Safeguarding New Zealand's National Interest

Available under the Overseas Investment Act 2005 and Overseas Investment Regulations 2005

Toitū Te Whenua
Land Information
New Zealand

Role of LINZ

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

National interest assessments

National interest assessments allow the Minister of Finance to consider whether proposed overseas investments that require consent are contrary to New Zealand's national interest. The assessment is a backstop. The starting point is that overseas investment is in New Zealand's interest.

Investments requiring national interest assessment

Overseas investments in significant business assets (more than $100m), sensitive land, and fishing quota may be subject to national interest assessment in specific circumstances.

Mandatory assessment

Assessment is mandatory for:

Certain overseas investments in a strategically important business that is:
- a critical direct supplier to the New Zealand Defence Force or an intelligence or security agency,
- involved in military or dual-use technology,
- involved in ports or airports,
- a strategically important electricity, water, or telecommunications provider,
- a major financial institution, or involved in financial market infrastructure,
- a media business with significant impact, or
- involved in a strategically important irrigation scheme.

OR

Certain investments by an overseas investor that are made by, or associated with, a foreign government.

Discretionary assessment

LINZ and the Minister of Finance may call-in an overseas investment for national interest assessment where it may include risks to the national interest, including where a transaction:

may pose risks to national security or public order

OR

may adversely affect New Zealand's international relations

OR

could give disproportionate access or control to a foreign government or its associates

OR

may include material risks to land that may have national significance (for example land with significant conservation value, Treaty of Waitangi claims, heritage places, or Wahi Tapu land)

Relevant factors:

The Minister of Finance has broad discretion to decide whether an investment is contrary to national interest and can consider a range of factors including:
- national security, public order, and international relations,
- market structure,
- economic and social impact,
- alignment with New Zealand's values and interests,
- the character of the investors, or
- overseas government involvement.

If the Minister considers an investment is contrary to the national interest, consent can be declined. The Minister can impose conditions on any consent granted.

Risk mitigation action is only taken where necessary to protect New Zealand's interests.

Further information

More information on the overseas investment regime and national interest assessment are available on the overseas investment pages of the Toitū TeWhenua 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.

National Interest Assessments
Process and roles

Toitū Te Whenua Land Information New Zealand

Roles in national interest assessment process

Public Service

LINZ receives, assesses, and provides advice to Ministers about overseas investments that require consent, including undertaking a national interest assessment where required. LINZ makes some consent decisions under delegated authority.

The **Standing Committee on Overseas Investment** includes members from a range of government agencies who provide information and perspectives to assist in providing national interest assessments and advice to the Minister of Finance.

Relevant Consent Ministers

LINZ under delegation, or the Relevant Ministers if an application is called in, determine whether the relevant criteria are met to grant consent with or without conditions.

Relevant Consent Ministers are:

- significant business assets – an Associate Minister of Finance,
- sensitive land – an Associate Minister of Finance and Minister for Land Information, and
- fishing quota – an Associate Minister of Finance and Minister for Oceans and Fisheries.

Minister of Finance

Where LINZ has reasonable grounds to that consider that a transaction may be contrary to New Zealand's national interest, the Minister of Finance determines whether to decline consent.

The Minister can determine whether the investment:

- is not contrary to national interest so consent can be granted,
- is contrary to national interest so consent cannot be granted, or
- is contrary to national interest but this can be managed with conditions so consent can be granted.

National interest assessment process

The Act prescribes a three stage process: Stage one: risk identification; Stage two: risk assessment; Stage three: Ministerial decision making. The general process for national interest assessments is:

1A

Stage 1: LINZ verifies whether a transaction is a *mandatory* transaction of national interest (s20A), has been *called-in* by the Minister of Finance (s20B).

1B

If not *mandatory* and not called-in by the Minister of Finance, LINZ decides whether to call-in an investment for national interest assessment using its discretionary powers.

2A

Stage 2: LINZ assesses application against consent criteria, including the national interest criterion.

2B

Standing Committee reviews and provides input and advice on draft national interest assessment.

2C

LINZ determines whether transaction may be contrary to the national interest, and either grants consent, grants consent subject to conditions, or escalates the decision to the Minister of Finance

3A

Stage 3: If necessary, Minister of Finance decides whether transaction is contrary to the national interest and whether to impose national interest conditions.

3B

LINZ notifies applicant of decision.

