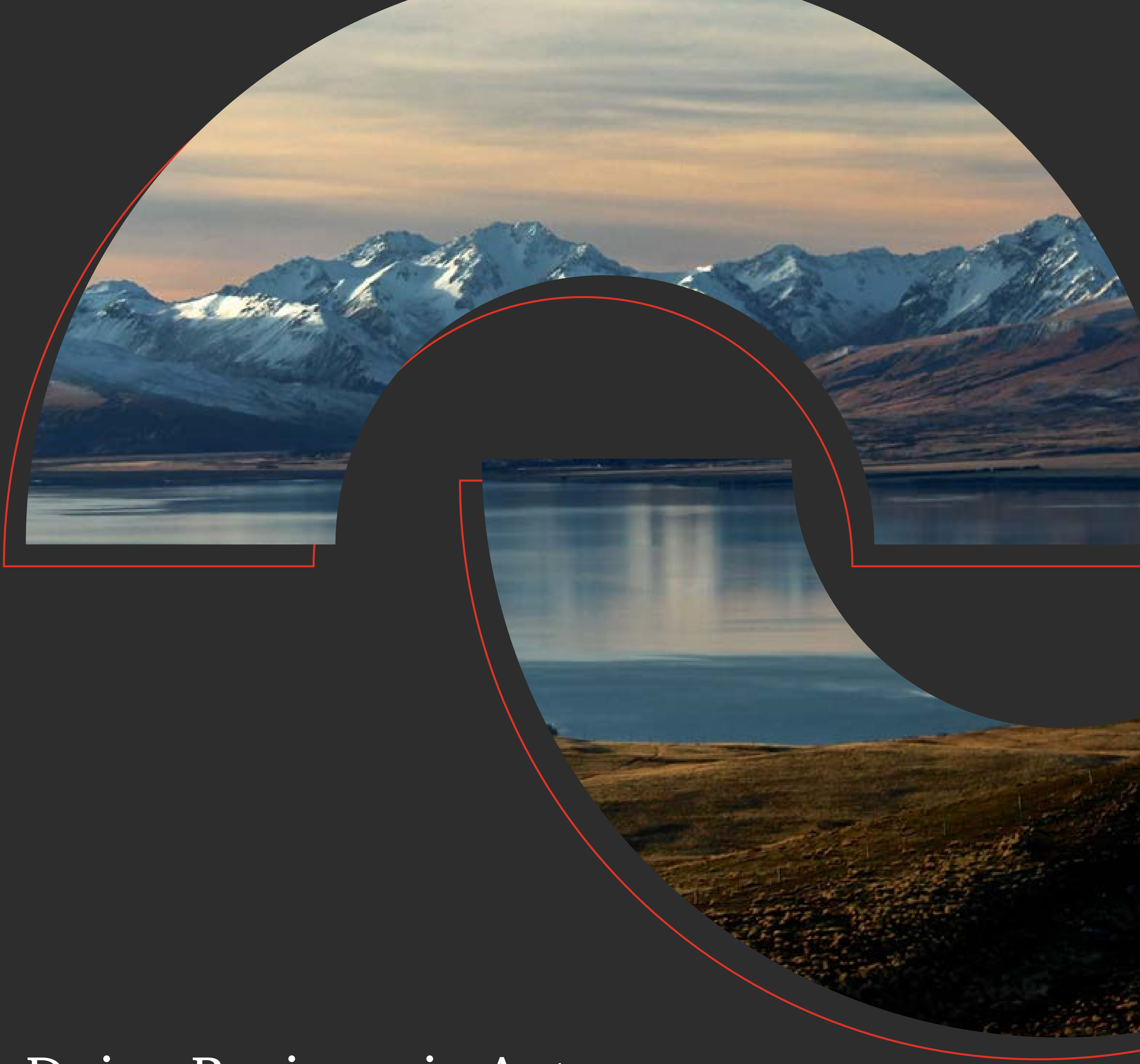

Doing Business in Aotearoa

New Zealand Guide

pwc

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Contents

About PwC

A message from the CEO

There's no doubt the world has experienced an extraordinary period of change in recent years. From a global pandemic, digital disruption, increasing geopolitical differences, as well as a heightened focus on environmental, social and governance related issues, we are navigating new and complex challenges.

Here at PwC New Zealand our purpose is to build trust and solve important problems. It's about helping our clients respond to these challenges 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 experiences of doing business in Aotearoa New Zealand. 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 regulations, taxation and other key laws and regulations that you should be aware of before seeking to invest or do business in Aotearoa New Zealand.

We hope you find this guide helpful and should you require more information about the migration, business, and investment opportunities in Aotearoa 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 Aotearoa New Zealand easy for you.

We look forward to hearing from you.

Mark Averill
CEO & Senior Partner

Section One

Introduction

Introduction

New Zealand as an investment opportunity

With the global markets focused towards Asia, and increasing geo-political instability, New Zealand is an increasingly 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 fourth on the Index of Economic Freedom 2022 and was ranked one of the least corrupt countries in the world in Transparency International's 2021 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. 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 enforce 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 strong, despite the significant impacts of COVID-19 on the availability of labour and supply chain challenges. The food and fibre sector in New Zealand continues to perform better than overseas competitors, reaching a record NZ$52 billion in export revenues.

New Zealand's ability to generate high complexity/highly-differentiated products (such as Gold Kiwifruit and A2 milk), has played a significant role in New Zealand's recovery from the COVID-19 pandemic.

Prior to COVID-19, tourism was New Zealand's biggest export industry, representing approximately 6% of GDP. New Zealand is re-establishing its tourism industry after opening the borders to international travellers in July 2022. Its stunning landscapes and the development of domestic policy are stimulating a promising recovery of the tourism industry. To support the recovery of the tourism industry the Government has implemented a NZ$400 million recovery package, followed up with a NZ$54 million Innovation package towards sustainable recovery.

Invest in New Zealand

- New Zealand has a strong reputation for innovation, particularly in agri-tech and bio-tech products and services. It also enjoys a thriving investment ecosystem, with significant growth in the number of transactions and capital invested in recent years, despite the challenges of COVID-19.
- As the nation looks to recover from the economic impacts of COVID-19 and seeks to kickstart growth, the current environment provides opportunities for offshore investors to play a key role beyond simply providing capital.
- 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. 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 wages 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.

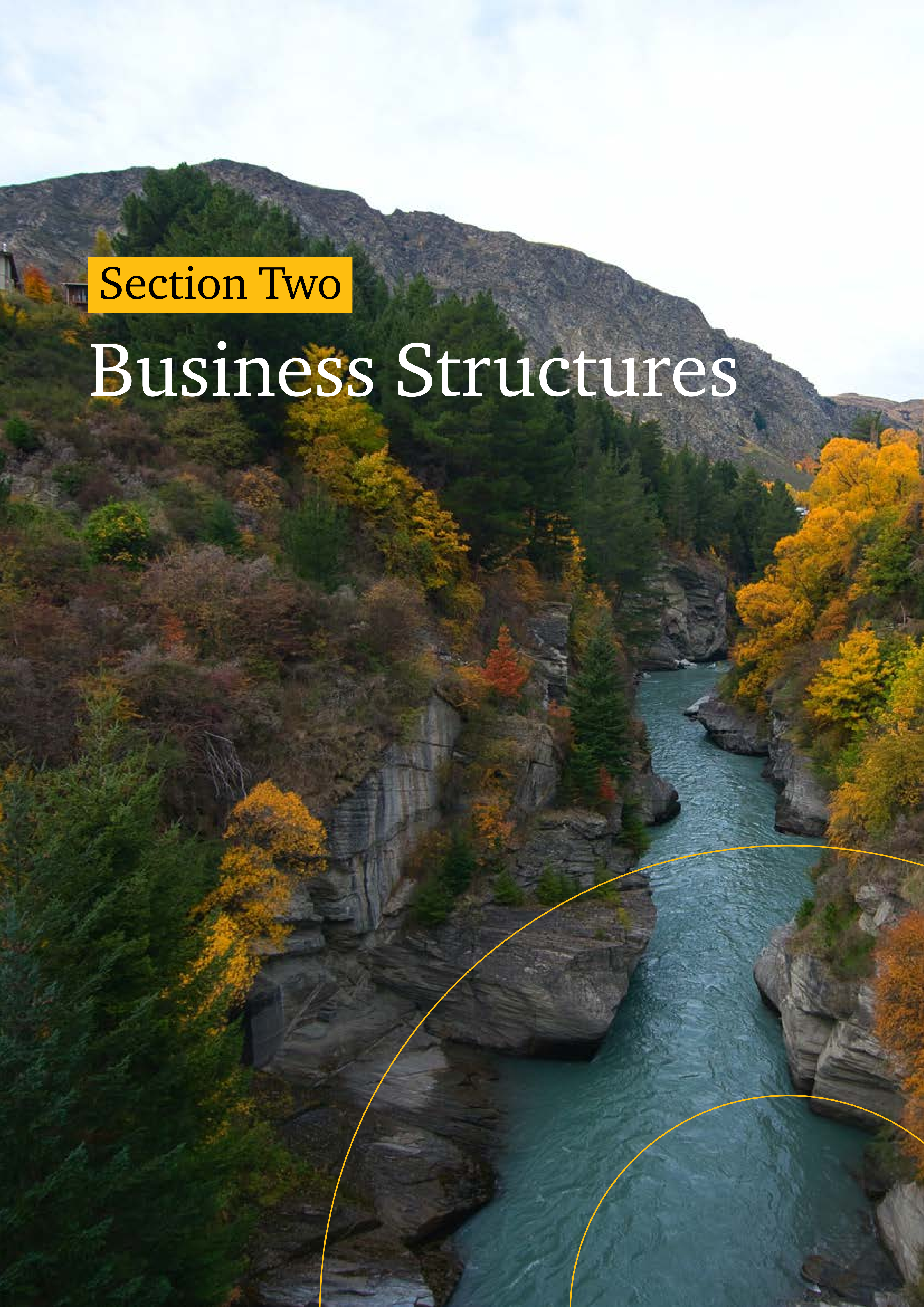
International Trade

New Zealand's major export partners include China, the United States, Australia, Japan, the United Kingdom, Singapore, South Korea, and Germany. Taking advantage of its international reputation with a strong and growing network of international trading partners, New Zealand has successfully concluded 13 free trade agreements, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), a partnership with 11 key economies in the Asia-Pacific.

New Zealand also has long standing free trade agreement (FTA) with Australia and China respectively. As a party to the Regional Comprehensive Economic Partnership, New Zealand has improved market access to 13 key markets that go beyond the existing FTAs. The New Zealand-United Kingdom FTA will likely come into force by the end of 2022 and will provide duty-free quota access for the agriculture sector. New Zealand is currently in negotiations for an FTA with the EU to remove tariffs and other inhibitors.

Section Two

Business Structures



Business Structures

Doing business through 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. There are a number of different types of corporate entities that are used in New Zealand and the most common are limited liability companies, branch offices, and limited partnerships.

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

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.

Limited liability companies

In New Zealand, limited liability companies provide limited liability to their shareholders, which means such shareholders are generally only liable for the capital 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. 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.

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 Inland Revenue Number may be applied for 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 its website (which acts as an electronic register), 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 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 struck off the Companies Register.

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; or
- 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.

Branch offices

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

If an overseas company is carrying on its business in New Zealand, it may be required to register a 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 not required to have a nominated representative resident in New Zealand, but is required to fulfil certain obligations such as completing an annual return and notifying the Companies Office of changes to its directors, addresses, or constitution.

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.

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, and to confirm that the overseas company is still carrying on business in New Zealand.

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.

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 such debts and liabilities. The general partner may be a limited liability company, another limited partnership, or partnership.
- A limited partner is liable only to the extent of their financial contribution. 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 (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 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 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.

Section Three

Capital Markets

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. This year has seen a softening of transactional activity, with investors taking a “wait and see” approach in the light of the global impacts of war, inflation and supply chain disruption. However, it is expected that price expectations of vendors will recalibrate given tightening monetary conditions, and, based on underlying capital trends, transactional activity will return.

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 co-investment opportunities with Crown investment vehicles (especially in early stage, high growth capital markets).

Access to capital continues to be as important as ever, as New Zealand firms look for capital to grow and restore balance sheets post COVID-19. Offshore capital is vital to continue to bolster domestic capital 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 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 can 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 a more simplified capital raising processes, and greater investor protections. In addition to traditional capital raising methods, the reform has enabled capital raisIng through peer-to-peer and crowdfunding opportunities.

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 20 registered NBDTs.

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 combined market capitalisation of over NZ$235 billion.

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). Any NZX issuer must also comply with the FMCA.

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

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.

Section Four

Mergers & Acquisitions

Mergers & Acquisitions

The New Zealand IPO market remains complex. Like many global exchanges, the 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 risk associated with a public market IPO are greater compared to private market transactions, and 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 PwC New Zealand M&A Quarterly Update 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 acquisition 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 New Zealand Stock Exchange (NZX), or private entities above a certain size, must be structured as a takeover offer under the Takeovers Code or a Scheme of Arrangement under the Companies Act 1993 (Companies Act). The NZX Listing Rules will also apply to mergers and acquisitions involving New Zealand listed companies.

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

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.

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 the approval of 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 payable to the seller (see Capital Markets at Section 3 of this Guide for more information). 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 business 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 at least NZ$30 million in assets or 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 (or two or more "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; or
- 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

Once a person and their associates control 90% or more of the voting rights of a code company, they become a "dominant owner" and are 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 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

While 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 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;
- taking advantage of substantial market power; and
- 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 within 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 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 substantially 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.

The Commerce Commission aims to reach a decision on a clearance application 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.

Breach of the Commerce Act

The Commerce Commission takes an active enforcement role and can investigate mergers that may raise competition concerns and where the merging parties have not applied 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.

Section Five

Overseas Investment Regulations

Overseas Investment

Overseas Investment Regime

While not all overseas investments require regulatory consent, investments by overseas persons in either "sensitive land" or "significant business assets" are heavily 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 the consent of the OIO.

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.

Given the complexity of the overseas investment regime, 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.

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 range between NZ$38,000 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).

The OIO may pause or extend these statutory timeframes in certain circumstances. There is no penalty to the OIO and no grounds for compensation for applicants if these timeframes are not met. These new statutory timeframes will require significant improvements to the OIO's processes. Accordingly, until there is more certainty of the OIO's performance against these statutory timeframes, overseas investors are advised to take specialised advice on the likely impact on transaction timeframes.

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 their securities, and overseas voting persons with 10% or more of its securities do not collectively control more than 25% of the total securities or 50% or more of the board of directors.

Where a transaction takes place outside of New Zealand, but involves New Zealand 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 25% interest in a business (or the increase of an existing stake over certain control thresholds) where the value or consideration paid for the New Zealand part of the investment exceeds NZ$100 million.
- The acquisition of more than 25% interest in a business (or the increase of an existing stake over certain control thresholds) where the value of the New Zealand assets exceeds NZ$100 million.
- The establishment of a business in New Zealand where the total expenditure expected to be incurred exceeds NZ$100 million.
- The acquisition of property (including goodwill and other intangible assets) used in carrying on business in New Zealand where the consideration paid exceeds NZ$100 million.

Investors from certain countries with significant trading arrangements with New Zealand will benefit from an elevated threshold, rather than the default NZ$100 million threshold. 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)
- NZ$560 million for certain Australian non-Government investors (subject to annual adjustment)
- NZ$117 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, 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 New Zealand Government. The New Zealand Government 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 forest land (being land over five hectares devoted principally to 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 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

If an overseas person is investing in a strategically important business, even where consent is not 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.

Section Six

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 also has no inheritance tax, no stamp duty, no local or state taxes and no healthcare tax.

New Zealand is therefore a favourable tax environment for an investor's earnings and assets.

In 2021, the US-based Tax Foundation ranked New Zealand's overall tax system as third in the developed world for its overall competitiveness, taking into account its corporate, individual, consumption, property and international tax rules.

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

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).

Companies are taxed at a rate of 28%. Dividends are subject to tax in New Zealand and 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 for fully imputed dividends to be subject to no withholding tax.

A business is subject to tax in New Zealand if it is a New Zealand tax resident, has a sufficient physical presence here, or has New Zealand sourced income. Taxpayers must register with Inland Revenue (IR) and file an annual income tax return. Corporate 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 applied to be 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.

If there is a breach of the 49% continuity requirement, it may still be possible for a company to carry forward tax losses if the company satisfies the Business Continuity Test (BCT). The BCT will 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 8 of this Guide for more information).

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

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.

Transfer pricing

New Zealand's transfer pricing rules impose an arm's length price on cross border transactions between related parties. 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.

While New Zealand typically follows OECD guidance as to how an arm's length price should be determined, there are unique rules that apply 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.

The onus of proof is on the taxpayer to demonstrate that arrangements are conducted on an "arm's length" basis. Contemporaneous New Zealand-specific transfer pricing documentation places taxpayers in the strongest position to defend the transfer pricing position during a given financial year and to mitigate the risk of penalties being imposed.

Thin capitalisation

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

Anti-hybrid rules

New Zealand has comprehensive anti-hybrid rules, based on OECD recommendations as part of its Base Erosion and Profit Shifting (BEPS) project.

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 their FATCA regime and is a party to the OECD's Automatic Exchange of Information Initiative.

Section Seven

Land and Property

Land and 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 in New Zealand. 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 Regime at Section 5 of this Guide, there is no other distinction between domestic and overseas purchasers of land.

Purchasing land

The usual process for acquiring land 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, 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 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 would otherwise be a capital investment. These include:

- a 10 year bright-line test applying to residential land which is disposed of or sold within a 10 year period (subject to some exclusions, including where the property is used as the owner's main home)
- rules that can apply to tax gains in relation to land acquired by land dealers, developers, or builders (or anyone associated with 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

Environmental management

New Zealand has strong cultural respect for the natural environment which is reflected in our legislation. Currently undergoing fulsome review and likely replacement in the near future, the Resource Management Act 1991 (RMA) is the principal environmental management legislation in New Zealand. It promotes the sustainable management of natural and physical resources such as air, soil, freshwater and coastal marine areas.

Many development and infrastructure proposals are required to obtain RMA consent 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 RMA 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 resource consents under the RMA, 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.

Section Eight
Employment

Employment

The employment landscape in New Zealand

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

The unemployment rate remains low (measuring 3.3 percent in the second quarter of 2022) 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 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. However, many aspects of employment law in New Zealand are also governed by case 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.

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 with fewer than 20 employees are permitted to apply a 90 day trial period to new employees. Correct use of a 90 day trial period 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. This is a particular type of complaint which must be made within 90 days of any alleged instance of discrimination, harassment, bullying, or any disadvantage or dismissal.

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$21.20 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. Repeal of the Holidays Act is on the Government’s agenda, with new legislation expected to come into effect in late-2023 or 2024.

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 17% of all employees in the 2021 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.

The New Zealand Government is currently working towards implementing a Fair Pay Agreement system, which would involve a mandatory sector-level collective bargaining regime and new minimum terms and conditions of employment for certain industries and occupations.

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 financial penalties can be imposed (including fines and imprisonment).

Personal injury

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 enroll 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.

Section Nine

Immigration

Immigration

2022 has been a year of transition for New Zealand Immigration policy and process following the disruption caused by the COVID-19 pandemic.

Who can move to New Zealand

New Zealand offers many types of visas for application, but broadly, those looking to move to New Zealand will be granted a visa if they can demonstrate that they have the skills, experience or capital that are in short supply locally.

If you are neither a New Zealand citizen nor an Australian citizen or permanent resident, you will need a work or resident visa to live and/or work in New Zealand.

Temporary and residence visas

There are two classes of New Zealand visas temporary and residence:

- A temporary visa allows a fixed-term stay in New Zealand for either a specific purpose or for a particular duration (work, study or visiting).
- A residence visa allows an indefinite stay (to work, study and/or live) and provides access to most publicly-funded services including subsidised healthcare and tertiary education.
- A permanent residence visa allows the holder to leave and re-enter New Zealand without conditions.

Immigration New Zealand (INZ) assesses visa applications against criteria and requirements that are set out by visa category.

Investor category visa

The Investor Policy in New Zealand has undergone an overhaul and is now referred to as the Active Investor Plus (AIP) policy. The AIP policy came into effect on 19 September 2022.

Investment value and timings

At a high level, to meet the acceptable investment criteria under the new AIP visa, applicants must commit to one of the following investments types totalling NZ$15 million (with weighting):

- direct investment into private businesses of NZ$5 million (3x weighting);
- private equity or venture capital funds equating to NZ$7.5 million (2x weighting); or
- listed equities and philanthropy of NZ$15 million (capped at 50% of the total for each category with no weighting).

Direct investment is rated three times higher than indirect investment. Applicants under the new AIP policy can no longer use investments in bonds, commercial property or land to meet the requirements of the policy (as announced).

The new AIP visa rewards those who share access to global knowledge, capital, networks and markets. INZ's hope is that the new policy will stimulate business productivity and greater job growth than previous investor visa categories.

Investments will be allowed over a three-year period and must be maintained up to the end of a fourth year.

Under the newly reworked policy, investors will only need to spend 117 days in New Zealand over the entire four year investment period; however, all primary applicants will need to demonstrate a moderate command of the English language.

As was true under previous policy, partners and dependent children can be included in an application and all applicants must meet health and character requirements.

Time in New Zealand

The visa holder must spend a minimum of 117 days in New Zealand over the four year investment period.

English requirement

Primary applicants will need to meet an English language requirement (International English Language Testing System level 5).

Immigration New Zealand will continue to process investor visa applications under the previous category. Immigration advice may only be provided by a licensed New Zealand immigration advisor or a New Zealand qualified solicitor.

Entrepreneur work and residence visa

As at mid-2022, the Entrepreneur Work Visa Category is still available for experienced business people who want to be self-employed in New Zealand. The main requirements for an Entrepreneur Work Visa include a minimum capital investment of NZ$100,000 (excluding working capital), having a business plan specific to the proposed business, the achievement of a set number of points relating to the likely success of the proposed business and its value to New Zealand, a clear business history and satisfaction of various health, good character and English language requirements. Entrepreneurs who achieve success with their business in New Zealand may be eligible to apply for residence under the Entrepreneur Residence Visa Category.

Partners and Dependents

Visa options for partners and dependent children are available under the Migrant Investor and Entrepreneur visa categories.

Citizenship

Resident visa holders who spend the required amount of time in New Zealand over a five year period or more may be eligible to apply for New Zealand citizenship. Citizens may apply for a New Zealand passport.

We recommend engaging with a qualified professional early so as to streamline the application process and have a clear understanding of the rules regarding transferring funds to New Zealand as well as meeting the acceptable investment requirements. PwC is a trusted partner with Immigration New Zealand.

Section Ten

Privacy

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 Information Privacy 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, 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 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 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 within 72 hours 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). 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.

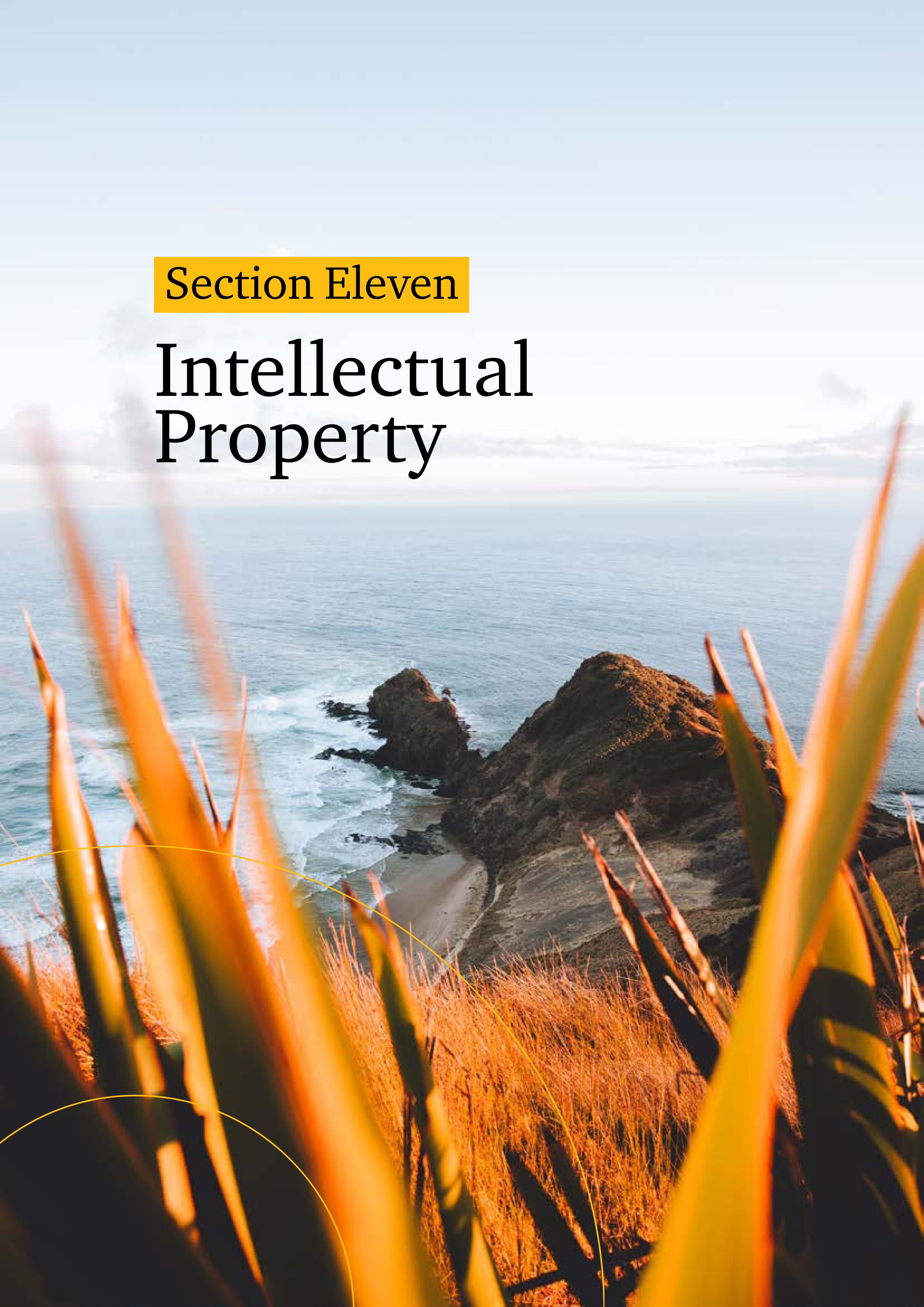
Complaints about a breach of the Information Privacy Principles are investigated by the OPC and may be referred to the Director of Human Rights Proceedings if the matter is not able to be resolved by the OPC.

Cross border data transfer

Personal information may be transferred outside of New Zealand if there are sufficient protections in place to protect the personal information as if it remained in New Zealand. There are exceptions to this general rule, for instance, if that personal information is being sent to a cloud hosting provider who will not use it for their own purposes.

Section Eleven

Intellectual Property



Intellectual Property

New Zealand has a comprehensive and robust legal regime for the protection of intellectual property rights. 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 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.

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. 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 reexamination and revocation processes post-grant.

Registered designs

Designs that are new or original features of shape, configuration, pattern, or ornament applied to any article by any industrial process or means can be registered under the Designs Act 1953. 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 New Zealand-European Union Free Trade Agreement comes into force)
- 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 to avoid tax leakage 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.

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

Section Twelve

Contracts and Consumer Protection

Contracts and Consumer Protection

New Zealand's contract law is founded on English common law principles and supplemented with legislation. Its objective is to facilitate business arrangements on commercially agreed terms. The application of contract law in New Zealand is the same regardless of whether the contracting parties are foreign-owned or NZ-owned. It is possible, however, to select the jurisdiction that will govern the contract and where any disputes must be heard.

Contract and Commercial Law Act 2017

The Contract and Commercial Law Act 2017 (the CCL Act) consolidates several pieces of legislation to provide a "one stop shop" for rules pertaining to certain contractual situations. For example:

- **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 terms into contracts relating to the sale of goods, unless the parties clearly intended 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.
- **Penalties:** 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 regime are governed by the following principal legislation:

- Commerce Act 1986;
- Fair Trading Act 1986;
- Consumer Guarantees Act 1993; and
- 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.

Fair Trading Act 1986

The Fair Trading Act 1986 (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$250,000pa);
- 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; and
- 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.

Consumer Guarantees Act 1993

The Consumer Guarantees Act 1993 (the 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; and
- 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 ensure that they can meet their minimum obligations under the FTA and CGA.

Credit Contracts and Consumer Finance Act 2003

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. The CCCFA does not currently cover "buy now, pay later" credit contracts. The CCCFA also 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.

Section Thirteen

Partnering with Māori and the Māori economy

Te Hinerangi Pou at Te Ahua, Te Kawerau a Maki (carved by Sunnah Thompson)

Partnering with Māori and the Māori economy

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

The Māori economy

The Māori economy is interwoven into the New Zealand economy and is broadly made up of Māori owned businesses and Māori collectives (e.g. iwi (indigenous tribes), hapū (sub-tribes)). The Māori economy has grown significantly in recent decades with an estimated NZ$68 billion asset base and, prior to COVID-19, had projected growth to NZ$100 billion by 2030.

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

40%
Forestry

50%
Fishing quota

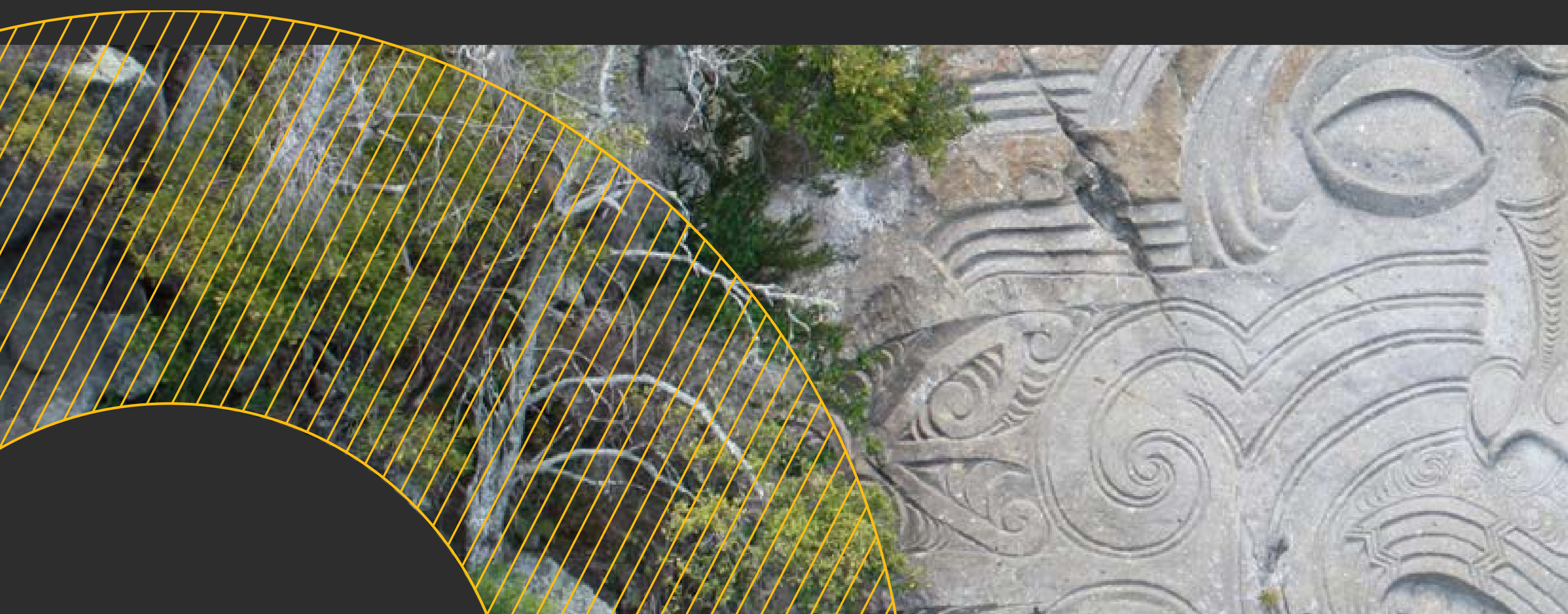
30%
Sheep and beef

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.

In a recovery-focused and inflationary environment, many Māori food producers are seeking opportunities to progress up the value chain to develop trade opportunities into offshore markets.

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.



Core values underpinning social and cultural objectives

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

Some 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; and
- **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.

Ngātoroirangi at Mine Bay, Ngāti Tūwharetoa (carved by Matahi Brightwell)

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 foundational 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
- Māori world views and cultural practices (for example, the Māori language) increasingly influence the way we do business in New Zealand

Although the Treaty is not enforceable, nor a matter of statute law in New Zealand, it is expressly recognised in various pieces of legislation. For example, the Resource Management Act (RMA) 1991 and the Urban Development Act 2020 each provide a statutory requirement for persons exercising powers and functions to take into account the principles of Te Tiriti o Waitangi (see Land and Property at Section 7 of this Guide for more information). The Local Government Act 2002 also recognises the Crown's responsibility to take appropriate account of principles of the Te Tiriti o Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes.

Māori organisations and collectives play an important role in helping to grow the domestic capital needed to achieve growth in 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 Business Team operates under the principle of being a relationship builder, a connector and an interpreter that bridges the gap between te ao Māori (the Māori world) and the conventional corporate world and government institutions. The Manukura Māori Business Team can assist investors looking to do business with Māori organisations.

Section Fourteen

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. 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 recent Carbon-Related Disclosures legislation.

New Zealand is one of the few countries to have a net zero emissions by 2050 goal enshrined in law. 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; and
- allow New Zealand to prepare for, and adapt to, the effects of climate change.

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 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, the impact on the NZU (the emissions units under the Emissions Trading Scheme) price under current settings may be considerable, as they are one of the Government's most significant levers to support meeting the budgets.

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

The emissions reduction plan

The emissions reduction plan 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 enable New Zealand to transition to a low-emissions future in a way that is achievable and affordable.

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 NZ 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 NZ 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 NZ 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 actively 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.

Mandatory climate-related disclosures

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 (FMC Act), the Financial Reporting Act 2013, and the Public Audit Act 2001. This new law will require around 200 large financial institutions covered by the FMC Act 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 2023, subject to the pending publication of climate standards from 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 will be followed by detailed guidance for compliance in 2023.

PwC New Zealand is a market leading advisory firm, proudly operating in New Zealand for over 100 years. We help significant corporate and blue chip organisations, public sector organisations, entrepreneurs and iconic SME businesses create and deliver value to their customers and stakeholders.

Our purpose is to “build trust in society and solve important problems”, and we do this by bringing the right capability to our clients, through relationships founded on trust.

In Aotearoa New Zealand, PwC employs over 1,700+ people and has six offices across the country, in Auckland, Hamilton, Napier, Wellington, Christchurch and Dunedin.

We are dedicated to supporting our clients, especially those new to the New Zealand business environment. By offering an extensive range of professional services and working together as a team, we can make entry into a new market easy for you. We will work with you to make the most of your investment in Aotearoa New Zealand, regardless of what stage your business is in.

Our global PwC network of firms stretches over 155 countries with more than 327,000 people. Through this extensive network and the business contacts that come with it, we can facilitate connections that would optimise your business opportunities in Aotearoa New Zealand and offer you a truly integrated global network and experience.

This guide is designed to provide prospective investors with an introduction to New Zealand’s business, legal, cultural and regulatory framework.