

What is an “associate” of an overseas person?

Overview

- The definition of associate prevents an overseas person from circumventing the Act by having a third party (normally a New Zealander) buying on their behalf
- The focus must be on the *substance* of the transaction. Does the transaction, in substance, give the overseas person ownership or control of the assets?
- Many situations will meet one or more of the limbs of the definition for general purposes, but not necessarily “in relation to an overseas investment”, having regard for the substance of the arrangement. Consent will not be required in these cases.
- LINZ is aware that the broad definition can cause some investors or advisors to take a conservative/risk averse position. While caution is justified given the significant penalties under the Act, an overly cautious approach may deprive New Zealand of the benefit of legitimate business arrangements. This guidance aims to help investors understand LINZ’s approach to applying the definition.

Background

The Overseas Investment Act 2005 (**Act**) requires that both overseas persons and associates of overseas persons get consent before giving effect to certain transactions. The “associate” is a person, usually a New Zealander, who acts on behalf of the overseas person, and the requirement for the associate to obtain consent serves to prevent a person from using a third party such as an agent, nominee, co-venturer, friend or family member to circumvent the Act.

Whether a person is an associate or not is a question of fact. Like so many questions of fact, this can lead to uncertainty. Given the penalties that could apply if this assessment is made incorrectly, LINZ considers it appropriate to provide guidance on how it approaches the issue.

The statutory definition

The definition of associate is (at least in theory) very broad. The four primary limbs overlap. It isn’t uncommon for someone to meet all four limbs.

- Direction/control
- Agents, trustees, and representatives
- Acting jointly or in concert
- Arrangements and understandings

The definition of “associate” covers two scenarios:

- being an associate “in relation to an overseas investment”, and
- being an associate “in relation to... any other matter”.

In some cases, the Act specifically requires the person to be an associate “in relation to an overseas investment”. While the scenario of “...any other matter...” is broad, when used in an anti-avoidance sense, LINZ considers that the person will also generally need to be an associate “in relation to an overseas investment”.

8 Meaning of associate and associated land

- (1) In this Act, a person (A) is an associate of another person (B) in relation to an overseas investment or any other matter if—
 - (a) A is controlled by B or is subject to B's direction:
 - (b) A is B's agent, trustee, or representative, or acts in any way on behalf of B, or is subject to B's direction, control, or influence, in relation to the overseas investment or the other matter:
 - (c) A acts jointly or in concert with B in relation to the overseas investment or the other matter:
 - (d) A participates in the overseas investment or the other matter as a consequence of any arrangement or understanding with B:
 - (e) A would come within any of paragraphs (a) to (d) if the reference to B in any of those paragraphs were instead a reference to another associate of B.
- (2) If A is an associate of B, B is also an associate of A.
- (3) For the purposes of subsection (1), it does not matter whether the control, direction, power, influence, arrangement, or other relationship between A and B is—
 - (a) direct or indirect:
 - (b) general or specific:
 - (c) legally enforceable or not.

Key case law

In *UBNZ Assets Holdings Ltd v Plateau Farms*¹, UBNZ sought a declaration that a certain structure would not result in UBNZ and another company being associates of one another.

The case involved the purchase of 16 farm properties by UBNZ, and a concern that UBNZ was ultimately buying them on behalf of a Hong Kong listed company, Natural Dairy (NZ) Holdings Limited.

LINZ had previously argued that UBNZ was an associate of Natural Dairy and UBNZ had argued that it was not. UBNZ ultimately sought a declaration that, if it altered the structure of a proposed transaction, it would not be an associate of Natural Dairy.

Harrison J acknowledged the apparent purpose of the definition: to prevent people from circumventing the Act. This purpose needs to be considered when applying the concept of "associate". Harrison J said of the Act:

It defines the "associate" of an overseas person expansively, for the apparent purpose of preventing such a person from circumventing its provisions by operating through the medium of a third party such as an agent, nominee or co-venturer.

The judgment acknowledges the need to focus on the *substance* of the transaction.² In that case, Harrison J found that the substance of the transaction involved Natural Dairy acquiring 'substantive ownership' of the 16 farms through its ability to exercise control over UBNZ.

¹ *UBNZ Assets Holdings Ltd v Plateau Farms Ltd*, CIV-2010-404-3263

² *UBNZ* at [27]

Finally, counsel for UBNZ accepted that UBNZ and Natural Dairy were associates for “general purposes”, but not “in relation to an overseas investment”. While the Court does not expressly endorse this distinction, it is perhaps a useful way to differentiate between circumstances where the definition of “associate” is triggered and circumstances where it is not.

LINZ has interpreted the *UBNZ* judgment as narrowing the “associate” definition somewhat. While acknowledging the expansive nature of the definition, Harrison J also clearly identified the purpose of the definition and the need to focus on the substance of a transaction.

Key points from the judgment

- The definition of “associate” prevents an overseas person from circumventing the Act by having a third party (normally a New Zealander) buying on their behalf.
- You must focus on the substance of the transaction. Does the transaction, in substance, give the overseas person ownership or control of the assets?
- It may be useful to distinguish between circumstances where two people are associates for “general purposes” and circumstances where two people are associates “in relation to an overseas investment”.

“Associates” are a common cause of breaches of the Act...

LINZ regularly engages with people who have contravened the rules requiring “associates” to obtain consent. These incidents generally arise from:

- a desire on the part of the overseas person to not comply with the rules, or at least delay compliance with the rules, generally for a commercial advantage, and
- poor advice from a lawyer or other professional, generally proposing a scheme to avoid the overseas investment rules involving an associate, or enabling such a scheme by setting up the relevant ownership structures and preparing the relevant documents.

LINZ will generally take swift and firm action against the associate (generally a New Zealander), the overseas person and, where appropriate, the lawyer or other professional advisor involved. The most common response will be to seek civil penalties for a breach of s 42 or 43 of the Act.

...but a risk averse position may deter legitimate business arrangements

However LINZ is aware that applying a broad definition can cause some investors or advisors to take a conservative/risk averse position.. LINZ has heard of concern from investors about shareholders’ agreements, certain provisions in company constitutions, leasing arrangements, and lending transactions. In many such cases, LINZ has taken a view that there was no associate relationship.

Each case must be considered on its merits. With that in mind, the purpose of this guidance is to help investors, lawyers and other professionals better judge whether a particular arrangement may give rise to an associate relationship.

Common questions asked by LINZ when considering whether an associate relationship exists include:

- Has the overseas person obtained control of the asset?
- Does the overseas person stand to benefit financially from the transaction?
- Has the transaction caused a financial risk for the overseas person?
- Would the investment have occurred but for the involvement of the overseas person?
- Are the arrangements relating to the transaction on entirely “normal” or “arm’s length” terms, having regard for the circumstances?

LINZ has also found that two persons are more likely to be associates of one another “in relation to an overseas investment” if more than one (often all) of the limbs of the definition are met.

Components of the definition

Control or subject to direction

Definition of 'associate'	
8	Meaning of associate and associated land
(1)	In this Act, a person (A) is an associate of another person (B) in relation to an overseas investment or any other matter if—
(a)	A is controlled by B or is subject to B's direction:
...	
...	

Neither “control” nor “direction” are defined in the Act, and these terms take their ordinary meanings.

LINZ generally considers that one person will direct or control another when they can reliably use their influence to bring about or prevent an outcome. There is no requirement for the direction or control to be legally enforceable.

For example, an employer might well be able to exert influence over an employee, or a lender may be able to exert influence over a borrower so that the employer or lender can retain control of the employee or borrower’s asset, when that asset is (in substance) owned by the employer or lender. Similar relationships might exist between family members, business partners (especially where one is senior to the other), and professional advisors and their clients (especially where the advisor is heavily reliant on the client’s business).

Against that, a genuinely arm’s-length relationship between an employer/employee or lender/borrower, between business partners, or between a professional advisor and their clients won’t make either party an associate of the other.

Agent, trustee, or representative, acts in any way on behalf of, or is subject to direction, control, or influence, in relation to the overseas investment or the other matter:

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...	
(b)	A is B's agent, trustee, or representative, or acts in any way on behalf of B, or is subject to B's direction, control, or influence, in relation to the overseas investment or the other matter:
...	
...	

The concepts of “agent” and “trustee” are well established and take their ordinary meanings. Amongst other things, LINZ considers that one person is acting on behalf of another when they are acting on the other person’s instructions, or acting under a power of attorney (whether directed by the other person or not).

Influence is similar to direction and control (see above), albeit by more indirect means. Acts jointly or in concert in relation to the overseas investment or the other matter

Definition of 'associate'

8 Meaning of associate and associated land

- (1) In this Act, a person (A) is an associate of another person (B) in relation to an overseas investment or any other matter if—

...

- (c) A acts jointly or in concert with B in relation to the overseas investment or the other matter:

...

...

LINZ considers that for two people to act jointly or in concert with one another, there must generally be an understanding or arrangement between parties as to a common purpose or object, although it is not essential that the parties are committed to the common purpose or bound to support it.³

The purpose or object in question must be "in relation to the overseas investment".

There must also be some communication between the parties and the conduct of the parties needs to be more than a mere coincidence of separate acts occurring at the same time.⁴

Participates in the overseas investment or the other matter as a consequence of any arrangement or understanding

Definition of 'associate'

8 Meaning of associate and associated land

- (1) In this Act, a person (A) is an associate of another person (B) in relation to an overseas investment or any other matter if—

...

- (d) A participates in the overseas investment or the other matter as a consequence of any arrangement or understanding with B:

...

...

The concepts of arrangement and understanding are broad and can encompass a wide range of behaviour. The effect being that an associate relationship may be present in circumstances where there is no legally enforceable obligation between parties or any documentation outlining an agreement or understanding.

³ *Bank of Western Australia Ltd v Ocean Trawlers Pty Ltd* (1995) 13 WAR 407.

⁴ *Adsteam Building Industries Pty. Limited v The Queensland Cement and Lime Company Limited (No. 4)* [1985] 1 Qd R 127 at 132.

For an arrangement or understanding to exist, there will generally be an element of reciprocal commitment or consensual dealing (even if it is not legally enforceable).⁵ In essence, there must be a meeting of the minds. There must be more than a mere 'hope' or 'expectation' that each party will act in accordance with its terms. While there must be some communication between the parties what is said may not amount to offer and acceptance for the purposes of the law of contract.⁶

An "understanding" has been held to be something broader than an "arrangement". An "understanding" can also be tacit in the sense that it can be arrived at and not made by the parties. This could be done either by words or acts, signifying some kind of intention to act in a particular way in relation to a matter. However, there must still be some meeting of the minds in order for it to be a consensual dealing.⁷

An associate relationship is bidirectional

Definition of 'associate'	
8	Meaning of associate and associated land
...	
(2)	If A is an associate of B, B is also an associate of A.
...	

The associate relationship is normally approached from the perspective of an overseas person being in a position of power or influence over the associate (normally a New Zealander). This is implicit in the notion of being an "associate of an overseas person", and the anti-avoidance purpose of the definition.

However, strictly, the relationship is bi-directional and a New Zealander who exerts control over an overseas person might still be an "associate of an overseas person". This will generally be most relevant when tracing control from one person (A) to another (B) and on to a third person (C) or fourth person (D), where one or more of the persons "in the middle" is a New Zealander.

While a New Zealander who exerts control over an overseas person might technically be an "associate of an overseas person", provided the overseas person is not acquiring ownership or control of the relevant assets LINZ would take the view they are not associates "in relation to an overseas investment".⁸

Nature of the relationship

Definition of 'associate'	
8	Meaning of associate and associated land
...	
(3)	For the purposes of subsection (1), it does not matter whether the control, direction, power, influence, arrangement, or other relationship between A and B is—
(a)	direct or indirect:
(b)	general or specific:
(c)	legally enforceable or not.

⁵ *Australian Competition and Consumer Commission v Channel Seven Brisbane Pty Ltd* [2009] HCA 19 at [48].

⁶ *Australian Competition and Consumer Commissioner v Leahy Petroleum Pty Ltd* (2007) 160 FCR 321 at [26].

⁷ *Australian Competition and Consumer Commissioner v Leahy Petroleum Pty Ltd* at [28].

⁸ This was essentially the situation in the *UBNZ* case, where UBNZ (a New Zealand company with New Zealand ownership) was an associate of Natural Dairy (an overseas person). However, individuals with control of UBNZ also exerted influence over Natural Dairy.

Section 8(3) reinforces the 'anti-avoidance' purpose of the definition, by making clear that the control, direction, power, influence, arrangement, or other relationship can be direct or indirect, general or specific, legally enforceable or not. Essentially, the definition looks at whether the control (etc) exists *in fact*.

Examples of indirect, general and un-enforceable types of control include:

- the ability of family members to exert influence on other family members,
- the ability of an individual (A) to exert commercial influence on another (B) for A's benefit, for example an employer/employee and client/professional, and
- a contractual provision that, despite being clear, may not be legally enforceable (but may nonetheless be respected by the parties).

Evidence of the relationship

Both circumstantial and direct evidence is appropriate to determine whether an associate relationship exists.

This means that in a situation where there is a lack of documentation or evidence directly proving some kind of relationship or understanding between the parties; an associate relationship can still be inferred from the overall circumstances present in the situation. A lack of evidence may also make it difficult to dispel such an inference.

Maintaining appropriate contemporary evidence of a transaction and the relationship between the parties will help should LINZ investigate the transaction later.

Recent enforcement action

Case	Summary	Link
<i>The Chief Executive of Land Information New Zealand v Hong & Ke</i>	A New Zealand company acquired land on behalf of an "investment partnership" involving two overseas investors.	[2019] NZHC 1561
<i>The Chief Executive of Land Information New Zealand v Carbon Conscious New Zealand Limited</i>	A New Zealand company acquired land on behalf of an Australian company in order to avoid transaction delays.	[2016] NZHC 558
<i>The Chief Executive of Land Information New Zealand v Clevedon-Kawakawa Road Limited</i>	CKRL was 76% owned by a New Zealander and 24% owned by an overseas person. At all material times CKRL was under the direction and control of another overseas person (the spouse of the 24% shareholder).	[2021] NZHC 1831
<i>The Chief Executive of Land Information New Zealand v HK Search Limited</i>	A New Zealand company associated with the investor's lawyer acquired residential land on behalf of a South Korean investor in order to avoid the need for consent.	[2022] NZHC 444 : Civil judgment against overseas person and associates
<i>The Chief Executive of Land Information New Zealand v Andrew James Jarvis and ors</i>	On a lawyer's advice, two New Zealand companies acquired land on behalf of overseas investors.	[2025] NZHC 212 : Judgment against lawyer personally [2024] NZHC 3010 : Judgment against investors
Tresorelle (NZ) Limited	76% of the shares in Tresorelle were held by a New Zealand on behalf of an overseas person. The shares were later transferred to another New Zealander on the same basis.	Enforceable undertaking

Case	Summary	Link
JL, JH and QL	JH and JL acquired equitable interests in residential land as associates of QL, an overseas person, without first obtaining consent under the Act.	Enforceable undertaking
<i>Aviation School of New Zealand Limited</i>	Residential land was acquired by a New Zealand owned company with a view to holding the land until an overseas person was able to secure consent.	Enforceable undertaking
New Forests Asset Management Pty Limited, Wairarapa Estate Limited and Forest Growth Holdings Limited	Forest Growth Holdings Limited acquired several small forestry blocks for the purpose of selling those blocks to Wairarapa Estate Limited once there were sufficient blocks to justify an application for consent. The purchases were funded by Wairarapa Estate Limited acquiring a forestry right over each block for approximately the purchase price.	Settlement agreement : New Forests Asset Management Pty Limited and Wairarapa Estate Limited Settlement agreement : Forest Growth Holdings Limited

Case studies

Example 1 – Warehousing transaction

A wishes to purchase sensitive land, but the vendor is unwilling to sell to an overseas person as they fear this may delay the transaction.

A proposes that their New Zealand friend, B, acquire the land instead. A would lend money to B to fund the transaction. A would then agree to buy the land from B, with the transaction conditional upon consent being required. If consent was not forthcoming, B would sell the land and use the proceeds to repay A.

Discussion

B is an associate of an overseas person (A) in relation to an overseas investment (both A's initial acquisition of a form of ownership and control over the property and A's later outright purchase of the property). As an associate of an overseas person, B requires consent to give effect to the purchase. B will commit an offence against s 42 if B gives effect to the transaction without consent, and will likely also commit an offence against s 43 as well.

It's common for investors (in this case, B) to argue that they are genuinely taking on all of the risk, and that any loss would accrue to B if the sale to A didn't proceed. While this may be so, this doesn't change the fact that the purpose of the transaction was to facilitate the sale to A, and so A and B will be associates "in relation to an overseas investment" regardless of what might happen if the sale to A doesn't occur.

Example 2 – "Plan B"

A is an overseas-owned property developer. A wished to purchase sensitive land, but subsequently learned that consent would not be forthcoming. One of A's New Zealand directors wishes to take up the opportunity however, and proposes to buy the land instead.

In the circumstances the director's lawyer is concerned that the director might be deemed an associate of A, given A's prior interest in the property.

Discussion

In these circumstances, there is a natural concern that the New Zealand director is an associate of A.

However, whether a "plan B" transaction like this results in an associate relationship depends on the facts. The key

Example 2 – “Plan B”

is whether the “plan B” is genuinely an entirely separate investment that makes sense on its own and doesn’t reflect an undisclosed arrangement between A and the director, and is not intended to confer on A the benefit of the investment in some way.

Concerning facts would include A participating in the transaction by lending to the director or by taking a minority equity interest, or A committing to leasing the property (especially on favourable terms, including terms linked to the lending). Contrast this scenario with examples 6A and 6B.

Example 3 – trust for dubious purpose gives access to holiday home

A, an overseas person, wishes to acquire a holiday home in Queenstown. The land in question is sensitive land so consent is required. However A’s investment is unlikely to meet the criteria for consent, and A seeks advice from a local lawyer (L).

L recommends that A agrees to the following arrangements:

- An employee of L will settle a trust (T) for an apparently charitable purpose
- L will be the sole trustee
- A will lend the funds required for T to acquire the land, secured by mortgage
- The loan is on commercial terms, except that payment of interest and repayment of capital will be deferred for so long as A is allowed to use the land as a holiday home.

Discussion

L and T will both be associates of A. L and T will commit an offence against s 42 if they purchase the land without consent.

The non-standard financial arrangements in this case shed significant light on the true nature of the transaction. In this case, the primary purpose of the purchase by T is to facilitate A’s private use of the land. The creation of a trust (despite its apparent charitable purposes) is little more than a sham.

Example 4 – lending to a family member

A and B, both New Zealanders, are buying their first home. A’s parents (who are overseas persons) will lend or gift money to A and B to help them buy the home.

Discussion

Whether consent is required depends on the wider facts.

- **Genuine lending:** If A’s parents are genuinely gifting or lending the money, then A and B will not be associates of A’s parents and will not require consent. A’s parents will likely be able to take mortgage security over the home in reliance on the exemption in regulation 41.
- **Ploy to avoid consent:** If A’s parents are not genuinely gifting or lending the money, and A and B are ‘fronting’ the transaction to allow A’s parents to secure land in New Zealand without consent, then A and B will be associates of A’s parents and will require consent to acquire the home. This may be the case if the home is to be rented and the revenue is returned to A’s parents, or if the expectation is that any capital gain will accrue to A’s parents.

It can be difficult to distinguish genuine lending, especially in the circumstances of a family arrangement where loan terms may not resemble those from a bank. Other documents that clearly record the wider nature of the arrangement between the parties may help to evidence the relationship if required.

Example 5A– shareholders’ agreement – establishing a business together

A (an overseas person), along with B, C, D and E (all New Zealanders) have established a company (LandCo) to acquire land. Each has a 20% shareholding in LandCo. They also have a shareholders’ agreement that sets out certain matters including capital contributions, business plan, and rules around the appointment of directors.

Discussion

Provided that A, B, C, D and E are genuinely investing in their own right and for their own purposes, then while all could fairly be described as being associates for “general purposes” they will not be associates “in relation to an overseas investment”. Equally, LandCo will not be an associate of A “in relation to an overseas investment”.

However, if B’s shareholding was a ‘front’ for A, then A and B *would* be associates “in relation to an overseas investment”, and LINZ would consider LandCo to also be an associate of A. LandCo would require consent

Example 5B – shareholders’ agreement – changing the ownership of the business

A (an overseas person), along with B, C, D and E (all New Zealanders) are each 20% shareholders in a company. They have a shareholders’ agreement that sets out certain matters including capital contributions, a general business plan, and rules around the appointment of directors.

E wishes to sell their interest to F (a New Zealander). F’s lawyer is concerned that F will be an associate of an overseas person (A) because F would not be investing without the benefit of the shareholders’ agreement, and this could be said to be F participating in the share purchase as a consequence of any arrangement or understanding with A.

Discussion

Provided that F was investing in his own right, for his own purposes, then A and F could fairly be described as being associates for “general purposes”. This association for general purposes would result from F investing as a consequence of an arrangement or understanding with A (the shareholders’ agreement). However they are not associates “in relation to an overseas investment” as the substance of the purchase by F is neither an overseas investment nor will the purchase give rise to an overseas investment in the future.

However, if F was buying as a ‘front’ for A (that is, to allow A to increase their shareholding), then A and F *would* be associates “in relation to an overseas investment”. In that case, F will likely be acting “... on behalf of...” A, while also acting jointly or in concert with A and investing as a consequence of an arrangement or understanding with A.

Example 6A – sale and leaseback

A is an overseas owned retailer. A has operated a successful retail business from several parcels of land that it has owned for many years. On tax advice, A proposes to sell the land to a New Zealand investor (B) and lease the land back. B is a long-term property investor with an existing exposure to the retail sector, and considers the ownership of the property to be a good investment.

However, B’s lawyer has expressed concern that B may be an associate of A as B would not be buying the land without A’s commitment to a long-term lease.

Discussion

A and B are likely to be associated for general purposes but not “in relation to an overseas investment”. This association for general purposes would result from F investing as a consequence of an arrangement or understanding with A (the lease arrangement).

In this case, A’s clear intention is to dispose of the assets concerned, B’s intention is genuinely to own them for its own purposes, and it’s reasonable to infer that the lease arrangement is a genuine one.

The result would likely be the same whether B was a long-term property investor or not. However, B’s status as an existing investor with exposure to the retail sector makes it easier to accept that B is investing in its own right. If B was a *new* investor, then greater caution would be required to ensure that A and B were genuinely acting independently of one another.

Note that A may still need consent to lease the land from B

Example 6B – purchase, develop, lease

A is an overseas-owned retailer that wishes to establish a new retail site on land that it has identified. A has undertaken due diligence and negotiated general terms of sale with the owner (including how the site would be developed consistently with the owner's neighbouring sites).

A approaches B, a well-known property investor, to explore whether B might wish to buy the site, develop the retail building, and then enter into a long-term lease with A. B has developed a number of other sites for both A and other retailers. B funds the purchase and development from its own funds and from borrowing from commercial lenders.

Again, B's lawyer has expressed concern that B may be an associate of A as B would not be buying the land without A's commitment to a long-term lease.

Discussion

Again, A and B are likely to be associated for general purposes but not in relation to an overseas investment. This association for general purposes would result from B investing as a consequence of an arrangement or understanding with A (the lease arrangement).

In this case, A's clear intention is not to own the assets concerned, and it's reasonable to infer that the lease arrangement is a genuine one. Again, the result would likely be the same whether B was a long-term property investor or not, provided B was genuinely investing in its own right.

Example 7 – 'special' shareholding arrangements

A (an overseas person) and B (a New Zealander) wish to undertake a joint investment in sensitive land. However, they are not confident that consent will be forthcoming, and have asked their lawyer for options.

The lawyer has proposed the following arrangements:

- Establish a company (A = 25%, B = 75%)
- A and B each have the ability to appoint one director
- A and B each make equal capital contributions
- A and B equally share the profit.

Discussion

There are two issues here. First, the company will be an overseas person in its own right, as an overseas person (A) has the power to control the composition of more than 25% (in this case, 50%) of the governing body of the company. Consent will be required for the company to acquire sensitive land whether or not the associate definition is met.

However, the company will also be both a direct and indirect associate of A.

First, A and B are associates of one another. Their participation in the formation of the company and the company's purchase of land reflects them acting jointly and in concert with one another (their common purpose being the purchase of the sensitive land) and is a consequence of any arrangement or understanding with one another.

Second, the company is an associate of both A and B. The company is under their joint control and essentially acting on their behalf.

These associate relationships are in relation to A's effective 50% ownership of the company and indirect 50% ownership of the land.

However, the result may be different if the facts were different and the ability to appoint directors was limited to B, and A and B made capital contributions and shared in any profit in proportion to their shareholding.

In these circumstances you might argue that A and B (and ultimately the company) are associates for general purposes, however they are not associates "in relation to an overseas investment". A's 25% shareholding would now properly reflect A's economic interest in the transaction, and could no longer be described 'in substance' as an overseas investment.

Example 8 – Lending arrangements

A (an overseas person) and B (a New Zealander) wish to undertake a joint investment in sensitive land. In order to avoid the need for consent under the Act, A and B have established a company with A having 25% shareholding and B having a 75% shareholding.

However, A and B intend that A will lend a significant sum of money to the company in order to fund the development of the land. A's lawyer is concerned that the lending will make the company an associate of A.

Discussion

Whether the company will be an associate of A requires an assessment of the substance of the transaction. This will involve consideration of the terms of the loan amongst other things.

Assuming the loan is on normal terms (having regard for the nature of the development), then A and the company will not be associates of one another.

LINZ would consider the starting point for "normal terms" to be the sort of lending terms that might be provided by a commercial lender, or the sort of lending terms that might be provided by B in these circumstances.

The more favourable the terms of the loan are to A, the more likely it is that A and the company will be associates. For example, an associate relationship would be more likely if the terms of the loan gave A a greater return than would normally be the case, or gave A rights to control the development that were out of proportion to A's shareholding. LINZ would essentially ask whether, in light of the lending arrangement, the 25/75 shareholding split truly reflected the substantive ownership of the company.

More information

The information contained in this document is intended for general guidance only, and the examples provided are for illustrative purposes only.

For more information, we recommend that you seek legal advice from a lawyer who has experience in dealing with the Overseas Investment Act.

We also encourage investors to consider meeting with us before submitting an application for consent. A ['pre-application meeting'](#) will help you prepare a clearly reasoned application that contains all the information we will need to assess your application.

You will be able to:

- Explain (at a high level) your overall application for consent and your investment proposal
- Ask any questions you have about presenting specific aspects of your application
- Get our feedback on how you may be able to improve the quality of your application
- Ask any questions you have about the application process.

For more information:

Phone: 0800 665 463 (New Zealand only),
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About the LINZ's overseas investment regulatory function

LINZ regulates access to New Zealand's land, residential properties and significant business assets by overseas investors, and makes decisions on overseas investment applications. It administers and applies the Overseas Investment Act. Its work contributes to more homes and jobs for New Zealanders, thriving companies and industries, protection of the places Kiwis treasure, and greater access to them.

