# New Zealand and EU approaches to investment chapters

**New Zealand and the EU will aim for an agreement that promotes high quality, commercially meaningful outcomes in services and investment, while also recognising that there are sensitivities in certain sectors. The EU and New Zealand have reaffirmed the importance of governments' right to regulate for public policy purposes, including in relation to public services.**

**Investment Protection and Investor State Dispute Settlement (ISDS)**
New Zealand's approach is to include investment as part of high quality free trade agreements. However, New Zealand opposes the inclusion of ISDS in FTAs. ISDS and investment protection provisions are not included in the EU mandate for negotiations with New Zealand. This follows a recent ruling by the European Court of Justice that, unlike other aspects of FTAs, these provisions cannot be approved at the EU level and would therefore require parliamentary approval by member states. The EU may propose a separate agreement to cover these areas at some stage in the future. We will carefully consider any EU proposals in this regard, but our position is unchanged – New Zealand remains opposed to ISDS.

**Key obligations**
New Zealand will seek to ensure the investment chapter applies to all phases of an investment's lifecycle (including 'pre-establishment' and during the operation of an investment).

Specifically, New Zealand will seek obligations in an investment chapter with the EU on:

- *Non-discrimination*: Ensure that New Zealand investors and their investments cannot be discriminated against by the EU, compared to its own domestic investors in like circumstances (through national treatment commitments), or against other foreign investors from any other country (through most favoured nation commitments).

- *Control over investments*: Enable New Zealand investors to retain control of their investments in the EU, for example, through provisions that prevent restrictions on who can be appointed as senior managers and directors. New Zealand also seeks provisions that prevent the imposition or enforcement of performance requirements, such as requirements to achieve a percentage of domestic content or to transfer technology to a person in the EU. These types of requirements can be particularly onerous on small- and medium-sized enterprises.

New Zealand will also seek to provide certainty that transfers relating to New Zealanders' investments in the EU (like their profits or dividends) will be able to be made freely and without delay, while recognising the importance of regulation in context of balance of payments crises.

**Approach to scheduling investment commitments**

New Zealand's preferred approach is to schedule services and investment commitments in a 'negative list', which means that all sectors are covered by the agreement unless they are included in the list. This ensures the FTA stays relevant over time and provides more certainty and transparency for investors and services exporters. This format also provides exporters and investors a simple way to determine whether the services and investment chapters apply to their area of business in an EU market.

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