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New Zealand
Investing In

Contributor

Hesketh Henry

Kate Telford

Partner | kate.telford@heskethhenry.co.nz

Erich Bachmann

Partner | erich.bachmann@heskethhenry.co.nz

Brooke Taylor

Solicitor | brooke.taylor@heskethhenry.co.nz

This country-specific Q&A provides an overview of investing in laws and regulations applicable in New Zealand.

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New Zealand: Investing In

1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

The current investment climate in New Zealand displays a positive trajectory for foreign direct investments (**FDI**). Over the past three years, New Zealand has experienced a substantial surge in FDI, with a 94% increase in the total dollar value of FDI observed from 2020 to 2022. This figure is somewhat inflated due to the adverse impact the COVID-19 pandemic had on FDI numbers, which returned to levels as low as the numbers in 2005. A broader analysis looking at the trend over the last five years reveals a dollar value increase in FDI of 176.87%, underscoring persistent international interest for investment in New Zealand.

This resilience in the face of a worldwide drop in FDI deals, attributed to various international crises, demonstrates New Zealand's consistent appeal as an attractive destination for foreign investment. This appeal can be attributed to several key factors, including low levels of corruption, access to global markets, transparent business regulations, robust property rights, and a favorable tax policy system. These elements collectively contribute to a growing demand for investment in New Zealand, fostering a climate conducive to sustained FDI growth.

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

FDI in New Zealand is made in a variety of different forms. This includes greenfield or brownfield projects to build new facilities; the acquisition of the assets of an existing New Zealand business; acquiring all, or some of, the shares in an existing New Zealand company; and/or entering into joint venture arrangements. In addition, limited partnerships are a common type of investment vehicle used in New Zealand, particularly by foreign investors as a result of their tax look-through status.

Subject to obtaining any required regulatory approvals (particularly, under the Overseas Investment Act 2005 (**OI Act**), which is described in detail below), New Zealand provides foreign investors with a broad range of investment opportunities.

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

Foreign investors are generally free to invest in, and own, 100% of a domestic company or business. The OI Act regulates investment by overseas persons in significant business assets, sensitive land (including residential land), forestry rights and fishing quotas. Subject to any approvals required under the OI Act (as described in question 8 below) and the Takeovers Code 1993 (as described in question 9 below), a foreign investor will generally be able to invest in, and hold, up to 100% of a domestic company or business without any other approvals being required.

As noted below, in terms of the OI Act, if a foreign investor is acquiring a shareholding interest in a New Zealand company of less than 25%, then approval under the OI Act would generally not be required.

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

There are no specific restrictions on the class of equity that may be held by foreign investors. Both foreign and domestic shareholders may invest in the same class of equity regardless of whether they are investing in a public or private company. The restrictions in the OI Act in relation to overseas persons acquiring interests in New Zealand companies apply equally to investments in private and publicly listed companies.

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

A domestic company may be owned by individuals, based in New Zealand or overseas; another company registered in New Zealand; or a company registered overseas.

New Zealand companies are managed and controlled by their directors who are appointed by the company's shareholders. The New Zealand Companies Act 1993 requires that, for a company to be incorporated in New Zealand, it must have at least one director who either lives in New Zealand, or lives in Australia and is a director of a company incorporated in Australia. Beyond this requirement and the restrictions imposed by the OI Act, there are no restrictions on New Zealand companies being owned and managed by offshore companies.

An overseas company may also register their company as a branch in New Zealand. Overseas companies registered in New Zealand are not subject to the same resident director requirements as a New Zealand incorporated company (see further details in question 6 below).

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

There are two key forms of domestic companies in New Zealand. These are either:

(a) a company incorporated in New Zealand, which can be owned by individuals residing either overseas or in New Zealand, or by another company, whether domestic or foreign, either in whole or part; or

(b) a company registered as an overseas company in New Zealand (which is commonly referred to as a branch).

A company incorporated in New Zealand is a separate legal entity that benefits from separate limited liability from its shareholders. Conversely, registering an overseas company as a branch in New Zealand does not create a separate legal entity in New Zealand, and the operations of the New Zealand branch will also be obligations of the overseas company as they are the same legal entity.

The financial reporting requirements also differ between a company incorporated in New Zealand and a branch, with the requirement to file audited financial statements with the New Zealand Companies Office being triggered at a lower monetary threshold for branches. Specifically, a company incorporated in New Zealand is required to file audited financial statements where, at the balance date of each of the two preceding accounting periods, the total assets of the entity (and its subsidiaries) exceeds NZ$66 million and/or in each of the two preceding accounting periods, the total revenue of the entity (and its subsidiaries) exceeds NZ$33 million. Conversely, the thresholds for a branch are NZ$22 million in total assets and NZ$11 million in total revenue.

• Which form is preferred by domestic shareholders?

Domestic shareholders will generally incorporate a new company when they intend to conduct a new business activity in New Zealand. Depending on the kind and duration of the activity, other forms of investment vehicles used by domestic investors include limited partnerships and unincorporated joint ventures.

• Which form is preferred by foreign investors/shareholders?

As noted above, foreign investors/shareholders often invest in New Zealand by establishing a New Zealand incorporated company if they wish to pursue business activity in New Zealand. Alternatively, they may register their company as an overseas company (or branch).

Another investment vehicle commonly used by foreign investors/shareholders is limited partnerships. A limited partnership has the key benefits of affording limited liability to its limited partners (subject to various criteria being met, particularly relating to the limited partners not having management control over the limited partnership) and having tax look-through status. This means that the limited partnership itself is not subject to tax in New Zealand, but the limited partners are taxed on the profits generated by the limited partnership.

• What are the reasons for foreign shareholders preferring one form over the other?

As noted above, foreign investors/shareholders prefer to pursue a company incorporated in New Zealand as opposed to a branch because of the separate limited liability afforded by the incorporated company. Additionally, a limited partnership is often favored due to its limited liability and tax look-through status, giving financial protection and potentially tax advantages for foreign shareholders.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for

forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

Incorporating a company in New Zealand is generally a relatively straight forward process. The process is managed by the Registrar of Companies which operates an online registration system referred to as the New Zealand Companies Office. The key steps involved in registering a New Zealand company are: to reserve a company name; provide details of the proposed shareholders and directors (including full residential addresses for each director); sign director and shareholder consent forms; and provide details of the proposed company's registered office, address for service and correspondence address.

As noted above at question 5, a New Zealand company must have at least one director who either lives in New Zealand, or lives in Australia and is a director of a company incorporated in Australia.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?

Foreign investment in New Zealand is regulated by the OI Act and the Overseas Investment Regulations 2005 (**OI Regulations**). Under the OI Act and OI Regulations, *overseas persons* need consent to invest in sensitive land, significant business assets, fishing quota and certain forestry rights. Section 7 of the OI Act sets out the definition of an *overseas person*. In broad terms, an *overseas person* includes:

(a) an individual not a New Zealand citizen, nor ordinary resident in New Zealand;

(b) a body corporate:

(i) incorporated overseas or any New Zealand subsidiary owned more than 25% by any such body corporate;

(ii) where more than 25% of any class of shares is held by an overseas person;

(iii) where the power to control the composition of more than 25% of the governing body is held by an overseas person; or

(iv) where the right to exercise or control the exercise of more than 25% of the voting power at any meeting of that body corporate is held or owned more than 25% by an overseas person.

Acquiring shares in private company

Overseas persons will not always be required to obtain consent to acquire shares in a private company. However, under the OI Act, consent will be required where (for example) the overseas person wishes to:

(a) acquire more than 25% ownership or control of the securities of a New Zealand company where the value of the securities, the consideration for the transfer, or the value of the assets of the New Zealand target company, and any more than 25% subsidiaries, exceed NZ $100 million (or an alternative monetary threshold that applies in accordance with the OI Regulations);

(b) increase the proportion of ownership or control of the securities of such a company where the overseas person already has more than 25% ownership or control (noting that consent is only required if the increase crosses an ownership or control threshold of 50%, 75% or reaches 100%, depending on the level of existing ownership and control); or

(c) acquire more than 25% ownership or control of the securities of a New Zealand company or increasing an existing proportion of ownership or control where the overseas person already has more than 25% ownership or control (as set out above) where the target company owns or controls (directly or indirectly) *sensitive land*.

The full definition of *sensitive land* is set out in Part 1, Schedule 1 of the OI Act. Essentially, there are two main types of sensitive land being (1) residential land (but not otherwise sensitive land) and (2) sensitive land (but not residential land). Land will be considered residential where it is classified as *residential* or *lifestyle* on the relevant District Valuation Roll.

The OI Act sets out an extensive list of land types which are considered *sensitive land*. This includes:

(a) non-urban land that exceeds five hectares;

(b) land on islands which are not the main islands (North and South Island);

(c) the marine and coastal area;

(d) the bed of a lake where the land being acquired exceeds 0.4 hectares;

(e) land greater than 0.4 hectares which adjoins certain sensitive land, for example, certain islands, reserves, historical heritage areas; and

(f) land more than 0.2 hectares which adjoins a marine and coastal area.

Acquisition of Assets

Consent may also be required under the OI Act where an overseas person is acquiring business assets (rather than shares in a New Zealand company) or where they are looking to establish a new business in New Zealand. For example, consent is required where an overseas person is:

(a) establishing a new business for a period exceeding 90 days in any year (either on its own or in partnership with another person) where the total expenditure expected to be incurred in setting up the business exceeds NZ$100 million or an alternative monetary threshold that applies in accordance with the OI Regulations;

(b) acquiring property (including goodwill and other intangible assets) used in carrying on a business in New Zealand where the consideration provided for the acquisition exceeds NZ $100 million or an alternative monetary threshold that applies in accordance with the OI Regulations;

(c) acquiring sensitive land.

The NZ$100 million consent threshold for significant business assets does not apply for certain investors. Specifically, under the OI Regulations, alternative money thresholds apply for Australian non-government investors of NZ$586 million and for Australian government investors of NZ$123 million (noting that these figures are correct as at November 2023). The alternative money thresholds are adjusted annually and in 2024 the thresholds will increase to NZ$618 million for Australian non-government investors and NZ$129 million for Australian government investors. Further, parties to certain free trade agreements also benefit from an increased threshold of NZ$200 million.

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

The acquisition and disposal of shares of a public company is governed by the Takeovers Act 1993 and the Takeovers Code (**Code**). The Takeovers Act 1993 and the Code apply to all *code companies*. A *code company* is a company that is listed on a registered stock exchange (or has been in the last 12 months), or is an unlisted company with 50 or more shareholders and share parcels.

The fundamental rule of the Code is that no person is permitted to be the holder and/or controller of more than 20% of the voting rights of a code company (subject to limited exceptions in the Code). Existing holders and/or controllers of a code company with less than 20% of the voting rights must not increase their voting rights above 20% and an existing holder and/or controller with more than 20% of the voting rights must not increase their voting rights in the code company. The Takeovers Panel regulates the Code and has the power to grant exceptions.

Where a person seeks to become the holder and/or controller or increase existing voting rights above 20%, this can be done by:

(a) **Acquisition under a full offer:** An offer for all the voting securities in the code company not already held by the offeror.

(b) **Acquisition under a partial offer:** A partial offer to all holders of voting securities (other than the offeror) so that more than 50% of the voting rights are acquired (or a lesser percentage approved by shareholders not associated with the offeror).

(c) **Acquisition approved by shareholders of the code company**: Approval by ordinary resolution of the shareholders.

(d) **Acquisition of less than 5%:** If an existing shareholder controls more than 50 percent, it may creep up 5 per cent per year.

(e) **Acquisition by shareholder already holding or controlling 90% of the Code Company:** There are compulsory acquisition provisions that apply where a person owns 90% of the Code Company.

The Code requires all shareholders to be treated equally, including as to price. The penalties for breaches of the Code are fines up to NZ$500,000 for individuals and NZ$5 million for body corporates for each contravention.

In terms of OI Act consent, foreign investors will need consent to acquire shares in a public company where the public company becomes an overseas person and owns or controls (directly or indirectly) an interest in sensitive land (as described in question 8 above). A public company will become an overseas company where (as a result of the acquisition):

(a) an overseas person has a beneficial entitlement or interest in 10% or more of any class of shares of the target company that confer control rights; and

(b) when adding together the interests of all overseas persons with 10% or more, those overseas persons cumulatively have the right to 50% or more of the public company's governing body or exercise or control the exercise of more than 25% of the voting power at a meeting of the public company.

To obtain consent, the overseas persons will need to satisfy certain criteria and tests. The applicable criteria and tests will depend on the type of land owned or controlled by the public company.

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

If a foreign investor wishes to become the holder and/or controller or increase existing voting rights above 20%, this must be done by way of one of the exceptions to the Code as set out in question 9 above.

Acquiring voting rights above 20% may be done by way of full offer or partial offer (although these are not the only mechanisms, as described above). Where an overseas person seeks to become the holder and/or controller or increase existing voting rights above 20% by way of an offer (whether full or partial) this must be done pursuant to the Code. The Code has strict requirements of what must be included in the offer documents when a person intends to make an offer.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

Various types of approval may need to be obtained when building a new facility in the country.

OI Act

Firstly, overseas investors will need to obtain consent when they are acquiring *sensitive land* (as further described in respect of question 8).

As set out in response to question 8 above, there are two main types of sensitive land, being 1) residential land (but not otherwise sensitive land) and (2) sensitive land (but not residential land). There are different consent pathways that may be available under the OI Act where an overseas person wishes to acquire sensitive land. Which consent pathway the investor seeks to use will depend on the type of sensitive land being acquired and the purpose they are using the land for. For example, the following consent pathways exist for the acquisition of residential land:

(a) Increasing the supply of housing – an overseas person may acquire residential land to develop new residential buildings e.g., residential dwellings homes, long term facilities or associated development works.

(b) Non-residential use – consent may be obtained where an overseas person wishes to use residential land for non-residential purposes e.g., hotel or supermarket.

(c) Incidental Use – the residential land will be used for a purpose that is incidental to the investor's business.

In the case of overseas investment in land which is sensitive (but not residential) land, the overseas person must satisfy one of the two following criteria:

(a) the overseas person acquiring the sensitive land is ordinarily resident in New Zealand (or intends to be); or

(b) the proposed acquisition meets the '*benefit to New Zealand test*'. In broad terms, under this test, the overseas person will need to demonstrate that the investment will have a benefit to New Zealand. There are various factors that will be considered in determining whether the proposed transaction will result in a benefit to New Zealand including whether the proposed transaction will result in economic benefits to New Zealand; benefits to New Zealand's natural environment; continued or enhanced access by the New Zealand public to the sensitive land; and/ or continued or enhanced protection of cultural heritage.

If the land sought to be acquired is considered farmland, this will affect the application for OI Act consent. Land will be considered farmland if it is principally or exclusively used for agriculture, horticultural or pastoral purposes, or for keeping bees, poultry or livestock. Where an overseas person wishes to acquire farmland, the land must have first been offered to New Zealanders on the open market. The OI Act has strict requirements surrounding how the advertisement must be administered. Further, the *farm land benefit test* will apply to an application for consent to acquire farm land, which has a higher benefit threshold than that of the *benefit to*

New Zealand test.

Resource Management Act 1991

Approval is also likely to be required for any greenfield building project under the Resource Management Act 1991. This Act regulates the use of New Zealand's natural resources (i.e., land, water, minerals, coastline and air). The Act provides for various types of consents that a developer may need to obtain before they are permitted to proceed with any development on land. Accordingly, any greenfield building project will need to be separately considered in the light of the Act and also applicable regional and district plans.

Building Act 2004

Further, all greenfield building projects would be regulated and controlled by the Building Act 2004. Every new building must comply with the Building Act and the requisite building code, which primarily focus on ensuring safe habitation and accessibility.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

In New Zealand, investors are not restricted to conducting transactions solely in New Zealand dollars. Neither the Reserve Bank (being New Zealand's central bank), nor any other governmental agency has an approval requirement for the use of foreign currency.

(a) Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country?

No

(b) Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

There are no restrictions on the purchase of New Zealand dollars.

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**) serves as the regulatory framework that oversees and imposes obligations on certain reporting entities in order to deter and prevent money laundering and terrorism financing.

The AML/CFT Act imposes compliance requirements and obligations on reporting entities. Reporting entities include financial institutions (i.e., banks), casinos, financial service providers, lawyers, accountants, real estate agents etc. Compliance requirements include requiring reporting entities to conduct customer due diligence (**CDD**) on its clients and reporting any suspicious activities.

Accordingly, foreign investors who wish to transfer currency in to, and out of, New Zealand through a New Zealand reporting entity will likely be required to complete CDD before carrying out a transaction. For example, a law firm would be required to undertake CDD where a client is buying or selling shares or assets. Standard CDD under the AML/CFT Act involves obtaining information about the customer including name, date of birth and address (along with supporting documentation). In some instances, reporting entities will be required to undertake enhanced CDD on a client, depending on the type of entity the client is or the type of transaction the client wishes to undertake, which requires additional information to be provided.

Additionally, sections 69-70 of the AML/CFT Act govern cross-border transportation of physical cash. Where a person is moving cash into, or moving cash out of New Zealand, or where a person receives cash moved into New Zealand from outside New Zealand and the cash value is NZ$10,000 or more, the transaction must be reported and notified through a Border Cash Report (irrespective of whether the money is entering or leaving New Zealand).

14. Is there a tax or duty on foreign currency conversion?

In New Zealand, there is no tax or duty imposed on foreign currency conversion. However, New Zealand banks, and other foreign currency converters, may charge a service fee for this conversion.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

In New Zealand, there is no tax or duty imposed on foreign or domestic currency brought into New Zealand. However, there is an obligation imposed on individuals to complete a Border Cash Report when they are carrying a sum greater than NZ$10,000 or the equivalent in a foreign currency. Further, any worldwide income earned while being a New Zealand tax resident is subject to taxation, irrespective of whether this income was brought into the country. This can include situations such as interest earned from overseas bank accounts, worldwide beneficiary income, wages paid from overseas and many more.

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

New Zealand does not have capital gains tax. Generally, shares are a capital asset and any gains the seller gets on the share sale are non-taxable income (provided that the shares were held for long-term investment). The tax treatment on the sale by a company of its business assets will depend on a number of different factors.

The goods and services tax (**GST**) treatment (being New Zealand's form of sales tax) differs depending on the nature of the transaction. For example, GST may be payable on the transfer of business assets unless an exemption applies. The most common exemptions are where the transaction involves the transfer of a business as a going concern or where land assets transfer under the transaction (subject to various criteria being satisfied). However, GST is not payable on the sale and transfer of shares in New Zealand.

See comments below regarding stamp duty.

17. When is a stamp duty required to be paid?

There is no stamp duty payable in New Zealand.

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

Shares in private companies are generally easily transferable, subject to any rights of pre-emption included in the company's constitutional documents and the OI Act.

• Can the shares be held outside of the home jurisdiction?

Shares in a New Zealand company can be held outside New Zealand by overseas shareholders. As noted in question 8 above, consent may be required under the OI Act for shares to be held by overseas persons in certain circumstances.

• What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder?

The constitutional documents of the relevant New Zealand company may require approvals, including waiver of pre-emptive rights, for a share transfer to be made to another foreign or domestic shareholder. As noted above, consent may also be required under the OI Act to transfer the shares to a foreign shareholder in certain circumstances.

• Are changes in shareholding publicly reported or publicly available?

The New Zealand Companies Office is required to be updated within 10 working days of new shares being issued in a New Zealand company. In relation to share transfers, any change in shareholding must be recorded at the time the annual return for the company is required to be filed with the New Zealand Companies Office. The New Zealand Companies Office is a publicly available website and includes details of all shareholders' names, addresses and number of shares held.

In relation to public companies, the company is only required to provide the details of the share allocations and shareholders for persons holding the 10 largest number of shares in the company. All other share allocations are not required to be provided to the New Zealand Companies Office and the public must contact the company directly to obtain this information.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

• With which agency is it required to be made?

The Overseas Investment Office (**OIO**) is the New Zealand government agency responsible for administering the OI Act and the OI Regulations. Any applications for consent must be made to the OIO.

The OIO will review the consent application and, depending on the consent that is required, make recommendations to the relevant government minister as to whether an application should be granted consent. In some cases, the OIO has been delegated the decision-making ability to decide whether consent should be granted.

• How long does it take to obtain an FDI approval?

The length of time to obtain consent under the OI Act will vary depending on the nature of the application and what consent pathway is used. In respect of the consent pathways for the acquisition of residential land referred to in question 11 (increasing the supply of housing, non-residential use and incidental use), the consent application takes approximately 55 wording days from submission of the application. However, for an acquisition of sensitive (but not residential) land, where the overseas person is demonstrating that an acquisition meets the '*benefit to New Zealand test*', the consent application takes approximately 100 working days. The longest application, where an overseas person applies for consent for a fishing quota, takes approximately 200 working days from start to finish.

• Under what circumstances is the mandatory FDI filing required to be made?

Under the OI Act and OI Regulations, overseas persons will need consent to invest in sensitive land (including residential land), significant business assets, fishing quota and certain forestry rights.

• If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?

A notification of call-in transaction (**NSPO Notification**) may apply where the transaction results in the acquisition of a strategically important business in New Zealand. The definition of a strategically important business is set out in full in section 6 of the OI Act and includes, for example, a business that:

i) researches, develops, produces, or maintains military or dual-use technology; ii) is a critical direct supplier; iii) is involved in ports or airports; iv) is involved in electricity generation, distribution, metering, or aggregation; v) is involved in drinking water, waste water, or storm water infrastructure; vi) is involved in telecommunications infrastructure or services; vii) is a financial institution or is involved in financial market infrastructure; viii) is a media business with significant impact; and ix) is a business that develops, produces, maintains, or otherwise has access to sensitive information.

Where the strategically important business researches, develops, produces, or maintains military or dual-use technology or if the business is a critical direct supplier, the overseas person making the investment must notify the OIO before giving any effect to the transaction. Once the OIO has received an NSPO Notification, it will complete an initial assessment of the transaction. If the OIO considers that the transaction may pose a risk to national security and public order, it will refer the transaction to the Minister of Finance for a full assessment of whether there is significant risk to New Zealand's national security and public order. Alternatively, the OIO may issue a direction order permitting the transaction to proceed (noting that the direction order can be issued subject to certain conditions being required to be complied with).

For other call-in transactions that involve strategically important businesses, notification is voluntary. Voluntary notification can be made up to 6 months after the transaction is given effect to. However, if the transaction is not notified to the OIO, there is a risk that it will be called in by the relevant Minister for review and an adverse direction made in relation to the transaction (including that it be unwound). Conversely, if the transaction is notified, and a direction order is issued allowing the transaction to proceed, the transaction is protected from subsequent challenge under the NSPO Notification regime.

• If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction,) could such a transaction trigger a mandatory FDI filing in your jurisdiction?

Transactions that occur outside of the New Zealand jurisdiction which involve the sale of sensitive New Zealand assets (i.e., sensitive land, significant business assets or fishing quota) will still require consent. The OI Act is concerned with the ultimate ownership of entities that hold sensitive New Zealand assets. Section 12(b) of the OI Act provides that where an overseas person is acquiring shares in a target company that directly or indirectly controls sensitive land, if the overseas person is acquiring more than 25% interest (or increasing an existing interest above prescribed thresholds), then the overseas person will be required to obtain consent under the OI Act.

As such, depending on the nature of the transaction and the sensitive New Zealand assets involved, global transactions may trigger consent under the OI Act.

• Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

Where a transaction triggers the requirement for consent under the OI Act and the foreign investor gives effect to the transaction without consent, this will be a breach of the OI Act. However, where a transaction has been given effect to without that consent, the transaction will not be void. If the global transaction is governed by New Zealand law, the OIO may apply to the Court to cancel the transaction.

The OIO does have a range of enforcement tools at its disposal where there has been a breach of the OI Act, including requiring the relevant entity to dispose of the property held (i.e., the sensitive land), or initiating civil/criminal proceedings in New Zealand courts. Where the OIO commences civil proceedings, the associated penalties can include up to NZ$500,000 for an individual and up to NZ$10,000,000 in other cases (or three times the quantifiable gain an investor has made).

20. What are typical exit transactions for foreign companies?

The typical exit strategy for a foreign owner of shares in a New Zealand company would be to sell their shares, either by means of a trade sale, sale to private equity or another investor. Also, as noted below, the New Zealand company may seek to pursue an IPO.

Alternatively, the New Zealand company may seek to sell its business and assets to another company. This would require approval of all shareholders of the company under the Companies Act 1993. Following the sale, the relevant company would generally be wound down and the proceeds of sale distributed to its shareholders.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

New Zealand private companies do pursue an IPO as an exit mechanism. This may be on the domestic market, being the New Zealand Stock Exchange (**NZX**), or on an overseas exchange. The most common overseas exchange that New Zealand companies are listed on is the Australian Stock Exchange (**ASX**), although New Zealand companies are also listed on other international exchanges.

Companies seeking to pursue their IPO on the NZX are likely to do so to attract local investors. Listing on the NZX is likely to increase brand recognition and assist in building a supportive shareholding base for New Zealand companies. Further, the regulatory framework is likely to be relatively familiar for New Zealand companies and compliance comparatively simple, as opposed to listing on an international exchange where the company will be required to comply with international law.

A company seeking to list on a foreign stock exchange may also yield a multitude of benefits. As noted above, New Zealand companies tend to list on the ASX. The ASX provides a much larger market with greater liquidity and provides visibility to a broader market. However, the regulatory and taxation framework differs from New Zealand, which is likely to result in higher compliance costs.

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

We would generally seek to provide that disputes are dealt with by New Zealand courts in an Agreement for Sale and Purchase of Shares or Business Assets, or in a JV Agreement. This is because New Zealand courts provide a familiar and readily accessible forum for parties involved in local disputes. They provide a well-established legal structure, procedural transparency, and the ability to rely on precedent and finality of proceedings. As such, the New Zealand courts are generally regarded as a trusted choice for resolving disputes within New Zealand.

It is also not uncommon for parties to JV Agreements to elect for disputes to be resolved by international arbitration. In such a case, Singapore is the most common seat of arbitral proceedings selected.

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

Contractual disputes are determined in the New Zealand District Court (claims up to NZ$350,000) or the New Zealand High Court (claims of any amount), or the appellant courts. Depending on the complexity of the dispute, volume of evidence and court time required to hear the dispute, the court process will usually take 12 – 18 months (excluding appeals).

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

Assuming the New Zealand Courts have jurisdiction to determine a dispute (for example, an agreement provides for New Zealand law and the jurisdiction of the New Zealand courts) foreign investor's rights should be upheld. Generally, the New Zealand courts will not treat a foreign investor differently from a domestic party.

Further, New Zealand courts regularly recognise and enforce foreign judgments.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

Foreign investment is generally encouraged in New Zealand, subject to compliance with applicable laws. As set out in question 19, the OIO may compel foreign investors to divest assets if they are found not to have complied with the OI Act.

26. Are international arbitral awards recognized and enforced in your country?

New Zealand is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and therefore international arbitral awards are recognized and enforced in New Zealand. The process for recognising and enforcing foreign awards under the New Zealand Arbitration Act 1996 is relatively straightforward and the courts adopt a general presumption in favour of enforcement.

27. Are there foreign investment protection treaties in place between your country and major other countries?

New Zealand is a party to a number of free trade agreements, including the:

- NZ-China Free Trade Agreement;
- NZ-Republic of Korea Free Trade Agreement;
- NZ-Australia Closer Economic Relations;
- ASEAN-Australia-New Zealand Free Trade Agreement;
- NZ-Hong Kong, China Closer Economic Partnership;
- NZ-Malaysia Free Trade Agreement;
- NZ-Singapore Closer Economic Partnership Agreement;
- NZ-Thailand Closer Economic Partnership Agreement;
- Trans-Pacific Strategic Economic Partnership Agreement;
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership;
- New Zealand-Singapore-Chile Digital Economy Partnership Agreement; and
- Pacific Agreement on Closer Economic Relations.

Contributors

Kate Telford
Partner

kate.telford@heskethhenry.co.nz

Erich Bachmann
Partner

erich.bachmann@heskethhenry.co.nz

Brooke Taylor
Solicitor

brooke.taylor@heskethhenry.co.nz