

Investor Test Criteria

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There are no recent updates to this resource.

Introduction

All applications for consent are tested against four core investor criteria:

- business experience and acumen
- financial commitment
- good character, and
- absence of ineligible individual(s) for exemptions or permits under the Immigration Act 1987.

The OIO informally refers to these collective criteria as the “investor test”.

The investor test for fishing quota, sensitive land and significant business assets is effectively the same.

Legislation

The legislation references for the investor test are:

- Section 16 (sensitive land applications)
- Section 18 (significant business asset applications)
- Section 57 G of the Fisheries Act (fishing quota applications).

See section 19 and 57 I of the Fisheries Act 1996 for more information about how the good character and immigration criteria are applied.

Business experience and acumen

The business experience and acumen criterion provides that the individual(s) must have practical knowledge and abilities **relevant** to the overseas investment.

The OIO is looking for evidence that demonstrates and explains:

- substantial experience in the same industry and type of investment
- a track record of successful business activity that demonstrates generic business experience and acumen
- that sufficient “nouse” exists to oversee local managers engaged to undertake the investment on the investor’s behalf
- how the background, qualifications and work experience of the individuals are relevant to the proposed overseas investment.

Evidence required by the OIO may include:

- if the relevant overseas person is an individual, a curriculum vitae detailing the individual's background, qualifications and work experience
- if the relevant overseas person is not an individual, a curriculum vitae detailing the background, qualifications and work experience of the individuals with control of the relevant overseas person
- if a manager or consultant is to be or has been contracted to manage the overseas investment in sensitive land, a curriculum vitae detailing the manager or consultant's background, qualifications and work experience and, if available, a copy of any contract entered into between the overseas person and the manager or consultant.

The level of business experience and acumen required to satisfy this condition may vary according to the nature of the investment subject to the OIO application. For instance, individuals planning to purchase lifestyle or residential properties may need only demonstrate fairly generic business expertise and acumen to satisfy this condition. Refer to the OIO’s resource Lifestyle Properties and New Migrants.

Demonstrated financial commitment

The OIO requires evidence of the relevant overseas person having demonstrated financial commitment to the proposed overseas investment in sensitive land. Evidence may include:

- setting aside or committing resources to the investment
- securing an advance or loan to undertake the investment
- having already funded aspects of the investment, for example, the overseas person has already acquired part of the business assets or has already undergone an expansion into New Zealand
- having paid the deposit towards the purchase or entered into a contract for sale and purchase.

Having access to capital to make investments does not demonstrate a financial commitment to a particular investment. The OIO requires specific evidence that a particular part of the capital has been set aside for the investment, or that the particular capital required has been called up.

Good character

Although the Act does not define good character, the test for good character is detailed in section 19(1) (for sensitive land and significant business assets applications) and section 571(1) of the Fisheries Act (for fishing quota applications).

The relevant Ministers must take into account:

- offences or contraventions of the law by the individual, or by any person in which the individual has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not), and
- any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

The OIO considers that good character goes beyond the concept of criminal convictions. The existence of criminal convictions is merely one factor in determining a person's character.

“Character” denotes both moral factors and the reputation of the person concerned. Allegations made which suggest that a person has engaged in activities which, although not giving rise to a criminal conviction, must be regarded by any reasonable person as having an adverse impact on the person's good standing in the community, are also relevant.

While the legislation is framed in terms of individuals, the activities of entities over which those individuals exercise substantive control may reflect on the character of those individuals.

Minor offences

The existence of minor offences (such as traffic infringements) will not necessarily result in a determination that an individual is not of good character. For these purposes, minor offences include:

- infringement offences, and
- offences for which imprisonment is not an available penalty.

Accordingly, there is generally no requirement to disclose this information unless there is a pattern of minor offending that might indicate a non law-abiding nature.

Relationship to the investment

The nature of the investment may influence whether a particular person is of good character. For example, a person with fishing convictions may be of good character for the purposes of an investment in a commercial property but may not be of good character for the purposes of an investment in fishing quota. Conversely, good character must be considered in the context of the relevant Act (for example under the Fisheries Act, allegations that relate to the fishing practices of an individual or entities controlled by an individual are relevant).

The closer the relationship between the investment and the “character issue” the more likely that issue will compromise the individual's character.

Ineligible individual(s) under the Immigration Act

This part of the investor test provides that the relevant overseas person, or the individual(s) with control of the relevant overseas person, must not be individual(s) of the kind referred to in section 7(1) of the Immigration Act.

Section 7(1) of the Immigration Act establishes the classes of person who are ineligible for exemptions or permits. These classes relate to persons who, broadly:

- have been sentenced to imprisonment:
 - for more than 5 years, or
 - for more than 12 months in the previous 10 years
- have been the subject of a removal order
- have been deported
- have been involved in terrorism or likely to be involved in terrorism
- are likely to commit drug offences, or
- constitute a danger to the public interest or order of New Zealand.

Section 19(2) (for sensitive land and significant business assets applications) and section 571(2) of the Fisheries Act (fishing quota applications) provides guidance on applying the immigration criteria. Note that section 130(1) of the Immigration Act allows the Minister of Immigration to make a special direction allowing an exemption or permit to be granted despite the applicant being a member of a class established by section 7(1) of that Act.

Statutory declaration

A statutory declaration will usually be required with each application that evidences the good character and immigration criteria. See the “How to Prepare Statutory Declarations for the OIO” publication for further information and example text.

Apply for consent

Further factors may need to be satisfied before consent can be granted, depending on the nature of the investment.

For further information on how to apply, see the OIO publications on:

- Sensitive land
- Lifestyle Properties and New Migrants
- Significant Business Assets/Fishing Quota
- How to Apply for Consent.

Further information

Visit the OIO website at 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.

If you require further information, please contact the OIO.

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