High Court (for commercial disputes of any value), and the appellate courts, the Court of Appeal and the Supreme Court. Typically, cases are disposed of by the court of first instance within 12 – 18 months. Although, this is dependent on the complexity of the dispute, volumes of evidence and time required to hear the dispute. Clear-cut cases can be handled much more quickly as all courts have summary judgment and strike-out jurisdictions.
- 15.6 There are separate specialist courts and tribunals in a number of areas. Notably, minor disputes can be referred to the Disputes Tribunal; employment matters are dealt with in the Employment Court; planning and environmental matters are dealt with in the Environment Court; disputes concerning the traditional rights of New Zealand's indigenous people, Māori, in relation to land (or concerning other traditional Māori rights) are handled at first instance by the Waitangi Tribunal. Certain; and construction disputes are heard by the Weathertight Homes Tribunal.

Arbitration

- 15.7 New Zealand is a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) and has arbitration legislation (e.g., Arbitration Act 1996) that enforces international arbitration awards and creates consistency between international and domestic arbitration. The Courts generally proceed on an assumption of reduced judicial intervention in arbitration. New Zealand has a considerable pool of international and domestic arbitrators who can give sound, high quality decisions.
- 15.8 Overall, it can be said that a new entrant to the New Zealand business environment is unlikely to be met with any surprises about basic contract laws, contract enforceability or Court procedure.

16. Important Note

- 16.1 This paper provides a general overview of the legal aspects of doing business in New Zealand as at 16 December 2024. While Hesketh Henry has made every effort to ensure that the contents of this document are accurate in all material respects, this commentary is not comprehensive and should not be relied upon without obtaining further professional advice specific to your situation. Hesketh Henry would be delighted to assist you. Please visit our website at www.heskethhenry.co.nz.