



Overseas Investment Amendment Regulations 2018

Patsy Reddy, Governor-General

Order in Council

At Wellington this 3rd day of September 2018

Present:

The Right Hon Jacinda Ardern presiding in Council

These regulations are made under sections 61 and 61C of the Overseas Investment Act 2005—

- (a) on the advice and with the consent of the Executive Council; and
- (b) to the extent that they are made under section 61C of that Act, on the recommendation of the Minister of Finance made in accordance with section 61E of that Act.

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Regulations

1 Title

These regulations are the Overseas Investment Amendment Regulations 2018.

2 Commencement

These regulations come into force on 22 October 2018 (immediately after the Overseas Investment Amendment Act 2018 comes into force under section 2(3) of that Act).

3 Principal regulations

- (1) These regulations amend the Overseas Investment Regulations 2005 (the **principal regulations**).
- (2) In these regulations, a reference to a regulation of the principal regulations is a reference to that regulation as it was numbered before the commencement of these regulations.
- (3) However, subclause (2) does not apply to a reference in the third column of the table in regulation 5 or to other references where the context otherwise requires (for example, in cross-references in regulations of the principal regulations that are inserted or replaced by these regulations).

4 Interpretation

In regulation 3(1), insert in its appropriate alphabetical order:

permitted security arrangement has the meaning set out in regulation 41

5 Regulations renumbered

Renumber each existing regulation shown in the first column of the following table as the regulation number set out opposite to it in the third column and reposition it in its appropriate numerical order and, if relevant, update the cross references as shown in the fourth column.

Existing number	Title of the regulation	New number	Cross references updated
33A	Exemption for overseas custodians acquiring certain rights and interests in custodial property	47	
34	Exemption for persons connected to portfolio investors or New Zealand controlled persons	48	In examples 1 to 4, replace “regulation 34” with “regulation 48”.
35	Exemption for New Zealand controlled persons	49	
36	Consequential exemption for other transactions	50	In subclauses (1) and (2), replace “regulation 34 or regulation 35” with “regulation 48 or regulation 49”.
36AA	Exemption for certain land transactions commonly known as re-grants	51	
36AB	Exemption for certain transactions where relevant land of certain type and area is already in overseas ownership or control	52	In subclauses (4)(c) and (5)(a)(iii), replace “regulation 33(1)(a) or (e)” with “regulation 37(1)(a) or regulation 40(1)(a)”.
36AC	Exemption for transactions consequential on certain	53	

Existing number	Title of the regulation	New number	Cross references updated
	actions under Public Works Act 1981		
36AE	Exemptions for network utility operators	57	
36AF	Exemptions relating to relationship property where spouse or partner granted consent under commitment to reside in New Zealand test	58	
36A	Exemptions in Schedule 5 apply	61	
36B	Exemption for certain bodies corporate who are overseas persons only because overseas custodians have custodial securities	62	In example 2, replace “regulation 36B” with “regulation 62”.

Part 1

Amendments to Part 1 of principal regulations (consent)

6 New regulations 29 to 32 and cross-headings inserted

After regulation 28 (Other factors for assessing benefit of overseas investment in sensitive land), insert:

Benefit test: special test relating to forestry activities

29 Special test may be applied and requirements to be met

Special test may be applied

- (1) For the purposes of section 16A(4) of the Act, the benefit to New Zealand test is also met if the relevant Ministers are satisfied of the matters listed in section 16A(4)(a) to (g).

Requirements for purposes of section 16A(4)(d) of Act

- (2) For the purposes of section 16A(4)(d) of the Act, the requirements that must be met after the overseas investment is given effect to are as follows:
- (a) any existing arrangement in respect of the relevant land, or any part of the relevant land, that is for 1 or more specified purposes will be implemented and maintained, or will continue to be implemented and maintained:
 - (b) anything that any existing conditions of a consent require to be done, or prohibit from being done, in respect of the relevant land, or any part of the relevant land, for 1 or more specified purposes will be done or not be done, or will continue to be done or not to be done:

- (c) logs will be supplied, or will continue to be supplied, as required by any existing supply obligation (so long as the obligation remains in place).
- (3) Subclause (2)(a) does not apply to an arrangement to the extent that the arrangement will (in any event) have to be implemented and maintained, or continued to be implemented and maintained, after the overseas investment is given effect to because of—
- (a) a requirement imposed by or under an enactment, other than the Act or these regulations:
- (b) an interest in the relevant land, or any part of the relevant land, that is recorded in the register under the Land Transfer Act 1952 or the Land Transfer Act 2017 and that benefits or burdens the relevant land or the part of it.
- (4) Subclause (2)(b)—
- (a) does not limit subclause (2)(a):
- (b) applies in relation to a consent even if, because of the overseas investment or otherwise, the consent holder will cease to own or control (directly or indirectly) any interest in the relevant land or any part of the relevant land.
- (5) In subclause (2) (and this subclause),—
- arrangement**—
- (a) means an agreement or other arrangement or understanding, whether or not legally binding; and
- (b) includes (without limitation) a commitment that—
- (i) is given by a person to an organisation whose functions are or include the setting of standards or other requirements for 1 or more specified purposes; and
- (ii) is a commitment to comply with a standard or other requirement set by the organisation for 1 or more specified purposes; but
- (c) does not include an agreement or other arrangement or understanding, or a commitment, that is exclusively oral
- existing**, in relation to an arrangement, the conditions of a consent, or a supply obligation, means the arrangement, conditions, or supply obligation is or are in place—
- (a) immediately before the overseas investment transaction is entered into; or
- (b) if the application for consent for the overseas investment transaction is made before the overseas investment transaction is entered into, immediately before the application is made

specified purpose means any of the following:

- (a) protecting areas of indigenous vegetation or habitats of indigenous fauna:
- (b) protecting areas of habitats of trout, salmon, wildlife protected under section 3 of the Wildlife Act 1953, or game as defined in section 2(1) of that Act:
- (c) protecting any historic place or historic area that is entered on the New Zealand Heritage List/Rārangī Kōrero under the Heritage New Zealand Pouhere Taonga Act 2014:
- (d) protecting any wāhi tapu or wāhi tapu area that—
 - (i) is entered on the New Zealand Heritage List/Rārangī Kōrero under the Heritage New Zealand Pouhere Taonga Act 2014; or
 - (ii) is identified in the terms of any lease or forestry right, if the lease or forestry right is, in relation to the overseas investment, the interest in land, or one of the interests in land, described in section 12(a) of the Act:
- (e) protecting any land that is set apart as Māori reservation and that is wāhi tapu under section 338 of Te Ture Whenua Māori Act 1993:
- (f) providing access to land for members of the public or any section of the public

supply obligation means a contractual obligation under which logs from trees harvested on the relevant land must be supplied to a person who intends to have the logs processed in New Zealand.

- (6) In paragraphs (c) and (d) of the definition of specified purpose in subclause (5), terms defined in section 6 of the Heritage New Zealand Pouhere Taonga Act 2014 have the meanings given in that section.
- (7) For the purposes of the definition of existing in subclause (5), when deciding when the overseas investment transaction is entered into,—
 - (a) entering into a contract or an arrangement is a transaction that must be treated as being entered into when the contract or arrangement is actually entered into even if it is subject to a condition precedent:
 - (b) clause 1(5) of Schedule 1AA of the Act applies with any necessary modifications.
- (8) Paragraph (b) of the definition of existing in subclause (5) does not apply where a standing consent under clause 3 of Schedule 4 of the Act is being relied on for the overseas investment.

Special land

- (9) The requirement set out in subclause (10) applies for the purposes of section 16A(4)(f) of the Act if—

- (a) the relevant land is or includes special land (as defined in section 16A(9) of the Act); and
 - (b) the overseas investment falls within section 12(a) of the Act; and
 - (c) the interest in land described in section 12(a) of the Act is a freehold estate.
- (10) The special land must be offered to the Crown in accordance with regulations 13 to 26.
- (11) In applying regulations 13 to 26 for the purposes of subclause (10), in regulations 15(2) and 23, the reference to the factor set out in section 17(2)(f) of the Act must be read as a reference to the requirement set out in subclause (10).

Matters relating to sensitive land that is residential land

30 Types of overseas persons specified to be qualifying individuals

The following persons are specified for the purposes of clause 4(2)(d) of Schedule 2 of the Act:

- (a) an individual who is, under Australian law, an Australian citizen or a permanent resident of Australia;
- (b) an individual who is, under Singaporean law, a national of Singapore or a permanent resident of Singapore.

31 Factors for considering whether person remains committed to residing in New Zealand

- (1) This regulation applies for the purposes of clause 8 of Schedule 2 of the Act.
- (2) The factors for considering whether a person (**OP**) remains committed to residing in New Zealand are the following:
- (a) the reason for OP's absence from New Zealand on application days, including whether the reason is—
 - (i) a qualifying reason; or
 - (ii) any other reason that the relevant Ministers consider is consistent with OP remaining committed to residing in New Zealand; and
 - (b) whether the amount of time that OP was or will be absent from New Zealand on application days is reasonable given the reasons for OP being absent from New Zealand on those days; and
 - (c) OP's ongoing connection to New Zealand; and
 - (d) the nature of OP's connection to the other country or countries where OP was or will be on application days.

- (3) In this regulation,—

application days means any days in respect of which OP has applied for a waiver under clause 8 of Schedule 2 of the Act

qualifying reason means any of the following:

Employment reasons

- (a) Crown service under the New Zealand Government:
- (b) service under an international organisation of which the New Zealand Government is a member:
- (c) service in the employment of a person, company, society, or other body of persons resident or established in New Zealand:
- (d) self-employment in a business that is ordinarily carried on in New Zealand:

Compassionate reasons

- (e) attendance at a significant event relating to a family member that a person with OP's relationship to the family member would reasonably be expected to attend (*see* subclause (4)):
- (f) absence because OP or his or her spouse or partner, dependent child, or sibling is receiving medical treatment overseas:
- (g) other absence for the purpose of obtaining any special medical or surgical treatment if the relevant Ministers are satisfied that there are good and sufficient reasons for the person leaving New Zealand to obtain that special treatment:

Other reasons

- (h) accompanying a spouse or partner who is overseas for one of the reasons in paragraphs (a) to (g)

spouse or partner means spouse, civil union partner, or de facto partner.

- (4) In subclause (3), definition of qualifying reasons, paragraph (e),—

family member, in relation to OP, includes a person who is treated by OP as, and acknowledged by OP to be, a member of OP's family

significant event, in relation to OP's family member, includes the following events:

- (a) serious illness or serious injury or imminent death:
- (b) any of the following connected to the family member's death:
 - (i) a funeral (however called) or unveiling:
 - (ii) if OP has missed the family member's funeral, a visit to pay respects to a family member of the deceased:
 - (iii) attending to legal matters in relation to the deceased's affairs:
- (c) a wedding or civil union:
- (d) a birth of a child.

32 Maximum percentage: dwellings in large apartment developments that are purchased off plans

- (1) This regulation applies for the purpose of clause 4 of Schedule 3 of the Act.
- (2) The maximum percentage of new residential dwellings in a development that an exemption certificate may be applied to is 60%.

7 Regulations 29 and 30 replaced

Replace regulations 29 (Fees and charges) and 30 (When fees and charges are payable) with:

33 Fees and charges

- (1) The fees and charges set out in Schedule 2 are payable to the regulator for the matters to which they relate.
- (2) The fees and charges in Parts 7 and 8 of Schedule 2 are payable for every hour and, on a pro rata basis, for every part-hour of work that is carried out by or on behalf of the regulator.
- (3) The fees and charges include goods and services tax.

34 When fees and charges are payable

- (1) A fee or charge that is payable under regulation 33 must be paid on the making of an application, a notification, or a request, as the case may be.
- (2) However, a fee or charge in Part 7 or 8 of Schedule 2 is payable—
 - (a) on the issue of an invoice by or on behalf of the regulator; and
 - (b) within the time frame specified in the invoice.

8 Regulation 31 replaced (Administrative penalty for late filing)

Replace regulation 31 (Administrative penalty for late filing) with:

35 Administrative penalty for late filing

For the purposes of section 52 of the Act, the administrative penalty that the regulator may require a person to pay if the person files, provides, or produces a document required by or under the Act, these regulations, or a condition of a consent, an exemption, or an exemption certificate with the regulator after the time when the document must be filed, provided, or produced is \$500.

9 Regulation 32 replaced (Administrative penalty for retrospective consent)

Replace regulation 32 (Administrative penalty for retrospective consent) with:

36 Administrative penalty for retrospective consent

- (1) For the purposes of section 53 of the Act, the administrative penalty that the regulator may require an applicant for a retrospective consent to pay is an amount calculated in accordance with the following table:

Consideration provided for overseas investment	Administrative penalties	
	For consent for transaction on basis that only commitment to reside in New Zealand test is met	All other cases
If the value of the consideration provided for the overseas investment is less than \$2 million	\$5,000	\$20,000
If the value of the consideration provided for the overseas investment is \$2 million or more but not more than \$10 million	\$10,000	\$30,000
If the value of the consideration provided for the overseas investment is more than \$10 million	\$10,000	\$40,000

(2) In determining whether to impose an administrative penalty under subclause (1), the regulator must consider whether requiring the applicant to pay that amount would be unduly harsh or oppressive given the nature of, and the reasons for, the retrospective consent.

Part 2

Amendments to Part 2 of regulations (exemptions)

Exemptions from requirement for consent

10 Regulation 33 replaced (Certain transactions exempted from requirement for consent)

Replace regulation 33 (Certain transactions exempted from requirement for consent) with:

37 Exemptions for corporate dealing

- (1) The requirement for consent does not apply to the extent that giving effect to a transaction has any of the following effects:

Transactions within group where 1 overseas person owns 95% of group

- (a) the acquisition by an overseas person (**A**) of property—
- (i) from another member of the same group, being a group that comprises A and persons that are directly or indirectly at least 95% owned by A, as part of a reconstruction or reorganisation of that group; or
 - (ii) from an overseas person that directly or indirectly owns at least 95% of A:

Other acquisitions if no increase in ultimate ownership and control by overseas persons

- (b) the acquisition by an overseas person (**A**) of property from another overseas person (**B**) where one of the following applies:
- (i) A owns 100% of the securities in B; or

- (ii) B owns 100% of the securities in A that are owned by overseas persons; or
- (iii) another person (C)—
 - (A) owns 100% of the securities in A and in B that are owned by overseas persons; and
 - (B) owns a proportion of the total securities in A that is no greater than the proportion of the total securities that C owns in B; or
- (iv) 2 or more persons own in the same proportions 100% of the securities in A and in B that are owned by overseas persons,—

where **owns** means directly or indirectly owns:

Company acquiring own shares

- (c) the acquisition by a company incorporated under the Companies Act 1993 of its own shares if—
 - (i) the acquisition does not alter the proportions in which shares in the company are held by the shareholders or the relative voting rights of the shareholders; or
 - (ii) the shares are acquired under sections 112 to 112C or section 118 of that Act:

Amalgamations

- (d) the acquisition by an overseas person of securities or property in an amalgamated company under an amalgamation effected under the Companies Act 1993 if the overseas person has the same direct or indirect interest in or rights to the assets of that amalgamated company as that overseas person had in relation to those assets prior to the amalgamation.
- (2) If relying on an exemption in subclause (1)(a), (b), or (d), *see also* subpart 1 of Part 3.

38 Exemptions for shareholding creep

- (1) This regulation applies if the relevant Minister or Ministers have previously granted consent to A (**A's consent**) for the acquisition of securities or rights or interests in securities of B (the **initial consented securities**).

Exemption

- (2) The requirement for consent does not apply to the extent that giving effect to a transaction has the effect of an acquisition by A of securities or rights or interests in securities of B (the **further securities**) if—
- (a) the further securities and the initial consented securities are securities of the same class; and
 - (b) the further securities are acquired by A in 1 or more transactions, all of which are completed within 5 years of the date of A's consent; and

- (c) either—
- (i) the total number of further securities is less than 5% of the total number of initial consented securities; or
 - (ii) on completion of each acquisition of further securities, both of the following are true:
 - (A) the resulting percentage of securities of the same class that A holds does not exceed by more than 10 percentage points the percentage of those securities that were initial consented securities; and
 - (B) A's level of control in B is less than A's control limit.

Example

A has consent to acquire 60% of company B's class Z shares. There are 100 class Z shares.

A wants to acquire 20 further shares. A cannot under this exemption.

However, A could use paragraph (c)(i) to acquire 3 further class Z shares (that is, 5% of 60).

Or, paragraph (c)(ii) may allow A to acquire up to 10 further shares (that is, 60% plus 10 percentage points). The exact amount that A could acquire under paragraph (c)(ii) depends on A's level of control in B which, after the acquisition, would need to be less than A's control limit.

Interpretation

- (3) For the purposes of this regulation,—

A's control limit is defined in relation to the investment in B that A has consent for as follows:

- (a) if A has consent to acquire less than 25% of a class of B's securities, A's control limit is 25%:
- (b) if A has consent to acquire 25% or more, but less than 50%, of a class of B's securities, A's control limit is 50%:
- (c) if A has consent to acquire 50% or more, but less than 75%, of a class of B's securities, A's control limit is 75%:
- (d) if A has consent to acquire 75% or more, but less than 90%, of a class of B's securities, A's control limit is 90%:
- (e) if A has consent to acquire 90% or more of a class of B's securities, A's control limit is 100%

holds includes has a beneficial entitlement to or a beneficial interest in

level of control in B, in relation to A and expressed as a percentage, is the highest of the following:

- (a) the proportion of the governing body of B of which A has power to control the composition:
- (b) the proportion of the voting power at a meeting of B that A has the right to exercise or of which A has the right to control the exercise

securities of the same class means that the securities have attached to them identical rights, privileges, limitations, and conditions.

Conditions

- (4) If a person (A) relies on the exemption in this regulation, the conditions of A's consent continue in effect as conditions of the consent as if the further securities were covered by the consent.

39 Exemption for redeemable preference shares

The requirement for consent does not apply to the extent that giving effect to a transaction has the effect of the acquisition by an overseas person of redeemable preference shares that are redeemable only in cash and that do not entitle the holder to exercise voting rights except if the dividend payable is in arrears.

40 Exemptions for trusts

- (1) The requirement for consent does not apply to the extent that giving effect to a transaction has any of the following effects:
 - (a) the transfer of property from a trustee to an overseas person who is a trustee of the same trust on the appointment of a new trustee or the retirement of a trustee or on the resettlement of a trust if that appointment, retirement, or resettlement does not result in the trust becoming an overseas person:
 - (b) the transfer by a trustee, executor, or administrator of the will or of the estate of a deceased person to an overseas person who is a beneficiary of property under that will or estate or under a trust established by that will or estate:
 - (c) the transfer by a trustee of a trust to an overseas person who is a beneficiary of property under that trust if—
 - (i) the trust is an overseas person; and
 - (ii) the acquisition of that property by the trust has been previously consented to under the Act; and
 - (iii) the transfer is not contrary to any conditions of that consent.
- (2) *See also* subpart 1 of Part 3.

41 Exemptions for permitted security arrangements

- (1) The requirement for consent does not apply to the extent that giving effect to a transaction has any of the following effects:
- (a) the acquisition by an overseas person of property under a permitted security arrangement;
 - (b) the acquisition by an overseas person of property as a result of the overseas person enforcing a permitted security arrangement in good faith;
 - (c) the reacquisition by an overseas person of property as a result of the discharge of a permitted security arrangement.
- (2) A security arrangement (*see* section 6(1) of the Act) is a **permitted security arrangement** if it—
- (a) requires that the property be retransferred to the original transferor or extinguished on the payment or performance of the obligation; and
 - (b) to the extent that the term is used in subclause (1)(a),—
 - (i) is entered into by the parties in good faith and in the ordinary course of business; and
 - (ii) is not entered into with the intention of using the security arrangement to make an overseas investment in sensitive land or an overseas investment in significant business assets or an overseas investment in fishing quota without consent.

42 Exemption for portfolios or bundles of permitted security arrangements

The requirement to obtain consent under section 10(1)(a) of the Act or section 57B of the Fisheries Act 1996 does not apply to a transaction to the extent that—

- (a) giving effect to the transaction results in the acquisition by an overseas person of—
 - (i) 2 or more permitted security arrangements that are acquired together as a portfolio or bundle; or
 - (ii) securities in a person (**A**), to the extent of A's property under permitted security arrangements; and
- (b) the acquisition is in good faith and in the ordinary course of business; and
- (c) the transaction is not entered into with the intention of using 1 or more of the permitted security arrangements to make an overseas investment in sensitive land or an overseas investment in fishing quota without consent.

43 Exemption for life insurance

The requirement for consent does not apply to the extent that giving effect to a transaction has the effect of the acquisition of property from the investment of funds by an overseas person carrying on in New Zealand the business of life insurance if—

- (a) the investment of the funds is made for the benefit of policy holders at least 75% of whom are New Zealand citizens or persons ordinarily resident in New Zealand; and
- (b) the investment is of funds held in the overseas person's—
 - (i) Life Insurance Fund within the meaning of section 15 of the Life Insurance Act 1908 if the overseas person carries on any other business; or
 - (ii) statutory fund or funds (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010).

44 Exemption for retirement schemes

The requirement for consent does not apply to the extent that giving effect to a transaction has the effect of the acquisition of property by or on behalf of an overseas person that is the supervisor or manager of a retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) from the investment of all or part of the assets of the scheme for the benefit of members at least 75% of whom are New Zealand citizens or persons ordinarily resident in New Zealand.

45 Exemptions for relationship property

- (1) The requirement for consent does not apply to the extent that giving effect to a transaction has any of the following effects:
 - (a) the acquisition by an overseas person of property if—
 - (i) the property is, or will be as a result of the acquisition, relationship property of the overseas person and the overseas person's spouse or partner; and
 - (ii) the overseas person's spouse or partner is not an overseas person:
 - (b) the acquisition by an overseas person of property as a result of a division of relationship property under the Property (Relationships) Act 1976:
 - (c) the acquisition by a company incorporated in New Zealand (**A Co**) of property if—
 - (i) all of the securities in **A Co** are wholly owned as relationship property by a person (**B**) and **B**'s spouse or partner; and
 - (ii) **B** is not an overseas person.
- (2) In this regulation,—

relationship property means relationship property as defined in section 8 of the Property (Relationships) Act 1976

spouse or partner means spouse, civil union partner, or de facto partner.

- (3) See also regulation 58 for another relationship property exemption.

46 Exemption for underwriting

The requirement for consent does not apply to the extent that giving effect to a transaction has the effect of the underwriting by an overseas person of an issue of securities if that person—

- (a) is a person whose ordinary business includes entering into bona fide underwriting or subunderwriting contracts with respect to offers of securities; and
- (b) acquires the securities as a result of entering into a bona fide underwriting or subunderwriting contract in the course of that person's ordinary business; and
- (c) holds the securities for less than 6 months; and
- (d) does not exercise any voting rights attached to those securities.

11 Regulation 33A amended (Exemption for overseas custodians acquiring certain rights and interests in custodial property)

In regulation 33A(2), definition of **custodial property**, replace “securities or rights or interests in securities or property” with “property”.

Exemptions from requirement for consent in respect of overseas investments in sensitive land

12 Regulation 36AA amended (Exemption for certain land transactions commonly known as re-grants)

In regulation 36AA(1), after “freehold estate”, insert “or a regulated *profit à prendre*”.

13 New regulations 54 to 56 inserted

After regulation 36AC (Exemption for transactions consequential on certain actions under Public Works Act 1981), insert:

54 Exemption for replacement of forestry right with new forestry right

Application

- (1) This regulation applies if—
- (a) an overseas person (the **original forestry investor**) acquired a forestry right (the **original forestry right**) as a result of a transaction (the **original transaction**); and
 - (b) one of the following applies:

- (i) the acquisition of the original forestry right was an overseas investment in sensitive land and—
 - (A) consent was obtained for the original transaction for the purposes of section 10(1)(a) of the Act to the extent that the original transaction resulted in the acquisition of the original forestry right; or
 - (B) because of the exemption in clause 7 of Schedule 3 of the Act, consent was not required for the original transaction for the purposes of section 10(1)(a) of the Act to the extent that the original transaction resulted in the acquisition of the original forestry right:
 - (ii) consent for the original transaction was not required as referred to in subparagraph (i)(A) because the original transaction was entered into before the commencement of clause 1 of Schedule 1AA of the Act.
- (2) This regulation also applies if—
- (a) a person (the **original forestry investor**) acquired a forestry right (the **original forestry right**); and
 - (b) subsequent to the acquisition of the original forestry right, an overseas person acquired rights or interests in securities of the original forestry investor as a result of a transaction (the **securities transaction**); and
 - (c) one of the following applies:
 - (i) the acquisition of the rights or interests in securities of the original forestry investor was an overseas investment in sensitive land and, in relation to the original forestry right, consent was obtained for the securities transaction for the purposes of section 10(1)(a) of the Act to the extent that the securities transaction resulted in the acquisition of the rights or interests in securities:
 - (ii) consent for the securities transaction was not required as referred to in subparagraph (i) because the securities transaction was entered into before the commencement of clause 1 of Schedule 1AA of the Act.
- (3) For the purposes of subclauses (1) and (2), it does not matter whether an acquisition of a forestry right, or of rights or interests in securities, was given effect to before, on, or after the commencement of this regulation.
- (4) Clause 1(4) and (5) of Schedule 1AA of the Act applies for the purposes of subclauses (1)(b)(ii) and (2)(c)(ii), with any necessary modifications, when deciding when a transaction is entered into.

Exemption

- (5) A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that it will result in an overseas investment in sensitive land if—
- (a) the overseas investment is the acquisition of a forestry right (the **new forestry right**) by the original forestry investor or a person related to the original forestry investor; and
 - (b) immediately before the new forestry right is acquired,—
 - (i) the area of land covered by the new forestry right is fully covered by the original forestry right (whether or not it is the only area of land covered by the original forestry right); and
 - (ii) the original forestry right is held by the original forestry investor or a person related to the original forestry investor; and
 - (c) the term of the new forestry right (including rights of renewal, whether of the grantor or grantee) expires no later than 3 years after the end of the term of the original forestry right (*see* subclause (6)); and
 - (d) the requirements of subclause (7) are met (if applicable).
- (6) For the purposes of subclause (5)(c), the term of the original forestry right must be determined as at the time of its acquisition by the original forestry investor, but including rights of renewal, whether of the grantor or grantee, existing at that time.
- (7) If subclause (11) will apply (*see* subclause (10)), the rights conferred by the new forestry right—
- (a) must be sufficient to enable any relevant conditions of a consent to continue to be complied with;
 - (b) must not include any right that was not conferred by the forestry right to which the consent related, if the absence of that right from that forestry right was the basis (wholly or partly)—
 - (i) on which the relevant Ministers, when they granted the consent, did not apply or modified a requirement under section 16A(8) of the Act; or
 - (ii) if the consent is a standing consent under clause 3 of Schedule 4 of the Act, on which the relevant Ministers varied the conditions of the consent under clause 3(10) of that schedule in relation to a requirement set out in regulations made for the purposes of section 16A(4)(d) of the Act.

Reapplication of exemption

- (8) Subclause (9) applies if—

- (a) the exemption in subclause (5) is relied upon for the acquisition of a forestry right (including in a case where the exemption is applied by virtue of subclause (9)); and
 - (b) the original forestry investor, or a person related to the original forestry investor, makes a subsequent acquisition of a forestry right.
- (9) The exemption in subclause (5) may be applied to the subsequent acquisition, reading references in subclause (5)(b)(i) and (ii) to the original forestry right as references to the forestry right referred to in subclause (8)(a).

Conditions of consents to continue in effect

- (10) If the exemption in subclause (5) is relied upon, subclause (11) applies to the conditions of a consent—
- (a) if the consent was obtained for the purposes of section 10(1)(a) of the Act in relation to a relevant forestry right (*see* subclause (14)); and
 - (b) to the extent that the conditions are in effect immediately before the acquisition of the new forestry right (including in a case where the conditions are in effect by virtue of subclause (11)).
- (11) The conditions continue in effect as conditions of the consent, with any necessary modifications, as if the new forestry right were the relevant forestry right (except to the extent that the area of land that was covered by the relevant forestry right is not covered by the new forestry right).
- (12) If the consent is a consent that was obtained for the transaction referred to in subclause (1)(a) and the person who acquires the new forestry right is not a holder of the consent, that person is treated as a holder of the consent for all purposes.
- (13) However, that person is not required to comply with the conditions of the consent to the extent that they relate to any area of land that is not covered by the new forestry right.
- (14) In subclause (10)(a), **relevant forestry right** means—
- (a) the original forestry right; or
 - (b) another forestry right that was previously acquired in reliance on the exemption in subclause (5).

Meaning of related

- (15) For the purposes of this regulation, a person (A) is **related** to the original forestry investor if—
- (a) the original forestry investor owns and controls 95% of A; or
 - (b) A owns and controls 95% of the original forestry investor; or
 - (c) a third person owns and controls 95% of the original forestry investor and of A.

- (16) For the purposes of subclause (15), a person (**X**) **owns and controls 95%** of another person (**Y**) if X has—
- (a) a beneficial entitlement to, or a beneficial interest in, 95% or more of Y's securities; and
 - (b) the power to control the composition of 95% or more of the governing body of Y; and
 - (c) the right to exercise, or control the exercise of, 95% or more of the voting power at a meeting of Y.

55 Exemption for replacement of regulated *profit à prendre* with new regulated *profit à prendre*

Application

- (1) This regulation applies if—
- (a) an overseas person (the **original profit investor**) acquired a regulated *profit à prendre* (the **original profit**) as a result of a transaction (the **original transaction**); and
 - (b) the original *profit* is not a forestry right; and
 - (c) one of the following applies:
 - (i) the acquisition of the original *profit* was an overseas investment in sensitive land and consent was obtained for the original transaction for the purposes of section 10(1)(a) of the Act to the extent that the original transaction resulted in the acquisition of the original *profit*;
 - (ii) consent for the original transaction was not required as referred to in subparagraph (i) because the original transaction was entered into before the commencement of clause 1 of Schedule 1AA of the Act.
- (2) This regulation also applies if—
- (a) a person (the **original profit investor**) acquired a regulated *profit à prendre* (the **original profit**); and
 - (b) the original *profit* is not a forestry right; and
 - (c) subsequent to the acquisition of the original *profit*, an overseas person acquired rights or interests in securities of the original *profit* investor as a result of a transaction (the **securities transaction**); and
 - (d) one of the following applies:
 - (i) the acquisition of the rights or interests in securities of the original *profit* investor was an overseas investment in sensitive land and, in relation to the original *profit*, consent was obtained for the securities transaction for the purposes of section 10(1)(a) of the

Act to the extent that the securities transaction resulted in the acquisition of the rights or interests in securities:

- (ii) consent for the securities transaction was not required as referred to in subparagraph (i) because the securities transaction was entered into before the commencement of clause 1 of Schedule 1AA of the Act.
- (3) For the purposes of subclauses (1) and (2), it does not matter whether an acquisition of a regulated *profit à prendre*, or of rights or interests in securities, was given effect to before, on, or after the commencement of this regulation.
- (4) Clause 1(4) and (5) of Schedule 1AA of the Act applies for the purposes of subclauses (1)(c)(ii) and (2)(d)(ii), with any necessary modifications, when deciding when a transaction is entered into.

Exemption

- (5) A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that it will result in an overseas investment in sensitive land if—
- (a) the overseas investment is the acquisition of a regulated *profit à prendre* (the **new profit**) by the original *profit* investor or a person related to the original *profit* investor; and
 - (b) the new *profit* is not a forestry right; and
 - (c) immediately before the new *profit* is acquired,—
 - (i) the area of land covered by the new *profit* (the **covered land**) is fully covered by the original *profit* (whether or not the covered land is the only area of land covered by the original *profit*); and
 - (ii) the original *profit* is held by the original *profit* investor or a person related to the original *profit* investor; and
 - (d) the subject matter of the rights conferred by the new *profit* in respect of the covered land is the same, or substantially the same, as the subject matter of the rights conferred by the original *profit* in respect of the covered land; and
 - (e) the term of the new *profit* (including rights of renewal, whether of the grantor or grantee) expires no later than 3 years after the end of the term of the original *profit* (see subclause (6)); and
 - (f) the requirement of subclause (7) is met (if applicable).
- (6) For the purposes of subclause (5)(e), the term of the original *profit* must be determined as at the time of its acquisition by the original *profit* investor, but including rights of renewal, whether of the grantor or grantee, existing at that time.

- (7) If subclause (11) will apply (*see* subclause (10)), the rights conferred by the new *profit* must be sufficient to enable any relevant conditions of a consent to continue to be complied with.

Reapplication of exemption

- (8) Subclause (9) applies if—
- (a) the exemption in subclause (5) is relied upon for the acquisition of a regulated *profit à prendre* (including in a case where the exemption is applied by virtue of subclause (9)); and
 - (b) the original *profit* investor, or a person related to the original *profit* investor, makes a subsequent acquisition of a regulated *profit à prendre* that is not a forestry right.
- (9) The exemption in subclause (5) may be applied to the subsequent acquisition, reading references in subclause (5)(c)(i) and (ii) to the original *profit* as references to the regulated *profit à prendre* referred to in subclause (8)(a).

Conditions of consents to continue in effect

- (10) If the exemption in subclause (5) is relied upon, subclause (11) applies to the conditions of a consent—
- (a) if the consent was obtained for the purposes of section 10(1)(a) of the Act in relation to a relevant *profit* (*see* subclause (14)); and
 - (b) to the extent that the conditions are in effect immediately before the acquisition of the new *profit* (including in a case where the conditions are in effect by virtue of subclause (11)).
- (11) The conditions continue in effect as conditions of the consent, with any necessary modifications, as if the new *profit* were the relevant *profit* (except to the extent that the area of land that was covered by the relevant *profit* is not covered by the new *profit*).
- (12) If the consent is a consent that was obtained for the transaction referred to in subclause (1)(a) and the person who acquires the new *profit* is not a holder of the consent, that person is treated as a holder of the consent for all purposes.
- (13) However, that person is not required to comply with the conditions of the consent to the extent that they relate to any area of land that is not covered by the new *profit*.

- (14) In subclause (10)(a), **relevant *profit*** means—
- (a) the original *profit*; or
 - (b) another regulated *profit à prendre* that was previously acquired in reliance on the exemption in subclause (5).

Meaning of related

- (15) For the purposes of this regulation, a person (A) is **related** to the original *profit* investor if—

- (a) the original *profit* investor owns and controls 95% of A; or
 - (b) A owns and controls 95% of the original *profit* investor; or
 - (c) a third person owns and controls 95% of the original *profit* investor and of A.
- (16) For the purposes of subclause (15), a person (X) **owns and controls 95%** of another person (Y) if X has—
- (a) a beneficial entitlement to, or a beneficial interest in, 95% or more of Y's securities; and
 - (b) the power to control the composition of 95% or more of the governing body of Y; and
 - (c) the right to exercise, or control the exercise of, 95% or more of the voting power at a meeting of Y.

56 Exemption for freeholder who acquires another interest in land included in freehold

A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that it will result in an overseas investment in sensitive land if—

- (a) the overseas investment is the acquisition of an interest in land (the **new interest**) by an overseas person; and
- (b) the new interest is not a freehold estate; and
- (c) immediately before and after the acquisition,—
 - (i) the freehold estate in the area of land covered by the new interest has a single (legal and equitable) owner; and
 - (ii) the overseas person is that single owner.

Exemptions from requirement for consent in respect of overseas investments in residential land

14 New regulations 59 and 60 inserted

After regulation 36AF (Exemptions relating to relationship property where spouse or partner granted consent under commitment to reside in New Zealand test), as inserted by Schedule 5 of the Overseas Investment Amendment Act 2018, insert:

59 Exemption for diplomatic premises

- (1) A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that it will result in the acquisition by a foreign government of an interest in residential (but not otherwise sensitive) land that is to be used exclusively for both or either of the following:
- (a) for the purposes of a mission or consular post:

(b) as a diplomatic or consular residence.

(2) In this regulation,—

foreign government means a foreign government or an entity that is recognised by or under the Diplomatic Privileges and Immunities Act 1968 or the Consular Privileges and Immunities Act 1971 as having the privileges and immunities specified in either of those Acts

mission has the same meaning as in section 2 of the Diplomatic Privileges and Immunities Act 1968.

60 Exemption for charitable entities

A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that it will result in the acquisition of an interest in residential (but not otherwise sensitive) land by a person—

- (a) that is registered as a charitable entity under the Charities Act 2005; and
- (b) that is described in section LD 3(2) of the Income Tax Act 2007; and
- (c) that is not listed in Schedule 32 of that Act.

Exemption from definition of overseas person

15 Regulation 36B amended (Exemption for certain bodies corporate who are overseas persons only because overseas custodians have custodial securities)

In regulation 36B (Exemption for certain bodies corporate who are overseas persons only because overseas custodians have custodial securities), subclause (3), example 2, first sentence, replace “custodial property” with “custodial securities”.

16 Regulation 38 replaced (Requirements for application for exemption)

Replace regulation 38 with:

64 Requirements for application for exemption

(1) An application for an exemption under section 61D of the Act (Minister may grant individual exemptions) must—

- (a) be in writing; and
- (b) be signed by each applicant; and
- (c) contain the information specified by the Minister by notice in the *Gazette*; and
- (d) be accompanied by a statutory declaration verifying that the information contained in the application is true and correct, unless the regulator waives this requirement; and
- (e) be sent to the regulator; and

- (f) be accompanied by the relevant fee, unless this has already been paid.
- (2) The statutory declaration must be made by each applicant or, if an applicant is a body corporate, by an officer of that applicant.
- (3) For the purpose of considering the application, the regulator may, by notice in writing, require the applicant or any other person with information relevant to the application to provide the information specified in the notice and in the form specified by the notice.

Part 3

Amendments to rest of regulations

17 Part 3 revoked

Revoke Part 3.

18 New Parts 3 and 4 inserted

After regulation 38, insert:

Part 3

Miscellaneous

Subpart 1—When person who relies on exemption to acquire property becomes subject to existing consent or exemption conditions

65 Application of, and interpretation for, subpart

- (1) This subpart prescribes matters for the purposes of section 61G of the Act and applies if—
 - (a) a person (**B**) acquires property (the **relevant property**) in reliance on an exemption listed in subclause (2); and
 - (b) existing conditions apply in connection with the relevant property (whether or not they also apply in connection with other property).
- (2) The listed exemptions are as follows:
 - (a) regulation 37(1)(a) (which relates to transactions within a group where 1 overseas person owns 95% of the group):
 - (b) regulation 37(1)(b) (which relates to acquisitions if no increase in ultimate ownership and control by overseas persons):
 - (c) regulation 37(1)(d) (which relates to amalgamations):
 - (d) regulation 40(1)(a) (which relates to changes of trustees):
 - (e) regulation 40(1)(b) (which relates to estates of deceased persons):

- (f) regulation 40(1)(c) (which relates to transfers by trusts to an overseas person who is a beneficiary).

Example

New trustees (**B1**) are appointed to a trust.

They acquire trust property in reliance on the exemption in regulation 40(1)(a).

Existing conditions of consent apply in connection with the trust property.

So this subpart applies.

-
- (3) In this subpart, **existing conditions** means any of the following:
- (a) conditions of consent:
 - (b) conditions of an exemption in the Act or in these regulations:
 - (c) conditions to which, because of the previous operation of section 61G of the Act, a person is treated as being subject.
- (4) In this subpart, unless the context otherwise requires,—
- A** means a person A in section 61G(1)(a) of the Act
- B** means the person who acquires the relevant property as described in subclause (1)
- continuing condition** has the meaning given to it by regulation 66(2)
- listed exemptions** means the exemptions listed, for the purpose of section 61G of the Act, in subclause (2)
- relevant property** means the property acquired by B as described in subclause (1).

66 B treated as subject to existing conditions that are continuing conditions

- (1) In addition to the conditions (if any) of the listed exemption relied on by B, B is treated under section 61G of the Act as being subject to all existing conditions that apply in connection with the relevant property (if any) that are continuing conditions.

Example (continued)

The previous trustees (**A**) are the consent holders in relation to the trust property that is acquired by B1 (the new trustees), without consent, in reliance on the exemption in regulation 40(1)(a) (a listed exemption).

So B1 is treated as subject to all conditions of A's consent that are continuing conditions.

Example (continued)

The trustees change again. The new trustees (**B2**) acquire the trust property from B1 in reliance on the exemption in regulation 40(1)(a).

B1,—

- because of the previous operation of section 61G of the Act, is treated as subject to all conditions of A's consent that are continuing conditions; and

- relied on an exemption in these regulations to acquire the trust property (the exemption in regulation 40(1)(a)).

So B2 becomes subject to all conditions of A's consent, and all conditions of the exemption that B1 relied on (if any), that are continuing conditions.

- (2) For the purposes of this subpart, every existing condition is a **continuing condition**, except to the extent that it has been met at the date that B acquires the relevant property and is not ongoing.

Example (continued)

The conditions of A's consent include—

Condition	Details	Required date
1	A must acquire the property by 1 January 2018	1 January 2018
2	A must tell the regulator in writing that A has acquired the property	Within 2 months of settlement
3	The individuals who control the trust must continue to meet certain good character and Immigration Act 2009 criteria	Ongoing
4	A must allow the regulator to visit the property that is land to monitor compliance with conditions	Ongoing
5	A must tell the regulator if A disposes of the property or any part of it.	Within 20 working days of disposal

Condition 1 is not a continuing condition.

Condition 2 is not a continuing condition if the required date is in the past and A met the condition.

Conditions 3 to 5 are continuing conditions.

- (3) Subclause (1) specifies the class of conditions to which section 61G(3) of the Act applies.
- (4) *See* also section 61G(4) of the Act for when B is treated as a consent holder in respect of continuing conditions.

67 A ceases to be subject to existing conditions to extent B becomes subject

- (1) A ceases to be subject to existing conditions to the extent that (including on and from the date that) B is treated as subject to the conditions.
- (2) However, subclause (1) does not release A from liability for performance of, or any breach of, a condition before the date that B becomes treated as subject to the condition.

New example

The trustee (**A**) of a trust that is an overseas person transfers to an overseas person who is a beneficiary (**B**) interests in securities under that trust. The acquisition of the interests in securities was previously consented to under the Act and the transfer is not contrary to any conditions of A's consent. B relies on the exemption in regulation 40(1)(c) to acquire the interests in securities.

A's consent also relates to other interests in securities.

A's consent relates to: 100 shares in Company Ltd	B acquires from A: 50 shares in Company Ltd, on 1 January 2019	B treated as subject to: Conditions of A's consent that apply in connection with the 50 shares and are continuing conditions, on and from 1 January 2019	A is subject to: <ul style="list-style-type: none"> • All conditions of A's consent up to 1 January 2019 • On and from 1 January 2019, all conditions of A's consent to the extent that B is not treated as subject to those conditions
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Subpart 2—Notices

Notices

68 Relevant Minister or Ministers or regulator may give notice of exercise of powers

- (1) The relevant Minister or Ministers or the regulator may give notice of the exercise of any powers under the Act or these regulations.
- (2) A notice under subclause (1) may be given—
 - (a) in the *Gazette*;
 - (b) to a particular person.
- (3) Every person is bound by a notice given under subclause (1).
- (4) A notice under subclause (1) may at any time be amended or revoked.

Service of notices

69 Service of notices

See sections 54 to 55A of the Act.

Part 4

Exemptions in respect of overseas investments in sensitive land to implement obligations under international agreements

Subpart 1—Introduction and definitions

70 Introduction to this Part

- (1) This Part, which is made under section 61(1)(i) of the Act, is for the purpose of implementing obligations that have entered into force for New Zealand under certain international agreements to which New Zealand is a party and that relate to overseas investments in sensitive land.

- (2) Subpart 2 relates to the Protocol on Investment to the New Zealand–Australia Closer Economic Relations Trade Agreement done at Wellington on 16 February 2011 (the **Australian CER Investment Protocol**).
- (3) Subpart 3 relates to the Agreement between New Zealand and Singapore on a Closer Economic Partnership done at Singapore on 14 November 2000 (the **Singapore CEP**).

71 Definitions

- (1) In this Part, unless the context otherwise requires,—

Australian CER Investment Protocol is to be read in accordance with regulation 70(2)

Australian individual is to be read in accordance with regulation 74

Australian investor is to be read in accordance with regulation 78

enterprise means any of the following, whether acting for profit or not:

- (a) a body corporate;
- (b) a trust (including a unit trust);
- (c) a partnership;
- (d) a sole proprietorship;
- (e) a joint venture;
- (f) any other unincorporated body of persons

non-NZ enterprise means an enterprise that is neither constituted nor organised under the law of New Zealand

NZ branch means a branch of an enterprise if the branch is located in New Zealand

NZ individual means—

- (a) a New Zealand citizen; or
- (b) a natural person who is ordinarily resident in New Zealand

ordinarily resident in New Zealand has the relevant meaning in section 6(2)(a) or (b) of the Act, as the case requires, except that the requirement to hold a residence class visa granted under the Immigration Act 2009 does not apply

ownership and control test is to be read in accordance with regulation 72

relevant investor, in relation to a transaction, means—

- (a) an overseas person if, as a result of the transaction and either alone or with any other person, the overseas person—
 - (i) acquires an interest in land referred to in section 12(a) of the Act; or

- (ii) acquires rights or interests in securities of a person (**A**) if A owns or controls (directly or indirectly) an interest in land described in section 12(a) of the Act; or
- (b) an associate of an overseas person if, as a result of the transaction and either alone or with any other person, the associate—
 - (i) acquires an interest in land referred to in section 12(a) of the Act; or
 - (ii) acquires rights or interests in securities of a person (**A**) if A owns or controls (directly or indirectly) an interest in land described in section 12(a) of the Act

Singapore CEP is to be read in accordance with regulation 70(3)

Singaporean individual is to be read in accordance with regulation 80

Singaporean investor is to be read in accordance with regulation 83.

- (2) *See* regulation 74 for further definitions that apply in subpart 2.
- (3) *See* regulation 80 for further definitions that apply in subpart 3.

72 Definition of ownership and control test

- (1) For the purposes of this Part, an enterprise meets the **ownership and control test** (subject to subclauses (3) to (5)) if—
 - (a) the enterprise is a body corporate (**S**) and a qualifying person or persons have, directly or indirectly,—
 - (i) a beneficial entitlement to, or a beneficial interest in, more than 75% of S's securities; and
 - (ii) the power to control the composition of more than 75% of S's governing body; and
 - (iii) the right to exercise, or to control the exercise of, more than 75% of the voting power at a meeting of S; or
 - (b) the enterprise is a trust (**T**) that is not a unit trust and—
 - (i) more than 75% of T's governing body are qualifying persons; and
 - (ii) a qualifying person or persons have, directly or indirectly, a beneficial entitlement to, or a beneficial interest in, more than 75% of T's trust property; and
 - (iii) more than 75% of the persons having, directly or indirectly, the right to amend, or to control the amendment of, T's trust deed are qualifying persons; and
 - (iv) more than 75% of the persons having, directly or indirectly, the right to control the composition of T's governing body are qualifying persons; or
 - (c) the enterprise is a unit trust (**U**) and—

- (i) the manager or trustee (or both) is a qualifying person; and
- (ii) a qualifying person or persons have, directly or indirectly, a beneficial entitlement to, or a beneficial interest in, more than 75% of U's trust property; or
- (d) the enterprise is a partnership, an unincorporated joint venture, or any other unincorporated body of persons (**V**) that is not a trust and—
 - (i) more than 75% of V's partners or members are qualifying persons; and
 - (ii) a qualifying person or persons have, directly or indirectly,—
 - (A) a beneficial entitlement to, or a beneficial interest in, more than 75% of V's profits or assets (including on V's winding up); and
 - (B) the right to exercise, or to control the exercise of, more than 75% of the voting power at a meeting of V.
- (2) In subclause (1), **qualifying person** means—
 - (a) an NZ individual or an Australian individual, if this regulation is being applied for the purposes of subpart 2; or
 - (b) an NZ individual or a Singaporean individual, if this regulation is being applied for the purposes of subpart 3.
- (3) If this regulation is being applied for the purpose of subpart 2, an enterprise cannot meet the **ownership and control test** in relation to a transaction if, in relation to the transaction, the enterprise—
 - (a) is an agent, a trustee, or a representative of an overseas person who is not an Australian investor; or
 - (b) acts in any way on behalf of an overseas person who is not an Australian investor; or
 - (c) is subject to the direction, control, or influence of an overseas person who is not an Australian investor.

Example

A company is constituted under Australian law. It does not have substantive business operations in Australia so, in order to be an Australian investor under regulation 78, it must meet the ownership and control test.

It is entering into a transaction to acquire the freehold estate in residential (but not otherwise sensitive) land.

Only New Zealand individuals and Australian individuals are shareholders of the company, and they have all the beneficial entitlement to and interest in the company's securities, the power to control the composition of all of the company's governing body, and the right to exercise all of the voting power at a meeting of the company.

However, in relation to the transaction, the company is acquiring the land as trustee for a overseas person who is not an Australian investor. The ownership

and control test is not met in relation to the transaction and the company cannot rely on the exemption in regulation 75.

In addition, the beneficiary would also be a relevant investor under paragraph (b) of the definition of relevant investor in regulation 71, and is an overseas person who is not an Australian investor. That is another reason why the exemption in regulation 75 could not be relied upon.

- (4) If this regulation is being applied for the purpose of subpart 3, an enterprise cannot meet the **ownership and control test** in relation to a transaction if, in relation to the transaction, the enterprise—
- (a) is an agent, a trustee, or a representative of an overseas person who is not a Singaporean investor; or
 - (b) acts in any way on behalf of an overseas person who is not a Singaporean investor; or
 - (c) is subject to the direction, control, or influence of an overseas person who is not a Singaporean investor.
- (5) In subclauses (3) and (4), references to the enterprise include, if the enterprise is a trust, the trustees of the trust.

Subpart 2—Implementation of Australian CER Investment Protocol

Introduction and definitions

73 **Introduction to subpart 2**

The purpose of this subpart is to implement obligations in the Australian CER Investment Protocol in relation to overseas investments in sensitive land where—

- (a) the relevant land is residential (but not otherwise sensitive) land; or
- (b) the interest in land described in section 12(a) of the Act is a regulated *profit à prendre*.

74 **Definitions for subpart 2**

In this subpart, unless the context otherwise requires,—

Australia does not include its external territories

Australian branch means a branch of an enterprise if the branch—

- (a) is located in Australia; and
- (b) is carrying out business activities in Australia

Australian enterprise means an enterprise that is constituted or organised under Australian law

Australian Government includes—

- (a) the Crown in right of Australia; and
- (b) an Australian State or territory; and

(c) Australian regional or local government

Australian individual means a natural person who is—

- (a) an Australian citizen under Australian law; or
- (b) a permanent resident of Australia under Australian law and who is ordinarily resident in New Zealand

Australian investor is to be read in accordance with regulation 78.

Exemptions for Australian investors

75 Exemption for Australian investors in respect of residential (but not otherwise sensitive) land

A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that—

- (a) it will result in an overseas investment in sensitive land where the relevant land is residential (but not otherwise sensitive) land; and
- (b) every relevant investor either is an Australian investor or is not an overseas person.

Example 1

A New Zealand citizen acquires the freehold estate in residential (but not otherwise sensitive) land as the agent for an Australian citizen, such that the New Zealand citizen is a relevant investor under paragraph (b) of the definition of relevant investor in regulation 71, and the Australian citizen is a relevant investor under paragraph (a) of that definition. There are no other associates.

The exemption can be relied upon because the New Zealand citizen is not an overseas person (see section 7(2)(a) of the Act) and the Australian citizen is an Australian investor.

Example 2

A trust is organised under Australian law. The trustees, who are all Australian individuals, are entering into a transaction to acquire the freehold estate in residential (but not otherwise sensitive) land. The trustees will hold the land on trust for an overseas person who is not an Australian investor. That beneficiary's equitable interest in the land is enough to make that beneficiary a relevant investor under paragraph (a) of the definition of relevant investor in regulation 71. As not all of the relevant investors are Australian investors, the exemption cannot be relied upon.

This is the case regardless of whether (and why) the trust is an Australian investor under regulation 78 (ie, regardless of whether it has substantive business operations in Australia or meets the ownership and control test under regulation 72).

76 Exemption for Australian investors in respect of regulated *profit à prendre*

A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that—

- (a) it will result in an overseas investment in sensitive land where the interest in land described in section 12(a) of the Act is a regulated *profit à prendre*; and
- (b) every relevant investor either is an Australian investor or is not an overseas person.

77 Exemption for Australian investors in respect of relationship property

(1) A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that—

- (a) the transaction will result in an overseas investment in sensitive land where the relevant land is residential (but not otherwise sensitive) land or where the interest in land described in section 12(a) of the Act is a regulated *profit à prendre* or both (the **exempted land**); and
- (b) the transaction will result in either of the following:
 - (i) the acquisition by an overseas person of exempted land if—
 - (A) the exempted land is, or will be as a result of the acquisition, relationship property of the overseas person and the overseas person’s spouse or partner; and
 - (B) the overseas person’s spouse or partner is an Australian individual;
 - (ii) the acquisition by a company incorporated in New Zealand (**A Co**) of exempted land if—
 - (A) all of the securities in A Co are wholly owned as relationship property by a person (**B**) and B’s spouse or partner; and
 - (B) B is an Australian individual.

(2) In this regulation,—

relationship property means relationship property as defined in section 8 of the Property (Relationships) Act 1976

spouse or partner means spouse, civil union partner, or de facto partner.

78 Definition of Australian investor

In this subpart, **Australian investor**—

- (a) means—
 - (i) an Australian individual; or
 - (ii) the Australian Government; or
 - (iii) an Australian enterprise, if the enterprise—
 - (A) carries on substantive business operations in Australia; or
 - (B) meets the ownership and control test; or

- (iv) a non-NZ enterprise that is acting through an Australian branch of the enterprise if—
 - (A) the branch carries on substantive business operations in Australia; or
 - (B) the enterprise meets the ownership and control test; but
- (b) does not include an enterprise that is acting through an NZ branch of the enterprise.

Subpart 3—Implementation of Singapore CEP

Introduction and definitions

79 Introduction to subpart 3

The purpose of this subpart is to implement obligations in the Singapore CEP in relation to overseas investments in sensitive land where the relevant land is residential (but not otherwise sensitive) land.

80 Definitions for subpart 3

In this subpart, unless the context otherwise requires,—

Singaporean branch means a branch of an enterprise if the branch—

- (a) is located in Singapore; and
- (b) is carrying out business activities in Singapore

Singaporean enterprise means an enterprise that is constituted or organised under Singaporean law

Singaporean individual means a natural person who is—

- (a) a national of Singapore under Singaporean law; or
- (b) a permanent resident of Singapore under Singaporean law and who is ordinarily resident in New Zealand

Singaporean investor is to be read in accordance with regulation 83.

Exemptions for Singaporean investors

81 Exemption for Singaporean investors in respect of residential (but not otherwise sensitive) land

A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that—

- (a) the transaction will result in an overseas investment in sensitive land where the relevant land is residential (but not otherwise sensitive) land; and
- (b) every relevant investor either is a Singaporean investor or is not an overseas person.

82 Exemption for Singaporean investors in respect of relationship property

- (1) A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that—
- (a) the transaction will result in an overseas investment in sensitive land where the relevant land is residential (but not otherwise sensitive) land (the **exempted land**); and
 - (b) the transaction will result in either of the following:
 - (i) the acquisition by an overseas person of exempted land if—
 - (A) the exempted land is, or will be as a result of the acquisition, relationship property of the overseas person and the overseas person's spouse or partner; and
 - (B) the overseas person's spouse or partner is a Singaporean individual;
 - (ii) the acquisition by a company incorporated in New Zealand (**A Co**) of exempted land if—
 - (A) all of the securities in A Co are wholly owned as relationship property by a person (**B**) and B's spouse or partner; and
 - (B) B is a Singaporean individual.
- (2) In this regulation,—
- relationship property** means relationship property as defined in section 8 of the Property (Relationships) Act 1976
- spouse or partner** means spouse, civil union partner, or de facto partner.

83 Definition of Singaporean investor

In this subpart, **Singaporean investor**—

- (a) means—
 - (i) a Singaporean individual; or
 - (ii) a Singaporean enterprise, if the enterprise—
 - (A) carries on substantive business operations in Singapore; or
 - (B) meets the ownership and control test; or
 - (iii) a non-NZ enterprise that is acting through a Singaporean branch of the enterprise if—
 - (A) the branch carries on substantive business operations in Singapore; or
 - (B) the enterprise meets the ownership and control test; but
- (b) does not include an enterprise that is acting through an NZ branch of the enterprise.

19 Schedule 1AA amended

- (1) In Schedule 1AA, clause 1(2), delete “under regulation 37”.
- (2) In Schedule 1AA, clause 2(1), replace “Regulations 33A and 36AA to 36AC” with “Regulations 47 and 51 to 53”.
- (3) In Schedule 1AA, clause 2(2), replace “Regulation 36B” with “Regulation 62”.
- (4) In Schedule 1AA, after Part 2, insert:

Part 3**Provisions relating to Overseas Investment Amendment Regulations 2018****3 Existing transactions and applications not affected**

- (1) The amendments to these regulations made by the Overseas Investment Amendment Regulations 2018 apply only to transactions entered into on or after commencement.
- (2) In particular, these regulations, as in force immediately before commencement, continue to apply to the following as if the Overseas Investment Amendment Regulations 2018 had not been made:
 - (a) any transaction entered into before commencement;
 - (b) any application for consent that is made before commencement and that relates to a transaction entered into before commencement;
 - (c) any application for consent that is made after commencement and that relates to a transaction entered into before commencement.
- (3) Subclause (2) does not limit subclause (1).
- (4) Clause 1(4) and (5) of Schedule 1AA of the Act applies for the purposes of this clause with any necessary modifications.
- (5) In this clause, **commencement** means the commencement of this clause.

4 Existing transactions: benefit to New Zealand test relating to sensitive land that will be used for forestry activities

Despite clause 3, these regulations, as amended by the Overseas Investment Amendment Regulations 2018, apply to an application that is to be considered under the benefit to New Zealand test applying section 16A(3) of the Act, or in accordance with section 16A(4) of the Act, under clause 2 of Schedule 1AA of the Act.

20 Schedule 2 replaced

Replace Schedule 2 with the Schedule 2 set out in the Schedule of these regulations.

21 Schedule 4 amended

In Schedule 4, delete “TrustPower Limited”.

Schedule Schedule 2 replaced

r 20

Schedule 2 Fees and charges

r 33

Part 1

Applications relating to transaction in category of overseas investment in sensitive land only—residential land

The fees in this Part apply to transactions that will result in an overseas investment in sensitive land only, where all of the relevant land is residential land.

Application	(\$)
1 For consent for a transaction involving a land decision only, on the basis of section 16(1)(b)(i)(A) of the Act (the commitment to reside in New Zealand test), where the land is residential (but not otherwise sensitive) land—	
(a) if the applicant is 1 or more individuals	2,040
(b) if the applicant is a company, trust, or limited partnership or any person other than 1 or more individuals	3,900
(c) if the application is for a waiver relating to a trigger event under clause 8 of Schedule 2 of the Act	550
(d) if the application is for a variation of the consent or a condition of the consent	550
2 For consent for a transaction involving a land decision only, on the basis of section 16(1)(d)(i) of the Act (the commitment to reside in New Zealand test), where the land is both residential and otherwise sensitive land—	
(a) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is less than \$1 million	24,600
(b) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is \$1 million or more or is not stated in the application	31,600
(c) if the application is for a waiver relating to a trigger event under clause 8 of Schedule 2 of the Act	550
3 For consent for a transaction involving a land decision only, on the basis of section 16(1)(b)(i)(B) of the Act (the increased housing test),—	
(a) if the investor test does not apply to the overseas investment because circumstance 2 in section 16(3)(b) applies	2,040
(b) if the investor test does apply to the overseas investment	34,100
4 For each exemption certificate under clause 6 of Schedule 1AA of the Act (exemption relating to dwellings in large apartment developments where sales of dwellings have begun before assent date),—	
(a) on application to grant an exemption certificate	25,500
(b) on application to vary an exemption certificate	13,000

	Application	(\$)
5	For each exemption certificate under clause 4(2) of Schedule 3 (dwellings in large apartment developments that are purchased off plans)	27,600
6	For consent for a transaction involving a land decision only, on the basis of section 16(1)(b)(i)(C) of the Act (the non-residential use test)	34,100
7	For consent for a transaction involving a land decision only, on the basis of section 16(1)(b)(i)(D) of the Act (the incidental residential use test)	34,100
8	For consent for a transaction involving a land decision only, on the basis of section 16(1)(b)(ii) of the Act (the benefit to New Zealand test) and where section 16A(1)(b) is not applicable,—	
	(a) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is less than \$1 million,—	
	(i) where the determination is made by the relevant Ministers	37,500
	(ii) where the determination is made by the regulator under delegation	35,500
	(b) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is \$1 million or more or is not stated in the application,—	
	(i) where the determination is made by the relevant Ministers	43,500
	(ii) where the determination is made by the regulator under delegation	41,500
9	For consent for a transaction involving a land decision only, on the basis of section 16(1)(b)(ii) of the Act (the benefit to New Zealand test) and where section 16A(1)(b) is applicable,—	
	(a) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is less than \$1 million,—	
	(i) where the determination is made by the relevant Ministers	42,500
	(ii) where the determination is made by the regulator under delegation	40,500
	(b) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is \$1 million or more or is not stated in the application,—	
	(i) where the determination is made by the relevant Ministers	49,000
	(ii) where the determination is made by the regulator under delegation	47,000
10	For consent for a transaction involving a land decision only, on the basis of more than 1 of the circumstances in items 1 to 9 (for example, a transaction relying on both the increased housing test and the non-residential use test)	34,100
11	For a standing consent under clause 2 of Schedule 4 of the Act (increased housing test, non-residential use test, or incidental residential use test),—	
	(a) on application	34,100
	(b) for each transaction of which the regulator must be notified under a condition imposed under clause 2(3)(c) of Schedule 4 of the Act	13,000
12	For any other variation of consent or conditions of consent (including addition to and revocation of conditions of consent) referred to in this Part	13,000
13	For each exemption under section 61D of the Act (Minister may grant individual exemptions) in respect of residential land	25,500

Part 2

Applications relating to transaction in category of overseas investment in sensitive land only—forestry activities and *profits à prendre*

The fees in this Part apply to transactions that will result in an overseas investment in sensitive land only, where all of the relevant land is used exclusively or nearly exclusively for forestry activities, or all of the relevant land is a regulated *profit à prendre*.

Application	(\$)
14 For consent for a transaction involving a land decision only, on the basis that section 16A(3) of the Act be applied (the modified benefits test),—	
(a) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is less than \$1 million	44,600
(b) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is \$1 million or more or is not stated in the application	51,100
15 For consent for a transaction involving a land decision only, on the basis that the application be considered in accordance with section 16A(4) of the Act (the special test relating to forestry activities)	34,100
16 For a standing consent under clause 3 of Schedule 4 of the Act (forestry activities)—	
(a) on application	34,100
(b) for each transaction of which the regulator must be notified under a condition imposed under clause 3(3)(c) of Schedule 4 of the Act	13,000
17 For consent for a transaction involving a land decision only, if the only interest in land described in section 12(a) is 1 or more regulated <i>profits à prendre</i> (other than forestry rights) on the basis that section 16A(1) of the Act be applied—	
(a) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is less than \$1 million	42,600
(b) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is \$1 million or more or is not stated in the application	49,100
18 For variation of consent or conditions of consent (including addition to and revocation of conditions of consent) in respect of forestry activities or <i>profits à prendre</i>	13,000
19 For each exemption under section 61D of the Act (Minister may grant individual exemptions) in respect of forestry activities or <i>profits à prendre</i>	25,500

Part 3

Other applications relating to transaction in category of overseas investment in sensitive land only

The fees in this Part apply to transactions that will result in an overseas investment in sensitive land only, and to which Parts 1 and 2 do not apply.

	Application	Determination by relevant Ministers or by regulator under delegation	(\$)
20	For consent for a transaction involving a land decision only, on the basis of section 16(1)(c)(i) of the Act,—		
	(a) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is less than \$1 million	Relevant Ministers or regulator	22,500
	(b) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is \$1 million or more or is not stated in the application	Relevant Ministers or regulator	29,500
21	For consent for a transaction involving a land decision only, on the basis of section 16(1)(c)(ii), (d)(ii), or (e) of the Act (the benefit to New Zealand test) and where section 16A(1)(b) is not applicable,—		
	(a) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is less than \$1 million	Relevant Ministers Regulator	37,500 35,500
	(b) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is \$1 million or more or is not stated in the application	Relevant Ministers Regulator	43,500 41,500
22	For consent for a transaction involving a land decision only, on the basis of section 16(1)(c)(ii), (d)(ii), or (e) of the Act (the benefit to New Zealand test) and where section 16A(1)(b) is applicable,—		
	(a) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is less than \$1 million	Relevant Ministers Regulator	42,500 40,500
	(b) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is \$1 million or more or is not stated in the application	Relevant Ministers Regulator	49,000 47,000
23	For variation of consent or conditions of consent (including addition to and revocation of conditions of consent)	Relevant Ministers or regulator	13,000
24	For each exemption under section 61D of the Act (Minister may grant individual exemptions)	Relevant Ministers or regulator	25,500

Part 4

Applications relating to transaction in category of overseas investment in significant business assets only

The fees in this Part apply to transactions that will result in an overseas investment in significant business assets only.

	Application	(\$)
25	For consent for a transaction involving a business decision only	32,000

Application		(\$)
26	For variation of consent or conditions of consent (including addition to and revocation of conditions of consent)	13,000
27	For each exemption under section 61D of the Act (Minister may grant individual exemptions)	25,500

Part 5

Applications relating to transaction in categories of overseas investment in sensitive land and significant business assets only

The fees in this Part apply to transactions that will result in both an overseas investment in sensitive land and an overseas investment in significant business assets, but will not result in an overseas investment in fishing quota.

Application		Determination by relevant Ministers or by regulator under delegation	(\$)
28	For consent for a transaction involving a land decision on the basis of section 16(1)(b)(ii), (c)(ii), (d)(ii), or (e) of the Act (the benefit to New Zealand test) and a business decision	Relevant Ministers	54,000
		Regulator	52,000
29	For consent for a transaction involving any other land decision and a business decision	Relevant Ministers or regulator	34,100
30	For variation of consent or conditions of consent (including addition to and revocation of conditions of consent)	Relevant Ministers or regulator	13,000
31	For each exemption under section 61D of the Act (Minister may grant individual exemptions)	Relevant Ministers or regulator	25,500

Part 6

Applications relating to overseas investment in fishing quota

The fees in this Part apply to transactions that will result in an overseas investment in fishing quota, whether or not the transaction also results in an overseas investment in sensitive land or an overseas investment in significant business assets.

Application		(\$)
32	For consent for a transaction	40,000
33	For variation of consent or conditions of consent (including addition to and revocation of conditions of consent)	13,000
34	For each exemption under section 61D of the Act (Minister may grant individual exemptions)	40,000

Part 7 Other applications

	Application	(\$)
35	For each exemption under section 61D of the Act (Minister may grant individual exemptions) by addition to Schedule 3 (which relates to portfolio investors) or Schedule 4 (which relates to New Zealand controlled persons),—	
	(a) application for exemption	\$560 per hour
	(b) monitoring compliance with conditions of exemption	\$560 per hour

Part 8 Information and services

	Request	(\$)
36	For provision of information or services	\$168 per hour

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations are made under sections 61 and 61C of the Overseas Investment Act 2005 (the **Act**) and amend the Overseas Investment Regulations 2005 (the **principal regulations**).

These regulations come into force on 22 October 2018, immediately after the Overseas Investment Amendment Act 2018 (the **2018 Amendment Act**), but *see* below on *regulation 20* about the fee for a transitional exemption.

The Act requires consent to be obtained for overseas investments in sensitive New Zealand assets. In particular, section 10(1)(a) of the Act requires consent to be obtained for overseas investments in sensitive land (*see* section 12 and Schedule 1 of the Act). The Act also sets out criteria that must be met for consent to be given.

Some of the amendments made by these regulations arise from the 2018 Amendment Act and relate to forestry activities, regulated *profits à prendre*, and residential land. Some of the other amendments are more general. The regulations are also being renumbered, due to the extra regulations being slotted in.

Amendments relating to forestry activities and regulated profits à prendre

Regulation 6 inserts *new regulation 29* into the principal regulations. *New regulation 29* applies for the purposes of section 16A(4) to (8) of the Act (as inserted by the 2018 Amendment Act). *New regulation 29* does the following:

- permits the benefit to New Zealand test for an overseas investment in sensitive land relating to forestry activities to be met in accordance with section 16A(4) of the Act, instead of section 16A(1) (as inserted by the 2018 Amendment Act):
- for the purposes of section 16A(4)(d) of the Act, sets out requirements in accordance with section 16A(5) that the relevant Ministers must be satisfied will be met, or are likely to be met, after the overseas investment is made, including requirements relating to the following:
 - the maintaining of existing arrangements for the protection of areas of vegetation and habitats of fauna, the protection of historic heritage, the protection of wāhi tapu or wāhi tapu areas, and the providing of public access:
 - the performance of existing contractual obligations for the supply of logs to be processed in New Zealand:
- for the purposes of section 16A(4)(f) of the Act, requires any foreshore, seabed, riverbed, or lakebed that is included in the land to have been offered to the Crown in accordance with regulations 13 to 26 of the principal regulations if the overseas investment is the acquisition of a freehold estate.

Regulation 12 amends regulation 36AA of the principal regulations. Regulation 36AA exempts certain re-grants of leases, and other interests in land, from the requirement for consent under section 10(1)(a) of the Act. The amendment excludes regulated *profits à prendre* from the scope of the exemption. Regulated *profits à prendre* are subject to similar exemptions in *new regulations 54 and 55* of the principal regulations as inserted by *regulation 13* of these regulations (*see below*).

Regulation 13 inserts *new regulations 54 and 55* into the principal regulations. *New regulation 54* exempts certain acquisitions of forestry rights from the requirement for consent under section 10(1)(a) of the Act where the forestry right is essentially replacing an existing forestry right and provides for relevant conditions of existing consents to continue in effect in relation to the newly acquired forestry right. *New regulation 55* gives a corresponding exemption for acquisitions of regulated *profits à prendre* that are not forestry rights.

Also, *see new regulation 76*, which exempts certain Australian investors in respect of *profits à prendre*.

Amendments relating to residential land

Regulation 6 inserts *new regulations 30 to 32* into the principal regulations.

New regulation 30 specifies that Australian citizens and permanent residents and Singaporean nationals and permanent residents are qualifying individuals for the purposes of the commitment to reside in New Zealand test. This means that these groups are in the same position as New Zealand citizens and permanent residents under that test, which requires that every key individual be a qualifying individual.

New regulation 31 sets out factors for considering whether a person remains committed to residing in New Zealand. The factors are a non-exhaustive list of reasons (eg, employment, medical, and other compassionate reasons) why a person may be absent from New Zealand but still be regarded as committed to residing in New Zealand. If a factor applies, it means that a person who is absent from New Zealand for more than 183 days in any 12-month period, and who would otherwise be required to dispose of all relevant interests in residential land as a consequence of that, may apply for a waiver from that requirement to dispose of the land.

New regulation 32 sets 60% as the maximum percentage of new residential dwellings in a development that an exemption certificate may be applied to. This links to the provision (*see* clause 4 of new Schedule 3 inserted by the 2018 Amendment Act) that allows developers of large multi-storey apartment buildings of 20 or more units to apply for an exemption to sell a percentage of the units to overseas buyers “off the plans” without the need for consent or the requirement to on-sell once the unit is complete. However, buyers would not be allowed to occupy the units themselves.

Regulation 14 inserts *new regulations 59 and 60* into the principal regulations. Those regulations provide exemptions from the requirement for consent in respect of residential (but not otherwise sensitive) land for diplomatic premises and charities.

Miscellaneous

Regulation 13 inserts *new regulation 56* into the principal regulations. *New regulation 56* exempts acquisitions of interests in land, other than freehold estates, from the requirement for consent under section 10(1)(a) of the Act in cases where the person acquiring the interest in land holds the freehold estate in all of the area of land covered by the newly acquired interest in land.

Regulation 18 inserts *new subpart 1 of Part 3* into the principal regulations. The new subpart is made under section 61(1)(ka) of the Act, which relates to section 61G of the Act. The main effect of the new subpart and section 61G is that, if a person acquires property in reliance on an exemption that is listed in the new subpart, the person will be treated as being subject to certain existing conditions (if any). For example, there may be conditions of a consent that was granted at an earlier date to another person to acquire the property that have not yet been met and that apply in connection with the property.

Regulation 20 replaces Schedule 2 of the principal regulations, which relates to fees and charges. New fees are included in respect of matters relating to residential land and forestry activities and regulated *profits à prendre*. The new fee in respect of the exemption relating to dwellings in large apartment developments where sales of dwellings have begun before the date of Royal assent of the 2018 Amendment Act applies from the date of the expiry of the 2-week period that starts on the date of Royal assent (*see* new section 80 of the Act).

Australians and Singaporeans

Regulation 18 inserts *new Part 4* into the principal regulations. *New Part 4* is made under section 61(1)(i) of the Act for the purpose of implementing obligations that have entered into force for New Zealand under—

- the Protocol on Investment to the New Zealand–Australia Closer Economic Relations Trade Agreement done at Wellington on 16 February 2011, the text of which can be found at <https://www.mfat.govt.nz/assets/FTAs-agreements-in-force/Australia/CER-investment-protocol-16-2-11.pdf>
- the Agreement between New Zealand and Singapore on a Closer Economic Partnership done at Singapore on 14 November 2000, the text of which can be found at <https://www.mfat.govt.nz/assets/FTAs-agreements-in-force/Singapore-FTA/NZ-Singapore-CEP-full-text.pdf>

New Part 4 exempts 6 groups from the requirement for consent in respect of residential (but not otherwise sensitive) land. The groups are—

- Australian citizens:
- Singaporean nationals:
- Australian and Singaporean permanent residents who meet the relevant definition of “ordinarily resident in New Zealand” from section 6(2) of the Act, other than the requirement to hold a residence class visa granted under the Immigration Act 2009. For example, to the extent that a transaction will result in an overseas investment in sensitive land where the relevant land is or includes residential land, the person must have been residing in New Zealand for the last 12 months, be tax resident in New Zealand, and have been present in New Zealand for 183 days or more in total in the immediately preceding 12 months:
- spouses and partners of the above if the land is acquired as relationship property (and companies incorporated in New Zealand in which all of the securities are held as relationship property by those same couples):
- the Australian Government:
- Australian and Singaporean enterprises.

New regulation 76 exempts those same groups of Australians from the requirement for consent in respect of an interest in land that is a regulated *profit à prendre*.

Also, *see above for regulation 6* which inserts *new regulation 30* into the principal regulations. *New regulation 30* specifies that Australian citizens and permanent residents and Singaporean nationals and permanent residents are qualifying individuals for the purposes of the commitment to reside in New Zealand test. This means that these groups are in the same position as New Zealand citizens under that test, which requires that every key individual be a qualifying individual.

Amendments of a general nature

Regulation 9 increases the administrative penalty for retrospective consent. The regulator may require an applicant for a retrospective consent to pay an administrative penalty before the consent is granted. The current penalty is an amount that is not more than \$20,000. The new regulation provides for a sliding scale between \$5,000 and \$40,000 depending on the type of consent and the value of the consideration provided for the overseas investment.

Regulation 10 inserts *new regulations 37 to 46* into the principal regulations. *New regulations 37 to 46* replace regulation 33 of the principal regulations, which contained the main exemptions from the requirement for consent. Regulation 33 applied to all overseas investments in sensitive New Zealand assets (ie, all of sensitive land, significant business assets, and fishing quota). *New regulations 37 to 46* do too, with the exception of *new regulation 42* (exemption for portfolios or bundles of permitted security arrangements) which does not apply to overseas investments in significant business assets. Substantive changes are made in respect of the following:

- acquisitions if there is no increase in ultimate ownership and control by overseas persons (such as moving property around a corporate group) (*see new regulation 37(1)(b)*):
- shareholding creep (*see new regulation 38*):
- portfolios or bundles of permitted security arrangements (*see new regulation 42*):
- relationship property acquired by New Zealand incorporated companies (*see new regulation 45*).

Otherwise, the current exemptions in regulation 33 of the principal regulations are carried forward with no change in effect. In particular, no change to the law is effected by—

- the replacement of the term “securities or rights or interests in securities or property” with a simpler term “property”. Both terms have the same meaning—*see* the definition of property in section 6(1) of the Act:
- the replacement of some of regulation 33 by new separate regulations with their own headings.

Other regulations make other minor changes.

Statement of reasons

The following statement of reasons is published for the purposes of section 61F(5) of the Overseas Investment Act 2005

- (1) This statement sets out the Minister’s reasons for recommending the exemption regulations in the Overseas Investment Amendment Regulations 2018 and why the Minister considered each exemption to be necessary, appropriate, or desirable.

- (2) Under the Act the Minister may recommend exemption regulations only if the Minister considers—
 - that there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption for any of the matters referred to in section 61B(a) to (c) of the Act; and
 - that the extent of the exemption is not broader than is reasonably necessary to address those circumstances.
- (3) When considering whether to recommend that an exemption regulation be made, the Minister must have regard to the purpose of the Act: that it is a privilege for overseas persons to own or control sensitive New Zealand assets and that it is therefore appropriate for overseas investments in those assets to be made only after meeting a number of consent criteria and subject to prescribed conditions.
- (4) The Minister may also have regard to all or any of the factors set out in section 61E(2)(b) of the Act, including any other factors that seem to the Minister to be relevant to the circumstances.

Reasons for exemptions for corporate dealings—other acquisitions if no increase in ultimate ownership and control by overseas persons (new regulation 37(1)(b))

- (5) This exemption would allow companies and other entities that are overseas persons and own sensitive assets to transfer the sensitive assets to different entities in a corporate group without consent, as long as the ultimate ownership and control of the sensitive assets by overseas persons does not increase. For example, under this exemption the creation of a wholly-owned subsidiary company interposed between the initial consent holder and the relevant sensitive assets would not require consent.
- (6) This exemption is for the matters referred to in section 61B(a) and (b) of the Act. It is minor and technical in nature and provides an exemption where compliance with the Act would be inefficient and unduly burdensome, but where the purpose of the Act can still be substantially achieved through the terms and conditions of the exemption.
- (7) I consider this exemption is appropriate and desirable because requiring overseas persons to obtain consent in these circumstances would be inefficient and unduly burdensome for affected overseas persons. This is because there is no increase in the ultimate ownership and control of the sensitive assets by overseas persons (having regard to the Act's purpose and general requirements, and the factors in section 61E(2)(b)(i) and (ii) of the Act).
- (8) I further consider that this exemption is not broader than reasonably necessary because it is limited to situations where there is no increase in the ultimate ownership and control of the sensitive assets by overseas persons. The exemption only operates where the ownership and control by overseas persons is either unchanged, or is diminished because of increased ownership and control

by non-overseas persons (New Zealand citizens and persons ordinarily resident in New Zealand). This reflects the fact that non-overseas persons never require consent under the Act. In circumstances where there is an increase in ultimate ownership and control of the assets by overseas persons, overseas persons would still be required to obtain consent according to the usual rules in the Act.

- (9) For those reasons the terms and conditions of the exemption also substantially achieve the purpose of the Act.

Reasons for exemption for shareholding creep (new regulation 38)

- (10) This exemption is to allow overseas persons to increase their degree of ownership or control in another person (**P**), such as a company, by acquiring additional securities in P without obtaining consent, so long as—
- the overseas person already has consent to own securities in P; and
 - the overseas person is acquiring securities of the same type that they have already received consent to own (for example, an overseas person that owns ordinary shares in a company will only be able to use this exemption to acquire additional ordinary shares); and
 - the transaction involves the acquisition of no more than 10% of all securities in each relevant class (for example, if the overseas person already has consent to own 55% of the company's ordinary shares, the overseas person would only be able to increase its shareholding to 65% of the company's ordinary shares); and
 - the transaction does not result in the overseas person's overall control interest reaching key control thresholds of 25, 50, 75, or 90% (for example, if the overseas person has consent to own 45% of the company's ordinary shares, the overseas person could only use the exemption to acquire less than 5% further ordinary shares—that is, their total shareholding of ordinary shares remains below 50%); and
 - the transaction occurs within 5 years of the overseas person receiving consent for the initial acquisition of securities in P.
- (11) This exemption is for the matter referred to in section 61B(c)(iii) of the Act—minor increases in ultimate ownership and control by overseas persons if consent has already been granted for those overseas persons to own or control sensitive assets.
- (12) I consider that this exemption is appropriate and desirable because, having regard to the Act's purpose, the overseas person has already obtained consent to acquire securities in P and requiring them to obtain a new consent in these scenarios where there is only limited change in the ultimate ownership and control of P would be inefficient and unduly expensive.
- (13) This is especially so in cases where the overseas person has no control over the increase in their ownership or control interest in P. For example, if an overseas person does not participate in a company share buy-back and other sharehold-

ers do, the overseas person's relative shareholding in the company would increase, which, without an exemption, could trigger the need for the overseas person to obtain consent.

- (14) I consider that this exemption is not broader than is reasonably necessary because the exemption is limited in the following ways:
- The transaction must not result in the overseas person's overall control interest reaching key control thresholds of 25, 50, 75, or 90%. Passing those thresholds could respectively give the overseas person: negative control (such as being able, unilaterally, to prevent special resolutions of a company); majority control; ability, unilaterally, to approve special resolutions of a company; and the option to more easily complete a full takeover of a company:
 - The exemption limits the additional ownership interest an overseas person can acquire without consent to no more than 10% of the securities in the relevant class. This means that obtaining greater ownership interests would still require the overseas person to demonstrate that allowing the further increase in ownership or control would provide additional benefits to New Zealand (if consent were to be obtained under the benefit to New Zealand test):
 - Accordingly, there is limited increase in the ultimate ownership and control of the sensitive assets by overseas persons who already have consent (having regard to the Act's purpose and general requirements, and the factors in section 61E(2)(b)(i) and (ii) of the Act):
 - The exemption could be used only within 5 years of the consent being granted. This means that the overseas person would have passed the investor test in the Act (if it applied to the consent being obtained) relatively recently. Whereas over time an overseas person may change its character or composition and fail the investor test (after previously passing the test), this is less likely to occur relatively closely to when consent was granted. This condition therefore balances the need to obtain consent against imposing undue burden on overseas persons in situations where ultimate ownership and control of the sensitive assets has not materially changed.

Reasons for exemption for portfolios or bundles of permitted security arrangements (new regulation 42)

- (15) This exemption is for the matter referred to in section 61B(c)(iv) of the Act—security arrangements that are entered into in the ordinary course of business. The term “security arrangement” is defined in section 6 of the Act as “an arrangement that in substance secures payment or performance of an obligation (without regard to the form of the arrangement or the identity of the person who has title to the property that is subject to the arrangement)”.

- (16) This exemption is to allow an overseas person to acquire 2 or more “permitted security arrangements”, or to acquire securities in a person that owns 1 or more “permitted security arrangements”, relating to sensitive land or fishing quota without obtaining consent. This would replace existing regulation 33(1)(ja).
- (17) Regulation 33(1)(ja) previously provided an exemption for the transfer of portfolios or bundles of security arrangements if the total value of consideration provided was \$100 million or less. This effectively meant that relevant transactions over \$100 million required consent and that this exemption could therefore not be used in respect of the acquisition of significant business assets (because the threshold for the screening of those assets is \$100 million). However, because of the way that transaction size was measured in the regulations compared to the more detailed provisions in the Act, this outcome was not as clear as it could have been.
- (18) Consequently, I consider that providing such an exemption for acquiring “permitted security arrangements”, or interests in “permitted security arrangements”, in respect of sensitive land or fishing quota is appropriate and desirable, having regard to the Act’s purpose, because an overseas person holding a permitted security arrangement (given how that term is defined) is not likely to change the effective ownership and control of the secured asset (having regard to the factor in section 61E(2)(b)(i)) and have little impact on the secured asset (having regard to the factor in section 61E(2)(b)(iv)).
- (19) This is particularly so given that security arrangements of the nature covered by the exemption are typically traded as debts (like mortgages over residential property), without a genuine intention to use the security arrangements to acquire a controlling interest in the secured asset (and it is a requirement of the exemption that the acquisition is made in good faith and in the ordinary course of business).
- (20) Further, given that facilitating the trading of mortgages and other security arrangements is important to support access to finance on reasonable terms, the exemption is also desirable to avoid limiting overseas persons’ willingness to lend money to people acquiring property in New Zealand.
- (21) I consider that this exemption is not broader than is reasonably necessary to address those circumstances, because of the following limitations within the exemption:
- The transaction must be entered into in good faith and in the ordinary course of business with no intention of using the security arrangement to acquire sensitive land or fishing quota without consent (instead, the interest is taken as security that secures the performance of the obligations associated with that security arrangement). This means that under the terms and conditions of the exemption, for example, an overseas person could not (without consent) intentionally acquire security arrangements securing debts with debtors that are struggling to meet their obli-

gations and then enforce the security arrangements in order to acquire the secured assets:

- The exemption only removes the requirement for consent under section 10(1)(a) of the Act (for an overseas investment in sensitive land) and under section 57B of the Fisheries Act 1996 (for an overseas investment in fishing quota). The exemption applies regardless of the value of consideration (that is, the \$100 million cap in the current regulations has been removed), but the exemption cannot be relied on to avoid consent for an overseas investment in significant business assets. Relying on the Act's provisions regarding whether there is an overseas investment in significant business assets is more consistent with the policy of the Act (than the regulations containing a different measure of the size of a transaction):
- Where the exemption is being used to acquire securities in a person (A) that owns 1 or more "permitted security arrangements", the exemption from consent only applies in relation to A's permitted security arrangements, and not any other sensitive assets A may own.

Reasons for exemption for relationship property—wholly owned company incorporated in New Zealand (new regulation 45(1)(c))

- (22) This exemption is for the matter referred to in section 61B(c)(v) of the Act—relationship property as defined in section 8 of the Property (Relationships) Act 1976.
- (23) The exemption would allow a couple (married, civil partnerships, or de facto), where one partner is an overseas person and the other is not, to use a company to acquire property without consent, as long as—
- the property is being acquired by a company registered under the Companies Act 1993 (so is a New Zealand incorporated company); and
 - the company making the acquisition is wholly owned and controlled by the couple as relationship property under the Property (Relationships) Act 1976.
- (24) This effectively extends an existing exemption that allows couples to acquire sensitive assets (either directly or through the acquisition of securities) as relationship property without the overseas person in the couple requiring consent. I have chosen to first provide reasons for the existing exemptions, then the reasons for the proposed extension.
- (25) First, I consider that the existing exemption, which allows couples to acquire sensitive assets as relationship property without the overseas person in the couple requiring consent, is appropriate and desirable for the following reasons:
- the non-overseas person (New Zealander) in the couple would not require consent to acquire sensitive assets by himself or herself; and

- relationship property is governed by the Property (Relationships) Act 1976 and is underpinned by the principle that both partners/spouses have an interest in relationship property; and
 - not providing such an exemption would place New Zealanders that are in a relationship with an overseas person at a disadvantage when seeking to acquire sensitive assets relative to if they were not in a relationship or were in a relationship with a non-overseas person. Without an exemption, New Zealanders in relationships would face the burden of not being able to acquire some property in the usual way (that is, as relationship property) without their partner or spouse obtaining consent; and
 - the overseas person partner/spouse is holding his or her interest in sensitive assets with a New Zealander and as relationship property affected by the Property (Relationships) Act 1976. Having regard to the factor in section 61E(2)(iv) (about the extent of time an overseas person is likely to have ownership or control of a right or an interest, for what purpose, and the likely impact on the sensitive asset of that overseas ownership or control), and the Act's purpose, I consider it is not appropriate and desirable to require the overseas person partner/spouse to obtain consent in these circumstances.
- (26) I consider that this current exemption is not broader than necessary. This is because of its terms and conditions and because to access the exemption an overseas person would need to enter into a verifiable marriage, civil union, or de facto relationship with a New Zealander. If the overseas person entered into a marriage or civil union for the purposes of evading the Act, then it would be an offence under the anti-avoidance provision of the Act (section 43). The potential consequence of these types of offences include the court ordering the overseas person to dispose of the property. Furthermore, the cost and effort of entering a marriage or civil union, ending it, and dividing relationship property also provide a barrier to entering into a marriage or civil union for the purposes of evading the Act.
- (27) Second, I consider that this exemption should be expanded. While the existing exemption allows a couple to acquire, without consent, sensitive assets directly, or securities in a company (or other person) that already owns sensitive assets, it is not clear that a company owned by the same couple could acquire the same sensitive assets (where the shares in the company are relationship property) without consent. This is despite the fact that in both scenarios the ultimate ownership and control of the sensitive assets is the same.
- (28) Consequently, I consider it is appropriate and desirable, having regard to the Act's purpose, to amend the exemption to ensure that when a company wholly owned by a couple acquires sensitive assets it does not require consent. It would be inefficient and unduly burdensome to require the company in such circumstances to obtain consent.

- (29) I further consider that the extension to the exemption is not broader than is reasonably necessary to address those circumstances. This is because the exemption could be used only by companies incorporated in New Zealand that are wholly owned by the couple as relationship property, rather than companies that are, for example, only partly owned by the relevant couple. In those circumstances, while it is the company acquiring the legal interest in the property, the couple, through the company, have ultimate control of, and the beneficial entitlement to, the property.

Reasons for exemption for replacement of forestry rights with new forestry rights (new regulation 54)

- (30) This exemption will allow existing forestry rights to be replaced with new forestry rights on the same key terms without obtaining consent, such as when a forestry right is sub-divided into 2 new, separate forestry rights (but the owner of both new forestry rights is the same as the owner of the original forestry rights, or is closely related). At the same time, the duration of the forestry rights could be extended by no more than 3 years from the original consented duration.
- (31) The exemption is for the matters referred to in section 61B(a) and (b) of the Act. It is minor and technical in nature, and provides an exemption where compliance with the Act would be inefficient and unduly burdensome, but where the Act's purpose can still be substantially achieved through the terms and conditions of the exemption.
- (32) I consider that this exemption is appropriate and desirable for the following reasons:
- having regard to the Act's purpose, the owner of the forestry rights would have already obtained consent to acquire the right (or been exempted or not required consent at the time) and taking replacement forestry rights does not change the level of overseas ownership or control of the interest in land (having regard to the factors specified in section 61E(2)(b)(i) and (ii) of the Act); and
 - while the new forestry rights are a new interest in land that could technically re-trigger the Act's requirement to obtain consent, it would be inefficient and unduly burdensome to require additional screening; and
 - if any of the terms and conditions of the new forestry rights were changed in the ways allowed by this exemption (discussed below), such changes would not on their own require consent in cases where consent had already been obtained for the original forestry rights.
- (33) I also consider that this exemption is not broader than is reasonably necessary for the following reasons:
- the exemption only allows for forestry rights to be replaced on essentially the same terms as the original forestry rights, specifically—

- the new owner of the forestry rights must be the same person or a closely related person, with a 95% relation rule (as a new overseas person acquiring a 5% interest in the forestry rights owner would only require consent if its acquisition resulted in the rights owner becoming 25% or more owned or controlled by overseas persons—but if that was the case then the rights owner would have previously not been an overseas person so would probably not have required consent for the original forestry rights); and
 - the duration must be the same, shorter, or extended by no more than 3 years from the original duration (as the Act only screens interests in land of 3 years or longer); and
 - the rights must be over the same geographic area of land or a subset within it:
- conditions of the consent for the original forestry right will be carried over as conditions of the new forestry rights, and there can be no changes to other terms and conditions of the forestry rights that would prevent compliance with those consent conditions:
 - the new forestry rights cannot contain new terms and conditions that would have changed the exercise of discretion by the relevant Ministers (or the regulator under delegation) to waive certain requirements of obtaining consent under the special benefits test (that is, when consent was given in accordance with section 16A(4)).
- (34) For those reasons, the terms and conditions of the exemption also substantially achieve the purpose of the Act.

Reasons for exemption for replacement of regulated profit à prendre with a new regulated profit à prendre (new regulation 55)

- (35) Similar to *new regulation 54*, this exemption will allow existing non-forestry *profits à prendre* to be replaced with new *profits à prendre* on the same key terms without obtaining consent.
- (36) The exemption is also for the matters referred to in section 61B(a) and (b) of the Act.
- (37) I consider this exemption to be appropriate and desirable because—
- having regard to the Act's purpose, the owner of the *profit à prendre* would have already obtained consent to acquire the *profit à prendre* (or not required consent at the time) and taking a replacement *profit à prendre* does not change the level of overseas ownership or control of the interest in land (having regard to the factors specified in section 61E(2)(b)(i) and (ii) of the Act); and
 - while the new *profit à prendre* is a new interest in land that could technically re-trigger the Act's requirement to obtain consent, it would be inefficient and unduly burdensome to require additional screening; and

- if any of the terms and conditions of the new *profit à prendre* were changed in the ways allowed by this exemption (discussed below), such changes would not on their own require consent in cases where consent had already been obtained for the original *profit à prendre*.
- (38) I also consider that this exemption is not broader than is reasonably necessary for the following reasons:
- the exemption only allows for *profits à prendre* to be replaced on essentially the same terms as the original *profits à prendre*, as set out in the first bullet point of paragraph 33 above:
 - in addition, the subject matter of the *profit à prendre* must be the same or substantially the same:
 - conditions of the consent for the original *profit à prendre* will be carried over as conditions of the new *profit à prendre*, and there can be no changes to other terms and conditions of the *profit à prendre* that would prevent compliance with those consent conditions.
- (39) For those reasons, the terms and conditions of the exemption also substantially achieve the purpose of the Act.

Reasons for exemption for freeholder who acquires another interest in land included in freehold (new regulation 56)

- (40) Under this exemption, an overseas person that holds the freehold estate in land can also acquire any other interest in that land (for example, forestry rights) without consent.
- (41) The exemption is for the matters referred to in section 61B(a) and (b) of the Act. It is minor and technical in nature, and provides an exemption where compliance with the Act would be inefficient and unduly burdensome, but where the purpose of the Act can still be substantially achieved through the terms and conditions of the exemption.
- (42) I consider this exemption is appropriate and desirable because, having regard to the Act's purpose, the overseas person would have already obtained consent (or been exempted or not required consent at the time) to acquire the freehold estate in the land. As such, requiring additional consent to be granted to take a lesser interest in the relevant land would be inefficient and unduly burdensome on the overseas person.
- (43) I consider this exemption is not broader than necessary given that this exemption will only apply where the overseas person who acquires the new interest is the single legal and equitable owner of the freehold estate. For that reason, the terms and conditions of the exemption also substantially achieve the purpose of the Act.

Reasons for exemption for diplomatic premises (new regulation 59)

- (44) This exemption allows a foreign government to acquire residential (but not otherwise sensitive) land for the purposes of a mission or consular post, as a diplomatic or consular residence, or a combination of those things.
- (45) The exemption is for the matter referred to in section 61B(c)(i) of the Act—interests in land to be used for diplomatic or consular purposes.
- (46) I consider it appropriate and desirable, having regard to the the Act's purpose, that such transactions be exempted from the requirement for consent to support foreign governments (who will always be overseas persons under the Act) to have a diplomatic or consular presence in New Zealand. Also, having regard to the factor in section 61E(2)(b)(iv), the use of residential land for diplomatic or consular purposes is unlikely to have a major physical impact on the land, because using land as embassies, high commissions, or diplomatic residences is similar to using land for residential purposes.
- (47) I consider this exemption is not broader than is reasonably necessary to address those circumstances because of the following limitations within the exemption:
- the exemption only removes the requirement for consent under section 10(1)(a) of the Act (for an overseas investment in sensitive land), and only applies to residential (but not otherwise sensitive) land; and
 - a foreign government can only acquire land using the exemption if it has a diplomatic presence in New Zealand, using the land for the purposes of a mission or consular post, as a diplomatic or consular residence, or a combination of those things.

Reasons for exemption for charitable entities (new regulation 60)

- (48) This exemption would allow certain charitable entities conducting activities within New Zealand to acquire residential (but not otherwise sensitive) land without consent. To qualify for the exemption, the charitable entity must be registered under the Charities Act 2005 and also have donee status under the Income Tax Act 2007 (but not through the Schedule 32 list). This means that the charity's funds must be applied wholly or mainly within New Zealand, or that the charitable entity has assets and activities based in New Zealand.
- (49) The exemption is for the matter referred to in section 61B(c)(ii) of the Act—persons registered as a charitable entity under the Charities Act 2005.
- (50) I consider that this exemption is appropriate and desirable, having regard to the Act's purpose, for the following reasons:
- There are special rules constraining the ownership and control interest that a charitable entity has over its assets. In particular, for a body to be a registered charitable entity, then either the body is not carried on for the private pecuniary profit of any individual (so that if the body is wound up any remaining assets must be distributed to other charities or charitable purposes, and not back to any donors to the charity), or is a trust in

relation to which an amount of income is derived by the trustees in trust for charitable purposes (section 13 of the Charities Act 2005). Consequently, in term of ownership, to the extent that any individuals could be said to have beneficial entitlement to, or enjoyment of, the assets of a charitable entity, it would be the people within New Zealand (predominantly New Zealanders)—that is, those that benefit from the charity’s activities:

- Further, in terms of control, the charitable entity must deal with assets consistently with its charitable purposes, and have donee status (including in the case of trusts), the charity’s funds must be applied wholly or mainly within New Zealand or the charity must have assets and activities based in New Zealand. Consequently, irrespective of whether the charity is controlled by overseas persons (with that control being constrained by New Zealand charities law), people within New Zealand (predominantly New Zealanders) effectively have beneficial entitlement to those assets. The Act is only concerned with the interests overseas persons have in assets:
 - Finally, charities are most likely to be “overseas persons” under the Act not because of overseas persons having any ‘ownership’ interest in the charity’s assets, but instead because—
 - overseas persons control the composition of the governing body of the charity or have voting power over the charity—as explained above, the control of the charity’s assets is constrained by charities law; or
 - the charity is incorporated or organised under the law of another country—in any such cases where that charity nonetheless had donee status, its New Zealand activities would be regulated by the New Zealand charities law discussed above.
- (51) Consistent with the factors listed above, I consider that requiring charitable entities to obtain consent would be unduly burdensome and an inefficient use of the charitable entity’s assets, which are for the benefit of New Zealand-focused operations.
- (52) I consider this exemption is not broader than reasonable necessary to address those circumstances for the following reasons:
- The exemption would only apply to charitable entities with donee status under the Income Tax Act 2007. That is, broadly,—
 - societies, institutions (whether public or private), associations, organisations, and trusts (whether public or private) that are not carried on for the private pecuniary profit of an individual but rather apply their funds wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes within New Zealand; and

- community housing entities operating in New Zealand under New Zealand tenancy law; and
- tertiary education institutions and Boards of Trustees constituted under Part 9 of the Education Act 1989 (which will be operating in New Zealand):
- The exemption would not apply to charitable entities listed in Schedule 32 of the Income Tax Act 2007. The Schedule 32 list allows charitable entities that do not meet those tests above (from section LD 3(2) of the Income Tax Act 2007) to still obtain donee status. That is, those charitable entities are not required to apply their funds wholly or mainly within New Zealand, or have assets and activities based in New Zealand, so cannot use the exemption.

Amendments to existing exemptions

- (53) I recommend that “TrustPower Limited” be deleted from Schedule 4 of the principal regulations. This deletion is at the request of the company and means that TrustPower Limited will no longer get the benefit of the exemptions in regulations 34 to 36. This will reduce the number of persons that could rely on those exemptions, so I consider it is appropriate as a technical matter and having regard to the Act’s purpose.
- (54) I recommend that the following minor or technical amendments be made to existing exemptions, or that the following existing exemptions be replaced with only minor or technical amendments:
- the exemptions contained within existing regulation 33 be split out into topic groups in *new regulations 37 to 46*, and the existing exemption contained in regulation 33(1)(p) be inserted into *new regulation 38* (see in particular *new regulation 38(2)(c)(i)*):
 - the existing regulations’ language of “securities or rights or interests in securities or property” be replaced with the term “property” (which is defined in section 6 of the Act) to simplify the text:
 - existing regulation 36AA of the regulations be amended to clarify that it does not apply to forestry rights and non-forestry *profits à prendre*, as those interests in land are subject to the new exemptions in *new regulations 54 and 55* respectively. Existing regulation 36AA includes an exemption from screening for overseas persons acquiring sensitive leasehold land as a result of the “re-granting” of a lease as long as the new lease is on essentially the same terms and will expire within 20 years of the commencement of the lease for which consent was first granted:
 - example 2 in regulation 36B(3) be amended so that “custodial property” is replaced with “custodial securities”, to correct a typographical error.

Regulatory impact assessment

The Treasury produced the following 2 regulatory impact assessments about matters that are affected by these regulations, to help inform the decisions taken by the Government relating to the contents of this instrument:

- *Commitment to Reside in New Zealand* dated 16 January 2018 and published on 15 August 2018, which is relevant to *new regulation 31* (factors for considering whether person remains committed to residing in New Zealand):
- *Amendment to the Overseas Investment Act: Forestry land and other profits à prendre* dated 27 February 2018 and published 20 March 2018, which is relevant to *new regulation 29* (special test may be applied and requirements to be met).

Copies of those assessments can be found at—

- <http://www.treasury.govt.nz/publications/informationreleases/ria>

In addition, Land Information New Zealand produced a cost recovery impact statement dated 2 June 2018 about the new fees and charges to help inform the decisions taken by the Government relating to the contents of this instrument.

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These regulations are administered by the Treasury.