

# Direct Investment Policy

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**Document Handling:**

The document is available on the New Zealand Superannuation Fund's internal and external websites.

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| Note this version supersedes all earlier draft versions (#159575) |              |   |                  |        |
| 2.0   | 11 Sept 2012 | Update reference to Master Checklist to Investments Implementation File and include ORA in Schedule 5.<br>Replace GMAA with GMPC<br>Annual Review by Board 12 June 2012 | CEO<br><br>Board | Final  |
| 2a  | 9 Apr 2013   | Minor change to Schedule 4 (Director Appointment and Monitoring) and some roles in Sch 1 to be consistent with other policies.  | Board<br><br>CEO | Final  |
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| 3A             | 26 May 2015  | Update Schedule 5 to refer to derivative use.              | CEO                | Final         |
| 4              | 15 Dec 2016  | Annual Policy Review                                       | Board              | Final         |
| 4A             | 28 June 2018 | Updates to statutory references for changes in legislation | CEO                | Final         |
| 5              | 11 Apr 2019  | Update Schedule 3 (Due Diligence Implementation)           | Board              | Final         |
| 6              | 13 Mar 2020  | Update to Schedule 1 (Responsibilities)                    | CEO                | Final         |

**Contents**

- 1. Background ..... 4
- 2. Objective ..... 4
- 3. Definitions..... 4
- 4. Scope ..... 4
- 5. Delegations and Authorities ..... 5
- 6. Due Diligence: Investment Case..... 5
- 7. Due Diligence: Implementation and Management..... 6
- 8. Director Appointment and Monitoring..... 7
- 9. Investment Management ..... 8
- 10. Reporting..... 8
- 11. Legislative Compliance ..... 9
- 12. Control Section ..... 9
- Schedule 1: Responsibilities .....10
- Schedule 2: Due Diligence Investment Case .....11
- Schedule 3: Due Diligence Implementation.....13
- Schedule 3 - Appendix A: New Investments Toolkit (Investment Implementation File).....15
- Schedule 4: Director Appointment and Monitoring .....16
- Schedule 5: Investment Management.....17
- Schedule 6: Reporting Framework.....19
- Schedule 7: Legislative Compliance .....20

## **C2 - Internal Use Only**

### **1. Background**

- 1.1. We have established a Reference Portfolio which specifies weights for various market exposures that may be obtained at low-cost on a passive basis.
- 1.2. In the Actual Portfolio of the Fund we seek to add value to the Reference Portfolio in three ways:
  - by temporarily adjusting (tilting) the Fund's market exposures in response to changes in expected returns (Strategic Tilting).
  - through accessing return premia (whether market or skill based) not available in the Reference Portfolio (Capturing Active Returns).
  - by gaining access to the desired risk exposures, rebalancing the Fund, and managing liquidity risk in the most cost effective manner possible (Portfolio Completion).
- 1.3. Direct investments in assets are a way of capturing active returns to add value to the Reference Portfolio. Direct investment is preferred over access via an external manager when it offers improved risk adjusted returns, there is alignment of interest, and we have the capabilities and governance to successfully implement and manage.
- 1.4. The NZ Direct team supports our progress with the NZ Investment Directive, which requires us to actively identify and consider investments in New Zealand, subject to remaining commercially prudent in our investment activities.
- 1.5. Direct investment can be the Guardians alone or through co-investment with one or more other local or international entities. These could include other Crown Financial Institutions, peer funds, iwi, family offices / foundations, endowments or other institutional investors.

### **2. Objective**

- 2.1. To implement effective controls and frameworks to ensure that direct investments covered by this policy are managed effectively and in compliance with our governance and legislative requirements.

### **3. Definitions**

- 3.1. To aid with interpretation of this policy we have a Glossary of Terms, which defines all investment and technical terms used in our policy documents. References to other documents are italicised.

### **4. Scope**

- 4.1. This policy covers how we assess, implement and monitor direct investments in assets when not using Collective Investment Vehicles that are managed by external managers or Financial Market Transactions. It also covers how we appoint directors.

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4.2. This policy does not cover:

- Allocation of capital to a *strategy, or opportunity* which is governed by the *Investment Risk Allocation Policy*.
- Investment in Collective Investment Vehicles or externally managed investment mandates, which are governed by the *Externally Managed Investments Policy*.
- Financial Markets Transactions, which are governed by the *Portfolio Completion and Internally Managed Securities Policy*.

4.3. There may be situations where an investment is a hybrid between a direct investment and an externally managed investment, normally because of some initial involvement of an external investment manager or because we are investing alongside one of our external investment managers. Where this is the case, this policy will normally apply along with section 7 (Manager Competency) of the Externally Managed Investments Policy.

**5. Delegations and Authorities**

5.1. The *Delegations Policy* governs the delegations and authorities that apply in all policy documents. In the event of any discrepancy between this policy and the *Delegations Policy* the *Delegations Policy* will prevail.

5.2. The Board has reserved certain matters either to itself, a committee of the Board or the Chief Executive. All other matters are delegated to the Chief Executive who may sub-delegate them to Guardians’ staff. All delegates and sub-delegates must exercise their authorities in compliance with the general conditions of delegation and sub-delegation set out in Schedule 2 of the *Delegations Policy*.

5.3. There are certain responsibilities inherent under this policy. Those responsibilities, and the person responsible for them, are outlined in Schedule 1.

**6. Due Diligence: Investment Case**

An investment can only be considered if it is consistent with an investment opportunity and we have, or can access, appropriate capabilities to complete and monitor the investment to an appropriate standard.

The maximum amount that is (or can be) allocated to any one investment is controlled by the *Investment Risk Allocation Policy*.

The Responsible Investment framework that is to be applied to all investments is controlled by the *Statement of Investment Policies, Standards and Procedures* (section 5).

One of the attractions of direct investment is that we avoid paying ongoing investment manager fees. It is still possible that an investment could be introduced by a third party and that completion may require us to pay a one-off origination or advisory fee.

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6.1. We will maintain and adhere to an investment case evaluation framework that focuses on the following:

- Demonstrating the fit of the investment with our investment strategy;
- Identifying the reasons why we see an investment opportunity to capture active returns;
- Identifying the best access point;
- Calculating the expected risk and return characteristics of the investment after any fees and any non-recoverable foreign taxes;
- Calculating, together with sensitivity analysis, the incremental impact on the Fund from making the investment;
- Considering the capabilities we will require internally to manage the investment, and whether we will require any external input;
- Considering the governance framework required for the investee company and the degree to which we could add value; and
- Considering exit options (as applicable), in particular how we protect our commercial options (buy/hold/sell) in the event a majority shareholder or co-investment partner decides to exit an investment.

6.2. An outline of that framework must be maintained in Schedule 2.

6.3. All proposals to make a direct investment must be progressed and decided under the relevant policies including the Delegations Policy.

## 7. Due Diligence: Implementation and Management

Having established the case for investing, the second stage of due diligence focuses on non investment aspects of the transaction to ensure that any legal, operational, responsible investment, reputational, finance or tax risks are identified and managed appropriately.

Attention is also to be given to our communication approach, including how the Board and Minister will be informed and kept up to date. Rigorous management of actual or perceived conflicts applies to all activities of the Guardians and Fund. Potential conflicts are more likely to arise in the New Zealand context. The NZ equities team are consulted in respect of any potential investment that could impact on the internally managed NZ equities mandate to ensure both investment and legal issues are identified early.

We need to also consider possible conflicts of interest Board members may have.

This stage is also a chance for us to assess in greater detail whether implementation of the investment will require additional staff or technology or some change to our business model or processes. The cumulative impact of investments is also considered.

When considering direct investments we are mindful of the heightened reputational consequences of poor investment selection because we are directly responsible for the selection. This is particularly so in the case of direct investments within New Zealand.

Satisfactory completion of non-investment due diligence is a gate to any investment.

When the investment no longer meets our investment needs we implement an exit strategy that checks through the same areas as listed above.

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- 7.1. We will maintain and adhere to an implementation management process that recognises the heightened focus that direct investments attract and ensures that legal, operational, responsible investment, reputational, finance and tax issues relating to the investment have been identified and are managed appropriately.
- 7.2. An outline of that framework must be maintained in Schedule 3.

**8. Director Appointment and Monitoring**

Direct investments may entitle us to board representation on the investee entity. Our intention is to determine the best use of employees (of the Guardians) and external directors as appropriate in order to provide the highest value governance to our investee entities. Our primary objective is to ensure a balanced and diverse Board with the necessary skills to lead and direct the investee company that aligns with our objective of maximising long term value and allowing the business to avoid compromised decisions based on artificial constraints.

We believe, depending on the level of investment and maturity of the investee entity, that a mixture of employees and external directors with domain knowledge provides best practice governance capability. Where an investee entity is mature with aligned shareholders and a comprehensive governance structure, it is recognised that external directors are likely to add greater value than employees and are hence preferred.

Attendance at meetings, as either a director or observer, will provide earlier visibility of, and better perspective on, investee entity activities and issues – particularly of any critical events requiring urgent attention. Different considerations apply to listed issuers given the laws governing issuers.

We believe governance requirements evolve over time and that the solution implemented at the time of investment should be reviewed regularly and may need to be adjusted over time.

We will always seek to achieve maximum governance rights in investment negotiations, however appointment of internal or external representative to the Board will be based on an assessment of the needs of the investee entity and our objectives so we may not always exercise the rights we have negotiated.

- 8.1. We will maintain and adhere to a framework for director appointment and monitoring.
- 8.2. An outline of that framework must be maintained in Schedule 4.
- 8.3. Any fees paid by investee entities to directors who are employees of the Guardians will be paid to the Fund’s account.

## **9. Investment Management**

We actively manage investment performance against our expectations and research relevant market trends and competitor performance.

Our subject matter experts are available upon request to support our appointed director(s) by providing input to specific investee entity activities, such as developing capital structures and divestments.

As interested shareholders, we will also influence investee entities through strong working relationships and our shareholder rights. This provides access to a broader and deeper pool of information to assist in guiding direct investments than is typically the case with investments that are not direct.

9.1. We will maintain, and adhere to, a management framework that focuses on:

- Maintaining a view on relative attractiveness and prioritisation of the Opportunity that an investment sits within;
- Tracking business performance;
- Maintaining a view on the planned strategy and forecast financial performance of the investment; and
- Maintaining a view on the operational competency and efficiency of the investee entity.

9.2. An outline of that framework must be maintained in Schedule 5.

## **10. Reporting**

10.1. We must report to the Board on the matters set out in Schedule 6, which include:

- New investments;
- Material changes to the terms of existing investments;
- Performance of the direct investment portfolios; and
- Investee entity director appointments and resignations.

10.2. We must report proposed material changes to the following schedules to the Board for their approval:

- Schedule 4: Director Appointment and Monitoring
- Schedule 6: Reporting Framework

10.3. We must report to the Board, for their information, material changes to the following schedules of this policy:

- Schedule 1: Responsibilities (responsibilities only)
- Schedule 2: Due Diligence: Investment Case
- Schedule 3: Due Diligence: Implementation
- Schedule 5: Monitoring Framework
- Schedule 7: Legislative Compliance

10.4. An outline of the reporting framework, including any reporting to internal management committees, must be maintained in Schedule 6.



**11. Legislative Compliance**

We have a legislative compliance framework to ensure that we comply with our legislative obligations. In each of our policies we list specific legislation that might impact on the activities covered by that policy. The list is not always exhaustive as often the law is specific to a particular aspect of the activity or jurisdiction in which the activity occurs.

- 11.1. We will ensure that all our activities under this policy comply with our legislative obligations and give effect to our legislative compliance framework.
- 11.2. A list of legislation that potentially impacts on the activities under this policy must be maintained in Schedule 7.

**12. Control Section**

Approved this 13<sup>th</sup> day of June 2011 and amended 31 July 2014 and 15 December 2016.

Chief Investment Officer \_\_\_\_\_

Chief Executive Officer \_\_\_\_\_

Board Chairperson \_\_\_\_\_

**Schedule 1: Responsibilities**

|  |  |
|--|--|
| <p><b>CIO will:</b></p>                            | <ul style="list-style-type: none"> <li>• ensure this policy is kept current and relevant to the activities being undertaken (including schedules)</li> <li>• ensure this policy is reviewed at least five yearly</li> <li>• decide deviation from the full due diligence process (the Investment Committee (IC) can request more information)</li> <li>• provide rationale for recommendation to appoint a director</li> <li>• report director appointments made by the Guardians at least six monthly to the Board and under the no surprises protocol</li> <li>• where director was a Guardian representative, report director resignations to the subsequent IC and Board meetings and under the no surprises protocol</li> <li>• report new investments and material changes to existing investments to the subsequent IC or by circular to the IC, and Board meetings</li> <li>• report adverse events to the subsequent IC and Board meetings</li> </ul> |
| <p><b>CIO or GM Portfolio Completion will:</b></p> | <ul style="list-style-type: none"> <li>• give final sign off of the Investment Implementation File</li> </ul>  |
| <p><b>Lead Investment Professional will:</b></p>   | <ul style="list-style-type: none"> <li>• be responsible for the execution and ongoing management and monitoring of a new investment</li> <li>• undertake post implementation review of new opportunities</li> <li>• meet with appointed directors at least six monthly</li> </ul>  |
| <p><b>General Counsel will:</b></p>                | <ul style="list-style-type: none"> <li>• ensure schedule 7 (legislative compliance) is kept current,</li> <li>• report material changes to the schedules of this policy as part of the annual SIPSP review to the Risk Committee and Board meetings and under the no surprises protocol</li> </ul>   |
| <p><b>Head of Risk will:</b></p>                   | <ul style="list-style-type: none"> <li>• report material policy breaches notified through the Learning Opportunities reporting process immediately to the Risk Committee and Board</li> <li>• report all policy breaches notified through the Learning Opportunities reporting process to the subsequent Audit Committee meeting</li> </ul>  |

**Responsibilities approved by CEO on 13 June 2011 and amended 31 July 2014, 15 December 2016, and 13 March 2020**

### Schedule 2: Due Diligence Investment Case

For all investments we undertake quantitative analysis of how much the investment would improve the Fund's portfolio. That analysis aims to reveal:

- the best access point;
- the expected return of the investment;
- the expected risks of the investment;
- the expected costs associated with the investment;
- the investment's fit with the rest of the portfolio;
- the appropriate amount to allocate to the investment;
- capability and governance required; and
- options for exit.

We compare all investments on an unlevered, risk-adjusted, net-of-costs basis.

We compare the expected net return from the investment with what we could expect if we simply kept the funds in the Reference Portfolio. We do this by determining the hurdle required rate of return which compensates us for the risk we are introducing into the portfolio, including penalties for illiquidity and costs. The hurdle is the minimum or break-even return needed to ensure that the portfolio would be improved by making the investment.

The expected return analysis should consider the long-term expected return, and should highlight key assumptions and other potential outcomes. Our commercial judgement about expected future returns should be based on a wide range of quantitative and qualitative evidence, including internal and external research wherever possible. We try to ensure that the assumptions behind the expected return analysis are consistent with the other assumptions in our investment case framework, for instance our own views on the expected return from the Reference Portfolio.

Risk analysis should include an analysis of the likely profile of the future returns to the investment and how the investment is likely to behave under differing conditions. It is important to test how sensitive the investment case is to different assumptions about the business or market environment. Consideration should also be given to non-investment risks (these are covered in greater detail as part of the implementation process). Costs should be analysed under different scenarios and should incorporate all non-recoverable costs including fees and foreign taxation.

In building the Actual Portfolio we identify a number of investment opportunities within each of the Fund's value-adding strategies, and employ a Risk Allocation Process to determine the relative attractiveness of the opportunities. The amount of active risk allocated to each opportunity and investment is based on the recommendations of the relevant Risk Budget team and the relevant Access Point teams, respectively.

The appropriate desired risk allocation to the Opportunity is the responsibility of the relevant Risk Budget team. The allocation to a specific investment within an Opportunity is the responsibility of the Access Point teams and will depend on a range of factors including:

- (a) our view on the relative attractiveness of the investment versus other investment opportunities in the relevant risk basket;
- (b) the expected risk adjusted return;
- (c) our degree of confidence around the investment case;
- (d) its similarity to other investments in the portfolio;
- (e) the minimum size required to achieve the appropriate level of diversification; and

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(f) our prudential limits, including single asset limits.

For more information see the *Investment Risk Allocation Policy*.

In most circumstances we will apply the Fund's Operational Risk Assessment (ORA) process to proposed exit strategies (refer to SuperDocs #812093 "Quick Guide to ORA" for information regarding when an ORA is required).

A written recommendation to the Investment Committee, the Chief Investment Officer or the Chief Executive Officer (as applicable) is the final stage of the approval process.

The presentation will include:

- a comprehensive summary of all due diligence to date. The presentation will also highlight any due diligence or contractual issues that remain unresolved;
- an analysis of our capability to manage the direct investment including how we plug any gaps in our internal capabilities through the use of external directors, advisors or consultants; and
- in the case of investments that may have media interest, a report from the Head of Communications outlining how we intend to manage potential reputational and communication issues arising from the investment.

From time to time opportunities will arise under circumstances which preclude the full process from being followed. In these cases it will be acceptable to proceed provided that the degree to which the process has been deviated from is clearly identified and the risks arising from that deviation are identified. It is the responsibility of the Chief Investment Officer to determine the appropriate level of due diligence. In any event, the decision maker can request more information before endorsing or rejecting a recommendation.

**Approved by the Chief Executive on 13 June 2011 and amended 31 July 2014 and 15 December 2016**

### Schedule 3: Due Diligence Implementation

Our New Investment Implementation Framework operates under the following key principles:

1. We initiate new investment implementations under clear authority:
  - With approval by the CIO (having regard to any Investment Committee recommendation - Schedule 10B of the Investment Risk Allocation Policy sets the threshold for when the IC should consider the investment) or, if it is less than \$50 million and a follow on investment into an existing asset or Opportunity, by the Head of Direct Investment (such approval to be consistent with the Terms of Reference for the Direct Investments Forum).
  - Where funding or internal resources are constrained, the Investment Committee prioritises new investment initiatives.
2. We have clear new initiative ownership:
  - The Lead Investment Professional is responsible for the execution and ongoing management of a new investment and must outline clear performance expectations to enable the execution to occur in a timely fashion.
3. We seek and welcome multiple points of analysis:
  - Each business unit of the Guardians that may be affected by a new investment will have the earliest possible chance to scrutinise and comment on that investment before that investment is approved.
  - This will be achieved primarily via the New Investment Implementation Group (the NIGEL).
4. We must be commercial and opportune:
  - Investment professionals must listen to any feedback on a proposal but are ultimately responsible for the commercial terms recommended to the person responsible for the decision. Recommendations should capture and highlight the key areas of debate within the project team.
  - Investment support teams must ensure they facilitate investment activities as best they can within the clear performance expectations set.
  - Where a support team strongly disagrees with the Lead Investment Professional's commercial judgement, it should refer the matter to the Investment Committee or CIO as relevant before the initiative is undertaken.
5. We will adhere to our established due diligence protocols:
  - The New Investments Toolkit (also known as the Investment Implementation File) is the document of record that summarises the non-investment due diligence for a new investment and exit.
  - The Chief Investment Officer or General Manager Portfolio Completion gives the final signoff of the Investment Implementation File to permit funding.
  - The Risk Committee tracks the extent to which management responses identified in the Operational Risk Assessment (ORA) have been implemented.

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6. We will learn from new investment implementations:
  - After the completion of each transaction, the Lead Investment Professional will undertake a review of the implementation process once the investment has been executed.

As part of the ORA, the Head of Communications will detail how we have addressed potential reputational and communication issues and any protocols that might need to be followed regarding future communications.

The current New Investments Toolkit (also known as the Investment Implementation File) is referred to in Appendix A of this Schedule.

**Approved by the Chief Executive on 13 June 2011 and as amended 31 July 2014, 15 December 2016, and 11 April 2019**

**Schedule 3 - Appendix A: New Investments Toolkit (Investment Implementation File)**

The Investment Implementation File and Operational Risk Assessment (ORA) is available as a template with the ORA part of it available on the Intranet, and the signature section is also available electronically.

#### **Schedule 4: Director Appointment and Monitoring**

The Chief Investment Officer provides a rationale for the recommendation to appoint an external director or an employee director. This includes (as appropriate) but is not limited to:

- The requirements of the business and the Board of Directors;
- Industry expertise or ability to fill a skill-base gap in the Board of the investee entity;
- Our expectations of the director with regards to strategy and definition of success;
- The director's alignment with the Guardians culture and investment approach; and
- Mitigation of any potential conflict of interest.

The appointment of any directors must be done in accordance with the *Delegations Policy*.

Employee directors accepting appointment to the Board of an investee company need to have a clear understanding of governance protocols. This includes but is not be limited to:

- The duties owed to the investee company and its shareholders, as well as the responsibility to the Guardians;
- The relationship between the Board of the investee company and its management; and
- An understanding of insider trading and other applicable laws.

The Lead Investment Professional will meet with appointed directors at least six monthly to review performance and discuss any concerns they may have about their role as a director. Where the director is also the Lead Investment Professional, the Lead Investment Professional will instead meet with their manager.

The Lead Investment Professional will on a regular basis and no fewer than every two years consider whether there are any changes to the direct investee entity, the composition of the investee entity Board or any other change that prompts a review of the suitability of the director.

**Approved by the Board on 9 April 2013 and amended 31 July 2014 and 15 December 2016**



## **Schedule 5: Investment Management**

We will manage each investment for performance and risks in order to ascertain whether it is operating according to our expectations and to inform future investment decisions.

### **Derivative Use**

Derivative use will be in accordance with the Derivatives Policy.

### **Performance Monitoring**

Performance is monitored on a monthly basis, although unless monthly performance is outside the bounds of our expectations, most emphasis is given to longer term measures. The appropriate timeframe over which to measure the performance of a particular investment will be conditional on the strategy being managed. Generally in the case of direct unlisted investments, annual external valuations will be undertaken in accordance with the Investment Valuation Policy.

Performance monitoring should also include an annual report on the investee entity's strategic plan and budget.

Every investment we make will contain specific reporting requirements.

### **Investment Management and Monitoring**

We assign a Lead Investment Professional to each investee entity under the implementation process. The Lead Investment Professional has responsibility for the overall relationship with the investee entity and in some circumstances may also be appointed as a director of the investee entity.

The Lead Investment Professional maintains regular contact with each investee entity to monitor ongoing management and maintain our investment assessment. If the Lead Investment Professional is an appointed director this is primarily through Board meetings. If the Lead Investment Professional is not an appointed director, they, or our appointed agent, meet with appointed Board members from each of their assigned investee entities every six months. As a result of this meeting the Lead Investment Professional updates a written assessment of the investee entity.

The Lead Investment Professional is also responsible for delivery of the Investment Case. The Lead Investment Professional is also responsible for making judgements as to whether over time an investee company remains consistent with the investment objectives of the Fund.

### **Adverse Event Reporting**

We aim to ensure that investee entities self report if there has been a material adverse change to their circumstances. Self reporting requirements include:

- CEO appointment or removal;
- Proposed merger or acquisition activity;

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- Any investigation by any governmental or regulatory agency or any self-regulating organisation;
- A qualified audit opinion;
- Environmental, Social and Governance (ESG) issues that may cause legal or reputational impact; and
- Acts or omissions likely to cause material financial loss.

If we identify any issue that may have a reputational impact on the Fund or the Guardians we immediately report it to the Head of Communications.

**Approved by the Chief Executive on 13 June 2011 and amended 31 July 2014 and 26 May 2015 and 15 December 2016**

## Schedule 6: Reporting Framework

| Report  | Reporting frequency required and to whom  | Minimum information required by the Board   |
|---|---|---|
| New investments   | To subsequent IC and Board meeting and under the no surprises protocol.   | <ul style="list-style-type: none"> <li>Summary of investment case.</li> </ul>   |
| Reference check on non staff directors for Direct investments | Immediately to Board  | <ul style="list-style-type: none"> <li>Name;</li> <li>Background and experience.</li> </ul>   |
| Director appointments   | Six monthly and under the no surprises protocol   | <ul style="list-style-type: none"> <li>Name;</li> <li>Background and experience;</li> <li>Reference checking completed;</li> <li>Key terms.</li> </ul>                          |
| Material changes to terms of existing investments             | To subsequent IC and Board meetings   | <ul style="list-style-type: none"> <li>Change;</li> <li>Reason;</li> <li>Any impact on original investment case.</li> </ul>   |
| Non-material changes to terms of existing investments         | To subsequent IC  | <ul style="list-style-type: none"> <li>Change;</li> <li>Reason;</li> <li>Any impact on original investment case.</li> </ul>   |
| Performance of the direct investment portfolio                | Annually to IC and Board  | <ul style="list-style-type: none"> <li>Amount invested;</li> <li>Performance past year to date, and since inception;</li> <li>Aggregate performance by sub-strategy.</li> </ul> |
| Health and Safety Reporting                                   | Six Monthly to the Board  | As per the Board's decision on the Health and Safety Paper to the Board at the meeting of 24 November 2017 (refer to SuperDocs #2368979).                                       |
| Adverse event notification                                    | Immediately to Head of Communications (who will assess and report to Board as appropriate); and reported to subsequent IC and Board meeting | <ul style="list-style-type: none"> <li>Event;</li> <li>Cause;</li> <li>Proposed action/response.</li> </ul>   |
| Director resignations   | Six monthly to the IC and Board as well as under the no surprises protocol  | <ul style="list-style-type: none"> <li>Name;</li> <li>Reason;</li> <li>Any planned action.</li> </ul>   |
| Policy breaches   | If material: immediately to RC and Board<br>Otherwise: to subsequent RC, AC and Board meetings  | <ul style="list-style-type: none"> <li>Details of breach and remedial action taken.</li> </ul>  |
| Material changes to Schedules of this policy                  | Annually to the RC and Board as well as under the no surprises protocol   | <ul style="list-style-type: none"> <li>Details and reason for change.</li> </ul>  |

Approved by the Board on 13 June 2011 and amended 31 July 2014, 15 December 2016, and 24 November 2017

### Schedule 7: Legislative Compliance

The summary of New Zealand legislation set out below does not purport to be comprehensive or to provide legal advice. If you require any advice on these matters please contact the legal team.

As part of making any direct investment, legislative considerations must be taken into account and complied with. The following legislation is not an exhaustive list as every investment will have legislation governing the investment and this may be different depending on the particular jurisdiction relevant to the investment.

When contemplating entry into a direct investment we need to consider the legislation below carefully as some compliance requirements are triggered right at the start of a transaction even before we engage in negotiations with other parties.

When entering into any form of written documentation including informal “non binding” heads of agreement it is essential that a legal review of the documentation is carried out to ensure that documents do not contravene or have correctly contemplated the Acts referred to below. The following is a list of New Zealand legislation that may apply to New Zealand governed Direct Investments. Overseas jurisdictions will often have equivalent legislation.

Most countries have restrictions on foreign investment in their country which require the foreign investor to obtain consent before investing.

#### **Our governing legislation**

- Crown Entities Act 2004
- New Zealand Superannuation and Retirement Income Act 2001

#### **Legislation specific to transactions**

- Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (The Guardians have an exemption which currently expires 30 June 2018 and is in the process of being renewed to 30 June 2023)
- Commerce Act 1986
- Companies Act 1993
- Contract and commercial Law Act 2017
- Copyright Act 1994
- Employment related legislation
- Health and Safety legislation
- Environmental legislation
- Fair Trading Act 1986
- Financial Advisors Act 2008 and Financial Service Providers (Registration and Dispute Resolution) Act 2008
- Financial Markets Conduct Act 2013
- Overseas Investment Act 2005 and Foreign Acquisitions and Takeovers Act 1975 (establishing the Foreign Investment Review Board in Australia) and similar laws in other jurisdictions
- Property Law Act 2007
- Reserve Bank of New Zealand Act 1989
- Secret Commissions Act 1910
- Takeovers Act 1993 and Takeovers Code, NZX listing rules

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### **Tax and Accounting legislation**

- Double Tax Relief Agreements
- Financial Reporting Act 2013
- Goods & Services Tax Act 1985
- Income Tax Act 2007 (instead of New Zealand Income Tax Act 2004)Tax Administration Act 1994
- Public Audit Act 2001
- Public Finance Act 1989

### **Other**

- Official Information Act 1982. Our obligations in respect of this Act are covered in the Communications Policy.
- Public Records Act 2005. Our obligations in respect of this Act are covered in the Communications Policy.

### **Investment Vehicle Structure**

Compliance with the relevant governing legislation of any investment vehicle in which Fund is invested is necessary. Particular advice is required in respect of the requirements of each vehicle and in this schedule we only refer to the potential type of vehicles and their governing legislation.

- Co-Operatives - Co-Operatives Companies Act 1996
- Companies - Companies Act 1993
- Incorporates Societies - Incorporated Societies Act 1908
- Insurance Companies - Insurance (Prudential Supervision) Act 2010
- Life Insurance Vehicles - Life Insurance Act 1908
- Limited Partnerships - Limited Partnership Act 2008
- General Partnerships - Partnership Act 1908

### **Further information**

Further information about the relevant sections of the legislation listed above can be obtained from our General Counsel.

**Approved by the Chief Executive on 13 June 2011 and amended 31 July 2014, 15 December 2016 and 28 June 2018**