

Hon Grant Robertson

MP for Wellington Central

Deputy Prime Minister

Minister of Finance

Minister for Infrastructure

Minister for Sport and Recreation

Minister for Racing



21 June 2021

Gaye Searancke
Chief Executive
Land Information New Zealand
Private Box 5501
WELLINGTON 6145

Dear Ms Searancke

Ministerial Directive Letter

1. This Ministerial directive letter is made pursuant to section 34 of the Overseas Investment Act 2005 (the Act). It directs you, as the regulator, on:
 - 1.1. the Government's general policy approach to exempting persons, transactions, rights, interests, or assets that the Minister considers to be majority owned and substantively controlled by New Zealanders from requiring consent to invest in sensitive New Zealand assets;
 - 1.2. removal of conditions on completed transactions that would not require consent if entered into under the new regime;
 - 1.3. conducting regular fee reviews, and
 - 1.4. other changes from the Overseas Investment Amendment Act 2021 (the Amendment Act).
2. This letter reflects the delegation to you from the Minister of Finance, Minister of Fisheries, and the Minister for Land Information, dated 17 October 2018, to make decisions on individual exemptions.
3. The terms used in this letter have the meaning given to them in the Act, unless otherwise specified.
4. Directions relating to exemptions for fundamentally New Zealand entities (paragraphs 5 to 12) in this letter apply to the regulator's consideration of all new and existing applications at the date it comes into force.

Fundamentally New Zealand entities

5. The Act defines 'overseas person' in a way that results in some entities and managed investment schemes that are majority owned/funded by New Zealanders and have a strong connection with New Zealand, being required to obtain consent.

6. The Act permits exemptions to be granted for persons, transactions, rights, interests or assets that the Minister considers to be majority owned and substantively controlled by New Zealanders (section 61B(c)(viii)). Under section 61D, a decision-making power delegated to you, the regulator may grant individual exemptions to applicants that satisfy this threshold. This aligns with the Act's purpose, as it is clear that the degree of New Zealand ownership and control is what determines whether an entity is an overseas person, not other matters such as New Zealand employees or having headquarters in New Zealand.
7. I consider that such exemptions should generally be granted to non-listed bodies corporate, managed investment schemes (MIS) and limited partnerships, where they meet the criteria specified below, unless good reason exists not to.

Non-listed bodies corporate

8. In order to be eligible for an exemption from consent requirements, the Government considers a domestically incorporated non-listed body corporate will generally:
 - 8.1. not be majority owned by overseas persons. That is, be less than 50 per cent owned by overseas persons,
 - 8.2. not be substantively controlled by overseas persons. That is, 25 per cent or less of the entity's total securities are cumulatively controlled by overseas persons, each of whom hold 10 per cent or more of the entity's total securities, and
 - 8.3. not be open to access or control by a foreign government. That is, no foreign government (or its associates) holds 10 per cent or more of the entity's total securities.

Managed Investment Schemes

9. In order to be eligible for an exemption from consent requirements, the Government considers a MIS will generally:
 - 9.1. not be majority owned by overseas persons. That is, less than 50 per cent of the value of the managed investment products in the MIS are invested on behalf of overseas persons,
 - 9.2. not be substantively controlled by overseas persons. That is, 25 per cent or less of the managed investment products in the MIS that entitle holders to vote are invested on behalf of overseas persons, each of whom have 10 per cent or less of those products¹, and
 - 9.3. not be open to access or control by a foreign government. That is, no foreign government (or its associates) holds 10 per cent or more of value of the managed investment products in the MIS.

¹ A MIS that has an overseas person as manager or trustee should not be considered to have substantive control for the purpose of this directive.

Limited partnerships

10. In order to be eligible for an exemption from consent requirements, the Government considers a limited partnership will generally:
 - 10.1. not be majority owned by overseas persons. That is, less than 50 per cent of the limited partnership interest is held by overseas persons,
 - 10.2. not be substantively controlled by overseas persons. That is, 25 per cent or less of the general partner is cumulatively controlled by overseas persons that each hold a 10 per cent or less of the interests in the general partner, and
 - 10.3. not be open to access or control by a foreign government. That is, no foreign government (or its associates) holds 10 per cent or more of the partnership interest.

Other matters for consideration

11. In addition to the specified criteria, in determining whether to grant an exemption to these kinds of entities, the Government would expect the regulator to consider:
 - 11.1. the entities' character (in accordance with how character is assessed under investor test in the Act), and
 - 11.2. the degree of access or control foreign governments (or their associates) hold in the entity.
12. The Government would expect the exemption to depend on compliance with conditions being maintained, including the condition that the investor remain not unsuitable to own or control the assets.

Revocation or variation of conditions of consent for persons who are no longer considered overseas persons under the Act

13. Section 27 of the Act provides that a condition of consent can be revoked by the relevant Minister or Ministers or be varied or added to by the relevant Minister or Ministers with the agreement of the consent holder.
14. Clause 37(2) of Schedule 1AA of the Act, as introduced by the Amendment Act, provides that relevant Ministers may revoke a condition of a consent that the Act required to be imposed. This relates to a person who ceases to be an overseas person on commencement of new section 7 of the Act (clause 5 of the Amendment Act) and who applies to the regulator under section 27 of the Act for a variation of a consent granted to them while they were considered an overseas person under the Act.
15. I generally expect you, as the regulator, when processing such applications, to revoke the conditions of those consents unless good reason exists not to.
16. I expect you to exercise your discretion having regard for, amongst other things:
 - 16.1. the purpose of the Act,

- 16.2. the Government's view that some investors are no longer considered overseas persons under the Act and therefore their ownership of sensitive New Zealand assets is unlikely to pose risks to New Zealand.

Fees review

17. Section 61 of the Act provides that regulations can prescribe fees and charges for the purpose of meeting (or assisting in meeting) costs of Ministers and the regulator in exercising functions and powers, performing duties and generally providing services under the Act.
18. New section 61(1)(e) of the Act, as introduced by the Amendment Act, provides that fees can be set at a level which recovers the true cost of assessing an application by:
- 18.1. clarifying that the government can set fees to ensure that under- or over-collections can be distributed among fee payers on a rolling four year basis,
 - 18.2. requiring the Minister to commence a fees review at least once every four years, and
 - 18.3. confirms that any existing deficit for the regulator can be recouped through fees that are set after commencement of these changes, to the extent that the deficit arose in the preceding four financial years.
19. Where you are assisting with future fees reviews, consistent with the Government's Cost Recovery Policy, I do not expect cost recovery from investors that can not be reasonably ascribed to processing that investor's application (other than as a consequence of reasonable under-collections across a four year basis).

Date letter takes effect

20. This Ministerial directive letter takes effect from the commencement date of the Amendment Act, 5 July 2021.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Grant Robertson', with a stylized, cursive script.

Hon Grant Robertson
Minister of Finance