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A) Investment models and the procedure of establishing a company in New Zealand

New Zealand provides its investors with a free and open business environment and a sophisticated business legal system. It is an ideal country for investment. In a World Bank survey "Doing Business 2015", New Zealand ranked second for the ease of doing business. The average length of setting up a company in New Zealand is 3 days, although a company can be set up in a few hours if all required documentation is complete. OECD named New Zealand as one of the easiest countries to start a business.

(I) Investment models：

The following are the three main investment models for overseas investors:

1) Establish or purchase a New Zealand company as a subsidiary

The procedure (including government approval procedure) for an overseas investor to establish or purchase a New Zealand company is usually very simple. Normally, rigorous government approval procedures would not apply unless the investment exceeds NZ$100 million or when the investment involves sensitive land or fishing quota (note this includes the situation when an overseas investor acquires more than 25% of a New Zealand company, and the total asset value of the acquired company exceeds $100 million or the acquired company controls sensitive land or fishing quota).

The company is required to pay a small annual fee to the Companies Registrar.

2) Register a branch of an overseas company in New Zealand

A company incorporated outside New Zealand is normally considered an overseas company.

The Companies Act 1993 requires any overseas companies that carry on business in New Zealand to register with the Companies Registrar (as a branch). A small annual registration fee is payable to the Registrar.

3) Operate through a joint venture

A joint venture refers to two or more business parties or companies that invest together in commercial transactions. Any joint ventures that involve overseas investors are governed by the Overseas Investment Act 2005. A joint venture may operate in the form of a company, a partnership or an incorporated entity.

Similar to many developed countries, most of the businesses are carried out as limited liability companies. Investors can also undertake businesses in partnerships or sole proprietorship.

Limited liability companies are separate legal entities governed by the Companies Act 1993 and the liabilities of the shareholders are limited. Shareholders share a company's profit and net assets according to their shareholding. Companies can raise funds from the public.

Partners in a general partnership are jointly responsible for the operation of the partnership and are jointly and severally liable for the debts and obligations of the partnership.

In addition, a limited partnership regime allows investment in a partnership with limited liability for partners who do not participate in the management of the partnership.

A sole proprietorship refers to a natural person carrying on business in his/her own name. A sole proprietorship is subject to less regulatory requirements however, a sole proprietor is personally liable for the debts of the business.

(II) Procedure of establishing a company：

The procedure of establishing a company in New Zealand is provided in the *Companies Act 1993*.

From 1 May 2015, companies in New Zealand must have at least one director who lives in New Zealand or a recognised "enforcement country". If a director lives in an enforcement country (and the company in question has no directors living in New Zealand), they must also be a director of a registered company in that enforcement country. At the moment, the only enforcement country is Australia. Companies registered before 1 May 2015 will have a grace period until 27 October 2015 to comply with these requirements. Under the new requirements, all directors must provide their place of birth and date of birth and all companies must supply their ultimate holding company details (if applicable).

Normally the registration is very easy and there is no minimum capital requirement. Below are the steps for setting up a company:

1) An application to the Companies Office to reserve a company name there must be submitted before registering a company. The Registrar will not reserve a name that is identical to an existing company name or a name that contravenes New Zealand law.

2) Once a company name is reserved, the following documents must be submitted to the Registrar and a registration fee needs to be paid.

   - A notice confirming the reservation of a name for the proposed company.
   - A registration application that is signed by all applicants and includes the following information: the name and address of every applicant, the name and address of every director and shareholder, numbers of shares held by every shareholder, the address of the registered office and the address for service.
   - Consents signed by every director to be a director and confirmation signed by every shareholder confirming he/she is a shareholder holding the specified shares. Every registered company must have at least one director and one shareholder. Directors must be more than 18 years old.
   - Each director must provide a certificate confirming he/she is qualified to be a director.
   - A specific company constitution (if desired): A company is not obliged to have a specific constitution. Where a company does not have a specific constitution, the rights and obligation of the board, the directors and the shareholders are bound by the *Companies Act 1993*. Any specific constitutions must not contravene the *Companies Act 1993*.

3) Once a company is registered, the Registrar will issue a Certificate of Incorporation to the company. The company is able to operate in New Zealand and enjoy the right as a legal person commencing from the date of the issue of the Certificate of Incorporation.

(III) Financial reporting requirements:

The Financial Reporting Act 2013 was passed in December 2013. It sets out a new financial reporting framework and minimum financial reporting requirements that apply for periods commencing on or after 1 April 2014. These changes are generally aimed at reducing compliance costs for small and medium enterprises.

The amendments include changes to the requirements for the preparation, audit and filing of financial statements for companies wholly or partially owned by overseas investors and we have included below a high level overview of the relevant requirements.

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Companies and partnerships
(that are not FMC reporting entities[1] or public entities)

Entity type	Preparation	Audit	Filing
Large[2] company with less than 25% overseas ownership (Large is more than $60m assets or $30m revenue)	✓ Within five months of balance date	✓ (can opt out)	✗
Large[2] company with more than 25% overseas ownership, but not a subsidiary of an overseas company (Large is more than $60m assets or $30m revenue)	✓ Within five months of balance date	✓	✓ Within five months of balance date
Large[2] company that is a subsidiary of an overseas company (Large is more than $20m assets or $10m revenue)	✓ Within five months of balance date	✓	✓ Within five months of balance date
Large[2] overseas company that is carrying on business in New Zealand (NZ) (i.e. NZ branch) (Large is more than $20m assets or $10m revenue)	✓ Within five months of balance date (including for the NZ branch/group business if it is large as well as the overseas company/ group)3	✓	✓ Within five months of balance date
Every other company with 10 or more shareholders	✓ Within five months of balance date (can opt out)	✓ (can opt out)	✗
Every other company with fewer than 10 shareholders	✗ (can opt in)	✗ (can opt in)	✗
Large[2] Limited Partnerships (Large is more than $60m assets or $30m revenue)	✓ Within five months of balance date	✓ (can opt out)	✗ Must be distributed to each partner within five months of balance date
Other Limited Partnerships (i.e. not large)	✗ (can opt in)	✗ (can opt in)	✗
Large[2] Partnerships under the Partnership Act 1908 (Large is more than $60m assets or $30m revenue)	✓ Within five months of balance date	✓ (can opt out)	✗
Other Partnerships under the Partnership Act 1908 (i.e. not large)	✗	✗	✗

1 FMC reporting entity includes issuers of a regulated product, listed issuers, market services licensees, licensed supervisors, operators of licensed markets, recipients of money from conduit issuers, registered banks, licensed insurers, credit unions, buildings societies and people specified in regulations.

2 For an entity and its subsidiaries (if any), large is at least one of total assets greater than $60m, or total revenue greater than $30m, both in respect of the two preceding accounting periods, unless the entity (and group) is an overseas company carrying on business in New Zealand, or a subsidiary of an overseas company. In that case large is at least one of total assets greater than $20m, or total revenue greater than $10m both in respect of the two preceding accounting periods.

3 The FMA has power to grant exemptions.

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B) Summary of New Zealand human resource

New Zealand has a relatively small population. However, New Zealanders are usually well educated and thus provide a quality resource to the labour market.

Employment relations

New Zealand employers must comply with the *Employment Relations Act 2000*. Otherwise, they may be sued by employees for unjustified dismissal or behaviour. Employees may individually sign employment agreements with employers or they can collectively negotiate with employers through a labour union. There are legal requirements regarding the minimum wage level. Effective from 1 April 2015, the minimum wage for employees over 16 (who are not starting-out workers or trainees) is $14.75 an hour. For starting out workers and employees on recognised industry training the minimum wage is $11.80 an hour. Employees' rights for annual leave and an acceptable office and working environment are all protected by law.

Currently, the *Employment Relations Act 2000* is the core employment legislation. The Act aims to promote a trusted relationship between employers and employees. The Act recognises the rights for employees to collectively negotiate with employers. Pursuant to the Act, employers can directly negotiate with individual employees. However, any collective decisions need to be negotiated and resolved through labor unions.

Employers are able to employ new employees on a trial period of up to 90 calendar days. Trial periods are voluntary, and must be agreed to by the employer and employee in good faith and in writing as part of the employment agreement. An employer and employee may agree to a trial period only if the employee has not previously been employed by the employer. An employee who is given notice of dismissal before the end of a trial period cannot raise a personal grievance on the grounds of unjustified dismissal. He or she may, however, raise a personal grievance on other grounds, such as discrimination or harassment or an unjustified action by the employer that disadvantaged the employee.

Employees are able to cash in up to one week of their minimum entitlement to annual holidays a year. This can only be at the employee's request and the request must be made in writing. Any request must be considered within a reasonable time and may be declined. An employer cannot pressure an employee into cashing up holidays. Cashing up cannot be raised in wage or salary negotiations or be a condition of employment.

Employment disputes

Any employment disputes are encouraged to be resolved through mediation. If the disputes are not resolved through mediation, the Employment Relations Authority (ERA) will assist in investigating and resolving the disputes. If the disputes are still not resolved through the ERA, they can be referred to the Court. Most disputes are resolved at mediation stage.

Overseas employees

In order to provide local citizens with sufficient employment opportunities, employers are not able to hire overseas employees unless they can prove that the relevant position requires special skills and experience that is not available from local labour resource. Overseas employees will require the appropriate visas and permits to work in New Zealand.

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KiwiSaver Scheme

The New Zealand KiwiSaver Scheme is a voluntary work-based savings initiative designed to encourage New Zealand citizens to save for retirement and to assist them in the purchase of their first home. The KiwiSaver Scheme is a retirement plan under which employees may choose to contribute a certain portion of their salaries to KiwiSaver funds. When an employee chooses to join the scheme, his/her employer must also contribute for that employee. The contribution from both the employee and his/her employer will be placed in the employee's chosen KiwiSaver fund account. The compulsory employer contribution is 3% of an employee's gross annual salary. Employers are obligated to deduct ESCT (employer superannuation contributions tax) on any employer cash contributions based on the employees' marginal tax rate.

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C) Tax

New Zealand has a sophisticated and stable tax system and a broad tax basis although capital gains are not currently taxed. New Zealand is considered to operate one of the most efficient tax systems in the world. New Zealand's tax policies are seen as relatively straightforward, consistent and predictable compared to other countries in the region, according to Deloitte's 2014 Asia Pacific Tax Complexity Survey Report. The New Zealand Inland Revenue (IR) is responsible for collecting tax. The *Tax Administration Act 1994* stipulates the rights and obligations of taxpayers and IR.

New Zealand businesses must submit an annual tax return and pay tax (provisional tax instalment rules apply) to IR. The tax regimes generally operate on a self-assessment basis with returns filed being selected for review/audit by IR from time to time. Large entities are now often subject to a level of review on an annual basis. Businesses are also required to maintain relevant business records to support the tax return.

The following are the main taxes:

1) Income tax

Income tax is one of the most important taxes in New Zealand. New Zealand residents (including natural persons and companies) are taxed on their global income. Non-residents are taxed on income sourced from New Zealand only. Normally, an individual that is present in New Zealand for more than 183 days in any consecutive 12 months period is deemed to be a tax resident of New Zealand. Companies are generally resident in New Zealand if they are incorporated in New Zealand, have their centre of management in New Zealand, their directors' control is exercised in New Zealand, or they have a head office in New Zealand. A resident must return income tax on worldwide income (including salaries, bonus, government benefits, interest, and business profit).

The company tax rate is currently 28%.

Personal income tax rates vary dependent on income levels. Details of the current personal tax rates are included in the table below.

Summary of Income Tax Rates	
Income	**Current Rates**
$0 - $14,000	10.5%
$14,001 - $48,000	17.5%
$48,001 - $70,000	30.0%
Over $70,000	33.0%

When calculating income tax, a taxpayer (other than an employee) is generally able to deduct expenses that are incurred in deriving assessable income or are necessarily incurred in the course of carrying on a business of deriving assessable income. Some examples of deductible expenses are salaries paid to employees, cost of inventory, rental expenses, business travel expenses, depreciation on fixed assets (generally depreciation cannot be claimed on buildings, other than building fit out,). Private expenses or expenses of a capital nature are not deductible. Expenditure incurred by employees in deriving employment income is not deductible.

Businesses operating in New Zealand should also be aware of the thin capitalisation regime. The New Zealand thin capitalisation regime aims to limit the amount of interest deductions against the New Zealand tax base. Thin capitalisation applies to inbound investments by a non-resident. Generally thin capitalisation will apply to a New Zealand company owned 50% or more by one non-resident or a group of non-residents "acting together". The main effect of the regime is that if the debt level of a company exceeds prescribed levels (currently 60%), the interest expense on the excess debt is treated as non-deductible for tax purposes. Thin capitalisation rules can be complicated and advice should be sought before an investment is made in New Zealand.

Normally, businesses are required to pay provisional tax to IR in three instalments during the relevant income year. At the end of each financial year, a business is required to file a tax return and submit it to IR. The taxpayer will then either pay terminal tax or receive a refund from IR depending on the difference between tax paid and tax payable. Use of money interest is generally imposed where the appropriate level of tax has not been paid at the provisional tax instalment dates. Penalties also apply if tax is paid late.

Tax is generally deducted at source for wage and salary earners under the pay-as-you-earn (PAYE) regime. Fringe benefit tax (FBT) is payable by an employer in respect of the provision of employee benefits, including the private use of company cars, medical insurance, etc.

When a company distributes dividends to its shareholders, imputation credits arising from tax paid by the company can be attached and used to partially offset the New Zealand tax liabilities of the shareholders. The availability of imputation credits is subject to minimum levels of continuity in the shareholders' interests in the company. Resident withholding tax (RWT) is also required to be withheld unless certain exemptions apply.

In the case of non-resident shareholders, the attaching of imputation credits can result in the effective elimination of the non-resident withholding tax ("NRWT") that generally applies to dividends paid.

For unimputed dividends, the domestic rate of NRWT is 30 percent but a tax treaty could reduce this to 15 percent, 5 percent or zero depending on the relevant treaty and what double tax agreement criteria are met.

Certain payments to non-residents, including dividends, interest, royalties, payments for services performed in New Zealand, and payments for the use of personal property in New Zealand, are subject to withholding tax (NRWT, at different withholding rates). Alternatively, if a borrower pays interest to an unrelated non-resident lender, the borrower can elect to be an approved issuer. Then instead of deducting NRWT, a 2% levy (approved issuer levy (AIL)) must be paid. On 7 May 2015 the Government issued an Officials' issues paper on NRWT which focuses on strengthening the NRWT rules in relation to interest arising on related party debt and it also proposes material changes to the application of the AIL regime. More detailed discussions and potential changes to the rules can be expected in the near future.

New Zealand has signed double tax agreements with many countries, including China and Hong Kong. The double tax agreements also reduce the New Zealand withholding tax payable on amounts paid from New Zealand such as dividends, interest and royalties to non-residents.

Income tax paid by a New Zealand tax resident in other countries can generally be claimed as a foreign tax credit to offset the taxpayer's New Zealand tax liability on his/her overseas income to the extent that the tax credit does not exceed the taxpayer's New Zealand tax liability that would otherwise be payable on the overseas income. The taxpayer needs to be able to provide evidence in respect of tax paid overseas.

2) Goods and Services Tax (GST)

GST is a value added consumption tax which is imposed on the supply of goods and services in New Zealand. The ultimate tax payer is the consumer. The current standard rate of GST is 15%. Certain taxable supplies are taxed at the rate of 0% rather than at the standard rate of 15%, including in general, the export of goods and services. Land transactions between GST registered persons are generally also subject to GST at the rate of 0%.

GST is payable based on the taxable supplies made by businesses. It is paid at each supply in a supply chain with the corresponding ability to claim input tax credits in respect of making that supply. Every GST registered person must account for GST when it makes taxable supplies. A GST registered person is also allowed to claim input tax credits in respect of GST paid on goods and services purchased for the purposes of making taxable supplies.

Any New Zealand business that has an annual turnover of $60,000 or more is required to register for GST. An entity with a turnover of less than the GST registration threshold can still voluntarily register for GST.

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With some exceptions, financial services are exempt from GST. However, input tax credits are generally also disallowed in respect of exempt supplies.

Businesses that are not resident in New Zealand can now register for GST in New Zealand provided that certain conditions are met. This will allow the non-resident business to claim back the GST it has paid for goods or services in New Zealand. An example of where a non-resident would be able to claim the GST on the costs incurred in New Zealand is where a non-resident business send its employees to a conference or training course in New Zealand.

3) Property rates

Property rates are the main income source for the New Zealand regional authorities. Rates are charged at certain percentage of the value of land and/or property.

4) Duties

New Zealand does not impose estate, stamp or gift duties.

5) Capital gains tax

There is currently also no capital gains tax (please note capital gains may be subject to income tax under certain circumstances, e.g. when a taxpayer is dealing in property, acquires property with the intention of disposal or the property is subject to development/improvement and falls within the land taxing provisions).

The 2015 Budget released on 21 May 2015 reveals the Government's intention of tightening the rules around taxation on property transactions, including requiring non-residents and New Zealanders buying and selling property, other than their main home, to provide a New Zealand IRD number, and requiring non-residents to have a New Zealand bank account to get an IRD number. A new bright-line test will be introduced to tax gains from residential property sold within two years of purchase, except where the property is the seller's main home, the property is inherited, or the property is transferred in a relationship property settlement. These rules if enacted will take effect from 1 October 2015.

6) Foreign Account Tax Compliance Act (FATCA)

The Foreign Account Tax Compliance Act (FATCA) is specific United States (US) legislation that aims to reduce tax evasion by US citizens, tax residents, and entities. US citizens and tax residents are required to report their worldwide income to the Internal Revenue Service (IRS) whether they live in the US or not. In June 2014, New Zealand entered into an Intergovernmental Agreement (IGA) and Memorandum of Understanding with the United States which governs how FATCA will operate in New Zealand. It requires all foreign financial institutions that are not exempt, including New Zealand financial institutions, to register with the IRS and report on US citizens and tax residents who have specified foreign financial assets that exceed certain thresholds.

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D) New Zealand ACC Scheme

The New Zealand Accident Compensation Corporation (ACC) Scheme is a government operated accident compensation scheme which provides accident insurance for all New Zealanders. The ACC covers medical costs and in certain cases provides monetary compensation, based largely on earnings. The scheme operates on a no-fault basis, so that anyone, regardless of the way in which they incurred an injury, is eligible for cover under the Scheme, and correspondingly does not have the right to sue an at-fault party, except for exemplary damages. For example, employees who are injured should be paid compensation (after the first week) by ACC, as well as their treatment and rehabilitation costs. In the event the injury occurs at work, they are generally unable to sue their employer for the injury. As such the expense and stress of a court case are generally avoided.

The ACC scheme is funded in part by various levies that are based on earnings and are payable by employers, employees, self-employed persons and private domestic workers at different rates. There are various maximum earnings levels for the purpose of the various levies. Earnings liable for the various levies include mostly salary and wages, and self-employment income. Income not liable for the levies includes retirement payments, redundancy payments, rents, interest, dividends, and some other income.

Levies payable by employees are collected through the PAYE system. Levies payable by employers and self-employed persons are calculated and invoiced by the Accident Compensation Corporation.

Below is a summary of the ACC levies.

	Applicable to:			
Levies	Employer	Employee	Self-employed & PDW	Levy rates
Work Account Levy	✓		✓	Determined by the type of business activities
Residual Claim Levy	✓		✓	Determined by the type of business activities
Earner's Levy		✓	✓	Flat rate published annually *
Earner's Account Residual Levy		✓	✓	Flat rate published annually *

The relevant calculation can be quite complicated.

* The Earner's Levy and Earner's Account Residual Levy rates are amended/updated every year together with the maximum levy amounts. Below is a summary of the combined levy rates for the 2013 to 2016 tax years (the rates are inclusive of Goods and Services Tax).

Income year	Combined Earner's Levy and Earner's Account Residual Levy rate	Maximum Levy per person
1 April 2015 to 31 March 2016	1.26%	$1,512.88
1 April 2014 to 31 March 2015	1.45%	$1,713.76
1 April 2013 to 31 March 2014	1.70%	$1,973.51
1 April 2012 to 31 March 2013	1.70%	$1,934.05

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E) The New Zealand Emissions Trading Scheme

The New Zealand Emissions Trading Scheme (ETS) puts obligations on certain industries to account for the greenhouse gas emissions that result from their activities.

The New Zealand scheme applies to all sectors of the economy and includes six greenhouse gases specified in the Kyoto Protocol. The sectors to which the scheme fully applies includes forestry, liquid fossil fuels, electricity production, industrial processes, synthetic gases and waste.

Under the ETS, the primary unit of trade is a New Zealand unit (NZU) issued by the Crown. Participants are required to surrender NZUs to the Crown to meet their obligations under the scheme. During the transition phase (from July 2010, no expiry date has been set yet albeit likely to be at least until 2015) participants other than forestry have to surrender only one NZU for every two tonnes of emissions or pay the Government a fixed price of $25. After this, one emission unit will be equal to one tonne of emissions. Participants can also surrender a range of 'Kyoto units' which they can buy overseas.

After the transition phase, the price of an NZU will be determined in the trading market and is intended to match the international price of emission units. Participants can sell NZUs internationally by exchanging them for Kyoto units, within the limits on international sales set by the Kyoto Protocol.

On 19 April 2013, the Government enacted The Climate Response (Emissions Trading and Other Matters) Amendment Act 2012. Some of the key changes include extending the 'transitional measure' and to remove the start date for surrender obligations for the agricultural sector.

Businesses should consider the ETS when making business / investment decisions. Emission units will obviously be benefits / costs to the business. Furthermore, there are also significant compliance obligations in relation to reporting. The relevant tax and accounting implications of the emission units should also be considered.

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Appendix Useful reference websites

Companies Office

http://www.business.govt.nz/companies

Inland Revenue Department

http://www.ird.govt.nz/

Department of Labour

http://www.dol.govt.nz/

Overseas Investment Office

http://www.linz.govt.nz/overseas-investment/index.aspx

ACC

http://www.acc.co.nz/

The Emission Trading Scheme

http://www.climatechange.govt.nz/

Kiwisaver

http://www.kiwisaver.govt.nz/

Inland Revenue Tax Policy – Treaties

http://taxpolicy.ird.govt.nz/tax-treaties

The World Bank – Doing Business Project

http://www.doingbusiness.org/reports/global-reports/doing-business-2015

External Reporting Board (New Zealand)

http://xrb.govt.nz/

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