

EXISTING MEASURES

Schedule of New Zealand

EXPLANATORY NOTES

1. For greater certainty, the measures that New Zealand may take in accordance with Article [X.64] (Prudential Carve-out), provided they meet the requirements of that Article, include those governing:
 - a licensing, registration or authorisation as a financial institution or cross-border financial service supplier, and corresponding requirements;
 - b juridical form, including legal incorporation requirements for systemically important financial institutions and limitations on deposit-taking activities of branches of overseas banks, and corresponding requirements; requirements pertaining to directors and senior management of a financial institution or cross-border financial service supplier;
 - c capital, related party exposures, liquidity, disclosure and other risk management requirements;
 - d payment, clearance and settlement systems (including securities systems);
 - e anti-money laundering and countering financing of terrorism; and

- f distress or failure of a financial institution or cross-border financial service supplier.

Sector	All Sectors
Obligations concerned	National Treatment (Investment Article X) Market Access (Investment Article X)
Measure	Companies Act 1993 Financial Reporting Act 2013
Description	<u>Investment</u> 1 Consistent with New Zealand’s financial reporting regime established under the Companies Act 1993 and Financial Reporting Act 2013, the following types of entities are required to prepare financial statements that comply with generally accepted accounting practice, have those statements audited and registered with the Registrar of Companies (unless exceptions to any of those requirements apply): a) any body corporate that is incorporated outside New Zealand (an “overseas company”) that carries on business in New Zealand within the meaning of the Companies Act 1993 and which is “large” ¹ ;

¹ An overseas company or subsidiary of an overseas company is “large” in respect of an accounting period if at least one of the following applies:
(i) as at the balance date of each of the two preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed NZ\$20 million; or
(ii) in each of the two preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds NZ\$10 million.

- b) any “large” New Zealand company in which shares that in aggregate carry the right to exercise or control the exercise of 25 per cent or more of the voting power at a meeting of the company are held by²:
 - (i) a subsidiary of a body corporate incorporated outside New Zealand;
 - (ii) a body corporate incorporated outside New Zealand; or
 - (iii) a person not ordinarily resident in New Zealand;
- c) any “large” company incorporated in New Zealand which is a subsidiary of an overseas company³.

- 2 If a company is required to prepare financial statements and if they have one or more subsidiaries, they must, instead of preparing financial statements in respect of themselves, prepare group financial statements that comply with generally accepted accounting practice in relation to that group. This obligation does not apply if:

An audit report is required unless the New Zealand business of that overseas company is not “large” and the law where the company is incorporated does not require an audit.

² A New Zealand company is “large” in respect of an accounting period if at least one of the following paragraphs applies:

- (i) as at the balance date of each of the two preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed NZ\$60 million; or
- (ii) in each of the two preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds NZ\$30 million.

- a that Company (A) is itself a subsidiary of a body corporate (B), where body corporate (B) is:
 - (i) incorporated in New Zealand; or
 - (ii) registered or deemed to be registered under Part 18 of the Companies Act 1993; and
- b group financial statements in relation to a group comprising B, A, and all other subsidiaries of B that comply with generally accepted accounting practice are completed; and
- c a copy of the group financial statements referred to in paragraph (b) and a copy of the auditor's report on those statements are delivered for registration under the Companies Act 1993 or for lodgement under another Act.

2 If an overseas company is required to prepare:

³ An overseas company or subsidiary of an overseas company is "large" in respect of an accounting period if at least one of the following applies:

- (i) as at the balance date of each of the two preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed NZ\$20 million; or
- (ii) in each of the two preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds NZ\$10 million.

An audit report is required unless the New Zealand business of that overseas company is not "large" and the law where the company is incorporated does not require an audit.

- a financial statements under the Companies Act 1993 it must also, if its New Zealand business meets the asset and revenue thresholds that apply in respect of “large” overseas companies, prepare, in addition to the financial statements of the large overseas company itself, financial statements for its New Zealand business prepared as if that business were conducted by a company formed and registered in New Zealand; and

- b group financial statements under the Companies Act 1993, and if the group’s New Zealand business meets the asset and revenue thresholds that apply in respect of “large” overseas companies, the group financial statements that are prepared must include, in addition to the financial statements of the group, financial statements for the group’s New Zealand business prepared as if the members of the group were companies formed and registered in New Zealand.

Sector	Agriculture, including Services Incidental to Agriculture
Obligations concerned	Market Access (Cross-Border Trade in Services Article X and Investment Article X) National Treatment (Cross-Border Trade in Services Article X and Investment Article X) Performance Requirements (Investment Article X) Senior Management and Boards of Directors (Investment Article X)
Measure	Dairy Industry Restructuring Act 2001
Description	<u>Cross-Border Trade in Services and Investment</u> The Dairy Industry Restructuring Act 2001 (DIRA) and regulations provide for the management of a national database for herd testing data. The DIRA: (a) provides for the New Zealand Government to determine arrangements for the database to be managed by another dairy industry entity. In doing so the New Zealand Government may: (i) take into account the nationality and residency of the entity, persons that own or

control the entity, and the senior management and Board of Directors of the entity; and

(ii) restrict who may hold shares in the entity, including on the basis of nationality;

(b) requires the transfer of data by those engaged in herd testing of dairy cattle to the Livestock Improvement Corporation (LIC) or successor entity;

(c) establishes rules regarding access to the database and that access may be denied on the basis that the database's intended use could be "harmful to the New Zealand dairy industry", which may take into account the nationality or residency of the person seeking access.

Sector	Communication Services Telecommunications
Obligations concerned	National Treatment (Investment Article X) Senior Management and Boards of Directors (Investment Article X)
Measure	Constitution of Chorus Limited
Description	<u>Investment</u> The Constitution of Chorus Limited requires New Zealand Government approval for the shareholding of any single overseas entity to exceed 49.9 percent. At least half of the board directors are required to be New Zealand citizens.

Sector Agriculture, including Services Incidental to Agriculture

Obligations concerned Market Access (Investment Article X)

Senior Management and Boards of Directors
(Investment Article X)

Measure Primary Products Marketing Act 1953

Description Investment

Under the Primary Products Marketing Act 1953, the New Zealand Government may impose regulations to enable the establishment of statutory marketing authorities with monopoly marketing and acquisition powers (or lesser powers) for “primary products”, being products derived from beekeeping, fruit growing, hop growing, deer farming or game deer, or goats, being the fur bristles or fibres grown by the goat.

Regulations may be issued under the Primary Products Marketing Act 1953 concerning a broad range of the marketing authority’s functions, powers and activities. In particular, regulations may require that board

members or personnel be nationals of or resident in New Zealand.

Sector	Air Transportation
Obligations concerned	National Treatment (Investment Article X) Performance Requirements (Investment Article X) Senior Management and Boards of Directors (Investment Article X)
Measure	Constitution of Air New Zealand Limited
Description	<u>Investment</u> No one foreign national may hold more than 10 per cent of shares that confer voting rights in Air New Zealand unless they have the permission of the Kiwi Shareholder. ⁵ In addition: <ul style="list-style-type: none">(a) at least three members of the Board of Directors must be ordinarily resident in New Zealand;(b) more than half of the Board of Directors must be New Zealand citizens;(c) the Chairperson of the Board of Directors must be a New Zealand citizen; and

⁵ The Kiwi Share in Air New Zealand is a single NZ\$1 special rights convertible preference share issued to the Crown. The Kiwi Shareholder is Her Majesty the Queen in Right of New Zealand.

- (d) the location of the Head Office of Air New Zealand, and its principal place of business, shall be in New Zealand.

Sector	All Sectors
Obligations concerned	Market Access (Investment Article X) National Treatment (Investment Article X) Performance Requirements (Investment Article X) Senior Management and Boards of Directors (Investment Article X)
Measure	Overseas Investment Act 2005 Fisheries Act 1996 Overseas Investment Regulations 2005
Description	<u>Investment</u> Consistent with New Zealand's overseas investment regime as set out in the relevant provisions of the Overseas Investment Act 2005, the Fisheries Act 1996 and the Overseas Investment Regulations 2005, the following investment activities require prior approval from the New Zealand Government:

- (a) acquisition or control by non-government sources of 25 per cent or more of any class of shares⁶ or voting power⁷ in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ\$200 million;
- (b) commencement of business operations or acquisition of an existing business by non-government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ\$200 million;
- (c) acquisition or control by government sources of 25 per cent or more of any class of shares⁸ or voting power⁹ in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ\$200 million;

⁶ For greater certainty, the term 'shares' includes shares and other types of securities.

⁷ For greater certainty, 'voting power' includes the power to control the composition of 25 percent or more of the governing body of the New Zealand entity.

⁸ For greater certainty, the term 'shares' includes shares and other types of securities.

⁹ For greater certainty, 'voting power' includes the power to control the composition of 25 percent or more of the governing body of the New Zealand entity.

- (d) commencement of business operations or acquisition of an existing business by government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ\$200 million;
- (e) acquisition or control, regardless of dollar value, of certain categories of land that are regarded as sensitive or require specific approval according to New Zealand's overseas investment legislation; and
- (f) any transaction, regardless of dollar value, that would result in an overseas investment in fishing quota.

Overseas investors must comply with the criteria set out in the overseas investment regime and any conditions specified by the regulator and the relevant Minister or Ministers.

This entry should be read in conjunction with Annex II – New Zealand – X.

Sector	All Sectors
Obligations concerned	Performance Requirements (Investment Article X)
Measure	Income Tax Act 2007 Goods and Services Tax Act 1985 Estate and Gift Duties Act 1968 Stamp and Cheque Duties Act 1971 Gaming Duties Act 1971 Tax Administration Act 1994
Description	<u>Investment</u> Any existing non-conforming taxation measures.

Sector	Financial Services
	Insurance and Insurance-related Services
Obligations concerned	National Treatment (Cross-Border Trade in Services Article X and Investment Article X and X)
	Market Access (Cross-Border Trade in Services Article X and Investment Article X)
Measure	Commodity Levies Act 1990
	Commodity Levies Amendment Act 1995
	Kiwifruit Industry Restructuring Act 1999 and Regulations
Description	<u>Cross-Border Trade in Services and Investment</u>
	<p>The provision of crop insurance for wheat can be restricted in accordance with the Commodity Levies Amendment Act 1995 (CLA). Section 4 of the CLA provides for the use of funds derived under a mandatory commodity levy on wheat growers to be used for the purpose of funding a scheme insuring wheat crops against damage or loss.</p> <p>The provision of insurance intermediation services related to the export of kiwifruit can be restricted in accordance with the Kiwifruit Industry Restructuring</p>

Act 1999 and regulations relating to the export
marketing of kiwifruit.

Sector	Financial Services Banking and Other Financial Services (excluding Insurance)
Obligations concerned	Senior Management and Boards of Directors (Investment Article X)
Measure	KiwiSaver Act 2006 Financial Markets Conduct Act 2013
Description	<u>Investment</u> The fund manager of a registered KiwiSaver scheme and the corporate trustee of a registered KiwiSaver scheme that is a restricted scheme must both have at least one director that is a New Zealand resident for tax purposes.

