



Doing Business in New Zealand

*An ECOVIS KGA Limited
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Introduction

Kia Ora

Greetings from New Zealand; one of the most open and dynamic economies in the world today. We may be a small, young country but we rightfully claim our place on the world stage.

Our government actively encourages inward investment and while we enjoy an open economy, there are rules around investing in New Zealand. We understand those rules and can assist prospective investors in going about making their investment in the right way.

This guide summarises the requirements for setting up business in New Zealand under New Zealand law and outlines important features of that law and commercial practices relevant to conducting business in New Zealand.

However, it is presented in summary form and is intended only as an introductory guide.

The information in this guide should not be relied upon as a basis for making formal investment and business decisions in isolation, as specific circumstances may apply and government policy and legislative provisions may have changed.

We strongly recommend that you seek out specific advice before you act and we will be happy to assist you in your inquiries.



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About ECOVIS KGA

ECOVIS KGA Limited is a boutique Chartered Accountancy and Advisory practice located in the heart of Newmarket, a vibrant business and shopping suburb of Auckland, New Zealand's largest city.

Clients come to ECOVIS KGA because we take good care of the fundamentals - accounting and tax compliance - but they stay with us because we bring our expertise and experience to the table, helping them plan, grow and protect their businesses through consultancy and value added services.

We take an objective and immersive approach to working with our clients. Our expertise is valued across corporate advisory, general accounting services, specialist taxation advice and wider business strategy services.

From our office in Auckland and through our international affiliation with ECOVIS, we help manage the business interests of individuals, SMEs and larger corporations throughout New Zealand, Australia and Asia.

All of this is applied with relentless passion, insight and commitment.

We strive to develop a deep understanding of every business we serve. We consider ourselves as our clients' partners with their best interests at heart; we don't succeed unless they do.

Our point of difference is that with us you get the expertise you would expect to find in a much larger advisory firm, but you get direct access to the people who are best suited to assist you with your needs; people who are able to guide you through the complexity of the modern business world in a highly effective manner.

Our Partners

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About ECOVIS

ECOVIS is a leading global consulting firm with its origins in Continental Europe. It has over 4,500 people operating in over 60 countries. Its consulting focus and core competencies lie in the areas of tax consultation, accounting, auditing and legal advice.

The particular strength of ECOVIS is the combination of personal advice at a local level with the general expertise of an international and interdisciplinary network of professionals. Every ECOVIS office can rely on qualified specialists in the back offices as well as on the specific industrial or national know-how of all the ECOVIS experts worldwide. This diversified expertise provides clients with effective support, especially in the fields of international transactions and investments - from preparation in the client's home country to support in the target country.

The name ECOVIS, a combination of the terms economy and vision, expresses both its international character and its focus on the future and growth.

Business Landscape

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Geography and Demography

New Zealand is located in the South Pacific Ocean, nearly 2,000 km east of Australia, its nearest neighbour and main trading partner and comprises two main islands: the North and South Islands.

The combined area of these islands is approximately 270,000 square kilometres, a land mass similar in size to that of Great Britain or Japan. The population is around 4.8 million and is comprised of people of diverse ethnicity and culture.

There are three official languages in New Zealand, with English the most common, as well as Maori and Sign Language. However, due to the widely diverse culture there are many other languages commonly spoken.

Approximately three quarters of the population resides in the North Island and

nearly 2 million people live in the four major cities of Auckland, Christchurch, Wellington and Hamilton.

Located at the base of the North Island is New Zealand's capital city of Wellington. Meanwhile, the largest city, Auckland, is located towards the top of the North Island and is the main commercial hub of New Zealand.

New Zealand has been blessed with a variety of spectacular scenery; with beautiful beaches, rivers, lakes, mountains and rolling green pastures gracing every inch of the small country. Due in part to the sparse population and also to the level of ecological consciousness, there is minimal pollution and people often speak of the clean, green image of the country.

System of Government

New Zealand is a Constitutional Monarchy and its present Head of State, or Sovereign, is Her Majesty Queen Elizabeth II, who is represented in New Zealand by the Governor-General.

New Zealand has a Westminster-style political system that is based on the principle of distribution of power across three branches of government: Parliament, the Executive and the Judiciary. The Parliament – the Sovereign and the democratically elected House of Representatives – makes the laws that govern life in New Zealand. The Executive – Ministers of the Crown – administer the laws and the Judiciary – the Courts – interpret the laws.

The members of the House of Representatives are elected every three years by way of a general election. There are several political parties in New Zealand; however the two main parties are The National Party and The Labour Party, who are centre-right and centre-left respectively. The Head of Government is the Prime Minister.

New Zealand is a democracy that enjoys a stable political system and in 2015 took up a non-permanent seat on the Security Council of the United Nations.





Currency

The unit of currency is the New Zealand dollar which is freely floated against all other major currencies. New Zealand has no form of exchange control and funds can be moved in and out of the country freely but such movements are subject to strict Anti-Money Laundering legislation.

The Reserve Bank Act 1989 makes the Reserve Bank independent from Government and tasks it with keeping future price inflation between 1% and 3% on average over the medium term. The setting of the Official Cash Rate (OCR) is the responsibility of the Reserve Bank Governor.

Legal System

The legal system is based on the English common law system and New Zealand statutes are primarily based on English or Australian law, but with some North American influence too.

The Judiciary is independent from the Legislative Authority and operates through a hierarchical system. The lower Court is the District Court and the higher Courts are the High Court, The Court of Appeal and the Supreme Court of New Zealand, which is the final appeal Court.

In addition, there are numerous special Courts such as the Employment Court, the Coroner's Court, the Environment Court and the Maori Land Court as well as a number of Tribunals.

An increasingly common means of resolving disputes is arbitration, which is governed by the Arbitration Act 1996 (based on the UNCITRAL Model Law) unless the parties agree otherwise. The High Court will generally enforce an arbitral award as though it was a judgment of the Court.



Regulatory Bodies

The principal regulators which are relevant to parties seeking to do business in New Zealand are as follows:

- The Overseas Investment Office (OIO): administers foreign investment policy;
- The Financial Markets Authority (FMA) and the Reserve Bank of New Zealand (RBNZ) are the main regulators of financial markets, insurance, investments and financial products. The FMA also has regulatory authority over the New Zealand Stock Exchange (NZX) and the raising of capital from the public;
- The Commerce Commission enforces consumer protection and anti-trust legislation together with legislation specific to the telecommunications, dairy, and electricity industries;
- The Inland Revenue Department (IRD): acts as the collector of taxes, both direct and indirect;
- The New Zealand Customs Service: is charged with the protection of New Zealand's borders and collection of import duties, tariffs etc; and
- The Accident Compensation Corporation (ACC) administers New Zealand's no-fault accident compensation scheme, whereby persons injured in accidents, be they in the workplace or not, are compensated.

Government Approvals and Regulations

New Zealand has a largely de-regulated business environment but there are certain areas that are subject to strict government regulation.

The most important of these, in the context of seeking to do business in New Zealand, is complying with the Financial Markets Conduct Act 2013. This law deals with disclosure requirements for offers of and governance over financial products, fair dealing practices, licensing, regulation of providers of investment advice and reporting requirements.

It is complex legislation that has wide reaching implications. A detailed analysis of this law goes beyond the scope of this guide, but potential investors are urged to seek specific advice in this regard.

Another important area of regulation is competition law which is governed by the Commerce Act 1986 that regulates business acquisitions, prohibits restrictive trade practices and allows for pricing controls in certain industries.

Anyone seeking to develop land or undertake any activities which may have an impact on the environment will need to comply with the provisions of the Resource Management Act 1991, the purpose of which is to promote the sustainable management of natural and physical resources.

Foreign Ownership of New Zealand Assets

Overseas investment in New Zealand is regulated. The Overseas Investment Office (OIO) assesses applications from overseas investors seeking to invest in sensitive New Zealand assets – being ‘sensitive’ land, high value businesses (worth more than \$100 million) and fishing quota.

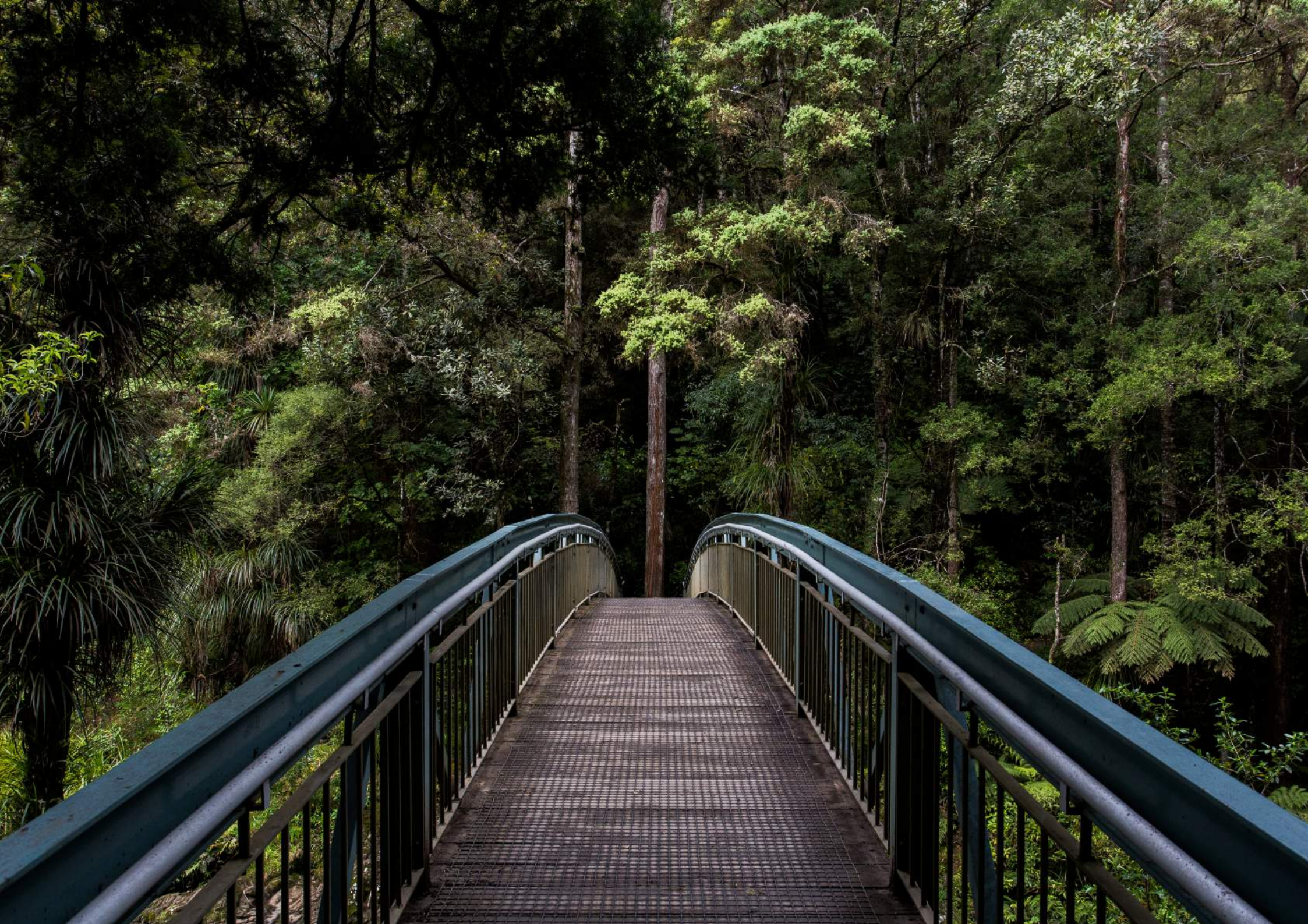
People who are not New Zealand citizens or who do not ordinarily reside in New Zealand must apply for consent to invest in these assets. That requirement also applies to overseas owned or controlled companies, other incorporated or unincorporated bodies, such as partnerships or joint ventures and trusts, as well as associates of overseas investors (who may be New Zealanders).

Before an overseas person invests in New Zealand, it is prudent to consider whether that investment will require consent. Whether or not consent is required depends on the amount of money involved and the type of investment being proposed. In granting consent Land Information New Zealand (LINZ) will take into account a number of factors including such things as the proposed residency of the purchaser and their commitment to New Zealand.

To be successful, the proposed investment must meet a number of criteria set out in the Overseas Investment Act 2005 (for ‘sensitive’ land and high value businesses) and the Fisheries Act 1996 (for fishing quota). All decisions to grant or decline consent are published by the OIO.

To obtain consent an application must be made to LINZ. There is a range of application fees, depending on the specific consent being sought. Application fees can be up to NZ\$12,000 in some cases. The Act also provides for a large range of fines and even imprisonment for failure to comply with its provisions.

In relation to “farm land”, the Act defines a procedure for the purchase of such land. LINZ will not approve overseas investment in farm land unless that land has first been offered for sale or acquisition on the open market to New Zealanders. LINZ will also consider whether the overseas investment in the farm land will, or is likely to, result in substantial and identifiable benefits to New Zealand.



Government Grants

While there are few incentives or grants offered by the central government directly to businesses, there are certain funding programmes which mainly apply to small businesses and vary from region to region.

The government does aim to support entrepreneurs and those involved in research and development. More information can be obtained from www.nzfundinggrants.org.



Banking and Financial System

New Zealand's banking system is substantially deregulated and there is a relatively open policy on the entry of new banks into the market. This has created a competitive and, hence, sophisticated banking system. There are presently 25 banking licences in issue and the main trading banks are largely foreign owned.

In addition to the existence of banks there are numerous other non-banking deposit takers such as building societies, co-operatives, credit unions, trust and mortgage institutions and finance companies.

There are specific statutes that govern some of these institutions and the over-arching provisions of the Financial Markets Conduct Act 2013 are likely to apply.

Anyone who advises on financial products, provides an investment planning service in New Zealand, makes investment management decisions on behalf of another person under authority, or receives, holds, pays or transfers client money, is subject to disclosure requirements and conduct obligations under the Financial Advisers Act 2008.





Capital Raising

Borrowers may raise finance both within New Zealand and off-shore in their currency of choice. Banks are actively engaged in the provision of short and medium-to-long term debt as are some of the other types of the aforementioned financial institutions.

Interest rates charged will vary depending on the level of the OCR and the risk profile attributed to the loan by the provider of the finance.

Equity finance is available through issuing shares and listing on the main board of the New Zealand Stock Exchange (NZSX) or the New Zealand Alternative Market (NZAX) which is aimed at smaller companies.

Public offerings are regulated by the Financial Markets Conduct Act 2013 and other securities legislation, and are generally made pursuant to a prospectus and an investment statement (although simplified disclosure can be made in certain circumstances).

Trade and Market Access

Trade is critical for New Zealand's economic well-being and growth prospects. Only by selling goods and services to other countries can New Zealand pay for the goods and services it imports from overseas.

International trade (exports and imports) accounts for around 60 percent of New Zealand's total economic activity. In 2015, New Zealand's merchandise exports totalled \$50 billion, while service exports totalled \$19 billion.

New Zealand has an open economy that places few barriers in the way of foreign services providers or importers.

New Zealand has a number of free trade agreements in place with several others currently under negotiation.

There are Free Trade Agreements in force with Australia (through the Close Economic Relations protocol), China and Hong Kong, Malaysia, Thailand, Singapore and a recently concluded agreement with Korea.

The country is a signatory to the Trans Pacific Partnership agreement (TPP) along with 11 other Pacific Rim nations. While the TPP is not yet in force it aims to promote economic growth, enhance innovation and to facilitate the lowering of trade barriers between member states.

Forms of Business Ownership

Incorporation of a Company

Registering a Branch

Reporting Obligations

Mergers & Takeovers

Limited Partnerships

New Zealand Foreign Trusts

Forms of Business Ownership

The most common form of carrying on business in New Zealand is through a limited liability company which is formed pursuant to the provisions of the Companies Act 1993.

The Companies Act sets out the main requirements for companies domiciled overseas to operate in New Zealand. This can be achieved by:

- Incorporation of a new company in New Zealand under the Companies Act 1993; or
- Registering the foreign company as a branch in New Zealand; or
- Acquiring shares in a pre-existing New Zealand company or entering a joint venture with a New Zealand company; or
- Forming a limited partnership (discussed in more detail below).

Incorporation of a Company

The Companies Act requires the following for the incorporation of a new company:

- At least one shareholder and one director who lives in New Zealand, or if there is no New Zealand-resident director, a director who lives in Australia and is a director of an Australian incorporated company;
- Share capital - there is no required minimum size or par value, the emphasis being on the maintenance of solvency;
- Where the company chooses to have a constitution, a certified copy of the constitution must be prepared in accordance with the Companies Act and filed with the Companies Office; and
- All the prescribed forms are to be filed with the Companies Office, including the particulars of the directors and shareholders and the address of a registered office in New Zealand where correspondence can be sent and official documents can be served.

The ongoing statutory requirements after incorporation include:

- Under the Financial Reporting Act 2013, within 5 months and 20 days from the company's financial year-end (usually 31 March), audited financial statements and a copy of the audit report may need to be filed with the Companies Office depending on certain size criteria;
- To file an Annual Return;
- To use its full and correct company name on all correspondence and legal documents; and
- To prepare an annual report in accordance with the Companies Act unless all shareholders waive their right to have an annual report prepared.



Registering a Branch

The Companies Act requires every overseas company that carries on business in New Zealand to register as an overseas company (referred to as a “branch”).

The requirements for registration are:

- Within 10 days of commencing trading, the overseas company must:
 - File a reservation of company name; and
 - File all other prescribed registration forms at the Companies Office;
- To lodge a certified copy of the company’s Articles and Memorandum of Association or its Constitution; and
- To lodge particulars of a nominee resident in New Zealand upon whom documents can be served and communications can be sent on the company’s behalf.

The continuing requirements for a branch include filing financial statements and an annual return at the Companies Office (along with the relevant filing fee). In all correspondence and legal documents, the New Zealand entity must state both its full name and the country in which it was originally incorporated.

The penalty for failure to register is a fine for the overseas company and each of its directors of up to NZ\$10,000.

Reporting Obligations

(non-subsidiaries)

In addition to foreign-owned subsidiaries (discussed above), overseas companies which are deemed as “large” must have their financial statements audited.

A subsidiary of an overseas company will be deemed to be “large” if it has:

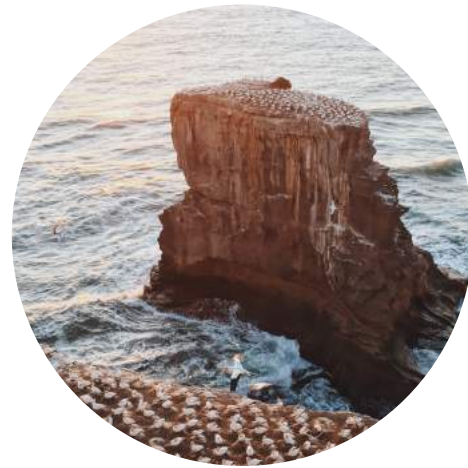
- NZ\$ 20 million annual turnover (as per statement of financial performance shown in their latest financial accounts); or
- NZ\$ 10 million in assets (as per statement of financial performance shown in their latest financial accounts); or
- 50 full-time employees.

An entity (other than an overseas company or a subsidiary of an overseas company) is “large” if:

- Total assets of the entity and its subsidiaries (if any) exceed NZ\$60 million; or
- Total revenue of the entity and its subsidiaries (if any) exceeds NZ\$30 million.

Mergers & Takeovers

A company considering merging with or buying a New Zealand company must be aware of the restrictions on business acquisitions contained in the Commerce Act 1986. If the New Zealand company is listed on the New Zealand Stock Exchange or, if not listed, has more than 50 shareholders and share parcels, the Takeovers Code is likely to apply. Specific advice on the implications of the Code should be sought.



Limited Partnerships

A limited partnership provides the limitation of liability protection of a company and some of the flow through tax and confidentiality advantages of a partnership. This type of entity can be particularly beneficial for individual investment.

The New Zealand limited partnership model is similar to limited partnerships in other jurisdictions, including Delaware, certain Australian states and the Channel Islands.

A limited partnership does provide a measure of confidentiality. The identity of the limited partners must be registered with the Registrar of Companies but that information is not publicly disclosed. Every limited partnership must have a limited partnership agreement.

Unlike a company's Constitution, however, this agreement is not registered with the Registrar and is not made public.

Like a company, a limited partnership is a separate legal entity from its investors and that separation helps to protect those investors from losses and claims arising from the business activities of the limited partnership.

A limited partnership requires a general partner and limited partners.

Limited partners are passive investors and their liability is typically limited to their agreed capital commitment, the exception being unless they participate in the management of the limited partnership. The general partner manages the business and is responsible for the debts and obligations of the limited partnership if the limited partnership itself cannot meet them. A general partner may be a company.

Limited partnerships are treated as fiscally transparent for New Zealand tax purposes, notwithstanding their separate legal

identity. The limited partners are treated as holding the assets of the limited partnership, and personally derive the income and deductions. This presents a number of tax advantages, such as the ability to distribute capital gains tax free to the limited partners and the passing through of tax losses. Use of a limited partnership can involve additional tax issues in some circumstances, such as where partnership interests are traded or where non-residents are involved, although these can usually be resolved.

A limited partnership is required to prepare accounts and keep them at its registered office, but generally they are not required to file those accounts with the Registrar and therefore the accounts are not made public.

New Zealand Foreign Trusts

New Zealand tax law includes a special category of trust designed for non-residents. A “New Zealand Foreign Trust” is exempt from tax in New Zealand other than on its New Zealand-sourced income. Many non-residents choose to establish a New Zealand trust to hold their investments in other countries for the following reasons:

- New Zealand is a politically stable country in which to accumulate assets;
- Most countries around the world respect New Zealand’s reputation for integrity, which can make doing business overseas much easier than if your assets are held in recognised tax havens;
- New Zealand has no capital gains tax (with one limited exception in respect of certain property transactions which is more comprehensively addressed under Taxation, below); and
- Non-residents can invest confidentially in other countries by utilising trustee services, with limitations around their identity being available to competitors in that country.



Taxation

Income Tax

Non-Resident Withholding Tax

GST (Goods & Services Tax)

Fringe Benefit Tax

Transfer Pricing Regime

Capital Gains Tax

Apportionment of Branch Income

Thin Capitalisation Rules

Taxation

In New Zealand taxes are collected by the Inland Revenue Department (IRD) and are levied under several regimes, including:

- Income tax;
- Goods and Services Tax (“GST”);
- Fringe benefit tax;
- Withholding tax; and
- Import tariffs and miscellaneous excise duties (administered by the Customs Service).

Taxation

continued

As a general rule New Zealand capital gains or deceased estates are not taxed.

It should be noted that certain transactions in other jurisdictions that might attract capital gains can be assessed in New Zealand for income tax, for example some capital profits derived from transactions involving land can be treated as assessable income.

Stamp Duty was abolished in New Zealand in 1999 and Gift Duty in 2011.

For individuals and companies defined as “resident” in New Zealand, income tax is imposed on worldwide income. Non-resident individuals and companies, on the other hand, are taxed only on income derived from New Zealand and their tax liability may be reduced by the provisions of an applicable double tax agreement.

Individuals are generally regarded as resident in New Zealand for income tax purposes if they have a permanent place of abode in New Zealand or are present in New Zealand for more than 183 days within a 12-month period. The matter of tax residency is an important factor in seeking to do business in New Zealand and we recommend that advice be sought in this regard.



Income Tax

- The tax rate for resident and non-resident companies is a flat rate of 28%. Persons and companies resident in New Zealand pay tax on their worldwide income. Persons and companies not resident in New Zealand are subject only to tax on any income they derive in New Zealand. For tax purposes a company is resident in New Zealand if:
 - It is incorporated in New Zealand; or
 - It has its head office in New Zealand; or
 - It has its centre of management in New Zealand; or
 - The control of the company by its directors is exercised in New Zealand.
- For individuals, marginal rates are from 10.5% to 33%. Employers deduct income tax on a pay as you earn (“PAYE”) basis from wage and salary payments to employees and pay the deductions to Inland Revenue directly. This deduction is made on account of the employee and at the end of the tax year any necessary adjustments can be made.
- The types of income that are subject to taxation are not precisely defined in the legislation. There are many specific exclusions and inclusions that make up taxable income.

Income Tax

continued

- New Zealand is also a signatory to numerous Double Taxation Agreements with foreign countries. This means that, in general, New Zealand allows a tax credit for foreign tax paid. This tax credit is the lesser of the foreign tax paid or the New Zealand income tax payable. The tax credit available may change depending on the particular Double Taxation Agreement.

Double Tax Agreements have been concluded with:

Australia, Austria, Belgium, Canada, Chile, China, Czech Republic, Denmark, Fiji, Finland, France, Germany, Hong Kong, India, Indonesia, Ireland, Italy, Japan, Korea, Malaysia, Mexico, Netherlands, Norway, Papua New Guinea, Philippines, Poland, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Taiwan, Thailand, Turkey, United Arab Emirates, United Kingdom, United States of America and Vietnam.

- New Zealand also operates a full dividend imputation system. This means that tax paid by resident companies creates imputation credits. These credits can be attached to dividends paid by that company. Where a dividend is fully imputed, it will be tax-free where the dividend is paid to a New Zealand resident. This imputation tax credit may not be available to offset any domestic tax in the country of residence.

Non-Resident Withholding Tax

- Dividends, interest and royalties paid to non-residents are subject to non-resident withholding tax. The tax rates are:
 - 30% of the gross amount of dividend payments, except for a number of special types of dividends including fully imputed dividends; and
 - 15% of the gross amount of interest or royalties.

However, a Double Taxation Agreement between New Zealand and the relevant overseas country may reduce these rates.

- Non-resident withholding tax may not need to be deducted on interest when the non-resident is engaged in business through a fixed establishment in New Zealand, but then resident withholding tax would apply.
- Non-resident withholding tax on interest can be reduced to 0% where the payer is an approved issuer and the interest is paid in respect of a registered security under the Approved Issuer Regime.



GST (Goods & Services Tax)

- GST is an indirect tax on most goods and services. Usually GST is charged at a flat rate of 15%. However in some limited situations, for example, when goods are exported or services are supplied to a non-resident outside New Zealand or a business is sold as a going concern, GST is charged at the rate of 0%.
- Financial services and rental paid for private accommodation are two of the major exemptions from GST.
- Businesses are able to register for GST which means they can claim input credits for any GST they incur in conducting business. They must charge GST on goods and services provided, and file returns and pay to the Inland Revenue the net GST collected.
- Although GST Registration is not mandatory until “supplies” exceed NZ\$60,000 in any twelve month period (or if there are reasonable grounds for believing that supplies will exceed NZ\$60,000 in the following twelve months) most companies will want to register for GST immediately because of the cost of financing the GST while not registered. Businesses may voluntarily register for GST before they are required to do so, and there may be different timing and factual situations where this is advantageous.

GST (Goods & Services Tax)

continued

- Businesses with annual turnover less than NZ\$250,000 may, on application, file returns six monthly, businesses with annual turnover between NZ\$250,000 and NZ\$24 million must file two-monthly returns, and businesses with annual turnover of more than NZ\$24 million must file monthly returns.
- When goods arrive into New Zealand, they are subject to GST which is calculated and collected by New Zealand Customs as if it were customs duty. It is normal practice for the GST to be paid on importation. However, if the importer has a deferred payment account with the Customs Department, GST can be paid on a monthly basis. Importers (including foreign companies) who are registered for GST and who intend selling goods in New Zealand can claim back the GST paid on importation.
- From 1 October 2016 overseas-based suppliers of “remote” goods and services to New Zealand-resident consumers will be required to become registered for GST and to return GST in New Zealand on those supplies if the supplies, in aggregate, exceed NZ\$60,000 in a 12 month period.

Fringe Benefit Tax

- Employers who provide non-cash benefits to employees while they are at work must pay fringe benefit tax. This includes interest free loans, company vehicles and discounted goods. The fringe benefit tax rate is 55% (annual filer) or 49.25% (quarterly filer) of the taxable value of the benefit, although an election may be available to pay fringe benefit tax at attributed rates of as low as 43%. This is a tax-deductible expense for employers.
- Superannuation Schemes that have been registered under the Superannuation Schemes Act 1989 are taxed at usually 30 - 33% on the income of the scheme however benefit payments to employees are exempt.



Transfer Pricing Regime

New Zealand has a transfer pricing regime which may regulate the price of transactions between a New Zealand entity and a non-resident “associate”. If the price charged has the effect of reducing the New Zealand taxpayer’s net income, the tax charged will instead be based on an “arm’s length” price (i.e. at the price that would have been charged if there was no association between the parties).

The transfer pricing regime applies in arrangements for supply of goods, services or intangible transfers such as royalties, trademarks, management fees and inter-company guarantees, where the arrangement is between companies, one of whom has more than 50% voting, ownership or income interest in the other company, and either:

- One (or both) of the companies concerned is non-resident in New Zealand for tax purposes; or
- Both companies are resident in New Zealand, but the purpose of the arrangement is that one of the companies carries on business overseas.

The transfer pricing regime does not directly apply to arrangements within a branch company as there is only one entity, however there are equivalent income apportioning provisions (see below).

There is a high level of responsibility on the company to exercise judgement in determining the correct pricing method for calculating transfer prices, and maintain adequate documentation to evidence that transfer prices for things imported were accounted for at arm’s length, and the pricing method chosen to calculate that price complies with the requirements of the regime in respect to accuracy, completeness etc.

Transfer Pricing Regime

continued

The documentation requirements under the transfer pricing regime place a high level of responsibility on the taxpayers to:

- Exercise judgement in determining the correct pricing method for calculating transfer prices; and
- Maintain adequate documentation.
- While documentation is not specifically required by the legislation, the IRD Guidelines suggest that companies should prepare and maintain adequate documentation in case the IRD require proof that:
 - The transfer price for things imported were accounted for at arm's length; and
 - The pricing method chosen to calculate that price complies with the requirements of the regime in respect to accuracy, completeness etc.

Non-compliance with the regime is considered by the Commissioner of Inland Revenue to be (at least) a failure to exercise reasonable care or even gross carelessness which brings with it minimum penalties of between 20% and 40% of the underpaid tax.

Capital Gains Tax

While there is no comprehensive tax on capital gains, recent legislative amendments saw the introduction of such a tax on certain property transactions. They apply to residential properties acquired on or after 1 October 2015.

- The amendments introduce a brightline test of a period of two years from the date of acquisition of residential property during which the gain arising from the sale of that property, with certain exceptions, will be taxable;
- Their purpose is also to provide additional information to the IRD in respect of residential property transactions; and
- They see the introduction of a Residential Land Withholding Tax (RLWT) where the vendor of a property to which the new brightline test will apply is an “offshore person”.

The brightline test applies where any residential property is sold within two years of its acquisition. Regardless of the intention underlying its acquisition, any gain arising from the sale of such residential land will be subject to taxation. There are, however, exceptions, namely if the land being sold is the vendor’s “main home”, or the sale is part of a relationship property settlement, or if it is a sale of inherited land.

Also, because the new rules apply only to residential property, farmland and business premises are excluded.

Non-residents who meet the definition of an “offshore person” will be required to obtain a local IRD number and to have a local bank account, which means that they will be subject to identification verification procedures for anti-money laundering purposes.



Apportionment of Branch Income

For income tax purposes, a branch company is not considered an 'associated person' in relation to the overseas parent company therefore the transfer pricing regime does not apply. However, the branch is a resident for tax purposes and it receives taxable income for the overseas company.

The income received by the branch is assessed for New Zealand income tax on an apportionment basis. The amount of apportionment varies depending on the type of goods and services being traded.

An alternative form of assessment of the branch company's taxable income is for the branch to submit a profit and loss account of the business done in New Zealand. This profit and loss account should be accompanied by a certificate from a chartered accountant stating that no charges have been made for interest on capital or reserves or any unusual depreciation or other charges.

The apportionment is calculated to produce a net taxable income or loss that would have been made by a company which carried out business totally independent from its overseas parent. In this respect, the assessable income should be similar to that calculated under the transfer pricing regime.



Thin Capitalisation Rules

The thin capitalisation rules form part of New Zealand's international tax rules and are designed to protect the country's tax base. The rules place limits on how much debt a non-resident can commit to their New Zealand investments.

This is important as the use of debt is one method that non-residents can use to move profits out of New Zealand to significantly lower the amount of New Zealand tax they would otherwise pay.

The rules currently only apply when a single non-resident controls a New Zealand investment and the tenor of the regime is that if the debt level of a corporate group or other taxpayer exceeds prescribed levels the interest expense on the excess debt is treated as an item of income.

This can have a significant effect on the tax to be paid by the New Zealand entity and care should be exercised when structuring an inward investment that is to be funded partially by debt.

Employment

Employment

Employment and the well-being of personnel in any organisation, regardless of its size, is a very important aspect of doing business in New Zealand.

The Employment Relations Act 2000 is the principal statute governing employment in New Zealand. Its object is to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship. It seeks to protect the right of workers to bargain collectively.

Employment agreements must be in writing, and may be individual (between an individual employee and the employer) or collective (between one or more unions and one or more employers).

Employers must hold a signed copy of employment agreements.

Union membership is not compulsory but all collective agreements must be negotiated and concluded by a union.

The preservation of good faith in the employment relationship is a cornerstone of the legislation.

The law makes provision for the protection of employees' rights, working conditions, paid leave, transfer of employment of "vulnerable employees" when a sale of a business is contemplated, termination processes, dispute resolution procedures, union access and strikes and lockouts.

Employment

Holidays and special leave are also covered by the legislation. In addition to 11 statutory holidays, employees are entitled under law to at least four weeks' paid annual leave after 12 months of employment.

Primary caregivers are entitled to receive up to 18 weeks' paid parental leave. To be eligible, parents must have been in paid employment with the same employer for at least an average of ten hours per week for at least six months before the birth or adoption of a child.

The Parental Leave and Employment Protection Act 1987 also provides for both parents to take specified periods of parental leave (unpaid) on the birth or adoption of a child.

Minimum wage rules apply and the present rate for workers over the age of 16 is NZ\$15.25, before tax, per hour. These rates are reviewed by the Department of Labour annually.

There is no system of compulsory superannuation in New Zealand but all new employees must be automatically enrolled in the KiwiSaver superannuation scheme. Automatic enrolment does not apply to temporary employees or to most business sale situations. Existing employees can also enrol in KiwiSaver if they wish. Employees who are automatically enrolled have a six week period in which they can opt out.

Employees who are members of KiwiSaver will have part of their gross earnings (minimum of 3%) deducted and paid by their employer to a superannuation scheme. Required employer contributions are also 3%. Total remuneration approaches (where employer contributions are deducted from the employee's salary) to KiwiSaver are generally permitted.

Employment

Employee health and safety in the workplace is critically important and under new health and safety legislation, businesses of all sizes are required to have an effective strategy to develop worker engagement and safety practices. There will be a greater responsibility imposed on businesses and individuals to ensure compliance with health and safety processes. Employers must take all reasonably practicable steps to:

- Provide and maintain a safe working environment and work facilities;
- Ensure that plant at work is arranged, designed and maintained so that it is safe for use;
- Ensure that employees are not exposed to hazards in their place of work or near their place of work under the employer's control;
- Develop procedures for dealing with emergencies that may arise while employees are at work; and
- Ensure that no action or inaction by any employee while at work harms any other person.

Employers must also maintain a record of every accident that harmed (or might have harmed) an employee at work or any person in the place of work controlled by the employer, or which resulted from a hazard to which the employee was exposed while at work. If an accident or harm occurs, the employer must take all practicable steps to ensure that the occurrence is investigated so as to determine whether it was caused by or arose from a significant hazard.

New Zealand legislation around employment matters is complex and there is even a special Employment Court that hears cases where employment issues are at the heart of the action. Anyone contemplating undertaking a business venture in New Zealand would be well advised to seek out specialist assistance in setting up an employment framework to ensure full compliance with what is a very tricky area of the law.

Immigration

Work Visa

Skilled Migrants

Entrepreneur Visa

Investor Visa

Immigration

New Zealand is seeking to grow its population and economic wealth base through a policy of managed migration. There are numerous options available for non-New Zealanders wishing to work and live in New Zealand on a permanent or temporary basis.

Current immigration policy focuses on migrants who can add economic value, enhance the creative industries in New Zealand and provide skills in areas where shortages are considered to exist.

Anyone who is not a national of New Zealand or Australia will require an appropriate visa or permit to live and work in New Zealand.

Apart from student and work visas, there are three main categories under which a migrant can seek residency in New Zealand:

- Skilled Migrant
- Business Ownership (Entrepreneur)
- Investment Funds

A detailed description of all the various immigration factors to be considered goes beyond the scope of this guide and a great deal of information may be found by visiting the official Immigration New Zealand website www.immigration.govt.nz.







Work Visa

A work visa allows for work in New Zealand for a limited period, generally up to three years, from the date of arrival in New Zealand (but up to five years for certain essential skills workers). For someone seeking to settle permanently in New Zealand, or set up a business, residency is likely to be more appropriate.

Skilled Migrants

This category is designed to attract migrants to New Zealand who have the skills the country needs. This category works on a points system – applicants may only apply for residency if they have sufficient points. Points are earned on the criteria of age, qualifications, work experience, identified skills shortages, or job offers in New Zealand. Applicants must also satisfy health and character requirements, be English-language proficient, and be aged from 20 - 55 (inclusive).

Applicants who don't necessarily qualify under that category may seek to acquire residence through the Work to Residence category.

Entrepreneur Visa

This category is aimed at people who wish to purchase, invest in or start up a business in New Zealand with a view to gaining permanent residence.

A key feature is a clear demonstration of the benefits that business will provide to New Zealand.

Applicants must establish a business that benefits New Zealand significantly and be self-employed in that business for at least three years which includes an initial 12-month “start-up” period. Those who hold a Long Term Business visa may apply for residency under this category after the aforementioned 3-year period has passed.



Investor Visa

This category aims to bring persons who have high net worth to New Zealand as investors and hence to obtain their residency. The applicant must demonstrate ownership of the nominated funds and assets and demonstrate that the nominated funds and assets have been legally earned or acquired. All invested funds must be placed in acceptable investments.

<i>Key requirements</i>	<i>Investor Plus</i>	<i>Investor</i>
Maximum age	No requirement	65 or younger
Business experience	No requirement	Minimum of three years
Investment funds	NZ\$10 million invested in New Zealand for three years	NZ\$1.5 million invested in New Zealand for four years
Settlement funds	No requirement	NZ\$1 million - transfer not necessary but proof required (in addition to NZ\$1.5 million investment funds)
Principal applicant's English language	No requirement	An English speaking background, or an International English Language Testing System (IELTS) test report with an overall band score of three or more, or a competent user of English
Family member's English language	No requirement	Same as principal applicant or pre-purchase ESOL tuition
Minimum time in New Zealand	44 days in New Zealand in each of the last two years of the three-year investment period	146 days in New Zealand in each of the last three years of the four-year investment period

Useful Links

ECOVIS KGA Limited
www.ecoviskga.co.nz

ECOVIS International
www.ecovis.com

New Zealand Companies Office
www.companies.govt.nz

Inland Revenue Department
www.ird.govt.nz

New Zealand Immigration Service
www.immigration.govt.nz

New Zealand Customs Service
www.customs.govt.nz

New Zealand Intellectual
Property Office
www.iponz.govt.nz

Ministry of Foreign Affairs and Trade
www.mfat.govt.nz

Reserve Bank of New Zealand
www.rbnz.govt.nz

Ministry of Business, Innovation and
Employment
www.mbie.govt.nz

Ministry of Justice
www.justice.govt.nz

Land Information and Overseas Investment
www.linz.govt.nz

Financial Markets Authority
www.fma.govt.nz

