

ANNEX I

SCHEDULE OF NEW ZEALAND

INTRODUCTORY NOTES

1. **Description** sets out the non-conforming measure to which the entry applies.
2. In accordance with Article 9.12 (Non-Conforming Measures) and Article 10.7 (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the laws, regulations, rules, procedures, decisions, administrative actions, practices or other measures identified in the **Description** element of that entry.

Sector: All

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: *Companies Act 1993*
Financial Reporting Act 1993

Description: Investment

Consistent with New Zealand's financial reporting regime established under the *Companies Act 1993* and *Financial Reporting Act 1993*, the following overseas non-issuer companies are required to file audited financial statements with the Registrar of Companies:

- (a) any company that is incorporated outside New Zealand that carries on business in New Zealand;
- (b) any large company incorporated in New Zealand in which shares that carry the right to exercise or control the exercise of 25 per cent or more of the voting power are held by:
 - (i) a subsidiary of a company or body corporate incorporated outside New Zealand;
 - (ii) a company or body corporate incorporated outside New Zealand;
or
 - (iii) a person not ordinarily resident in New Zealand; and
- (c) any company that is a subsidiary of a company or body corporate incorporated outside New Zealand.

A company is “large” if it meets at least two of the following criteria:

- (a) the total assets of the company and its subsidiaries exceeds NZ\$10 million;
- (b) the company and its subsidiaries have a total turnover of NZ\$20 million or more; and
- (c) the company and its subsidiaries have 50 or more full-time equivalent employees.

These requirements do not apply if the overseas company is a subsidiary of a New Zealand company that has already filed audited group financial statements with the Registrar of Companies.

Sector:	Business Services
Obligations Concerned:	National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4)
Level of Government:	Central
Measures:	Section 100(2)(a) of the <i>Patents Act 1953</i>
Description:	<u>Cross-Border Trade in Services</u> Registration of patent attorneys is restricted to those who satisfy the criteria set out in section 100(2)(a) of the <i>Patents Act 1953</i> , being any person who is a British subject or a citizen of the Republic of Ireland.

Sector:	Agriculture, including services incidental to agriculture
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)
Level of Government:	Central
Measures:	<i>Dairy Industry Restructuring Act 2001</i>
Description:	<p><u>Investment and Cross-Border Trade in Services</u></p> <p>The <i>Dairy Industry Restructuring Act 2001</i> (DIRA) and Regulations provide for the management of a national database for herd testing data. The database is currently held by the Livestock Improvement Corporation Ltd (LIC). The DIRA:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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 LIC or successor entity; (c) establishes rules regarding access to the database and that access may be denied on the basis that its 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 (Article 9.4) Senior Management and Boards of Directors (Article 9.11)
Level of Government:	Central
Measures:	Constitution of Chorus Limited
Description:	<p><u>Investment</u></p> <p>The Constitution of Chorus Limited requires New Zealand government approval for the shareholding of any single overseas entity to exceed 49.9 per cent.</p> <p>At least half of the Board directors are required to be New Zealand citizens.</p>

Sector:	Communication Services Audio-visual Services
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6) Performance Requirements (Article 9.10)
Level of Government:	Central
Measures:	<i>Radiocommunications Act 1989</i>
Description:	<u>Investment and Cross-Border Trade in Services</u> The acquisition of licences or management rights to use the radio frequency spectrum, or any interest in such licences or management rights, under the <i>Radiocommunications Act 1989</i> by foreign governments or agents on behalf of foreign governments is subject to the written approval of the Chief Executive of the Ministry of Business, Innovation and Employment.

Sector: Agriculture, including services incidental to agriculture

Obligations Concerned: Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: *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 (Article 9.4) Senior Management and Boards of Directors (Article 9.11)
Level of Government:	Central
Measures:	<i>Civil Aviation Act 1990</i> Ministerial Guidelines
Description:	<u>Investment</u> Only a licensed air transport enterprise may provide international scheduled air services as a New Zealand international airline. Licences to provide international scheduled air services as a New Zealand international airline are subject to certain conditions to ensure compliance with New Zealand's air services agreements. Such conditions may include requirements that an airline is substantially owned and effectively controlled by New Zealand nationals, has its principal place of business in New Zealand or is subject to the effective regulatory control of the New Zealand Civil Aviation Authority.

Sector: Air Transportation

Obligations Concerned: National Treatment (Article 9.4)
Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Constitution of Air New Zealand Limited

Description: Investment

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 Shareholder¹. In addition:

- (a) at least three members of the Board of Directors must be ordinarily resident in New Zealand; and
- (b) more than half of the Board of Directors must be New Zealand citizens.

¹ 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.

Sector:	All
Obligations Concerned:	National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)
Level of Government:	Central
Measures:	<i>Overseas Investment Act 2005</i> <i>Fisheries Act 1996</i> Overseas Investment Regulations 2005
Description:	<p><u>Investment</u></p> <p>Consistent with New Zealand’s overseas investment regime as set out in the relevant provisions of the <i>Overseas Investment Act 2005</i>, the <i>Fisheries Act 1996</i> and the Overseas Investment Regulations 2005, the following investment activities require prior approval from the New Zealand Government:</p> <ul style="list-style-type: none"> (a) acquisition or control by non-government sources of 25 per cent or more of any class of shares² or voting power³ 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

² For greater certainty, the term “shares” includes shares and other types of securities.

³ For greater certainty, “voting power” includes the power to control the composition of 25 per cent or more of the governing body of the New Zealand entity.

of shares⁴ or voting power⁵ in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ\$100 million;

- (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\$100 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 – 7 and 8.

⁴ For greater certainty, the term “shares” includes shares and other types of securities.

⁵ For greater certainty, “voting power” includes the power to control the composition of 25 per cent or more of the governing body of the New Zealand entity.

Sector:	All
Obligations concerned:	Performance Requirements (Article 9.10)
Level of Government:	Central
Measures:	<i>Income Tax Act 2007</i> <i>Goods and Services Tax Act 1985</i> <i>Estate and Gift Duties Act 1968</i> <i>Stamp and Cheque Duties Act 1971</i> <i>Gaming Duties Act 1971</i> <i>Tax Administration Act 1994</i>
Description:	Any existing non-conforming taxation measures.