DENTONS

Doing Business in New Zealand

Legal guidelines and information

Grow | Protect | Operate | Finance

December 2023

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About New Zealand

Key points about New Zealand

Geography

New Zealand is a small country, made up of two main islands, with a total land area of 268,021 square kilometres. It is similar in size to Japan or Britain and has a population of 5.2 million.[1] The official languages are English, Māori and New Zealand sign language. Wellington is the capital city, while Auckland is the most populous.

Vital statistics

Population
5.2 million

Area
268,021km²

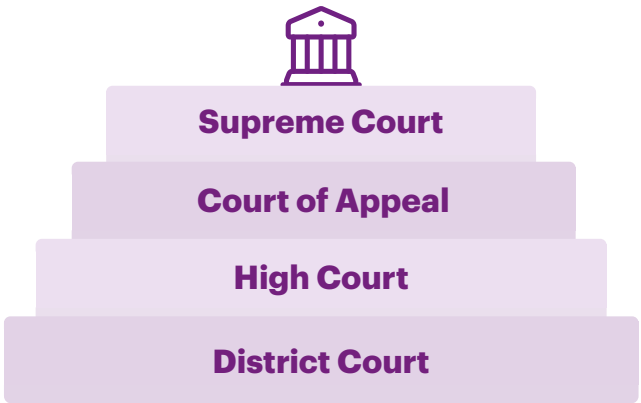
GDP
NZD$395 bn
As at June 2023

Political and legal system

New Zealand has a common law system inherited from England. The system is similar to that found in many British Commonwealth countries and comprises of statute law made by Parliament, supplemented by a collection of common law or case law made by the courts.

The New Zealand Court system has four tiers; District Court; High Court; Court of Appeal and Supreme Court. In additional to the Courts, New Zealand has a large number of specialist tribunals and bodies.

Court System



Economy

Due to its geographic location and the size of its population, New Zealand is a trade dependent economy, is reliant on Foreign Direct Investment and is a big proponent of a free and open market. Around 60% of its economic activity is made up from international trade.[2]

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

The major industries are agriculture (pastoral farming), horticulture and tourism. On a global scale New Zealand is the 12th largest agriculture exporter by value, the 2nd largest dairy exporter by value, the biggest sheep meat exporter and second biggest wool exporter. Other major industries include forestry, natural resources and fishing.[2]

[1] https://www.stats.govt.nz/indicators/population-of-nz/

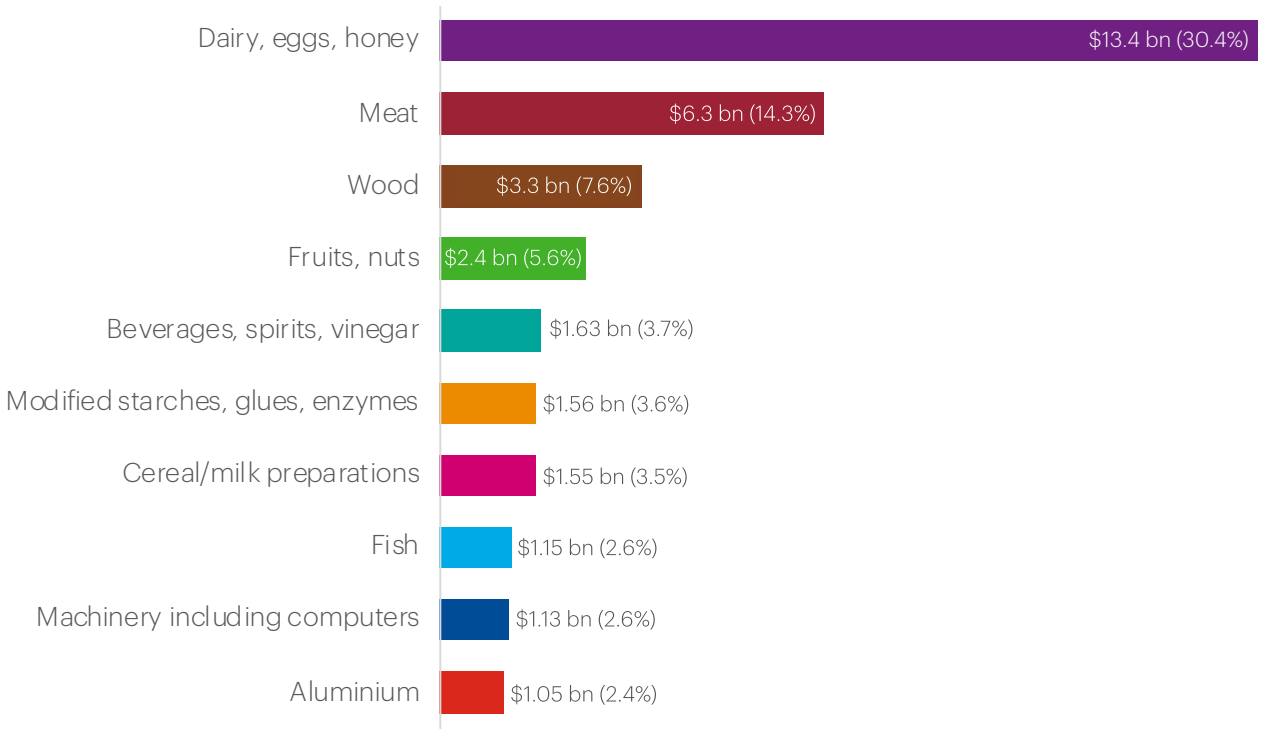
[2] https://www.mfat.govt.nz/en/trade/nz-trade-policy/

Free trade agreements

New Zealand economy depends on trade and is a strong advocate for free trade and the regional and international institutions that support it. New Zealand is party to a large number of free trade agreements, including with Australia, China, the EU, the UK, Hong Kong, Chinese Taipei, South Korea, ASEAN, Singapore, Thailand, Malaysia, Brunei and Chile. We are also signatories to the Comprehensive and Progressive TransPacific Partnership (CPTPP) and to the Regional Comprehensive Economic Partnership (RCEP).

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

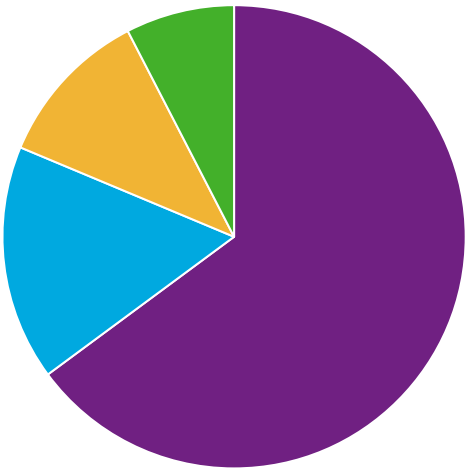
New Zealand's Top 10 Exports in 2022[3]



** Figures above are in USD*

[3] http://www.worldstopexports.com/new-zealands-top-10-exports/

New Zealand Sectors by GDP (2020)[4]



- Services
- Government, education and health
- Manufacturing
- Primary (agriculture, mining, fishing, forestry)

1st
out of 141 countries for Macroeconomic Stability[5]

$11.6bn
of live New Zealand investment opportunities[6]

1st
in the world for corruption transparency[7]

450+
companies supported in a successful capital raise[8]

[4] http://sectorsdashboard.mbie.govt.nz/

[5] World economic forum, global competitiveness report 2019

[6] Annual report, New Zealand Trade and Enterprise, 2022

[7] Corruptions perceptions index, transparency international, 2021

[8] Annual reports 2017 - 2022 New Zealand Trade and Enterprise

Banking and finance in New Zealand

Banking and finance in New Zealand

3 partners

8 professionals

The team are alive to the market and aware of business and regulatory developments and how they impact their clients. They are an expert, experienced and thoughtful team.

— Banking & Finance,
Chambers and Partners Asia Pacific, 2023

Specialists in:

- Acquisition Financing
- Trade and Receivables
- Retirement Village Financing
- Project Financing
- Property Financing
- Securitisations
- Regulatory
- Syndicated Lending
- Financial Product Development
- Debt Capital Markets
- Structured Finance
- Consumer Finance

Ranked with:

Chambers TOP RANKED Asia-Pacific 2023

The LEGAL 500 ASIA PACIFIC LEADING FIRM 2023

IFLR1000

Key points about banking and finance in New Zealand

The Reserve Bank of New Zealand (Reserve Bank) is New Zealand's central bank.

Banks operating in New Zealand must be registered with the Reserve Bank.

Certain non-bank deposit takers (NBDTs) operating in New Zealand must be licensed by the Reserve Bank.

The detail

Reserve bank of New Zealand

The banking industry in New Zealand is prudentially supervised by the Reserve Bank. The Reserve Bank's purpose, objectives and powers are set out in the Reserve Bank of New Zealand Act 2021 (the RBNZ Act) and the Banking (Prudential Supervision) Act 1989 respectively. In general, the Reserve Bank:

- formulates and implements monetary policy to maintain price stability and support sustainable employment;
- promotes the maintenance of a sound and efficient financial system; and
- supplies and manages the New Zealand currency.

Fundamental to the Reserve Bank's roles are managing the registration and prudential supervision of banks, and monitoring the financial system with the intention of preventing, or mitigating the consequences of, institutional distress or failure.

Bank registration

All banks operating in New Zealand must be registered with the Reserve Bank. There are currently 27 registered banks in New Zealand, most of which are subsidiaries or branches of overseas-incorporated banks.

Only an entity whose business substantially consists of borrowing or lending money, or the provision of financial services, may be registered as a bank in New Zealand. In general, for registration, the Reserve Bank will have regard for:

- **Qualitative criteria:** the applicant's financial standing and its ability to prudently manage its business; and
- **Quantitative criteria:** evidence of the applicant's ability to meet the qualitative criteria, and of its ability to consistently carry on business in a prudent manner on an ongoing basis following registration.

In addition, applicants that are incorporated overseas are required to have the approval of their home supervisor to conduct banking business in New Zealand. The applicant must also meet the prudential requirements imposed on it by its overseas home supervisor.

Any person or entity carrying on any activity in New Zealand and that includes 'Bank', 'Banker', or 'Banking' in its name must be a registered bank or authorised to use that name by the Reserve Bank or otherwise be exempt under the Banking (Prudential Supervision) Act 1989.

Non-bank deposit takers and the new Deposit Takers Act 2023

An NBDT is an entity which is not a registered bank but which offers debt securities (a deposit-taker) and carries on the business of borrowing and lending money, or providing financial services, or both.

In general, every NBDT which makes a regulated offer of debt securities to retail investors requires to be licensed in New Zealand. If a licence is granted, it may be subject to conditions imposed by the Reserve Bank.

NBDTs are prudentially regulated by the Reserve Bank under the Non-bank Deposit Takers Act 2013 (NBDT Act) and the new Deposit Takers Act 2023 (DTA) which was passed into law in July 2023 (among other regulations).

The DTA applies to all deposit takers (including banks and NBDTs) and introduces the following significant changes to New Zealand's prudential settings:

- Introduction of a Depositor Compensation Scheme.
- Integration of separate prudential regimes for the licensing of deposit takers.
- Strengthening of New Zealand's deposit taker crisis management framework.

The relevant provisions of the NBDT Act will remain in force until the DTA fully comes into effect. The new Depositor Compensation Scheme is expected to come into force first, in late 2024, but there will be a staggered implementation of the rest of the DTA until July 2028. Currently, the Reserve Bank proposes to develop and consult on new standards from early 2024 until 2026, with the new DTA licensing regime to be rolled out in 2027.

For other regulatory requirements that may be relevant to banks, NBDTs and financial markets participants, refer to 'Financial Markets in NZ'.

How we can help you

We represent some of the largest financial institutions and corporate trustees in New Zealand and globally on matters including:

- Corporate financing, including acquisition finance, property development, trade finance, and receivables financings.
- Asset and asset based financing.
- Specialist retirement village development financing.
- Debt capital markets.
- Financial services regulatory advice.
- Consumer finance and PPSA advice.
- New product structuring and development, including assisting major New Zealand and international banks with developing corporate finance, transactional banking, trade finance, receivables financing products.
- Structured finance arrangements including securitisations.
- Restructuring.

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Buying real estate in New Zealand

Buying real estate in New Zealand

Specialists in:

Commercial leasing

Commercial property and development

Overseas Investment

Construction

Public Works and Infrastructure

Residential Conveyancing

4 partners

14 professionals

Prominent practice with experience across the commercial property space, highlighted for its impressive public sector work and its work with the New Zealand government. The firm is adept at representing investors and funds on a range of real estate matters, including property acquisitions and building projects.

— Real Estate,
Chambers and Partners Asia Pacific, 2023

Ranked with:

Chambers TOP RANKED Asia-Pacific 2023

The LEGAL 500 ASIA PACIFIC LEADING FIRM 2023

IFLR1000

Key points about buying real estate in New Zealand

All titles in New Zealand are registered at Land Information New Zealand (LINZ), and their accuracy is guaranteed by the government.

When purchasing real estate, it is common to use a standard form base contract customised for the particular real estate.

Agreements for sale and purchase of real estate are usually conditional on the purchaser carrying out a due diligence investigation and being satisfied with the real estate after that investigation.

Overseas investors (or New Zealand entities with at least 25% overseas control) will be subject to restrictions on acquiring land in New Zealand.

Investors need to be aware of certain rules when purchasing real estate in New Zealand, including government consents for certain purchases, the seismic rating system, and tax implications when investing in residential real estate.

The detail

New Zealand has a well-established and transparent land ownership system. Investing and trading in real estate assets has always played a key role in New Zealand's economy. Equally important for those acquiring or establishing a business in New Zealand is to understand the accommodation requirements for the business regardless of the sector in which it operates.

Registered title system

New Zealand operates under the Torrens land registration system. All legal interests in land under the system are created by registration under the Land Transfer Act 2017 and are recorded against the title to the land.

A copy of the title register to the land is readily accessible and carrying out this search is often the first step in reviewing what affects the land. New Zealand has converted almost all titles, plans, and instruments into an electronic format, through a system run through LINZ called Landonline. Landonline allows up to date searching and electronic registration of land transactions.

The three most common forms of title in New Zealand are:

Land is sensitive if it is or includes this type of land	...and exceeds an area threshold of:
Freehold	Purchase of freehold title gives you outright ownership of the land in question. This may also be referred to as fee simple. These terms are used interchangeably.
Leasehold	Purchase of leasehold gives you the benefit of a long-term lease of the real estate. Commercial leases are not usually registered.
Unit Titles	• A form of strata or sectional title ownership • Purchase of unit titles gives you title to a defined part of a larger real estate. • These are a common form of title for apartment buildings. • They are subject to certain rules under the Unit Titles Act 2010.

Particular care should be taken when acquiring leasehold or unit title property, as well as other less common forms of title.

Māori land

In many instances Māori land ownership and use is governed by the Te Ture Whenua Māori Act 1993. This Act contains a range of restrictions on the disposal of various types of Māori owned land which can make dealing with Māori land very complicated.

Contracts for sale and purchase of real estate

To be enforceable, a contract for sale and purchase of real estate must:

- be in writing, and
- signed by the parties (or their authorised agents).

There is a high reliance on standard form documents for transacting more straightforward assets. Contracts are often tailored to reflect the commercial terms and nature of the assets involved.

In New Zealand it is common to undertake a relatively limited due diligence process before entering into a contract, which will then include more detailed conditions for the parties to satisfy before the agreement becomes unconditional and settlement occurs. Subject to the satisfaction of conditions, written agreements are binding.

Typical conditions include due diligence, the satisfaction of regulatory consents, building inspection, valuation, obtaining finance, and board or CEO approval.

Overseas Investment Act

Overseas investors (whether individuals or corporate entities with more than 25% overseas control) need government consent under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 (together, the OIA), when acquiring an interest in 'sensitive' land or any other significant business asset (including shares in a New Zealand company) for a consideration of more than NZ$100 million. Residential land in New Zealand is automatically 'sensitive' land, which means that overseas persons are generally required to obtain consent to acquire residential land. Australian and Singaporean nationals and corporate investors are exempt from the consent requirements relating to residential land.

The OIA sets out a procedure for overseas investors to seek consent to acquire sensitive land. Examples of the categories of land (subject to, in certain cases, a minimum area threshold) that are considered 'sensitive' land typically include the following:

- Residential land (being land that has a property category of 'residential' or 'lifestyle' in the relevant district valuation roll);
- Farm land or non-urban land;
- Lake bed;
- Historic land;
- Conservation land;
- Heritage ordered land;
- Reserve land, public parks, land used for recreational purposes or open spaces;
- Māori reservation land;
- Marine and coastal area land;
- Land on numerous New Zealand Islands; and
- Land adjoining certain types of sensitive land.

In order to obtain consent to acquire residential land, an overseas investor needs to meet one or more of the following tests (depending on the nature of the investment and whether the land contains other sensitive characteristics):

- The commitment to reside in New Zealand test (which is the only pathway that allows an overseas person to live in the acquired residential property);
- The increased housing test;
- The non-residential use test;
- The incidental residential use test; or
- The benefit to New Zealand test.
- The OIA also provides exemptions for investing in sensitive land, such as:

- Periodic leases;
- Residential tenancies of less than five years;
- Off-the-plans large apartment developments which has received an exemption certificate to sell to foreign investors;
- Hotel units acquired and leased back; and
- Forestry rights of less than 1,000 hectares.

The OIA is managed and enforced by the Overseas Investment Office. The OIA sets out numerous powers and penalties for contravening the OIA.

Seismic rating of commercial buildings

Following several major earthquakes in New Zealand over the past decade, purchasers of commercial buildings are advised to include the seismic rating of those buildings in their due diligence investigation.

While all new buildings are required to be constructed to at least 100% of the current building code, older buildings are unlikely to have been constructed to that standard. Recent amendments to the Building Act have brought in changes to manage earthquake prone buildings. One of those initiatives included creating a register of earthquake-prone buildings. Purchasers need to be aware that older buildings with seismic ratings of less than 34% of the current building code are classified as "earthquake prone" and strengthening works will be required by statute. Notices may be issued by the Council requiring work to be completed.

Any strengthening works completed will usually be at a cost to the landowner. There are other alternatives, such as demolition – although it is important to ascertain whether the building is subject to a Historic Places Order, preventing demolition.

Seismic rating of commercial buildings

Income Tax must be paid on the sale of residential properties purchased on or after 27 March 2021 where the real estate is sold within ten years of purchasing it, unless the real estate was:

- used as the owner's main home,
- inherited from a deceased estate, or
- sold as part of a relationship breakdown.

Residential properties purchased between 29 March 2018 and 26 March 2021, are subject to the same tax if sold within 5 years of purchase unless one of the exceptions set out above apply. Residential properties with a qualifying "new build" which are purchased or acquired on or after 27 March 2021 will also be subject to a 5-year bright-line period. This new build bright-line applies if it is a "new build land" acquired within 12 months after it became a new build land, and there is a dwelling at the time of disposal or settlement. Generally, a "new build land" means land that:

- a self-contained residence or abode has been added to; and
- has received its code compliance certificate (CCC) issued under the Building Act 2004 on or after 27 March 2020 (subject to some exceptions).

Residential land withholding tax (RLWT) applies where the seller is an offshore acquisition person or entity and the land is sold within the bright-line periods stated above. RLWT also applies to sales by New Zealand entities that are more than 25% owned or controlled by offshore persons. The seller's lawyer is required to deduct the RLWT and pay it to Inland Revenue on the seller's behalf.

From 1 October 2021, interest deductibility rules limit what can be claimed as interest incurred by residential property investors in disallowed residential properties (DRP) unless an exclusion or an exemption applies. DRP's generally include land in New Zealand which is commonly and will be foreseeably used as a residential accommodation. This can apply to properties that are rented out long

or short term, used for short-stay accommodation some or all the time, or left vacant. Some loans which were first drawn before 27 March 2021 may also be partially deductible as part of the transitional phasing-out of interest deductibility. However, interest deductions will be phased-out completely from 1 April 2025.

Building and developing real estate

Building work and the use of buildings is regulated by the Building Act 2004. New buildings, as well as most additions or alterations to existing buildings, will require a building consent.

After completion of building work under a building consent, a code compliance certificate will need to be obtained. It is important to check when purchasing real estate that any building work carried out has had the relevant code compliance certificate issued. Landowners should hold records of any work or maintenance completed, and any inspections undertaken.

Most properties, other than stand-alone residential homes, are also required to hold a building warrant of fitness. These are issued annually and confirm that the building complies with certain Building Act criteria, which for the most part relate to health and safety.

Both code compliance certificates and building warrants of fitness can be checked during a due diligence investigation by reviewing a Land Information Memorandum (LIM) report for the real estate.

Resource Management Act and district plans

The Resource Management Act 1991 (RMA) is the primary source of environmental law in New Zealand. Under the RMA, territorial authorities have responsibility for the control, use, development and protection of land. Territorial authorities are also required to have district plans which contain rules relating to land use and subdivision activities in that authority's area.

The RMA and district plans can have major implications for real estate developments and other construction projects. A large development may require multiple consents under the RMA before its commencement.

The Government announced that the RMA would be repealed and replaced with three new pieces of legislation: the Natural and Built Environment Act, the Spatial Planning Act and the Climate Adaptation Act. The new Acts are intended to speed up and simplify the planning process, reduce costs and to protect our environment. Some changes in the new law began coming into effect on 24 August 2023. The legislations will gradually phase in over a 10-year period and many parts of the RMA will remain in place until then.

Leasing

The physical day-to-day operations of most businesses in New Zealand are carried out under a lease of the land and buildings that the business occupies. The lease terms are negotiated between the contracting parties, being in this case the landlord and the tenant. However, there are also numerous other rights and obligations implied into leases by statutes, principally under the Property Law Act 2007.

There is a high reliance on standard lease forms, at least as a starting point, with tailored special conditions to reflect the particular premises and the commercial terms. Most leases are for a specified term and may allow the tenant the right to renew for an additional term or terms.

When acquiring an existing business that occupies premises on a leasehold basis, it is very likely that the lease will include terms controlling the transfer of the lease to the buyer. These terms often cover both the acquisition of business assets where shares are being acquired or there is an effective change of management or control.

Residential tenancies

Residential tenancies are governed by the Residential Tenancies Act 1986, which imposes minimum standards for properties, and processes for managing and terminating tenancies. These requirements and processes are strictly enforced.

How we can help you

- Businesses acquiring or disposing of real estate interests need input from advisers who know the industry as well as the law – advisers who can identify the many risks, and manage them in a way that is commercially appropriate, legally sound, and cost-effective.
- Dentons' real estate team has a wealth of experience in all aspects of property and real estate law. Our team works closely with clients to get a good understanding of their business and their present and future needs.
- We are supported by colleagues in other teams, such as environment and planning, construction, infrastructure, health and safety, public law, banking and finance, corporate and commercial, employment, private wealth, tax, and dispute resolution.

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Competition and antitrust in New Zealand

Competition and antitrust in New Zealand

3 partners

5 professionals

The firm has a strong knowledge of New Zealand law, is very practical in its application and is cost-effective.

— Chambers and Partners Asia Pacific, 2023

Specialists in:

Conduct advice

Merger advice

Clearance applications

Authorisation applications

Dealing with investigations

Litigation

Key points about competition law in New Zealand

Competition law is governed in New Zealand by the Commerce Act 1986.

The purpose of the Commerce Act is to promote competition in markets for the long-term benefits of New Zealand consumers. To this end, the Act sets out a number of prohibitions on various f orms of anti-competitive behaviour, and provides for significant financial penalties for a breach of those provisions.

The Commerce Commission is the regulatory body that administers and enforces the Commerce Act.

The detail

Mergers and Acquisitions

The Commerce Act sets out the rules which apply to mergers and acquisitions affecting markets in New Zealand. The Act prohibits an acquisition of shares or business assets which would result in a substantial lessening of competition in any market.

The Commission has published guidelines indicating that competition is unlikely to be substantially lessened where, should an acquisition proceed, either of the following conditions exist:

- in markets where the three largest firms (post-transaction) comprise less than 70% of the market, the merged firm would have a market share of less than 40%
- in markets where the three largest firms (post-transaction) comprise more than 70%, the merged firm would have a market share of less than 20%.

Obtaining Commission Approval

Parties to a proposed acquisition have a choice as to whether to apply for and implement their proposal in accordance with the prior approval of the Commission, or to proceed without approval. Applications are voluntary, so are normally only made where the 'safe harbour' guidelines above are not met.

Obtaining the prior approval of the Commission provides protection against the Commission or any other person taking legal action under the Commerce Act provided the merger or acquisition is completed within 12 months from the date of the Commission's approval.

The Commission is able to issue one of two types of approval to a proposal:

- A 'clearance', which is a confirmation that the acquisition is not unlawful (i.e. that it will not result in a substantial lessening of competition in any market).
- An 'authorisation', which is an approval for an acquisition which would otherwise be prohibited. An authorisation will only be granted if the Commission is satisfied that there is enough public benefit in the acquisition to outweigh the detriments of the substantial lessening of competition caused by it.

The normal time frame for the Commission to decide on a straightforward application for clearance is about eight weeks, though it is normal to engage with the Commission informally before submitting an application. An application for authorisation will usually take at least three months.

Penalties for breach of business acquisition provisions

The maximum penalty for a company for a breach of the business acquisition provisions of the Commerce Act is a fine of NZ$10 million or three times the commercial gain resulting from the breach (or 10% of turnover if this cannot be easily established). The maximum penalty for an individual is a fine of NZ$500,000.

In addition, the High Court may order a person or company to dispose of specified assets or shares acquired in breach of the Commerce Act.

Individuals or companies may also take private legal action, for example, by applying for an injunction to stop an acquisition or seeking damages for loss suffered as a result of an acquisition.

Restrictive trade practices

The Commerce Act prohibits the following collective restrictive trade practices:

- **Practices substantially lessening competition** — The Commerce Act prohibits a contract, arrangement or understanding that has the purpose, or has or is likely to have the effect, of substantially lessening competition in the market. This section is very broad in its application and it is not necessary for there to be a legally binding contract for there to be a breach.

- **Cartel provisions** — The Commerce Act also prohibits the entering into, or giving effect to, a contract, arrangement or understanding containing a cartel provision. A cartel provision is a provision that has the purpose, effect or likely effect, of:
    - price fixing — where competitors fix, control, or maintain the price of a product or service.
    - restricting output — where competitors prevent, restrict or limit the production, supply or acquisition of a particular good or service.
    - market allocating — an example of market allocating is where competitors allocate a market between themselves, for example according to geographical area.

Individuals involved in cartel conduct are committing a criminal offence.

The Commerce Act prohibits the following unilateral restrictive trade practices:

- **Taking advantage of market power** — Where a company has substantial market power, it must not take advantage of that market power with the purpose, effect, or likely effect of substantially lessening competition. The Commerce Act prohibits a company with a substantial degree of market power from taking advantage of that power to:
    - restrict the entry of a competitor
    - prevent or deter a competitor engaging in competitive conduct
    - eliminate a competitor from the market.

An example of where an abuse of market power might arise is predatory pricing. This is where a business sells its products below market value in order to chase its competitors out of the market due to an inability to compete.

- **Resale Price Maintenance** — Suppliers cannot fix the price of their goods sold by other retailers. Furthermore a supplier cannot enforce a minimum price for resale (whether by specifying a minimum price or by setting restrictions on the ability to discount).

Penalties for restrictive trade practices

The Commission has a range of enforcement options available to it depending on the extent and severity of a breach and the public interest involved. In some cases the Commission will merely issue a warning; in more serious cases prosecution in the High Court can occur.

As with breaches of the acquisition provisions, an individual can face penalties of up to NZ$500,000 per breach and, for companies, the penalty can be up to the greater of NZ$10 million, three times the value of any commercial gain resulting from the contravention, or 10% of the turnover of the company (and any interconnected companies).

How we can help you

- Understanding and reviewing the Commerce Act compliance requirements for your business, including in respect of planned acquisitions.
- Employee/management training materials for Commerce Act compliance.
- Drafting or reviewing of contracts with competitors.
- Drafting or reviewing supply agreements.
- Drafting and filing clearance or authorisation applications.
- Assisting in responding to Commission investigations.
- Bringing or defending a claim under the Commerce Act.

Contact

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Construction and major projects in New Zealand

Construction and major projects in New Zealand

4 partners

16 professionals

Ranked with:

Specialists in:

Construction Contract drafting and negotiation

Construction Contract Administration

Construction Contracts Act

Dispute Resolution

Vertical and horizontal infrastructure

Major Building Projects

Power Infrastructure

Civil construction

Transport Infrastructure

Water and Waste Infrastructure

Nothing is too difficult for them, the advice is presented in a simple, direct way, and they understand the commercial side of things and seamlessly incorporate this into their advice.

— Construction,
Chambers and Partners Asia Pacific, 2023

Key points about construction law in New Zealand

Building and construction projects are almost always carried out in New Zealand under a negotiated contractual arrangement, the form of which will be determined by the type, size and complexity of the particular project. Building and construction contracts are governed by the general law of contract subject to specific legislative controls, primarily under the *Resource Management Act 1991*, *Health and Safety at Work Act 2015* (both dealt with in other sections of this guide), *Building Act 2004*, and the *Construction Contracts Act 2002*.

The detail

Procurement

Tender processes are commonly used by principals (particularly public agencies) and head contractors to create a competitive bid environment. Traditional contracting models still prevail in the market although in recent years, some large-scale infrastructure projects have been procured under a public private partnership (PPP) structure or on the basis of other alliancing models.

Standard Form Contracts

The New Zealand Standard (NZS) suite of contracts are the most commonly used construction contracts in the market, primarily: NZS 3910 (traditional 'build only'); NZS 3916 (design and build); and NZS 3917 (fixed-term or maintenance). These are often tailored to specific projects through the inclusion of special conditions. NZS 3910 has been significantly updated with the new version to be released in December 2023. There are also other standard forms including:

- New Zealand: the NZIA's SCC1 2018 contract and a Master Builders contract, and
- International: FIDIC and NEC 3 and 4.

Building Act 2004

All building work in New Zealand must comply with the Building Code (contained in Schedule 2 to the Building Act). The Code prescribes minimum performance standards which a building must meet and methods by which a builder can establish compliance. The Code is being constantly updated. The Building Act also:

- requires work affecting the structural integrity or weathertightness of a building to be carried out or super-vised by a Licensed Building Practitioner, and;
- implies warranties relating to the performance of contract works into all residential building contracts.

Payment Security

The Construction Contracts Act 2002 (CCA) is designed to assist contractors in securing their right to payment via:

- statutory right to progress payments;
- right to claim as a statutory debt due amounts owing;
- right to obtain a charging order (or lien) over a construction site;
- rendering invalid 'pay-if-paid' and 'pay-when-paid' clauses;
- right to suspend work for unjustified non-payment;
- all retentions to be held on trust or via a financial instrument.
- The Construction Contracts (Retention Money) Amendment Act 2023 has markedly improved the retentions regime under the CCA. These changes come into force in October 2023.

Tortious Liability

New Zealand recognises an extra-contractual duty of care on the part of contractors, subcontractors, suppliers and consultants (amongst others) to owners and subsequent purchasers with respect to building defects, including weathertightness requirements, and the parties responsible can be sued in tort for breaching this duty of care.

Duration of Liability

Legal proceedings must be commenced within the relevant statutory limitation period which, in short, requires a claim to be brought within 6 years from the date of the act or omission in question. However, if the claimant has 'late knowledge' of the damage, the claim can be brought outside the 6 year limitation period provided it is lodged within three years of discovery of the damage. In relation to 'building work' covered by the Building Act, this is subject to an overarching 10 year long-stop period.

Seismic activity

The Building (Earthquake-prone Buildings) Amendment Act 2016 (EPB Act) was passed in response to the numerous seismic events that have occurred in New Zealand since 2010. In short, it requires building owners to carry out strengthening work to commercial and apartment buildings identified by territorial authorities (and confirmed via an engineering assessment) as prone to collapse in a moderate earthquake.

The Ministry of Business Innovation and Employment is in the process of reviewing the technical standard (NZS 1170.5) against which a building's performance is measured. This review comes after the release of the updated National Seismic Hazard Model in 2022, which highlighted the need to boost national seismic resilience. However, the current EPB Act requires that buildings are assessed against the version of NZS 1170.5 which applied at 1 July 2017. This means any update to NZS1170.5 will not effect the assessment of earthquake prone buildings under the EPB Act, unless the EPB Act is amended to reflect the updated understanding of seismic risk following the release of the National Seismic Hazard Model (2022).

Dispute resolution

Statutory adjudication of disputes under the CCA is by far the most popular mode of dispute resolution, however construction contracts will usually provide for arbitration as the final step. Dispute Review Boards remain relatively uncommon in New Zealand, save on some larger public projects. New Zealand has no specialist construction law courts. Mediation also remains a popular mechanism for resolving disputes.

How we can help you

- Negotiating, advising on standard form documentation and drafting bespoke contracts of all procurement models to minimise client risk.
- Advising on residential and commercial building projects and a wide range of infrastructure projects such as road and rail projects, schools, prisons, stadiums, civil and earthworks, and water and energy projects.
- Advising on large-scale joint venture projects and complex procurement processes such as PPP's, project alliances and early contractor involvement (ECI) arrangements.
- Providing strategic project delivery advice and contract administration support, including to secure the right to payment through contractual means and under the CCA.
- Preparing, defending and resolving commercial and residential claims brought by way of CCA adjudication, arbitration and in the Courts, and through ADR such as expert determination, conciliation and mediation.

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Consumer protection in New Zealand

Consumer protection in New Zealand

3 partners

9 professionals

Specialists in:

The Fair Trading Act

Consumer Guarantees Act and other consumer legislation

Reviewing marketing collateral for compliance with both the Fair Trading Act and Advertising Standards Codes

The team has great attention to detail, can deliver on required timelines, always with a smile and can act as external advisers or another pair of hands in an in-house environment, depending on the client's needs.

— Legal 500 Asia Pacific, 2023

Ranked with:

Key points about consumer protection in New Zealand

Consumers in New Zealand are protected by six key sources of law:

- Fair Trading Act 1986
- Consumer Guarantees Act 1993
- Credit Contracts and Consumer Finance Act 2003
- Privacy Act 2020
- Unsolicited Electronic Messages Act 2007
- The sales promotion scheme regime in the Gambling Act 2003.

There are also voluntary codes such as the Advertising Standards.

The detail

Fair Trading Act 1986 (FTA)

The FTA promotes trading which is fair, honest, and transparent. It applies to the supply of goods or services in 'trade'. The FTA prohibits:

- **Deceptive or misleading conduct:** Consumers must not be misled or deceived about the nature, manufacturing process, characteristics, suitability to purpose, or quantity of goods or services.

- **False, misleading and unsubstantiated representations:** Representations made to consumers about goods or services must not be false or misleading. Representations made without reasonable grounds, even if they are believed to be true (or are in fact true), will also breach the FTA.

- **Unfair contract terms:** A contract term is unenforceable if a court declares that it is unfair. An 'unfair' contract term is one that causes significant imbalance in the parties' rights and obligations, is not reasonably necessary to protect the legitimate interests of the business and causes detriment if enforced. The scope of this applies to:

    - standard form consumer contracts – involving the supply of goods or services of a kind ordinarily acquired for personal, domestic, or household use or consumption; and

    - small trade contracts – where each party is engaged in trade, the contract is not a consumer contract and it does not comprise or form part of a trading relationship that exceeds an annual value threshold of NZ$250,000 when the contractual relationship first arose.

- **Unfair practices:** The FTA lists a number of activities which are considered to be unfair and which are prohibited. Some examples of the listed activities include pyramid selling schemes, bait advertising, and requiring payment for unsolicited goods or services.

Contracting out

In most cases, the FTA cannot be contracted out of. In some business-to-business transactions, contracting out is possible in writing if both parties are 'in trade' and the goods or services are both supplied and acquired 'in trade' and it is fair and reasonable to do so.

Other matters dealt with under the FTA include:

- compliance with safety standards for certain products and services offered to consumers, to prevent or reduce risk of injury to a person;

- compliance with consumer information requirements for certain products and services offered to consumers;

- layby sale agreements and disclosure requirements to consumers;

- uninvited direct sale agreements and disclosure requirements to consumers;

- extended warranties; and

- auctions.

Penalties for breaching the FTA

- a maximum fine for breach by an individual of NZ$200,000 per offence, or NZ$600,000 per offence for a business;

- compensation to affected consumers;

- injunctions; and

- management banning orders.

Consumer Guarantees Act 1993 (CGA)

- Provides consumers with a number of guarantees that apply to goods or services purchased from a supplier in trade.

- Has a broad scope defining a consumer as a person who acquires goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that

the person does not represent themselves as acquiring the goods or services for resupplying them in trade, consuming them in the course of a process of production or manufacture, or in the case of goods, repairing or treating in trade other goods or fixtures on land.

- Applies to certain business-to-business transactions, giving the business consumer the benefit of the same guarantees as an individual consumer.

- The guarantees generally cannot be contracted out of, but as with the FTA, there is a limited exception for parties to a business-to-business transaction where the goods or services are purchased for business purposes and it would be fair and reasonable to contract out of the CGA.

In relation to the supply of goods, the CGA implies the following guarantees:

- the supplier has the legal right to sell the goods, the goods are free of any undisclosed security interests and that the consumer has the undisturbed possession of the goods;

- the goods will be delivered at the time agreed or within a reasonable time if the supplier is to deliver the goods;

- the goods are of acceptable quality;

- the goods are fit for a particular purpose made known by the consumer or represented by the supplier;

- the goods match the supplier's description of the goods or any sample;

- the goods are sold at a reasonable price where the price is not pre-determined by the contract, left to be determined in a manner agreed by the contract nor left to be determined by the course of dealing between the parties; and

- repairs and spare parts will be made reasonably available for a reasonable period after the goods are so supplied.

In relation to the supply of services, the CGA implies the following guarantees for services. The services will be:

- performed with reasonable care and skill;

- reasonably fit for any particular purpose that the consumer makes known to the supplier;

- completed within a reasonable time where the time has not been pre-determined by the contract, left to be fixed in a manner agreed by the contract nor left to be fixed by the course of dealing between the parties; and

- supplied at a reasonable price where the price is not pre-determined by the contract, left to be determined in a manner agreed by the contract nor left to be determined by the course of dealing between the parties.

Liabilities and Penalties

Where goods do not comply with a guarantee, a consumer may seek redress against the supplier or, in the case of goods supplied, the manufacturer or importer, at the consumer's election. If the failure is capable of remedy, the consumer must first give the supplier (or otherwise) the right to rectify the breach. If the failure is minor, the supplier can choose to either repair the goods, replace the goods or refund the consumer. If the supplier refuses to repair faulty goods or fails to do so within a reasonable time, the consumer may have them repaired elsewhere and recover the costs from the supplier. If the failure cannot be remedied or cannot be put right within a reasonable time, or is substantial, the consumer may reject the goods or cancel the service contract, or obtain damages for any reduction in value of the good or service.

In addition, the consumer can also claim for any other reasonably foreseeable loss that results from the failure.

Credit Contracts and Consumer Finance Act 2003 (CCCFA)

- Places strict requirements on lenders who provide credit to consumers for personal, domestic or household purposes under credit contracts and consumer leases, and buy-back transactions of land.

- Requires lenders to comply with the 'lender responsibility principles', some of which include:

  - exercising care, diligence and skill in advertising credit services, before entering into credit arrangements with a borrower and in all subsequent dealings with a borrower in relation to an agreement or relevant insurance contract or a guarantor in relation to a relevant guarantee;

  - making reasonable inquiries into a borrower's requirements and objectives;

  - considering a borrower's repayment abilities;

  - assisting a borrower to make an informed decision; and

  - treating a borrower reasonably and in an ethical manner.

Penalties

Lenders can be fined up to NZ$200,000 for individuals and NZ$600,000 for businesses for breaching the CCCFA. Courts can also reopen 'oppressive' contracts which are unjustly burdensome, unconscionable or breach reasonable standards of commercial practice.

Privacy Act 2020 (Privacy Act)

- Governs the collection, storage, use and disclosure of personal information by requiring compliance with thirteen Information Privacy Principles (IPPs).

- 'Personal information' is broadly defined as 'information about an identifiable individual.' The Privacy Act applies to agencies, which include any person or body of persons, whether corporate or unincorporated and whether in the public sector or private sector (unless an exception applies). It applies to New Zealand agencies as well as overseas agencies carrying on business in New Zealand.

The IPPs, among other things, specify that an agency:

- Must not collect personal information unless it is necessary for a lawful purpose connected with a function or activity of the agency (and must not require identifying information if the purpose does not require it);

- must collect personal information from the individual concerned (unless an exception applies);

- should take reasonable steps to ensure the individual is aware of the collection of personal information, and other information in relation to the collecting agency and the purpose for such collection, who the information will be disclosed to, the consequences (if any) for the individual if the information is not provided, and the individual's rights of access to, and correction of, information;

- may only collect personal information by lawful means, and by fair and not unreasonably intrusive means (particularly in the case of children or young persons);

- ensure that the personal information is protected by reasonable security safeguards to protect the information from loss, unauthorised access, use, modification or disclosure and other misuse;

- upon request from an individual, give confirmation of whether or not the agency holds, and give access to, their personal information, and also advise the individual that they may request correction of any personal information, and, if the agency does not correct the information, it must attach a statement of correction to the information if the individual has provided it;

- must not use or disclose personal information without taking reasonable steps to ensure that the information is accurate, up to date, complete, relevant and not misleading;

- must not to keep personal information longer than necessary;
- should only use or disclose personal information for the purposes it was collected for, unless the individual consents or another of the exceptions applies;
- may only disclose personal information to a foreign entity in certain circumstances, essentially where the information will be protected by similar safeguards to those provided under the Privacy Act; and
- may only use unique identifiers when it is necessary, may not use a unique identifier assigned by another agency, and must take reasonable steps to protect unique identifiers from misuse.

The Privacy Act requires mandatory reporting of privacy breaches where it is reasonable to believe the breach has caused serious harm or is likely to do so.

Penalties

Breach of any of the IPPs is grounds for a complaint to the Privacy Commissioner. The Privacy Commissioner may investigate the complaint and may refer matters to the Director of the Human Rights Review Tribunal, who may award remedies such as damages, a declaration that the actions interfere with privacy, a compliance order, costs, or other relief deemed appropriate. The Privacy Commissioner may issue compliance notices and binding decisions on access requests. Privacy Act fines of up to NZ$10,000 may be imposed for offences. The Human Rights Review Tribunal has jurisdiction to award damages of up to NZ$350,000 in respect of the interference with the privacy of an individual. However, in practice, awards by the Human Rights Review Tribunal in relation to breaches of the IPPs tend to be much lower, and the highest awards (closer to NZ$100,000) are reserved for only the most egregious breaches where significant harm has been caused to the aggrieved individual. See here for more information about claims and damages awarded by the Human Rights Review Tribunal.

Unsolicited Electronic Messages Act 2007 (UEMA)

An individual or organisation (person) must comply with the UEMA when sending emails (and SMS messages) to consumers. The UEMA prohibits the sending of unsolicited commercial electronic messages. Essentially, in order to send commercial electronic messages, the person must first obtain consent from the recipient. Consent can either be:

- express (for example by way of a 'tick the box' opt in when a person provides their contact details);
- inferred (from the conduct, business and other relationships of the person concerned); or
- deemed (where an email address has been published by a person in a business or official capacity, they have not expressly said they do not wish to receive unsolicited electronic messages and the message sent to that address is relevant to the business or duties of the person in a business or official capacity).

'Electronic messages' that are subject to the UEMA include emails, faxes, instant messages, SMS (txt), multimedia messages, and other mobile phone messages, but not voice calls or voice messages. 'Commercial' electronic messages are defined to include 'electronic messages that market or promote goods, services, land, an interest in land, or a business or investment opportunity'.

Common electronic messages that are not considered 'Commercial' electronic messages include those that:

- provide a quote or estimate of goods or services, if that quote was requested by the recipient;
- facilitate, complete or confirm a commercial transaction which was previously agreed to with the person sending the message;
- provide notification of factual information about a subscription, membership, account, loan, or similar relationship involving the ongoing purchase or use by the recipient of goods or services offered by the person who authorised

the sending of the message or the recipient's ongoing subscription, membership, account, loan, or similar relationship; or

- deliver goods or services, including product update or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously entered into with the person who authorised the sending of the message.

The person, when sending a commercial electronic message, must also:

- identify itself clearly as the sender of each commercial electronic message; and
- include a functional unsubscribe facility in all commercial electronic messages which is functional and valid for at least 30 days after the principal message is sent.

Penalties

An individual can be liable to pay a penalty not exceeding NZ$200,000 in respect of a civil breach and an organisation can be liable to pay a penalty not exceeding NZ$500,000. The Department of Internal Affairs is active in this space, and if a complaint is made it is very likely to be investigated.

Gambling Act 2003 (Gambling Act)

Businesses may use sales promotions or competitions as a marketing technique to promote the goods and/or services they offer to consumers. However, a business will be prohibited from running a promotion in New Zealand if the promotion is considered 'gambling'. The exception to this is if the promotion is expressly permitted under the Gambling Act. 'Gambling' is defined as the 'paying or staking of consideration', directly or indirectly, on the outcome of something and seeking to win money, where that outcome depends wholly or partly on chance. For this purpose, 'money' includes 'money's worth', whether or not convertible into money.

A promotion or competition may be authorised if it is considered a 'sales promotion scheme'. A 'sales promotion scheme' is defined under the Gambling Act as gambling that meets the following criteria:

- a promotion which does not involve a gaming machine, nor a prize restricted or prohibited under the Gambling Act;
- a promotion which is used by a creator, distributor, or vendor of goods or services to promote the sale of those goods or services, in that:
    - participation in the gambling requires a person to purchase the goods or services promoted for a price not exceeding the usual retail price; and
    - the date or period on or over which the outcome of the gambling will be determined is clear to the participant at the time and place of sale;
- the person is not required to pay direct or indirect consideration other than to purchase the goods or services promoted (except the cost, at the standard rate, incurred in submitting an entry into the promotion, for example, the cost of sending a telecommunication by a mobile phone at the standard rate); and
- the outcome is determined:
    - random or wholly by chance; or
    - partly by chance (whether chance plays the greater or lesser part) and partly by the application of some knowledge or skill).

Penalties

In the case of an individual, an offence under the Gambling Act can hold a person liable to imprisonment for a term not exceeding 1 year or to a maximum fine of NZ$20,000. In the case of a body corporate, a business may be liable to pay a maximum fine of NZ$50,000.

Advertising Standards

Advertising in New Zealand is regulated by the Advertising Standards Authority (the self-regulatory body, 'ASA') under the Advertising Standards Code, Children and Young People's Advertising Code, Alcohol Advertising and Promotion Code and several others (Advertising Standards). Although the Advertising Standards are not laws per se, they set important expectations for how businesses in New Zealand should operate when advertising their goods and/or services. ASA members consist of associations and incorporations representing the majority of the media and advertising industries in New Zealand.

The ASA will consider complaints about any advertisement in any medium, and any person can complain. The ASA can make orders as to the removal or amendment of any advertisement and publicise its decisions. Compliance with the ASA's decisions are voluntary, but the rate of compliance in the industry is extremely high and enforced by media and advertisers (i.e. TV stations, advertising agencies, outdoor marketers, etc).

The Advertising Standards Code aims to ensure that every advertisement is a responsible advertisement, and all advertising is legal, decent, honest and respects the principles of fair competition. Of relevance, the Advertising Standards Code establishes two broad principles which are linked to 17 rules. These include:

- Principle 1: Social Responsibility – Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

- Principle 2: Truthful Presentations – Advertisements must be truthful, balanced and not misleading.

How we can help you

FTA and CGA

- Draft or review your consumer contracts and terms of trade.
- Draft or review your business-to-business contracts.
- Review your marketing material.
- Advise you on your obligations under the FTA and CGA.
- Defend a claim for an alleged breach of the FTA.
- Provide training on the CGA and FTA to avoid staff breaching it.

CCCFA

- Draft or review your credit contract terms, consumer leases or buy-back agreements.
- Advise you on advertising requirements under the CCCFA.
- Draft or review your disclosure statements to borrowers.
- Register and enforce security interests.
- Defend a claim for an alleged breach of the CCCFA.
- Provide training on the CCCFA to avoid staff breaching it.

Privacy Act

- Advise you on how to safely hold, collect, store, use and disclose information.
- Draft or review your Privacy Notices for New Zealand and Australian law; and GDPR.
- Prepare templates and guidance on data audits and privacy impact assessments.
- Prepare policies for various aspects of privacy compliance, for example, in relation to HR matters, front-line staff, breach protocols and procedures.
- Provide training for your staff about how they can comply with their Privacy Act obligations.
- Assist you in responding to requests for information.

How we can help you

UEMA

- Advise you on whether your methods of obtaining consent to send commercial electronic messages are adequate for the purposes of the UEMA.
- Prepare internal policies and provide training on the UEMA to avoid staff breaching it.
- Assist you in responding to investigations by the Department of Internal Affairs.

Gambling Act

- Review your competition formats and terms to ensure they comply with the Gambling Act 'sales promotion scheme'.

Advertising Standards

- Review your marketing material.
- Defend a claim for an alleged breach of the standards.
- Provide training on the standards to avoid staff breaching them.

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Key points about contract law in New Zealand

Contract law is at the heart of all commercial transactions in New Zealand.

New Zealand's contract law has its origins in common law, but has been subject to progressive legislative codification, particularly since the middle of the 20th century.

The Contract and Commercial Law Act 2017 (CCLA) is the central piece of legislation applying to contracts that are subject to New Zealand law but there remains many matters which are covered on by the common law rules, in other words "judge made law".

The CCLA applies in full to all contracts entered into after 1 September 2017. Except for certain minor changes in legal effect, the CCLA also applies to contracts made before 1 September 2017.

The detail

Choice of Law for International Contracts

Determining which country's law is applicable to an international contract can have important implications for when and how a contract was formed, whether the parties had capacity to enter into the contract, whether the contract conferred benefits on third parties and even whether the contract was formally valid for the particular transaction.

A choice of law made by the parties in their contractual arrangements will generally be respected by the Courts, provided that the choice is genuine and legal, and does not need to be avoided for reasons of public policy.

When the parties have not expressly chosen an applicable law, the Courts will need to determine what law applies based on the details of the contract and the surrounding circumstances. The Court will seek to establish which legal system has the closest and most real connection with the contract in question. The Court may consider factors such as where the contract was concluded, where performance of the contract was to occur, where the parties reside and the subject matter of the contract. Any substantive dispute between the parties will generally not be able to be resolved until the applicable law has been determined. For this reason, it is advisable to include a 'choice of law' clause in all international commercial agreements.

The United Nations Convention on Contracts for the International Sale of Goods

New Zealand is a party to the United Nations Convention on Contracts for the International Sale of Goods (CISG). The CISG is an international treaty that has been signed by over 90 states. The purpose of the CISG was to harmonise the law applying to contracts for the international sale of goods.

Generally speaking, the CISG will apply to contracts for the international sale of goods where both of the parties have their place of business in contracting states or where the rules of private international law lead to the application of the law of a contracting state. This means that, even if the parties have not made any choice of law, the CISG may automatically be the law applying to their contract. It is, however, possible to contractually agree to expressly exclude the application of the CISG.

Before entering into an international commercial contract, it is important to consider which law should or would apply to the contract in question. We can help your business to ensure that the law applicable to the contract is certain and that it is consistent with the commercial needs and expectations of the parties.

Settlement of disputes

The default dispute resolution mechanism for international commercial transactions is international litigation. Where the parties have not specified which country's courts will have jurisdiction over matters arising from the contract, a New Zealand Court will first need to determine whether or not it has jurisdiction to hear a particular matter. Therefore, it is generally preferable to ensure that any international commercial agreement has a well-drafted choice of forum or alternative dispute resolution clause.

An international commercial contract can also specify that one or more method of international dispute resolution mechanisms will be used to resolve any disputes which arise under the contract, for example, mediation or arbitration. The New Zealand Courts will generally honour such clauses and refuse jurisdiction where the parties have chosen an alternative method of dispute resolution. However, it is important to ensure that such clauses are drafted carefully to avoid any potential for a dispute about what the applicable dispute resolution mechanism is.

How we can help you

- Drafting, reviewing and modifying international commercial contracts to avoid common pitfalls that can be costly later down the track.
- Drafting, negotiating and advising on a range of commercial arrangements, including distribution, supply and customer contracts and terms of trade.
- Resolving commercial disputes of all sizes.

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— Corporate and Commercial, Chambers and Partners Asia Pacific, 2023

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- Franchising
- Warranty and Indemnity
- Insurance

Ranked with:

Key points about corporate law in New Zealand

Overseas entities proposing to set up business in New Zealand have four main structures available to them:

- register a branch
- form a subsidiary company
- acquire an existing New Zealand company
- form a partnership, including a limited partnership.

The most effective way for an overseas company to operate in New Zealand will depend upon the nature of its intended business activities in New Zealand, the method of cooperation intended to be formed between the overseas company (or its New Zealand registered entity) and local partners, as well as each method's respective tax consequences.

The detail

Registered branch

An overseas company wishing to register a branch in New Zealand must:

- reserve its name with the Registrar of Companies, and
- file an application for registration within ten working days of commencing business in New Zealand.

Australian companies wishing to register a branch in New Zealand benefit from:

- an information sharing arrangement between the Companies Office and the Australian Securities and Investments Commission (ASIC), and
- reduced compliance requirements on an ongoing basis.

Forming and registering a subsidiary company

Companies incorporated in New Zealand are registered under the Companies Act 1993 (the Act). Some of the major features of the Act are set out below.

Directors and shareholders

A company must have:

- a name
- at least one director living in New Zealand or living in an enforcement country and being a director of a company incorporated in that enforcement country. At present only Australia has been confirmed as an enforcement country.
- at least one shareholder. Unlike for directors, there is no residency requirements for shareholders. The rights and powers of the shareholders are laid out in the Act and may be modified to the extent allowed by the Act by the company's constitution (if it has one). Shareholders' liability is generally limited to the price payable for the shares for which they subscribe. The same person can be both shareholder and director.

Constitution

Under the Act there is no distinction between a public or private company. Additionally, there is no obligation to have a constitution. If no constitution is adopted, then the provisions of the Act govern the conduct of the affairs of the company.

Most companies elect to have a constitution in order to take advantage of certain powers not otherwise permitted under the Act, such as the ability to take out directors' and officers' liability insurance.

Each company must maintain registers of shareholders, directors, directors' interests, and certificates given by directors and such other company records as directors' and shareholders' resolutions and financial statements, all of which must be kept at the company's registered office unless otherwise approved by the Registrar of Companies.

Capital

Under the Act, shares have no par value and there is no concept of nominal capital. There may be different classes of shares.

Financial assistance to purchase shares and, if expressly authorised by the constitution, share buybacks are permitted if certain procedural requirements are followed.

One procedural requirement is the directors must certify that the company passes the solvency test. Creditors are protected from inappropriate reduction of capital by the need for the directors of the company to certify that the company will remain solvent at the time distributions are made to shareholders. Directors may be personally liable if a distribution is made when the company cannot pass the solvency test.

Management

In New Zealand, the ownership and management of the company are distinctly separate. A director must be a natural person, and a shareholder can be

a natural person or a legal entity. A natural person shareholder does not necessarily have to be a director, and vice versa.

The board of directors is responsible for managing the company's business affairs. The board must keep minutes of their meetings.

Subject to a company's constitution, the Act sets out the methods by which a company may enter into contracts and other obligations. This method is dependent on the type of obligation and the form of the contract.

There is no requirement for a company seal and most companies do not execute documents under seal.

Directors duties are set out in the Act. Where expressly allowed by a company's constitution, the Act also permits directors of wholly-owned subsidiaries or joint venture companies to take into account the interests of the holding company or the shareholder, in priority to the interests of the company itself. Importantly, the Act allows for directors to consider matters other than the maximisation of profit when determining whether an action is in the best interests of the company. The Act provides that environmental, social and governance (ESG) matters may be considered when determining the best interests of the company

Public disclosure

The Act and the Financial Reporting Act 2013 prescribe the requirements for companies to prepare, have audited and file with the Registrar of Companies financial statements. The requirement to audit and file will differ between companies depending on factors such as the level of overseas ownership of the company, the size and scale (measured on the basis of revenue and value of assets) of the company and other relevant factors.

Generally speaking, most New Zealand incorporated companies that are owned by large overseas persons and have a substantial business presence will need to prepare and file audited financial statements.

Shareholder rights

Under the Act, unless the constitution provides otherwise, shareholders have pre-emptive rights on the issue of new shares but not in respect of the transfer of shares. However, it is common for constitutions of closely held companies to incorporate pre-emptive rights on the transfer of shares.

Companies cannot undertake transactions with a value exceeding 50% of the gross assets of the company without approval by a special resolution (which requires the vote of at least 75% of shareholders). In such cases, dissenting minority shareholders whose dissenting votes have been recorded may require the company to purchase their shares.

Acquire an existing New Zealand company

Share sale versus an asset sale

Before commencing an acquisition it is important to decide on how the acquisition is structured. The two most common types of structures are:

- acquisition of the shares in the target business; or
- acquisition of the assets of the target business.

A share purchase is typically a simpler transaction as all contracts, employees and assets remain with the target business with only the ownership of the business' shares changing. However, the downside to a share purchase is that a purchaser has to acquire all the assets of the business (and also the business' liabilities) and is unable to 'cherry-pick' those it wants. There are a range of factors to consider when structuring an acquisition so it is important to consult your legal and financial advisors before entering into a transaction.

Merger or takeover proposal

An overseas person considering merging with or buying a New Zealand company must be aware of the restrictions on business acquisitions contained in the Commerce Act 1986 and the Overseas Investment Act 2005 (OIA). If the New Zealand

company is listed on the New Zealand Stock Exchange, or has more than 50 shareholders, the Takeovers Code is also likely to apply.

The Takeovers Code

The Takeovers Code (Code) regulates the conduct of takeovers in New Zealand. The Code applies to companies (Code Companies) which meet one of the following:

- are listed on the New Zealand Exchange (NZX)
- were listed on the NZX and have ceased to be listed for less than 12 months before the date of the relevant event referred to in the Code
- have 50 or more shareholders who hold voting rights, and have 50 or more share parcels in a company that in the most recently completed accounting period and either or both of the following is true: The total assets of the company and its subsidiaries is at least NZ$30 million and/ or the total revenue of the company and its subsidiaries is at least NZ$15 million.

The main feature of the Code (fundamental rule) restricts the ability of a person and that person's 'associates', to increase or acquire voting rights in a Code Company beyond 20%.

Under the Code:

- a person who holds or controls less than 20% of the voting rights in a Code Company cannot acquire an increased percentage of voting rights if such an acquisition would put that person and their associates over the 20% threshold, unless such acquisition is by way of one of the permitted exceptions listed in the Code (and summarised below).
- a person already holding or controlling more than 20% of the voting rights of a Code Company cannot acquire an increased percentage of voting rights other than by way of one of the permitted exceptions.
- once a person holds 90% or more of the shares in a Code Company, they become a 'Dominant Owner'. Upon becoming a Dominant Owner:
  - The Dominant Owner has the right to acquire all the outstanding shares
  - The outstanding security holders have the right to sell their shares to the Dominant Owner.

The Code does not distinguish between voluntary or involuntary increases in voting rights. Therefore, a person whose voting rights cross the 20% threshold by involuntary means (e.g. a non-pro rata buyback, transfers by operation of law, or an undersubscribed rights issue), will be in the same position as if they had actively purchased shares, although some general exemptions allow a period for the holder to reduce their holding back to where it was. The Takeovers Panel is able to grant exemptions from the Code where appropriate.

Code permitted exceptions

- A full offer to acquire all the voting and non-voting equity securities in a Code Company will comply with the Code so long as the offer is fair and reasonable between all classes of shares held in the company.
- A partial offer to acquire a specific percentage of all voting securities will comply with the Code so long as the offer will have the effect of the offeror owning more than 50% of the voting rights in the company. A partial offer must be for the same percentage in each share class and be fair and reasonable between all share classes.
- Shareholders of the target company may resolve by ordinary resolution to approve a particular issue of new shares or the acquisition of existing shares that would otherwise be restricted by the Code. The intended purchaser, and any other interested person, are not permitted to take part in the vote.
- Where a person has an existing holding of between 50% and 90% of voting rights, they are permitted to increase their holdings by up to 5% of the total voting rights in any one 12-month period. The maximum increase permitted is calculated from the lowest percentage of voting rights held by that person in that 12-month period.

The Code sets out more fully the procedure as to what is required to be in the offer, what the target company must do upon receipt of the offer, and certain restrictions upon the offeror and the target company during this process.

Partnership and limited partnerships

Partnership

The definition of 'partnership' is provided in the Partnership Law Act 2019, as the relationship that subsists between persons (which can be companies) who carry on a business in common with a view to profit. The relationship between shareholders or members of certain entities, including a limited partnership, is not a partnership.

Unlike companies, a partnership is not considered a separate legal entity. Each partner is liable jointly and severally for the liabilities of the partnership with no limited liability. This means that a claim made against a partnership can be enforced against any partner in the partnership.

The partnership relationship is ordinarily documented by way of a partnership agreement, which is governed by the Partnership Law Act 2019 and common law. Partners can, in writing, contract out of certain general provisions in the Partnership Act.

Limited Partnership

The Limited Partnership Act 2008 introduced a limited partnership model into New Zealand similar to those in some Australian states, Delaware, and the Channel Islands. Effectively, the model provides investors with the protection of limited liability, with some of the flow-through tax and confidentiality advantages of a partnership.

A limited partnership must be registered with the Companies Office and must be composed of at least one general partner and at least one limited partner, both of which can be companies.

General partners are:

- responsible for the management of the general partnership.
- jointly and severally liable with the limited partnership for the debts and liabilities and for any wrongs or omissions of the partnership. General partners' liability for the debts and liabilities is limited (subject to the partnership agreement) to the debts and liabilities that the limited partnership cannot pay.

Limited partners are:

- passive investors and are not entitled to take part in management outside certain specified activities.
- not liable for the debts and liabilities of the limited partnership, provided that they do not take part in the management of the limited partnership.

Both general and limited partners may make capital contributions to the limited partnership.

How we can help you

- Structure your investment in the way that best suits your business model and investment plans.
- Advise on compliance and best practice, on all aspects of a merger or acquisition, from initial planning to post-completion, including undertaking due diligence, negotiating terms, providing regulatory advice (including consent applications to the Overseas Investment Office under the OIA), enabling ongoing project management, as well as helping you understanding shareholder rights and negotiate and resolve disputes.
- Our Takeovers Code experts provide specialist advice to companies, investors, stock brokers, and other market participants. We can help you to understand your obligations, whether you're a Code Company, a substantial product holder, a holder of voting rights, or an offeror.
- Navigate the Financial Markets Conduct Act and ongoing compliance with relevant listing rule and market participant requirements to become listed on the NZX.

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Corporate restructuring and insolvency in New Zealand

Corporate restructuring and insolvency in New Zealand

The team regularly acts for banks, insolvency practitioners and creditors on a range of issues, including receiverships, administrations and risk management. The firm is especially respected for its work on insolvency mandates arising in the construction and property sectors, and for advising on debt recovery.

— Restructuring and Insolvency,
Chambers and Partners
Asia Pacific, 2023

3 partners

5 professionals

Specialists in:

- Receiverships
- Administrations
- Liquidations
- Restructuring solutions
- Creditors' compromises
- Debt recovery
- Securities enforcement
- Priority disputes
- Advice on director liability
- Voidable transactions

Ranked with:

Key points about corporate insolvency law in New Zealand

There are three key procedures which are used in corporate restructurings and insolvencies in New Zealand:

- Liquidation;
- Receivership; and
- Voluntary administration.

Other options available in New Zealand include formal and informal compromises. In rare circumstances, statutory management may also be appropriate.

The detail

Liquidation

A liquidator is appointed to wind up the affairs of a company. The principal duty of a liquidator is to take possession of, protect, realise, and distribute the assets (or their proceeds) of the company to its creditors and to distribute any remaining surplus to the company's shareholders or whomever else is entitled to such surplus.

The process of liquidation is governed by Part 16 of the Companies Act 1993. A liquidator can be appointed by the High Court, by special resolution of shareholders, by a resolution of directors upon the occurrence of an event specified in the company's constitution, or by resolution of the creditors passed at the watershed meeting. Once a company is in liquidation, an unsecured creditor cannot, without the permission of either the court or the liquidator, start or continue any legal proceedings against the company or its property, or start or continue to enforce rights against the property of the company.

Liquidation does not prevent secured creditors from exercising their rights, although certain preferential creditors are paid before general security holders from the proceeds of inventory and accounts receivable.

A liquidator will investigate the affairs of the company (to the extent that funding allows) and may bring claims for the purpose of recovering additional funds to increase the overall dividend to creditors. The liquidator must give regular reports to every known creditor, shareholder, and to the Registrar of Companies. A liquidation is complete when the liquidator sends a final report and various other documents to all creditors, shareholders and the Registrar of Companies.

Receivership

Receivership is the appointment of a receiver under the terms of a security agreement to manage or realise secured assets for the benefit of the security holder that appointed the receiver. In some circumstances, receivers can also be appointed by the Court.

The legislation governing receiverships in New Zealand is the Receiverships Act 1993. In a private receivership, assets are realised by the receiver for the benefit of the secured creditor who made the appointment of the receiver, but certain preferential creditors are paid before general security holders from the proceeds of inventory and accounts receivable. A receiver is required to give public notice of their appointment and must provide reports during and at the end of the receivership.

Voluntary administration

Voluntary administration involves the appointment of an administrator to assess a company's affairs and options going forward.

Voluntary administration is governed by Part 15A of the Companies Act 1993. The objective of voluntary administration is to provide for the affairs of an insolvent company, or one that may become insolvent, to be administered in a way that:

- maximises the chances of the company, or as much as possible of its business, continuing in existence; or
- if it is not possible for the company or its business to continue in existence, would result in a better return for the company's creditors than would result from an immediate liquidation.

An administrator may be appointed by the Court, a liquidator (if the company is in liquidation), the company's directors, or a secured creditor holding a charge over the whole, or substantially the whole, of the company's property. If a company is in liquidation, the appointment of an administrator will suspend the liquidation. The appointment of an administrator does not remove a receiver from office.

Once an administrator has been appointed, a moratorium comes into force, preventing anyone from bringing or continuing proceedings against the company or enforcement processes in relation to the company's property without the administrator's consent or court permission (with some exceptions). This is to give the company breathing space to allow the administrator time to assess whether the company should enter into a deed of company arrangement (an agreement setting out how the company will be run and how it will pay creditors), be placed into liquidation, or come out of administration.

How we can help you

Our team are specialists in all areas of restructuring and insolvency, including:

- Acting for insolvency practitioners in relation to all aspects of their appointments, including advising on priority disputes and claims against directors and other parties.
- Acting for creditors in relation to claims and other matters.
- Acting for directors and business owners on turnaround and liability issues.
- Advising foreign creditors and foreign insolvency practitioners on cross-border insolvency issues, and assisting them with recovery of assets in New Zealand.

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Employment and Health & Safety in New Zealand

Employment and Health & Safety in New Zealand

Specialists in:

Occupational Safety and Health

Employment relations

Investigations

Collective bargaining

Dispute resolution

4 partners

10 professionals

Dentons is in demand for its depth of expertise in health and safety regulatory compliance, including dealing with investigations by regulatory bodies. The firm advises on various aspects of employment law, including restructurings, contractual issues and performance management, while also boasting extensive litigation experience.

— Employment,
Chambers and Partners, 2023

Ranked with:

Key points about employment law in New Zealand

Employment relationships in New Zealand are structured around binding contracts negotiated and entered into between employers and employees, but with their terms and the legal framework extensively regulated by legislation.

The detail

The Employment Relations Act

The Employment Relations Act 2000 (the Act) is the principal statute that governs all employment relationships and agreements. The key features of the Act are:

- the underlying duty of good faith, which is a crucial element of the employer/employee relationship, including bargaining for individual and collective employment agreements;
- unions have rights of access to workplaces in relation to union matters and workplace safety;
- employers must hold a copy of signed employment agreements, and maintain accurate and up-to-date wage and time records;
- minimum entitlements and standards must be included in employment agreements;
- certain categories of 'vulnerable employees' have special protections if an employer sells, transfers, or contracts out all or part of its business (which may include a right to transfer to a new employer);
- workers may request flexible working arrangements, and employers must consider requests in good faith; and
- all employees may raise a 'personal grievance' if they consider the employer has breached its obligations, and these can be pursued as legal claims.

There are a number of other statutes which contribute to the landscape of employment law, among which are the Minimum Wage Act 1983, the Human Rights Act 1993 (which contains laws against discrimination on a range of protected characteristics), the Holidays Act 2003 and the Health and Safety Work Act 2015.

Termination

Generally, an employer cannot terminate employment except for cause, for example where the employee's position is redundant, or for poor performance or misconduct.

Any termination must be the act of a fair and reasonable employer, both substantively and procedurally. This generally requires employers to investigate any concerns, to raise concerns with the employee, and provide the employee an opportunity to respond (with a representative or support person present if they wish). The employer should genuinely consider the employee's response prior to making a decision.

An employee can terminate an employment relationship by resigning, provided that they give notice as required by their employment agreement.

Redundancy

Restructuring the business may result in an employee being dismissed. Employers are entitled to make employees redundant as part of their right to manage their business as they see fit (provided they act fairly and reasonably).

The Act protects the jobs of certain 'vulnerable employees' during a restructure, ensuring their employment is maintained even where the work is transferred to another business.

Dispute resolution and personal grievances

Employees can raise a personal grievance against their employer on a number of grounds, including where they believe that they have been subject to an unjustified disadvantage, or if they have been unjustifiably dismissed.

The Act encourages employers and employees to attend mediation to resolve any disputes in the first instance. If unsuccessful at mediation, the parties can file proceedings in the Employment Relations Authority, which makes decisions based on the merits of a case. If a party is dissatisfied with an Authority determination, they can appeal to the Employment Court.

The Employment Relations Authority and the Employment Court can order a range of remedies, including reinstatement to the employee's former position, payment of lost wages, and compensation for injury to feelings or loss of another benefit. Reinstatement is the primary remedy under the Act, and so where an employee asks to be reinstated,

the Authority or Court will respect that wish where practicable and reasonable to do so.

Collective bargaining

The Employment Relations Act actively promotes collective bargaining, however individual agreements are permitted and are common outside traditionally unionised industries.

Unions have exclusive rights to represent their members in matters relating to the collective interests of the workers, including collective bargaining. In accordance with specific procedural requirements, unions may call employees out on strike to garner leverage during collective bargaining, or in relation to health and safety concerns.

Union membership is optional, and employees who are not members will remain on individual employment agreements.

Union members can also be employed on individual employment agreements, provided the terms are no less favourable than those of the collective agreement.

The Fair Pay Agreements Act allows employees to initiate bargaining with employers for a minimum standard for all employees within that industry. Employees can apply to initiate the bargaining process if there is agreement from at least 10% of their workforce, or 1000 staff.

If a successful agreement is reached between the bargaining parties, the Fair Pay Agreement will need to be vetted and approved by the Employment Relations Authority before being brought into force by the Ministry of Business, Innovation and Employment. Once in force, the Fair Pay Agreement will apply to all employees within the industry.

Discrimination

Employers have a number of obligations under the Human Rights Act 1993, including not to discriminate against employees on any of the following grounds:

- Sex
- Marital status
- Religious or ethical beliefs
- Race
- Ethnic or national origins
- Disability
- Age
- Political opinion
- Employment status
- Family status
- Sexual orientation.

Discrimination claims will commonly arise out of situation involving:

- Job applications
- The drafting of terms and conditions of employment
- The provision of training
- Promotions or transfers
- Termination of an employee's employment
- The retirement of an employee.

Key points about Health and Safety in New Zealand

The Health and Safety at Work Act 2015 (HSWA), imposes obligations on a range of people and entities in respect of work, workplaces, and people in or near places of work.

The business or other organisation that is doing the work is known as a PCBU.

The PCBUs and any other persons with management or control of a workplace (whether they are an employer or not), are primarily

responsible for the health and safety of the workplace and those within it, or otherwise affected by the work.

Each PCBU must ensure, so far as is reasonably practicable, that the health and safety of workers, and others within the vicinity of the place of work, is not put at risk. PCBUs that exercise certain activities, for example, if they are involved in the design, manufacture or supply of plant, substances and structures, have further specific obligations in relation to those activities.

PCBUs must engage with workers on matters that could affect their health and safety and provide a reasonable opportunity for workers to participate in improving health and safety. Additionally, all PCBU's (regardless of size or industry) are required, when requested by workers, to hold elections for health and safety representatives and committees.

Individuals in senior governance and leadership positions with significant influence over the management of a PCBU have personal duties as officers. Officers must exercise due diligence to ensure that the PCBU complies with its health and safety duties described above. The extent of the officer's duty depends on the nature of the business, and the officer's position and responsibilities within it.

Workers have duties to take reasonable care for their own health and safety, the safety of others, and to comply with a PCBU's reasonable health and safety instructions, policies and procedures.

WorkSafe New Zealand is the New Zealand health and safety regulator. Failure to comply with duties under the HSWA is a criminal office, investigated by WorkSafe and prosecuted in the District Court. The Act provides strong penalty provisions, with fines of up to NZ$3 million for companies, and up to NZ$600,000 and/or five years' imprisonment for individuals.

Accident compensation

New Zealand has a comprehensive no-fault system of compensation provided by the Accident Compensation Act 2001 (ACA). Those who suffer personal injuries are entitled to cover under the Act, regardless of whether the accident occurred in the workplace. However, they are barred from claiming damages arising from their injury. Most physical injuries are covered, however mental injuries are only covered in very limited circumstances. The bulk of benefits provided under ACA constitute payments for medical treatment and weekly compensation.

The scheme is administered by the Accident Compensation Corporation (ACC) and funded by levies paid by employers, employees, and self-employed people. Employers have two categories of obligations in respect of compensation:

1. The payment of levies into the work account in respect of every employee to cover the cost of work accidents; and

2. The payment of 80% of wages to the injured employee for the first week an employee has off work as a result of an accident.

The levies that an employer must pay depend on the category of work undertaken. The levy determined by ACC may be adjusted in light of an audit of a particular employer's safety management practices and the Accident Compensation (Earners' Levy) Regulations 2015. This is intended to promote good health and safety practices. ACC is required to consult the public before implementing any changes in rates and regulations, and before making any recommendations to the Government.

Deductions for tax, Accident Compensation premiums, and 'KiwiSaver'

Employers are required to deduct PAYE (Pay As You Earn) tax from employees' remuneration. This includes deductions for income tax and accident compensation premiums (representing employee contributions to fund ACC cover).

With limited exceptions, employers are also obliged to enrol employees into a compulsory pension savings scheme called 'KiwiSaver', and to make deductions from employee remuneration for that purpose as well as offering an employer contribution. Currently, employees must contribute a minimum of 3% of their salary or wages, with the employer also required to make a 3% contribution on top.

Other than the employer ACC levy, and the minimum employer contribution to KiwiSaver, New Zealand does not currently have any payroll or other employment tax which employers have to pay over and above an employee's salary and wages.

Employers must account for PAYE to the Inland Revenue Department. Failure to do so can attract penalties, and may amount to a criminal offence.

Independent Contractors in New Zealand

It is possible for individuals to be engaged as contractors rather than employees. Such individuals are recognised as being in business in their own right and having an arms-length relationship with those engaging them. Consequently they do not receive employment entitlements. For tax, ACC, levies, and holidays entitlements, it is important to accurately distinguish between employees and independent contractors.

Independent contractors are responsible for their own tax obligations and not entitled to the rights and protections provided to employees. However, the status of an independent contracting arrangement can be challenged, and it is the 'true nature' of the relationship rather than that which is described in any agreement which will be assessed by the courts. Those using contractors should bear in mind that if the status of the agreement is challenged, an employment relationship may be determined to exist for tax and entitlement purposes even if that was not intended by either party.

Jurisdiction and overseas employers

Foreign companies may employ staff in New Zealand but are required to be registered on the Companies Office Overseas Register if they are carrying out business in New Zealand and intend on hiring employees for that purpose.

Overseas companies need to be aware that their activities in New Zealand could lead to classification as a permanent establishment, requiring them to meet business tax obligations on any income-earning activity.

Generally, employers may choose which law applies to any employment agreement. However, notwithstanding any different choice of law, employees who are based in New Zealand will generally be entitled to the minimum standards and benefits extended by domestic employment legislation.

It is the employer's responsibility to ensure that all of its employees are legally entitled to work in New Zealand. Employees who are not citizens or residents will generally need a work visa. Such visas may limit the type of work undertaken by the worker and the length of any work in New Zealand. Foreign employees are generally subject to the same employment laws and tax requirements as domestic staff.

Employers are subject to prosecution and/or the imposition of fines if they employ a person who is not entitled to work under the Immigration Act, or in a manner inconsistent with that person's visa or fail to provide employment documents when requested by an Immigration Officer.

Employment law post Covid

The last of the Covid public health requirements in New Zealand were removed by the Government in August 2023. The onus is now on employers to determine what action, if any, they take to deal with Covid risks, bearing in mind that both health and safety obligations and the statutory duty of good faith apply to their dealings with employees in this area.

How we can help you

We have a large specialist employment law team with deep experience and expertise in assisting businesses at the point they are considering their first employee or contractor engagements in New Zealand, and then in supporting their actual set up. Please feel free to contact us to discuss your plans and how we can help.

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Environment and planning in New Zealand

Environment and planning in New Zealand

Dentons Kensington Swan is noted for its legal team's specialist expertise in resource management issues, with particular experience in the coastal marine area and water infrastructure. Its diverse practice provides a strong offering for heritage and conservation projects, advising on Māori legal issues. The team frequently assists clients in obtaining consent applications for major infrastructure and construction projects. It also advises a range of public sector organisations, government agencies, district councils and companies from the utilities and construction sectors.

— Environment & Resource Management Asia Pacific, 2023

3 partners

9 professionals

Ranked with:

Chambers TOP RANKED Asia-Pacific 2023

The LEGAL 500 ASIA PACIFIC LEADING FIRM 2023

Specialists in:

- Infrastructure
- Water regulation
- Energy
- Climate change
- Coastal environments
- Forestry
- Heritage
- Urban development

Key points about environment and planning law in New Zealand

The resource management system (under the RMA) is currently in the process of reform with the recent passing of two new pieces of legislation. However, the future of the reform and new enactments is uncertain as the incoming Government in October 2023 has promised to 'wipe them from the statute books' by 2024 and make a fresh start. For the most part, the RMA remains in force.

The Emissions Trading Scheme is New Zealand's current main climate change tool. In 2019 the Government passed the Climate Change Response (Zero Carbon) Amendment Act (Carbon Zero Act) which amended New Zealand's existing climate change legislation to transition the country to a low emissions, climate-resilient economy.

Historic heritage is primarily regulated by the RMA and the Heritage New Zealand Pouhere Taonga Act 2014. Resource consents or archaeological authorities may be required where historic heritage is affected by a proposed development.

Key points about environment and planning law in New Zealand

The Resource Management Act 1991 (RMA) is the primary source of environmental law in New Zealand and sets out the framework for managing both our natural and built environment.

The RMA is mostly administered by local government through the use of resource consents (which are essentially permits authorising particular uses or activities).

Regional and district plans contain rules that govern the use of natural resources and changes to the built environment, and are administered by the relevant regional and territorial authority.

Central government drives the direction of some of the key issues addressed in regional and district plans through national policy statements and national environmental standards.

The RMA has a range of penalty and enforcement provisions. Many of these are strict liability offences. The maximum fines for offences under the RMA is NZ$600,000 for companies and NZ$300,000 for individuals (or, for individuals, a prison sentence of up to two years).

The detail

The Resource Management Act 1991

The RMA regulates the use of land, water and air in New Zealand. The purpose of the RMA is to promote the sustainable management of natural and physical resources.

Functions under the RMA are divided as follows:

- Regional councils have responsibility for the control of matters relating to water and the discharge of contaminants;
- Territorial authorities (or district councils) have the responsibility for the control, use, development and protection of land, and the control of subdivision and noise; and
- Regional and territorial authorities share the responsibility for natural hazards and hazardous substances.

There are also several unitary authorities in New Zealand which perform the roles of both regional councils and territorial authorities.

The functions under the RMA are largely administered by the relevant council through permitted activities or resource consents that are granted or declined under district and regional plans.

Planning rules

Under the RMA, regional councils also have a policy statement, which sets the basic direction for environmental management in the region.

Regional councils are also required to have regional plans which contain rules relating to issues such as:

- the use and development of the coastal marine area;
- discharges to air, land or water; and
- contaminated land.

Every territorial authority is required to have a district plan which contains objectives, policies, and rules relating to land use and subdivision activities in the district. In addition, there are various national environmental standards relating to specific matters such as telecommunications facilities, electricity transmission, land contamination, forestry, and air quality.

Activities and developments are classified into a hierarchy of activity types and this determines whether a resource consent is required for any proposed activity. District and regional plans classify activities as:

- Permitted (do not require resource consent in order to undertake the activity);
- Controlled activities (cannot be declined but conditions can be imposed to mitigate effects);
- Restricted discretionary, discretionary, and non-complying (require resource consent and, if granted, will often be subject to specific conditions to mitigate any adverse environmental effects); and
- Prohibited (cannot be consented).

Resource consents

Resource consents are required for activities that contravene a rule in a district plan, or are not provided for as a permitted activity in a regional plan.

Types of resource consents include land use consents, subdivision consents, water permits, coastal permits, and discharge permits. Resource consents contain conditions that the consent holder must comply with and may include construction conditions as well as ongoing requirements and obligations post construction. Land use consents 'run with the land' so are not required to be transferred to a new owner of the property.

Other types of consents will generally require a transfer if there is a new owner of the relevant property, often subject to Council approval. While land use consents do not generally expire, other

consents such as water, coastal and discharge permits are granted for a fixed term and require renewal.

The consenting process

This process starts with an application to the relevant authority in the form specified under the RMA (and accompanied by an assessment of environmental effects). The local authority will decide whether the owners of adjacent land should be notified of the application and/or whether public submissions should be invited and a hearing held. If an application is publicly notified this will impact on the duration and complexity of the consenting process.

The RMA and the regional and district plans provide guidance to the local authority on how to make a decision on notification and on whether to grant consent for an application. The amount of discretion that the local authority may exercise, and the legal tests an applicant must meet in order to obtain consent, will depend on the nature of the consent sought (and whether it is envisaged by the relevant planning rules). The local authority can also impose conditions on any resource consent it grants in order to address any adverse effects on the environment.

There is a right of appeal to the Environment Court for both the applicant and, where an application is notified, for submitters. There is also a right of appeal from the Environment Court's decision to the High Court but on points of law only.

Alternative consenting pathways

In addition to the process set out above, there are several alternative pathways available to obtain a resource consent:

- The direct referral process allows for the resource consent application to be decided by the Environment Court in the first instance, rather than the relevant council. This pathway effectively bypasses the council level hearing and results in a hearing before the Environment Court. The application is publicly notified and members of the public have the right to lodge submissions. This process can be used to streamline the consenting pathway for large and complex applications which would likely end up in the Environment Court on appeal after a council decision in any event. There is a right to appeal the Environment Court's decision to the High Court, but this right is limited to points of law.

- A resource consent application may also be referred to a Board of Inquiry if the Minister for the Environment decides it is a nationally significant project. All submissions on the proposal will be considered by the board and they will make a final decision on the matter. It is possible to appeal the board's decision to the High Court, however appeals are limited to points of law.

Existing use rights

The RMA provides for "existing use rights" that allow the continued use of land in a way that contravenes a rule in a district plan where that use was lawfully established before the relevant rule was put in place. In addition to showing that an activity has been lawfully established, the environmental effects of the land use must also be the same as (or similar to) what they were before the rule became operative and the land use cannot have been discontinued for a period of more than 12 months. Activities that have existing use rights are not required to obtain resource consent.

In terms of regional plan rules, activities that were permitted, or were lawfully carried on without a resource consent, but which become controlled, discretionary or non-complying activities as a result of a new rule in a regional plan, may be continued for a limited period provided that the environmental effects of the land use must also be the same as they were before the rule became operative and the land use cannot have been discontinued for a period of more than six months. An application for a resource consent must be made within six months of the rule becoming operative. Where an application for resource consent has been lodged, the activity can continue until such time as the final decision is issued.

Designations

Designations are a mechanism that allow Ministers of the Crown, local authorities, and network utility operators (who have the status of

'requiring authorities' under the RMA) to identify, acquire and develop land for a public work or infrastructure. Designations are often used for public infrastructure such as transport networks, airports, telecommunication, and electricity and education facilities.

A designation will create a 'spot zone' over a particular site within a district plan. This 'spot zone' sets out the parameters of the work to be undertaken on the site without the need for land use consent (although regional plan consents are still required) and subject to compliance with any conditions on the designations. Designations are secured by lodging a 'notice of requirement' with the relevant district council. The process for considering notices of requirement is similar to resource consent applications except that the district council makes a recommendation on the notice of requirement and the requiring authority issues the decision. Submitters have a right of appeal to the Environment Court on the decision issued by the requiring authority.

A designation also restricts third parties from carrying out work on the designated land that will prevent or hinder the project or work to which the designation relates, without first obtaining the approval of the requiring authority.

National Environment Standard for Plantation Forestry (NES-PF)

The NES- PF came into force in May 2018 and aims to manage the environmental effects of plantation forestry activities in New Zealand through one set of rules that apply to forestry activities. Regional and district councils across New Zealand are now required to apply the rules in the NES-PF in relation to plantation forests. The NES-PF prevails over district or regional plan rules except where the NES-PF specifically allows more stringent plan rules.

In addition to addressing plantation forestry activities, the NES-PF regulations address afforestation, pruning and thinning of trees and slash, earthworks associated with forestry, river crossings, forestry quarries and harvesting of logs.

Some forestry activities have been classified as permitted activities under the NES-PF meaning that a resource consent is not required for these activities (although permitted activity standards need to be met and/or management plans put in place for some activities). Other activities require resource consent which must be obtained from the relevant council.

Liability

Under the RMA, the Environment Court can require a person to do something in order to avoid, remedy, or mitigate an actual or likely adverse effect on the environment relating to any land of which the person is the owner or occupier. Therefore, if you are purchasing land that may be affected by historic contamination issues, it is important to investigate this thoroughly and, if necessary, include appropriate indemnities or warranties in the sale and purchase agreement.

Historic contamination issues may arise in purchases of land where there have been industrial activities carried out in the past. Examples could include forestry and timber processing sites, and quarries on farm land. The RMA creates many strict liability offences, which mean that it is not necessary to prove that a person intended to commit an offence, or was reckless or negligent.

There are several prosecution options available to councils in the case of contaminated land, including:

- Issuing infringement notices;
- Abatement notices and enforcement orders; and
- Criminal offences.

Infringement notices are issued for minor cases of pollution and the penalty will usually be a low level fine. The infringement fees range from NZ$300 to NZ$1,000 depending on the offence under the RMA.

An abatement notice or enforcement order will be issued by the Environment Court and will require the recipient to comply with the RMA. This means that the recipient will need to cease the activity immediately and potentially remediate the situation. These notices and orders are issued for more serious contamination and recipients have a right to appeal. Criminal offences under the RMA carry a maximum fine for individuals of NZ$300,000 plus

NZ$10,000 per day for continuing offences, and a prison term of no more than two years.

A company, if convicted of an offence, can be subject to a maximum fine of NZ$600,000 plus NZ$10,000 per day for continuing offences.

Examples of criminal offences include:

- Contravening the provisions of an enforcement order or abatement notice
- Developing land without a resource consent; and
- Taking, damming or diverting fresh inland coastal water without a resource consent.

Historic heritage

In New Zealand, heritage is primarily regulated by the RMA and the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA).

The HNZPTA makes it unlawful for any person to modify or destroy any archaeological site without the prior authority of Heritage New Zealand. If you wish to do any work that may affect an archaeological site, you must obtain an authority from Heritage New Zealand before you begin. An archaeological site is defined as any place in New Zealand (including buildings, structures or shipwrecks) that was associated with pre-1900 human activity, where there is evidence relating to the history of New Zealand that can be investigated using archaeological methods. If a previously unknown site is uncovered during earthworks, work must stop and an archaeological authority will be required to in order to continue.

District councils or unitary authorities can include rules in their district plans which seek to protect a range of historic heritage resources. District plan rules commonly schedule and map heritage buildings and archaeological sites, and require resource consent to be obtained for activities which have an adverse impact on them.

Climate change policy in New Zealand

Internationally, New Zealand signed up to the Paris Agreement and is committed to reducing greenhouse gas emissions by 30% from 2005 levels by 2030.

In 2020, New Zealand committed to a 2050 domestic target of net zero emissions of all greenhouse gases other than biogenic methane, and a reduction of biogenic methane emissions by 24% to 47% below 2017 by 2050.

The New Zealand Emissions Trading Scheme (ETS), a cap and trade scheme, is one of the government's main tools to ensure New Zealand meets these targets. The ETS creates a financial incentive for participants to invest in technologies and practices that reduce emissions. It also encourages forest planting by allowing eligible foresters to earn New Zealand emissions units. The ETS covers some sectors (forestry, stationary energy, liquid fossil fuels, waste) but not others (agriculture is included nominally, but without any surrender obligations).

In 2020, the government made changes to the ETS by introducing, among other things, a cap on emissions so as to allow it to reduce the total emissions from the scheme, and the ability for the government to auction NZ emissions units every year.

The ETS is not the only tool used to reduce greenhouse gas emissions.

The New Zealand government published its first three emissions budgets in May 2022. Emissions budgets account for both ETS and non-ETS emissions, and used to determine New Zealand's progress in reaching its targets. These budgets are for the years 2022–2025, 2026–2030, 2031–2035, with their progress monitored by the Climate Change Commission, which was established in 2019 to advise the government on the policies needed to achieve its targets.

Legislative reform

In early 2021, the Government announced it would reform the resource management system by replacing the RMA with three new Acts:

- Natural and Built Environment Act (NBEA), as the primary replacement for the RMA, to protect and restore the environment while better enabling development.
- Spatial Planning Act (SPA), requiring the development of long-term regional spatial strategies to help coordinate and integrate decisions made under relevant legislation; and
- Climate Adaptation Act (CAA), to address complex issues associated with managed retreat, funding and financing adaptation.

This legislative reform came as a response to the Government (and wider) concern that the current system under the RMA "takes too long, costs too much and has neither adequately protected the natural environment, nor enabled housing or development where needed." (Minister David Parker 6 September 2022).

As of August 2023, the NBEA and SPA have been enacted into law. However, both have lengthy transition periods with the RMA being slowly phased out during a period of 7-10 years. During this time, different sets of rules will apply to different regions and the resource management landscape will be extensive and complex. More information on these reforms can be found in our article here.

With the recent election results in October 2023, it is clear that a change of government is on the horizon with the National Party coming in to take the reins. The National Party has made a commitment to repeal the new legislation and introduce a new fast-track consenting regime as part of its '100 day action plan.' A repeal at this stage would have little effect on the average resource user but would create uncertainty as to what the future resource management system in New Zealand will look like.

How we can help you

- Obtaining planning authorisations for large scale major infrastructure projects right through to smaller developments like single residential houses.
- Guiding you through the consenting process, from providing you with strategic advice in the early stages of your project to appearing for you in court if necessary.
- Seeking changes to regional and district plans both in terms of the zoning of properties and changes to the planning rules; or
- Conducting due diligence investigations to help you accurately assess environmental risks and your responsibilities under the RMA.

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Financial markets in New Zealand

Financial markets in New Zealand

Dentons has a highly recommended financial services team with expertise in managed funds, superannuation and advising offshore funds in relation to New Zealand investments. The team advises public bodies on the full range of investment funds law, as well as any reforms in financial markets regulation. It presents at the forefront of changes in financial markets regulation, with a significant presence in the regulation of wealth platforms and discretionary investment management services.

— Financial Services, Chambers and Partners Asia Pacific, 2023

3 partners

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Insurance

Financial Advice

Licensing and Regulation

Fintech

Key points about financial markets and services in New Zealand

The Financial Markets Conduct Act 2013 (FMCA) and its regulations are the primary pieces of law regulating the offering of, and dealing in, financial products and financial services (including financial advice) in New Zealand.

A license from the Financial Markets Authority (FMA) is required for offering certain financial products, and for providing financial advice to retail clients.

Unless an exclusion or exemption applies, there are numerous disclosure obligations and fair dealing obligations in the FMCA that all offerors of financial products and services must comply with.

Persons providing financial services and having a place of business in New Zealand will typically need to be registered on the Financial Service Providers Register (FSPR) in accordance with the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSPA). Those dealing with retail clients will also generally need to join an approved dispute resolution scheme.

Key points about financial markets and services in New Zealand

Financial advice for retail clients in New Zealand can only be provided by persons who are registered to do so on the FSPR and who are licensed to do so under the FMCA as Financial Advice Providers (FAP). All persons providing regulated financial advice must comply with statutory conduct duties under the FMCA.

From 1 April 2024, entities covered by the impending climate related disclosures regime (being climate reporting entities) must prepare and publish climate reports that are based on the Aotearoa New Zealand Climate Standards (Climate Standards) produced by the External Reporting Board (XRB).

From 31 March 2025, the Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI) will introduce a new regulatory and licensing regime into the FMCA for 'Financial Institutions', a category of which captures registered banks, licensed insurers, and licensed non-bank deposit takers (NBDTs), in relation to their conduct towards consumers. Additionally, Financial Institutions are required to comply with the supplemental regulations that prohibit certain target-based sales incentives, and regulate other types of incentives.

The detail

Regulation of financial product offerings

A financial product is an equity security, a debt security, a managed investment product, or a derivative. These terms cover the offer of traditional investment products such as shares, bonds, investment syndicates, investment funds, and superannuation/KiwiSaver schemes.

The rules are designed to ensure that retail investors are given sufficient information to make informed investment decisions, and have protections around governance (particularly for managed investment products).

Who must be licensed under the FMCA?

- managed investment scheme managers
- derivatives issuers
- discretionary investment management service (DIMS) providers who offer their products or services to retail investors
- providers of regulated financial advice
- from 31 March 2025 CoFI Financial Institutions will need to have a separate 'CoFI licence'.

The licensing process is administered by the FMA. For non-CoFI licences the process involves a thorough and detailed assessment of the provider's business and systems as well as the capability and suitability of its directors and senior management. The process by which the FMA will assess CoFI licence applications is considered below.

Exceptions to the requirement for licensing under the FMCA are precisely defined and include:

- offers to various categories of wholesale investors and wholesale clients
- offers through licensed intermediaries (which includes crowdfunding platforms and peer-to-peer lending providers)
- employee share purchase schemes and 'small' offers
- offers of financial products of a same class as a quoted financial product.

There are a number of more specific exemptions to licensing, such as for registered banks and for some incidental offers in New Zealand by overseas listed companies.

Product disclosure statements

Regulated offers of financial products must be made by way of a product disclosure statement (PDS) which complies with the FMCA and its regulations. The PDS must be provided to each investor and lodged online with the Registrar of Financial Service Providers before the regulated offer can be made.

Restrictions on the content of a PDS, as well as general representations and advertisements relating to financial products, include prohibitions on:

- false or misleading conduct
- making unsubstantiated representations
- offering financial products in unsolicited meetings or telephone calls.

In addition, the Registrar must be supplied with all required information and documents for the online register of financial product offers. The regulations prescribe the information and reports which must be provided in those documents, including historical and in some cases prospective financial information.

Any issuer of a regulated product is required to keep accounting records and have annual financial statements, which must be lodged with the Registrar and audited by a qualified auditor.

Secondary markets for financial products

The PDS regime does not normally apply to the secondary markets for financial products (i.e. financial products that have previously been allotted), although there are some exceptions to this, such as where the original allotment was made

for the purpose of a subsequent offer that is made within 12 months.

Dealings in financial products in the secondary markets require:

- the licensing of financial product markets (i.e. exchanges), and their supervision and regulation by the FMA
- the making of conduct rules for licensed markets operated by licensed market operators
- the continuous disclosure of material information by listed entities
- the continuous disclosure of substantial holdings (5% or more) and movements (of 1% or more) in listed entities
- the continuous disclosure of directors' and senior managers' dealings and 'relevant interests' in listed entities, irrespective of size
- prohibitions on, and remedies for, insider trading in quoted financial products issued by listed entities
- a market manipulation regime, which includes a prohibition on practices which give a false or misleading appearance with respect to the extent of active trading in, or the supply, demand, price, or value of, financial products traded on a licensed market
- rules relating to the trading of derivatives.

Regulation of financial services and financial advice

The relevant provisions of the FMCA have extraterritorial effect and cover services or advice provided from outside New Zealand into New Zealand.

The provision of 'financial services' is usually limited to financial service providers that are registered on the FSPR. A financial service includes (but is not limited to) any financial advice service, a regulated client money or property service (including a custodial service, being a registered bank or NBDT, acting as issuer or supervisor or regulated products, acting as an insurer or acting as a custodian. To be registered, a provider needs to participate in an approved dispute resolution scheme (if it provides services to retail clients), and must not be disqualified from registration.

Providers of financial services face disqualification from registration if a controlling owner, director, or senior manager:

- is an undischarged bankrupt
- is subject to a management banning order
- has been convicted of certain offences
- has convictions or banning orders under overseas law.

The FSPR is a publicly searchable electronic register.

Registration on the FSPR is generally only possible when the financial service provider is resident in New Zealand or has a place of business in New Zealand.

Registration can be stopped where the registration has, will have, or is likely to have, the effect of creating a false or misleading appearance of the extent of financial services provided in or from New Zealand, or of the extent of regulation by New Zealand law. An existing registered provider can be deregistered in the same circumstances.

Any person or entity providing financial advice to retail clients must be licensed by the FMA as a FAP. A provider may give advice itself or through a financial adviser or a nominated representative.

FAPs are required to make upfront disclosure of information to clients, especially about fees and remuneration.

Specific duties that apply to all persons providing regulated financial advice include:

- giving priority to clients' interests if there is a conflict between the interests of the client and the interests of the person giving the advice
- exercising the care, diligence, and skill that a prudent person engaged in the profession of

giving regulated financial advice would exercise in the same circumstances

- not recommending that an individual acquire a financial product that contravenes the FMCA or its regulations
- making prescribed information available when required to do so by the regulations
- not making information available where it contains false or misleading statements.

FAPs who have engaged advisers or nominated representatives face additional duties, including to:

- take all reasonable steps to ensure that all persons engaged to provide financial advice on the provider's behalf comply with the conduct duties
- implement processes and controls to, amongst other restrictions, limit the nature and scope of the advice given.

In each case, limited conditional exemptions are available for offshore-based providers.

Anti-money laundering and countering financing of terrorism (AML/CFT)

Financial service providers operating in New Zealand also need to be aware of their obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act).

The AML/CFT regime requires overseas entities engaged in business in New Zealand to:

- undertake and prepare a written risk assessment of the risk of money laundering and the financing of terrorism that it may reasonably expect to face in the course of its business
- establish, implement, and maintain an AML/CFT compliance programme under the administration of a dedicated compliance officer
- have the risk assessment and compliance programme audited at least every two years
- carry out various levels of customer monitoring and due diligence, identity verification, and suspicious activity and prescribed transaction reporting.

In June 2023 a suite of regulations were released which will amend the operation of the AML/CFT regime. These regulations will have a staggered implementation beginning on 31 July 2023 and with the final regulation coming into force on 1 June 2025.

The impending regulations have a broad range of effects ranging from clarifying definitions contained within the AML/CFT Act, setting prescribed thresholds and introducing new prohibited actions.

Conduct of financial institutions regime

Effective from 31 March 2025, the CoFI regime will introduce new conduct licensing requirements for registered banks, licensed insurers, and licensed NBDTs. These Financial institutions will be captured by the CoFI regime if they are in the business of providing one or more 'relevant services', being any of the following:

- acting as an insurer
- being a creditor under a consumer credit contract
- providing any of the relevant financial services referred to under the FSPA
- acting as an intermediary for any of the above services.

Financial Institutions will need to be licensed as such by the FMA in order to comply with CoFI. The regime establishes a 'fair conduct principle' which focuses on good customer outcomes and ensuring customers are, at all times, treated fairly.

Under CoFI, Financial Institutions are required to establish, implement and maintain an effective fair conduct programme (FCP) that is proportionate to the financial institution's business. A FCP must contain various policies, processes, systems and controls in place by the Financial Institution which ensures that the fair conduct principle is met.

The Financial Markets Conduct (Conduct of Financial Institutions) Amendment Regulations 2023 (CoFI Regulations) supplement CoFI and prohibit Financial Institutions and their intermediaries from giving 'prohibited incentives' to certain persons. The prohibited incentives ban any sales incentives which make reference to volume or value based targets to any customer-facing employees and to their immediate managers. Under the CoFI Regulations, intermediaries of Financial Institutions are also subject to the ban on giving prohibited incentives.

Climate-related disclosures (CRD) regime

The Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (CRD Act) makes it mandatory for 'climate reporting entities', which are FMC reporting entities who are considered to have a higher level of public accountability to make certain climate-related disclosures. Climate reporting entities include:

- listed issuers that are large and not excluded
- registered banks that are large
- licensed insurers that are large
- credit unions that are large
- building societies that are large
- managers of registered schemes (other than a restricted scheme) who are large in certain circumstances.

The CRD regime will require these climate reporting entities to make mandatory climate-related disclosures for the financial reporting periods commencing on, or after, 1 January 2023, with the first set of disclosures needing to be made in April 2024. The disclosures must be made in accordance with the Climate Standards published by the XRB. Despite the XRB establishing the Climate Standards, it is the FMA that will regulate compliance with the CRD Act.

From 27 October 2024, climate reporting entities will also be required to obtain independent assurance for specific aspects of their climate-related disclosures relating to their greenhouse gas emissions.

How we can help you

- Assisting with capital raisings, restructuring of capital holdings, dealing in financial products (including substantial product holder notification obligations), and wholesale investor validations.
- Assisting fund managers with licensing and regulatory compliance and conduct obligations, product development, governing documents, outsourcing, ISDA arrangements, institutional investment arrangements, product administration, and disclosure.
- Advising on regulatory reforms and compliance obligations for financial adviser services, including discretionary investment management services.

How we can help you

- Advising both established providers and new entrants on the design, implementation, and regulation of new FinTech products and services, including crowd funding platforms, robo-advice services, integration of technology into the offer and administration of financial products and services, and other disruptive technologies.
- Advising on prudential supervision and regulatory compliance obligations, as well as policy drafting, administration, and marketing.
- Acting for supervisors of investment funds and proportionate ownership scheme offerings, and advising on custodial and corporate trustee arrangements.
- Advising on AML/CFT obligations, including risk assessments, compliance programmes, suspicious transaction/activity reports, customer due diligence and identity verification requirements, and regulator inquiries.

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Immigrating to New Zealand

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Nothing was too much trouble. They communicated proactively and responsively at every point. Moreover, because of the pandemic, there was a range of accommodations that had to be made for hearings, but they managed well.

— Employment, Chambers and Partners Asia Pacific, 2023

Ranked with:

Chambers TOP RANKED Asia-Pacific 2023

The LEGAL 500 ASIA PACIFIC LEADING FIRM 2023

Key information to know about moving to New Zealand

New Zealand welcomes new migrants, with priority given to people who will contribute to the country by bringing valuable skills or qualifications, setting up a business, or making a financial investment.

There are also opportunities for family reunification by allowing residents and citizens to sponsor family members for residence. Anyone who is not a New Zealand resident or Australian national needs a visa to come to New Zealand.

If you are looking to set up a business in New Zealand, recruit from overseas, or move to, and work in New Zealand, your decision will be governed by immigration laws and policies.

The detail

Studying in New Zealand

If you are planning on studying full-time in New Zealand for more than three months, you will need a student visa. You are entitled to study in New Zealand for up to four years, provided you have an offer from an approved education provider or student exchange scheme.

Some student visas will allow you to work part-time during your study.

Working in New Zealand temporarily

Accredited Employer Work Visa (AEWV)

This visa allows employees of an accredited employer to live and work in New Zealand for up to three years. Accredited employers are organisations that are assessed by Immigration New Zealand and must meet strict criteria. This includes proof the business' sound financial history and compliance with employment and immigration laws.

Jobs filled through an AEWV must first go through a 'job check'. INZ checks that the roles pay market rate or at least median wage (with some exceptions)[1], that the employment agreement complies with New Zealand law and that the role has been adequately advertised domestically first (again with some exceptions). Domestic advertising is not required where the role; (a) pays at least twice the NZ median wage (the median wage is NZD$29.66 an hour as of 27 February 2023); or (b) is an occupation on INZ's list of in-demand jobs: the Green List.

Partners of AEWV holders can also obtain work rights through a 'Partner of a Worker Work Visa'. Their visa will have some conditions on the type of work they can do, including that it pays at least the median wage and that they are employed by an accredited employer. Partners of migrants with Green List roles or who earn more than twice the median wage, will not have any restrictions on their work rights.

Specific purpose or event category

Employers are able to recruit business people who are coming to New Zealand for a specific purpose or event, including business people, such as senior or specialist business people, on short term intra-group secondments who have a job offer either in a substantial New Zealand business or a New Zealand subsidiary of an overseas business.

This category of work visa is particularly useful when there is an urgent need for an employee of a multinational group to carry out work in New Zealand on a particular project. However, there are specific criteria that the employee must satisfy in terms of their seniority and/or specialist knowledge of the employer's business.

Working holiday

If an individual is aged between 18 and 30 years, they may be eligible to experience life in New Zealand on a working holiday.[2]

Seasonal work in the horticulture and viticulture industries / Recognised Seasonal Employer Limited Visa

New Zealand has several different policies for people who want to do seasonal work including planting, maintaining, harvesting, or packing crops in the horticulture and viticulture industries. Applicants must have a job offer before they apply.

[1] Roles in the tourism and hospitality sectors have been granted a temporary exception to the median wage threshold, with a lower wage of NZD$28.18 per hour. This temporary exception will end in April 2024.

[2] In a select few countries (Argentina, Canada, Chile, Czech Republic, Finland, Hungary, Slovakia, United Kingdom and Uruguay), working holiday visas are available to those aged 18-35. Canadian citizens are eligible to travel and work for up to 23 months, and 36 months for citizens of the United Kingdom.

Seasonal work in the horticulture and viticulture industries / Recognised Seasonal Employer Limited Visa

New Zealand has several different policies for people who want to do seasonal work including planting, maintaining, harvesting, or packing crops in the horticulture and viticulture industries. Applicants must have a job offer before they apply.

Nationals of China, Vietnam and the Philippines

There are special visa categories for nationals from China, Vietnam, Korea, Thailand, and the Philippines who are qualified and experienced in specific occupation and have a New Zealand job offer in that occupation.

Working and living permanently in New Zealand

There are a number of options available to people who wish to live and work in New Zealand permanently. This generally requires first obtaining a 'residence visa' through one of the pathways below. A residence visa allows you to live in New Zealand indefinitely (but subject to travel restrictions).

Migrants can then apply for permanent residence in New Zealand after two years. Permanent residence can be obtained through several pathways including by living in New Zealand for certain periods, obtaining tax residence, investing, starting a business, or by establishing a 'base' in New Zealand.

Skilled migrant visa

The Skilled Migrant category is for people who have the skills, qualifications, and experience New Zealand needs and who want to live and work permanently in New Zealand. This visa can include a partner and any dependent children under the age of 24, provided they also meet the English language requirement.

The system is points-based, allowing potential employees aged 55 years and under, and with reasonable English speaking ability, to claim points based on their skill level, work experience and qualifications. The newly amended process for accumulating points allows employees to claim up to 3 (of the required 6) points from a New Zealand occupational registration, their qualification or their job offer.[3]

Residence through AEWV

Migrants on an AEWV who a working in a Green List role, can apply for residence for themselves, their partner and dependent children. Those working in a 'tier one' role will be able to apply for residence immediately through the 'Straight to Residence Visa'. Those working in a 'tier two' role can apply through the 'Work to Residence Visa' and must have worked in New Zealand in that role for two years. Further requirements must also be met in relation to age, health, marital status and employment circumstances.

Employee of a Relocating Business

If you're a key employee of a business that is relocating its operations to New Zealand, you can apply for a work visa, and later a resident visa under the Employee of a Relocating Company category.

Pacific Access Category

Citizens of Kiribati, Tuvalu, Tonga and Fiji are afforded the opportunity to be granted residence in New Zealand every year through the Pacific access ballot. Applicants must be aged 18-45 years old, with a permanent, full-time job offer from a New Zealand employer.

Entrepreneur Work Visa

This visa is available if you intend to buy or establish a business in New Zealand, and be actively involved in that business. You must meet certain requirements, including making a minimum capital investment of NZ$100,000, and providing a detailed and credible business plan.

[3] The new points system comes into effect 9 October 2023.

Investor Category Visas

People wishing to make large investments in a business in New Zealand can apply for residence under one of two Investor Categories. Applicants may include their partners and dependent children (aged 24 and under) in their applications.

Investor Plus (Investor 1 Category):

- For migrants investing at least NZ$10 million in New Zealand in 'acceptable investments' for a period of three years. Applicants must reside in New Zealand for at least 44 days in each of the last two years of the three year period. Applicants who invest 25% of their investment in growth investments only need to spend a minimum of 88 days over three years.

- Applicants must also meet Immigration New Zealand's health and character requirements, but there is no requirement for the applicant to be able to understand or speak English.

Investor (Investor 2 Category):

- For migrants investing at least NZ$3 million in New Zealand in 'acceptable investments' for four years

- To qualify, the principal applicant must be under 65 years of age, have at least three years' business experience, and will be required to meet the English speaking requirements set out under Immigration New Zealand's instructions. Applicants are required to spend 146 days per year in New Zealand, or 438 days at any time over the four year investment period if they have invested a minimum of NZ$750,000 in growth investments. Applicants must also meet Immigration New Zealand's health and character requirements.

Holders of either category of visa may live, work and study in New Zealand. They may also apply for permanent residency, if all the visa conditions are met.

Temporary retirement

If you are 66 years of age or over, you may wish to retire temporarily in New Zealand. The Temporary Retirement Visa is for two years (renewable for further periods provided you continue to meet relevant criteria). You will need to invest NZ$750,000 in New Zealand for a period of two years (investment criteria apply), show that you have NZ$500,000 of maintenance funds as well as an annual income of NZ$60,000. You will also need to meet standard health and character requirements, and hold comprehensive travel and/or health insurance for the duration of your stay.

Family Categories

Many people already settled in New Zealand wish to have their close family join them. Further, family members may wish to come to New Zealand to be close to their relatives. There is a range of family policies facilitating partners, dependent children, parents, siblings, or adult children of New Zealand citizens or residents to come to live in New Zealand.

How we can help you

It is important that you only seek immigration advice from those who are legally able to provide it pursuant to the Immigration Advisers Licensing Act 2007. Our experienced immigration team are able to provide further guidance to the above summary. Please get in contact if you want to hire migrant workers, apply for a visa yourself, or apply for residency. Additionally, further information is available on the Immigration New Zealand website (www.immigration.govt.nz).

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Intellectual property in New Zealand

Intellectual property in New Zealand

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Copyright and Designs

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They understand our business from years of experience supporting us. They are experts in the IP and trade mark field. They are friendly and responsive and offer commercial and legal advice where appropriate.

— Intellectual Property,
Chambers and Partners Asia Pacific, 2023

Ranked with:

Key points about intellectual property in New Zealand

New Zealand has a strong and sophisticated system of registrable and unregisterable intellectual property (IP) rights, governed by international agreements, statute and case law.

The Intellectual Property Office of New Zealand is responsible for the registration of certain types of intellectual property rights in New Zealand. It operates an online register of these rights and interests.

A number of unregistered IP rights are also recognised in New Zealand.

Can be registered in New Zealand	Cannot be registered in New Zealand
Patents	Copyright
Trade marks	Trade secrets and know how
Designs	Unregistered trade marks
Plant variety rights	Confidential information
Company names	Printed circuit layout designs
Domain names	

The detail

Registered trade marks

A trade mark is a sign used to identify the goods and/or services of the owner. The best way to protect a trade mark in New Zealand is to register it. A trade mark registration gives the owner the exclusive right to use the mark for the registered goods and/or services.

Registered trade marks can include:

- Logos
- Words
- Colours
- Shapes
- Smells
- Signatures
- Sounds.

Labels Trade marks can be registered for goods and services in 45 classes under the Trade Marks Act 2002. A trade mark registration lasts for 10 years from the date of application but can then be renewed every 10 years for an unlimited period (on payment of renewal fees).

Registration gives the trade mark owner the right to take action for trade mark infringement against others using the same or confusingly similar trade marks.

Once a trade mark is registered the owner can use the ® symbol next to it, to show it is registered.

Unregistered trade marks

Unregistered trade marks can be very valuable. The owner of an unregistered mark may be able to bring an action for passing off against competitors who have adopted a confusingly similar mark in trade, or are otherwise attempting to appropriate the goodwill of an established trade mark or get-up. Such actions can also be brought under the 'misleading or deceptive conduct' provisions of the Fair Trading Act 1986.

The owner of an unregistered trade mark can use the ™ symbol next to it, to show it is a trade mark.

Business/company names

Registering a company under a particular name in New Zealand does not prevent another party from using that name, but it does stop registration of an identical name by another company. Registering or reserving a company name does not provide a defence to trade mark infringement and does not give the company the right to use the name as a trade mark.

Confidential information

New Zealand law also protects secret processes, formulae, or other genuinely confidential business information from being used or disclosed if obtained in confidence and used or disclosed without the consent of the owner/provider of the information. If confidential information is to be disclosed to a third party, it is always recommended that a confidentiality agreement be signed before the information is disclosed.

Copyright

There is no registration system for copyright in New Zealand. An original work will automatically qualify for copyright protection once created.

Copyright protects certain original works, including:

- Written works
- Artistic works
- Musical works
- Works of sculpture
- Sound and video recordings
- Television broadcasts
- Cable broadcasts.

New Zealand is party to many international agreements on copyright, which means that many copyright works created overseas are recognised in

New Zealand, and many copyright works created in New Zealand are recognised in other countries.

In New Zealand, copyright protection for three dimensional product designs that could have been protected by design registration is available. For industrially applied works, protection lasts for 16 years (or 25 in some cases), depending on the nature of the work.

In addition to copyright protection, the appearance of an article can be protected by registering a new and original design.

Registered designs

Design rights protect the external appearance of an article (including its pattern or ornamentation) and give the owner the right to prevent others from making, importing, selling or hiring an article covered by the registered design. The best way to protect a design in New Zealand is to register it. To be capable of registration, the design must be new and not purely functional. Designs can be registered for up to 15 years.

Importers can parallel import genuine goods, through unauthorised distribution channels, from foreign countries without infringing the copyright or trade mark rights of the New Zealand IP rights holder. Care must be taken in the use of copyright works and claims in the marketing of the goods.

It is illegal to import counterfeit goods, made without the owner's consent, into New Zealand.

Domain names

Businesses can register various New Zealand domain names including 'co.nz', '.kiwi', and '.nz'. There are no restrictions on the number of domain names a business can register.

The Domain Name Commission provides a dispute resolution service for 'cyber-squatting', which is similar to domain name dispute resolution services in other jurisdictions. The Courts have also protected businesses against cyber-squatting, on the basis of passing off and breach of the Fair Trading Act 1986.

.Parallel importation

Importers can parallel import genuine goods, through unauthorised distribution channels, from foreign countries without infringing the copyright or trade mark rights of the New Zealand IP rights holder. Care must be taken in the use of copyright works and claims in the marketing of the goods.

It is illegal to import counterfeit goods, made without the owner's consent, into New Zealand.

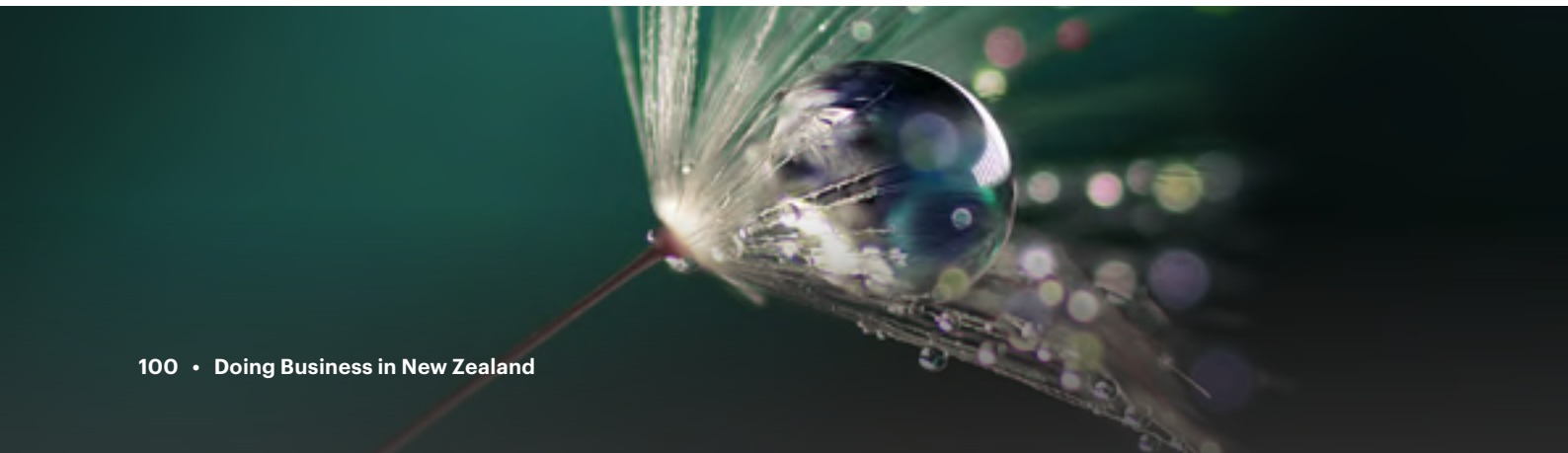
Patents

Patents are available for new products, processes, and methods of manufacture. A granted patent gives the owner the exclusive right to stop others from using, selling or importing a patented invention. The maximum term of a patent is 20 years.

To be able to register a patent in New Zealand, the invention must:

- Be new (not known or used anywhere in the world);
- Contain an inventive step; and
- Have an industrial application.

If an invention does not meet these criteria, it is not usually patentable. It is important not to publicly disclose a new invention before seeking patent protection for it.



How we can help you

- Registering your intellectual property (including trade marks, designs, plant variety rights, company names and patents).
- Enforcing your intellectual property rights against others.
- Auditing your IP to make sure there are no gaps in your protection.
- Lodging Customs Notices to help prevent counterfeit goods entering the market.
- Drafting confidentiality and intellectual property agreements for you.

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Investing in New Zealand

Investing in New Zealand

9 partners

19 professionals

Specialists in:

Acquisition of business assets and sensitive land for forestry, dairying, pastoral, lifestyle and residential development purposes

Pre-investment planning

OIO applications and notifications

Variations to existing consents or consent conditions

Great commercial advice and excellent client service. Specialist financial services practice.

— Investment Funds, Legal 500 Asia Pacific, 2023

Key points on investing in New Zealand

New Zealand welcomes overseas investment that is beneficial to our country.

The Overseas Investment Office (OIO) assesses applications from overseas investors to ensure they meet the criteria set out in the Overseas Investment Act 2005 (the OIA).

Overseas people wanting to invest in sensitive land, significant business assets and fishing quotas in New Zealand must get consent under the OIA (OIA Consent) before they do so.

Certain transactions that do not require consent under the OIA may still need to be notified to the OIO if the overseas investment is an investment into a strategically important business.

An overseas person includes an associate of an overseas person and an overseas organisation (e.g. entities that are incorporated outside New Zealand or more than 25% foreign-owned).

The detail

When consent by the OIO is required

You may need to apply to the OIO for consent if you are an overseas person wishing to acquire:

- sensitive land or an interest in sensitive land (for example, buying shares in a company that owns sensitive land); or
- significant business assets worth more than NZ$100 million; or
- fishing quotas or an interest in fishing quotas.

General guide to investing in New Zealand under the OIA

Investing in New Zealand	New Zealanders and Residents who live in New Zealand, and New Zealand-owned companies or trusts	New Zealand residents who live overseas, and businesses that are more than 25% overseas owned or controlled	Australian and Singaporean citizens and permanent residents who live in New Zealand	Other overseas people (including international entities)
Buying a home to live in	✓ Okay to buy	! Consent required	✓ Okay to buy	X Won't get consent
Developing residential land	✓ Okay to buy	! Consent required	✓ Okay to buy	! Consent required
Buying forestry	✓ Okay to buy	! Consent required	! Consent required	! Consent required
Investing in significant business assets over $100 million	✓ Okay to buy	! Consent required	! Consent required (but see higher thresholds below that may apply)	! Consent required
Investing in other sensitive land	✓ Okay to buy	! Consent required	! Consent required	! Consent required
Investing in strategically important business involved with military or dual-use technology	✓ Okay to buy	Must notify	Must notify	Must notify
Investing in another type of strategically important business	✓ Okay to buy	Must notify	Must notify	Must notify

Acquisition of significant business assets

An investment by an overseas person into significant business assets exceeding NZ$100 million (unless an alternative monetary threshold applies) will require OIA Consent, regardless of whether there is one transaction or a collection of related transactions.

Examples of investments in significant business assets include:

- the acquisition of more than 25% ownership or control interest (such as shares and securities) in a New Zealand business;
- the acquisition of property (including goodwill and other intangible assets) in a New Zealand business;
- the establishment of a business in New Zealand; or
- an increase in the overseas person's existing more than 25% ownership or control interest in significant business assets to more than 50%, 75%, or 100%.

Alternative monetary thresholds

Certain non-government investors from countries with overseas investment treaties with New Zealand have the benefit of higher monetary thresholds before consent is required for an investment in significant business assets. Those thresholds, for the 2023 calendar year, are as follows:

- Australia: NZ$586 million
- Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, Vietnam, the Republic of Korea, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Hong Kong, China and the United Kingdom of Great Britain and Northern Ireland: NZ$200 million.

Acquisition of sensitive land or an interest in sensitive land

You may be required to obtain OIA Consent for an acquisition of 'sensitive land', which includes:

- the purchase of freehold land;
- the lease of residential land for a term of three years or more (including any rights of renewal); or
- the lease of non-residential 'sensitive land' for a term of 10 years or more (including any rights of renewal).

The following table details what is considered sensitive land under the OIA:

Land is sensitive if it is or includes this type of land	...and exceeds an area threshold of:
Residential land (but excluding residential tenancies of less than five years)	Any
Non-urban land	5 hectares
Land on islands specified in Part 2 of Schedule 1 of the OIA	0.4 hectares
Land on other islands (other than the North or South Island)	Any
Marine and coastal area	Any
Adjoining the marine and coastal area	0.2 hectares
Bed of a lake (or adjoined)	0.4 hectares
Land held for conservation purposes (or adjoined)	0.4 hectares
A historic place, historic area, wahi tapu, or wahi tapu area that is entered on the New Zealand Heritage List/Rārangi Kōrero (or adjoined)	0.4 hectares
Land that is set apart as Māori reservation (or adjoined)	0.4 hectares
Land adjoining areas owned by iwi or a hapū and managed in accordance with the Conservation Act 1987	0.4 hectares
Land adjoining Te Urewa land, the Whanganui River, or the Maungatautari Mountain Scenic Reserve	0.4 hectares

The significant business assets and sensitive land consent requirements are separate. That is, if an overseas investment transaction is below the 'significant business assets' threshold, but involves sensitive land, then consent is still required.

National interest test

Certain transactions that are already screened under the OIA will be subject to a 'national interest test'. Such transactions may include:

- an investment in 'strategically important businesses'– such as businesses involved with military or dual-use technology, ports or airports, electricity, water, telecommunications, media businesses with significant impact and financial market infrastructure, businesses involved in an irrigation scheme, and critical direct suppliers to intelligence or security agencies;
- certain levels of investment by an overseas investor that are made by, or associated with, a foreign government; or
- other investments which have been identified by the relevant Minister as posing material risks to New Zealand's national interest.

Under the national interest test, the relevant Minister will be able to decline consent to an overseas investment transaction that it regards as contrary to New Zealand's national interest.

Criteria for investment in significant business assets

To obtain consent for an investment in significant business assets, the relevant overseas persons and all individuals with control of those relevant overseas persons (excluding those individuals who are New

Zealanders) must satisfy two groups of 'character and capability' factors (collectively referred to as the '**Investor Test**'). These factors include disclosing:

Character factors

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

Capability factors

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

If an overseas investor has previously satisfied the investor test and its circumstances have not changed, then the investor test component of its consent application will not need to be reassessed.

Criteria for investment in sensitive land

To obtain consent for an overseas investment in sensitive land (other than residential land), the same Investor Test must be satisfied.

In most cases, the applicant must also demonstrate that the investment will, or is likely to, benefit New Zealand (the Benefit Test). If the relevant land includes non-urban land over five hectares or is to be converted from farm land to forestry, then the benefit must be 'substantial and identifiable' (i.e. more than just likely to benefit New Zealand). There are more streamlined and targeted pathways available (e.g. the 'special forestry test') for obtaining consent to an overseas investment in residential land or existing forestry land.

The Benefit Test involves assessing the proposed investment against seven broad factors. These factors include benefits to the economy (such as the creation of job opportunities, increased export receipts and introduction of technology), natural environmental public access, protection of historic heritage, advancing a significant government policy, New Zealander participation in the investment, and other consequential benefits to New Zealand.

Benefits will be weighted using various considerations such as the size of the benefit that is likely to occur. For example, the creation of 100 jobs in New Zealand is likely to be given a greater weight than the creation of one job. To obtain consent, an investment from an overseas investor must deliver benefits over and above those that a likely New Zealand investor would otherwise be able to deliver.

Fresh or seawater areas

Some sensitive land may also contain 'fresh or seawater interests' (previously known as 'special land'), such as qualifying foreshore, seabed, riverbed or lakebed. Fresh or seawater interests must first be notified and offered back to the Crown before OIA Consent can be granted.

The Crown may accept the offer but may decide not to if the amenity and conservation value outweighed or the Minister is not satisfied with the amount of compensation to be paid to the owner of the fresh or seawater interest. If the Crown accepts this offer, it is only entitled to the part of the land which is "fresh or seawater interests" and compensation may be claimed.

Farm Land

If the relevant sensitive land is or includes 'farm land', it would first need to be advertised for acquisition on the open market in New Zealand, in accordance with the procedure set out in Overseas Investment Regulations. 'Farm land' includes land used for agricultural, horticultural or pastoral purposes, or for the keeping of bees, poultry, or livestock.

Standing consent

Overseas persons who are large developers of residential land or forestry investors or operators may apply for a standing consent. A standing consent covers a predetermined number of transactions and may have a use-by date. The advantage of having a standing consent is that it will allow an overseas investor to acquire property without having to obtain consent in relation to each

specific investment, if that investment falls within the parameters of the standing consent. This in turn gives the standing consent holder a competitive advantage when tendering for a property, as they would be able to submit an offer that is not conditional on OIA Consent and thus putting them on the same playing field as domestic investors.

Fishing quota or an interest in fishing quota

Fishing quotas are issued under the Fisheries Act 1996 (the Fisheries Act) and are the total quantity you are allowed to commercially catch of certain fish species. The Benefit Test applies when seeking to apply to acquire a fishing quota.

Except where approval has been obtained, no commercial fishing may be undertaken within the territorial waters of New Zealand by any person who does not own a fishing quota.

OIA Consent will be needed for an overseas person to gain an interest in a fishing quota, or rights or interests in a foreign-controlled business that owns or controls an interest in a New Zealand fishing quota. In determining whether to grant permission to an overseas person to acquire an interest in any fishing quota, the OIO must have regard to the benefits that may arise under each factor set out in section 57H of the Fisheries Act.

The national security and public order (NSPO) notification regime

The NSPO regime applies to overseas investments in strategically important businesses that do not otherwise require OIA Consent. Notification to the OIO is mandatory for investment in some industries, and voluntary for others.

Notification of a transaction is mandatory if the target business involves dual-use technology or is a critical direct supplier to New Zealand intelligence or security agencies. Transactions subject to the mandatory notification regime must receive Ministerial clearance before they can be given effect to.

Notification of other types of overseas investments in strategically important businesses is voluntary and can be done either before or up to 6 months after the transaction is given effect to.

Make an application for consent

All applications to the OIO must be made in writing via the OIO's online application forms.

The OIO will consider the application initially to verify that all the correct information has been provided and ask for the relevant application fee to be paid. If the application is accepted, it will be registered with OIO and they will begin their assessment.

The timeframe is highly variable. As a general indication, an application in relation to significant business assets could take 2 months or more, and in relation to sensitive land (other than residential or forestry land) could take 5 months or more. In the case of urgency (for example a takeover), the OIO does make every effort to make a decision within the applicant's timing requirements.

Investment planning

The OIO will require an investment plan for particular investments, particularly those in sensitive land. These investment plans must detail the benefits to New Zealand that are expected to come out of the investment or acquisition.

Careful planning in advance of making an investment in New Zealand is crucial. An overseas investor is required to provide a large amount of information about their proposed investment and the persons who will control the investment. Compared to consent applications, notifications demand less information but the OIO would still expect to see, at a minimum, basic information about the investment (e.g. the acquisition structure) and details of the people who will control the investment in the notification. Early preparation and engagement of legal advice will help you to mitigate the risk of delays, and provide more comfort regarding the viability of your proposed transaction.

How we can help you

- Acquire or invest in significant business assets and sensitive land for forestry, dairying, pastoral, lifestyle and residential development purposes.
- Pre-investment planning and structuring your investment.
- Prepare OIO applications and notifications, and liaise with the OIO throughout the application or notification process.
- Apply for variations to an existing consent or consent conditions.
- Respond to enforcement matters where significant business assets or sensitive land has been acquired without consent, or if there has been a breach of an existing consent.

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Superannuation in New Zealand

Superannuation in New Zealand

Specialists in:

KiwiSaver

Superannuation Schemes

Workplace Savings Schemes

2 partners

6 professionals

Dentons has a highly recommended financial services team with expertise in managed funds, superannuation and advising offshore funds in relation to New Zealand investments.

— Financial Services, Chambers and Partners Asia Pacific, 2023

Ranked with:

Key points about supperannuation in New Zealand

A government-funded superannuation entitlement is available to most persons living in New Zealand provided they meet the eligibility requirements below.

Individuals can choose to supplement their entitlement through private superannuation schemes and/or voluntary retirement savings scheme KiwiSaver.

If an employee is contributing to their KiwiSaver scheme, their employer is required to contribute at least 3% of the employee's gross salary or wages.

The detail

Government-funded superannuation

To meet the main requirements to receive a government-funded superannuation entitlement, an applicant must:

- be 65 years of age or over
- be a New Zealand citizen, permanent resident or hold a residence class visa
- be ordinarily resident in New Zealand at the time of the application
- have resided in New Zealand for 10 years or more (from July 2024 gradually increasing year on year to 20 years) depending on the applicant's date of birth, and subject to offset against any foreign pension entitlements, since attaining the age of 20 years[1]
- have resided in New Zealand, the Cook Islands, Niue or Tokelau for 5 years or more since attaining the age of 50 years.

A separate fund, the New Zealand Superannuation Fund, assists funding the pension obligation through Government contributions. The fund is managed and administered by a Crown entity known as the Guardians of New Zealand Superannuation.

Private superanuation

At present, there is no compulsory scheme for retirement savings in New Zealand.

Some employers establish or support staff superannuation schemes to provide retirement benefits to their employees. Employees who are not members of such schemes are able to make their own provision for retirement through a myriad of private savings products and retail superannuation schemes.

To offer a private scheme to retail clients the scheme must be registered with the Financial Markets Authority.

KiwiSaver

KiwiSaver is a voluntary retirement savings regime.

The scheme involves the automatic enrolment of new employees in one of a limited number of approved schemes (called default schemes), with an ability for those employees to 'opt out' within a limited period following commencement of their new employment, and the ability for existing employees and others to 'opt in'.

Anyone eligible to join KiwiSaver is entitled to join any one of a number of KiwiSaver schemes by making an active choice of scheme, including a default scheme.

Employees who are KiwiSaver members currently have to contribute at least 3% of gross salary or wages, but may contribute more at 4%, 6%, 8%, or 10% levels.

Employers are currently required to make a minimum contribution of 3% of gross salary or wages for each of their employees who are KiwiSaver members.

KiwiSaver members who are not employees do not have any fixed level of required contribution.

Savings are generally locked in to KiwiSaver until the member reaches 65 years of age. KiwiSaver members are generally free to move their savings from one KiwiSaver scheme to another at any time, but may only be a member of one scheme at a time.

Contributions and investment returns are taxed but retirement income is not.

[1] This residence criteria for New Zealand Superannuation and Veteran's Pension is in effect from July 2024, as provided by the New Zealand Superannuation and Retirement Income (Fair Residency) Amendment Act 2021. Prior to July 2024 the requirement is 10 years residence in New Zealand.

How we can help you

Dentons' Banking and Financial Markets team has extensive experience in all aspects concerning superannuation and KiwiSaver schemes in New Zealand. We are committed to providing practical advice to assist your business in relation to any of the above schemes.

We can advise both trustees and administrators of workplace savings schemes and managers of KiwiSaver schemes on:

- regulatory compliance obligations
- scheme administration
- disclosure issues.

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Tax in New Zealand

Tax in New Zealand

1 partner

1 professional

Specialists in:

Corporate taxation

International taxation

Mergers and acquisitions

Indirect taxes

Taxation of high-net worth individuals

Employee tax issues

Tax disputes

Transfer pricing

Tax governance

Key points about tax in New Zealand

The New Zealand taxation system is broad-based, taxing its residents on their worldwide income and non-residents on income derived from sources in New Zealand.

New Zealand's taxation system is heavily reliant on collecting income taxes from individuals (at a maximum rate of 39%) and companies (at a flat rate of 28%). This is complemented by a comprehensive GST regime, which is imposed at a single rate of 15% on almost all goods and services consumed in New Zealand.

Unlike most other developed economies New Zealand does not tax capital gains. It also not does have any wealth taxes, inheritance taxes, gift duties or stamp duties.

New Zealand has a comprehensive suite of international tax rules, including transfer pricing rules, a thin capitalisation regime and anti-hybrid legislation, all aimed at protecting its domestic tax base. It also has a network of 40 double tax treaties that help ensure that foreign investors are not subject to double taxation when investing in New Zealand.

The detail

Overview

New Zealand imposes income tax on its residents. Non-residents are taxed on New Zealand sourced income.

There are currently no gift duties, stamp duties, land taxes or inheritance or wealth taxes in New Zealand. Capital gains are only taxed in limited circumstances. Income tax is the most prevalent form of tax in New Zealand. Goods and services tax (GST) which is levied at the rate of 15% on the consumption of most goods and services in New Zealand is the other major source of taxation revenue.

Double-taxation treaties (DTTs) with various countries may create an exemption from full tax liability within New Zealand. Such exemptions exist to eliminate situations where an entity or individual may be subject to double taxation. New Zealand has a network of 40 DTTs in force with its main trading and investment partners.

The DTTs take precedence over the provisions of the Income Tax Act 2007 and contain 'tie-breaking' provisions to determine residence and which country has the primary right to tax income. New Zealand has also entered into a number of tax information exchange agreements, with more being frequently added, and is a party to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the MLI).

Taxation authorities

The tax system in New Zealand is administered by the New Zealand Inland Revenue. Inland Revenue collects most of the revenue that the government needs to fund its programs and administers a number of social support programs.

Business vehicles

Companies

Most business activity is carried out through limited liability companies. A limited liability company's legal status limits the liability its shareholders have in the business to the value of their shares in accordance with English common law principles.

Companies in New Zealand typically have limited liability (although it is possible for a company to have unlimited liability). A limited company is liable in full for all obligations that it incurs but the shareholders are only liable for any unpaid money owing on their shares.

Look through companies

Where a company elects and qualifies to be a `look through' company (LTC) it becomes fiscally transparent for income tax purposes. The income expenses, tax credits, rebates, gains and losses of an LTC are passed on to the shareholders pro rata to their shareholdings in the LTC. To become an LTC and maintain LTC status, a company must meet the following criteria for the whole of each income tax year that it is an LTC:

i. It must be a company;

ii. It must be a New Zealand tax resident company;

iii. Its shareholders must either be natural persons or trustees (including corporate trustees);

iv. It must not have more than five shareholders (who must be natural persons or trusts, with relatives counted as a single person)'look through counted owners'; and

v. The LTC must have only one class of shares.

Limited Partnerships

A limited partnership (LP) in New Zealand is an incorporated entity separate from its partners, having at least one general partner and at least one limited partner. Any person or body corporate (whether or not resident in New Zealand) can be a partner and there is no limit on the number of partners.

At least one general partner who is a natural person must be resident in either New Zealand or in Australia. If resident in Australia the general partner must also be a director of a company that

is registered in Australia. If the only general partner is a company registered in New Zealand then the resident director requirements will naturally apply to that company.

An LP is fiscally transparent for income tax purposes and not taxed at the partnership level. Generally, an LP will be structured so that only the limited partners receive income. Limited partners who are not resident in New Zealand will only be subject to tax in New Zealand on their share of the income generated by the LP that has a New Zealand source. An LP can register for other tax types in its own right, including GST and employment taxes.

In both a domestic and international context LPs have a range of applications including warehousing assets, and private placement collective investment schemes. LPs are also commonly formed for the transaction of agricultural, mining, mercantile, manufacturing or other business purposes. This can be particularly desirable where one or more of the investors is or are resident abroad because it can obviate withholding tax requirements and reliance on double tax treaties.

Ordinary Partnerships

The Partnership Law Act 2019 provides that a partnership is the relationship that subsists between persons carrying on business in common with a view to profit.

An ordinary (or general) partnership is a partnership comprised of defined individuals bound together by contract between themselves to continue together for some joint object either indefinitely or for a limited time. An ordinary partnership is essentially comprised of the persons originally entering the contract with one another. In this it differs from a company or limited partnership in which the members are constantly changing. It is common in New Zealand for professionals (such as lawyers and accountants) to organise themselves as ordinary partnerships.

Like limited partnerships, ordinary partnerships are fiscally transparent for income tax purposes.

Joint ventures

The term 'joint venture' is common in the New Zealand business vernacular and describes an enterprise subject to joint control by two or more undertakings, which are economically independent of each other. Rather than being an entity or structure with defined characteristics it connotes an association of persons for the purposes of a particular trading, commercial, mining, or other financial undertaking or endeavour with a view to mutual profit, with each participant usually (but not necessarily) contributing money, property or skill. As a result, joint ventures are not separately taxed, rather each joint venture partner is responsible for the income tax obligations arising in respect of their share of the income of the venture.

Trusts in New Zealand

New Zealand does not determine the tax residency of a trust based on the tax residence of its trustees as is the case in many other jurisdictions. Instead, New Zealand has a settlor-based regime which means the New Zealand tax treatment of a trust depends on where the settlor of a trust resides.

There are three types of trusts for New Zealand tax purposes:

i. Complying trusts;

ii. Foreign trusts; and

iii. Non-complying trusts.

A complying trust is a trust that has been settled by a New Zealand resident settlor and where all New Zealand tax filing obligations have been met and all of the trust's income has been taxed in full in New Zealand.

A foreign trust is a trust that has not had a New Zealand resident settlor at any time between December 17, 1987 and the date of a distribution.

A non-complying trust is a trust that is neither a complying trust nor a foreign trust.

There are ordering rules that apply to determine the source of distributions from foreign and non-complying trusts. The ordering rules exist to

prevent the trustee from manipulating distributions and making tax-free distributions ahead of, or instead of, taxable distributions.

The New Zealand income tax implications of distributions made under a trust turns on:

The classification of the trust (i.e. is the trust complying, non-complying or foreign). A trust's classification can change from distribution to distribution therefore the classification should be confirmed each time a distribution is made;

i. The nature of the distribution;

ii. The source of the distribution; and

iii. Whether the beneficiary is a New Zealand tax resident.

The following table summarises the tax treatment of distributions from complying, foreign and non-complying trusts in New Zealand:

	Complying Trust	Foreign Trust	Non-complying Trust
Pre 1/4/88* accumulated income	Exempt income	Exempt income	Exempt income
Corpus	Exempt income	Exempt income	Exempt income
Arm's length capital gain	Exempt income	Exempt income	Taxable distribution taxed at rate of 45%
Non-arm's length capital gain	Exempt income	Taxable distribution taxed at beneficiary's marginal rate	Taxable distribution taxed at rate of 45%
Post *1/4/88 accumulated income	Exempt income	Taxable distribution taxed at beneficiary's marginal rate	Taxable distribution taxed at rate of 45%
Trustee income	Taxed at trustee rate of 33%	Income derived from New Zealand taxed at trustee rate of 33%	Taxed at trustee rate of 33%
Beneficiary income	Taxable distribution taxed at beneficiary's marginal rate	Taxable distribution taxed at beneficiary's marginal rate	Taxable distribution taxed at beneficiary's marginal rate

**April 1, 1988 is the date that the current tax regime applying to trusts came into force in New Zealand.*

Most trusts are required to file tax returns with Inland Revenue in the same way as other taxpayers.

In addition, new rules requiring the disclosure of significant additional information regarding most trusts that earn assessable income came into effect from the 2021/2022 tax year (the year April 1, 2021 to March 31, 2022 for most taxpayers).

These rules require trustees to disclose to Inland Revenue:

i. Financial statements for the trust for the relevant income year that meet certain minimum standards; and

ii. Information regarding:

- Settlements made on the trust during the relevant income year;
- The settlors of any settlements made on the trust during the relevant income year;
- Distributions made by the trust during the relevant income year;
- Beneficiaries who have received distributions from the trust during the relevant income year; and
- Any person holding a power under the trust deed to appoint or dismiss a trustee, to add or remove a beneficiary, or to amend the trust deed.

Trustees are also required to provide other information to Inland Revenue on request.

Certain trusts are excluded from the disclosure rules, including foreign trusts (which are already subject to a similar disclosure regime), charitable trusts (which are, in general, exempt from paying tax in New Zealand), and trusts that are eligible to be Māori Authorities (i.e. trusts that are established to administer Māori owned property).

Financing a corporate subsidiary

Equity financing

Companies in New Zealand are financed by either debt or equity. A company financed by equity typically issues shares to the financier in exchange for capital contributed. Capital may be returned to a shareholder by dividend on profits or on a solvent winding up. In both cases the directors must be satisfied that the company is able to fulfil balance sheet and cash flow solvency tests.

Debt financing — financial arrangement rules

New Zealand has financial arrangement rules, which are a set of rules that require all returns on 'financial arrangements' to be taxed on a progressive nature over the term of the financial arrangement using a spreading method.

A financial arrangement is broadly defined and includes virtually any arrangement where there is a delay in giving or receiving consideration, including any debt instruments and securities such as bank accounts, loans and most derivatives. There are some exceptions that may be applicable in certain circumstances.

A person who is subject to the financial arrangement rules must account for all income and expenditure under the rules using an applicable spreading method regardless of whether the financial arrangement is of a revenue or capital nature. For example, in the context of a foreign currency bank account this would include any foreign exchange movement.

Without tax implications

Resident withholding tax (RWT) is imposed on interest at 28% for companies. Certain exemptions may apply.

Where a dividend is paid to a resident shareholder, RWT must generally be deducted such that the total of the attached imputation credits and RWT is 33% of the gross dividend (for example RWT of 5% must be deducted if a dividend is fully imputed except where the dividend recipient is another resident company and elects for no RWT to be withheld).

Non-resident withholding tax (NRWT) is imposed on interest paid to offshore lenders. The domestic rate of NRWT on interest is 15%. This is reduced to 10% under most of New Zealand's DTTs.

NRWT is imposed on dividends paid to non-resident shareholders. The rate of NRWT can be reduced to 0% under New Zealand domestic law where the dividend is fully imputed and a voting interest of 10% or more is held in the New Zealand company. Otherwise NRWT will generally apply at a rate of 30%. Once again though New Zealand's DTTs will generally reduce the amount of NRWT down to 15%, with some particularly favourable DTTs reducing the rate down to 5% or even 0% in some circumstances.

Approved Issuer Levy (AIL)

NRWT does not need to be deducted from the interest paid on offshore borrowings when:

i. The New Zealand borrower and overseas lender are not associated;

ii. The borrower is registered as an 'approved issuer';

iii. The debt instrument is registered;

iv. The borrower pays a tax-deductible AIL equal to 2% of the interest paid and which cost may be passed on contractually to the holder; and

v. The rate of AIL reduces to 0% on bonds that meet certain requirements e.g. offered to the public issued in NZD and listed on a recognised stock exchange or are widely held, and other requirements.

AIL is deductible for income tax purposes, meaning the tax-effected cost for a tax-paying corporate borrower is reduced to 1.44%. AIL is technically a stamp duty and is imposed on the borrower, meaning that unlike NRWT it is usually not a creditable tax for the foreign lender.

Thin capitalisation

'Inbound' thin capitalisation rules apply to New Zealand taxpayers controlled by non-residents, including branches of non-residents. The aim of the rules is to ensure that New Zealand entities or branches do not deduct a disproportionately high amount of the worldwide group's interest expense. This is achieved by deeming income in New Zealand when, and to the extent that, the New Zealand entities in the group are thinly capitalised (i.e. excessively debt funded).

The inbound rules include situations where non-residents are 'acting together' and include trusts where the majority of settlements have come from non-residents or from entities subject to the thin capitalisation rules.

The 'outbound' thin capitalisation rules are intended to operate as a base protection measure to prevent New Zealand residents with Controlled Foreign Company (CFC) investments and certain Foreign Investment Fund (FIF) investments from allocating an excessive portion of their interest cost against the New Zealand tax base.

An apportionment of deductible interest is required under the thin capitalisation rules when the debt percentage (calculated as the total group interest bearing debt/total group assets net of non-debt liabilities of a New Zealand entity or group) exceeds both:

i. 60% (for 'inbound' thin capitalisation) or 75% (for 'outbound' thin capitalisation) and

ii. 110% of the worldwide group's debt percentage.

Stamp tax

There is no stamp duty in New Zealand.

Corporate income tax

Income tax rate

Corporate taxation for New Zealand resident companies is at the rate of 28% on their worldwide income. An overseas company is taxed at the same rate, but only in respect of income that has a New Zealand source.

Capital gains

There is no comprehensive capital gains tax in New Zealand.

However, in certain circumstances capital gains are taxable. A significant example, which applies in the context of residential land, is the 'bright- line test'. This applies to tax capital gains derived in relation to the disposal of residential land that is owned for less than certain periods of time. The `bright line test' will apply if residential land is acquired:

i. On or after March 27, 2021, and disposed of within ten years;

ii. Between March 29, 2018 and March 26, 2021, and disposed of within five years;

iii. Between October 1, 2015 and March 28, 2018, and disposed of within two years (as two years have now passed since March 28, 2018 this is no longer relevant).

There are certain exemptions from the 'bright line test'. A significant exemption applies where the property is the 'main home' of the owner or a 'principal settlor' of a trust that owns the property. How the 'main home' exemption applies depends on when the property was acquired.

Note that at the time of writing the new National-led Government elected in October 2023 is proposing to reduce the bright-line period back to two years.

New Zealand also subjects commercial property transactions to taxation in a wide variety of circumstances. While not technically a capital gains tax, New Zealand's property tax rules will generally deem gains made by property dealers, developers and building to tax, as well as gains made by any person where the property was acquired with a purpose of resale.

Dividends

New Zealand operates an imputation system under which the payment of company tax is imputed to shareholders. Imputation credits can be attached pursuant to a ratio of 28/72 to cash dividends paid (or taxable bonus shares issued). Imputation credits reduce tax payable on a dividend (or taxable bonus shares) received by a shareholder. There are rules in relation to limits on carrying forward and the use of imputation credits in future years, which attempts to prevent streaming of imputation credits. There is a requirement for a continuity of shareholding of at least 66% to carry imputation credits forward.

Branch tax

Overseas companies that are carrying on business in New Zealand must register as an overseas company with the Companies Office.

If operated by a non-resident, the branch will be treated as a non-resident company for New Zealand tax purposes. Branch profits are subject to ordinary corporate rates of taxation, and there is no withholding tax on repatriated profits. A branch may also use utilise branch losses to offset foreign income.

Computation of taxable income

Taxable base

New Zealand resident companies are taxed on their worldwide income. Non-resident companies (including branches) are taxed only on their New Zealand-sourced income.

Deductions

Taxable income is calculated by subtracting allowable deductions from assessable income. Example of corporate deductions include:

i. Depreciation and amortisation;

ii. Salaries and wages;

iii. Property leasing costs;

iv. Start-up expenses;

v. Research and development costs;

vi. Interest expenses;

vii. Bad debts;

viii. Charitable deductions;

ix. Entertainment expenditure;

x. Legal expenditure;

xi. Net operating losses; and Payments to foreign affiliates.

New Zealand also operates a research and development (R&D) tax incentive, that offers a tax credit equal to 15% of eligible R&D expenditure up to NZD120 million. The credit offsets a company's income tax liability and in some circumstances is refundable. At least NZD50,000 of R&D expenditure must be incurred in an income year to be eligible for an R&D incentive claim

Income tax reporting

New Zealand has a self-assessment tax regime meaning taxpayers are required to file an income tax return reflecting their assessable income and deduct expenses for a tax or income year. Financial statements are required to be submitted to the Inland Revenue by the income tax return date.

The standard tax year is April 1st to March 31st however a company can apply to Inland Revenue to have a non-standard balance date in certain circumstances.

Cross-border payments

Transfer pricing

New Zealand has a comprehensive transfer pricing regime based on the Organisation for Economic Cooperation and Development Transfer Pricing Guidelines. The purpose of New Zealand's transfer pricing regime is to seek to protect the New Zealand tax base by ensuring that cross-border transactions (at least for tax purposes) are in accordance with the 'arm's length' principle.

The transfer pricing rules apply to arrangements for the acquisition or supply of goods, services, money, intangible property, and anything else where the supplier and acquirer are associated persons. Various methods are available for determining the 'arm's-length consideration'. The taxpayer is required to use the method that produces the most reliable measure of the amount that independent parties would have paid or received in respect of the same or similar transactions. Inland Revenue has published guidelines that make it clear that documentation is required to support a taxpayer's transfer prices.

New Zealand also has a unique restricted transfer pricing (RTP) regime that applies to the pricing of cross-border related party loans. The rules are complex and can require loans to New Zealand subsidiaries that are highly geared to be priced at interest rates that assume the New Zealand subsidiary has a credit rating only one or two notches lower than that of its global parent. The rules also require any so-called 'exotic features' of a loan (such as subordination or a term of more than five years) to be disregarded when undertaking the pricing exercise.

Withholding tax on passive income

Dividends, interest and royalties paid by a New Zealand resident company to non-residents are subject to NRWT which is generally payable at 15% on interest and royalties, and 30% on dividends (as explained above). These rates are subject to modification by DTTs between New Zealand and the recipient's country of residence.

Withholding tax on service fees

There is currently no specific withholding tax on service or management fees. However, the definition of royalty is very wide and can include what might be considered service fees in some other jurisdictions.

Multilateral Instrument

New Zealand signed the MLI on June 8, 2017 and deposited its instrument of ratification on June 26, 2018. The MLI entered into force in New Zealand from October 1, 2018 and came into effect from the latest of the dates on which the MLI enters into force for New Zealand and the other jurisdiction:

i. For withholding taxes: from January 1 of the following calendar year; and

ii. For all other taxes: for taxable periods commencing on or after the expiry of six calendar months.

New Zealand has listed 37 double tax agreements to be covered by the MLI. New Zealand has adopted the minimum provisions of the MLI as well as Article 3 (Fiscally Transparent Entities), Article 4 (Dual Resident Entities), Article 8 (Dividend Transfer

Transactions), Article 9 (Capital Gains), Article 10 (Anti-Abuse Rule for Permanent Establishments), Article 11 (Right to Tax Own Residents), and Articles 12 to 15 (Avoidance of Permanent Establishment Status).

International tax reform

On October 8, 2021, New Zealand, along with over 135 other countries and territories, committed to a two-pillar plan for international corporate tax reform that supports the OECD Inclusive Framework's 'Tax Challenges Arising from Digitalization' project.

On May 5, 2022 Inland Revenue released a paper for public consultation on the implementation of the Pillar Two rules for New Zealand. As New Zealand is part of the Inclusive Framework the consultation paper did not seek feedback on technical details, but rather on broader questions including whether New Zealand should adopt the Pillar Two rules, when the rules should be effective from and how best to translate the rules into New Zealand law. This was followed on May 18, 2023 by the introduction of the Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill (the Bill) which proposes to implement the Pillar Two rules.

The draft legislation contained in the Bill has been introduced through incorporating the OECD rules, as opposed to drafting New Zealand specific legislation. The Bill does not contain a specific application date. This will be set by the New Zealand Government once it determines that a critical mass of countries have adopted the Pillar Two rules. The application date will not be earlier than January 1, 2004 for the Income Inclusion Rule and January 1, 2025 for the Undertaxed Profits Rule.

New Zealand's Inland Revenue estimates that out of approximately 1,500 multinational groups that will be within the scope of the proposed rules, only 20-25 are headquartered in New Zealand. As a result Inland Revenue is not expecting the Pillar One or Pillar Two rules to generate much additional tax revenue.

Payroll taxes

New Zealand has a pay as you earn (PAYE) regime. Any person who makes a PAYE income payment must withhold tax from the payment under the PAYE rules. The PAYE rules specify how much tax must be deducted and when it must be paid to Inland Revenue.

Individual taxpayers are taxed at progressive or 'marginal' tax rates. For the year ending March 31, 2024 the individual tax rates are:

- Income up to NZD14,000: 10.5%
- Income over NZD14,000 and up to NZD48,000: 17.5%
- Income over NZD48,000 and up to NZD70,000: 30%
- Income over NZD70,000 and up to NZD180,000: 33%
- Income over NZD180,000: 39%

Note that the National-led Government elected in October 2023 is proposing to adjust these income tax rates to the following, with effect from 1 July 2004:

- Income up to NZD15,600: 10.5%
- Income over NZD15,600 and up to NZD53,500: 17.5%
- Income over NZD53,500 and up to NZD78,100: 30%
- Income over NZD78,100 and up to NZD180,000: 33%
- Income over NZD180,000: 39%

Employer superannuation contribution tax (ESCT)

Employers' contributions to an approved superannuation fund (excluding foreign schemes) are subject to ESCT. This includes employer contributions to KiwiSaver (which is a type of registered superannuation scheme).

ESCT is generally deducted at the employee's relevant marginal rate based on the employee's total salary or wages and employer superannuation cash contributions paid to the employee in the previous year.

KiwiSaver is a voluntary retirement savings scheme to which employees make contributions of at least 3% of their gross salary or wages. Employers are required to make KiwiSaver deductions from the employee's wages and forward them to Inland Revenue. Employers must also pay compulsory employer contributions of at least 3% of the employee's gross salary or wages.

Fringe Benefit Tax (FBT)

FBT applies to benefits provided by employers to employees such as motor vehicles, low interest loans and subsidised goods or services. It is levied on employers according to the taxable value of the fringe benefit provided. The tax rate varies with the tax rate of the employee receiving the benefit.

Pension plan

A pension payment is treated as an item of salary or wages and therefore tax should be deducted at the appropriate rate according to the PAYE tax deduction tables.

Provincial payroll taxes

Not applicable in New Zealand.

Indirect taxes

Goods and services tax

GST is charged on the supply of goods and services made in New Zealand by a registered person in the course or furtherance of a taxable activity, provided that the supply made is not an exempt supply (for example, the supplies of financial services and residential rental accommodation). Registration is compulsory if supplies exceed NZD60,000 in any 12-month period. The standard rate of GST is 15%.

Certain supplies can be zero-rated, which means that GST is calculated at the rate of 0%. These include the supply of exports, the sale of a business as a going concern and any transactions involving the transfer of commercial property (including leases of commercial property) between two GST registered parties.

Other supplies are treated as exempt from GST, which means no GST is charged on the supply and that no GST input tax credits are able to be claimed in respect of costs incurred in making the exempt supply. The main categories of exempt supplies are financial services and the transfer or rental of residential property.

Groups of related entities can form a GST group. If entities form a GST group, they nominate one member to be the group's representative, which then attends to all GST-related compliance on behalf of the group. Transactions within a GST group are disregarded.

Since December 1, 2019 GST has also been levied on low value (less than NZD1,000) imported goods into New Zealand. This can require non-resident suppliers of goods into New Zealand (including online marketplaces) to register for and charge New Zealand GST.

Finally, non-resident suppliers of remote services (e.g. TV and movie streaming services, suppliers of e-books, and online newspaper and magazine subscriptions) to New Zealand resident consumers must register for and charge New Zealand GST if their supplies into New Zealand exceed NZD60,000 in a 12-month period.

Land Transfer Requirements

Due to recent changes to land transfer legislation to address potential taxation issues, most buyers (including overseas buyers) are now required to provide an Inland Revenue Number (IRD Number) and any foreign equivalent of IRD Numbers at the time of purchase. In order for overseas buyers to apply for an IRD Number they must have a fully functioning New Zealand bank account.

Tax Depreciation

Depreciation can be claimed on building fit outs, but not on most buildings or land. Until April 1, 2011, buildings acquired after March 31, 1993 could be depreciated at 4% diminishing value or 3% straight-line, based on an estimated useful life of 50 years. The plant and capital equipment are depreciated at different rates, reflecting their economic life. Any depreciation claimed in the past is clawed back as income if a building is sold at a profit over the tax book value. Depreciation deductions have been re-introduced for non-residential buildings from the 2020/21 income year at 2% diminishing value or, 1.5% straight line.

Fit outs on commercial premises are depreciable at the rates listed in Determination DEP 1. Residential building fit out is not depreciable. If a fit out has been historically depreciated at the same rate as the building, 15% of the tax book value of the building is treated as equal to the fit out, and depreciation at 2% straight-line is permitted.

How we can help you

- Undertaking tax due diligence on New Zealand acquisition targets.
- Providing tax structuring and funding advice for New Zealand acquisitions and/or expansion activity (in co-ordination with other Dentons global offices and/or your existing offshore tax advisers).
- Reviewing the tax clauses of key contracts entered into in New Zealand.
- Providing advice on the implications of providing offshore goods and/or services to New Zealand customers.
- Advising on the tax implications of employing personnel in New Zealand.
- Advising on the personal tax implications of moving to New Zealand.
- Assisting with tax disputes with New Zealand Inland Revenue.

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