Overview of the Overseas Investment Act

Regulating overseas investment into New Zealand

OVERSEAS INVESTMENT OFFICE

Toitū Te Whenua Land Information New Zealand

What's changing and why

Reform of New Zealand's overseas investment law supports overseas investment into New Zealand by simplifying the Overseas Investment Act 2005 and reducing the screening of low-risk transactions. The reforms also ensure that the right checks and balances are in place to protect New Zealand's economy, communities, and national security.

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.

Key sources

Overseas Investment Act 2005

The Act governs overseas investment in sensitive assets in New Zealand. The Act sets out criteria for applications for consent for overseas investments, notification of transactions, and gives powers to impose conditions on investments and manage risks.

Overseas Investment Regulations 2005

The Regulations provide detail on how the Act is applied. The Regulations set out processes, procedures, definitions, and thresholds, and describe certain types of investors and investments that are exempt from the Act.

Ministerial Directive Letters

Directive Letters set out the Government of the day's priorities and policy approach to regulating overseas investment into New Zealand and guide how the OIO considers applications and focuses assessment effort.

Further information

More information on the overseas investment regime, and copies of the current Ministerial Directive Letters and delegation of functions, duties and powers are on the Toitū Te Whenua website: linz.govt.nz/overseas-investment

The Overseas Investment Act 2005 and Overseas Investment Regulations 2005 are available on the New Zealand legislation website legislation.govt.nz.

More information on New Zealand's foreign investment policy and national interest guidance is available on the Treasury website treasury.govt.nz.

Changes to the Act

Removing lower-risk transactions

- Adjust the definition of overseas person.
- Introduce new exemptions.
- Increase the threshold for screening of leases.
- Refine scope of the national interest test.
- Allow incremental investments within control thresholds.

Simplifying investor requirements

- New investor test.
- New repeat and standalone investor tests.
- Consolidate factors in the benefits test.
- Simplify the counterfactual requirement.

Managing higher risk investments

- Refine and focus scope of the national interest test.
- New National Security and Public Order notification regime allows proactive assessment of investments in particular higher-risk sectors and industries.
- Temporary emergency notification powers.

Increasing stewardship responsibilities

- Stronger enforcement and monitoring powers.
- Increased recognition in the benefits test for kaitiakitanga, sites of sensitivity to Māori and access to those sites.
- Tighter requirements for farm land to be advertised for sale within New Zealand first.
- New requirements for fresh and seawater areas (previously special land).
- Statutory timeframes for overseas investment decision processes.

Overseas Investment Law Reform Timeline

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16 June 2020

New functions

New national interest assessment Applied to transactions requiring notification under the Temporary Emergency Notification Regime if that application involved a strategically important asset, an overseas government investor, or is an area of specific national interest.

Stronger enforcement powers The OIO given stronger enforcement powers to act against overseas investors who do not comply, including seeking injunctions, enforceable undertakings, and increased penalties.

Who the Act applies to

Simplified screening changes so that some low-risk transactions no longer need consent to proceed, and reducing compliance requirements for listed companies and investments with adjoining sensitive land.

Remove Remove lower-risk transactions

Simplify Simplifying investor requirements

Manage Managing higher risk investments

Stewardship Increasing stewardship responsibilities

22 March 2021

How we assess

New investor test A new investor test focusing on the character and capability of investors, made up of 12 factors that include assessing criminal convictions, penalties for tax evasion, corporate fines, and civil penalties.

The new test applies to both individuals with control of the investment, and the corporate entities that are making the investment.

New Zealanders are now not subject to the investor test.

7 June 2021

New function

National Security and Public Order notification regime This regime enables the review of investments in strategically important businesses (SIBs) to manage investments that may pose a significant risk to New Zealand's national security or public order.

The regime applies to investments that do not otherwise require consent.

Notification of an investment is mandatory for some SIBs and voluntary for others. This system replaced the temporary emergency notification regime.

5 July 2021

Who the Act applies to

Incremental increases in ownership or control of sensitive land that do not cross thresholds (25%, 50%, 75% or 100%) will no longer require consent.

Companies that are both **New Zealand-incorporated and New Zealand-listed** with shares that are widely held less likely to be classed as overseas persons.

Clarify when a **managed investment scheme** will be classed as an overseas person.

Increase in consent threshold for **leases** of sensitive land from 3 to 10 years.

New exemptions are available for lower risk transactions.

National interest test exemption for low-risk overseas government investors.

Major Banks become strategically important businesses.

What to do differently

Repeat investors who have satisfied the investor test do not need to satisfy the test again unless there is a change in circumstances.

A new **stand-alone investor test** can be used to assess the suitability of the individuals and entities that make up an investor or a wider investor group before they make an investment application.

Significant Business Applications must now include **tax information** for Inland Revenue.

Fees have been set for the new exemptions and approvals that come into effect.

Refine scope of the national interest assessment

Increase threshold for transactions caught from over 10% to over 25% ownership by an overseas person.

Unrelated overseas governments will not be aggregated for assessing if the threshold is met.

Passive overseas government investors may be eligible for an exemption.

Focusing on the use of the assets being invested in, not just whether the owner is a strategically important business.

24 November 2021

How we assess

Statutory timeframes for decision making The law will prescribe timeframes within which decisions on applications and notifications are made. Timeframes will include time spent seeking information from investors and third parties and will vary according to the investment pathway.

Benefit to New Zealand test simplified to consider 7 broad factors, rather than 21 specific factors.

The changes include protecting sites of significance to Māori, higher benefit threshold for farm land and standardised benefit test for fisheries investments.

The counterfactual requirement is simplified to compare the benefit of investment to the status-quo.

What to do differently

Farm land advertising requirements are strengthened with amended provisions relating to exemptions and alternative forms of advertising.

Investors are required to offer **fresh or seawater areas** (formerly 'special land') to the Crown if acquiring a freehold interest. The Crown must acquire this land unless an exception applies.