National Security and Public Order

Assessment of overseas investment into New Zealand

OVERSEAS INVESTMENT OFFICE | Toitū Te Whenua Land Information New Zealand

Purpose of NSPO

The National Security and Public Order (NSPO) regime allows New Zealand's government to assess whether an overseas investment poses a significant risk to New Zealand's national security or public order. Under the regime, Ministers can assess and manage risks posed by overseas investments that would not usually be subject to OIO screening. There is a high threshold for taking risk management action.

Role of OIO

The Overseas Investment Office (OIO), part of Toitū Te Whenua (Land Information New Zealand), regulates overseas investment in New Zealand's sensitive land, significant business assets, and fishing quota. The OIO assesses notifications and applications for consent under the Overseas Investment Act 2005. It also monitors and enforces compliance with the Act.

How it works

What kinds of investments are covered?

The NSPO regime applies to investments in 'Strategically Important Businesses' (SIBs) or their assets. Notifications are mandatory for some SIBs and voluntary for others.

The NSPO regime applies to:

- **any** transaction of **any** value to acquire an initial interest in a SIB,
- an increase in an existing interest in a SIB that reaches a threshold of 25%, 50%, 75%, or 100%, involves a different class of securities, or gives disproportionate access or control,
- buying assets if the buyer will become a SIB in their own right.

A notification is not required for obtaining less than 10% in a publicly listed entity's shares (where there is not disproportionate access or control), or 25% or less of a media business or its assets.

It is important to know whether the investment you are considering involves a SIB. If you are uncertain we recommend you seek expert legal advice.

Make a notification

NSPO notifications are made online on the Toitū Te Whenua website – linz.govt.nz.

There is no fee for making a notification.

Powers under NSPO

Under NSPO the OIO can call in transactions that do not normally require overseas investment consent to assess potential risk to New Zealand's national security or public order.

If the investment is likely to give rise to significant risk to national security or public order Ministers have the power to:

- block investments
- impose conditions
- order the disposal of assets.

Types of Strategically Important Business and notification requirements

Notification under the NSPO regime can be mandatory or voluntary for different types of Strategically Important Business.

Mandatory notifications

It is mandatory to notify the OIO of investments into a business that:

- researches, develops, produces, or maintains military or dual-use technology

OR

- is a critical direct supplier to the New Zealand Defence Force or an intelligence and security agency

Voluntary notifications

Notifications are voluntary for investments into a business that is:

- involved in ports OR
- involved in airports OR
- involved in infrastructure for drinking water, wastewater or stormwater
- involved in electricity generation or distribution systems OR
- telecommunications infrastructure or services OR
- a registered bank or systemically important financial institution
- involved in financial market infrastructure OR
- a media business with significant impact OR
- develops, produces, maintains or has access to sensitive information

Advantage of voluntary notification

Voluntary notification is not required but is recommended.

If a voluntary notification is made, and the OIO issues a Direction Order, the investment will have 'safe harbour' and will not be scrutinised again by the OIO.

If an investor chooses not to notify the investment may be scrutinised at any later point.

Timeframes

- Mandatory notifications must be submitted before the investment transaction is given effect to.
- Voluntary notifications can be made either before or up to six months after the investment transaction is given effect to.
- After becoming aware of a transaction, the OIO makes an initial assessment, usually within 15 working days.
- If the initial assessment shows that an investment could pose a significant risk, a full assessment will be completed and referred to the Minister of Finance for decision. Decisions must be made within 55 days, with a possible extension of up to 30 days.

Further information

Further information on the overseas investment regime, the NSPO system and the list of Critical Direct Suppliers is available on the Toitū Te Whenua website at linz.govt.nz

The list of strategic goods, software and technology which come under the definition of 'military and dual-use technology' is available on the Ministry of Foreign Affairs and Trade website at mfat.govt.nz

The Overseas Investment Act 2005 and Overseas Investment Regulations 2005 are available online at legislation.govt.nz