

## **Overseas Investment Office—background information**

### **What is the role of the Overseas Investment Office (OIO)?**

The Overseas Investment Office (OIO) administers the Overseas Investment Act 2005 and sections 56 to 57J of the Fisheries Act 1996 (the overseas investment legislation).

The primary role of the OIO is to assess applications for consent from overseas persons who intend to acquire sensitive New Zealand assets. The OIO also has a range of other statutory functions. These functions include the monitoring of conditions of consent, the provision of statistical and other information about overseas investment in New Zealand, and enforcing breaches of the overseas investment legislation.

### **What does the overseas investment legislation do, and why is it needed?**

\*\*\*The Act applies to overseas persons who want to invest in sensitive New Zealand assets. The Act contains statutory criteria that must be met in order to obtain consent. Conditions of consent may also be imposed.

The Act ensures that of particular significance or importance to New Zealand is protected, while also encouraging foreign investment where it can make a positive contribution to the New Zealand economy.

### **Who needs to apply to the OIO to invest in New Zealand?**

Overseas persons or associates of overseas persons need to apply for consent under the Act if they want to acquire significant business assets (non-land investments) for more than \$100 million, sensitive New Zealand land, or fishing quota.

Information about the application process can be found here:

[www.linz.govt.nz/overseas-investment/need-consent-invest/index.aspx](http://www.linz.govt.nz/overseas-investment/need-consent-invest/index.aspx)

### **What is meant by ‘overseas persons’ or ‘associates of overseas persons’?**

The Overseas Investment Act 2005 applies to ‘overseas persons’ and ‘associates of overseas persons’.

An overseas person is defined as someone who is neither a New Zealand citizen nor ordinarily resident in New Zealand. A company will be an ‘overseas person’ if it is incorporated outside of New Zealand. A New Zealand incorporated company will also be an ‘overseas person’ if it is 25% or more overseas owned or controlled.

Associates of overseas persons can include New Zealanders who are controlled by, or act on the direction of, an overseas person.

### **When is consent required?**

Consent under the Overseas Investment Act 2005 is required before a transaction is given effect. Unless an agreement for sale and purchase is conditional on consent under the Overseas Investment Act, the transaction will usually be given effect at the time the agreement is signed.

### **What are the criteria for consent?**

Applicants must satisfy a number of criteria, such as business experience and acumen relevant to the investment, demonstrated financial commitment to the investment and good character.

In addition, consent to acquire sensitive land will only be granted if the transaction will, or is likely to, benefit New Zealand.

Some types of land also have specific additional consent criteria. For example, if a proposed investment involves the purchase of farm land or farm land securities (such as shares in a company that owns farm land), the land or the securities must generally be advertised on the open market for sale for at least 20 working days.

### **Who decides applications for consent?**

Under the Act, the Minister of Finance and the Minister for Land Information must decide all sensitive land applications.

However, the Act also enables Ministers to delegate some of their decision-making powers. The Minister of Finance has delegated his decision-making powers under the Act to one of the Associate Ministers of Finance. The Ministers have in turn delegated some of their decision-making powers to the OIO. The OIO decides about 75% of all applications. Only those applications that involve particularly sensitive assets are decided by Ministers.

### **What factors are considered when deciding on applications for consent?**

Under the Act, the relevant Ministers must make a decision to consent to, or decline, an application for consent after considering a recommendation by the OIO.

If the application for consent involves sensitive land, in determining whether the investment will or is likely to benefit New Zealand, Ministers must take 21 economic, environmental and other factors listed in the Act into account.

### **What checks are carried out before granting consent to invest in New Zealand?**

The OIO verifies information provided by applicants using a range of public sources. The OIO may also seek evidence or input from other third parties, such as government departments and agencies.

### **How does the OIO determine 'good character' of an investor?**

In assessing whether an overseas person is of good character, the relevant Ministers must take into account offences or contraventions of law, as well as any other matter that reflects adversely on the applicant's fitness to have the particular overseas investment.

### **How long does it take the OIO to assess an application, and for consent to be granted?**

The OIO aims to complete initial assessments of applications within five working days.

Once the OIO is satisfied that the required information has been provided and the correct fee has been paid, it registers the application and begins processing it.

There is no statutory timeframe within which an application for consent must be decided. However applications generally fall into one of three categories according to complexity, with category 3 being the most complex. These categories provide a guide for how long it may take for a decision to be made.

- **Category 1** applications, where the OIO aims to make decisions within 30 working days from the date of registration. Examples include:
  - (a) applications for consent to purchase significant business assets,
  - (b) variations to existing consents.
- **Category 2** applications where the OIO aims to make decisions within 50 working days from the date of registration. Examples include:
  - (a) applications for consent to purchase "sensitive land",
  - (b) applications for exemptions,
  - (c) applications where the overseas person is intending to reside in New Zealand indefinitely.
- **Category 3** applications, where the OIO aims to make decisions within 70 working days from the date of the registration. Examples include:
  - (a) applications to acquire an interest in fishing quota,
  - (b) applications that involve special land being land that includes foreshore or the bed of a river or lake,
  - (c) applications in respect of which a third party submission has been received by the Ministers or the OIO,
  - (d) applications where the Ministers or the OIO have decided that consultation with third parties is appropriate in considering whether or not to grant consent.

Note that these targets apply to high quality, well prepared and analysed applications, and excludes the time where the OIO is waiting for the applicant to provide further information and the time for Ministers to consider and make decisions on relevant applications.

### **Can the OIO grant retrospective consent?**

In some cases, the OIO has the power to retrospectively grant consent if it finds consent was required at an earlier stage.

The OIO also has the power to apply to the High Court to have the land or assets sold, if the court finds that an offence has been committed under the Overseas Investment Act 2005. This course of action could be taken if consent was declined by the OIO.

### **If consent is granted to an applicant, does this mean their future investments will also get consent?**

No. Obtaining consent for one transaction does not necessarily mean that consent for other transactions would also be granted.

As an example, should an applicant apply for and be granted consent to purchase five farms, this does not mean the applicant can then go ahead and purchase a further 10 farms without consent. It would need to seek consent for those transactions also.

### **What are the penalties for not complying with the Act?**

There are penalties for not obtaining consent, for trying to evade the Overseas Investment Act 2005, and for not providing information to the OIO if asked.

The penalties range from \$100,000 for not providing information to \$300,000 for not obtaining consent when consent is required, or trying to evade the Act.

For individuals, there is also potential imprisonment of up to one year.

### **Contact for media queries:**

Brad Young  
Senior Communications Advisor  
Ph (04) 460 0147 or 027 277 1267