

Acquiring Business Assets and Fishing Quota

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Recent updates to this guide:

24 April 2009: New Designation and Delegation Letter

Introduction

An overseas investment in New Zealand may require consent if it includes significant business assets or fishing quota.

Significant business assets

Significant business assets are New Zealand securities or assets, or the establishment of a business, where the total consideration is worth more than \$100 million.

If business assets include sensitive land, which is often the case, the consent criteria for sensitive land apply. See the OIO resource “Sensitive Land” for more information.

Fishing quota

Fishing quota is an interest in fishing quota or securities in a person that owns an interest in fishing quota.

Consent is only required if you are an overseas person as defined in New Zealand’s legislation and the investment includes sensitive New Zealand assets. Find out if consent is required on the OIO website (“Do I need consent?”) or consult your lawyer and/or a lawyer with significant experience in overseas investments.

Legislation

Significant business assets are defined in section 13 of the Overseas Investment Act 2005. Section 18 details the consent criteria for investments in significant business assets.

The definition of fishing quota is defined by [section 57D of the Fisheries Act 1996](#) as having:

- provisional catch history, quota, or annual catch entitlement, or
- an interest in that provisional catch history, quota, or annual catch entitlement.

The national interest test for fishing quota is detailed in section 57H of the Fisheries Act.

About significant business assets

Acquisition of securities

The acquisition of securities by an overseas person, or an associate of an overseas person, will be an overseas investment if the total value of consideration provided exceeds \$100 million, including:

- the gross value of the target and its 25% or more subsidiaries, and
- Goods and Service Tax (GST) if any.

Purchase of assets

The acquisition of assets by an overseas person, or an associate of an overseas person, is an overseas investment if the total value of consideration provided exceeds \$100 million, including:

- GST if any, and
- goodwill and other intangible assets

and the assets are:

- located in New Zealand, and
- used in carrying on business in New Zealand (whether by one transaction or a series of related or linked transactions).

Establishment of a business

The establishment of a business in New Zealand by an overseas person, or an associate of an overseas person, is an overseas investment if:

- the business is carried on for more than 90 days in any year (whether consecutively or in aggregate), and
- the total expenditure expected to be incurred, before commencing the business, in establishing that business exceeds \$100 million.

Consent criteria

Applicants for consent to acquire significant business assets or fishing quota must satisfy a number of criteria.

Investor test

The four core criteria of any overseas investment are good character, business acumen, financial commitment and immigration rules. Collectively these are referred to as the investor test. See the OIO resource "Investor Test" for more information.

Supporting documentation

The OIO also requires details about the proposed acquisition, including the nature of the investment, why the acquisition requires consent, and consideration and financing.

Fishing quota criteria

Consent to acquire fishing quota can only be granted to a body corporate. There is no discretion to vary this requirement.

The ministers cannot grant consent to the acquisition of fishing quota that cannot be registered in the Quota Register or the Annual Catch Entitlement Register. Unregistrable fishing quota therefore cannot be acquired by an overseas person.

The national interest test for fishing quota (section 57H of the Fisheries Act) shares some of the same criteria as the investment will benefit New Zealand factors for sensitive land applications. See the OIO resource "Benefit to New Zealand".

Note the words "will or is likely to" are not part of the test used in the Fisheries Act provision.

Apply for consent

Applications for consent to acquire significant business assets must include the following information. Where an application triggers more than one subsection of section 13, the applicant must provide the information relevant to each subsection.

In relation to section 13(1)(a) of the Act (acquisition of securities) the OIO requires:

- the security structure of the target company including:
 - the classes of securities
 - the number of securities in each class, and
 - the rights that attach to each class of security

The OIO also requires information about the securities being acquired including:

- the number of securities owned in each class and the percentage of the total securities in each class represented by the securities already owned by the applicant or any associate (either alone or together with its associates)
- the number of securities being acquired in each class and the percentage of the total securities in each class represented by the securities being acquired by the applicant or any associate (either alone or together with its associates)
- the value of the securities being acquired
- the total consideration to be paid for the securities, and
- whether the securities being acquired are existing securities or are new securities to be issued.

Further information required includes:

- the gross value of the assets of the target company and its 25% or more subsidiaries
- how the acquisition is to be financed
- a copy of any agreement(s) providing for the acquisition of the securities, and
- a general description of the business to be undertaken by the applicant following the acquisition.

In relation to section 13(1)(c) (purchase of assets), the OIO requires the following information for the acquisition, or for each transaction if the acquisition is structured using a series of related or linked transactions:

- the nature of the property being acquired, for example all of the assets and the undertakings of the milk powder business of ABC Milk Company Ltd.
- the total consideration (inclusive of GST if any)
- how the acquisition is to be financed
- a copy of any agreement(s) providing for the acquisition of the property, and
- a general description of the business to be undertaken by the applicant following the acquisition.

In relation to section 13(1)(b) (establishment of a business), please contact the OIO for guidance as to the information required.

Statement on sensitive land

Where a significant business assets or fishing quota application does not include sensitive land, the OIO requires an unfettered written statement that the acquisition does not involve any land that is sensitive under Schedule 1 of the Act. See the OIO resource on Sensitive Land for further information.

Fishing quota applications

Please contact the OIO for further information about applying for consent to acquire fishing quota.

See the OIO resource “How to Apply for Consent” for general information about presenting an application.

Delegation and fees

An application will not be processed unless it is accompanied by the correct fee. The fee is payable before consent is granted or declined. The OIO cannot refund fees. Check the current schedule of fees on the OIO website.

The Minister of Finance has delegated to the regulator (the OIO) the power to make all decisions under the Act on whether or not to grant consent to an overseas investment in significant business assets.

The Minister of Finance and the Minister of Fisheries decide fishing quota applications.

See the current Ministerial designation and delegation letter for more information.

Further information

Visit the OIO website at www.lin.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.

If you require further information, please contact the OIO.

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