

Annex 7.2.1: Limitations of New Zealand

A. All sectors

Type of Limitation: National treatment (Article 7.4)

Legal Citation: Fisheries Act 1996
Overseas Investment Act 1973
Overseas Investment Act Regulations 1995
Overseas Investment Amendment Act 1998

Description: 1. Under the Overseas Investment Act Regulations 1995, issued under the Overseas Investment Act 1973 Ministerial approval is required for the following investments by an overseas person:

- (a) acquisition or control of 25 per cent or more of any class of shares or voting power in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ\$50 million, unless an exemption exists or an authorisation is granted;
- (b) commencement of business operations, or acquisition of an existing business, including business assets, in New Zealand, where the total expenditure to be incurred in setting up or acquiring that business or those assets exceeds NZ\$50 million, unless an exemption exists or an authorisation is granted;
- (c) acquisition, regardless of dollar value, of:
 - (i) 25 per cent or more of any class of shares or voting power in a New Zealand entity that owns commercial fishing quota or annual catch entitlement;
 - (ii) commercial fishing quota or annual catch entitlement;unless an exemption exists or an authorisation is granted;
- (d) acquisition, regardless of dollar value of:
 - (i) New Zealand land outside of urban areas and exceeding five hectares or land wherever located worth more than NZ\$ 10 million;

(ii) scenic reserve land (including land that encompasses or adjoins recreational, historic or heritage areas, the foreshore and lakes);

(iii) land over 0.4 hectares on specified off-shore islands;

(iv) any land on all other islands;

unless an exemption exists or an authorisation is granted;

(e) acquisition, regardless of dollar value, of 25 percent or more of any New Zealand entity that owns or controls:

(i) New Zealand land outside of urban areas and exceeding five hectares or land wherever located worth more than NZ\$ 10 million;

(ii) scenic reserve land (including historic or heritage areas, the foreshore and lakes);

(iii) land over 0.4 hectares on specified off-shore islands;

(iv) any land on all other islands;

unless an exemption exists or an authorisation is granted.

2. Ministers, in determining whether to grant approval, act in accordance with a screening regime (a non-legally binding description of which is appended to this Annex) which may be adjusted or replaced from time to time by New Zealand Government legislation, regulation or policy setting.

B. Producer and Marketing Boards

Type of Limitation: National treatment (Article 7.4)

Legal Citation: Agriculture (Emergency Powers) Act 1934
Apple and Pear Export Regulations 1999
Apple and Pear Industry Restructuring Act 1999
Dairy Board Act 1961
Dairy Industry Restructuring Act 1999
Game Industry Board Regulation 1985
Hop Marketing Regulations 1939
Kiwifruit Export Regulations 1999
Kiwifruit Industry Restructuring Act 1999
Marketing Act 1936
Meat Board Act 1997
Pork Industry Board Act 1997
Primary Products Marketing Act 1953
Wool Board Act 1997

Description: More favourable treatment may be accorded to New Zealand nationals and permanent residents in respect of ownership of Producer and Marketing Board assets.

C. Fishing

Type of Limitation: National treatment (Article 7.4)

Legal Citation: Fisheries Act 1996

Description:

1. Without the permission of the Minister of Fisheries, and subject to any conditions that he or she thinks fit to impose, no vessel owned or operated by an overseas person may be registered to carry out commercial fishing or fish carrying activities.
2. No vessel that is not a New Zealand ship will be used for commercial fishing within the territorial sea of New Zealand.
3. Foreign fishing vessels or fish carriers are required to obtain the approval of the Minister of Fisheries before entering New Zealand internal waters. If the Minister of Fisheries is satisfied that the vessel has undermined international conservation and management measures he or she may deny the vessel approval to enter New Zealand internal waters.

D. Privatisation

Type of Limitation: National treatment (Article 7.4)

Legal Citation:

Description: More favourable treatment may be accorded to New Zealand nationals and permanent residents in respect of ownership of enterprises currently in State ownership.

E. Overseas Company Reporting Requirements

Type of Limitation: National treatment (Article 7.4)

Legal Citation: Companies Act 1993
Financial Reporting Act 1993

Description: Overseas companies are required to prepare audited financial statements on an annual basis. Legislation also requires financial statements in relation to an overseas company's New Zealand business. The following companies are required to deliver annual audited financial statements to the Registrar of Companies for registration:

- (a) issuers – i.e. those who have raised capital from the New Zealand public ;
- (b) overseas companies;
- (c) subsidiaries of companies or bodies corporate incorporated outside New Zealand;
- (d) companies in which 25 per cent or more of the shares are held or controlled by:
 - (i) a subsidiary of a company or body corporate incorporated outside New Zealand or a subsidiary of that subsidiary;
 - (ii) a company or body corporate incorporated outside New Zealand;
 - (iii) a person not ordinarily resident in New Zealand.

F. All Sectors

Type of Limitation: National treatment (Article 7.4)

Legal Citation:

Description: More favourable treatment may be accorded to New Zealand nationals and permanent residents in the form of incentives or other programmes to help develop local entrepreneurs and assist local companies to expand and upgrade their operations.

G. Services

Type of Limitation National treatment (Article 7.4)
Most favoured nation status (Article 7.3)

Legal Citation:

Description:

1. Most favoured nation status and national treatment shall not apply where a services sector is not scheduled under Chapter 8 (Services).
2. Where a services sector is scheduled under Chapter 8 (Services), the terms, limitations, conditions and qualifications stated therein shall apply to investments in that sector.
3. Any horizontal commitments, limitations, conditions and qualifications scheduled under Chapter 8 (Services) shall apply to investments in the services sector concerned.

DESCRIPTION OF THE OVERSEAS INVESTMENT REGIME

1. The following is a brief, non-legally binding, description of the criteria applied to overseas investment that requires approval under New Zealand's Overseas Investment Act 1973 and the Fisheries Act 1996. The criteria may be adjusted or replaced from time to time by Government legislation, regulation or policy setting. A more detailed description of the criteria is set out in the Overseas Investment Regulations 1995.

Non-Land (Prudential Criteria)

2. Ministers must be satisfied that prospective investors:
- (a) have business experience and acumen;
 - (b) demonstrate a financial commitment to the investment;
 - (c) are of good character and do not have a criminal record that would prevent them from obtaining permanent residence in New Zealand.

Land and Fishing Quota

3. In addition to the applicable prudential criteria, in order to approve overseas investment in specific non-farm land and fishing quota, Ministers must consider whether the investment is in the national interest. In doing so, Ministers shall have regard to whether the investment is likely to result in:

- (a) the creation of new job opportunities in New Zealand, or the retention of existing jobs in New Zealand that would otherwise be lost;
- (b) the introduction to New Zealand of new technology or business skills;
- (c) the development of new export markets, or increased export market access for New Zealand exporters;
- (d) added market competition, greater efficiency, greater productivity, or enhanced domestic services, in New Zealand;
- (e) the introduction of additional investment for development purposes;
- (f) increased processing in New Zealand of primary products;
- (g) in the case of an investment in land, whether an individual intends to reside permanently in New Zealand.

Additional Requirements for Farm Land

4. In addition to the prudential criteria, approval of overseas investment in farm land requires that the farm land has been offered for sale or acquisition on the open market to New Zealanders. Farm land is defined as land used exclusively or principally for the purpose of agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry or livestock.

5. To approve overseas investment in farm land Ministers must also consider whether the overseas investment in farm land is in the national interest and likely to result in “substantial and identifiable benefits” to New Zealand. Ministers must have regard to the same matters as for fishing quota and other land and investment, as well as:

- (a) whether experimental or research work will be carried out on the land;
- (b) the proposed use of the land; and
- (c) whether the overseas investor intends to farm the land for his or her own use and benefit, and is capable of doing so.