Doing Business in Aotearoa

New Zealand Guide

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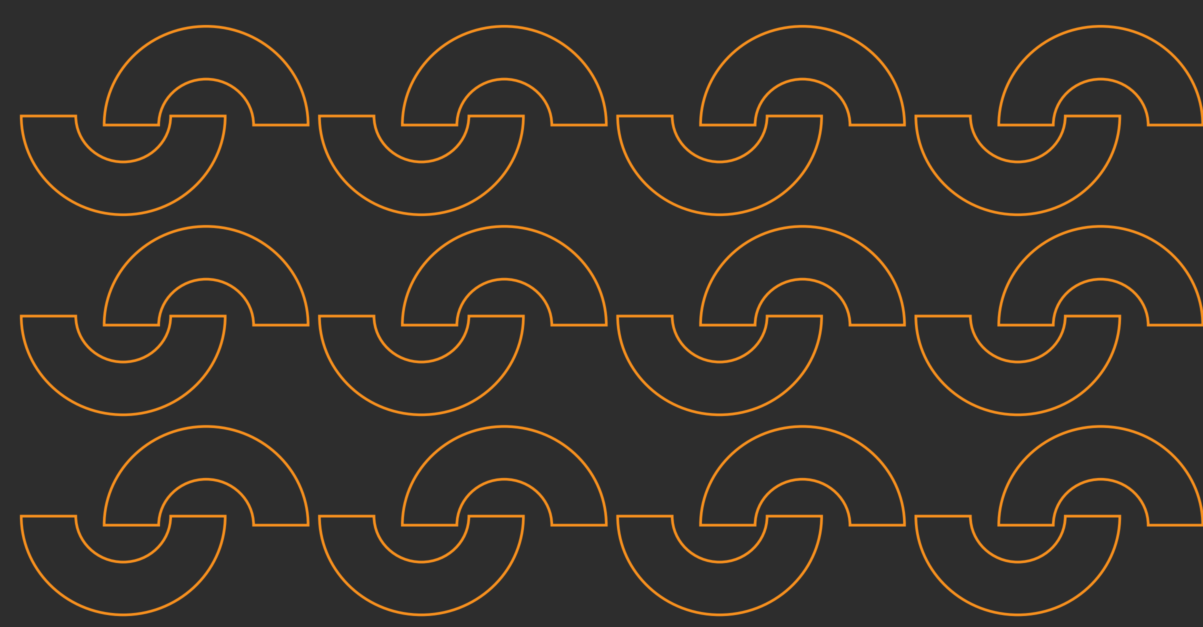

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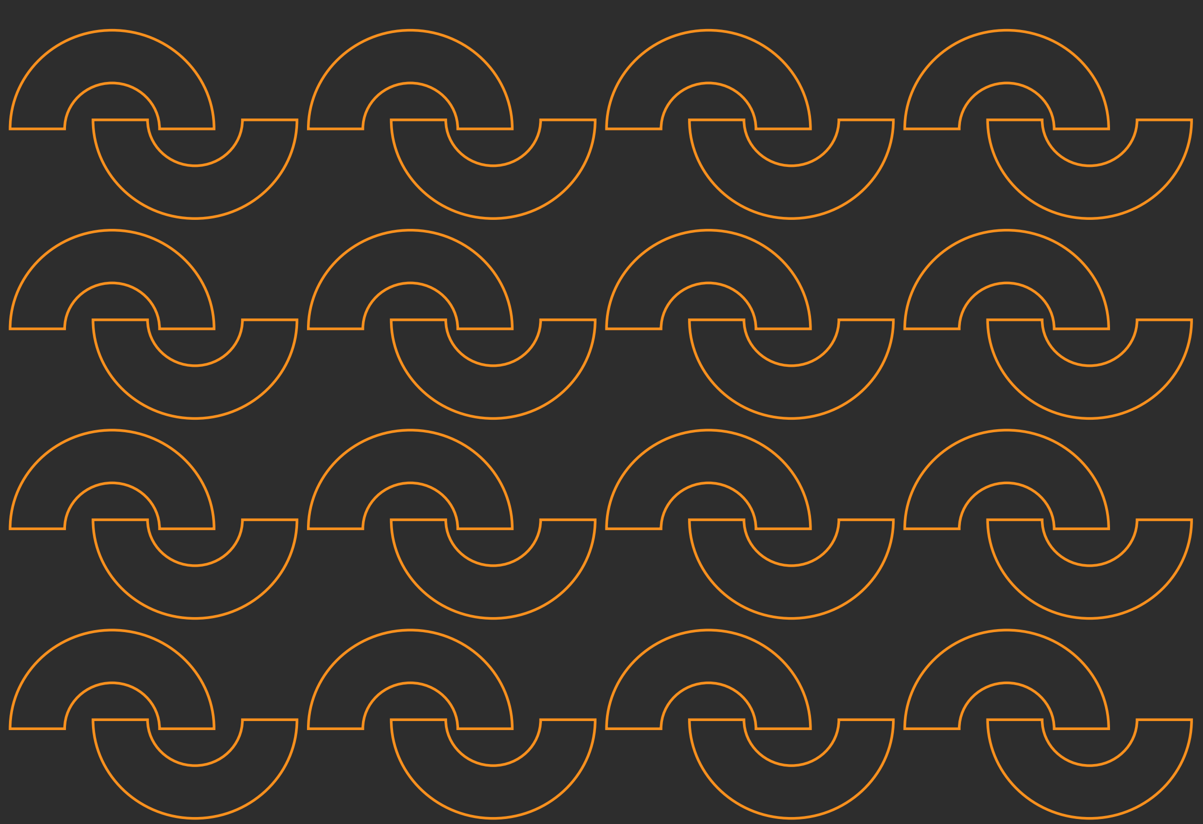


About PwC and PwC Legal

Kia ora,

As we look to the future, it's clear that change will continue to be the one constant – both here in New Zealand and around the world. These rapid changes bring both challenges and opportunities.

At PwC New Zealand, we help our clients respond to this changing environment so they can deliver sustained outcomes that support businesses, the economy and our wider communities and societies. Part of this is assisting clients to migrate to and invest in Aotearoa New Zealand. This easy-to-use guide brings together our knowledge and experience of doing business in New Zealand across PwC New Zealand and PwC Legal.

It provides an overview of our unique economic, social, and regulatory landscape and sets out the business structures, capital markets, mergers and acquisitions, overseas investment rules, taxation and other key laws and regulations that you should be aware of before seeking to invest or do business in New Zealand.

We hope you find this guide helpful and should you require more information about the migration, business, and investment opportunities in New Zealand, please contact our team. Through our wide range of services and global network of experts, we can help make entry into or expansion within New Zealand easy for you.

We look forward to hearing from you.

Andrew Holmes
CEO & Senior Partner

Working together to deliver value to your business

Every day more than 328,000 PwC people in 152 countries work hard to build strong relationships with others and understand the issues and aspirations that drive them. In New Zealand, PwC employs over 1,700 people and has offices in the Auckland, Waikato, Hawke's Bay, Wellington and Canterbury regions.

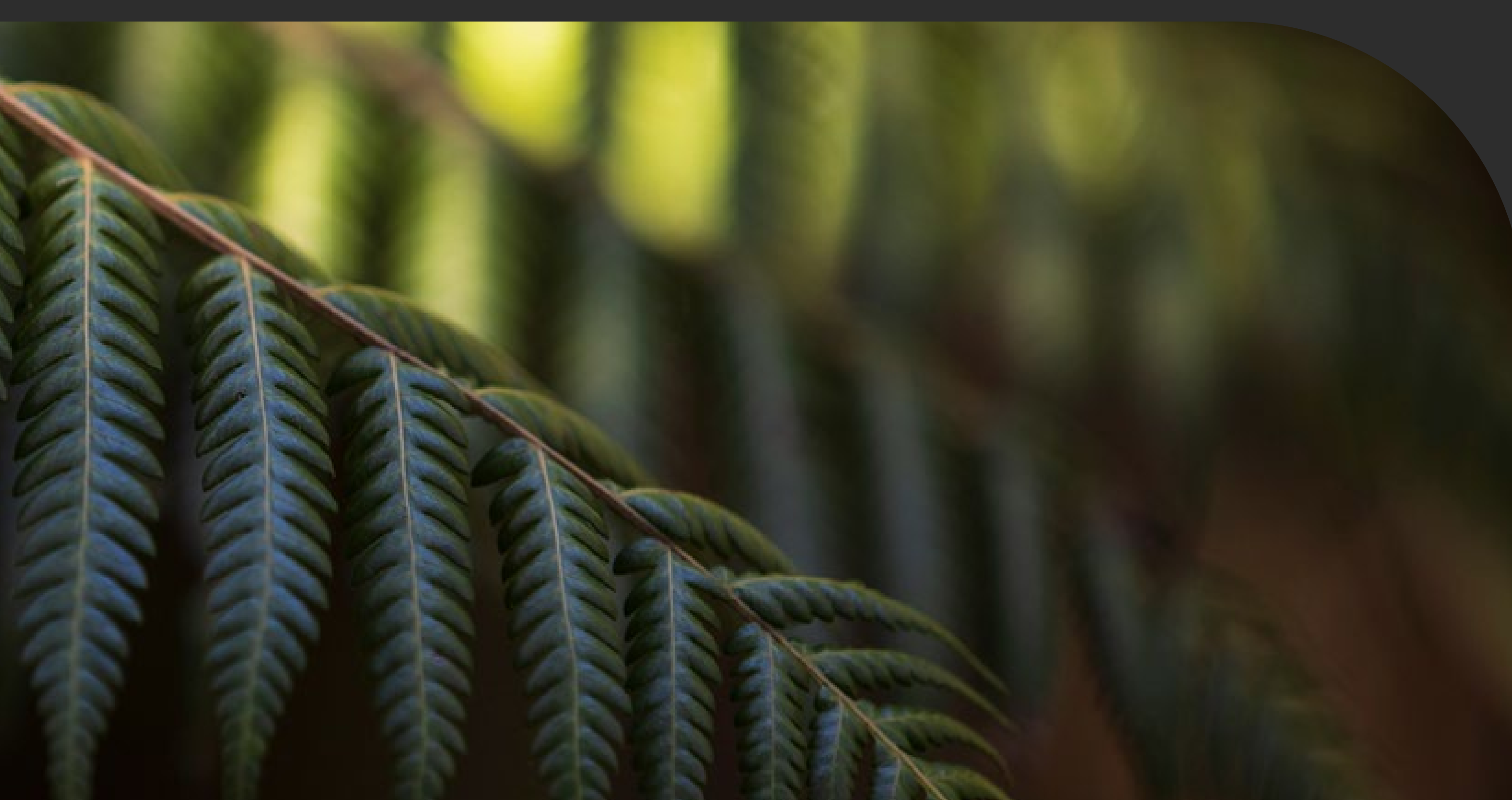
Over and above our traditional service offerings, PwC New Zealand also has a strong industry focus, with multi-discipline teams dedicated to key industry groups in both global and national markets. For our clients, this means the best local knowledge combined with the broadest global experience.

Our partners and staff are dedicated to solving the complex problems businesses are facing in today's changing marketplace. We have the resources to meet your needs through our truly integrated global network.

PwC Legal – integrated legal expertise

PwC Legal offers legal expertise across a broad range of practice areas and is part of the largest legal services network by geography, with over 3,700 lawyers worldwide. While technical excellence is at the core of what we do, the global breadth of our business and market insight differentiates us from traditional law firms, allowing us to deliver clients a fully integrated legal, financial, tax and accounting service.

In today's fast-moving world, it is more important than ever to have a legal partner who understands all aspects of your business. This document brings together the diversity of expertise and skills across PwC Legal and PwC New Zealand to help you navigate the changing and complex business environment.



1 Introduction

Aotearoa New Zealand as an investment opportunity

With the global markets focused towards Asia, and increasing geo-political instability, New Zealand is a desirable investment destination. New Zealand has a stable democratic political system, with strong legal institutions and a resilient economy. This stability, coupled with a transparent and open-market economy, and free floating currency, provides great opportunities for overseas investment.

Internationally, New Zealand is consistently recognised as having a stable and business friendly environment. New Zealand ranks sixth on the Index of Economic Freedom 2023 and was ranked one of the least corrupt countries in the world in Transparency International's 2022 Corruption Perceptions Index (alongside Denmark and Finland).

The New Zealand Government welcomes sustainable, productive and inclusive overseas investment and recognises its contribution to the overall prosperity of the country.

Government and the Legal System

New Zealand is an independent nation and its Government is modelled on the Westminster system.

This system is based on separation of powers, a concept intended to prevent abuses of power within Government, with each branch acting as a check on the others. The Government is led by the Prime Minister and consists of three branches: Parliament, Executive and Judiciary.

Laws are written by the Executive and are passed through Parliament. Parliament is elected by the public through a democratic election every three years.[1] It determines which laws to pass by examining and debating proposed laws, also known as bills. The Executive is made up of the Prime Minister and the Cabinet Ministers, who administer the law. Some of their powers and obligations are delegated to local councils and tribunals. The Judiciary interprets and applies the law by hearing and deciding cases, and keeps the balance between the power of the Government and the rights and responsibilities of New Zealanders.

Business Landscape

New Zealand's rich natural resources have afforded the country with significant resilience against economic disruption. New Zealand's primary sector remains integral to the economy and has remained financially robust, despite the significant impacts of recent severe weather events and the availability of labour and supply chain challenges.

Unlike most OECD developed economies, New Zealand has a remarkable reliance on the food and fibre sector as a significant contributor to its prosperity, reaching a record $56.2 billion in export revenues and representing the country's largest contributor to the tradable economy.[2]

Leveraging New Zealand's natural comparative advantages will continue to prove to be a prosperous strategy to continue making world-leading strides forward in the food and fibre sector. While quality products will always be in demand, New Zealand has the opportunity to strategically position its food and fibre sector to primarily offer high skills, knowledge, technology, and capability to countries with the existing resources for production. Much of New Zealand's success in the food and fibre sector can be attributable to its capability in processes, systems, and technology developed to turn sunlight and nutrients into a broad range of products for consumers around the globe.

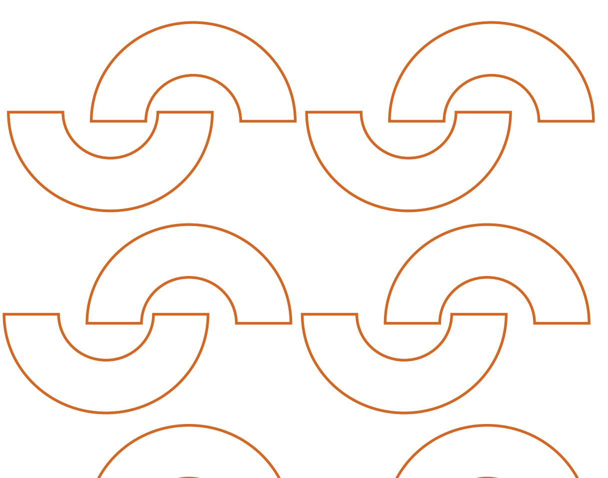
1 The term of Parliament is being reviewed by the current Government, following the recommendation of an Independent Electoral Review to extend that term to four years, subject to a binding referendum.

2 https://www.pwc.co.nz/insights-and-publications/2023-publications/transforming-nzs-food-and-fibre-sector-for-global-prosperity.html

International Trade

New Zealand's major export partners include China, Australia, the United States, Japan, the United Kingdom and South Korea. Taking advantage of its international reputation with a strong and growing network of international trading partners, New Zealand has successfully concluded 14 free trade agreements (FTA), including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), a partnership with 11 key economies in the Asia-Pacific, and long-standing FTAs with Australia and China.

As a party to the Regional Comprehensive Economic Partnership, New Zealand has improved market access to 14 key markets that go beyond the existing FTAs. The New Zealand-United Kingdom FTA came into force on 31 May 2023 which further strengthened New Zealand's trade and investment ties with the United Kingdom. New Zealand is also in negotiations to conclude a FTA with the Pacific Alliance, upgrade existing FTAs and create new rules on emerging issues such as the digital economy.



Invest in Aotearoa New Zealand

New Zealand has a strong reputation for innovation, particularly in agri-tech and bio-tech products and services, and a food and fibre sector that is highly responsive to global opportunities. It also enjoys a thriving investment ecosystem, with significant growth in the number of transactions and capital invested in recent years.

New Zealand is ranked third overall for competitiveness by the International Tax Competitiveness Index.

New Zealand's stock exchange is the first to open in the world each business day. The country also hosts several international and domestic banking institutions.

The labour force in New Zealand is skilled and productive, and robust labour laws ensure competitive wage rates are available.

New Zealand is committed to immigration policies that attract world-class talent, especially in the construction, engineering, healthcare, primary industries, and ICT industries.

2
Business Structures

Doing business through Aotearoa New Zealand entities

New Zealand is widely regarded as one of the easiest places in the world to start a business. New Zealand law allows overseas investors to set up businesses in a relatively short space of time, which allows such parties to own assets, operate businesses, employ local employees and enter into contracts with third parties in New Zealand.

New Zealand corporate entities are simple to form, globally recognised, and comparable to their international equivalents.

If an overseas company is "carrying on business" in New Zealand, it is required to register with the New Zealand Companies Office as a branch. There are a number of different types of corporate entities that are used in New Zealand and the most common are limited liability companies, overseas branches, and limited partnerships.

Other less common types of corporate entities include unlimited liability companies, incorporated societies, general partnerships and charitable trust boards.

Limited liability companies

The most commonly used corporate entity in New Zealand is the limited liability company. Limited liability companies are relatively easy to set up, and establishment and ongoing administration costs are minimal, which can be attractive to overseas companies looking to establish a local subsidiary entity.

In New Zealand, limited liability companies provide limited liability to their shareholders, which means such shareholders are generally only liable for money they have contributed or have agreed to contribute to the company (for example, money owed on shares that have been issued to them). A board of directors is responsible for governing the company, making various business decisions and overseeing the general operations of the company.

Establishment

Limited liability companies in New Zealand are governed by the Companies Act 1993 (Companies Act).

Incorporating a limited liability company in New Zealand is a relatively simple process, and requires confirmation of certain details and an application to the New Zealand Companies Office.

To incorporate a limited liability company in New Zealand, the company must have at least one director, one shareholder, and one share. It must also have a physical registered office address and an address for service in New Zealand. While these are minimum requirements, there are no minimum capital requirements, restrictions on the size of a company's share capital or the number of shareholders or directors (albeit some additional regulatory considerations for certain companies with over 50 shareholders).

While there are no residency requirements on shareholders, limited liability companies in New Zealand must have at least one New Zealand resident director, or one Australian resident director who is also a director of an Australian registered company.

Once the limited liability company details above are confirmed, the application for incorporation may be submitted to the Companies Office. If needed, an application for an IRD number, GST registration and registration as an employer with the Inland Revenue may be submitted at the same time.

Upon incorporation, the newly incorporated limited liability company will be issued with a New Zealand Company Number and a New Zealand Business Number. The Companies Office will also publish certain information about the company, its directors, and its shareholders on a publicly accessible website, including:

- the company's registered office address and address for service;
- the name and residential address of each director;
- the name and address of each shareholder, as well as details of each shareholder's shareholding interest in the company;
- a copy of the constitution (New Zealand's equivalent to articles of association or corporate bylaws), if there is one, however it is not mandatory for a company to have a constitution;
- details of any body corporate (whether registered in New Zealand or overseas) that is the company's ultimate holding company; and
- audited financial statements that comply with generally accepted accounting practice, if they are large and >25% overseas owned (see more on this below).

Ongoing compliance

Each year, a limited liability company must file an annual return which confirms the details held by the Companies Office about its presence in New Zealand. Failure to file an annual return is an offence under the Companies Act and can lead to the company being removed from the Companies Register. There are also obligations upon directors to maintain certain records (including a share register) and to update company information as relevant changes occur (such as the issue of new shares or changes to directors/shareholders).

Directors of New Zealand companies are subject to certain duties (including to act in good faith and the best interests of the company, and to not trade recklessly). Any person taking on the role of a company director should ensure they are aware of their duties and obligations, as in some instances they can face personal liability for breach of duty or other laws.

In addition to the requirement to file an annual return each year, companies that are deemed to be "large" and are >25% overseas owned will also generally be required to prepare and register audited financial statements with the New Zealand Companies Office.

A New Zealand company that is not a subsidiary of a body corporate incorporated outside New Zealand will be deemed large if one of the following applies:

- the total assets of the company and its subsidiaries (if any), as at the balance date of each of the two previous accounting periods, exceed NZ$66 million
- the total revenue of the company and its subsidiaries (if any), as at the balance date of each of the two previous accounting periods, exceeds NZ$33 million.

A company that is a subsidiary of a body corporate that is incorporated outside New Zealand will be deemed large if one of the following applies:

- the total assets of the company and its subsidiaries (if any), as at the balance date of each of the two previous accounting periods, exceed NZ$22 million; or
- the total revenue of the company and its subsidiaries (if any), in each of the two previous accounting periods, exceeds NZ$11 million.

"FMC Reporting Entities", such as companies listed on the New Zealand stock exchange, will have separate financial reporting obligations.

In the light of the staggering increase in generative artificial intelligence (AI) use, directors need to understand their role and responsibilities in the deployment of AI. This article provides commentary on the relevance of directors' duties in the context of AI and how directors can effectively manage these duties.[3]

3 https://www.pwc.co.nz/services/consulting/generative-ai/artificial-intelligence-what-directors-need-to-know.html

Overseas branches

Overseas investors may wish to establish a branch operation in New Zealand, rather than incorporating a local subsidiary company.

If an overseas company is carrying on business in New Zealand, it will be required to register as an overseas branch on the Companies Office's Overseas Register. This registration does not incorporate a separate legal entity under New Zealand law, and the overseas company continues to contract and enter into transactions in its own right.

A New Zealand branch is required to nominate a representative resident in New Zealand to accept service of documents on behalf of the branch.

In order to register a branch office in New Zealand, the overseas company must provide certified copies of its home jurisdiction's certificate of incorporation and constitutional documents, along with the details of its directors. If documents are not in English, a certified translation must be provided.

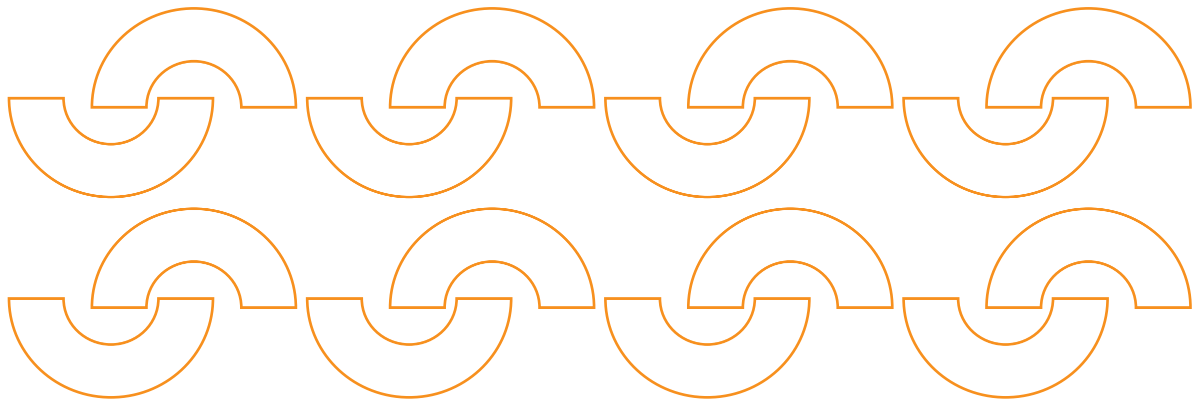
Similar to limited liability companies, branches of overseas companies will be required to file an annual return each year in order to confirm that the details held by the Companies Office are up to date, notify the Companies Office of changes to its directors, addresses or constitution, and to confirm that the overseas company is still carrying on business in New Zealand.

Branches of overseas companies registered to carry on business in New Zealand may be required to prepare and file two sets of audited financial statements with the Companies Office: one set for the overseas company's operations (including the New Zealand operations) if the overseas company is deemed to be "large", and one for the New Zealand business' operations (if such operations are separately deemed to be "large").

The branch and/or overseas company will deemed to be "large" if either of the following apply:

- the total assets of the (a) overseas company and its subsidiaries (if any) and/or (b) its New Zealand business, as at the balance date of each of the two previous accounting periods, exceed NZ$22 million; or
- the total revenue of (a) the overseas company and its subsidiaries (if any) and/or (b) its New Zealand business, in each of the two previous accounting periods, exceeds NZ$11 million.

While overseas companies carrying on business in New Zealand are required to register on the Companies Office's Overseas Register, there is no bright-line test for whether or not an overseas company is "carrying on business" in New Zealand. Whether registration is required will depend on the specific facts in each case.



Limited partnerships

Under New Zealand law, a limited partnership (LP) constitutes its own separate legal entity and must have at least one general partner and one limited partner.

- A general partner is responsible for the management of the LP and is liable for its debts and liabilities, to the extent that the LP is unable to meet them. The general partner may (subject to certain requirements) be an individual, a limited liability company, another limited partnership, or partnership
- A limited partner is liable only to the extent of their financial contribution to the LP. In order to preserve their limited liability, limited partners must not participate in the management of the LP

LPs are generally treated as "flow through" entities for income tax purposes – income and expenditure of a LP is treated as being derived/incurred by investing partners directly, in proportion to their partnership interest.

If an investor partner's expenditure exceeds their attributed income for the year, the expenditure may be able to be offset against income from other sources (subject to a loss limitation rule), or carried forward and offset against that partner's income in subsequent income years.

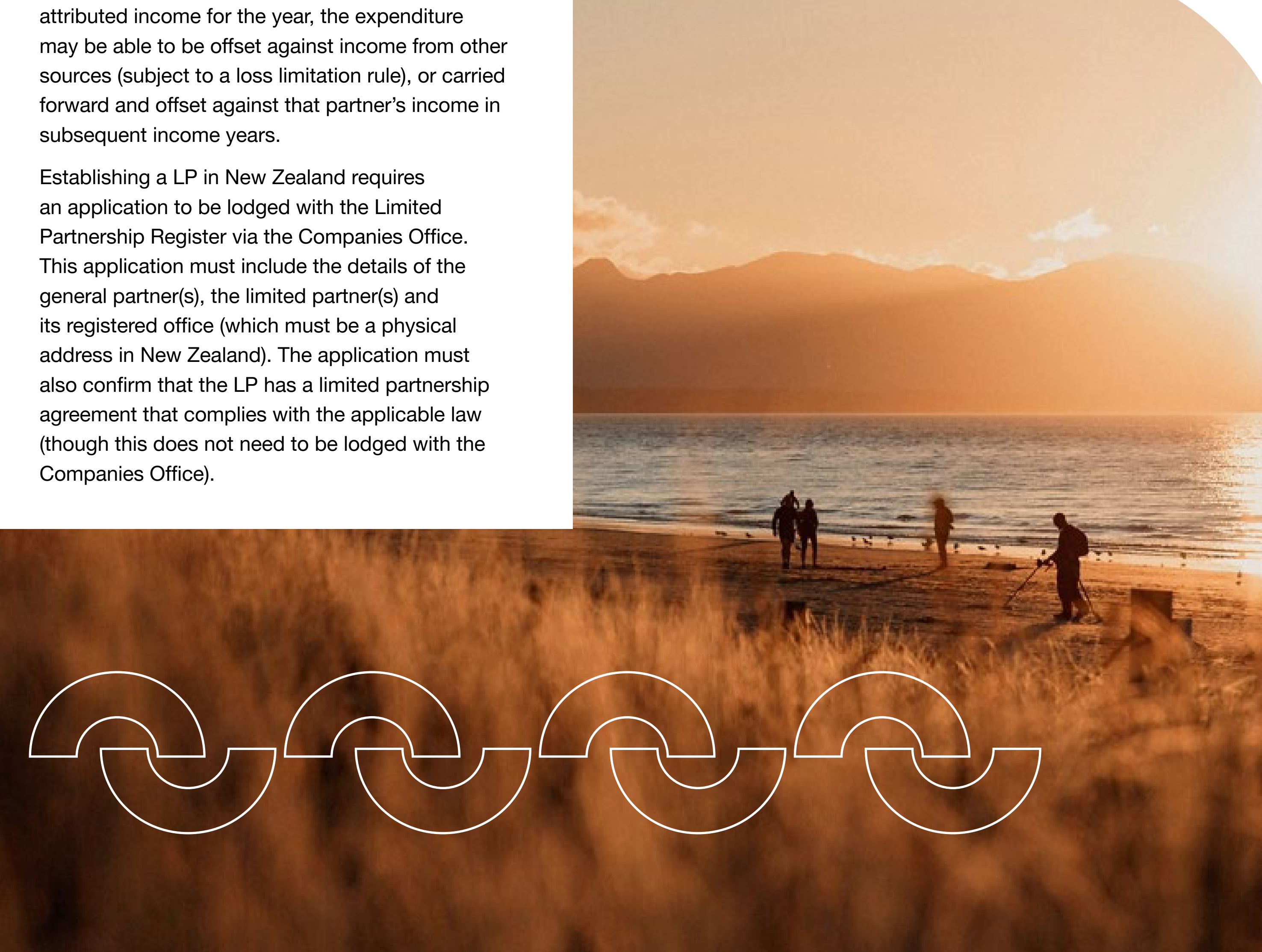
Establishing a LP in New Zealand requires an application to be lodged with the Limited Partnership Register via the Companies Office. This application must include the details of the general partner(s), the limited partner(s) and its registered office (which must be a physical address in New Zealand). The application must also confirm that the LP has a limited partnership agreement that complies with the applicable law (though this does not need to be lodged with the Companies Office).

While some of the details of the LP will be publicly available on the Limited Partnership Register (such as details of the general partner and registered office details), the identity and partnership interest of the limited partners will not be publicly available. This can be attractive to investors who do not want their details to be available to the general public.

As with limited liability companies, LPs are required to file an annual return each year, and those that are considered "large" may also be required to prepare audited financial statements.

Additional obligations

A limited liability company, branch, or LP's nature of business will determine what additional legislative or regulatory requirements the entity will be subject to. For example, if the entity is involved in insurance, there will be additional compliance obligations under the Insurance (Prudential Supervision) Act 2010 and the Financial Markets Conduct Act 2013.



3
Capital Markets

Private capital markets

New Zealand has always been a net importer of capital to fund growth and is generally considered to be an attractive investment destination for capital. Domestic and offshore private equity and venture capital funding continue to play a significant role in the New Zealand capital markets.

The past few years have seen significant transactional activity, fueled by more relaxed monetary and fiscal policy, which has also led to the increased predominance of investment funds securing capital to acquire assets. While initial public offerings have also been attractive to asset owners, significant transactions have occurred in private markets with trade and fund investors acquiring assets.

In recent quarters, investors have been more selective, but investment appetite is holding up and there is no shortage of private capital to be invested in quality opportunities. Investors are endeavouring to meet and bridge realistic vendor expectations and transaction activity in 2023 was surprisingly consistent despite challenging economic factors.[4]

Māori collectives and organisations increasingly contribute to an active private equity market as investors, and co-investors, across numerous sectors and industries. The New Zealand Government further contributes to the pool of capital and investment activity, and provides some co-investment opportunities with Crown investment vehicles (notably in early stage, high growth capital markets). Notable investments facilitated by the New Zealand Government include the New Zealand Superannuation Fund and Accident Compensation Commission fund, collectively valued at approximately NZD$120 billion, and Kiwisaver retirement scheme investments which are valued at over NZD$100 billion.

Access to capital continues to be as important as ever, as New Zealand firms look to grow. Offshore capital is vital to continue to bolster domestic sources in order to achieve the level of investment required to grow New Zealand's productive assets.

Securities law regime

An offer of financial products (e.g. debt and equity securities, managed investment products and derivatives) in New Zealand is regulated by the Financial Markets Conduct Act 2013 (FMCA) and overseen by the Financial Markets Authority (FMA).

An offer of financial products is made in New Zealand if it is received by a person in New Zealand, unless the offeror takes reasonable steps to ensure that persons in New Zealand cannot accept the offer. This applies regardless of whether the offer is made by a New Zealand or offshore entity.

An offer of financial products will require the preparation and registration of a product disclosure statement, unless an exemption or exclusion applies. The form and content of a product disclosure statement is heavily regulated under the FMCA and related regulations.

There are a number of exclusions and exemptions under the FMCA, where no disclosure document is required, or a reduced level of disclosure applies. Common exclusions and exemptions relate to offers to 'wholesale investors', 'close business associates' and 'employee share schemes' that fit within specific criteria. If the investor is unable to rely on any of the exclusions or exemptions, then it is possible to apply for a bespoke exemption from the FMA.

Australia and New Zealand have a Trans-Tasman mutual recognition scheme under which a New Zealand issuer may make an offer of financial products to investors in Australia without needing to prepare a separate offer document under Australian laws. The mutual recognition scheme also applies to Australian issuers in respect of offers to New Zealand investors.

After a significant reform of New Zealand financial markets legislation in 2013, New Zealand benefits from more simplified capital raising processes, and greater investor protections.

4 https://www.pwc.co.nz/services/mergers-acquisitions-valuations/second-quarter-of-2023.html#content-free-1-3c80]

Debt capital

New Zealand has developed debt capital markets, with traditional and non-traditional debt financiers. The Reserve Bank regulates banks, and non-bank deposit-takers (NBDT) which include institutions that take deposits from the public, such as finance companies. There are 27 registered banks, many of which are internationally owned, and 15 registered NBDTs.

For most New Zealand businesses, banks provide the overwhelming majority of debt, this is estimated to be roughly 90%. Of that, roughly 80% comes from the four main Australasian banks. The domestic bond market has approximately 150 instruments with $55 billion of market capitalisation. Corporate (non-bank) bond issues are relatively rare, and largely centre on infrastructure (e.g. airports and electricity) and property issuers (including retirement villages). The bond market extends beyond 10 years in some cases (e.g. Government bonds or Local Government Funding Agency (LGFA)), but for most corporates is limited to a maximum length of five to seven years (depending on the trading conditions). We are however seeing the rise of private credit with a number of domestic and Asia-Pacific based funds actively deploying capital in New Zealand.

NZX overview

NZX operates the New Zealand Stock Exchange (NZX) and comprises two main capital markets in New Zealand – the NZX Main Board (principal market for equity securities) and the NZX Debt Market (for debt securities, including New Zealand Government bonds). Over 300 equity and debt securities are listed on the NZX, with a total market capitalisation of over NZ$220 billion.[5]

Issuers can have a Primary or Foreign Exempt Listing on the NZX. An issuer with a primary listing will treat the NZX as their home exchange and will be required to comply with all of the NZX Listing Rules. Issuers that are already listed on certain overseas exchanges can apply to list on the NZX as a Foreign Exempt Listing. This means that the NZX will be a secondary listing for the issuer and the issuer will be deemed to comply with the NZX Listing Rules so long as it remains listed on its overseas home exchange.

Once listed, NZX issuers must comply with the NZX Listing Rules, which includes the continuous disclosure requirement (ensuring the timely release of material information to the market), additional ongoing corporate governance obligations, and reporting requirements (requiring the issuer to report against the NZX Governance Code) NZX issuers also have specific compliance obligations under the FMCA.

All listed equity issuers with securities containing voting rights are subject to the Takeovers Code (see Mergers and Acquisitions at Section 4).

Other exchanges in New Zealand

For businesses that are smaller than those that typically list on the traditional NZX exchange, the Catalist Public Market and Unlisted Securities Exchange (USX) offer alternative markets for issuers to list and trade securities.

The Catalist Public Market is a licensed financial product market. This means that investors have the protection of various provisions of the FMCA including for example, insider trading, market manipulation, and the monitoring of market obligations by the Financial Markets Authority. Unlike the continuous trading offered on the NZX exchange, Catalist Public Market operates periodic auctions where buyers and sellers will trade at a single price.

The USX offers a broker-traded market for continuous trading of both equity and debt securities. All trading on USX occurs through USX registered brokers and investors cannot trade directly on the USX market. The USX is not a licensed financial product market (and so various investor protection provisions of the FMCA do not apply).

Monitoring and enforcement

The FMA, in conjunction with the NZX, regulates New Zealand's capital markets. New Zealand law prohibits insider trading and other forms of market misconduct in relation to financial products (including misleading and deceptive conduct). Breaches of these laws carry civil or criminal liability for the person responsible, as well as potential accessory liability for others involved in the breach.

5 As at 31 December 2023; https://www.nzx.com/services/nzx-trading

4

Mergers & Acquisitions

Mergers & Acquisitions

The New Zealand IPO market remains complex. Like many global exchanges, the New Zealand Stock Exchange (NZX) faces a declining number of issuers, with private markets being an increasingly competitive transactional alternative for vendors. While the NZX has significantly improved its issuance processes, the time, cost and residual risks associated with a public market IPO are greater compared to private market transactions. The ongoing reporting obligations continue to present challenges for issuers and the traditional benefit of being listed, namely access to capital, is increasingly well accommodated for by private equity and other fund investors. The Minister of Commerce and Consumer Affairs has signalled that the Government will be exploring changes to capital market settings as a priority.

The PwC New Zealand M&A Quarterly Update[6] provides commentary on recent private market trends, including significant amounts of capital driving robust deal activity.

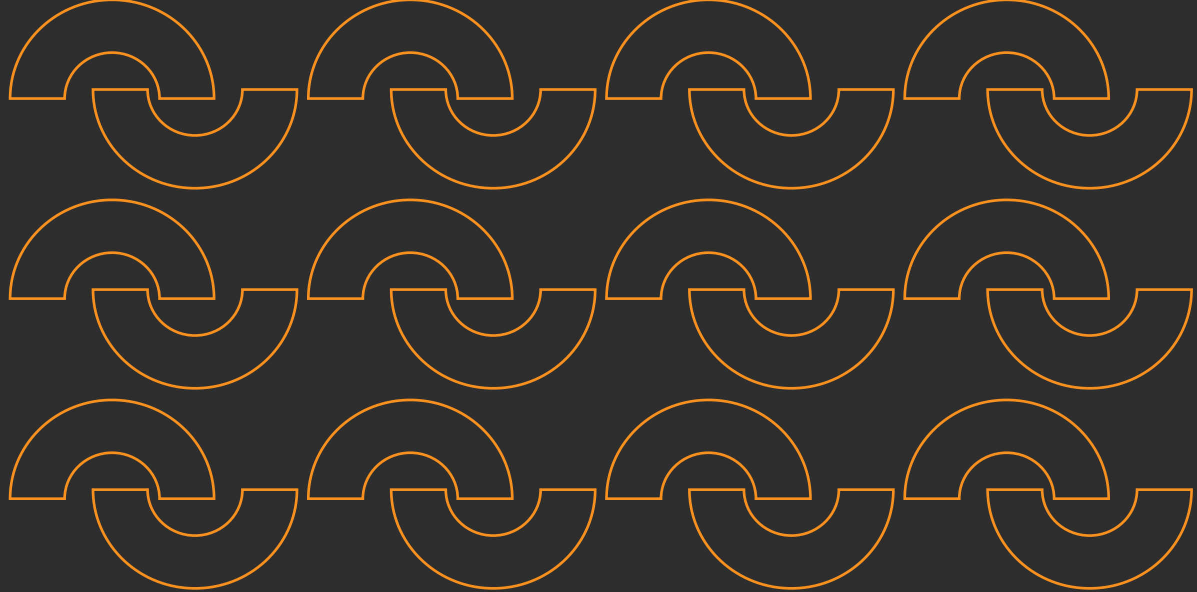
Overseas investors can acquire a New Zealand business or entity in a number of different ways. An acquisition will typically be structured according to regulatory and tax considerations, whether the parties preference is for is a share or asset sale, and whether the entity is privately held or publicly listed.

Acquisitions of privately held companies are generally undertaken by agreement between the seller and the purchaser.

The acquisition of an entity that is listed on the NZX, or private entities exceeding a certain number of shareholders and above a certain size, must be structured as a takeover offer under the Takeovers Code or a Scheme of Arrangement under the Companies Act. The NZX Listing Rules will also apply to mergers and acquisitions involving NZX listed companies.

The New Zealand overseas investment regime regulates mergers and acquisitions that involve an overseas person (or overseas controlled entity) seeking to make an investment in significant business assets or sensitive land in New Zealand. This regime also seeks to manage risks to New Zealand's national security and public order. (See Overseas Investment Regulations at Section 5).

Before agreeing the commercial aspects of the transaction, investors should determine what (if any) regulatory requirements and conditions will apply. Entering into a transaction that is subject to the Takeovers Code or Overseas Investment Act, for example, could have significant legal and financial implications if not managed correctly.



6 https://www.pwc.co.nz/services/mergers-acquisitions-valuations.html

Regulatory landscape

New Zealand company law is governed by the Companies Act. Most major merger and acquisition transactions will require the approval of a company's shareholders.

For example, a New Zealand company must not enter into a "major transaction" (broadly, a transaction worth more than half the value of the company's assets) unless the transaction is approved (or contingent on approval) by a special resolution of its shareholders, which requires at least 75% of the shareholder votes to be in favour of the transaction.

New Zealand securities laws may apply if New Zealand financial products are being offered as consideration (see Capital Markets at Section 3). There are a number of exclusions and exemptions under the Financial Markets Conduct Act 2013 that may apply.

Additional regulatory approvals may be required for a sale/disposal transaction depending on the nature of the industry that the target business is involved in. For example, insurance businesses will be required to obtain approval from the Reserve Bank of New Zealand prior to a merger or acquisition transaction being completed.

Takeovers Regime

Takeovers activity is regulated by the Takeovers Code. The Takeovers Code restricts investors and their associates from undertaking certain transactions that impact their voting rights in a "code company".

The purpose of the Takeovers Code is to, regulate the change of control of code companies, so that all shareholders have equal opportunity to approve or participate in changes of control.

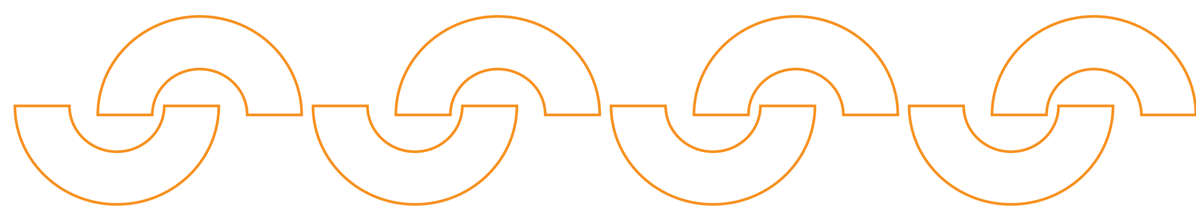
A code company is any New Zealand company that is listed on the NZX or which has 50 or more shareholders and 50 or more share parcels. Small sized companies (broadly, a company that, together with its subsidiaries, has less than NZ$30 million in assets and NZ$15 million in revenue in the most recent financial year) are exempt from the Takeovers Code. The Takeovers Code is enforced by the New Zealand Takeovers Panel (an independent Crown entity).

The transactions that are captured by the takeovers regime primarily involve where a person (alone, or together with "associates") increases their ownership of voting rights in a code company above 20% (i.e., by initially crossing the 20% threshold or, if already above 20%, by increasing their ownership stake further).

Once a person and their associates hold 20% or more of the shares in a "code company", there are specific rules about how and if that person and their associates can increase their shareholding. In summary, a person can increase their shareholding above the 20% threshold by way of:

- a takeover offer to shareholders for some or all of the code company shares, for an offer price. Shareholders are free to decide whether or not to accept the offer
- obtaining the approval of other shareholders;
- creeping acquisitions of up to 5% of the company's shares over a 12-month period, if the person already holds between 50% and 90% of the voting rights in the code company
- an approved exemption

Once a person and their associates control 90% or more of the voting rights of a code company, they become a 'dominant owner' and can be required to complete a compulsory acquisition of the remainder of the voting rights.



Scheme of arrangement as an alternative takeover mechanism

An alternative to conducting a takeover offer under the Takeovers Code is a scheme of arrangement that allows the change of control of a code company to be approved by the court under the Companies Act.

The key difference between a takeover offer and a scheme of arrangement is that, under a takeover offer, the acquirer controls the process, offer price and offer terms (subject to compliance with the Takeovers Code). This means that a takeover offer can be used for a friendly or hostile takeover. A scheme of arrangement can be used to effect the same outcome as a takeover offer, but the target code company controls the process (with some involvement from the acquirer and the shareholders). Accordingly, a scheme of arrangement can be an attractive option to effect a "friendly" takeover.

A scheme of arrangement can also be used to achieve other outcomes involving the reconstruction of the company's shares, assets or liabilities.

Some of the key features of a scheme of arrangement include:

- Certainty of outcome for the offeror (that is, if the scheme is not approved by the court, the offeror will not acquire any shares), although, the court process can be time consuming and poses execution risk in its own right
- The voting requirement to approve a scheme of arrangement is generally lower than voting thresholds required under the Takeovers Code
- There is greater flexibility to incorporate terms into a scheme of arrangement that would not be permitted under a takeover offer

The Takeovers Panel retains a role with scheme of arrangement transactions including providing the court with a letter of no objection, which essentially provides the court comfort that scheme disclosures are code equivalent and that the Panel has considered whether all shareholders can vote together or whether there should be separate votes of different classes of shareholders.

Competition Regime

Whilst mergers and acquisitions can bring many benefits to the New Zealand economy through efficiency and innovation, some transactions have the potential of substantially lessening competition and creating anti-competitive outcomes for consumers. The Commerce Act 1986 (Commerce Act) prohibits conduct that substantially lessens competition. The purpose of the Commerce Act is to promote competition in markets for the long-term benefit of consumers within New Zealand.

Restrictive trade practices

The Commerce Act prohibits restrictive trade practices such as:

- contracts and arrangements that substantially lessen competition in a market
- cartel provisions including unauthorised price fixing, restricting of output or market allocation
- misusing substantial market power by engaging in conduct that has the purpose or likely effect of substantially lessening competition in that market
- resale price maintenance by a supplier of goods to ensure that their goods are not resold below a minimum price

Clearance and authorisation of business acquisitions

The Commerce Act prohibits a person from acquiring another business' assets or shares (including by merger) if doing so will have the effect of substantially lessening competition in a market. Businesses proposing to acquire another business' assets or shares may apply to the Commerce Commission for clearance or authorisation of the acquisition. It is not mandatory to apply for clearance or authorisation of a proposed acquisition, however this would provide parties with certainty to proceed if they are uncertain whether the proposed transaction would substantially lessen competition in a market.

The Commerce Commission grants a clearance where it considers that the proposed acquisition will not be likely to substantially lessen competition in a New Zealand market. If the Commerce Commission grants a clearance in relation to a transaction, the parties are protected from future legal action under the Commerce Act.

The Commerce Commission may grant an authorisation to permit an acquisition to go ahead even if it considers that the acquisition would result in a substantial lessening of competition, in circumstances where the acquisition would result in a benefit to the public that outweighs the competitive harm.

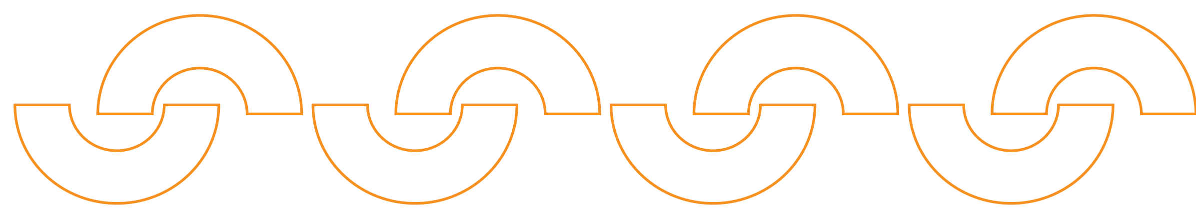
Clearance and authorisation applications to the Commerce Commission must be submitted before the acquisition is unconditional.

Breach of the Commerce Act

The Commerce Commission takes an active enforcement role and can investigate mergers or proposed mergers that may raise competition concerns and where the merging parties have not applied for or do not intend to apply for, clearance or authorisation prior to the transaction completing (a non-notified merger). The Commerce Commission can seek interim relief or take enforcement action in the High Court.

Penalties for breaching the Commerce Act are substantial. An individual that breaches the restrictive trade and business acquisition provisions may be fined up to NZ$500,000. A company could be fined either up to NZ$10 million, three times the commercial gain resulting from the breach, or 10% of the company's group turnover for a specific period. An individual that commits an offence relating to cartel provisions may also face imprisonment for up to seven years.

The Commerce Commission aims to reach a decision on clearance and authorisation applications within 40 working days, however complex applications have been known to take several months. We recommend initiating the clearance or authorisation process early to ensure that Commerce Commission approval does not interfere with your business acquisition.



5

Overseas Investment Regulations

Overseas Investment

While not all overseas investments require regulatory consent, investments by overseas persons in either “sensitive land” and/or “significant business assets” are regulated under New Zealand’s overseas investment regime.

The overseas investment regime seeks to achieve a balance between realising the benefits of overseas investment and the need to manage ownership and control of New Zealand’s sensitive land and assets. The regime is governed by the Overseas Investment Act 2005 (OIA) and associated regulations.

The Overseas Investment Office (OIO) monitors compliance with the overseas investment regime and takes enforcement action for breach. Although the OIO forms part of Land Information New Zealand, the ambit of the overseas investment regime covers much more than land, so overseas investors will need specialised advice early in the transaction to consider whether a proposed investment will require consent under the OIA.

It is an offence under the OIA to give effect to an investment without obtaining the required OIO consent or to take steps to evade or circumvent the operation of the OIA. A person who breaches the OIA may be liable to a range of civil penalties and criminal fines (for instance, penalties of up to NZ$500,000 for individuals and up to NZ$10 million or three times quantifiable gain for businesses). The OIO has a range of enforcement powers available in the case of breach or non-compliance with any condition attached to a consented transaction, including applying for court orders to require the investor to dispose of assets and property.

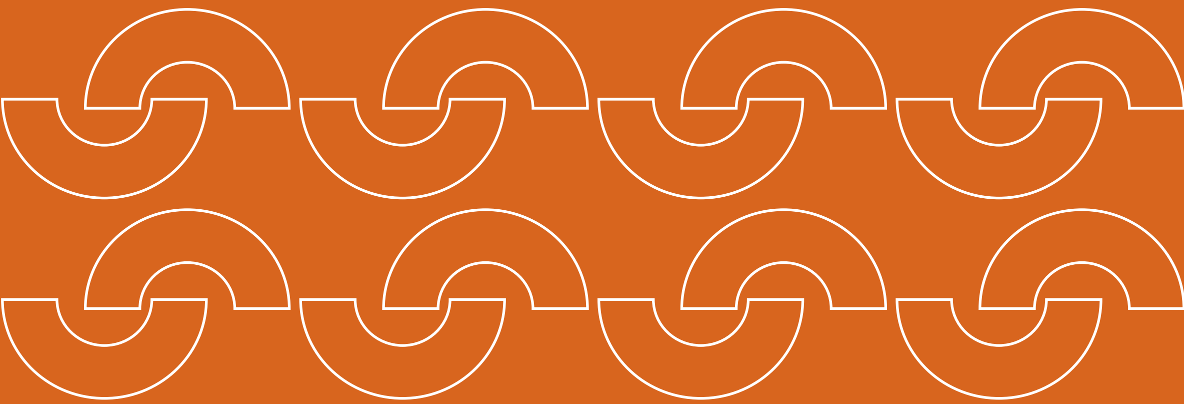
Application

There are different application pathways for obtaining consent depending on the transaction. Each consent pathway requires the investor to submit a detailed application in a prescribed format and pay a filing fee.

The filing fees can range between NZ$33,600 to NZ$146,200 depending on the type and complexity of the transaction.

OIO’s timeframes for the assessment of an application for consent will also vary depending on the type of investment and consent pathway. Statutory timeframes were introduced in November 2021, which can range between 35 working days (for significant business assets) to 70 working days (for certain types of land) and 100 working days (for farm land), however there are circumstances where these timelines may be paused and transaction timetables may need to be extended.

Given the complexity of the overseas investment regime, and lengthy and uncertain timeframes for the assessment of a consent application and the filing and legal costs of obtaining consent, it is important to engage specialised advisers early and factor in the impact of the regime into your transaction strategy.



Overseas person

An overseas person broadly includes an entity that is incorporated outside of New Zealand, and any person who is not a New Zealand citizen or ordinarily resident in New Zealand.

The definition also captures any entity in which overseas persons have more than 25% ownership or influence, unless the entity is listed.

In the case of a listed entity, the entity will not be an overseas person if overseas persons own less than 50% of it's securities, and /or overseas persons with 10% or more of its securities do not collectively control more than 25% of the total voting power at a shareholder meeting or the composition of 50% or more of the board of directors.

Where a transaction takes place outside of New Zealand, but involves significant New Zealand business assets or where a target business has interests in "sensitive land" in New Zealand (which can include leasehold interests), OIO consent may still be required. Where any New Zealand assets or land interests are involved, investors should make an early assessment of whether OIO consent is required.

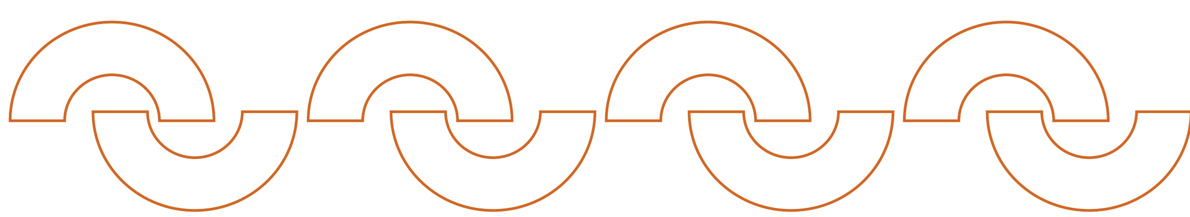
Significant business assets

An investment in significant business assets includes:

- The acquisition of more than a 25% interest in a business (or the increase of an existing stake over certain control thresholds) where the consideration paid for the New Zealand part of the investment exceeds NZ$100 million
- The acquisition of more than a 25% interest in a business (or the increase of an existing stake over certain control thresholds) where the value of the New Zealand assets exceed NZ$100 million
- The establishment of a business in New Zealand where the total expenditure expected to be incurred in establishing the business exceeds NZ$100 million
- The acquisition of property (including goodwill and other intangible assets) where the consideration paid exceeds NZ$100 million

Investors from certain countries with trading arrangements with New Zealand will benefit from elevated monetary thresholds, rather than the default NZ$100 million threshold listed above. For instance, the NZ$100 million threshold increases to:

- NZ$200 million for certain non-government investors from member countries to significant trade agreements (including China, the Republic of Korea, Hong Kong and Taiwan, and parties to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (which includes, as of July 2023, the UK))
- NZ$618 million for certain Australian non-Government investors (subject to annual adjustment)
- NZ$129 million for Australian Government investors (subject to annual adjustment)



Sensitive land

Sensitive land comprises certain types of land prescribed in regulations and includes:

- Non-urban land areas greater than five hectares (e.g. farm land)
- Residential land, being land that has a property category of 'residential' or 'lifestyle' on the District Valuation Roll. There is an exemption for investors from Australia or Singapore to acquire residential land (that is not otherwise sensitive land)
- Land of certain sizes either comprising or adjoining land of particular significance (e.g. marine and coastal areas, lakebed, or land listed as a reserve, of historical significance, held for conservation purposes, or set apart as Māori reservation)
- Land located on certain specified islands greater than 0.4 hectares

An investment in sensitive land includes the purchase of freehold land as well as the acquisition of any leasehold interest in residential land of three years or more, or any leasehold interest in non-residential land of ten years or more.

Where an overseas person acquires a more than 25% interest (or the increase of an existing stake over certain control thresholds) in an entity that owns or controls sensitive land, that acquisition by the overseas person will be considered to be an investment in sensitive land and will require consent.

Consent criteria

When considering an application for consent, in general, all investors must satisfy the "investor test" which is a bright line test as to certain character and capability factors. These factors include (among others) convictions and corporate fines, ineligibility to come to New Zealand, penalties for tax avoidance or evasion and unpaid tax of NZ$5 million or more.

Special rules apply to different types of investments. These are detailed in the OIA and associated regulations and investors should obtain specialised advice to determine the relevant pathway to consent.

Sensitive land: Where an investment involves land that is sensitive (for reasons other than being residential land), the investor must demonstrate the benefit that the proposed investment brings to New Zealand. This may relate to economic benefit, environmental benefit, public access, protection of historic heritage, oversight or participation by New Zealanders, advancing significant Government policy, and/or consequential benefits that do not fit within one of the other factors.

Farm land: If the land is farm land, the land must first have been advertised on the open market in New Zealand, to New Zealand investors, for a specified period.

Fresh or seawater areas: If the land is or includes fresh or seawater interests, the investor must notify the Crown. The Crown has the first right of refusal to acquire the land.

Forestry assets: Different statutory tests apply in the consenting process for investing in forestry assets. This includes the acquisition of land that is currently planted for forestry, or land to be used for forestry and the acquisition of forestry rights over 1,000 hectares per calendar year.

Residential land to live in: Special consent pathways apply for investors looking to acquire residential property to live in. Australian and Singaporean investors do not need OIO consent to invest in residential land (that is not otherwise sensitive land).

Investing in residential land to develop: Investors who are looking to "build to rent" (broadly involving the development of 20 or more new residential dwellings on residential land) may be able to apply under a special streamlined test for consent.

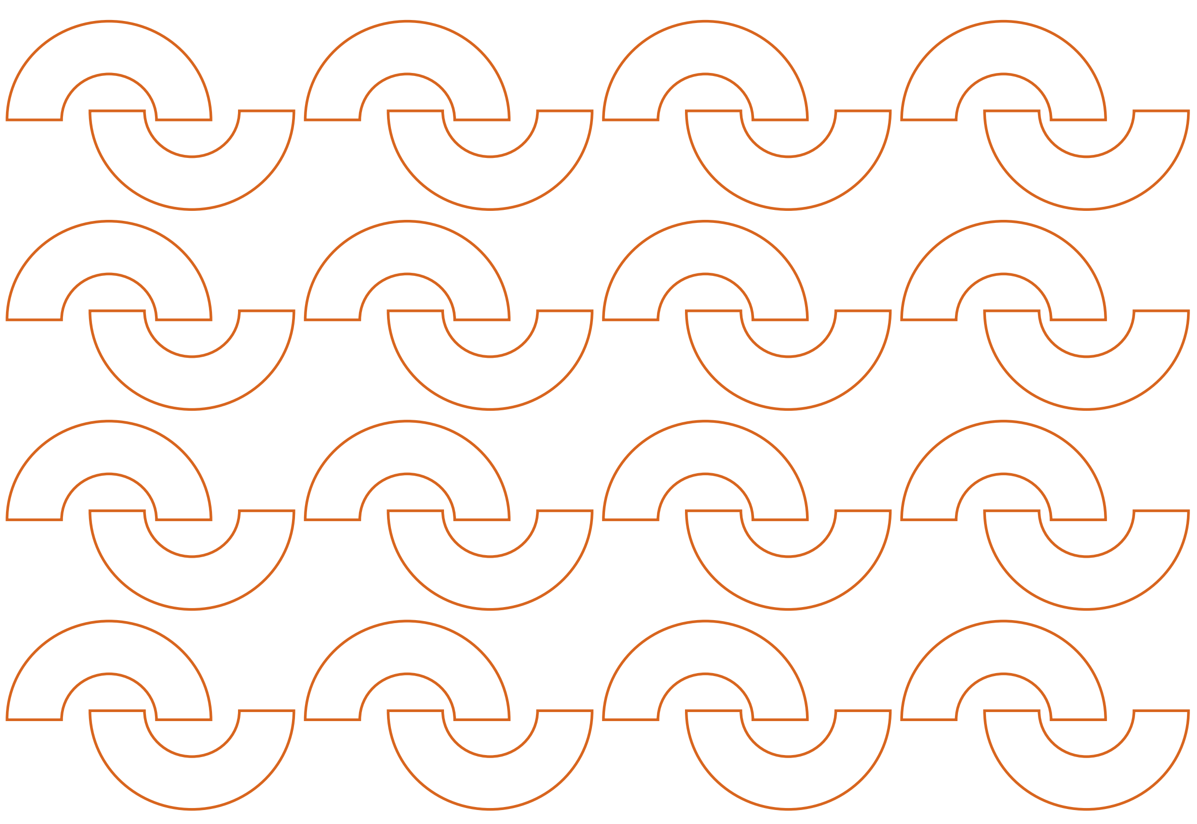
National interest assessment

Certain transactions that require OIO consent may be subject to a further national interest assessment by the Minister of Finance. While this assessment is only mandatory for transactions which meet certain criteria, the Minister has the discretion to call in any transaction to be subject to the national interest assessment. The national interest assessment is mandatory where:

- the investment would result in non-NZ government investors acquiring more than a 25% ownership or control interest in the target business; or
- the investment involves land or assets used for "strategically important business". Strategically important business is defined in detail in the OIA and associated regulations, and broadly includes:
  - critical direct suppliers to an intelligence or security agency
  - businesses involved in military or dual-use technology
  - ports or airports
  - electricity, water, or telecommunications businesses
  - important financial institutions, or organisations involved in financial market infrastructure
  - media businesses with significant impact
  - businesses involved in an irrigation scheme
  - businesses with access to data sets of sensitive information relating to 30,000 or more individuals

If an overseas person is investing in a strategically important business, even where consent is not otherwise required, the investor may be mandatorily required to notify the OIO of the transaction (in many cases, regardless of value or the extent of the interest being acquired).

Some investors may be able to voluntarily notify the transaction, and if they obtain OIO clearance from this notification, this clearance will operate as a "safe harbour" from future challenge from the OIO. If a transaction is not notified, the OIO could call in the transaction at a later time to assess the potential risk to New Zealand's national security or public order.



6 Treasury

Floating exchange rate

New Zealand has a free floating exchange rate, the New Zealand dollar (NZD), which was floated in 1985. Given New Zealand's dependency on external capital, relative interest rates play an outsized role in driving the value of the NZD. Commodity prices also impact the NZD, as New Zealand is a major exporter of agricultural products.

The NZD's floating exchange rate regime allows it to adjust to economic shocks by absorbing the impact of external events. During times of global uncertainty or economic downturns, the NZD can depreciate sharply (e.g. during the GFC and early part of the COVID-19 pandemic), providing a cushion for the economy by making exports more competitive and stimulating tourism and investment. Conversely, during periods of economic strength, the NZD can appreciate, helping to control inflation and maintain economic stability. Overall, the free floating exchange rate regime has been successful and the NZD is one of the top 15 most traded currencies in the world, despite New Zealand being only the 52nd largest economy.

Foreign exchange market – availability of hedging instruments

The full suite of hedging instruments is available to the NZD or businesses operating in New Zealand. Due to the level of volatility regularly seen in the NZD, it is very common for domestic companies to proactively manage or hedge foreign exchange (FX) risks.

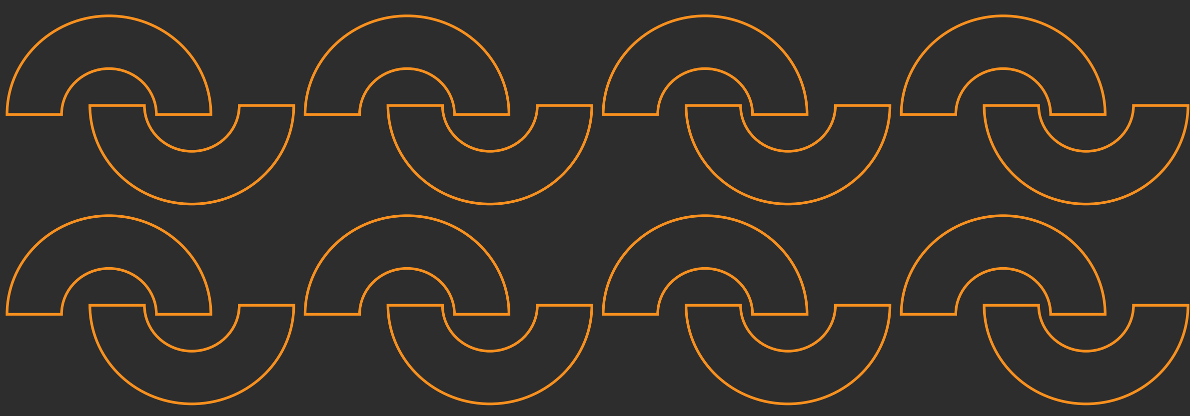
The most common instrument is the forward exchange contract (FEC), with the ability to hedge out multiple years across most of the main trading currency pairs (USD, GBP, EUR, AUD, JPY, CNH, SGD, THB). The large New Zealand banks all have local dealing desks, with larger volumes deals, or more complex transactions, occasionally priced or executed through the Australian parent banks (where applicable). Larger global banks have some presence in New Zealand but most will leverage their trading desks offshore (e.g. in Asia or Australia) as required.

Interest rate markets

New Zealand has a fully functioning domestic interest rate market with overnight index swaps (OIS) traded out several years and a traditional 'swap' curve traded out to 15 years. There is some capacity to fix longer than this, but most traded liquidity sits within 10 years.

The tenor and liquidity of the swap market broadly aligns with the domestic bond market, where there are very few bonds issued greater than 10 years outside of the Government or Local Government Funding Agency (LGFA).

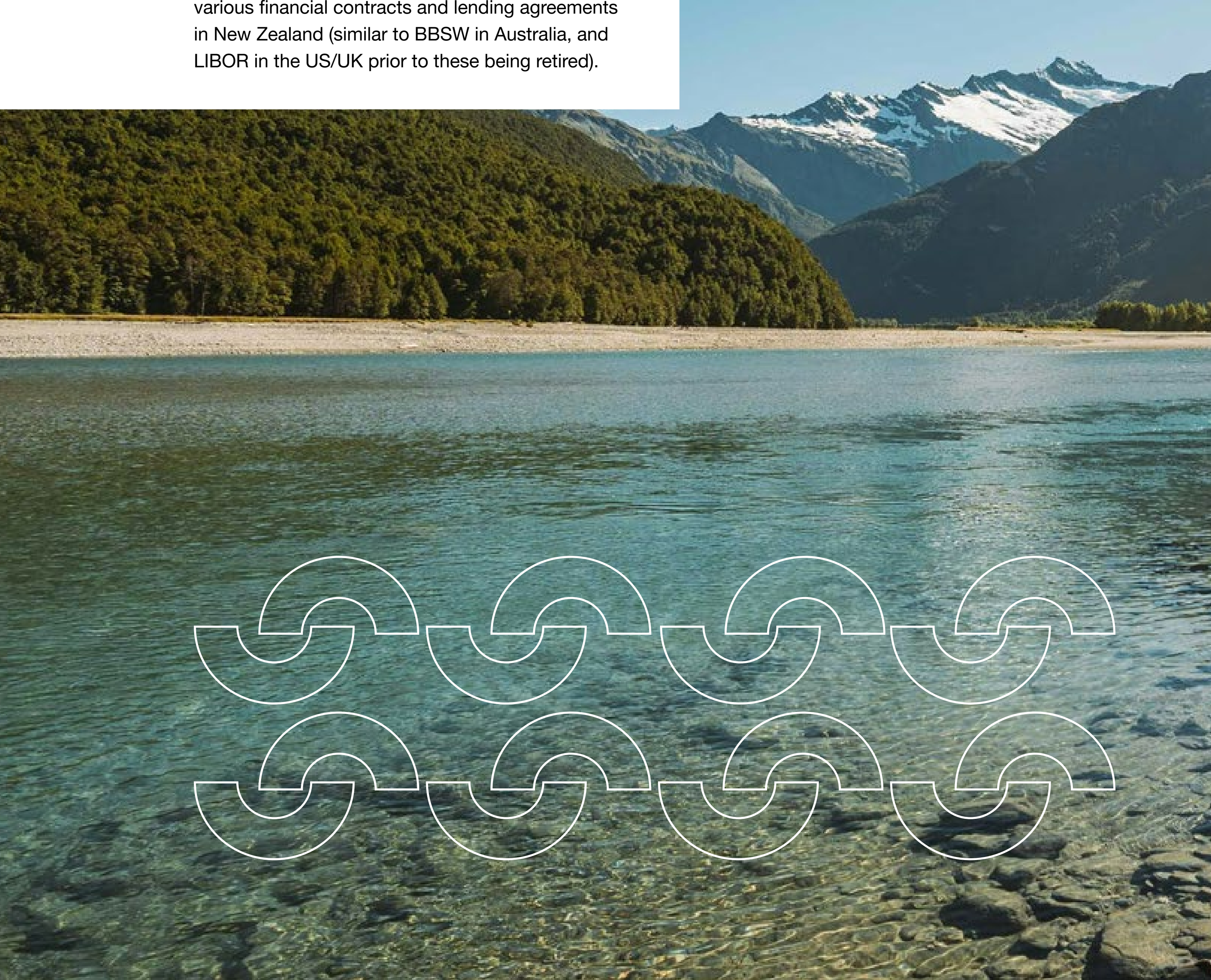
As mentioned in Section 3, Capital Markets, the overwhelming majority of lending to businesses in New Zealand comes through the registered banks (~90%). Within this, there is a general reluctance on the part of banks to extend committed lending for more than 5 years (and in many cases 3 years). As a result, it is very common for businesses to independently manage interest rate risks and they usually do this through the swap market.



Independent monetary policy and floating interest rates

The Reserve Bank of New Zealand (RBNZ) is the country's central bank responsible for maintaining price stability, promoting sustainable economic growth, and maintaining a sound and efficient financial system. One of the key tools the RBNZ uses to achieve its objectives is the Official Cash Rate (OCR), which it reviews and sets during 7-8 meetings per year (similar to the Federal Reserve).

The OCR is the interest rate at which banks borrow and lend funds to each other on an overnight basis. It serves as a benchmark for other interest rates in the economy, including mortgage rates and business lending rates. The RBNZ's Monetary Policy Committee (MPC) sets the OCR based on its assessment of economic conditions, inflation outlook, and other factors. The OCR also indirectly affects the floating rate BKBM (Bank Bill Key Benchmark Rate), which is a reference rate used in various financial contracts and lending agreements in New Zealand (similar to BBSW in Australia, and LIBOR in the US/UK prior to these being retired).



7 Taxation

Taxation

New Zealand has a broad-base tax system with few exemptions and concessions (with the notable exception that there is no comprehensive capital gains tax).

New Zealand's key taxes are income tax, goods and services tax (GST) and payroll taxes. There is no inheritance tax, no stamp duty and no local or state income taxes.

New Zealand is generally considered to have a favourable tax environment for an investor's earnings and assets.

Residency

A New Zealand tax resident's worldwide income is subject to tax in New Zealand. A non-New Zealand tax resident is also subject to tax in New Zealand to the extent the income has a source in New Zealand.

Tax residency for an individual is generally based on whether the individual has a 'permanent place of abode' in New Zealand or is present in New Zealand for more than 183 days in a 12-month period. Tax residency for a company is generally based on whether the company is incorporated in New Zealand, has its head office or centre of management in New Zealand, or control of the company by its directors is exercised in New Zealand.

Income Tax

Currently, individual tax rates are on a graduating scale, with marginal tax rates from 10.5% (on annual income up to NZ$14,000) to 39% (on annual income over NZ$180,000). New Zealand's recently-elected coalition government has proposed tax cuts to these individual tax rates but changes are yet to be introduced.

Companies are taxed at a flat rate of 28%. Dividends are subject to income tax in New Zealand, and potentially withholding tax if paid to a non-resident. New Zealand operates an imputation regime that enables New Zealand shareholders to obtain a credit for tax paid at the company level, and provides that fully imputed dividends are not subject to withholding tax.

A business is subject to income tax in New Zealand if it is a business of a New Zealand tax resident, has a sufficient physical presence here, or has New Zealand sourced income. Relief may be available from New Zealand income tax under New Zealand's double tax treaty network. Taxpayers must register with Inland Revenue (IR) and file an annual income tax return. Taxpayers will generally be required to pay provisional tax in three instalments over a year (calculated by a method prescribed by IR). Underpayments and late payments of tax may result in IR charging interest or late payment penalties.

Losses

Tax losses incurred by a taxpayer may be carried forward and offset against future income. In the case of a company, this is subject to maintaining a 49% continuity of shareholding from the income year in which the loss was incurred to the year in which it is used to offset income. There is no ability to carry back tax losses to prior income years.

A tax loss of a company may be made available to another company in certain circumstances where both companies are in the same group of companies and other conditions are also met.

For a company, if there is a breach of the 49% shareholder continuity requirement for carrying forward tax losses, it may still be possible for the company to carry forward tax losses if it satisfies the business continuity test (BCT). The BCT will generally allow tax losses to be carried forward if there is no "major change" in the nature of the company's business activities within five years of the continuity breach, and other criteria are met. Whether or not a major change has occurred will be assessed based on factors such as:

- assets used;
- business processes;
- use of suppliers;
- markets supplied to; and
- type of product or service supplied.

Employment tax

Businesses intending to employ people in New Zealand must register with IR. Filing requirements depend on the number of people being employed. Employer tax obligations include KiwiSaver contributions, PAYE, and employer superannuation contribution tax (ESCT). If a business provides a benefit to an employee outside of normal salary and wages, the employer may be subject to fringe benefit tax (FBT).

Tax obligations in respect of contractors are different to those that apply in respect of employees. New Zealand taxpayers need to ensure that staff and contractors are classified appropriately. (See Employment at Section 9).

Withholding tax

New Zealand imposes resident withholding tax (RWT) on passive income paid to residents (e.g. interest and dividends) and non-resident withholding tax (NRWT) on passive income paid to non-residents (e.g. interest, dividends and royalties), subject to any applicable double tax agreement. New Zealand borrowers may be able to apply New Zealand's approved issuer levy regime to reduce the withholding tax cost on interest paid to a third party non-resident lender.

Withholding tax is also imposed on other types of payments, including payments to non-resident contractors, entertainers and sportspeople, and New Zealand contractors within specified industries. Exemption certificates can be obtained in specified circumstances.

Goods and Services Tax

New Zealand imposes a goods and services tax (GST) at a rate of 15% of the value of supplies of goods and services in New Zealand (subject to certain exclusions). GST is also charged on imported goods and certain imported services. Taxpayers are required to register for GST and file regular returns if they make (or expect to make) supplies worth more than NZ$60,000 a year.

Importers

The majority of goods imported into New Zealand are subject to GST at 15% of their declared customs value, being the total of the value of goods, any amount of tariff duty (if any), and international transportation and insurance costs (special rules apply to low value imported goods under NZ$1,000). The import GST can be recoverable via the importer's GST return if the importer of record is GST registered and uses (or makes available to use) the goods for its taxable supplies in New Zealand. Tariff duty may apply based on the value of the item imported, at a rate that depends on the tariff classification of the item and its country of origin.

Transfer pricing

New Zealand's transfer pricing rules require cross-border transactions between related parties to be priced on arm's length terms. The transfer pricing regime is focused on economic substance over legal form, making it critical that cross border arrangements (and ultimately, the taxable profits of a New Zealand entity) align with the level of economic activity undertaken in New Zealand.

New Zealand typically follows OECD guidance as to how an arm's length price should be determined. However, there are unique rules which apply to the deductibility of interest where total cross-border related-party debt exceeds NZ$10 million. Simplification measures are also available to support taxpayers with managing their local compliance burden provided certain criteria are met.

Obtaining contemporaneous New Zealand-specific transfer pricing documentation places taxpayers in the strongest position to defend the transfer pricing position taken during a given financial year and to mitigate the risk of penalties being imposed.

Thin capitalisation

New Zealand has a thin capitalisation regime that effectively limits the deductibility of interest in New Zealand for non-New Zealand owned entities, based on the debt to asset ratio in New Zealand, and of the owner's worldwide group.

Double Tax Agreements

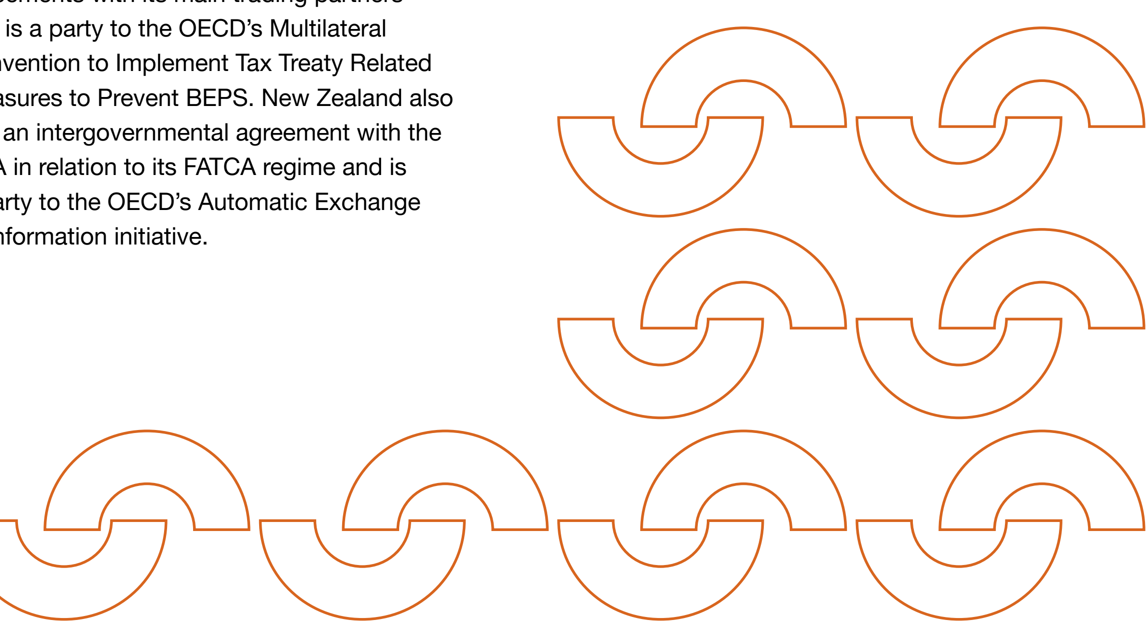
New Zealand has a network of 40 double tax agreements with its main trading partners and is a party to the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS. New Zealand also has an intergovernmental agreement with the USA in relation to its FATCA regime and is a party to the OECD's Automatic Exchange of Information initiative.

Pillar Two – Global minimum effective tax rate

Following the OECD led initiative, New Zealand has introduced draft legislation which could see the global minimum effective tax rate rules (referred to as Pillar Two) coming into effect from 1 January 2024. The effective date is yet to be confirmed and could be deferred to 1 January 2025.

At a high level, large multinational groups that fall within the scope of the rules (with annual global revenues over €750m) would pay a minimum 15% effective tax rate on "mobile" income in every jurisdiction in which they operate. Groups with a New Zealand presence and within the scope of the rules will be required to register with Inland Revenue, complete a GloBE Information Return and file an annual NZ "Multinational Top Up Tax" Return in New Zealand stating the amount of top up tax payable (if any). Failure to meet the registration or filing requirements could result in penalties of up to NZ$100,000.

Although there is no set date for its implementation in New Zealand at this stage, New Zealand taxpayers will likely still face increased compliance obligations in order to meet other jurisdictions' Pillar Two compliance obligations for financial years starting on 1 January 2024.



8
Property

Title to land

All title to land in New Zealand is held in a searchable, online registry, and the Government guarantees its completeness. As a result, there is certainty in purchasing and holding title to land. The land acquisition and transfer process can be made reasonably straightforward if undertaken with the guidance of experienced property law practitioners.

New Zealand law recognises a variety of interests in property, including freehold, leasehold (both residential and commercial), cross-lease, unit titles and personal rights to use land granted by licences.

New Zealand also recognises special land rights including rights to take resources from land and certain Māori land rights.

With the exception of the Overseas Investment at Section 5, there is no other distinction between domestic and overseas purchasers of land.

Purchasing land

The usual process for acquiring property in New Zealand, whether residential or commercial, is to sign an agreement for sale and purchase.

Agreements are generally subject to conditions that, for example, allow for purchasers to conduct due diligence on the property after signing. Common conditions of sale relate to reviewing records of title, Land Information Memorandum (LIM), completion of a satisfactory building inspection, resolution of resource management issues, arranging finance and, frequently, in respect of leased commercial or industrial buildings, the review of leases.

Tax on land held as an investment property

New Zealand taxes net rental income derived from real property. The applicable income tax rate depends on the profile of the investor(s).

At present, deductions for tax depreciation are generally available in relation to commercial and industrial buildings (excluding land), but not in relation to residential property (including most build-to-rent developments). Inland Revenue prescribed depreciation rates must be used for tax purposes irrespective of what rates are used for accounting.

Deductions for interest are generally available in relation to borrowing used to acquire commercial property, subject to several restrictions (e.g. the general anti-avoidance provisions, thin capitalisation, transfer pricing and anti-hybrid rules). There are currently significant restrictions in place in relation to deductions for interest paid on borrowing related to residential property.

Tax on disposal of land

While New Zealand does not have a comprehensive capital gains tax, there are a number of land taxing provisions that can apply to tax gains on the sale of land that could otherwise be considered a capital investment. These include, for example:

- a 10 year bright-line test applying to residential land that is disposed of or sold within 10 years of acquisition (subject to some exclusions, including where the property is used as the owner's main home). As outlined below, the Government has announced it intends to reduce the bright-line period to 2 years in the short term
- rules that can apply to tax gains in relation to land acquired by land dealers, developers, or builders (or anyone associated such persons)
- gains arising in relation to land developed for the purposes of sale
- land acquired for a purpose or with an intention of disposal

Upcoming tax policy changes

New Zealand's coalition Government has announced a number of upcoming changes to the current tax policy settings for real property in relation to the bright-line test, tax depreciation on commercial/industrial buildings, and interest deductibility on residential property.

On 20 December 2023, the Government announced that it intended to reduce the bright-line period for residential property from 10 years to 2 years, effective 1 July 2024.

Tax depreciation on buildings was removed in 2010, and subsequently reinstated (but limited to commercial/industrial buildings) in 2020 as part of the New Zealand COVID-19 relief measures. However, the Government has indicated that legislative changes will be made to repeal the ability to claim tax depreciation on commercial/industrial buildings for income years starting on/after 1 April 2024.

Interest deductibility for residential property is also expected to be reintroduced gradually from the 2023/24 income tax year.

Environmental management

New Zealand has strong cultural respect for the natural environment which is reflected in our legislation. New Zealand's resource consenting framework is a primary consenting process for activities which affect the environment, and deals with the management of natural and physical resources such as air, soil, freshwater and coastal marine areas. The resource consenting regime has been subject to recent overhaul, with the Natural and Built Environment Act 2023 and Spatial Planning Act 2023 having passed into law in August 2023. This new regime replaces the Resource Management Act 1991, albeit with a long transition and implementation period.

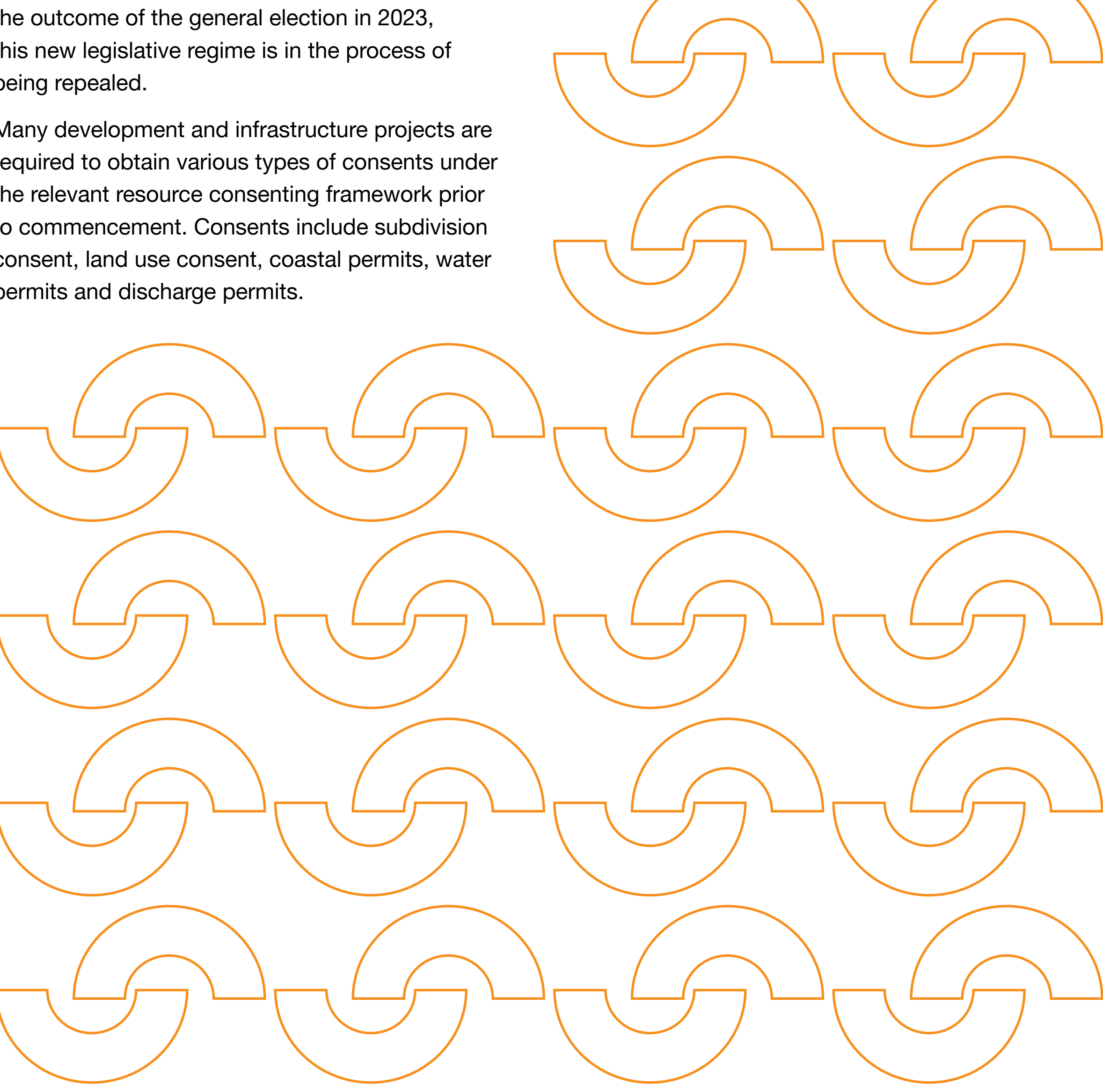
The new legislation (including in forming the operative committees, plans and strategies) was to be rolled out on a region-by-region basis, with full rollout to take around 10 years. However, following the outcome of the general election in 2023, this new legislative regime is in the process of being repealed.

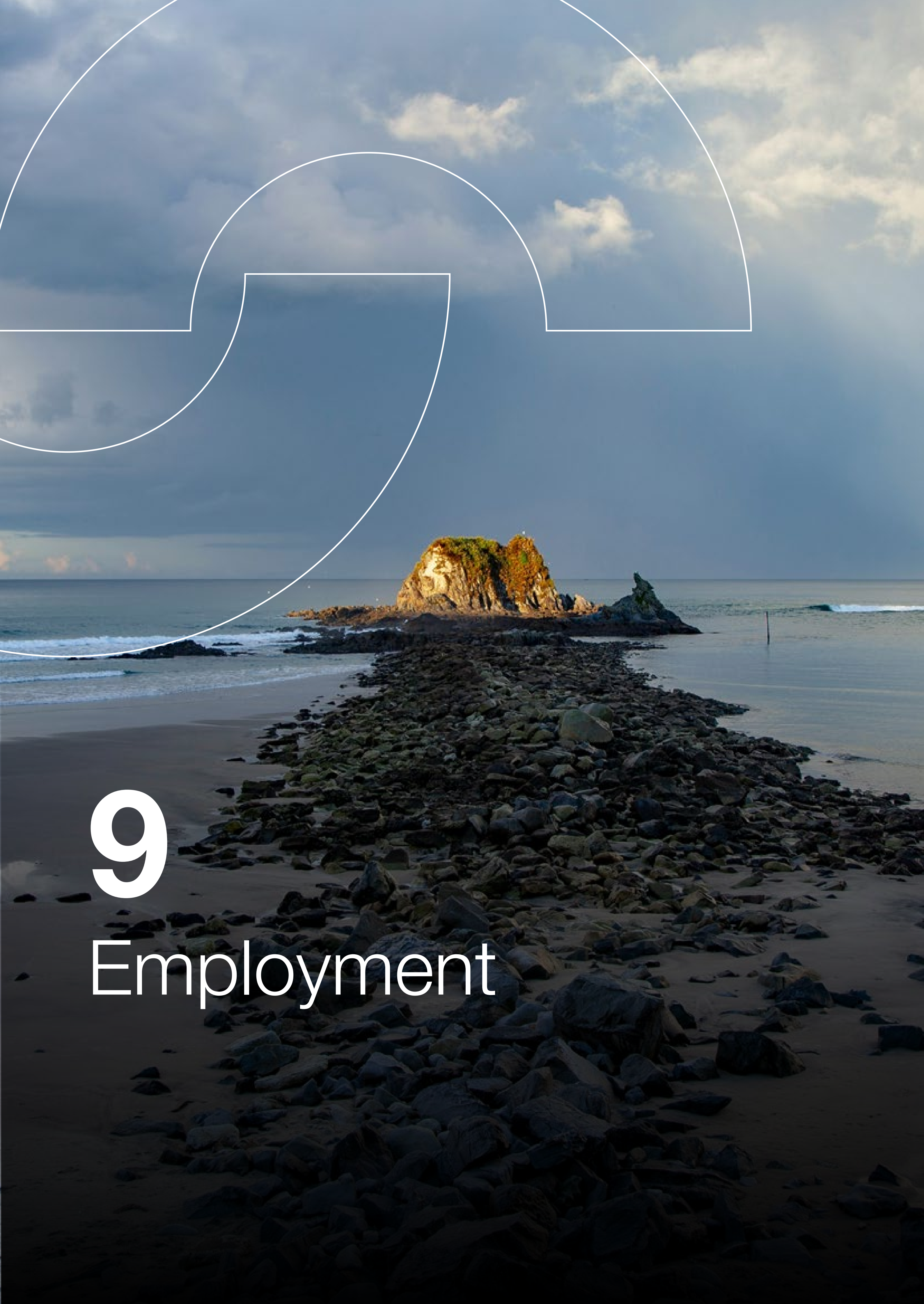
Many development and infrastructure projects are required to obtain various types of consents under the relevant resource consenting framework prior to commencement. Consents include subdivision consent, land use consent, coastal permits, water permits and discharge permits.

Building standards and consents

In addition to the resource consenting regime, the Building Act 2004 and the New Zealand Building Code provide performance standards for all building work in New Zealand, covering aspects such as structural stability, fire safety, access, moisture control, durability and energy efficiency. Like consents under the resource consenting regime, building consents can be obtained from a local authority.

Seismic activity can be a particularly relevant consideration in New Zealand, and the building consent regime includes minimum seismic performance requirements for buildings.





9 Employment

The employment landscape in Aotearoa New Zealand

The labour force in New Zealand is skilled, productive and cost competitive.

The unemployment rate currently remains low (measuring 4.0 percent in the forth quarter of 2023)[7] and the labour market continues to grow. Despite the global challenges of the COVID-19 pandemic, the employment landscape continues to support New Zealand's international reputation as a great place to do business.

Employment relationships in Aotearoa New Zealand

The Employment Relations Act 2000 (ERA) is the primary piece of legislation that governs relationships between employees and employers and establishes New Zealand's employment dispute resolution process. Many aspects of employment law in New Zealand are governed by common law.

Compared to other similar jurisdictions, New Zealand's employment law framework is generally considered to be "employee friendly". We recommend ensuring that you have a good understanding of your legal obligations and are set up for success with compliant employment documentation.

Good faith

The legal duty of good faith is central to employment relations in New Zealand. It requires parties in an employment relationship to be responsive and communicative, and to not mislead or deceive the other. As a general rule, employers must consult with employees before taking any action that might impact the workforce and particularly before making any changes that may affect their ongoing employment.

Employment agreements

All employees must have written employment agreements which contain certain minimum terms required by legislation. Employment agreements may take the form of an individual agreement between an employer and employee, or a collective agreement if there are union members.

Most employees in New Zealand work on a permanent basis. A person can also be employed on a part-time, fixed-term or casual basis. There are different legal requirements and entitlements for these types of employment relationships.

7 https://www.stats.govt.nz/news/unemployment-rate-at-4-0-percent/#:~:text=The%20seasonally%20adjusted%20unemployment%20rate,released%20by%20Stats%20NZ%20today.

Dismissal

Employers cannot "fire at will" in New Zealand. Termination must meet the statutory test of "justification", meaning it must be justified by one of a limited set of reasons (for example, misconduct, performance issues, redundancy or incapacity) and there are procedural requirements that must be followed.

Employers are permitted to apply a trial period of 90 days or less to new employees. Correct use of a 90 day trial period provision in an employment agreement precludes an employee from bringing an unjustified dismissal claim.

Redundancy

New Zealand employees are not entitled to any statutory compensation or severance payments. However, there may be a right to compensation as agreed between the employee and the employer as a matter of contract. All employees are entitled to their contractual notice period, as well as any outstanding salary and annual leave entitlements if they are made redundant.

Employees in specific industries (e.g. cleaning services, food catering and aged care) where jobs are particularly vulnerable to restructuring have additional statutory protections under the ERA.

Dispute resolution

All employees who believe they have been treated unfairly have access to New Zealand's personal grievance regime. A personal grievance is a particular type of complaint which must be made to the employer within 90 days of any alleged instance of discrimination, harassment, bullying, or any disadvantage or dismissal, or within 12 months of any alleged sexual harassment.

If a dispute cannot be resolved directly between an employee and employer, the Government provides a free mediation service. A dispute that cannot be resolved at mediation may be escalated to the Employment Relations Authority, and further to the Employment Court. The vast majority of disputes are resolved by way of a confidential settlement agreement before, or at, the mediation stage.

Minimum entitlements

New Zealand's employment law provides for a set of minimum entitlements that must be complied with.

Minimum wage: All employees aged 16 years or over must be paid the minimum wage. The minimum wage in New Zealand, which is reviewed annually, is currently NZ$22.70 per hour before tax. On 1 April 2024, the minimum wage will increase to NZD$23.15 per hour before tax.

Paid time off: Each year, employees are entitled to 12 public holidays, four weeks of paid annual leave (after 12 months of continuous employment) and paid sick leave (10 days), family violence leave and bereavement leave. The Holidays Act 2003 (Holidays Act) governs these minimum entitlements and is a complex piece of legislation which has given rise to compliance issues for many businesses in recent years.

Parental leave: Eligible employees are entitled to up to 52 weeks unpaid parental leave, with up to 26 weeks paid by the Government.

Independent contractors

Businesses can also engage independent contractors to provide services. Independent contractors are not afforded the same minimum statutory entitlements as employees and are responsible for their own taxes.

Contractors can challenge their status in the courts if they believe they are not genuine contractors, and should be classified as employees (despite any contractual or other documentation). If they are successful, this can give rise to liabilities for minimum entitlements under employment legislation and tax issues for the employer.

Collective representation

Employees in New Zealand can choose whether or not to join a trade union. Overall, national union membership remains low (approximately 14% of all employees in the 2022 financial year). The public and community services industries (such as health care and social assistance, public administration and safety, and education and training) are the most unionised sectors.

Employers, unions and employees are encouraged to work together in good faith to agree to suitable employment terms.

Health and Safety

The Health and Safety at Work Act 2015 and related regulations set out New Zealand's comprehensive health and safety regime. Businesses are responsible for the health and safety of their workers (including employees and any independent contractors) and anyone affected by their work, and must provide and maintain a safe working environment, taking into consideration both physical and mental wellbeing.

In the case of a breach, a business and its officers (including directors) can be prosecuted in the criminal courts by the regulator, WorkSafe New Zealand, and significant penalties can be imposed (including fines and imprisonment).

Insurance

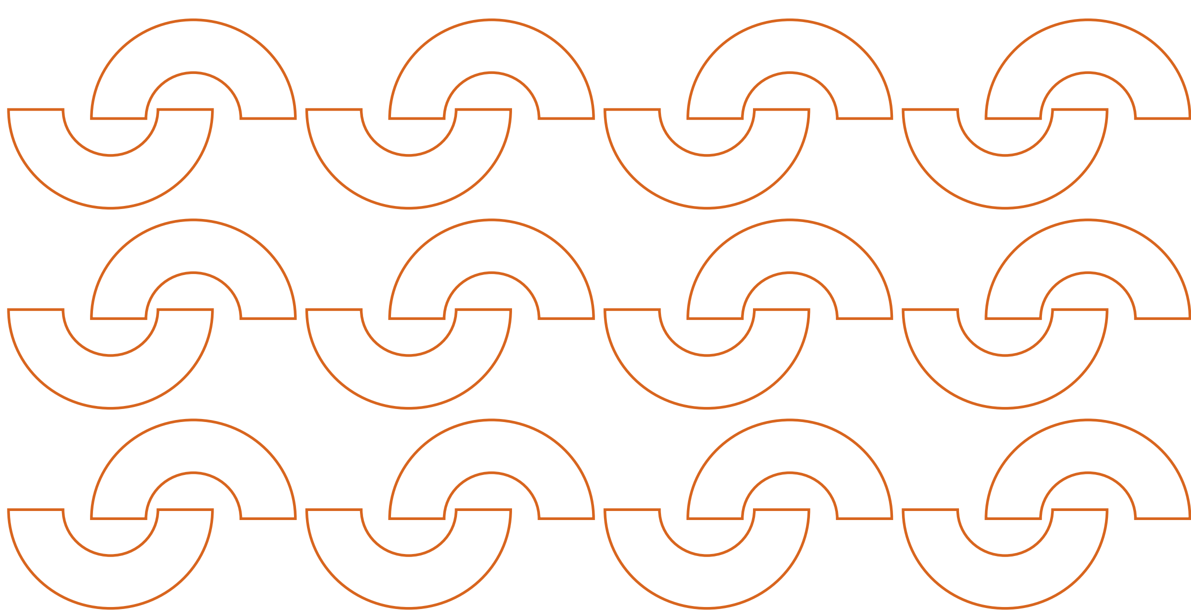
Accident Compensation Corporation (ACC) is a form of social insurance which provides personal injury cover for everyone in New Zealand. It is a no-fault system that provides compensation to people who are injured in accidents (including those suffered at work). Legal action for damages as a result of personal injury is generally prohibited in New Zealand.

Employers in New Zealand are not required to offer health insurance to employees, but they must contribute to ACC through regular levies. Employers that do not pay ACC levies can be liable for significant penalties.

KiwiSaver

KiwiSaver is a voluntary, work-based savings scheme designed to help New Zealanders save for their retirement. While KiwiSaver is not compulsory, employees must "opt-out", meaning all employers that are resident in New Zealand must enrol any eligible new hires and provide them with opt-out information.

Employees that participate in KiwiSaver must contribute a defined percentage of their before tax earnings (at least 3%). These contributions are deducted by their employer each time they are paid. Separately, employers must also make a compulsory contribution of at least 3% of each participating employee's salary or wages before tax. Private superannuation schemes are fairly uncommon in New Zealand.



10 Privacy

Data privacy

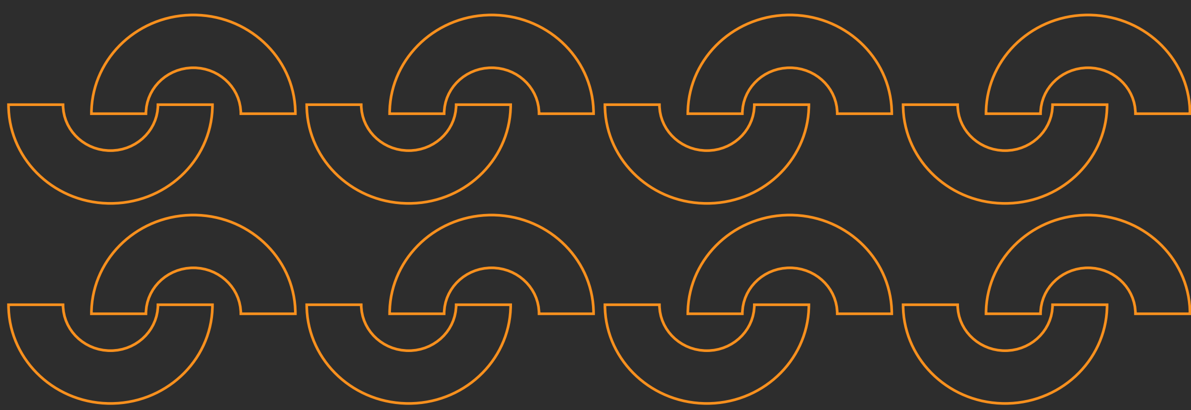
Data privacy in New Zealand is governed by the Privacy Act 2020 (Privacy Act). The Privacy Act sets out how individuals and organisations (both public and private) can collect, hold, use, and disclose Personal Information. Personal Information means any information about an identifiable individual (for instance, an individual's name, address, financial information, or health details).

Any organisation carrying out business in New Zealand, providing services to New Zealanders, and/or collecting their Personal Information for its own purposes is subject to the Privacy Act. The Privacy Act does not use the same definition of "carrying on business" as applicable to overseas companies carrying on business (and therefore required to register under the Companies Act 1993).

Information Privacy Principles

The Privacy Act contains a set of 13 principles. These provide the substantive requirements for collecting and using Personal Information and are similar to the information privacy regime in Australia. Broadly, they are as follows:

1. **Data minimisation** – only collect information necessary for your lawful purpose and nothing more
2. **Source of information** – collect the information directly from the individual concerned
3. **Transparency** – when collecting information directly from the individual, make the individual aware of a number of elements including why the information is being collected
4. **Manner of collection** – collect the information in a fair and lawful way without being unreasonably intrusive
5. **Security** – implement security safeguards to protect the information from being lost, misused, or disclosed
6. **Individual rights** – individuals have the right to access or correct their personal information
7. **Accuracy** – take reasonable steps to ensure the personal information is current, complete, and not misleading
8. **Storage limitation** – ensure personal information is not held longer than necessary
9. **Use limitation** – ensure personal information collected for one purpose is not used for another purpose
10. **Use of personal information** – only use personal information for the purpose it was collected
11. **Disclosure limitation** – keep personal information confidential unless permitted to disclose it under the Privacy Act
12. **Transfer of personal information outside Aotearoa New Zealand** – disclose personal information outside of New Zealand only if the required statutory safeguards under the Privacy Act are in place
13. **Unique identifiers** – ensure unique identifiers used by other companies are not replicated (for instance, requiring an individual to use their Tax number to identify them to you).



The Privacy Act 2020 applies to offshore persons carrying on business in New Zealand. If you plan to collect and/or use Personal Information as part of carrying out business in New Zealand, we recommend that you assess your operations against the 13 Information Privacy Privacy Principles set out in the Privacy Act.

All organisations carrying on business in New Zealand (and subject to the Privacy Act) must appoint a privacy officer (a person who will ensure the organisation is compliant with the Privacy Act).

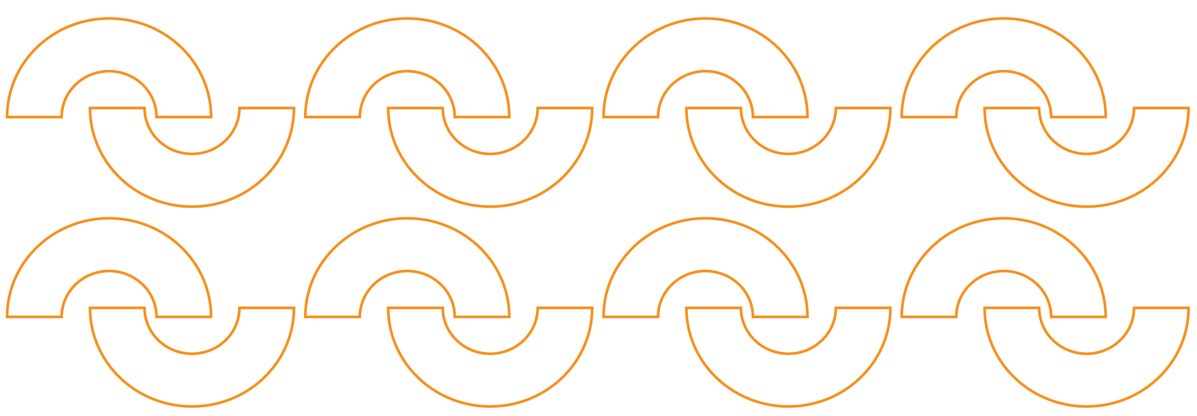
The New Zealand Office of the Privacy Commissioner (OPC) is responsible for monitoring and enforcing compliance with the Privacy Act. The Privacy Act requires organisations to notify the OPC where there has been a serious privacy breach (for instance a cyber attack or an incident which means that personal information has been lost or exposed). OPC guidance is that this notification should happen within 72 hours. You may also be required to notify the individuals who have been impacted by a privacy breach. Failure to report a notifiable privacy breach to the OPC without reasonable excuse is a criminal offence, with a maximum fine of NZ$10,000.

Complaints about a breach of the Information Privacy Principles are investigated by the OPC and may be referred to the Director of Human Rights Proceedings (DHRP) if the matter is not able to be resolved by the OPC. The DHRP has the ability to bring the matter before the Human Rights Review Tribunal and the Tribunal can award damages for a breach of privacy (up to a maximum of NZ$350,000). The Privacy Act allows a class action mechanism for individuals impacted by a breach of privacy. Using this mechanism, a representative may bring a class action to the Human Rights Tribunal for an interference with their privacy on behalf of a class of individuals.

Forthcoming developments

There are a number of developments in privacy law in the pipeline in New Zealand:

- The Ministry of Business, Innovation and Employment has released an exposure draft of the Customer and Product Data Bill. If passed, this Bill would introduce a Consumer Data Right in New Zealand which would allow for the safe transferring of consumer personal information between businesses (on the request of the customer) to improve customer experiences (similar to the Consumer Data Right introduced in Australia and Open Banking in the United Kingdom)
- The Ministry of Justice has indicated that it intends to amend the Privacy Act so that principle 3 (described above) must be complied with when collecting personal information from third parties (the current principle only applies when collecting information directly from individuals)
- The OPC has indicated that it intends to introduce a Code of Practice to regulate the increasing use of biometric technologies
- The OPC has published guidance setting out its expectations with respect to the use of generative Artificial Intelligence (AI) and has indicated that further more detailed guidance will follow



11

Intellectual Property

Intellectual Property

New Zealand has a comprehensive and robust legal regime for the protection of intellectual property rights (both registered and unregistered). These laws are aligned with international norms, with New Zealand being a signatory to a number of international intellectual property treaties and conventions including TRIPs, the Paris Convention, the Berne Convention, the Patent Cooperation Treaty, the Singapore Treaty, and the Madrid Protocol.

Many New Zealand companies are adept at developing valuable intellectual property and often seek out offshore capital to enable them to deploy the intellectual property, both domestically and for sale or licence overseas. The robust intellectual property regulatory system in New Zealand is attractive to foreign investors, as it establishes the framework for protecting their investment in new products, brands and ideas while allowing firms to drive innovation and productive uses of these assets.

Trade marks

Trade marks can be registered in New Zealand under the Trade Marks Act 2002. A trade mark grants the owner the exclusive right to use that trade mark in New Zealand in relation to the goods or services for which it was registered as long as the registration is renewed every 10 years. Trade marks that qualify for registration can include signs, symbols, words, logos, shapes, colours, sounds, and smells. New Zealand is a signatory to the Madrid Protocol, which facilitates trade mark applications internationally and into New Zealand.

Both registered and unregistered trade marks are protected under the common law tort of passing off and the Fair Trading Act 1986 (FTA). A passing off action can be used to prevent use of an identical or similar trade mark by third parties where that use would likely lead the public to believe that the third party is the same as or related to the trade mark owner. The FTA prohibits misleading and deceptive conduct in the course of trade, which includes misleading use of someone else's trade mark. The scope of protection under passing off and the FTA will depend on the use of and reputation in the trade mark, and generally registration of your trade mark provides better protection.

Copyright

Copyright applies automatically on the creation of certain original works, including writing (literary works), artistic works, music, sound and video recordings, designs, and software code. Copyright duration depends on the category of work, but is generally the life of the author plus 50 years. The Copyright Act 1994 also provides protection for industrial designs for a period of 16 years from the date of first mass production.

Patents

Patents grant the owner the exclusive right to exploit their inventions and licence them to others for a period of up to 20 years, subject to the payment of annual renewal fees after the first four years. The invention must be novel, inventive, and useful. Novelty is assessed on an absolute (or worldwide) basis. It also means that your invention must remain confidential (and not be in use or widely known) until you seek patent protection. In New Zealand, patents are examined for patentability prior to grant. There are pre-grant opposition processes should third parties wish to challenge a patent, and re-examination and revocation processes post-grant.

We recommend registering any trade marks intended to be used by the business, as registered trade marks are usually cheaper and easier to enforce than unregistered trade mark rights.

Registered designs

The Designs Act 1953 governs the registration of 'designs' applied to an article (by an industrial process or means) that are new or original features of shape, configuration, pattern or ornament. Protection through registration can last up to 15 years, subject to the payment of renewal fees.

Other intellectual property rights

New Zealand legislation also provides protection for:

- plant varieties
- geographical indications (currently only for wines and spirits, but this will expand to a broader range of food and agricultural products once the provisions of the New Zealand-European Union Free Trade Agreement are implemented domestically)
- layout designs for integrated circuits
- ambush marketing in connection with designated major events
- moral rights

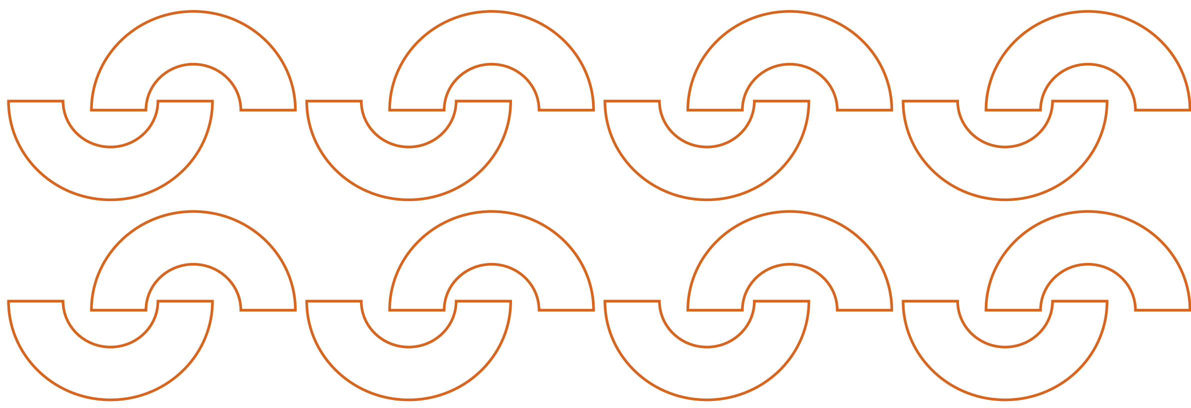
Tax

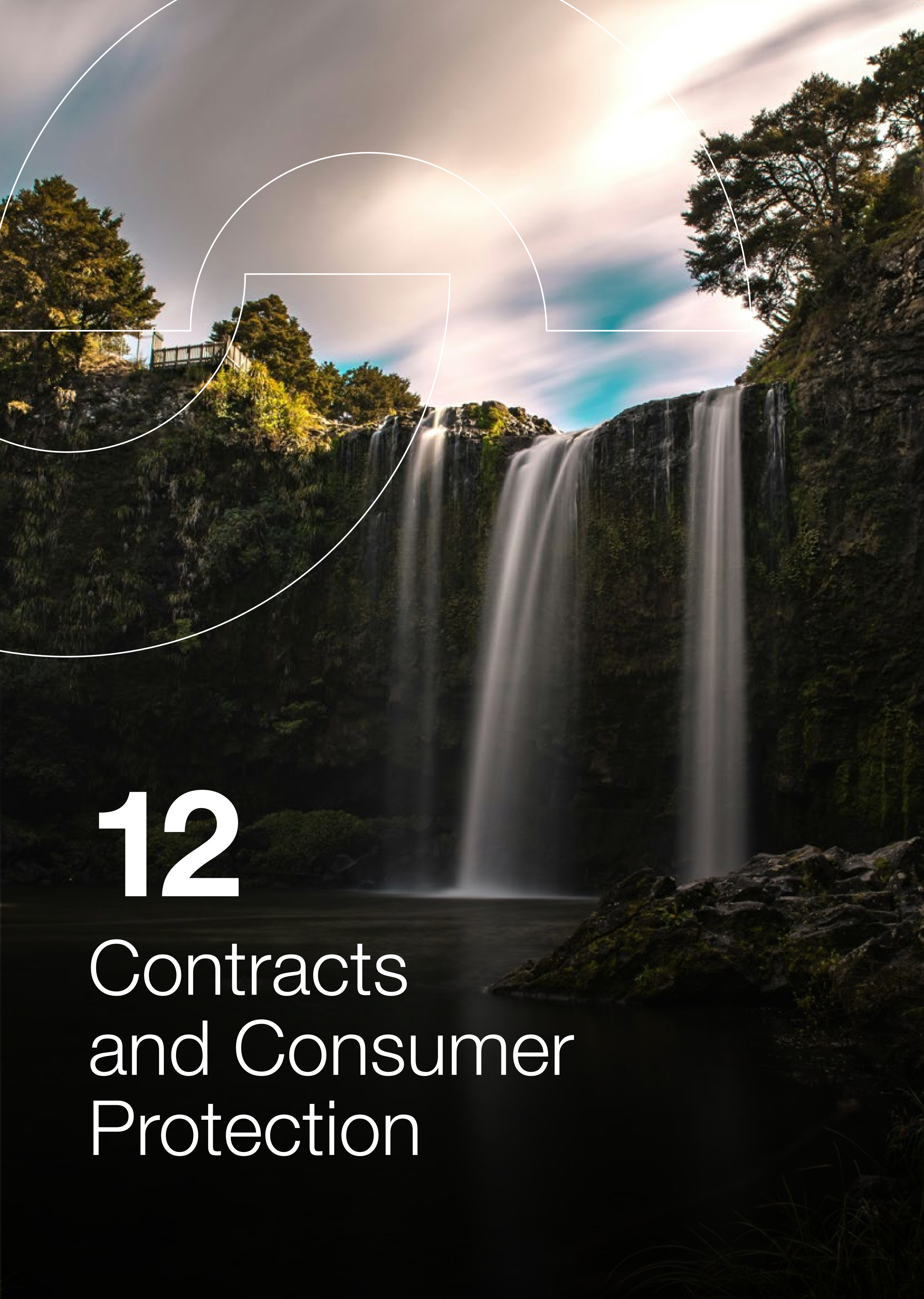
Numerous tax issues may arise where intellectual property is deployed offshore. During the early research and development stages, research expenditure is generally deductible in the year incurred, while development expenditure tends to be capitalised and amortised over the life of the asset. At the commercialisation stage, effective structuring will be important where intellectual property is deployed offshore.

If intellectual property is licensed offshore, royalties may be received in, or paid out of, New Zealand. Most countries with which New Zealand businesses trade will impose withholding tax on royalties paid to an offshore company. Tax considerations will also apply on the sale of intellectual property and depend on the types of intellectual property involved.

New Zealand offers a Research and Development (R&D) Tax Incentive to encourage businesses to invest in innovation in New Zealand. The tax incentive provides a tax credit at a rate of 15 percent of eligible R&D spend, up to $120 million a year, which is broadly refundable as cash. Subject to certain restrictions, entities may be eligible for the incentive even when the R&D is performed on behalf of a related party or the IP generated is held internationally within the group, or if being performed in New Zealand through a permanent establishment.

Checking for prior conflicting intellectual property rights will also be important before launching a new business, brand, product or service in New Zealand.





12
Contracts and Consumer Protection

Contracts and Consumer Protection

New Zealand's contract law is founded on English common law principles and supplemented with various pieces of legislation. Its objective is to facilitate business arrangements on commercially agreed terms and generally, without the courts having to intervene unless it is absolutely necessary. The application of contract law in New Zealand is the same regardless of whether the contracting parties are foreign-owned or New Zealand-owned. It is possible, however, to select the jurisdiction that will govern the contract and where any disputes must be heard – this can be done on either an exclusive or non-exclusive basis.

Contract and Commercial Law Act 2017

The Contract and Commercial Law Act 2017 (the CCLA) provides a "one stop shop" for various rules that relate to issues that commonly arise in contractual arrangements. For example:

- **Contractual privity:** The CCLA permits a person who is not a party to a deed or contract to enforce a promise made in it for the benefit of that person.
- **Mistakes, frustration and misrepresentation:** The CCLA outlines the remedies available where a contract contains a mistake, is impossible to perform, or has been entered into on the basis of a misrepresentation (subject to the satisfaction of certain criteria).
- **The sale of goods:** The CCLA implies various rights and obligations into contracts relating to the sale of goods, unless, where permitted, the parties expressly agree otherwise. For example, the CCLA specifies when property and risk will pass from seller to buyer. It also imposes minimum conditions and warranties about the quality of goods to ensure that the goods are reasonably fit for purpose.
- **Electronic transactions:** Technology and electronic means may be used to conclude transactions, subject to default rules implied by the CCLA. For example, electronic signatures may be used to sign contracts in place of wet-ink provided that it meets certain identification and reliability criteria.
- **Remedies:** Depending on the relevant contractual situation, the CCLA provides the courts with the power to provide relief in any form that it thinks is just, such as variation or cancellation of the contract and/or damages.

Consumer Protection

New Zealand's trade practices and consumer protection regimes are principally governed by the following legislation:

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

Commerce Act 1986

The Commerce Act 1986 (Commerce Act) protects consumers by regulating commercial conduct to promote competitive markets within New Zealand.

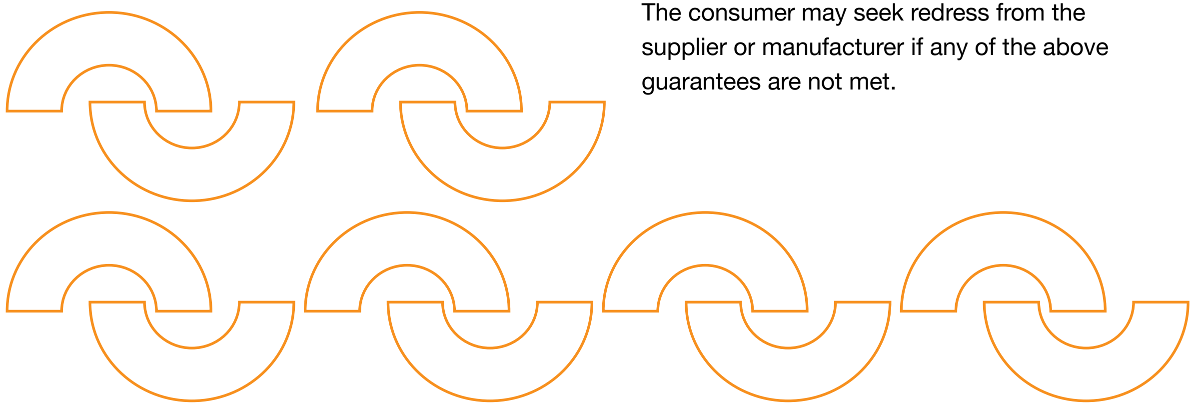
The Commerce Commission was established by the Commerce Act to enforce competition, fair trading and consumer credit laws. To do so, the Commerce Commission has the ability to clear and authorise business mergers and acquisitions, regulate certain goods and services, receive and investigate complaints under the Commerce Act, as well as prosecute alleged contraventions of the same (see Mergers and Acquisitions at Section 4).

Fair Trading Act 1986

The Fair Trading Act 1986 (the FTA) regulates conduct and practices in trade to protect consumers. Notably, the FTA:

- prohibits misleading and deceptive conduct in trade, as well as unsubstantiated, false or misleading representations
- prohibits "unconscionable conduct" in trade, broadly being unfair and unreasonable conduct, and which can involve a one-off activity or a system or pattern of conduct
- prohibits "unfair practices" in trade such as offering gifts and prizes without intending to supply them, bait advertising, and pyramid selling schemes
- prohibits unfair terms in standard form consumer contracts (business-to-consumer) and small trade contracts (business-to-business contracts for less than NZ$250,000 per annum)
- establishes standards for disclosure of information relating to the kind, quality, design and other characteristics of goods or services for the benefit of consumers
- establishes product safety standards that must be complied with for any class of goods and services to prevent risk of injury to any person
- regulates several other consumer contractual matters, such as layby sale agreements, direct sale agreements (via telephone or door-to-door), extended warranty agreements and auctions

Businesses cannot contract out of the FTA with consumers, but are able to do so with other businesses under certain conditions.



Failure to comply with the FTA constitutes an offence which may result in various civil remedies including fines and court orders, as well as criminal sanctions in some instances. The FTA also empowers the courts to impose management banning orders on individuals who are repeat offenders under the FTA.

Many of the prohibitions set out in the FTA are also repeated in the Financial Markets Conduct Act 2013, though relating specifically to financial products.

Consumer Guarantees Act 1993

The Consumer Guarantees Act 1993 (CGA) provides various implied guarantees to protect consumers of goods and services from suppliers in trade. These guarantees only apply to goods and services of a kind ordinarily acquired for personal, domestic or household use, where the goods are not acquired for the purposes of resupplying them in trade, using them in a manufacturing process or repairing the goods in trade.

The implied guarantees under the CGA include:

- goods being of acceptable quality
- goods being reasonably fit for a particular purpose
- goods or services being a reasonable price
- goods having parts reasonably available for repair purposes
- goods or services complying with their description or corresponding to the sample if provided
- services being carried out with reasonable skill and care
- goods being delivered and services being completed in a timely manner

The consumer may seek redress from the supplier or manufacturer if any of the above guarantees are not met.

Parties may only contract out of the FTA and CGA in limited circumstances. Businesses proposing to offer goods or services in New Zealand should seek legal advice before doing so to ensure that they can meet their minimum obligations under the FTA and CGA.

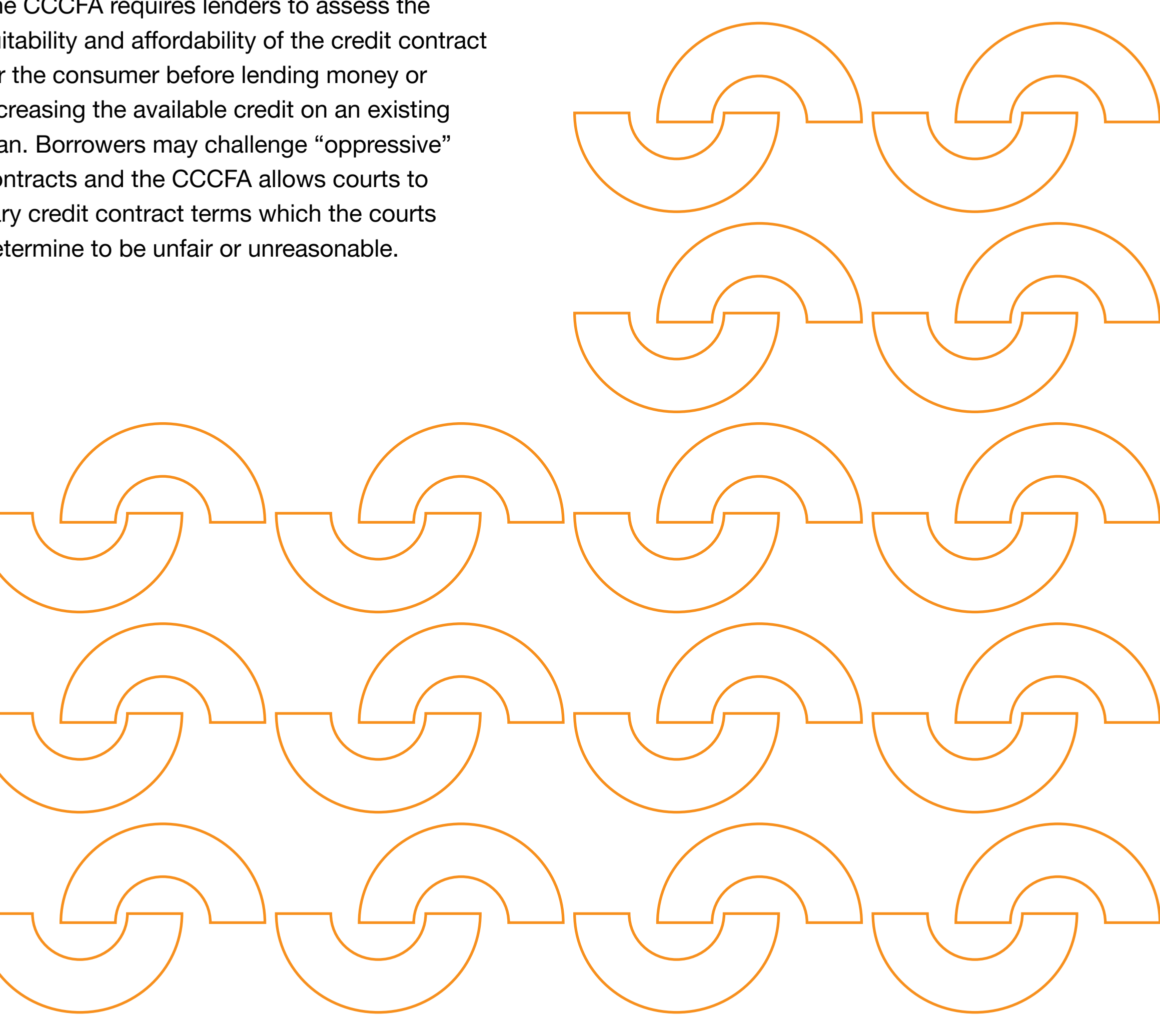
Credit Contracts and Consumer Finance

The Credit Contracts and Consumer Finance Act 2003 (CCCFA) regulates credit contracts entered into with consumers where money is loaned for personal use, including hire purchase and personal lending arrangements. However, the CCCFA does not apply where the credit is for commercial or investment purposes.

The CCCFA sets out limits on how much interest may be calculated and charged, and sets out disclosure requirements on lenders, including around interest and fees to help consumers compare the cost of borrowing and contract terms. Lenders cannot enforce credit contracts with consumers until all of the required disclosures have been made.

The CCCFA requires lenders to assess the suitability and affordability of the credit contract for the consumer before lending money or increasing the available credit on an existing loan. Borrowers may challenge "oppressive" contracts and the CCCFA allows courts to vary credit contract terms which the courts determine to be unfair or unreasonable.

While the CCCFA did not historically cover "Buy Now, Pay Later" (BNPL) credit contracts, the Government has introduced new regulations to apply CCCFA protections to BNPL. Despite BNPL providing benefits for consumers and businesses, the Government has decided to act on the concerns it has regarding the financial hardship that BNPL can create for some consumers. The new regulations will ensure there are similar safeguards for BNPL as other consumer credit contracts. The regulations will become effective on 2 September 2024, allowing BNPL providers time to comply with the new rules.



13

Doing Business with Māori

Partnering with Māori and the Māori economy

Māori are the indigenous people of Aotearoa New Zealand and are key players in the New Zealand economy.

The Māori economy

The Māori economy plays a crucial role in driving New Zealand's economic success and is experiencing significant growth – this is projected to continue. Over the last ten years, the Māori asset base has also grown at a significantly faster rate than the overall economy. Today the Māori economy is valued at more than NZD$70bn, and estimates suggest it will have assets worth NZD$100bn by 2030.[8]

Traditionally, the Māori economy has been driven by the primary sector. As an indicator of the overall primary sector, Māori entities are estimated to collectively own:

50%
Fishing quota

40%
Forestry

30%
Sheep and beef

10%
Dairy production

Treaty settlements (see Te Tiriti o Waitangi below) and a rapidly growing Māori asset base continue to provide Māori with capital for opportunities beyond the primary sector, with diversification among post-settlement governance entities (a legal entity established to receive and manage settlement assets on behalf of the claimant group) into the education, tourism, infrastructure, property development, and technology sectors.

We have also observed the emerging collective voice of Māori authorities and land trusts who are significant contributors to the Māori and national economy. Many have "hundred million plus" balance sheets, strong governance and management, and long-term growth strategies.

In 2022, Stats NZ identified:

- 1,290 Māori authorities and 2,630 other Māori enterprises
- Māori authorities employed a total of 11,800 people while other Māori enterprises employed a total of 29,800
- A quarter of Māori authorities operated in primary industries with half of Māori farms being in the Waikato, Bay of Plenty, and Northland regions
- Māori authorities exported $760m worth of goods and other Māori enterprises exported $256m worth of goods
- The total income for Māori authorities was $5.43bn, up 14% from the 2021 financial year
- 65% of Māori authorities and 76% of other Māori enterprises had a social media presence

Joint ventures between Māori and non-Māori organisations are becoming increasingly common with Māori organisations seeking to partner with investors who in addition to contributing capital can also contribute capability and expertise alongside the strategic value that Māori organisations bring to the relationship. For some large projects requiring use of natural resources, we are seeing a number of innovative ownership and commercial models which incorporate:

- strong alignment of values between partners
- access to global intellectual property, technology and innovations
- access to channels to market
- mutual investment into the health of the environment and sustainability of the natural resources
- recognition of mana whenua and mana moana (local tribal authorities)
- representation on governing boards and executive management teams
- investment into skills, workforce and education initiatives

8 NZTE, 2017.

Core values underpinning social and cultural objectives

Most Iwi and Māori collectives invest with wider social and cultural objectives in mind.

Core values underpinning these social and cultural objectives include:

- **Kaitiakitanga:** Guardianship, particularly in respect of the natural resources
- **Manaakitanga:** Care and hospitality, particularly for visitors, and building unity
- **Rangatiratanga:** Stewardship of others and empowering Māori to advocate for their own people
- **Whanaungatanga:** Building and maintaining relationships

Overseas investors who are considering partnering with Māori collectives and organisations, or who are considering an investment that involves land or natural resources, may benefit from understanding some of the guiding cultural values that Māori people and Māori organisations hold themselves to and should engage with Iwi early in the project.

Māori organisations and collectives will also often have their future generations in mind and will look for long-term relationships where economic success can facilitate greater social outcomes and benefits for their people. It is important to Māori organisations and collectives that commercial investments perform to their maximum potential in order to achieve, and/or directly impact, their wider social and cultural objectives.

Investors looking for purposeful businesses could invest in Māori-owned technology companies to help take the unique essence of to the world. Māori values are often strongly aligned with alternative or new investment models that accommodate both social and/or environmental impacts alongside financial returns.

Te Tiriti o Waitangi (the Treaty of Waitangi)

A treaty was signed by representatives of the Crown and by chiefs representing some, but not all, Iwi on 6 February 1840. This constitutional document of New Zealand's history has seen growing prominence in recent years as:

- Treaty grievance claims go through settlement processes
- Crown agencies increasingly seek to understand and uphold their Treaty obligations
- Broader society has begun to embrace Māori world views and cultural practices (for example, the Māori language)

The Treaty is expressly recognised in various pieces of legislation. For example, the Urban Development Act 2020 each provides a statutory requirement for persons exercising powers and functions to take into account the principles of Te Tiriti o Waitangi (see Property at Section 8). The Local Government Act 2002 also recognises the Crown's responsibility to take appropriate account of principles of Te Tiriti o Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes.

Iwi and Māori organisations and collectives play an important role in helping to grow the domestic capital needed to achieve growth in Aotearoa New Zealand's productive assets.

It is important that investors understand the core values and cultural objectives that underpin investment for Māori organisations, and look to engage with Iwi early, in order to partner effectively.

PwC's Manukura Māori team is passionate about working with Iwi, Māori focused entities, and organisations to enhance Māori economic, social, cultural and environmental outcomes and help shape a future Aotearoa where all communities thrive. As a community of solvers, the Manukura Māori Business Team can assist investors looking to understand, engage and do business with Māori organisations.

14 Climate Regulations

Climate Regulations

For overseas investors, there are opportunities to align with national and international obligations for climate change action within domestic legislative frameworks. Climate regulations in New Zealand seek to bring carbon into the balance sheet and embed climate risk analysis into everyday business processes. In terms of carbon risk exposure, emissions-intensive industries and business models may face additional costs through carbon pricing under the Emissions Trading Scheme, and disclosure requirements under the Climate Related Disclosures regime.

New Zealand has set a goal to be net zero carbon by 2050. This goal was passed into law through the Climate Change Response (Zero Carbon) Amendment Act in 2019, which provides a framework for New Zealand to develop and implement clear and stable climate change policies that:

- Contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre industrial levels
- Allow New Zealand to prepare for, and adapt to, the physical and transition impacts of climate change.

The evolving climate change landscape is complex to navigate, so it is important to stay up to date and engage advisors early to determine the most appropriate pathway for your business to meet its climate change goals and aspirations.

The New Zealand Emissions Reduction Plan (ERP)

The New Zealand ERP sets out the actions we will take to meet our first emissions budget (2022 – 2025) and set New Zealand on the path to meet the second (2026 – 2030) and third (2031 – 2035) emissions budgets. It sets expectations across sectors for future regulation and investment, to support decarbonising each sector. This will assist New Zealand's transition to a low emissions future in a way that is achievable and affordable.

In addition to setting the net zero goal, the Climate Change Response Act 2020 now establishes a system of emissions budgets to act as stepping stones towards the long-term national Net Zero target. The first three five-yearly emissions budgets have been provisionally set and the first emissions reduction plan outlines the policies that the Government will implement (or investigate) to achieve the first emission budget, with the following two emissions budgets in mind.

The emissions budgets are relatively conservative, based on known technologies, and a modest adoption rate for best practice. That said, as a more meaningful cap has been introduced on the NZU inventory (the emissions units under the Emissions Trading Scheme), the carbon price (NZU price) has risen from lows under $2 in 2013 to where it now sits at over $70 a tonne of CO2. The impact of a new Government regime on the NZU price is currently uncertain but may be material as the ERP is one of the Government's most significant levers to support meeting the budgets.

Through the plan, sector specific sub-targets have also been set to help track progress across key sectors over each emissions budget period. While these are a useful tool for checking progress, they are not intended to lock New Zealand into a single pathway to meeting emissions budgets.

The New Zealand Emissions Trading Scheme (ETS)

The New Zealand ETS creates a price signal by setting a "cap" – or limit – on greenhouse gas emissions. Under the ETS, participants can purchase, earn, and trade permits for the right to emit (NZUs). Participants can earn NZUs by removing greenhouse gases through certain activities. Over time, the cap will decrease in line with emissions budgets, reducing the supply of NZUs available for auctioning and driving up the incentive for emissions abatement. The ETS has a flexible cap that enables the volume of emissions within the scheme to be aligned with our emissions budgets. This alignment is primarily achieved through adjustments to the units available for auctioning.

The Minister of Climate Change is required to update the overall limit, sub-limits, and price control settings every year, providing a five-year look ahead period. For example, decisions were made in August 2021 to update the overall limit and price control settings to ensure they cover 2022 – 2026.

The Government is also required to set annual price controls for ETS auctions: a "price floor" and a "price ceiling". These controls signal the bounds of acceptable NZU prices at auction and act as a safety valve if an auction's clearing price deviates outside these bounds. They also provide some certainty to businesses and investors on the future trajectory of NZU prices to aid the forecasting of emissions obligations, or to help with investment planning.

NZUs are tradable assets. Accordingly, investors may buy and sell them on secondary markets, and it is possible to take security over NZUs. The Environmental Protection Agency manages a register of holding accounts to record holdings of NZUs.

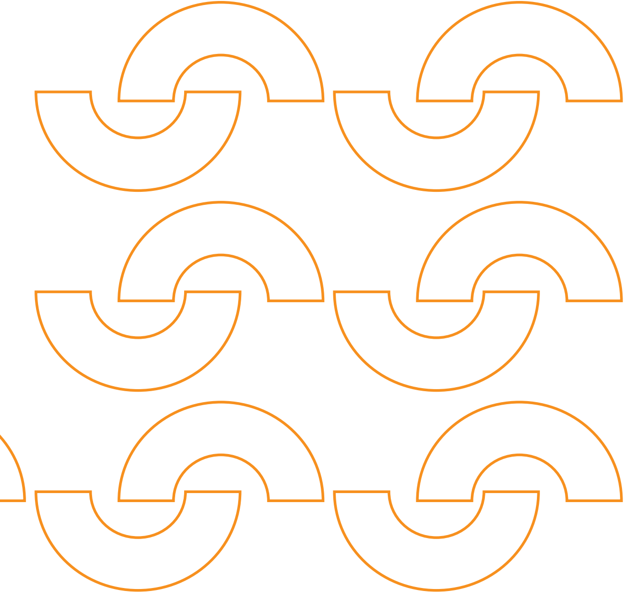
The ETS covers all sectors of New Zealand's economy. Different sectors participate in different ways and the obligation around reporting and pricing of emissions is generally set as far up the supply chain as possible.

Agriculture

The agricultural sector is a significant contributor to New Zealand's emissions (approximately half of gross emissions), dairy being the largest single contributor. Participants in the agricultural sector are not currently included in the ETS. The Government is working with the primary sector, Māori, farmers, and growers to manage emissions and will be implementing an agricultural emissions pricing scheme by 2025.

Forestry

Those who own or have rights to forest land can earn NZUs under the ETS for forests planted after 31 December 1989, and in turn, surrender NZUs for emissions released. The emissions impact of planting, forest management, harvesting, deforestation and natural events (such as fire or flood) are all covered. Owners of pre-1990 forest land can harvest and re-plant without liability, but the landowner (or the third party who had deforestation rights) must surrender NZUs for deforestation.



Aotearoa New Zealand Climate Standards (NZCS)

The majority of large New Zealand financial organisations provide inconsistent information on what climate change might mean for them. To improve climate change disclosures by New Zealand entities, the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 amends the Financial Markets Conduct Act 2013 (FMCA), the Financial Reporting Act 2013, and the Public Audit Act 2001. The purpose of the NZCS is to "support the allocation of capital towards activities that are consistent with a transition to a low-emissions climate-resilient future".[9]

This new law mandates around 200 large financial institutions covered by the FMCA to start making climate-related disclosures. New Zealand is one of the first countries in the world to require financial institutions to make climate-related disclosures under these new laws. Affected organisations are expected to publish disclosures from financial years commencing in FY 2023, in line with the Climate Standards produced by the External Reporting Board (XRB), which are based on the Task Force on Climate-related Financial Disclosures (TCFD) and International Sustainability Standards Board (ISSB) international frameworks.

Entities required to make climate disclosures include:

All registered banks, credit unions, and building societies with total assets of more than NZ$1 billion

All managers of registered investment schemes (other than restricted schemes) with greater than NZ$1 billion in total assets under management

All licensed insurers with greater than NZ$1 billion in total assets or annual premium income greater than NZ$250 million

Listed issuers of quoted equity securities with a combined market price exceeding NZ$60 million

Listed issuers of quoted debt securities with a combined face value of quoted debt exceeding NZ$60 million

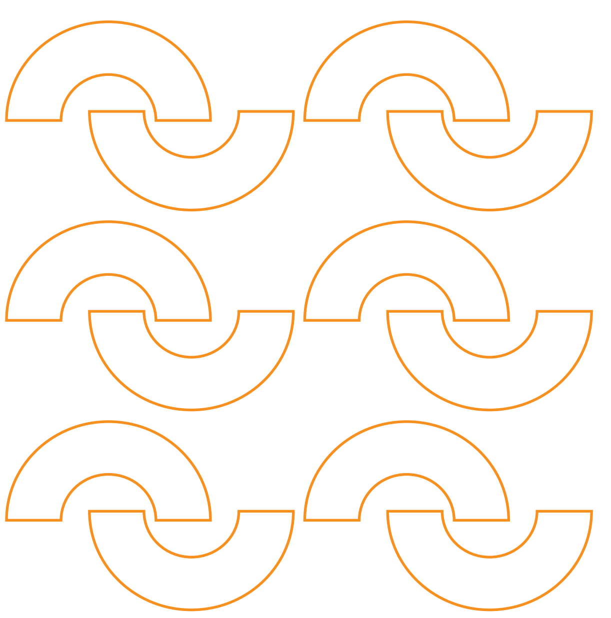
The New Zealand Financial Markets Authority uses its current regulatory powers to monitor climate change disclosure compliance. The Authority released an Initial Monitoring Approach in September 2022, which was followed by more detailed guidance for compliance in 2023.

Greenhouse gas emissions disclosures

Under the Aotearoa New Zealand Climate Standards (NZCS) guidance from the XRB, climate reporting entities (CREs) are mandated to report their scope 1 and 2 greenhouse gas emissions for the first year of reporting, and the option to report scope 3 emissions for the second reporting period and every year thereafter.

The NZCS standards require that organisations must use the Greenhouse Gas (GHG) Protocol or International Organisation for Standardisation (ISO) standards to calculate emissions. The standard allows for comparability and consistency in reporting across captured CREs.

Those organisations captured will be challenged to account and mitigate material emission sources. Non-CREs involved in CRE supply chains may be asked to provide relevant information for CRE's to report on the emissions associated with their value chain.



9 (NZCS1).

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