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NEW ZEALAND'S INVESTMENT CLIMATE: SELECTED LEGAL AND BUSINESS ASPECTS

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Abstract: The paper analyses major characteristics of the investment climate in New Zealand, a country that has taken effective measures to enhance its commercial attractiveness and regularly tops the list of the world's most comfortable places to do business. Specifically, issues related to New Zealand's investment climate, the Ease of Doing Business criteria and their forecasted relevance to 2023 are explored in detail. More specifically, the article focuses on several aspects – legal, including an international law perspective, issues of international arbitration and bilateral investment processes. Plus to that, it reveals main changes in the criteria of the Ease of Doing Business rating, which is no longer published after 2020. Taking New Zealand as a case study, the author makes a brief overview of major features of doing business and scrutinizes selected legal aspects of investing in the country. Lastly, major Ease of Doing Business criteria are extrapolated into 2023. According to the author, ample evidence indicates that the overall business and investment milieu in New Zealand has been and remains generally positive.

Keywords: *New Zealand, foreign direct investment, investment potential, business*

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ИНВЕСТИЦИОННЫЙ КЛИМАТ НОВОЙ ЗЕЛАНДИИ: НЕКОТОРЫЕ ЮРИДИЧЕСКИЕ И ДЕЛОВЫЕ АСПЕКТЫ

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Аннотация: В статье рассмотрены основные характеристики инвестиционного климата Новой Зеландии – страны, которая приняла эффективные меры по повышению своей коммерческой привлекательности.

тельности, и которая регулярно возглавляет список самых комфортных в мире мест для ведения бизнеса. В частности, подробно исследуются вопросы, связанные с инвестиционным климатом Новой Зеландии, критериями легкости ведения бизнеса и их актуальностью для 2023 года. Анализируется ряд аспектов – юридические, включая международное право, вопросы международного арбитража, а также двусторонние инвестиционные процессы. Также показаны основные изменения в критериях рейтинга «Легкость ведения бизнеса», который перестал публиковаться после 2020 года. На примере Новой Зеландии автор проводит краткий обзор наиболее важных особенностей ведения бизнеса и подробно рассматривает отдельные правовые аспекты инвестирования в эту страну. Наконец, основные критерии легкости ведения бизнеса экстраполируются на 2023 год. По мнению автора, многочисленные факты свидетельствуют о том, что общая деловая и инвестиционная атмосфера в Новой Зеландии была и остается в целом благоприятной.

Ключевые слова: *Новая Зеландия, прямые иностранные инвестиции, инвестиционный потенциал, бизнес*

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Sustainable and expanding investment flows into a country is an essential part of its economic development. Every country at the top of any of the existing investment attractiveness rankings has achieved this result mainly through an efficient strategy and fundamental reforms. New Zealand, with all its measures, including legal, has traditionally topped the rankings for ease of doing business and is assessed as an attractive country for investing. If so, it can be an excellent example to demonstrate how such performance is achieved, given that its economy is disproportionately smaller than the biggest world economies. New Zealand's experience can be used by countries that search for measures to improve their investment image¹.

New Zealand's Investment Climate: Main Characteristics

Inward investment in New Zealand is not growing fast, but it is relatively stable, which is confirmed by recent UNCTAD reports and data published by government institutions. According to the WEF Global Competitiveness Report published in 2020, the country occupies one of the highest places by several criteria. First, by the criterion “ensure public institutions

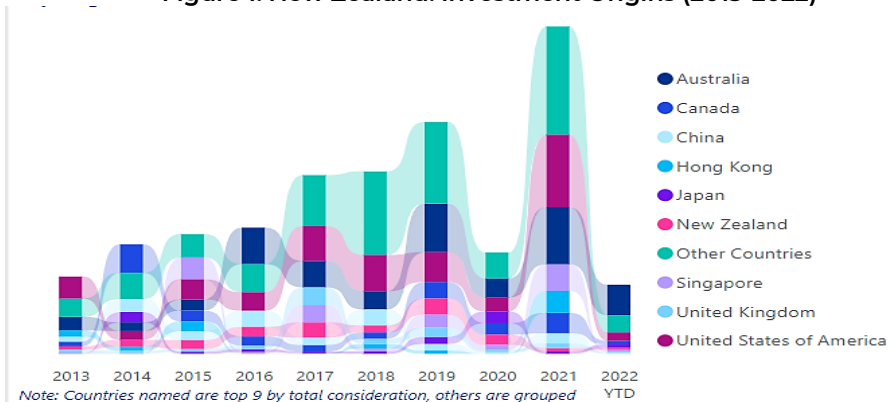
embed strong governance principles and a long-term vision and build trust by serving their citizens” it has 73 in 0-100 score. Second, by “increase incentives to direct financial resources towards long-term investments, strengthen stability and expand inclusion” New Zealand has 93,2 in 0-100 score. For comparison, Finland (the leader) has 78,47 and 95,42 respectively. This factor characterizes the investment climate in the country as “friendly and ready for further development”². It is also worth noting that M&A (mergers and acquisitions) activity seems to have recovered from all the effects of the pandemic, which is evidenced by UNCTAD M&A and net investment figures for 2021.

Australia (45,894 million US\$, 66% of total), China (7,110 million US\$, 10%) and the US (5,942 million US\$, 9%) are New Zealand’s main investment partners³. According to the KMPG report, there are certain areas that have attracted more investment in recent years – financials (16%), communication services (16%), as well as agri-business (12%)⁴.

Each of these areas deserves a brief outline. The financial sector attracts investment into the development of insurance, transactions and payment processing services and banks. Main investors, as demonstrated by the diagram below, are Australia (5,8 bn NZ\$), USA (4,0 bn NZ\$) and Canada (949,1 m NZ\$).

A lion’s share of investment in agri-business goes to beef and lamb production, dairy and wine production, and forestry. Main investors are Canada (2.3 bn NZ\$), the US (2.0 bn NZ\$), China (1.7 bn NZ\$), Australia (1.4 bn NZ\$), Japan (919.2 m NZ\$), Hong Kong (551.1 m NZ\$) and the UK (541.6 m NZ\$).

Figure 1. New Zealand: Investment Origins (2013-2022)



Source: KMPG report, 2022

New Zealand is actively involved in environmental initiatives at various levels, so this is expected to influence on its investment climate positively. According to UNCTAD, the growth of announced green investment projects since 2020 has increased by 284,3%, from 1,940 to 7,455 million dollars in 2020 and 2021 respectively. New Zealand's representatives repeatedly stress that the country will become carbon neutral by 2050. Investment inflows can be regarded as one the instruments for achieving this aim.

In September 2022, Wellington announced a new initiative – the “Do Good, Do Well” project, the main goal of which is to attract investments and investors to create a more innovative, more inclusive, and sustainable business environment in the country⁵. The project is led by New Zealand Trade and Enterprise (NZTE), which is an official state body that deals, among other things, with issues of attracting investments. Interestingly, the same body is engaged in supporting New Zealand's companies that enter international markets. This initiative is not pioneering, as projects to improve the attractiveness of the investment climate have been carried out before – like, for instance, the one launched in 2016 in order to simplify the visa regime for investors.

In New Zealand, the main body that monitors foreign investments is the Overseas Investment Office (OIO). The body regulates issues related to the areas of investment, property, etc. Also, it is responsible for managing ties with other investment regulators and third parties. Under the OIO supervision, other advisory agencies (tax advisors, visa advisors, financial advisors, credit advisors, estate agents and others) operate and coordinate their activity.

The main groups of investors are divided into 1) “overseas people, including international entities” (with the most stringent conditions), 2) “resident visa holders who live overseas, and entities that are more than 25% overseas-owned or controlled”, 3) “Australian and Singaporean Citizens, Australian and Singapore permanent residents who live in New Zealand” (having the largest number of privileges, for example, the possibility of buying certain lands)⁶. However, with permission from the ministries, some of the recommendations of this body can be revised by appeal through the High Court.

Overall, investment flows to New Zealand can be described as relatively stable, with both foreign investors and the government expressing considerable interest. In view of all bureaucratic and procedural simplifications, further interest from investors can be expected in the coming years.

At the same time, as the investment-related conditions have been comfortable enough, a sharp increase in investment is unlikely.

Investing in New Zealand: a Legal Perspective

Although the afore-discussed factors constitute an important context in which New Zealand's business milieu evolves, the field of investment must be addressed individually. In this regard, the following points are worthy of note.

Broadly speaking, one of the main legal instruments for regulating investment activity between countries is Bilateral Investment Treaties (BITs). They provide all parties in the investment process with a predictable and well-regulated framework, as well as guarantee transparent resolution of emerging disagreements. As for New Zealand, it cannot be referred to as a leader in this area. In fact, the country has two treaties that entered into force - signed in 1995 with Hong Kong and in 1988 with China. In addition, there are two treaties - with Chile (1999) and Argentina (1999) that have not entered into force yet⁷. As for the TIPs (Treaties with Investment Provisions), the situation is different – eighteen documents are signed (two of which have not entered into force) – with the UK, Korea, Malaysia, Thailand, the US, and other countries. Those signed on the side-lines of ASEAN, PACER Plus, RCEP and CPTPP in different years must also be mentioned.

The Overseas Investment Act, first passed in 2005, is a principal legal instrument governing foreign investment that comes into the country. After many years, and largely due to the COVID-19 pandemic, the state decided to amend the law, and the amendments were finally passed in 2021. The most notable amendment is the creation of tests to be taken by investors depending on the type of investment. The main purpose of introducing such tests is to examine the appropriateness of investing and to test investors on their management skills. The tests mainly cover investments in Significant Business Assets (SBAs), as well as in Strategically Important Businesses (SIBs)⁸.

However, this is not the only document focusing on foreign investment. In 1991, the Resource Management Act (RMA) was passed. Since then, it has long been criticised by foreign investors because of "uneven application across jurisdictions". So, in 2020, the government passes amendments to address this issue⁹. New Zealand is not a member country of any investment dispute (relevant information is not presented on the website of UNCTAD statistics), so it is difficult to assess the state of compensation payments or, for example, expropriation. At the same time, there

are many grass-root cases related to compensation payments, for example, concerning the consequences of natural disasters. International arbitration in the country is carried out through the Arbitration Act 1996. Remarkably, New Zealand has its own arbitration center (New Zealand International Arbitration Center (NZIAC)). Basically, all disputes are resolved through this body or the Chamber of Commerce (ICC), the American Arbitration Association (AAA) and the London International Arbitration Court (LCIA).

From a legal perspective, New Zealand can be considered a comfortable place for foreign investors. For the most part, the system is transparent, predictable, and with few restrictions. New Zealand and its companies abroad have not been reported of violating international investment law. In addition, the country is a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ratified by New Zealand in April 1980), and to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (ratified in 1983). Intellectual property rights are particularly well protected, the level of corruption is relatively low and labour rights, both local and foreign, are well protected by law.

In sum, in terms of investment attractiveness New Zealand still ranks high as a country where the system for dealing with any investment difficulties is linked to international rules and procedures.

Extrapolating the Ease of Doing Business Criteria into 2023

The Ease of Doing Business rankings have not been published after 2020. At the same time, between 2017 and 2020, New Zealand deservedly topped major positions and sub-positions. The years before 2017-2020 were not much different: New Zealand occupied the second place in 2007-2010 and 2015-2016 (behind Singapore), the third place in 2011-2014 (behind Singapore and Hong Kong). Although the ranking is not published at present, it is interesting to see if anything has changed in recent years (2021-2023). It makes sense to take the most recent updates and compare them with the ten criteria on which the ranking was premised. The criteria will be examined from the perspective of foreigners so that to specify whether it is difficult for a foreign investor to do business in the country.

Starting a business. Registering property. Opening a Limited Liability Company (LLC) in New Zealand has several advantages. Unlike in many countries, 100% foreign ownership is allowed (with a local legal representative), all registration processes can be online. There are no innovations compared with the registration processes of 2019-2020 (the last years of the ranking assessment). At the same time, in 2022 amendments were

made to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which increased the deadline for opening a business bank account to 90 days¹⁰. As for visa requirements for foreign entrepreneurs, there are two types, both specifying minimum working capital (between NZ\$100,000 and NZ\$500,000), and applicants must meet New Zealand's requirements for management skills, education health etc.

Dealing with construction permits. Arguably, there has been little change in this area since the last EODB assessment, apart from the amendments to the Building Act: low-risk construction no longer requires a special permission¹¹. Importantly, this will not only make construction easier for some businesses but may also speed up the review process for other applications, taking the burden off the regulator. The ministry dealing with these issues has elaborated on a guide to the rules and procedures for applications, which also makes it much easier for as investors to find information.

Getting electricity. Broadly speaking, the main change in this area is a greater focus on reducing emissions. The New Zealand government is extremely concerned about the climate agenda, with over \$42 billion already planned to be invested in this field over the next decade¹²? Arguably, energy will be both more available and cheaper, which will further increase New Zealand's investment attractiveness.

Protecting investors. Enforcing contracts. Resolving insolvency. Wellington took a serious of steps to change the role of OIO and the relevant law. The office offers a team of professionals, including lawyers, to assist foreign investors in matters including protection of their rights and interests.

Paying taxes. There have been no major updates in this area since the last rating assessment. The main requirements are BIC (Business Industry Code) registration, IRD (Inland Revenue number), and GST (Goods and Services Tax), the latter being optional for earnings under \$60,000 a year.

Trading across borders. Importantly, in recent years new FTAs have been actively negotiated – with the UK (signed in February 2022, after almost two years of discussions), the Regional Comprehensive Economic Partnership (with 11 member states, entered into force in 2022), and with the European Union (negotiations were finalized in June 2022).

The other ranking criteria do not have particularly significant changes (apart from those mentioned briefly presented above), so do not need a special outline.

Arguably, there would not have been much change in New Zealand's positions had the World Bank continued publishing the East of Doing

Business ranking. More than that, the country could even have received even more points on some of the assessment criteria. The government pays special attention to attracting foreign investment, which is confirmed by a simplification of business-related procedures and is a reliable guarantee factor of sustainable investment influx.

Conclusion

New Zealand's investment conditions are regarded as attractive, as the government creates the necessary ecosystem for development, encourages foreign investors, as well as manages to strike a balance between protecting their interests by, for example, introducing investor screening tests and verifying the "usefulness" of the investment for the country. This is an important prerequisite for attract high-quality investments understood in terms of making a significant contribution to the economy and simultaneously increasing the welfare of the country. Remarkably, New Zealand substantiates its interest in international investment laws by implementing its own relevant commercial practices.

New Zealand presents companies with a comfortable business ecosystem from a commercial point of view and from a legal, especially international investment law, perspective. Despite its efforts, however, New Zealand is not yet a leading country in terms of attracting FDI. Nevertheless, the country is a good example of supportive legislation, safe and predictable investment environment, and openness to change.

This case is especially useful for countries that aim to guarantee investment safety and control investment inflows. As investment cooperation remains an important priority (since, for instance, the Chinese mega-strategy Belt and Road Initiative gains traction), New Zealand's practices will be a good example to follow.

ИНФОРМАЦИЯ ОБ АВТОРЕ

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