

How to Prepare Statutory Declarations for the OIO

Contents

1. Introduction and legislation
2. Form of declaration
3. Good character and immigration criteria
4. Application is true and correct - section 23(1)(d)
5. Compliance with the conditions of consent - section 40
6. Further information
7. Disclaimer

Updated on 10 August 2011 to reflect the Immigration Act 2009 coming into force.

Introduction and legislation

The OIO requires statutory declarations for a number of purposes:

- evidence of good character and immigration criteria required by section 19 of the Overseas Investment Act 2005
- satisfaction of section 23(1)(d) of the Act verifying that information contained in the application is true and correct, and
- compliance with the conditions of consent (section 40 of the Act).

Sections 9 (declarations made in New Zealand) and 11 (declarations made outside New Zealand) of the Oaths and Declarations Act 1957 detail the procedure for making declarations.

About declarations

Declaration form

The form of declaration depends on the location in which it was made:

Location	Form
New Zealand	Schedule 1, Oaths and Declarations Act

Commonwealth Country	No prescribed form, although: <ul style="list-style-type: none"> • the declaration must record where it was made; and • the jurat must record the name, signature and qualification of the person taking the declaration in order to satisfy section 11(3) of the Oaths and Declarations Act .
Other Country	

Who may take a declaration?

The range of persons authorised to take declarations varies depending on where the declaration is made:

Location	Section
New Zealand	Section 9(1), Oaths and Declarations Act 1957
Commonwealth Country	Section 11(1), Oaths and Declarations Act 1957
Other Country	Section 11(2), Oaths and Declarations Act 1957

Common errors

Some common errors to avoid when drafting statutory declarations are:

- declarations not being dated
- declarations not being witnessed by an authorised person (for example a medical doctor)
- witnesses not recording their name and qualification at the foot of the jurat
- original declarations not being provided
- content not meeting the requirements of the Act.

Good character and immigration criteria

Good character and the absence of persons not eligible for visa or entry permission under the Immigration Act 2009 are two of the four core criteria known as the investor test. See the OIO's Investor Test resource for more information.

The statutory declaration must address the character of the overseas person, or if the overseas person is not an individual, all the individuals with control of the overseas person. The OIO provides declaration text below for both bodies corporate and all other entities including individuals.

Bodies corporate

The individuals with control of the relevant overseas person are normally:

- the directors of a company; or
- the trustees of a trust, and those with the power to appoint the trustees of a trust.

In certain circumstances, the OIO may deem other individuals to have control of an overseas person. These individuals may include:

- a substantial shareholder of a company; and
- an associate (or the individuals with control of an associate) of an overseas person; and
- the senior officers of an overseas person (such as the Chief Executive Officer, Chief Financial Officer etc).

Section	Declaration Text
s16(1)(c) s19(1)(a)	<p>Either:</p> <ul style="list-style-type: none"> • "None of the individuals with control over the overseas person have ever committed an offence or contravened the law and no entity in which they have had a 25% or more ownership or control interest at the time has committed an offence or contravened the law."; or • "The following people with control over the overseas person (or entities in which they had a 25% or more ownership or control interest at the time) have committed the following offences and contravened the law in the following ways: • The remaining individuals with control over the overseas person have never committed an offence or contravened the law and no entity in which they have had a 25% or more ownership or control interest at the time has committed an offence or contravened the law."
s16(1)(c) s19(1)(b)	"I know of no other matter that reflects adversely on the fitness of the individuals with control over the overseas person to have the particular overseas investment".
s16(1)(c) s19(1)(b)	"All of the individuals with control of the overseas person are of good character".

s16(1)(d) s19(2)	<ul style="list-style-type: none">• "None of the individuals with control over the overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009"; or• "The following individuals with control over the overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009 because a special direction referred to in section 17(1)(a) of that Act has been made permitting a visa or entry permission to be granted to that individual."
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All other entities including individuals

In the case of an individual, that individual must make a declaration that addresses each of the items in the following table. In all other cases, every individual with control over the overseas person must make a declaration that addresses each of the items in the following table.

Section	Declaration Text
s16(1)(c) s19(1)(a)	Either: <ul style="list-style-type: none">• "I have never committed an offence or contravened the law and no entity in which I had a 25% or more ownership or control interest at the time has committed an offence or contravened the law"; or• "I (or an entity in which I had a 25% or more ownership or control interest at the time) have committed the following offences and contravened the law in the following ways..."
s16(1)(c) s19(1)(b)	"I know of no other matter that reflects adversely on my fitness to have the particular overseas investment".
s16(1)(c) s19(1)(b)	"I am of good character".
s16(1)(d) s19(2)	Either <ul style="list-style-type: none">• "I am not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009"; or• "I am an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 because a special direction referred to in section 17(1)(a) of that Act has been made permitting a visa or entry permission to be granted to me."

Application is true and correct - section 23(1)(d)

The declaration must use the following language:

I have read the letters dated _____ and all attachments annexed to those letters (where applicable), which were submitted to the Overseas Investment Office in support of the application made by _____ to acquire _____ and confirm that the information contained in the application is true and correct.

Please note that it is imperative that each witness not only sign the declaration, but also—

(a) _____ writes their name underneath their signature; and

(b) writes their authority for witnessing the declaration (or uses a stamp to provide this information).

In particular, it is not enough for witnesses to rely on the words: “A person authorised to take statutory declarations by the Oaths and Declarations Act 1957.” The OIO needs to know why they are authorised to do so (for example, that they are a solicitor).

See the OIO resource on “How to Apply for Consent” for further information.

Compliance with the conditions of consent - section 40

Section 40 of the Act allows the Regulator to require a consent holder to provide a statutory declaration verifying:

- the extent to which the consent holder has complied with the conditions of the consent, and
- if the consent holder is in breach of a condition or conditions, the reasons for the breach and the steps that the consent holder intends to take to remedy the breach.

In the case of the investor test condition, the OIO will normally issue a notice pursuant to section 40 of the Overseas Investment Act 2005 requiring a statutory declaration verifying that the condition has been complied with.

Appropriate text for an individual applicant might be:

I <FULL NAME, OCCUPATION AND PLACE OF RESIDENCE> solemnly and sincerely declare that in relation to the acquisition of <THE OVERSEAS INVESTMENT>:

1. I have business experience and acumen relevant to the overseas investment; and
2. I have demonstrated financial commitment to the overseas investment; and
3. I am of good character; and
4. I am not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (which lists certain persons not eligible for visa or entry permission to enter or be in New Zealand).

And I make this declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Appropriate text for any other form of applicant might be:

I <FULL NAME, OCCUPATION AND PLACE OF RESIDENCE> solemnly and sincerely declare that in relation to the acquisition of <THE OVERSEAS INVESTMENT>:

1. The individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to the overseas investment
2. The relevant overseas person has demonstrated financial commitment to the overseas investment
3. All the individuals with control of the relevant overseas person are of good character
4. Each individual with control of the relevant overseas person is not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (which lists certain persons not eligible for visa or entry permission to enter or be in New Zealand).

And I make this declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Further information

Visit the OIO website at www.linz.govt.nz/oio to find related links, documents and answers to frequently asked questions. Read the Overseas Investment Act 2005 and the Overseas Investment Regulations on www.legislation.govt.nz.

If you require further information, please contact the OIO.

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