DOING BUSINESS IN New Zealand

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Business Structures:
What types of business structures are permitted?

There are a number of different structures which can be used to establish a business in New Zealand.

The most commonly used are:

- establishing a branch office for an overseas company;
- setting up a (or purchasing an existing) New Zealand registered company.

Other options include operating as a sole trader, trusts and partnerships (including limited partnerships).

Taxation:
Briefly explain the country’s tax regime including rates and how rates differ based on business structures.

New Zealand’s tax system principally comprises:

- income tax – New Zealand has a broad-based low rated income tax system;
- withholding taxes on many cross border payments, including dividends, interest and royalty payments; and
- a broad based consumption tax called goods and services tax (GST), set at 15%.

Companies and corporates are taxed at a flat rate of 28%. Trustees of trusts are taxed in New Zealand at 33% on income retained by a trust, including trading trusts.

New Zealand has an imputation credits system which effectively allows tax paid at company level to be attached to dividends and passed on to shareholders as a tax credit, provided various criteria are met. This leads to a relatively low overall tax rate on corporate profits once they are distributed.

Partners in partnerships are taxed on their share of partnership income at their personal marginal tax rates.

Personal tax rates are applied at the following rates:

- 10.5% on income up to $14,000
- 17.5% on income from $14,001 to $48,000
- 30% on income from $48,001 to $70,000
- 33% for income over $70,000.

New Zealand does not have a general capital gains tax (although some specific types of transactions may give rise to income tax on capital gains such as gains on profits on sale of patent rights and particular sales of land), nor any stamp duty, gift duty or death duty.

Fringe benefit tax is payable by employers on certain employment related benefits provided to employees up to a rate of 49.25%.
**Immigration:**

Summarize immigration laws, including visas available for foreign employees.

A foreign employee must hold a valid resident or work visa before they are entitled to work in New Zealand. There are a range of different visa options available for foreign employees, including:

- Work to Residence Visa
- Essential Skills Work Visa
- Recognised Seasonal Employer Limited Visa
- Specific Purpose Work Visa
- Post Study Work Visa – Employer Assisted
- Skilled Migrant Visa
- Nationality specific visas

An employer who hires a foreign worker who is not entitled to work in New Zealand could be subject to a fine of up to $50,000 (even if they did not know that the employee was not entitled to work in New Zealand).

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**Foreign Investment Review and Issues:**

Does the government review and approve foreign investments? What factors are considered?

The policy of the New Zealand Government is to encourage foreign investment, but consent is required for certain transactions involving the acquisition of securities, business assets or an interest in land by an “overseas person.”

The rules around investment by overseas persons are set out in the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005. The regime is administered by the Overseas Investment Office (“OIO”)

The acquisition by an overseas person (or an associate of an overseas person) of:

- “sensitive land” or an interest in “sensitive land” (including farm land and “special land”);
- “significant business assets”; or
- fishing quota;

will require consent from the OIO (and in some cases, Government Ministers) before the acquisition is given effect.

In determining whether to grant consent, the OIO will test the application against the core investor test criteria, which broadly relate to business acumen, financial commitment, good character and immigration rules.

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**Dealing with the Government:**

Identify major issues when dealing with local and federal governments.

There are no major issues when dealing with Governmental agencies.
| **Dispute Resolution and Court Systems:**
Summarize the court system, including the use of juries and arbitration. | New Zealand has a hierarchical Court system which has jurisdiction to hear both criminal and civil claims. New Zealand also has a specialist family court, environment court, employment court, youth court and Maori land court.

The New Zealand processes closely resemble those of England and Australia. With a small number of exceptions, civil cases are determined by a judge sitting alone and not with a jury. However, juries are common in serious criminal trials.

Parties are able to resolve their disputes by arbitration without interference of the Courts, pursuant to the Arbitration Act 1996. The Act is based on the Model Law on International Commercial Arbitration (UNCITRAL) and gives effect to various international protocols and conventions. New Zealand is also a signatory to the New York convention on the recognition and enforcement of foreign arbitral awards. Arbitral awards from other state parties are recognised and enforceable in New Zealand. |
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| **Foreign Corrupt Practices:**
What are the anti-corruption, anti-bribery and economic sanction laws which impact doing business in the country? | New Zealand is a star performer on Transparency International’s Corruption Perceptions Index.

In New Zealand, it is an offence to engage in bribery and corruption in both the public sector (under the Crimes Act 1961) and the private sector (under the Secret Commissions Act 1910). All New Zealand’s bribery offences are extraditable offences and subject to the Extradition Act 1999. |
| **Types of transaction:**
How may businesses combine? | The most common type of business combinations are:

- joint ventures;
- mergers; and
- acquisitions of business assets or shares. |
| **Statutes and regulations:**
What are the main laws and regulations governing business combinations? | The main laws and regulations governing business combinations are:

- Companies Act 1993
- Contract and Commercial Law Act 2017
- Commerce Act 1986
- the Takeovers Code (which applies to all companies listed on the New Zealand stock exchange and to unlisted companies with 50 or more shareholders and 50 or more share parcels)
- Overseas Investment Act 2005
- Financial Markets Conduct Act 2013 |
### Employment Relations:
**Briefly summarize major laws impacting employment and employee relations.**

Establishing and maintaining good faith relationships is the basis of employment law in New Zealand. It is also a requirement of the Employment Relations Act 2000 which is the key piece of legislation in this area.

Every employee in New Zealand must have a written contract called an employment agreement. This can be either an individual agreement or a collective agreement.

There are some provisions that must be included in employment agreements by law, and there are also a number of minimum conditions that must be met regardless of whether they are included in employment agreements. Employment law also provides a framework for negotiating additional entitlements.

### Competition Law:
**How do laws impact competition?**

The Commerce Act 1986 prohibits provisions in a contract, arrangement or understanding that have the purpose or (likely) effect of ‘price fixing’, ‘output restricting’ or ‘market allocating’ (cartel conduct). There are exceptions to the broad cartel prohibition for collaborative activities, vertical supply contracts and joint buying agreements.

Mergers and acquisitions of business assets or shares where such transactions would, or would be likely to, have the effect of substantially lessening competition in a market are also prohibited by the Commerce Act.

The Commerce Commission provides guidance called "concentration indicators" which are used to identify mergers which are less likely to raise competition concerns. A merger is unlikely to require a clearance application where, post-merger:

- the three largest firms in the market have a combined market share of less than 70%, and the merged firm’s combined market share is less than 40%; or
- the three largest firms in the market have a combined market share of 70% or more, and the merged firm’s combined market share is less than 20%.

If a clearance or authorisation is given by the Commerce Commission for the acquisition of assets of a business or shares, then no action may be taken against the acquisition by the Commission or any other party while that clearance or authorisation is in force.

The penalties for proceeding with a prohibited acquisition include divestment orders and penalties of up to NZ$500,000 for individuals and NZ$5 million for body corporates.

### Governing Law:
**What law typically governs the transaction agreements?**

New Zealand law (although the choice of a foreign law is possible).
### Filings & Fees:
Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees payable in connection with a business combination?

- Depending on the circumstances, applications may be required under the Commerce Act 1986 or the Overseas Investment Act 2005.
- New Zealand does not have any stamp duty.

### Information to be Disclosed:
What information must be made public in a business combination? Does this depend on the structure used?

- Certain information will be available on public databases, including the Companies Register, Land Information New Zealand and Intellectual Property Office of New Zealand.
- Listed companies are subject to continuous disclosure requirements under the NZX Listing Rules.
- Information will be provided as part of applications under the Commerce Act 1986 or the Overseas Investment Act 2005 (although an applicant will be able to seek confidentiality in relation to certain information).

### Disclosure of substantial shareholdings:
What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

- Substantial shareholders in listed companies have disclosure obligations under the Financial Markets Conduct Act 2013.
- A company must complete, and file at the Companies Office, an annual return which will include details in relation to shareholders.

### Duties of directors and controlling shareholders:
What duties do the directors or managers of a company owe to the company’s shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

- The Companies Act 1993 set out the general duties of directors including the duty to act in good faith and in the best interests of the company, and the duty to protect the company’s creditors from reckless trading. A breach of directors’ duties under the Act may result in personal liability.
- The Companies Act does not impose any duties on shareholders.
- A shareholder making a takeover offer under the Takeovers Code will have to comply with the provisions of that Code.
<p>| Approval and appraisal rights: | A “major transaction” by a company must be approved by a special resolution of shareholders. A major transaction is any transaction involving assets or obligations that are greater in value than half of the company’s existing assets. Takeover offers are made to shareholders in a Code company in accordance with the Takeovers Code. |
| Hostile transactions: | There are no special considerations for unsolicited transactions. The Takeovers Code will apply to Code companies as appropriate. |
| Break-up fees – frustration of additional bidders: | Directors of a company will need to consider their duties before agreeing to payment of a break fee. Generally, the fee should be a genuine pre-estimate of the loss that may be suffered if the transaction does not proceed. The Takeovers Code will apply to Code companies as appropriate. In particular, the Code allows a target to recover costs associated with a takeover offer, even where no cost recovery agreement is in place. |
| Government influence: | In addition, the Overseas Investment Act 2005 (referred to above) applies. |
| Conditional offers: | The Takeovers Code will apply to Code companies (and, generally, prohibits conditions that depend on the judgement of the offeror or conditions whose fulfilment is in the power, or under the control, of the offeror). This will prohibit certain finance conditions. Otherwise, there are no restrictions on conditions in a business combination, and obtaining third party finance may be a condition precedent. |</p>
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<th><strong>Financing:</strong></th>
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<td>If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer’s financing?</td>
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<td>A transaction is sometimes conditional upon the buyer obtaining finance on terms satisfactory to them. Generally, the buyer will need to use its reasonable endeavours to satisfy the condition by the relevant condition date. A seller may, on occasion, agree to provide financing to the buyer.</td>
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<th><strong>Minority squeeze-out:</strong></th>
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<td>May minority shareholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?</td>
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<td>The Takeovers Code includes rules for the compulsory acquisition of shareholders’ shares. A shareholder who owns at least 90% of all the shares in a Code company can (or must) buy all of the rest of the shares. The Code has rules about the price that has to be paid for these shares.</td>
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<th><strong>Cross-border transactions:</strong></th>
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<td>How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?</td>
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<td>The structure of a cross-border transaction will need to take into account the laws of the other country or countries involved.</td>
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<th><strong>Waiting or notification periods:</strong></th>
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<td>Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?</td>
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<td>The waiting and notification periods in the Takeovers Code will apply to Code companies.</td>
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<th><strong>Sector-specific rules:</strong></th>
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<td>Are companies in specific industries subject to additional regulations and statutes?</td>
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<td>Companies in specific industries will be subject to additional statutes and regulations, including (by way of example) telecommunications, electricity, dairy, airports, building and construction, fishing, forestry and transport.</td>
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### Tax issues:

What basic tax issues are involved in business combinations?

Tax considerations to be taken into account in business combinations include:

- continuity of shareholding for the purposes of preserving tax losses and imputation credits;
- specific tax rules applying to related party transactions;
- compliance with thin capitalisation ratios and transfer pricing requirements;
- potential depreciation recovered; and
- impact on available subscribed capital and the ability to distribute capital gains to shareholders.

### Labour and employee benefits:

What is the basic regulatory framework governing labour and employee benefits in a business combination?

Every employment agreement must contain an ‘employee protection’ clause to protect the employment of an affected employee in the event of a ‘restructuring’. Employers must follow the process in the employee protection clause where the business is sold, contracted or transferred out.

There are special protections where employees are considered to be ‘vulnerable’. Vulnerable workers are given the right to transfer to the new employer on the same terms and conditions as their existing employment.

These clauses do not apply where the shares in a company are transferred or the employer is bankrupt, in receivership or in liquidation.

### Restructuring, bankruptcy or receivership:

What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

A business combination involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring will be governed by the commercial contract. There will be heightened risk with such a business combination as the warranties in the contract will be limited and there will no guarantee of title to the assets.

The Personal Property and Securities Act 1999 contains strict rules that govern the rights of creditors.

### Anti-corruption and sanctions:

What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?

New Zealand has insider trading laws and a general prohibition against market manipulation.

A breach of insider trading or market manipulation laws can result in both civil and criminal liability.