

# Associate Provisions

## Contents

1. Introduction
2. Legislation
3. Control/direction
4. Trustee/representative or direction/control/influence
5. Acting jointly
6. Arrangement or understanding
7. Multiple associates
8. Instances where the associate status is less relevant
9. Further information
10. Disclaimer

There are no recent updates to this resource.

## Introduction

A person associated with an overseas person, such as a New Zealand agent, may require consent to invest in New Zealand, even if they are a New Zealand citizen or resident. For example, a New Zealand agent acting on behalf of an overseas person is an associate and requires consent.

The associate provisions are intended to capture situations where overseas investments are indirectly owned or controlled by an overseas person. The provisions operate both as a substantive control (agents, trusts, business relationships), and as an anti-avoidance mechanism (secret deals, unwritten agreements, understandings).

Here the OIO explains its approach to interpreting these provisions.

### **Associated land**

Associated land adjoins land owned or controlled by the applicant or an associate. See the OIO resource “Land Types and Areas” for further information.

## Legislation

Section 8 of the Overseas Investment Act 2005 outlines the meaning of associates.

## Control/direction

Situations of control or direction may or may not be clearly documented. The circumstances of the direction or control need not infer any unlawful or dishonest intent - the direction or control may result from a perfectly lawful and reasonable arrangement.

Examples of direction or control include:

- management agreements
- business relationships
- social obligations, and

- threats.

For example:

Facts:

N, a New Zealand citizen, is the trustee of T  
M is the manager of the trust assets  
The trust deed obliges N to follow the instructions of M  
M is an overseas person.

Result:

N and T are associates of M.

An acquisition of sensitive land by T is an overseas investment and requires consent.

## **Trustee/representative or direction/control/influence**

Section 8(1)(b) of the Act provides a comprehensive, but seemingly unrelated, list of situations in which a person will be an associate of another. However, on closer inspection it is clear that in every case the associate will be acting as a “front” for the overseas person. This distinguishes the direction and control components of the definition from similar language in section 8(1)(a).

For example:

Facts:

O, an overseas person, wishes to acquire sensitive land. O wishes to bypass the consent process  
N, a New Zealand citizen, informally agrees to purchase and hold the property on behalf of O  
O is to fund the purchase through an unsecured, undocumented loan.

Result:

N will hold the property as a bare trustee for O and would likely follow the instructions or requests of O  
N is an associate of O

The acquisition of sensitive land by N is an overseas investment and requires consent.

Note that this scenario may also breach section 43 of the Act (which makes it an offence to defeat, evade or circumvent the Act).

## **Acting jointly**

One person acts jointly with another when they have a joint purpose or plan, agreement, partnership or other close relationship whereby they could be described as “partners” or “associates”.

Examples may include:

- partners
- joint venture participants, and
- parties to a contract, where those parties have the same or similar interest.

## Arrangement or understanding

An arrangement involves a meeting of minds between two or more persons, which gives rise to an expectation that at least one person will act or refrain from acting in the manner envisaged by the parties. An “arrangement” is something less than a formal contract.

An understanding is similar in nature to, but less formal than an arrangement, in that it requires a meeting of minds.

Examples of arrangements or understandings may include handshake agreements, and promises.

The issue of whether an understanding or arrangement exists between parties is a question of fact to be determined in each case. The evidence of dealings between the parties would need to be considered. Direct evidence may not be available. Accordingly, inferences may need to be made from circumstantial evidence.

The fact that various parties may act in the same way will not itself be enough, but the courts may make inferences if there are other factors present such as:

- parties being unable or unwilling to explain uniform behaviour
- uniform conduct plus meetings or correspondence
- an unusual pattern of uniform behaviour that cannot be explained without “influence” or an “arrangement”.

For example:

Facts:

O, an overseas person, lends \$1m to N, a New Zealand citizen, for the purpose of buying a holiday home  
O and N have an understanding that O will not charge N interest if N allows O to use the holiday home.

Result:

N may be an associate of O

On its face, the 'understanding' would appear to be a mechanism by which O can effectively 'own' the holiday home without obtaining consent.

## Multiple associates

A person may be an associate as a result of either:

- their relationship with the overseas person, or
- their relationship with an associate of an overseas person.

There is no statutory limit on the number of “intermediaries” between the associate and the overseas person.

## Instances where the associate status is less relevant

A person's associate status is significantly less relevant in situations where one is an associate as a result of being part of an entity, relationship or arrangement that is otherwise regulated by the Act.

Examples include:

Partnership: If the partnership is an overseas person, the “associate” status of the partners (say, due to one partner being an overseas person) is less relevant.

Trusts: The trustees of a trust may be associates of an overseas person beneficiary or appointor. However, in such circumstances the trust itself would likely be an overseas person and the associate status would be less relevant.

## Further information

Visit the OIO website at [www.linz.govt.nz/oio](http://www.linz.govt.nz/oio) to find related links, documents and answers to frequently asked questions. Read the Overseas Investment Act 2005 and the Overseas Investment Regulations on [www.legislation.govt.nz](http://www.legislation.govt.nz).

If you require further information, please contact the OIO.

Overseas Investment Office  
Land Information New Zealand  
160 Lambton Quay  
PO Box 5501  
Wellington 6145  
New Zealand

Phone +64 4 462 4490  
Fax +64 4 460 0111  
Email [oio@linz.govt.nz](mailto:oio@linz.govt.nz)  
[www.linz.govt.nz/oio](http://www.linz.govt.nz/oio)

## Disclaimer

This website provides general information only. The OIO and LINZ do not assume any responsibility for giving legal or other professional advice and disclaim any liability arising from the use of the information. If you require legal or other expert advice you should seek assistance from a professional adviser.