

Changes to the law introducing new national interest assessment

The Overseas Investment Office (OIO) is responsible for administering the Overseas Investment Act 2005, including carrying out national interest assessments for the Minister of Finance.

A national interest assessment for some overseas investment transactions into New Zealand started on 16 June 2020.

The assessment applies to:

- transactions requiring consent (consent applications)
- some transactions notified under the temporary emergency notification regime (ENR).
Note: ENR only applies to transactions entered into before 7 June 2021.

Principles underpinning the national interest assessment

- 1 The starting point is that investment is in New Zealand's national interest.
- 2 The national interest assessment is designed to manage significant risks falling outside existing regulatory regimes.
- 3 Risk mitigation or risk management action should be applied rarely and only where necessary to protect New Zealand's national interests.

When transactions require a national interest assessment

There are three ways in which a transaction may require a national interest assessment by the Minister of Finance:

- **Consent pathway (mandatory criteria met):** if a transaction for a significant business asset, sensitive land, or fishing quota meets the mandatory criteria (section 20A of the Act) because it involves strategically important business assets or a non-New Zealand government investor.
- **Consent pathway (discretion exercised):** the Minister of Finance may call-in a transaction for national interest consideration under one of the consent pathways (for example, if it poses risks for market power or is significantly inconsistent with other Government objectives).
- **Temporary emergency notification pathway:** the Associate Minister of Finance calls in a notification for a business asset transaction (notifications must be made if a controlling interest is being acquired). **From 7 June 2021 this pathway only applies to transactions that were entered into before that date.**

What is considered for a national interest assessment

The national interest assessment is intended to be used as a backstop, as the presumption is that overseas investment is in New Zealand's national interest. The national interest assessment can apply to applications received under the traditional consent pathways, or to notifications received through the temporary emergency notification pathway.

In brief, there are two stages:

- a **call-in assessment** to determine if the transaction requires a national interest assessment (this is done differently for the consent and emergency notification pathways)
- a **national interest assessment** to determine if a transaction is contrary to New Zealand's national interests.

Where there are risks to the national interest, conditions or risk mitigation actions can be applied to enable the transaction to proceed.

As a last resort, transactions can be blocked or unwound if deemed contrary to the national interest.

Key criteria for the assessment are:

- **National security, public order and international relations:** the OIO works closely with government agencies to determine the level of risk, mitigations, and implications posed by a transaction.
- **Competition, market power and the economy.**
- **Economic and social impact:** the existing benefit test serves as a guide.
- **Alignment with New Zealand's values:** consideration is given to broader policy settings – for example, environmental policy, and giving better effect to Te Tiriti o Waitangi. (See: [New Zealand's economic plan](#), [Trade Recovery Strategy](#), [Aquaculture Strategy](#), or [Treaty Guidance](#))
- **Character of the investor (including non-government investors):** broader consideration of investor character than is currently provided for in the investor test.



National interest assessments under the consent and notification pathways

Consent pathways (for example, applications for significant business assets or sensitive land)

Overseas investments under the significant business asset (more than \$100m), sensitive land, and fishing quota consent pathways may be subject to the national interest assessment in specific circumstances. Currently there are no consent pathway statutory timeframes for national interest assessments. The OIO and Ministers aim to make decisions within commercial deadlines and performance targets.

Public servants

- The **Overseas Investment Office (OIO)** receives, assesses and provides advice to Ministers about notifications for business transactions where a controlling interest is being acquired.
- The **Standing Committee on Overseas Investment** provides information and comment to assist the formulation of advice for the Minister of Finance.

Relevant Consent Ministers

Relevant Ministers (or the OIO for delegated applications) determine the investment tests for an application (for example the investor test and benefits test) **before** the national interest assessment:

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

If the application does **not** meet the core tests, it is declined; and the Minister of Finance’s national interest determination is **not** required.

Minister of Finance

Minister of Finance determines whether a transaction is contrary to the national interest. The Minister can determine whether the transaction:

- is **not contrary** to the national interest (can proceed)
- is contrary to the national interest (**cannot** proceed)
- poses a **risk** to the national interest, which can be managed through conditions.



Temporary emergency notification pathway (for transactions entered into before 7 June 2021)

Overseas investors acquiring a controlling interest in a business asset, regardless of its dollar value, must notify the Overseas Investment Office (OIO) under the temporary emergency notification regime. **Transactions entered into before 7 June 2021 are subject to these rules, must still be notified, and must wait until they have received a direction order.**

Public servants

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Associate Minister of Finance

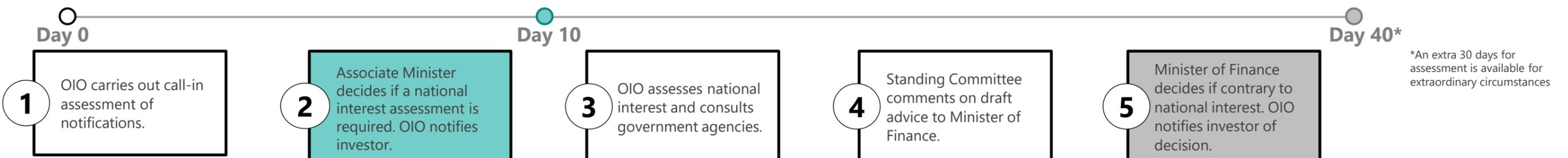
The Associate Minister of Finance determines if a transaction should be called in to receive a national interest assessment.

The Minister receives regular information from the OIO about notifications to make these decisions.

Minister of Finance

The Minister of Finance determines whether a transaction is contrary to the national interest. An interim direction order can be issued to limit investor activity while the Minister considers the transaction.

The Minister may make a direction order without/with conditions, stop the transaction from proceeding, make a disposal order requiring assets be sold, or remove an overseas person’s control or access to sensitive assets.



*An extra 30 days for assessment is available for extraordinary circumstances