

Reprint  
as at 22 October 2018



## Overseas Investment Act 2005

Public Act      2005 No 82  
Date of assent    21 June 2005  
Commencement    see section 2

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Treasury.**

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**1 Title**

This Act is the Overseas Investment Act 2005.

**2 Commencement**

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) One or more Orders in Council may be made appointing different dates for the commencement of different provisions.

Section 2: Overseas Investment Act 2005 brought into force, on 25 August 2005, by clause 2 of the Overseas Investment Act Commencement Order 2005 (SR 2005/219).

## **Part 1**

### **Preliminary provisions**

**3 Purpose**

The purpose of this Act is to acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets by—

- (a) requiring overseas investments in those assets, before being made, to meet criteria for consent; and
- (b) imposing conditions on those overseas investments.

**4 Overview**

- (1) In this Act,—
  - (a) this Part deals with preliminary matters, including the purpose of this Act and interpretation:
  - (b) Part 2 contains the consent and conditions regime for overseas investments in sensitive New Zealand assets, and is organised as follows:
    - (i) subpart 1 states when consent is required and the criteria for consent (except that those matters are stated in the Fisheries Act 1996 for overseas investments in fishing quota):
    - (ii) subpart 2 sets out the procedure for obtaining consent and imposing conditions of consent:
    - (iii) subpart 3 describes the role of the person (the regulator) who administers the regime:
    - (iv) subpart 4 confers information-gathering powers on the regulator:
    - (v) subpart 5 deals with aspects of enforcement, including offences under this Act, penalties, and the court's powers to make orders for effective enforcement:
    - (vi) subpart 6 relates to regulations and other miscellaneous matters:

- (vii) subpart 7 contains transitional provisions (mostly relating to the dissolution of the Overseas Investment Commission and the employment consequences for its employees) and amendments to other enactments (and *see also* Schedule 1AA for further transitional, savings, and related provisions).
- (2) This Act replaces the Overseas Investment Act 1973 and the Overseas Investment Regulations 1995.
- (3) This section is a guide only to the general scheme and effect of this Act.
- Section 4(1)(b)(iv): amended, on 22 October 2018, by section 7(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).
- Section 4(1)(b)(vii): amended, on 22 October 2018, by section 7(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

## 5 Act incorporates sections 56 to 58B of Fisheries Act 1996

- (1) This Act incorporates sections 56 to 58B of the Fisheries Act 1996 (which in this section are called the **overseas investment fishing provisions**) as if they were part of this Act, so that a reference in this Act to “this Act” includes a reference to the overseas investment fishing provisions.
- (2) *See* section 57A of the Fisheries Act 1996 for further provisions on the interpretation of the overseas investment fishing provisions.

## 6 Interpretation

- (1) In this Act, unless the context requires otherwise,—
- 25% or more ownership or control interest** has the meaning set out in subsection (4)
- 25% or more subsidiary** has the meaning set out in subsection (5)
- acquisition** includes obtaining ownership or coming into possession by any means
- associate** has the meaning set out in section 8
- associated land** has the meaning set out in section 8
- bed** means—
- (a) in relation to any river, the space of land that the waters of the river cover at its fullest flow without overtopping the banks; and
- (b) in relation to a lake not controlled by artificial means, the space of land that the waters of the lake cover at its highest level without exceeding its physical margin; and
- (c) in relation to a lake controlled by artificial means, the space of land that the waters of the lake cover at the maximum operating level
- benefit to New Zealand test** means the test set out in section 16A
- business decision** means a decision under this Act on whether or not to consent to an overseas investment in significant business assets

**category**, in relation to an overseas investment, means any of the following categories:

- (a) an overseas investment in sensitive land:
- (b) an overseas investment in significant business assets:
- (c) an overseas investment in fishing quota

**Commission** means the Overseas Investment Commission

**commitment to reside in New Zealand test** means the test set out in Part 2 of Schedule 2

**consent** means a consent granted under this Act for an overseas investment transaction

**consent holder** means the person or persons to whom a consent is issued

**conveyancing services** has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

**court** means the High Court

**district valuation roll** means the roll that each territorial authority must prepare and maintain under section 7 of the Rating Valuations Act 1998 for its own district in accordance with rules made under that Act

**document** means any record of information; and includes—

- (a) anything on which there is writing or any image; and
- (b) information recorded by means of any article or device (for example, a disk) from which information is capable of being reproduced with or without the aid of any other article or device; and
- (c) material subsequently derived from information recorded by that means

**excluded accommodation facility** means—

- (a) a hospital; or
- (b) any premises used, or intended to be used, in the course of business principally for providing temporary lodging to the public; or
- (c) a camping ground; or
- (d) any facility within a class set out in regulations as a class of facility to be treated as an additional excluded accommodation facility in this Act

**exempted interest** means—

- (a) an easement; or
- (b) a *profit à prendre* that is not a regulated *profit à prendre*

**exemption certificate** means a certificate granted under clause 4 of Schedule 3 (dwellings in large apartment developments that are purchased off-the-plans)

**farm land** means land (other than residential (but not otherwise sensitive) land) used exclusively or principally for agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry, or livestock



**fishing quota decision** means a decision under sections 56 to 58B of the Fisheries Act 1996 on whether or not to consent to an overseas investment in fishing quota

**foreshore or seabed**—

- (a) means the marine area that is bounded,—
  - (i) on the landward side by the line of mean high water springs; and
  - (ii) on the seaward side, by the outer limits of the territorial sea (within the meaning of section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977); and
- (b) includes the beds of rivers that are part of the coastal marine area (within the meaning of the Resource Management Act 1991); and
- (c) includes the bed of Te Whaanga Lagoon in the Chatham Islands; and
- (d) includes the air space and the water space above the areas described in paragraphs (a) to (c); and
- (e) includes the subsoil, bedrock, and other matters below the areas described in paragraphs (a) to (c),—

but any reference to land **adjoining the foreshore** is to land that adjoins this land on the landward side only

**forestry right** means—

- (a) a right created in accordance with the Forestry Rights Registration Act 1983; or
- (b) any other *profit à prendre* that—
  - (i) relates to taking timber from a forest; and
  - (ii) to the extent (if any) that the *profit à prendre* relates to other things, would, were the *profit à prendre* to be treated as a separate *profit à prendre* in relation to those things, fall within paragraph (b) of the definition of regulated *profit à prendre* in this subsection

**give effect to an overseas investment**—

- (a) means to acquire or dispose of any property, or establish any business, that results in an overseas investment in sensitive land, overseas investment in significant business assets, or overseas investment in fishing quota; but
- (b) excludes an acquisition, disposition, or establishment that is conditional on consent being obtained under this Act

**governing body** means,—

- (a) in relation to a body corporate, the board of directors (or other persons or body exercising powers of management, however described) of the body corporate;
- (b) in relation to a trust, the trustees:

- (c) in relation to a unit trust, the manager and trustee:
- (d) in relation to a partnership, unincorporated joint venture, or other unincorporated body of persons, either—
  - (i) the board of directors (or other persons or body exercising powers of management, however described) of the partnership, unincorporated joint venture, or other unincorporated body of persons; or
  - (ii) if there is no board or other persons or body as described in subparagraph (i), the partners of the partnership or members of the unincorporated joint venture or other unincorporated body of persons

**guidelines** means guidelines issued by the regulator under section 36

**historic heritage**—

- (a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:
  - (i) archaeological:
  - (ii) architectural:
  - (iii) cultural:
  - (iv) historic:
  - (v) scientific:
  - (vi) technological; and
- (b) includes—
  - (i) historic sites, structures, places, and areas; and
  - (ii) archaeological sites; and
  - (iii) sites of significance to Maori, including wahi tapu; and
  - (iv) surroundings associated with the natural and physical resources

**incidental residential use test** means the test set out in clause 14 of Schedule 2

**increased housing test** means the test set out in clause 11 of Schedule 2

**individuals with control of the relevant overseas person** has the meaning set out in section 15

**interest** includes a legal or equitable interest

**investor test**, in relation to an overseas investment in sensitive land, means the test set out in section 16(2)

**involved** has the meaning set out in subsection (7)

**lake** means a lake (as defined in section 2(1) of the Resource Management Act 1991) that has a bed that exceeds 8 hectares in area

**land decision** means a decision under this Act on whether or not to consent to an overseas investment in sensitive land

**LINZ** means Land Information New Zealand

**long-term accommodation facility**—

- (a) means—
  - (i) a retirement village or rest home; or
  - (ii) a hostel within the meaning of section 2 of the Education Act 1989, or other facility used or intended to be used to provide accommodation to students in accordance with the requirements of section 5B of the Residential Tenancies Act 1986; but
- (b) does not include any facility to the extent that it is, or is part of, an excluded accommodation facility

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**natural and physical resources** has the meaning set out in section 2(1) of the Resource Management Act 1991

**non-occupation outcome** has the meaning set out in clause 17 of Schedule 2

**non-residential use test** means the test set out in clause 13 of Schedule 2

**non-urban land** means—

- (a) farm land; and
- (b) any land other than land that is both—
  - (i) in an urban area; and
  - (ii) used for commercial, industrial, or residential purposes

**ordinarily resident in New Zealand** has the meaning set out in subsection (2)

**overseas investment in fishing quota** has the meaning set out in section 57D of the Fisheries Act 1996

**overseas investment in sensitive land** has the meaning set out in section 12

**overseas investment in significant business assets** has the meaning set out in section 13

**overseas investment transaction** means a transaction that results in an overseas investment in sensitive land, an overseas investment in significant business assets, or an overseas investment in fishing quota

**overseas person** has the meaning set out in section 7

**property** includes real and personal property, any interest in any real or personal property, any chose in action, and any other right or interest

**regulated *profit à prendre***—

- (a) means—

- (i) a forestry right; or
- (ii) any other *profit à prendre*, if the area of land covered by the *profit à prendre* is (or will be) used exclusively or principally for the purposes of the *profit à prendre*; but
- (b) does not include a *profit à prendre* that is not a forestry right, if the *profit à prendre*—
  - (i) consists only of rights to take any mineral (as that term is defined in section 2(1) of the Crown Minerals Act 1991); or
  - (ii) is within a class set out in regulations as a class of *profits à prendre* not to be treated as regulated *profits à prendre*

**regulations** means regulations made under this Act

**regulator** has the meaning set out in section 30

**relevant land**, in relation to an overseas investment in sensitive land, means the land referred to in section 12(a) or 12(b)

**relevant Minister or Ministers** means,—

- (a) in the case of a business decision, the Minister;
- (b) in the case of a fishing quota decision, the Minister and the Minister of Fisheries;
- (c) in the case of a land decision, the Minister and the Minister for Land Information;
- (d) in the case of a decision that is in more than 1 of the above categories, all of the Ministers that are relevant to those categories

**relevant overseas person** has the meaning set out in section 15

**Reserve Bank** means the Reserve Bank of New Zealand

**residential (but not otherwise sensitive) land** means land that—

- (a) is or includes residential land; but
- (b) is not otherwise sensitive under Part 1 of Schedule 1

**residential dwelling**—

- (a) means a building or group of buildings, or part of a building or group of buildings, that is—
  - (i) used, or intended to be used, only or mainly for residential purposes; and
  - (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but
- (b) does not include any dwelling—
  - (i) to the extent that it is, or is part of, a long-term accommodation facility or an excluded accommodation facility; or

- (ii) within a class set out in regulations as a class of dwellings not to be treated as residential dwellings in this Act

**residential land—**

- (a) means land that has a property category of residential or lifestyle in, or for the purpose of, the relevant district valuation roll (for example, the land's first character category code is "R" or "L"); and
- (b) includes a residential flat in a building owned by a flat-owning company (regardless of whether the building is on land within a property category referred to in paragraph (a)), and, for that purpose, references in this Act to interest include a licence to occupy that flat, where terms in this paragraph have a meaning corresponding to those in section 121A of the Land Transfer Act 1952 or section 122 of the Land Transfer Act 2017

**river** means a river (as defined in section 2(1) of the Resource Management Act 1991) that has a bed of an average width, for its length on or adjoining the relevant land, of 3 metres or more

**security—**

- (a) means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person; and
- (b) includes specifically—
  - (i) a share in a company or other body corporate; and
  - (ii) a unit in a unit trust; and
  - (iii) an interest in a partnership or unincorporated joint venture; and
  - (iv) a right, conferred by membership of an incorporated or unincorporated body of persons, to participate in the control or management of the body, vote at a general meeting of the body, or participate in the assets or property of the body on its winding up; and
- (c) includes also any other interest or right that confers rights of ownership of the property of any person, or to participate in the property of any person on the winding up of that person; and
- (d) includes also any other interest that confers rights to exercise control over the property or assets of any person; and
- (e) includes securities within paragraphs (a) to (d) in whatever currency they are expressed and whether they are situated in New Zealand or elsewhere; but
- (f) excludes an interest or right that is—
  - (i) solely an interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (and is not convertible into a security within paragraphs (a) to (d)); or

- (ii) conferred solely for the purpose of securing the repayment of money of that kind (and is not convertible into a security within paragraphs (a) to (d))

**security arrangement** means 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)

**sensitive (but not residential) land** means land that—

- (a) is not and does not include residential land; but
- (b) is sensitive under Part 1 of Schedule 1 for some other reason

**subsidiary** has the meaning set out in sections 5 and 6 of the Companies Act 1993

**transaction** includes—

- (a) the sale or transfer of property or securities; and
- (b) the issue, allotment, buyback, or cancellation of securities; and
- (c) the entering into, or the giving of effect to a provision in, a contract or arrangement; and
- (d) the arriving at, or the giving of effect to, an understanding

**working day** means a day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
- (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (b) a day in the period commencing with 25 December in a year and ending with 15 January in the following year.

(2) In this Act, a person is **ordinarily resident in New Zealand**,—

- (a) for the purposes of a transaction that will result in an overseas investment in sensitive land where the relevant land is or includes residential land, and related matters, if the person—
  - (i) holds a residence class visa granted under the Immigration Act 2009; and
  - (ii) has been residing in New Zealand for at least the immediately preceding 12 months; and
  - (iii) is tax resident in New Zealand; and
  - (iv) has been present in New Zealand for 183 days or more in total in the immediately preceding 12 months (counting presence in New Zealand for part of a day as a presence for a whole day):

- (b) for the purposes of a transaction that will not result in an overseas investment in sensitive land where the relevant land is or includes residential land, and related matters, if the person—
  - (i) holds a residence class visa granted under the Immigration Act 2009; and
  - (ii) is in one of the following categories:
    - (A) is domiciled in New Zealand; or
    - (B) is residing in New Zealand with the intention of residing there indefinitely, and has done for the immediately preceding 12 months (*see* subsection (3)).
- (2A) In subsection (2)(a)(iii), **tax resident in New Zealand** means a person who is a New Zealand resident under section YD 1(3) of the Income Tax Act 2007, where the reference in section YD 1(3) to a 12-month period is treated as the immediately preceding 12 months (disregarding the rules in section YD 1(4) to (6) of that Act).
- (3) Absence from New Zealand for no more than 183 days in aggregate in the last 12 months (counting presence in New Zealand for part of a day as presence for a whole day) does not prevent a person from satisfying the requirement for residing in New Zealand for the last 12 months under subsection (2)(b)(ii)(B).
- (4) In this Act, a person (A) has a **25% or more ownership or control interest** in another person (B) if A has—
  - (a) a beneficial entitlement to, or a beneficial interest in, 25% or more of B's securities; or
  - (b) the power to control the composition of 25% or more of the governing body of B; or
  - (c) the right to exercise or control the exercise of 25% or more of the voting power at a meeting of B.
- (5) In this Act, a body corporate (B) is a **25% or more subsidiary** of another body corporate (A) if—
  - (a) B is a subsidiary of A under sections 5 to 7 of the Companies Act 1993; or
  - (b) A controls the composition of 25% or more of the governing body of B; or
  - (c) A is in a position to exercise, or control the exercise of, 25% or more of the voting power at a meeting of B.
- (6) Section 7 of the Companies Act 1993 applies for the purposes of determining under this Act whether a person controls the composition of the governing body of another person as if references in that section to a company, a board, and directors were to a person, a governing body, and members of the governing body, respectively.

- (7) In this Act, a person is **involved** in a contravention, the commission of an offence, or a failure to comply if the person—
- (a) has aided, abetted, counselled, or procured the contravention, the commission of the offence, or the failure; or
  - (b) has induced, whether by threats or promises or otherwise, the contravention, the commission of the offence, or the failure; or
  - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention, the commission of the offence, or the failure; or
  - (d) has conspired with others to effect the contravention, the commission of the offence, or the failure.
- (8) Subsection (7) does not apply to proceedings for offences (but *see* Part 4 of the Crimes Act 1961, which relates to parties to the commission of offences).

Section 6(1) **benefit to New Zealand test**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **commitment to reside in New Zealand test**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **conveyancing services**: inserted, on 22 October 2018, by section 8(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **district valuation roll**: inserted, on 22 October 2018, by section 4 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **excluded accommodation facility**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **exempted interest**: replaced, on 22 October 2018, by section 6(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **exemption certificate**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **farm land**: amended, on 22 October 2018, by section 8(3) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **forestry right**: inserted, on 22 October 2018, by section 6(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **incidental residential use test**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **increased housing test**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **investor test**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **involved**: inserted, on 22 October 2018, by section 8(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **long-term accommodation facility**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **non-occupation outcome**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **non-residential use test**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).



Section 6(1) **regulated *profit à prendre***: inserted, on 22 October 2018, by section 6(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **residential (but not otherwise sensitive) land**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **residential dwelling**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **residential land**: inserted, on 22 October 2018, by section 4 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **security arrangement**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **sensitive (but not residential) land**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **working day** paragraph (ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

Section 6(2): replaced, on 22 October 2018, by section 8(4) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(2A): inserted, on 22 October 2018, by section 8(5) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(3): amended, on 22 October 2018, by section 8(6) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(7): inserted, on 22 October 2018, by section 8(7) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(8): inserted, on 22 October 2018, by section 8(7) of the Overseas Investment Amendment Act 2018 (2018 No 25).

## 7 Who are overseas persons

- (1) The purpose of this definition is to provide that persons are overseas persons if they themselves are overseas persons (for example, not a New Zealand citizen or ordinarily resident in New Zealand or, for companies, incorporated overseas) or they are 25% (or more) owned or controlled by an overseas person or persons.
- (2) In this Act, **overseas person** means—
  - (a) an individual who is neither a New Zealand citizen nor ordinarily resident in New Zealand; or
  - (b) a body corporate that is incorporated outside New Zealand or is a 25% or more subsidiary of a body corporate incorporated outside New Zealand; or
  - (c) a body corporate (A) if an overseas person or persons have—
    - (i) 25% or more of any class of A's securities; or
    - (ii) the power to control the composition of 25% or more of A's governing body; or
    - (iii) the right to exercise or control the exercise of 25% or more of the voting power at a meeting of A; or

- (d) a partnership, unincorporated joint venture, or other unincorporated body of persons (other than a trust or unit trust) (**A**) if—
  - (i) 25% or more of A's partners or members are overseas persons; or
  - (ii) an overseas person or persons have a beneficial interest in or entitlement to 25% or more of A's profits or assets (including on A's winding up); or
  - (iii) an overseas person or persons have the right to exercise or control the exercise of 25% or more of the voting power at a meeting of A; or
- (e) a trust (**A**) if—
  - (i) 25% or more of A's governing body are overseas persons; or
  - (ii) an overseas person or persons have a beneficial interest in or entitlement to 25% or more of A's trust property; or
  - (iii) 25% or more of the persons having the right to amend or control the amendment of A's trust deed are overseas persons; or
  - (iv) 25% or more of the persons having the right to control the composition of A's governing body are overseas persons; or
- (f) a unit trust (**A**) if—
  - (i) the manager or trustee, or both, are overseas persons; or
  - (ii) an overseas person or persons have a beneficial interest in or entitlement to 25% or more of A's trust property.

Section 7(1): amended, on 22 October 2018, by section 9 of the Overseas Investment Amendment Act 2018 (2018 No 25).

## 8 Meaning of associate and associated land

- (1) In this Act, a person (**A**) is an **associate** of another person (**B**) in relation to an overseas investment or any other matter if—
  - (a) A is controlled by B or is subject to B's direction:
  - (b) A is B's agent, trustee, or representative, or acts in any way on behalf of B, or is subject to B's direction, control, or influence, in relation to the overseas investment or the other matter:
  - (c) A acts jointly or in concert with B in relation to the overseas investment or the other matter:
  - (d) A participates in the overseas investment or the other matter as a consequence of any arrangement or understanding with B:
  - (e) A would come within any of paragraphs (a) to (d) if the reference to B in any of those paragraphs were instead a reference to another associate of B.
- (2) If A is an **associate** of B, B is also an **associate** of A.

- (3) For the purposes of subsection (1), it does not matter whether the control, direction, power, influence, arrangement, or other relationship between A and B is—
- (a) direct or indirect:
  - (b) general or specific:
  - (c) legally enforceable or not.
- (4) In this Act, land (**land A**) is **associated land** in respect of other land (**land B**) if—
- (a) land A adjoins land B or, in the case of land on an island listed in Part 2 of Schedule 1, land A and land B are on the same island; and
  - (b) a person owns or controls, or will (as the result of any transaction entered into or to be entered into) own or control, (directly or indirectly) an interest in land A (other than an exempted interest); and
  - (c) the same person, or an associate of that person, owns or controls, or will (as the result of any transaction entered into or to be entered into) own or control, (directly or indirectly) an interest in land B (other than an exempted interest).

#### **8A Status of examples**

- (1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

Section 8A: inserted, on 22 October 2018, by section 10 of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### *Transitional, savings, and related provisions*

Heading: inserted, on 22 October 2018, by section 10 of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### **8B Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 8B: inserted, on 22 October 2018, by section 10 of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### *Act binds the Crown*

### **9 Act binds the Crown**

This Act binds the Crown.

## Part 2

### Consent and conditions regime

#### Subpart 1—When consent required and criteria for consent

##### *When consent required*

#### **10 Consent required for overseas investments in sensitive New Zealand assets**

- (1) A transaction requires consent under this Act if it will result in—
  - (a) an overseas investment in sensitive land (*see* section 12);
  - (b) an overseas investment in significant business assets (*see* section 13).
- (2) *See* also sections 56 to 58B of the Fisheries Act 1996, which require consent for a transaction that will result in an overseas investment in fishing quota.

#### **11 Consent must be obtained before overseas investment given effect**

- (1) Consent must be obtained for a transaction before the overseas investment is given effect under the transaction.
- (2) The procedure for obtaining consent (including who must obtain consent) is set out in subpart 2.

#### **11A Exemptions from requirement for consent**

- (1) The exemptions from the requirement for consent in Schedule 3 have effect.
- (2) *See also* the exemptions in the regulations.

Section 11A: inserted, on 22 October 2018, by section 11 of the Overseas Investment Amendment Act 2018 (2018 No 25).

##### *What are overseas investments in sensitive New Zealand assets*

#### **12 What are overseas investments in sensitive land**

An **overseas investment in sensitive land** is the acquisition by an overseas person, or an associate of an overseas person, of—

- (a) an interest in land if—
  - (i) the land is sensitive under Part 1 of Schedule 1; and
  - (ii) the interest acquired is a freehold estate or a lease, or any other interest, for a term of 3 years or more (including rights of renewal, whether of the grantor or grantee), and is not an exempted interest; or
- (b) rights or interests in securities of a person (**A**) if **A** owns or controls (directly or indirectly) an interest in land described in paragraph (a) and, as a result of the acquisition,—

- (i) the overseas person or the associate (either alone or together with its associates) has a 25% or more ownership or control interest in A; or
- (ii) the overseas person or the associate (either alone or together with its associates) has an increase in an existing 25% or more ownership or control interest in A; or
- (iii) A becomes an overseas person.

### **13 What are overseas investments in significant business assets**

- (1) An overseas investment in significant business assets is—
- (a) the acquisition by an overseas person, or an associate of an overseas person, of rights or interests in securities of a person (A) if—
    - (i) as a result of the acquisition, the overseas person or the associate (either alone or together with its associates) has a 25% or more ownership or control interest in A or an increase in an existing 25% or more ownership or control interest in A; and
    - (ii) the value of the securities or consideration provided, or the value of the assets of A or A and its 25% or more subsidiaries, exceeds \$100 million; or
  - (b) the establishment by an overseas person, or an associate of an overseas person, of a business in New Zealand (either alone or with any other person) if—
    - (i) the business is carried on for more than 90 days in any year (whether consecutively or in aggregate); and
    - (ii) the total expenditure expected to be incurred, before commencing the business, in establishing that business exceeds \$100 million; or
  - (c) the acquisition by an overseas person, or an associate of an overseas person, of property (including goodwill and other intangible assets) in New Zealand used in carrying on business in New Zealand (whether by 1 transaction or a series of related or linked transactions) if the total value of consideration provided exceeds \$100 million.
- (2) However, an overseas person that was lawfully carrying on business in New Zealand on 15 January 1996 (which was when the Overseas Investment Regulations 1995 came into force) does not require consent for an overseas investment in significant business assets described in subsection (1)(b) if the investment requires consent only because it comes within that paragraph.

*Criteria for consent***14 Approach to criteria for consent**

- (1) The relevant Minister or Ministers, in considering whether or not to grant consent to an overseas investment transaction,—
  - (a) must have regard to only the criteria and factors that apply to the relevant category of overseas investment under this subpart (subject to this section); and
  - (b) may consult with any other person or persons, as the Minister or Ministers think appropriate; and
  - (c) must grant consent if satisfied that all of the criteria in section 16 or section 18 (as the case may be) are met; and
  - (d) must decline to grant consent if not satisfied that all of the criteria in section 16 or section 18 are met.
- (2) For a transaction that is in more than 1 category of overseas investment, the relevant Ministers must have regard to the criteria that apply to all of the relevant categories.
- (3) However, if the criteria are the same, the relevant Ministers only need to consider the same criteria once (and not consider them under each relevant category).

**15 Who are relevant overseas persons, and individuals with control, for overseas investments**

- (1) The relevant Minister or Ministers may determine which 1 or more of the following persons is the **relevant overseas person** for an overseas investment:
  - (a) the person making the overseas investment (**A**), whether A is an overseas person or an associate of an overseas person:
  - (b) any associate of A in relation to the overseas investment.
- (2) The relevant Minister or Ministers may determine which 1 or more of the following categories of persons are the **individuals with control of the relevant overseas person** for an overseas investment:
  - (a) the individual or individuals who each have a 25% or more ownership or control interest in the relevant overseas person:
  - (b) the member or members of the governing body of the relevant overseas person:
  - (c) the individual or body of individuals who the Minister or Ministers consider to have that control (whether directly or indirectly).

**16 Criteria for consent for overseas investments in sensitive land**

- (1) The criteria for an overseas investment in sensitive land are all of the following:

- (a) the investor test is met (unless the overseas investment is exempt from this criterion under subsection (3));
  - (b) if the relevant land is residential (but not otherwise sensitive) land,—
    - (i) 1 or more of the following tests in Schedule 2 are met:
      - (A) the commitment to reside in New Zealand test:
      - (B) the increased housing test:
      - (C) the non-residential use test:
      - (D) the incidental residential use test; or
    - (ii) the benefit to New Zealand test is met:
  - (c) if the relevant land is sensitive (but not residential) land,—
    - (i) the relevant overseas person is, or (if that person is not an individual) each of the individuals with control of the relevant overseas person is, a New Zealand citizen, ordinarily resident in New Zealand, or intending to reside in New Zealand indefinitely; or
    - (ii) the benefit to New Zealand test is met:
  - (d) if the relevant land is residential land but is not described in paragraph (b),—
    - (i) the commitment to reside in New Zealand test is met; or
    - (ii) the benefit to New Zealand test is met:
  - (e) if the relevant land is not described in paragraphs (b) to (d), the benefit to New Zealand test is met:
  - (f) if the relevant land is or includes farm land, either that farm land or the securities to which the overseas investment relates have been offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations (unless the overseas investment is exempt from this criterion under section 20).
- (2) For the purposes of this section, the investor test is met if the relevant Ministers are satisfied that—
- (a) the relevant overseas person has, or (if that person is not an individual) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to that overseas investment; and
  - (b) the relevant overseas person has demonstrated financial commitment to the overseas investment; and
  - (c) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, of good character; and
  - (d) the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an

individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (which sections list certain persons not eligible for visas or entry permission under that Act).

- (3) Subsection (1)(a) (the investor test) does not apply to an overseas investment in sensitive land if either of the following circumstances applies:

(a) **Circumstance 1:**

- (i) the application for consent is under the commitment to reside in New Zealand test only; and
- (ii) the relevant land is residential (but not otherwise sensitive) land:

(b) **Circumstance 2:**

- (i) the application for consent is under the increased housing test only; and
- (ii) the increased housing outcome under the test is to be met by a development described in clause 4(1) of Schedule 3 (large apartment developments); and
- (iii) the interest in land relates to 1 or more new residential dwellings in that development; and
- (iv) the transaction is entered into before the construction of the dwelling is complete.

- (4) *See also* clause 4(5) of Schedule 2 (which relates to the commitment to reside in New Zealand test and relationship property) for a circumstance in which an individual with control of the relevant overseas person can be disregarded in determining whether the investor test is met.

- (5) *See* section 19 in relation to subsection (2)(c) and (d).

Section 16(1)(a): replaced, on 22 October 2018, by section 12(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 16(1)(b): replaced, on 22 October 2018, by section 12(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 16(1)(c): replaced, on 22 October 2018, by section 12(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 16(1)(d): replaced, on 22 October 2018, by section 12(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 16(1)(e): replaced, on 22 October 2018, by section 12(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 16(2): replaced, on 22 October 2018, by section 12(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 16(3): inserted, on 22 October 2018, by section 12(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 16(4): inserted, on 22 October 2018, by section 12(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 16(5): inserted, on 22 October 2018, by section 12(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).



## 16A Benefit to New Zealand test

### *General test*

- (1) The benefit to New Zealand test is met if all of the following are met:
  - (a) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined by the relevant Ministers under section 17; and
  - (b) if the relevant land is or includes non-urban land that, in area (either alone or together with any associated land) exceeds 5 hectares, the relevant Ministers determine that that benefit will be, or is likely to be, substantial and identifiable; and
  - (c) if the relevant land is or includes residential land, the relevant Ministers are satisfied that the conditions that the relevant Ministers will impose on the consent in accordance with section 16B will be, or are likely to be, met.
- (2) Subsection (3) applies if the relevant Ministers are satisfied—
  - (a) that the relevant land will be, or is likely to be, used exclusively, or nearly exclusively, for forestry activities; and
  - (b) that—
    - (i) the relevant land is not residential land only; and
    - (ii) if the relevant land includes any residential land, the residential land adjoins other land that is included in the relevant land but is not residential land; and
  - (c) that the relevant land will not be, or is not likely to be, used, or held for future use, for any residential purposes, except where—
    - (i) accommodation is being provided for the purpose only of supporting forestry activities being carried out on the relevant land; and
    - (ii) all buildings being used for that accommodation are located on land on which some or all of those forestry activities are being carried out or on land that adjoins land on which some or all of those forestry activities are being carried out; and
  - (d) that, whenever a crop of trees is harvested on the relevant land, a new crop will be, or is likely to be, established on the relevant land to replace the crop that is harvested (subject to subsection (7)).
- (3) For the purposes of subsection (1)(a) and (b), the relevant Ministers may assess the benefit to New Zealand (or any part of it or group of New Zealanders) by comparing the expected result of the overseas investment with what is expected to happen in relation to the relevant land if—
  - (a) the overseas investment is not given effect to; and
  - (b) there were to be no future changes to the ownership or control (direct or indirect) of—

- (i) interests in the relevant land; or
- (ii) rights or interests in securities of persons who own or control (directly or indirectly) interests in the relevant land.

*Special test relating to forestry activities*

- (4) Regulations may provide that the benefit to New Zealand test is also met if the relevant Ministers are satisfied—
- (a) that the relevant land will be, or is likely to be, used exclusively, or nearly exclusively, for forestry activities; and
  - (b) that—
    - (i) the relevant land is not residential land only; and
    - (ii) if the relevant land includes any residential land, the residential land adjoins other land that is included in the relevant land but is not residential land; and
  - (c) that the relevant land will not be, or is not likely to be, used, or held for future use, for any residential purposes, except where—
    - (i) accommodation is being provided for the purpose only of supporting forestry activities being carried out on the relevant land; and
    - (ii) all buildings being used for that accommodation are located on land on which some or all of those forestry activities are being carried out or on land that adjoins land on which some or all of those forestry activities are being carried out; and
  - (d) that any requirements set out in regulations in accordance with subsection (5) will be, or are likely to be, met (subject to subsection (8)); and
  - (e) that, whenever a crop of trees is harvested on the relevant land, a new crop will be, or is likely to be, established on the relevant land to replace the crop that is harvested (subject to subsection (7)); and
  - (f) if the relevant land is or includes special land and regulations require the special land, or any part of it, to be offered to the Crown, that the special land, or the part of it, has been offered to the Crown in accordance with regulations; and
  - (g) that any other requirements set out in regulations are met.
- (5) Regulations may, for the purposes of subsection (4)(d), set out requirements that must be met after the overseas investment is given effect to.
- (6) Requirements set out in regulations for the purposes of subsection (4)(d) may (without limitation) be about 1 or more of the following:
- (a) activities that must, or must not, be carried out on the relevant land;
  - (b) the maintenance or protection of things that exist when or before the overseas investment transaction is entered into (including (without limitation) the maintenance of existing arrangements relating to historic

heritage, biodiversity, environmental matters, public access, or the supply of logs):

- (c) outcomes that must result from the overseas investment.

*Powers not to apply, or to modify, certain requirements*

- (7) The relevant Ministers may decide—
  - (a) not to apply the requirement set out in subsection (2)(d) or (4)(e) if satisfied that the relevant overseas person (together with the relevant overseas person's associates) will not have sufficient ownership or control (direct or indirect) of rights in respect of the relevant land to ensure that the requirement will be met:
  - (b) to modify the requirement set out in subsection (2)(d) or (4)(e) by not applying the requirement for a part of the relevant land if satisfied that the relevant overseas person (together with the relevant overseas person's associates) will not have sufficient ownership or control (direct or indirect) of rights in respect of that part of the relevant land to ensure that the requirement will be met for that part of the relevant land.
- (8) The relevant Ministers may decide not to apply, or may modify, any requirement set out in regulations for the purposes of subsection (4)(d) if satisfied that the relevant overseas person (together with the relevant overseas person's associates) will not have sufficient ownership or control (direct or indirect) of rights in respect of the relevant land to ensure that the requirement will be met.

*Definitions*

- (9) In this section,—
  - adjoins** includes separated only by a public road (including a motorway or a State highway, and whether or not the road is formed)
  - forestry activities** means any of the following:
    - (a) maintaining a crop of trees:
    - (b) harvesting a crop of trees:
    - (c) establishing a crop of trees

**special land** means foreshore or seabed or a bed of a river or lake.

Section 16A: inserted, on 22 October 2018, by section 13 of the Overseas Investment Amendment Act 2018 (2018 No 25).

### **16B Conditions for consents relating to sensitive land that is residential land: benefit to New Zealand test**

- (1) This section applies if an application for consent for an overseas investment in sensitive land is being considered under the benefit to New Zealand test and the relevant land is or includes residential land.

- (2) However, this section does not apply where section 16A(3) is being applied or the application is being considered in accordance with section 16A(4) (*see* instead section 16C).
- (3) If consent is granted, to the extent that the consent relates to the residential land,—
  - (a) the relevant Ministers must determine a residential land outcome listed in the table in clause 19 of Schedule 2 as applying to the residential land; and
  - (b) the consent must be made subject to the set of conditions for the residential land outcome, subject to any exemptions applying (in each case, as described in the table).
- (4) Consent may be granted on the basis of different residential land outcomes applying for different parts of the residential land (with different sets of conditions imposed for different parts).

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**Example**

A is an overseas person who wants to buy 100% of the shares in what is currently a 100% New Zealand-owned and -controlled company.

The company owns the following sensitive land (and has no other interests in sensitive land):

- 40 hectares of non-urban land (that is not residential land);
- residential land where 2 houses are being constructed.

No part of the land is, or will be, used for forestry activities.

***Criteria for consent***

Because the relevant land is a mix of sensitive (but not residential) land and residential land, section 16(1)(e) applies and (in addition to the other criteria in section 16(1) that apply) the benefit to New Zealand test must be met in relation to all of the relevant land.

***Residential land outcomes***

Because the relevant land includes residential land, section 16A(1)(c) applies.

A wants to complete and sell one of the houses and live in the other house. A's application for consent proposes the following residential land outcomes (from the table in clause 19 of Schedule 2) for the residential land:

- occupation as a main home or residence (on the basis that the commitment to reside in New Zealand test will be met in respect of part of the residential land);
- increased residential dwellings (for the remaining part of the residential land).

***Required conditions***

If consent is granted, each part of the residential land will be covered by a set of conditions (*see* clause 19 of Schedule 2) for the residential land outcomes that the relevant Ministers determine apply.

(See *also* sections 25A and 25B, in relation to the imposition of conditions generally.)

Section 16B: inserted, on 22 October 2018, by section 13 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**16C Conditions for consents relating to sensitive land that will be used for forestry activities**

- (1) Subsection (2) applies if an application for consent for an overseas investment in sensitive land is being considered under the benefit to New Zealand test and section 16A(3) is being applied.
- (2) If granted, the consent must be made subject to conditions for the purpose of ensuring that the following requirements will be met:
  - (a) the requirements set out in section 16A(2)(a) and (c):
  - (b) the requirement set out in section 16A(2)(d), subject to section 16A(7).
- (3) Subsection (4) applies if an application for consent for an overseas investment in sensitive land is being considered under the benefit to New Zealand test in accordance with section 16A(4).
- (4) If granted, the consent must be made subject to conditions for the purpose of ensuring that the following requirements will be met:
  - (a) the requirements set out in section 16A(4)(a) and (c):
  - (b) the requirements set out in regulations made for the purposes of section 16A(4)(d), subject to section 16A(8):
  - (c) the requirement set out in section 16A(4)(e), subject to section 16A(7).
- (5) A condition imposed in relation to the requirement set out in section 16A(2)(d) or (4)(e) may require the replacement of a crop of trees that is harvested to be on a like-for-like basis or on any similar basis.

Section 16C: inserted, on 22 October 2018, by section 13 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**17 Factors for assessing benefit of overseas investments in sensitive land**

- (1) For the purposes of section 16A(1)(a) and (b) (including where section 16A(3) is being applied), the relevant Ministers—
  - (a) must consider all the factors in subsection (2) to determine which factor or factors (or parts of them) are relevant to the overseas investment; and
  - (b) must determine whether the criteria in section 16A(1)(a) and (b) (including where section 16A(3) is being applied) are met after having regard to those relevant factors; and
  - (c) may, in doing so, determine the relative importance to be given to each relevant factor (or part).
- (2) The factors are the following:
  - (a) whether the overseas investment will, or is likely to, result in—

- (i) the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost; or
  - (ii) the introduction into New Zealand of new technology or business skills; or
  - (iii) increased export receipts for New Zealand exporters; or
  - (iv) added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand; or
  - (v) the introduction into New Zealand of additional investment for development purposes; or
  - (vi) increased processing in New Zealand of New Zealand's primary products:
- (b) whether there are or will be adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats of indigenous fauna, for example, any 1 or more of the following:
- (i) conditions as to pest control, fencing, fire control, erosion control, or riparian planting:
  - (ii) covenants over the land:
- (c) whether there are or will be adequate mechanisms in place for—
- (i) protecting or enhancing existing areas of significant habitats of trout, salmon, wildlife protected under section 3 of the Wildlife Act 1953, and game as defined in sections 2(1) of that Act (for example, any 1 or more of the mechanisms referred to in paragraph (b)(i) and (ii)); and
  - (ii) providing, protecting, or improving walking access to those habitats by the public or any section of the public:
- (d) whether there are or will be adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land, for example, any 1 or more of the following:
- (i) conditions for conservation (including maintenance and restoration) and access:
  - (ii) agreement to support the entry on the New Zealand Heritage List/Rārangi Kōrero of any historic place, historic area, wahi tapu, or wahi tapu area under the Heritage New Zealand Pouhere Taonga Act 2014:
  - (iii) agreement to execute a heritage covenant:
  - (iv) compliance with existing covenants:

- (e) whether there are or will be adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land or a relevant part of that land by the public or any section of the public:
- (f) if the relevant land is or includes foreshore, seabed, or a bed of a river or lake, whether that foreshore, seabed, riverbed, or lakebed has been offered to the Crown in accordance with regulations:
- (g) any other factors set out in regulations.

Section 17(1): amended, on 22 October 2018, by section 14(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 17(1)(b): amended, on 22 October 2018, by section 14(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 17(2)(d)(ii): amended, on 20 May 2014, by section 107 of the Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26).

## **18 Criteria for overseas investments in significant business assets**

- (1) The criteria for an overseas investment in significant business assets are all of the following:
  - (a) the relevant overseas person has, or (if that person is not an individual) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to that overseas investment:
  - (b) the relevant overseas person has demonstrated financial commitment to the overseas investment:
  - (c) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, of good character:
  - (d) the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (which sections list certain persons not eligible for visas or entry permission under that Act).
- (2) *See* section 19 in relation to subsection (1)(c) and (d).

Section 18(1)(d): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

## **19 Applying good character and Immigration Act 2009 criteria**

- (1) For the purposes of sections 16(2)(c) and 18(1)(c), the relevant Minister or Ministers must take the following factors into account (without limitation) in assessing whether or not a person (**A**) is of good character:
  - (a) offences or contraventions of the law by A, or by any person in which A has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not):

- (b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.
- (2) For the purposes of sections 16(2)(d) and 18(1)(d), an individual is not an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 if a special direction referred to in section 17(1)(a) of that Act has been made permitting a visa or entry permission to be granted to that individual.

Section 19 heading: amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 19(1): amended, on 22 October 2018, by section 15(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 19(2): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 19(2): amended, on 22 October 2018, by section 15(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

## 20 Exemptions from farm land offer criterion

Section 16(1)(f) does not apply to an overseas investment if—

- (a) the relevant Ministers consider that the overseas investment need not meet this criterion by reason of the circumstances relating to the particular overseas investment, interest in land, or rights or interests in securities; or
- (b) the overseas person making the overseas investment belongs to a class of overseas persons, or the overseas investment transaction belongs to a class of transactions, that is exempted from this criterion by the relevant Ministers by notice in the *Gazette*.

### Subpart 2—Procedure for making an application for consent and for granting consent

#### 21 Application for consent

An application for consent must be made in accordance with this Act and regulations.

#### 22 Who must apply for consent

- (1) The following persons must apply for consent to an overseas investment transaction:
  - (a) each overseas person or associate making the overseas investment; and
  - (b) if the transaction comes within section 12(b) or section 13(1)(a) because of the issue, buyback, or cancellation of securities, and consent has not been obtained by a person under paragraph (a), the issuer of the securities.



- (2) In addition, the regulator may require any other party to the overseas investment transaction, or any associate of the person referred to in subsection (1)(a) in relation to the overseas investment, to be a party to the application.

### **23 Requirements for application for consent**

- (1) An application for consent 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.

### **23A Applications for standing consent in advance of transaction**

- (1) A person may, in the circumstances set out in Schedule 4, apply for a consent (a **standing consent**) for 1 or more transactions in respect of 1 or more overseas investments in sensitive land—
- (a) that have not been entered into at the time when the application is made and when the standing consent is granted; and
  - (b) that fall within a class of transactions described in the application.
- (2) A standing consent is a consent to give effect to an overseas investment under a transaction for the purposes of section 10(1)(a), subject to Schedule 4.

Section 23A: inserted, on 22 October 2018, by section 16 of the Overseas Investment Amendment Act 2018 (2018 No 25).

### **24 Who decides application**

- (1) An application must be decided,—
- (a) in the case of a land decision, by the Minister and the Minister for Land Information;
  - (b) in the case of a business decision, by the Minister;
  - (c) in the case of a fishing quota decision, by the Minister and the Minister of Fisheries;

- (d) in the case of a decision that is in more than 1 of the above categories, by all of the Ministers that are relevant to those categories.
- (2) However, a Minister or Ministers may delegate the power to decide (*see* section 32).

## **25 Granting or refusal of consent**

- (1) A consent under this Act may be—
  - (a) granted in respect of a proposed or specified transaction, instrument, or person:
  - (b) granted in respect of classes of transactions, instruments, or persons that the relevant Minister or Ministers determine:
  - (c) *[Repealed]*
  - (d) granted subject to the payment of a bond:
  - (e) granted in whole or in part:
  - (f) granted retrospectively:
  - (g) refused.
- (2) A transaction may not be cancelled under section 29(1)(c) if it has been granted retrospective consent.

Section 25(1)(c): repealed, on 22 October 2018, by section 17 of the Overseas Investment Amendment Act 2018 (2018 No 25).

## **25A Conditions of consent**

- (1) A consent granted under this Act may, in addition to the automatic conditions in section 25B (which apply to every consent) and any conditions that this Act requires be imposed on the consent, be made subject to such other conditions (if any) that the relevant Minister or Ministers think appropriate.
- (2) Nothing in this Act limits the discretion of the relevant Minister or Ministers under subsection (1). For example, conditions of a consent may—
  - (a) expand on, or be similar to, conditions that this Act requires be imposed on the consent (if any):
  - (b) expand on, be similar to, or be the same as conditions that this Act requires be imposed on other consents:
  - (c) require the consent holder to dispose of property in certain circumstances (for example, if a condition of consent is breached).
- (3) For the purpose of enforcing a condition, the relevant Minister or Ministers may enter into a contract or deed with an applicant (including a mortgage or other security arrangement).

Section 25A: inserted, on 22 October 2018, by section 18 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**25B Automatic conditions: every overseas investment**

It is a condition of every consent, whether or not it is stated in the consent, that—

- (a) the information provided by each applicant to the regulator or the relevant Minister or Ministers in connection with the application was correct at the time it was provided; and
- (b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent is granted, unless compliance should reasonably be excused.

Section 25B: inserted, on 22 October 2018, by section 18 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**26 Minister may revoke consent in case of fraud**

The Minister may revoke a consent for an overseas investment transaction before the overseas investment has been given effect if, in the Minister's opinion, the consent has been obtained by fraud.

**27 Consent may be varied by agreement**

- (1) A consent granted under this Act may be varied by the relevant Minister or Ministers with the agreement of the consent holder.
- (2) Any conditions of a consent may be varied or added to by the relevant Minister or Ministers with the agreement of the consent holder.
- (3) A condition of a consent may be revoked by the relevant Minister or Ministers.
- (3A) Subsection (3) does not apply in respect of a condition that this Act required to be imposed but the relevant Ministers may, with the agreement of the consent holder, vary the condition (for example, by varying the specified period within which a matter must occur).
- (4) An application for variation of a consent or a condition of a consent may be made by written notice to the regulator accompanied by the fee required by regulations.

Section 27(3A): inserted, on 22 October 2018, by section 19 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**27A Consent holder may apply for new consent**

- (1) This section applies to a consent for a transaction that is subject to 1 or more conditions that this Act required to be imposed in relation to the consent.
- (2) The holder of the consent may apply for a new consent for the transaction.
- (3) The application must be made on the basis that any overseas investments that have resulted from the transaction are instead to be treated as if they will be given effect to on a future date specified or determined in accordance with the application.

- (4) The relevant Ministers—
- (a) must consider the application in accordance with section 14; and
  - (b) may grant the new consent if satisfied that all of the applicable criteria are met.
- (5) Despite subsection (3), if the application asks for the benefit to New Zealand test to be applied to any overseas investment, the relevant Ministers may—
- (a) assess the benefit to New Zealand (or any part of it or group of New Zealanders) by comparing the expected result of the overseas investment from the date on which the overseas investment was actually given effect to:
  - (b) otherwise apply (wholly or partly) any provision of sections 16A to 16C as they would have done had they been considering the application at the time of the original application for consent for the transaction.
- (6) If the relevant Ministers grant the new consent, the new consent (including its conditions) replaces the previous consent (including its conditions) with effect from the start of—
- (a) the date referred to in subsection (3); or
  - (b) if later, the date after the date on which the new consent is granted.

Section 27A: inserted, on 22 October 2018, by section 20 of the Overseas Investment Amendment Act 2018 (2018 No 25).

## **28 Conditions of consent**

*[Repealed]*

Section 28: repealed, on 22 October 2018, by section 21 of the Overseas Investment Amendment Act 2018 (2018 No 25).

## **29 Transaction may be cancelled**

- (1) A transaction for which consent is required under this Act and under which the overseas investment has been given effect without that consent—
- (a) is not an illegal contract for the purposes of subpart 5 of Part 2 of the Contract and Commercial Law Act 2017; and
  - (b) is not void only because the overseas investment has been given effect to without the requisite consent or because giving effect to the overseas investment without the requisite consent is an offence; but
  - (c) may be cancelled by—
    - (i) a party to the transaction who was not required to obtain consent to the transaction under this Act, by giving notice in writing to all the other parties; or
    - (ii) the court, on the application of the regulator.
- (2) On cancellation under this section,—

- (a) the court has the same powers as it has under sections 43 to 48 of the Contract and Commercial Law Act 2017; and
- (b) if the court orders the cancellation on the regulator's application, the court may also make any other order necessary to give effect to the cancellation.

Section 29(1)(a): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 29(2)(a): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

### Subpart 3—Administration

#### **30 Regulator**

- (1) The regulator is the chief executive of the department that for the time being is designated by the Minister by notice in writing to the chief executive as the regulating department.
- (2) The Minister may at any time by notice in writing to the chief executive revoke the designation of his or her department as the regulating department.

#### **31 What regulator does**

The regulator's functions are to—

- (a) consider each application and advise the relevant Minister or Ministers on how the application should be determined;
- (b) exercise any of the powers or functions that have been delegated to him or her under this Act or regulations;
- (c) in relation to an application, consult as the regulator thinks appropriate;
- (d) monitor compliance with conditions of consent;
- (e) issue guidelines when necessary;
- (f) compile and keep records relating to applications, for example, the number of applications in a particular year;
- (g) compile and make available statistics relating to applications;
- (h) provide general information for the benefit of applicants for consent about New Zealand's overseas investment rules;
- (ha) do the following:
  - (i) monitor compliance with this Act and the regulations;
  - (ii) investigate conduct that constitutes or may constitute a contravention, or an involvement in a contravention, of this Act or the regulations;
  - (iii) investigate conduct that constitutes or may constitute an offence under this Act;

- (iv) enforce this Act and the regulations:
- (i) do anything else that is necessary for the efficient operation of the rules relating to overseas investment in sensitive New Zealand assets.

Section 31(ha): inserted, on 22 October 2018, by section 22 of the Overseas Investment Amendment Act 2018 (2018 No 25).

### **32 Delegation by relevant Minister or Ministers**

The relevant Minister or Ministers may delegate to the regulator or any other person any of his or her or their powers or functions under this Act or regulations (including this power of delegation).

### **33 Rules that apply to delegation under this Act or regulations**

- (1) The delegation—
  - (a) must be in writing:
  - (b) in the case of delegation by the Minister, may (but does not have to) be made in a Ministerial directive letter:
  - (c) may be made generally or in relation to any particular matter or class of matters:
  - (d) may be made to—
    - (i) a specified person; or
    - (ii) persons of a specified class; or
    - (iii) the holder for the time being of a specified office or appointment; or
    - (iv) the holders of offices or appointments of a specified class:
  - (e) may be revoked at any time.
- (2) The delegation may be made subject to any conditions or restrictions that the delegator thinks appropriate.
- (3) Subject to any general or special directions or conditions or restrictions given or imposed by the delegator, the person to whom a power or function is delegated may exercise that power or function in the same way and with the same effect as if it had been conferred directly by this Act or regulations and not by delegation.
- (4) A person who purports to act under a delegation is presumed to act in accordance with the terms of the delegation, unless the contrary is proved.
- (5) A delegation does not prevent the delegator from exercising the power or function that has been delegated.

### **34 Ministerial directive letter**

- (1) The Minister may direct the regulator by a Ministerial directive letter, and the regulator must comply with it.

- (2) Subsection (1) applies even if the subject matter of the Ministerial directive letter relates to a power that has been delegated to the regulator.
- (3) A Ministerial directive letter may direct the regulator about the following things:
  - (a) the Government's general policy approach to overseas investment in sensitive New Zealand assets, including the relative importance of different criteria or factors in relation to particular assets:
  - (b) the asset types, value thresholds, and area thresholds over which the regulator has power to make decisions:
  - (ba) conditions of consent, including conditions that this Act requires be imposed:
  - (c) the level of monitoring required in relation to conditions of consent:
  - (d) the criteria for including reserves, public parks, or other sensitive areas on the list kept by the regulator under section 37:
  - (e) any general or specific matter relating to the regulator's functions, powers, or duties.

Section 34(3)(ba): inserted, on 22 October 2018, by section 23 of the Overseas Investment Amendment Act 2018 (2018 No 25).

### **35 Ministerial directive letter must be published, etc**

Each Ministerial directive letter must be published in the *Gazette* and presented to the House of Representatives within 6 sitting days after it was sent to the regulator.

### **36 Regulator may issue guidelines**

- (1) The regulator may issue guidelines about the following things:
  - (a) the offer of foreshore, seabed, riverbed, or lakebed to the Crown:
  - (b) offer requirements for farm land:
  - (c) monitoring compliance with conditions of consent:
  - (d) the level of information that must be provided in an application:
  - (e) the criteria to be taken into account in deciding whether an overseas person intends to reside in New Zealand indefinitely:
  - (f) any other matters relating to applications, the criteria and consent process, and the rules on overseas investment in sensitive New Zealand assets.
- (2) The regulator must not issue a guideline unless it has first been approved by the Minister.

### **37 Regulator must keep list of reserves, parks, and other sensitive areas**

- (1) The regulator must—

- (a) compile and keep a list of reserves and public parks, and other areas described in subsection (2), for which the adjoining land is sensitive under table 2 in Part 1 of Schedule 1; and
- (b) publish that list on a website maintained by or for the regulator.
- (2) Other areas of land may be included in the list only if they are held under statute and have a primary purpose, by or under statute, relating to—
  - (a) protecting natural and physical resources or historic heritage; or
  - (b) providing public access to natural and physical resources or historic heritage.
- (3) The list may set out the reserves, public parks, and other areas specifically or by class.
- (4) The regulator may amend that list.

#### Subpart 4—Information-gathering powers

Heading: replaced, on 22 October 2018, by section 30 of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### **38 Regulator may require person who is subject to condition to provide information for monitoring purposes**

- (1) For the purpose of monitoring compliance with the conditions of a consent, an exemption, or an exemption certificate, the regulator may, by notice in writing, require a person (A) who is required to comply with any of the conditions to provide the regulator with the information or documents (or both) that are specified in the notice.
- (2) A must—
  - (a) comply with the regulator’s notice within the time, and in the manner, specified in it; and
  - (b) certify that the information provided to the regulator, including information contained in any documents provided, is correct.
- (3) The regulator may retain or copy any information or document that is provided under this section.

Section 38: replaced, on 22 October 2018, by section 31 of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### **39 Regulator may require any person to provide information for statistical or monitoring purposes**

- (1) The regulator may, by notice in writing, require any person with information relevant to overseas investments in sensitive New Zealand assets to provide the regulator with the information specified in the notice for the purpose of—
  - (a) compiling statistical information relating to overseas investment in New Zealand; or



- (b) monitoring compliance with a condition or conditions of a consent, an exemption, or an exemption certificate.
- (2) The person must—
  - (a) comply with the regulator’s notice within the time, and in the manner, specified in it; and
  - (b) provide the information in the form specified in the notice.
- (3) The regulator may retain or copy any information that is provided under this section.

Section 39(1)(b): replaced, on 22 October 2018, by section 32(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 39(2)(a): amended, on 22 October 2018, by section 32(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### **40 Regulator may require person who is subject to condition to provide statutory declaration as to compliance**

- (1) The regulator may, by notice in writing, require a person (A) who is required to comply with a condition or conditions of a consent, an exemption, or an exemption certificate to provide the regulator with a statutory declaration verifying—
  - (a) the extent to which A has complied with the condition or conditions; and
  - (b) if A is in breach of a condition or conditions, the reasons for the breach and the steps that A intends to take to remedy the breach.
- (2) A must provide the declaration—
  - (a) within the time, and in the manner, specified in the notice; or
  - (b) if the notice specifies that A must provide the declaration at intervals, at those intervals.
- (3) A declaration that is made under this section is not admissible in evidence in any proceedings under this Act except proceedings under section 46.

Section 40: replaced, on 22 October 2018, by section 33 of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### **41 Regulator may require information and documents to be provided for purpose of monitoring compliance, investigating, and enforcing Act and regulations**

- (1) If the regulator has reasonable grounds to believe that it is necessary or desirable for 1 or more of the purposes set out in subsection (1A), the regulator may, by written notice, require any person (A)—
  - (a) to provide to the regulator, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or

- (b) to provide to the regulator any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or
  - (c) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any document or class of documents specified in the notice (within the time and in the manner specified in the notice).
- (1A) The purposes are as follows:
- (a) monitoring compliance with this Act or the regulations (or both):
  - (b) investigating conduct that constitutes or may constitute a contravention, or an involvement in a contravention, of this Act or the regulations (or both):
  - (c) investigating conduct that constitutes or may constitute an offence under this Act:
  - (d) enforcing this Act or the regulations (or both).
- (2) A must comply with the regulator's notice within the time, and in the manner, specified in it.
- (3) *[Repealed]*
- (4) The regulator may retain or copy any information or document that is provided under this section.
- (5) Sections 38 to 40 do not limit this section.

Section 41 heading: amended, on 22 October 2018, by section 34(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 41(1): replaced, on 22 October 2018, by section 34(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 41(1A): inserted, on 22 October 2018, by section 34(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 41(2): amended, on 22 October 2018, by section 34(3) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 41(3): repealed, on 22 October 2018, by section 34(4) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 41(5): inserted, on 22 October 2018, by section 34(5) of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### **41A Privileges for person required to provide information or document**

A person who is required to provide information or a document under any of sections 38 to 41 has the same privileges in relation to the provision of the information or document as witnesses have in any court.

Section 41A: inserted, on 22 October 2018, by section 35 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**41B Effect of proceedings**

- (1) If a person commences a proceeding in any court in respect of the exercise of any powers conferred by any of sections 38 to 41, until a final decision in relation to the proceeding is given,—
  - (a) the powers may be, or may continue to be, exercised as if the proceeding had not been commenced; and
  - (b) no person is excused from fulfilling the person's obligations under any of those sections by reason of the proceeding.
- (2) However, the court may make an interim order overriding the effect of subsection (1), but only if the court is satisfied that—
  - (a) the applicant has established a prima facie case that the exercise of the power in question is unlawful; and
  - (b) the applicant would suffer substantial harm from the exercise or discharge of the power or obligation; and
  - (c) if the power or obligation is exercised or discharged before a final decision is made in the proceeding, none of the remedies specified in subsection (3), or any combination of those remedies, could subsequently provide an adequate remedy for that harm; and
  - (d) the terms of the order do not unduly hinder or restrict the regulator in performing or exercising the regulator's functions, powers, or duties under this Act.
- (3) The remedies are as follows:
  - (a) any remedy that the court may grant in making a final decision in relation to the proceeding (for example, a declaration):
  - (b) any damages that the applicant may be able to claim in concurrent or subsequent proceedings:
  - (c) any opportunity that the applicant may have, as defendant in a proceeding, to challenge the admissibility of any evidence obtained as a result of the exercise or discharge of the power or obligation.

Compare: 2011 No 5 s 57

Section 41B: inserted, on 22 October 2018, by section 35 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**41C Effect of final decision that exercise of powers under sections 38 to 41 unlawful**

- (1) This section applies in any case where it is declared, in a final decision given in any proceeding in respect of the exercise of any powers conferred by any of sections 38 to 41, that the exercise of any powers conferred by any of those sections is unlawful.

- (2) If this section applies, to the extent to which the exercise of those powers is declared unlawful, the regulator must ensure that, immediately after the decision of the court is given,—
- (a) any information obtained as a consequence of the exercise of powers declared to be unlawful and any record of that information are destroyed; and
  - (b) any documents, or extracts from documents, that are obtained as a consequence of the exercise of powers declared to be unlawful are returned to the person who previously had possession or control of them, and any copies of those documents or extracts are destroyed; and
  - (c) any information derived from or based on such information, documents, or extracts is destroyed.
- (3) However, the court may order that any information, record, or copy of any document or extract from a document may, instead of being destroyed, be retained by the regulator subject to any terms and conditions that the court imposes.
- (4) No information, and no documents or extracts from documents, obtained as a consequence of the exercise of any powers declared to be unlawful, and no record of any such information or document,—
- (a) are admissible as evidence in any civil proceeding unless the court hearing the proceeding in which the evidence is sought to be adduced is satisfied that there was no unfairness in obtaining the evidence:
  - (b) are admissible as evidence in any criminal proceeding if the evidence is excluded under section 30 of the Evidence Act 2006:
  - (c) may otherwise be used in connection with the exercise of any powers conferred by this Act unless the court that declared the exercise of the powers to be unlawful is satisfied that there was no unfairness in obtaining the evidence.

Compare: 2011 No 5 s 58

Section 41C: inserted, on 22 October 2018, by section 35 of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### **41D Confidentiality of information and documents**

- (1) This section applies to the following information and documents:
- (a) information and documents supplied or disclosed to, or obtained by, the regulator under section 41:
  - (b) information derived from information and documents referred to in paragraph (a).
- (2) The regulator must not publish or disclose any information or document to which this section applies unless—

- (a) the information or document is available to the public under any enactment or is otherwise publicly available; or
  - (b) the information is in a statistical or summary form; or
  - (c) the publication or disclosure of the information or document is for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on a Minister or Ministers or the regulator by this Act or any other enactment; or
  - (d) the publication or disclosure of the information or document is made to a law enforcement or regulatory agency for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the law enforcement or regulatory agency by any enactment; or
  - (e) the publication or disclosure of the information or document is to a person who the regulator is satisfied has a proper interest in receiving the information or document; or
  - (f) the publication or disclosure of the information or document is with the consent of the person to whom the information or document relates or of the person to whom the information or document is confidential.
- (3) In relation to personal information, this section applies subject to the Privacy Act 1993.

Compare: 2011 No 5 s 59

Section 41D: inserted, on 22 October 2018, by section 35 of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### **41E Conditions relating to publication or disclosure of information or documents**

- (1) The regulator may, by written notice to a person to whom any information or document is published or disclosed under section 41D(2)(c) to (f), impose any conditions in relation to the publication, disclosure, or use of the information or document by the person.
- (2) The regulator must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of an individual.
- (3) Conditions imposed under subsection (1) may include, without limitation, conditions relating to—
  - (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993);
  - (b) the storing of, the use of, or access to anything provided;
  - (c) the copying, returning, or disposing of copies of documents provided.

- (4) A person who refuses or fails, without reasonable excuse, to comply with any conditions commits an offence and is liable on conviction to a fine not exceeding \$200,000.

Compare: 2011 No 5 s 60

Section 41E: inserted, on 22 October 2018, by section 35 of the Overseas Investment Amendment Act 2018 (2018 No 25).

## Subpart 5—Enforcement

### *Disposal of property*

Heading: inserted, on 22 October 2018, by section 36 of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### **41F Regulator may issue notice requesting disposal of property**

- (1) This section applies if the regulator has reasonable grounds to believe that a person (A) has, in relation to property,—
- (a) contravened this Act; or
  - (b) committed an offence under this Act; or
  - (c) failed to comply with a condition of a consent or of an exemption.
- (2) The regulator may, by notice in writing,—
- (a) ask A to dispose of the property (within the time and in the manner specified in the notice for the purposes of this paragraph); and
  - (b) require A, if A wants to rely on section 41G(1), to notify the regulator of that fact (within the time and in the manner specified in the notice for the purposes of this paragraph).
- (3) The time specified in the notice for the purposes of subsection (2)(a) must not be less than 90 days after the date on which the notice is given (but this does not limit the power to specify any time under subsection (2)(b)).
- (4) The notice must set out the regulator's belief and the reasonable grounds for that belief.
- (5) The regulator may withdraw a notice at any time before A does both of the following:
- (a) disposes of the property within the time and in the manner specified in the notice under subsection (2)(a); and
  - (b) complies with subsection (2)(b) within the time and in the manner specified in the notice under that paragraph.
- (6) This section does not limit any other power that the regulator has.
- (7) In this section and section 41G, **property** has the meaning set out in section 47(3).

Section 41F: inserted, on 22 October 2018, by section 36 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**41G Consequences of disposal or retention of property**

- (1) A person (**A**) is not liable for the contravention, offence, or failure referred to in section 41F(1) if A—
  - (a) disposes of the property within the time and in the manner specified in the notice under section 41F(2)(a); and
  - (b) complies with section 41F(2)(b) within the time and in the manner specified in the notice under that paragraph.
- (2) Subsection (1) does not apply if, in connection with the property, A has—
  - (a) made any statement that is false or misleading in any material particular or any material omission in—
    - (i) any offer or representation made for the purposes of this Act or regulations; or
    - (ii) any information or document provided to the regulator; or
    - (iii) any communication with the regulator; or
  - (b) provided the regulator with a document that is false or misleading in any material particular.
- (3) If another person (**B**) is involved in the contravention, offence, or failure referred to in section 41F(1), B may be ordered to pay a civil penalty under section 48 even though A is not liable under subsection (1).
- (4) *See also* Part 4 of the Crimes Act 1961, which relates to parties to the commission of offences.
- (5) The regulator may take any other enforcement action it thinks fit in relation to the contravention, offence, or failure referred to in section 41F(1) if—
  - (a) A fails to notify the regulator under section 41F(2)(b) within the time and in the manner specified in the notice under that paragraph; or
  - (b) A does not dispose of the property within the time and in the manner specified in the notice under section 41F(2)(a).
- (6) However, the failure to comply with the notice under section 41F is not itself a contravention of this Act that gives rise to any civil or criminal liability.

Section 41G: inserted, on 22 October 2018, by section 36 of the Overseas Investment Amendment Act 2018 (2018 No 25).

*Offences*

**42 Offence of giving effect to overseas investment without consent**

- (1) A person who is required to apply for consent to an overseas investment transaction commits an offence if that person gives effect to the overseas investment without the consent required by this Act.
- (2) A person who commits an offence under subsection (1) is liable on conviction,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$300,000:
- (b) in the case of a body corporate, to a fine not exceeding \$300,000.
- (3) In imposing a penalty under subsection (2), the court must, if the transaction resulted in an overseas investment in fishing quota and the fishing quota or an interest in it has been forfeited under section 58 or section 58A of the Fisheries Act 1996, have regard to the effect of the forfeiture on the defendant.

Section 42(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **43 Offence of defeating, evading, or circumventing operation of Act**

- (1) Every person commits an offence who knowingly or recklessly enters into a transaction, executes an instrument, or takes any other step, for the purpose of, or having the effect of, in any way, directly or indirectly, defeating, evading, or circumventing the operation of this Act.
- (2) A person who commits an offence under subsection (1) is liable on conviction,—
  - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$300,000:
  - (b) in the case of a body corporate, to a fine not exceeding \$300,000.

Section 43(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **44 Offence of resisting, obstructing, or deceiving**

- (1) Every person commits an offence who resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under this Act or regulations.
- (2) A person who commits an offence under subsection (1) is liable on conviction,—
  - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$300,000:
  - (b) in the case of a body corporate, to a fine not exceeding \$300,000.

Section 44(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **45 Offence of failing to comply with notice, requirement, or condition**

- (1) Every person commits an offence who, without lawful excuse, fails to comply with—
  - (a) this Act or regulations; or
  - (b) a notice, requirement, or condition given or imposed under this Act or regulations.



- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$100,000.
- (3) *[Repealed]*  
Section 45(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).  
Section 45(3): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **46 Offence of false or misleading statement or omission**

- (1) Every person commits an offence who knowingly or recklessly makes any statement that is false or misleading in a material particular or any material omission in—
- (a) any offer or representation made for the purposes of this Act or regulations; or
  - (aa) any statement made under section 51A; or
  - (b) any information or document provided to the regulator; or
  - (c) any communication with the regulator.
- (2) Every person commits an offence who knowingly or recklessly provides the regulator with a document that is false or misleading in a material particular.
- (3) A person who commits an offence under subsection (1) or subsection (2) is liable on conviction to a fine not exceeding \$300,000.
- (4) *[Repealed]*  
Section 46(1): amended, on 22 October 2018, by section 37(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).  
Section 46(1)(aa): inserted, on 22 October 2018, by section 37(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).  
Section 46(2): amended, on 22 October 2018, by section 37(3) of the Overseas Investment Amendment Act 2018 (2018 No 25).  
Section 46(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).  
Section 46(4): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Powers of court*

#### **47 Court may order disposal of property**

- (1) This section applies if the court is satisfied that a person (A) has, in relation to property,—
- (a) contravened this Act; or
  - (b) committed an offence under this Act; or
  - (c) failed to comply with a notice under section 38 or section 39 or section 40 or section 41; or

- (d) failed to comply with a condition of a consent or of an exemption.
- (2) The court may, on the application of the regulator,—
  - (a) order the disposal of the property (whether by A or by some other person appointed by the court, for example, the regulator); and
  - (b) make any other order or give any direction that is necessary to give effect to an order under paragraph (a).
- (3) In this section, **property** means—
  - (a) a right or interest in any security; or
  - (b) an interest in land; or
  - (c) an interest in fishing quota; or
  - (d) any other property or any rights or interests in any other property.

**48 Court may order person in breach or involved in breach to pay civil penalty**

- (1) On the application of the regulator, the court may order a person (A) to pay a civil penalty to the Crown or any other person specified by the court if A has—
  - (a) contravened this Act; or
  - (b) committed an offence under this Act; or
  - (c) failed to comply with a notice under section 38 or section 39 or section 40 or section 41; or
  - (d) failed to comply with a condition of a consent, an exemption, or an exemption certificate; or
  - (e) been involved in a contravention of this Act, the commission of an offence under this Act, or a failure to comply referred to in paragraph (c) or (d).
- (2) The court may order A to pay a civil penalty not exceeding the higher of—
  - (a) \$300,000; or
  - (b) 3 times the amount of any quantifiable gain (for example, the increase in the value since acquisition) by A in relation to the property to which the consent, exemption, or exemption certificate relates or for which a consent should have been obtained; or
  - (c) the cost of remedying the breach of condition; or
  - (d) the loss suffered by a person in relation to a breach of condition.
- (2A) However, in the case of a contravention of section 51C, the amount of the civil penalty must not exceed \$20,000.
- (3) A person cannot be ordered to pay a penalty under this section and be required to pay a fine under any of sections 42 to 46 for the same conduct.

- (4) For the purposes of this section, the court must determine whether a person's conduct falls within subsection (1) on a balance of probabilities.

Section 48 heading: amended, on 22 October 2018, by section 38(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 48(1)(d): replaced, on 22 October 2018, by section 38(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 48(1)(e): inserted, on 22 October 2018, by section 38(3) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 48(2)(b): amended, on 22 October 2018, by section 38(4) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 48(2)(b): amended, on 22 October 2018, by section 38(5) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 48(2A): inserted, on 22 October 2018, by section 38(6) of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### **48A Defences for person involved in contravention, offence, or failure**

- (1) This section applies if—
- (a) a person (**A**) contravenes this Act, commits an offence under this Act, or fails to comply as referred to in section 48(1)(c) or (d); and
  - (b) another person (**B**) is involved in the contravention, the commission of the offence, or the failure.
- (2) In any proceeding under section 48 against B for involvement in the contravention, the commission of the offence, or the failure, it is a defence if B proves that—
- (a) B's involvement in the contravention, the commission of the offence, or the failure was due to reasonable reliance on information supplied by another person; or
  - (b) B took all reasonable and proper steps to ensure that A complied with this Act, did not commit the offence, or complied with the notice or condition referred to in section 48(1)(c) or (d) (as the case may be).
- (3) In subsection (2)(a), **another person** does not include a director, an employee, or an agent of B.

Compare: 2013 No 69 s 503

Section 48A: inserted, on 22 October 2018, by section 39 of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### **49 Court may order mortgage to be registered over land**

- (1) The court may, on the application of the regulator, order that a mortgage in favour of the Crown or any other person be registered over land to which a consent, an exemption, or an exemption certificate relates for the purpose of securing—
- (a) the performance of any obligation, or the payment of any money, under a condition of the consent, the exemption, or the exemption certificate; or

- (b) the payment of a fine or civil penalty imposed under this Act; or
  - (c) the payment of interest that must be paid under an order made under section 50.
- (2) The court must approve the terms of the mortgage before it is registered.
  - (3) The court may make any other order or make any direction that is necessary to give effect to an order under subsection (1).

Section 49(1): amended, on 22 October 2018, by section 40(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 49(1)(a): amended, on 22 October 2018, by section 40(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

### **50 Court may order interest to be paid**

- (1) The court may order that a person who is in breach of this Act or a condition of a consent, an exemption, or an exemption certificate requiring the payment of money or on whom a fine or civil penalty has been imposed under this Act must also pay interest on the amount to be paid.
- (2) The court may fix the amount of interest in its discretion.

Section 50(1): amended, on 22 October 2018, by section 41 of the Overseas Investment Amendment Act 2018 (2018 No 25).

### **51 Court may order compliance with condition of consent, exemption, or exemption certificate**

- (1) This section applies to—
  - (a) a consent holder:
  - (b) a person who is relying on an exemption or an exemption certificate that is subject to a condition.
- (2) On the application of the regulator, the court may—
  - (a) restrain a person from acting in breach of a condition of a consent, an exemption, or an exemption certificate:
  - (b) order a person in breach of a condition of a consent, an exemption, or an exemption certificate to comply with it.

Section 51: replaced, on 22 October 2018, by section 42 of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### *Statement relating to compliance with consent requirement*

Heading: inserted, on 22 October 2018, by section 43 of the Overseas Investment Amendment Act 2018 (2018 No 25).

### **51A Person who acquires interest in residential land must make and provide statement**

- (1) This section applies if—

- (a) a person (**A**) is acquiring an interest in residential land under a transaction; and
  - (b) the interest acquired is a freehold estate or a lease, or any other interest, for a term of 3 years or more (including rights of renewal, whether of the grantor or grantee), but excluding an interest under a mortgage, an interest under any other security arrangement, or an exempted interest; and
  - (c) an instrument recording A's acquisition of the interest will be lodged by or under the direction of a conveyancer.
- (2) A must, in respect of the acquisition, make a statement, to the best of A's knowledge and belief, relating to whether the transaction requires consent under this Act and, if so, confirming that—
  - (a) A has complied or will comply with the requirement; and
  - (b) if A is acting on behalf of another person (**B**), B has complied or will comply with the requirement.
- (3) The statement must be made in a manner that is authorised by the regulator in a notice under section 51B.
- (4) The statement—
  - (a) may be in a single document; or
  - (b) may be included as part of another document (for example, an agreement for sale and purchase) if this is authorised by the regulator.
- (5) A must, before the instrument is lodged, provide the statement, or a copy of the statement, to the conveyancer who will lodge, or direct the lodgement of, the instrument.
- (6) A statement may be made and provided on A's behalf by another person (**C**) in either of the following ways (in which case the statement must be made to the best of C's knowledge and belief):
  - (a) by C acting under an enduring power of attorney granted by A under the Protection of Personal and Property Rights Act 1988; or
  - (b) by C acting in a manner authorised by the regulator in a notice under section 51B.
- (7) In this section and sections 51B and 51C,—

**conveyancer** means a lawyer or conveyancer (where lawyer and conveyancer have the same meanings as in the Lawyers and Conveyancers Act 2006)

**lodged** means lodged for registration or notation under the Land Transfer Act 2017.

Section 51A: inserted, on 22 October 2018, by section 43 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**51B Regulator must authorise manner of providing statement**

- (1) The regulator must, by notice, authorise the manner in which the statement must be made, including by doing any of the following:
  - (a) specifying the required content of the statement, which may include any information that the regulator thinks relevant (for example, information relating to whether A or B is an overseas person, has or will have a consent, or is relying or will rely on an exemption):
  - (b) approving or prescribing 1 or more forms for the statement or 1 or more methods for making the statement (or both):
  - (c) allowing the statement to be included in another document (for example, in an agreement for sale and purchase):
  - (d) authorising the statement to be made and provided on A's behalf (including the manner for doing so).
- (2) The regulator must—
  - (a) notify the making of the notice in the *Gazette*; and
  - (b) publish the notice on an Internet site maintained by, or on behalf of, the regulator.
- (3) The notice is a disallowable instrument but not a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 51B: inserted, on 22 October 2018, by section 43 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**51C Conveyancer must obtain and keep statement**

- (1) A conveyancer must not lodge, or direct the lodgement of, the instrument referred to in section 51A(1)(c) if the conveyancer—
  - (a) has not obtained the statement or a copy of the statement that is required to be provided under section 51A(5) or (6); or
  - (b) has reasonable grounds for believing that the statement or copy that is provided is not correct in a material particular.
- (2) The conveyancer must take reasonable steps to ensure that a copy of the statement is kept for a period of at least 7 years after the date on which the instrument is lodged.
- (3) Sections 41F, 45, and 47 do not apply in respect of a contravention of this section (but a conveyancer may be liable to a civil penalty under section 48).

Section 51C: inserted, on 22 October 2018, by section 43 of the Overseas Investment Amendment Act 2018 (2018 No 25).

*Administrative penalties*

**52 Administrative penalties for late filing**

- (1) The regulator may require a person to pay an administrative penalty if the person files, provides, or produces a document required by or under this Act, 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.
- (2) The regulator may refuse to accept the document if the penalty has not been paid.
- (3) The penalty is recoverable by the regulator in any court of competent jurisdiction as a debt due to the Crown.

Section 52(1): amended, on 22 October 2018, by section 44 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**53 Administrative penalty for retrospective consent**

The regulator may require the applicant for a retrospective consent to pay an administrative penalty before the consent is granted.

*Giving, providing, or serving notices or documents*

Heading: replaced, on 22 October 2018, by section 45 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**54 Address for service**

Every consent holder, holder of an exemption under section 61D, and holder of an exemption certificate must—

- (a) have a postal or street address in New Zealand for service of notices and other documents; and
- (b) notify the regulator of that address; and
- (c) notify the regulator of any change in that address.

Section 54: replaced, on 22 October 2018, by section 45 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**54A Notices or other documents given, provided, or served by regulator**

- (1) Any notice or other document that the regulator may or must give to, provide to, or serve on any person (A) by or under this Act or for the purposes of any proceeding under this Act must be treated as having been given, provided, or served on A if,—
  - (a) if A is a person who has complied with section 54, it has been sent by prepaid post to the last address for service for the person that has been notified to the regulator:
  - (b) in any other case, it has been served in any of the following ways:

- (i) by leaving the document for A in a prominent position on the relevant land (whether or not A is in possession of that land) and sending a copy of the document to any lawyer or conveyancer who provided conveyancing services to A in respect of the land (where lawyer and conveyancer have the same meanings as in the Lawyers and Conveyancers Act 2006):
  - (ii) if A has a known electronic address, by sending it to A at that address in electronic form:
  - (iii) if A has a known place of residence or business in New Zealand, by sending it by prepaid post addressed to A at that place of residence or business:
  - (iv) if A has an agent in New Zealand and A is absent from New Zealand, by sending it by prepaid post addressed to the agent at the agent's place of residence or business or by sending it in electronic form to the agent at the agent's electronic address.
- (2) In subsection (1)(b)(i), **relevant land** means any land in respect of which A has (or is alleged to have)—
- (a) contravened this Act; or
  - (b) committed an offence under this Act; or
  - (c) failed to comply with a notice under section 38, 39, 40, or 41; or
  - (d) failed to comply with a condition of a consent, an exemption, or an exemption certificate.
- (3) Subsection (1)(b)(iv) applies regardless of whether the agent is acting or has acted on behalf of A in respect of the matter to which the document relates.
- (4) This section applies despite any other rule or law.

Section 54A: inserted, on 22 October 2018, by section 45 of the Overseas Investment Amendment Act 2018 (2018 No 25).

## **55 Non-appearance not ground for court to refuse order under Act if person served in accordance with section 54A**

The court must not refuse to make an order under sections 47 to 51 on the ground that a person has not appeared or otherwise taken part in the proceeding if the court is satisfied that the proceeding has been served in accordance with section 54A.

Section 55: replaced, on 22 October 2018, by section 45 of the Overseas Investment Amendment Act 2018 (2018 No 25).

## **55A Proof that documents given, provided, or served**

- (1) If a document is given, provided, or served by sending it by prepaid post, then, unless the contrary is shown, the document is given, provided, or served when it would have been delivered in the ordinary course of post, and, in proving that



the document was given, provided, or served, it is sufficient to prove that the letter concerned was properly addressed and posted.

- (2) If a document is given, provided, or served by sending it in electronic form, then, unless the contrary is shown, the document is given, provided, or served at the time that the electronic communication first enters an information system that is outside the control of the document's originator, and, in proving that the document was given, provided, or served, it is sufficient to prove that the document concerned was properly addressed and sent.
- (3) In this section, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications.

Section 55A: inserted, on 22 October 2018, by section 45 of the Overseas Investment Amendment Act 2018 (2018 No 25).

### *Search and seizure*

#### **56 Search warrant**

- (1) The regulator may apply for a search warrant to search a place or thing.
- (2) The application must be made in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012 to an issuing officer (within the meaning of section 3 of that Act).
- (3) The issuing officer may issue a search warrant if there are reasonable grounds for believing that—
  - (a) an offence under this Act has been, or is being, committed at the place or thing; or
  - (b) there is in, on, over, or under the place or thing any thing that is evidence of an offence under this Act.
- (4) The issuing officer may issue the warrant to—
  - (a) the regulator; or
  - (b) a person authorised by the regulator in writing to execute the warrant; or
  - (c) a constable.
- (5) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply.

Section 56(2): amended, on 1 October 2012, by section 286(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 56(3): amended, on 1 October 2012, by section 286(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 56(4): amended, on 1 October 2012, by section 286(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 56(4)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 56(5): inserted, on 1 October 2012, by section 286(5) of the Search and Surveillance Act 2012 (2012 No 24).

## **57 Form and content of search warrant**

*[Repealed]*

Section 57: repealed, on 1 October 2012, by section 286(6) of the Search and Surveillance Act 2012 (2012 No 24).

## **58 Powers conferred by search warrant**

*[Repealed]*

Section 58: repealed, on 1 October 2012, by section 286(6) of the Search and Surveillance Act 2012 (2012 No 24).

## **59 Requirements when executing search warrant**

Section 59: repealed, on 1 October 2012, by section 286(6) of the Search and Surveillance Act 2012 (2012 No 24).

## **60 Disposal of things seized under search warrant**

*[Repealed]*

Section 60: repealed, on 1 October 2012, by section 286(6) of the Search and Surveillance Act 2012 (2012 No 24).

### Subpart 6—Miscellaneous provisions

## **61 Regulations**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
  - (aaa) prescribing classes of dwellings not to be treated as residential dwellings in this Act:
  - (aab) prescribing additional classes of facilities to be treated as excluded accommodation facilities in this Act:
  - (aac) prescribing classes of *profits à prendre* not to be treated as regulated *profits à prendre* in this Act:
    - (a) determining how to measure value or apply the value thresholds under section 13:
    - (b) prescribing, for the purposes of the criteria in section 16(1)(f), procedures for offering the farm land or the securities to which the overseas investment relates for acquisition on the open market to persons who are not overseas persons:
  - (ba) making provision referred to in section 16A(4) (*see* also paragraphs (c) and (ca) of this subsection):
  - (c) setting out what must be done to make an offer to the Crown count for the purposes of section 16A(4)(f) or 17(2)(f), including prescribing—

- (i) a maximum or minimum period for which an offer must be open:
  - (ii) the maximum price at which the land may be offered, and a valuation procedure for fixing that maximum price:
  - (iii) requirements about the non-price terms and conditions on which the land must be offered, with the purpose of ensuring that it is offered to the Crown on terms and conditions that are equivalent to those offered to the overseas person—
    - (A) to the extent that the offer to the Crown is equivalent to the offer made to the overseas person; and
    - (B) subject to the person making the offer choosing to make the terms and conditions more favourable to the Crown:
  - (iv) power for the relevant Ministers—
    - (A) to determine that an offer does not count for the purposes of section 16A(4)(f) or 17(2)(f) on the basis that any requirements set out in regulations under this paragraph have not been met in relation to the offer:
    - (B) to waive the requirement that an offer be made for the purposes of section 16A(4)(f) or 17(2)(f):
  - (v) other processes that the person making an offer must follow, or other requirements that that person must meet, in relation to the preparation, making, assessment, acceptance, or implementation of the offer, including requirements to meet costs that are, or that would otherwise be, incurred by the Crown:
- (ca) setting out processes that the Crown must follow, or other requirements that the Crown must meet, in relation to the preparation, making, assessment, acceptance, or implementation of an offer made, or to be made, for the purposes of section 16A(4)(f) or 17(2)(f):
  - (d) prescribing other factors that the relevant Ministers may apply under section 17(2)(g) of this Act or under section 57H of the Fisheries Act 1996:
  - (e) prescribing fees and charges to be paid, or the amounts to be charged, a means by which they may be calculated and ascertained, or a rate at which they may be calculated or ascertained, for the purpose of meeting or assisting in meeting costs of Ministers and the regulator in exercising functions and powers, and performing duties, and providing services, under this Act (but also the previous costs of Ministers and the Commission in relation to those matters under the Overseas Investment Act 1973):
  - (f) prescribing maximum bonds to be charged under section 25, a means by which bonds may be calculated or ascertained, or a rate at which bonds may be calculated or ascertained, for the purpose of meeting estimated

reasonable costs of Ministers and the regulator in monitoring compliance with a condition or conditions of consent or exemption, and providing for the payment, and repayment if conditions are met, of those bonds:

- (g) prescribing maximum administrative penalties to be charged by the regulator, a means by which administrative penalties may be calculated or ascertained, or a rate at which administrative penalties may be calculated or ascertained, for the purposes of sections 52 and 53:
- (h) exempting or providing for exemptions from, or waivers, refunds, or discounting of, fees, charges, amounts, or administrative penalties:
- (i) implementing obligations that have entered into force for New Zealand before the commencement of section 46 of the Overseas Investment Amendment Act 2018 under any international agreements to which New Zealand is a party and that relate to either or both of overseas investments in sensitive land and overseas investments in significant business assets:
- (j) specifying types of overseas persons for the purposes of clauses 4(2)(d) and 7 of Schedule 2 where necessary to implement obligations that have entered into force for New Zealand before the commencement of section 46 of the Overseas Investment Amendment Act 2018 under any international agreements to which New Zealand is a party and that relate to overseas investments in sensitive land:
- (ja) prescribing, for the purposes of clauses 7 and 8 of Schedule 2,—
  - (i) the process for considering whether a person remains committed to residing in New Zealand, including relevant factors (which may be non-exhaustive):
  - (ii) additional ways in which a trigger event is resolved:
- (jb) setting a maximum percentage of new residential dwellings in a development that an exemption certificate may be applied to, including a nil percentage:
- (k) providing for applications for exemptions:
- (ka) prescribing matters for the purposes of section 61G, including listing exemptions for the purposes of that section, prescribing circumstances in which that section does not apply, specifying classes of conditions to which section 61G(3) applies, and providing for matters under section 61G(5):
- (l) providing for and regulating the giving or service of notices for the purposes of this Act, and the effect of those notices:
- (m) providing for transitional provisions:
- (n) providing for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.

- (2) Regulations under this Act (including regulations for prescribing fees, charges, bonds, or administrative penalties) may make different provisions for different cases on any differential basis.

Section 61(1)(aaa): inserted, on 22 October 2018, by section 46(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(aab): inserted, on 22 October 2018, by section 46(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(aac): inserted, on 22 October 2018, by section 46(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(ba): inserted, on 22 October 2018, by section 46(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(c): replaced, on 22 October 2018, by section 46(3) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(ca): inserted, on 22 October 2018, by section 46(3) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(i): replaced, on 22 October 2018, by section 46(4) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(j): replaced, on 22 October 2018, by section 46(4) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(ja): inserted, on 22 October 2018, by section 46(4) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(jb): inserted, on 22 October 2018, by section 46(4) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(ka): inserted, on 22 October 2018, by section 46(5) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(2): replaced, on 22 October 2018, by section 46(6) of the Overseas Investment Amendment Act 2018 (2018 No 25).

## **61B Purpose of exemptions**

The purpose of sections 61C and 61D is to—

- (a) provide flexibility where compliance with this Act is impractical, inefficient, or unduly burdensome but where the purpose of this Act can still be substantially achieved through terms and conditions of the exemption; or
- (b) allow for exemptions that are minor or technical; or
- (c) allow for exemptions in respect of all or any of the following matters:
  - (i) interests in land to be used for diplomatic or consular purposes:
  - (ii) persons registered as a charitable entity under the Charities Act 2005:
  - (iii) 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:
  - (iv) security arrangements that are entered into in the ordinary course of business:

- (v) relationship property as defined in section 8 of the Property (Relationships) Act 1976:
- (vi) interests in land acquired for the purpose of providing network utility services:
- (vii) interests in residential (but not otherwise sensitive) land acquired in order to comply with a requirement imposed by or under the Resource Management Act 1991 and to support a business that is not principally in the business of using land for residential purposes.

Section 61B: inserted, on 22 October 2018, by section 47 of the Overseas Investment Amendment Act 2018 (2018 No 25).

### **61C Regulations may contain class or individual exemptions**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations exempting any transaction, person, interest, right, or assets, or any class of transactions, persons, interests, rights, or assets, from the requirement for consent or from the definition of overseas person or associate or associated land.
- (2) *See* sections 61E (criteria for all exemptions) and 61F (other provisions applying to all exemptions).

Section 61C: inserted, on 22 October 2018, by section 47 of the Overseas Investment Amendment Act 2018 (2018 No 25).

### **61D Minister may grant individual exemptions**

- (1) The Minister may exempt any transaction, person, interest, right, or assets from the requirement for consent or from the definition of overseas person or associate or associated land.
- (2) *See* sections 61E (criteria for all exemptions) and 61F (other provisions applying to all exemptions).
- (3) The Minister must publish each exemption granted under subsection (1) on an Internet site maintained by or for the regulator.

Section 61D: inserted, on 22 October 2018, by section 47 of the Overseas Investment Amendment Act 2018 (2018 No 25).

### **61E Criteria for all exemptions**

- (1) The Minister may recommend any regulations under section 61C, or grant an exemption under section 61D, only if the Minister considers—
  - (a) 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); and
  - (b) that the extent of the exemption is not broader than is reasonably necessary to address those circumstances.
- (2) In so considering, the Minister—

- (a) must have regard to the purpose of this Act; and
- (b) may have regard to all or any of the following:
  - (i) the extent to which effective ownership or control is changed by the overseas investment or remains with persons who are not overseas persons:
  - (ii) the extent to which a sensitive asset is already held in overseas ownership or control:
  - (iii) the extent to which the acquisition is the result of the operation of other legislation or an event outside the control of the overseas person:
  - (iv) 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:
  - (v) any other factors that seem to the Minister to be relevant to the circumstances.

Section 61E: inserted, on 22 October 2018, by section 47 of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### **61F Other provisions applying to all exemptions**

- (1) This section applies to regulations under section 61C and exemptions granted under section 61D.
- (2) An exemption may be made subject to any conditions.
- (3) Regulations under section 61C may provide, where a person relies on an exemption in the regulations, for the following:
  - (a) for conditions of consents, to the extent set out in the regulations, to continue in effect as conditions of the consents but on the basis set out in the regulations (whether or not the person who relies on the exemption is a consent holder):
  - (b) for the person who relies on the exemption to be treated as a consent holder to the extent set out in the regulations:
  - (c) for consent holders to cease to be subject to the conditions of their consents to the extent set out in the regulations.
- (4) An exemption may at any time be amended or revoked in the same way as it may be made (for example, section 61E applies with all necessary modifications).
- (5) The reasons of the Minister for recommending the regulations or granting an exemption (including why the exemption is necessary, appropriate, or desirable) must be published together with the regulations or exemption.
- (6) However, the publication of an exemption under section 61D, or of the reasons for granting any exemption, may be deferred or dispensed with (in whole or in

part) if the Minister is satisfied on reasonable grounds that good reason for withholding the exemption or the reasons (as the case may be) would exist under the Official Information Act 1982 if they were official information.

Compare: 1993 No 107 ss 45, 45A; 2013 No 69 ss 571(5), 572

Section 61F: inserted, on 22 October 2018, by section 47 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**61G Person who relies on exemption to acquire property may be subject to existing consent or exemption conditions**

- (1) This section applies if—
  - (a) 1 or more of the following apply:
    - (i) a consent holder (**A**) is subject to 1 or more conditions that apply in connection with property:
    - (ii) a person (**A**) relies on an exemption in, or an exemption granted under, this Act or the regulations that is subject to 1 or more conditions that apply in connection with property:
    - (iii) because of the previous operation of this section, a person (**A**) is treated as being subject to 1 or more conditions that apply in connection with property; and
  - (b) another person (**B**) acquires the property (in whole or in part) under an overseas investment transaction, but B does not obtain consent because B relies on an exemption listed in the regulations; and
  - (c) the regulations specify 1 or more classes of conditions to which subsection (3) applies.
- (2) However, this section does not apply in the circumstances prescribed in the regulations (if any).
- (3) B must be treated as being subject to the conditions referred to in subsection (1)(a) that are of the class specified in the regulations (and those conditions apply as conditions of a consent or an exemption, as the case may be, with all necessary modifications as if B were the person who was originally subject to the conditions).
- (4) If the conditions that apply to B are conditions of a consent, B must be treated as being a consent holder in respect of the property and in respect of the conditions (for example, B may agree to the variation of the conditions under section 27).
- (5) A ceases to be subject to the conditions in the circumstances, and to the extent, provided for in the regulations.
- (6) Subsection (5) does not limit subsection (4).
- (7) This section does not limit section 61F(3).

Section 61G: inserted, on 22 October 2018, by section 47 of the Overseas Investment Amendment Act 2018 (2018 No 25).



**62 Foreshore, seabed, riverbed, or lakebed acquired by the Crown under consent process is not subdivision**

Nothing in section 11 or Part 10 of the Resource Management Act 1991 applies to—

- (a) any acquisition by the Crown of land as a direct or indirect consequence of an offer made to the Crown to satisfy section 16A(4)(f) or 17(2)(f); or
- (b) any matter incidental to, or required for the purpose of, any acquisition of that kind.

Section 62(a): amended, on 22 October 2018, by section 24 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**Subpart 7—Transitional provisions and amendments to other enactments**

*Dissolution of Commission*

**63 Commission dissolved**

The Commission is dissolved.

**64 Assets and liabilities vest in the Crown**

All rights, assets, liabilities, and debts that the Commission had immediately before the commencement of section 63 must be treated as the rights, assets, liabilities, and debts of the Crown on that commencement.

**65 No compensation for loss of office**

The Crown is not liable to make a payment to, or otherwise compensate, any person in respect of that person ceasing to hold any office established by or under the Overseas Investment Act 1973.

**66 Transfer to LINZ**

A person who was employed by the Reserve Bank in a position with the Commission immediately before the commencement of section 63 and who has given a written notice of transfer of employment to the chief executive of LINZ is entitled on the commencement of section 63 to be transferred to LINZ.

**67 Transferring employee must be employed in equivalent employment**

- (1) An employee who transfers to LINZ under section 66 must be employed in equivalent employment to his or her employment immediately before the commencement of section 63.
- (2) In subsection (1), **equivalent employment** means employment by LINZ of the employee—
  - (a) in substantially the same position; and
  - (b) in the same general locality; and
  - (c) on terms and conditions that are no less favourable.

- (3) The requirement that the terms and conditions of the employee's employment with LINZ are no less favourable continues to apply until those terms and conditions are varied by agreement between the employee and the chief executive of LINZ.

#### **68 Continuity of employment**

- (1) Every transferring employee becomes an employee of LINZ on the commencement of section 63.
- (2) However, for the purposes of every enactment, law, determination, contract, and agreement relating to the employment of the employee,—
  - (a) the employee's contract of employment with LINZ must be treated as a continuation of the employee's contract of employment with the Reserve Bank; and
  - (b) the employee's period of service with the Reserve Bank, and every other period of service of that employee that was recognised by the Reserve Bank as continuous service, must be treated as a period of service with LINZ.

#### **69 No compensation for technical redundancy**

A transferring employee is not entitled to receive any payment or any other benefit on the ground that—

- (a) the position held by the person with the Reserve Bank has ceased to exist (as a result of the dissolution of the Commission); or
- (b) the person has ceased (as a result of the transfer to LINZ) to be an employee of the Reserve Bank.

#### **70 Final report**

- (1) Before the commencement of section 63, the Commission must prepare and submit to the Minister a final report of its operations for the period beginning on 1 July 2005 and ending with the close of the day before the commencement of section 63.
- (2) The Minister must present a copy of the report to the House of Representatives not more than 6 sitting days after receiving it.

#### **71 References to Commission**

Unless the context otherwise requires, every reference to the Commission in any enactment, agreement, deed, instrument, application, notice, or any other document in force immediately before the commencement of section 63, on and after that commencement, must be read as a reference to the regulator.

**72 Proceedings of Commission**

- (1) Any proceedings to which the Commission is a party before the commencement of section 63 may be continued, completed, and enforced by or against the Crown.
- (2) This section is for the avoidance of doubt.

*Amendments to Fisheries Act 1996*

*[Repealed]*

Heading: repealed, on 22 October 2018, by section 25 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**73 New sections 56 to 58B substituted in Fisheries Act 1996**

*[Repealed]*

Section 73: repealed, on 22 October 2018, by section 25 of the Overseas Investment Amendment Act 2018 (2018 No 25).

*Amendment to Te Ture Whenua Maori Act 1993*

*[Repealed]*

Heading: repealed, on 22 October 2018, by section 25 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**74 Amendment to Te Ture Whenua Maori Act 1993**

*[Repealed]*

Section 74: repealed, on 22 October 2018, by section 25 of the Overseas Investment Amendment Act 2018 (2018 No 25).

*Consequential amendments*

*[Repealed]*

Heading: repealed, on 22 October 2018, by section 25 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**75 Consequential amendments**

*[Repealed]*

Section 75: repealed, on 22 October 2018, by section 25 of the Overseas Investment Amendment Act 2018 (2018 No 25).

*Transitional provisions*

**76 Repeal and revocations**

- (1) In this section and in the rest of this subpart,—  
**1973 Act** means the Overseas Investment Act 1973  
**Regulations** means the Overseas Investment Regulations 1995.

- (2) The 1973 Act is repealed and the Regulations and the Overseas Investment Exemption Notice 2001 are revoked.

**77 Transitional provision for acts done or begun under previous overseas investment regime**

- (1) In this section, the 1973 Act, the Regulations, sections 56 to 58 of the Fisheries Act 1996, and section 152(3) of Te Ture Whenua Maori Act 1993, as they were in force immediately before the commencement of sections 73, 74, and 76, are called the **previous regime**.
- (2) The previous regime continues to have effect as if it had not been replaced by this Act (subject to section 71) for the purpose of—
- (a) investigating any offence under or breach of the previous regime committed before the commencement of this section (**commencement**), commencing or completing proceedings for the offence or breach, or imposing a penalty or other remedy for the offence or breach:
  - (b) considering and determining any application for consent or exemption under the Regulations that is made before commencement or that relates to a transaction entered into before commencement:
  - (c) considering and determining any application for a declaration under section 56(2), or a permission under section 57, of the Fisheries Act 1996 that is made before commencement or that relates to a transaction entered into before commencement:
  - (d) considering and determining an application for confirmation of an alienation under section 152(3) of Te Ture Whenua Maori Act 1993:
  - (e) completing any proceedings commenced under the previous regime before commencement.

**78 Transitional provision for consents, exemptions, and conditions under 1973 Act and Regulations**

- (1) This section applies to consents granted under the Regulations, exemptions granted under the 1973 Act or regulation 16 of the Regulations, and conditions of those consents and exemptions, that are in effect immediately before the commencement of section 76 or that are granted after that commencement by virtue of section 77(2).
- (2) Those consents, exemptions, and conditions must be treated as if they were consents and exemptions granted under this Act, or conditions applied under this Act,—
- (a) for the purposes of subpart 4 (monitoring):
  - (b) for the purposes of subpart 5 (enforcement), in relation to any act or omission that occurs after the commencement of section 76.
- (3) However, the following provisions, as in force immediately before the commencement of section 76, continue to apply:

- (a) regulation 14(2) of the Regulations, to those consents and conditions of those consents:
- (b) regulation 16(3) of the Regulations, to those exemptions.

**79 Transitional provision for permissions, etc, under Fisheries Act 1996**

- (1) This section applies to permissions granted under section 28Z(9) of the Fisheries Act 1983 or under section 57(3) of the Fisheries Act 1996, and conditions of those permissions, that are in effect immediately before the commencement of section 73 or that are granted after that commencement by virtue of section 77(2).
- (2) Those permissions and conditions must be treated as if they were consents granted and conditions applied under this Act.
- (3) However, regulation 14(2) of the Regulations, as in force immediately before the commencement of section 76, continues to apply to those permissions and conditions of those permissions.

**80 Transitional provision relating to clause 6 of Schedule 1AA (Exemption relating to dwellings in large apartment developments where sales of dwellings have begun before assent date)**

A person may apply for an exemption certificate, and the application may be dealt with, before the commencement of clause 6 of Schedule 1AA as if that clause and the relevant fee prescribed in the regulations were in force.

Section 80: inserted, on 5 September 2018, by section 48 of the Overseas Investment Amendment Act 2018 (2018 No 25).

## Schedule 1AA

### Transitional, savings, and related provisions

s 8B

Schedule 1AA: inserted, on 22 October 2018, by section 49 of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### Part 1

#### Provisions relating to Overseas Investment Amendment Act 2018

##### 1 Existing transactions and applications not affected

- (1) The amendments made by the Overseas Investment Amendment Act 2018 apply only to transactions entered into on or after commencement.
- (2) In particular, this Act and the regulations, as in force immediately before commencement, continue to apply to the following as if the Overseas Investment Amendment Act 2018 had not been enacted:
  - (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) In this clause, entering into a contract or an arrangement before commencement is a transaction that must be treated as being entered into before commencement even if, immediately before commencement, the transaction is subject to a condition precedent.
- (5) If a sale or transfer of property or securities, or the issue, allotment, buyback, or cancellation of securities, occurs without a contract or an arrangement being entered into or an understanding being arrived at, the transaction must be treated as being entered into for the purpose of subclauses (1) and (2) when the property or securities are sold or transferred or the securities are issued, allotted, bought back, or cancelled (as the case may be).
- (6) In this clause, clause 2, and clause 3, **commencement** means the commencement of this clause.

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##### Example

A is an overseas person.

Before commencement, A enters into a sale and purchase agreement to buy a house that is on residential (but not otherwise sensitive) land. At that time, the land is not sensitive under this Act. The agreement is subject to a finance condition.

After commencement, the finance condition is satisfied and the agreement becomes unconditional. Settlement occurs 1 month later.

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The transaction does not require consent under this Act because the transaction was entered into before commencement (that is, at a time when the residential land was not sensitive land and its purchase did not require consent).

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

- (1) This clause applies to a transaction entered into before commencement if consent is not given for the transaction before commencement.
- (2) Despite clause 1,—
  - (a) an application for consent for the transaction may be considered under the benefit to New Zealand test applying section 16A(3) or in accordance with section 16A(4), as inserted by the Overseas Investment Amendment Act 2018; and
  - (b) the other provisions of this Act, as amended by the Overseas Investment Amendment Act 2018, apply accordingly.
- (3) Clause 1(4) and (5) applies for the purposes of this clause.

**3 New information-gathering powers and service provisions apply to matters before or after commencement**

- (1) Despite clause 1,—
  - (a) the regulator may exercise a power under section 41 (as in force after commencement) in connection with any transaction, act, omission, or other matter regardless of whether the transaction, act, omission, or other matter occurred before or after commencement; and
  - (b) sections 54 to 55A (as in force after commencement) apply to any document that is served after commencement regardless of whether the document relates to a transaction, act, omission, or other matter that occurs before or after commencement.
- (2) However, section 54 (as in force after commencement) does not apply to a holder of an exemption under section 61D if the exemption was continued in force under clause 4(2) of this schedule.
- (3) Sections 41A to 41E (as in force after commencement) apply for the purposes of subclause (1)(a).

**4 Existing exemptions saved**

- (1) An exemption made under section 61(1)(i) that is in force immediately before the commencement of section 46 of the Overseas Investment Amendment Act 2018 continues in force as if it were made under section 61C of this Act.
- (2) An exemption granted under regulation 37 of the Overseas Investment Regulations 2005 that is in force immediately before the commencement of section 46 of the Overseas Investment Amendment Act 2018 continues in force as if it were granted under section 61D of this Act.

- (3) However, sections 61B, 61D(3), 61E, and 61F(5)—
- (a) do not apply to those exemptions as granted; and
  - (b) do not apply (other than section 61D(3)) to a minor or technical amendment to those exemptions, or to a replacement of those exemptions with only minor or technical amendments, made after the commencement of section 46 of the Overseas Investment Amendment Act 2018.

**5 Exemption relating to existing Resource Management Act 1991 requirements**

- (1) This clause applies if an overseas person (**A**), or a person (**B**) on behalf of an overseas person, is (in effect) required to acquire an interest in residential (but not otherwise sensitive) land because of—
- (a) a condition of a resource consent granted under the Resource Management Act 1991 before the commencement of this clause; or
  - (b) any other requirement imposed by or under that Act and that is imposed on A or B before the commencement of this clause.
- (2) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land that is the acquisition of that interest in residential (but not otherwise sensitive) land and is entered into by A or B for the purpose of satisfying that condition or other requirement.

**6 Exemption relating to dwellings in large apartment developments where sales of dwellings have begun before assent date**

- (1) This clause applies in respect of land that is being used, or intended to be used, for 1 (or more) of the following (a **development**):
- (a) in the construction of 1 or more multi-storey buildings as 1 development, where each building consists, or will consist, of at least 20 residential dwellings; or
  - (b) to increase the number of residential dwellings in 1 or more multi-storey buildings, where the number of residential dwellings in each building will be increased by 20 or more.

*Exemption certificates*

- (2) A person involved in the development (the **developer**) may apply for an exemption certificate no later than the expiry of the 6-month period that starts on the date of Royal assent of the Overseas Investment Amendment Act 2018 (the **assent date**), specifying the land that constitutes the development (in a way that enables its boundaries to be clearly identified).
- (3) The relevant Minister or Ministers may grant an exemption certificate if they are satisfied that—



- (a) at least 20 new residential dwellings that are not completed at the assent date (the **new dwellings**) will be, or are likely to be, completed in the development before the expiry of the 5-year period that starts on the assent date; and
  - (b) on or before the assent date, a transaction has been entered into by the parties in good faith in the ordinary course of business for the acquisition of 1 or more of the new dwellings that the relevant Minister or Ministers are satisfied will be, or are likely to be, completed in the development before the expiry of that 5-year period.
- (4) In considering whether the matters in subclause (3) are met, the relevant Minister or Ministers may have regard to factors such as—
- (a) whether the development has appropriate resource consent, building consent, and any other relevant authorisations; and
  - (b) the developer's financial strength; and
  - (c) the previous activity of the developer (or its associates or individuals with control) regarding use of residential land; and
  - (d) the previous record of the developer (or its associates or individuals with control) in complying with consent conditions or applying for consent conditions to be varied.
- (5) An exemption certificate must be applied to 100% of the new dwellings in the development.
- Exemptions for dwellings to which exemption certificate applies that are purchased from developer*
- (6) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land in respect of a residential dwelling in the development if—
- (a) the relevant land is residential (but not otherwise sensitive) land; and
  - (b) an exemption certificate applies to the dwelling under subclause (5); and
  - (c) the person (the **purchaser**) acquires the relevant land before the expiry of the 5-year period that starts on the assent date; and
  - (d) the purchaser acquires the relevant land from—
    - (i) the developer; or
    - (ii) another person from whom the exemption certificate permits the purchaser to acquire the relevant land in reliance on this exemption.
- Other provisions*
- (7) In any exemption certificate granted under this clause, the relevant Minister or Ministers—
- (a) must specify the land that constitutes the development; and

- (b) may specify persons or classes of persons for the purposes of subclause (6)(d) having regard to the purpose of this exemption, which is to allow persons involved in the construction of new dwellings to sell those dwellings (but not the development) to an overseas person as the first sale of the dwelling without the overseas person requiring consent.
- (8) The relevant Minister or Ministers may, with the agreement of the developer, vary an exemption certificate granted under this clause to the extent that it relates to the following:
  - (a) the developer;
  - (b) the persons specified under subclause (7)(b).
- (9) For the purposes of Part 2 of the Act, **exemption certificate** includes an exemption certificate granted under this clause.
- (10) Clause 1(4) and (5) applies for the purposes of this clause as if references to commencement were references to assent date.

#### **7 References to Land Transfer Act 2017**

- (1) This clause applies until the Land Transfer Act 1952 ceases to apply to instruments lodged for registration or endorsement.
- (2) The definition of **lodged** in section 51A of this Act must be treated as including lodged for registration or endorsement under the Land Transfer Act 1952 or the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

#### **8 Section 61G applies to conditions before and after commencement**

Section 61G may apply to a condition regardless of whether the condition came into effect before or after the commencement of this clause.

#### **9 Provisions relating to exemptions in clauses 6 and 8 of Schedule 3**

- (1) For the purposes of clause 6(4)(b)(i) of Schedule 3, the acquisition (or treated acquisition) of a forestry right by a related forestry investor is to be disregarded if the acquisition (or treated acquisition)—
  - (a) was made before commencement; or
  - (b) was made on or after commencement but resulted from a transaction referred to in clause 1(2)(a) of this schedule.
- (2) For the purposes of clause 8(4)(b)(ii) of Schedule 3, it does not matter if a regulated *profit à prendre* was first held (or treated as first held) by a related *profit* investor—
  - (a) before commencement; or
  - (b) on or after commencement as a result of a transaction referred to in clause 1(2)(a) of this schedule.

- (3) In this clause, **commencement** means the commencement of clause 1 of this schedule.

**10 Review of amendments relating to forestry**

- (1) The Minister must—
- (a) carry out a review of the operation and effectiveness of the amendments made by the Overseas Investment Amendment Act 2018 relating to forestry (including forestry rights); and
  - (b) prepare a report on that review, including the Minister's recommendations for amendments to this Act (if any); and
  - (c) present the report to the House of Representatives as soon as practicable after it has been prepared.
- (2) The review must be started within 2 years after the commencement of this clause.

## Schedule 1

### Sensitive land

s 12

#### Part 1

#### What land is sensitive

##### What land is sensitive

Land is **sensitive** under this Act if—

- (a) the land is or includes land of a type listed in table 1 and the area of that type of land exceeds the corresponding area threshold (either alone or together with any associated land of that type), if any; or
- (b) the land (**land A**) adjoins land of a type listed in table 2 and the area of land A exceeds the corresponding area threshold (either alone or together with any associated land), if any.

*Table 1*

<b>Land is sensitive if it is or includes this type of land</b>	<b>... and that type exceeds this area threshold (if any)</b>
residential land	—
non-urban land	5 hectares
land on islands specified in Part 2 of this schedule	0.4 hectares
land on other islands (other than North or South Island, but including the islands adjacent to the North or South Island)	—
foreshore or seabed	—
bed of a lake	0.4 hectares
land held for conservation purposes under the Conservation Act 1987	0.4 hectares
land that a district plan or proposed district plan under the Resource Management Act 1991 provides is to be used as a reserve, as a public park, for recreation purposes, or as open space	0.4 hectares
land subject to a heritage order, or a requirement for a heritage order, under the Resource Management Act 1991 or by Heritage New Zealand Pouhere Taonga under the Heritage New Zealand Pouhere Taonga Act 2014	0.4 hectares
a historic place, historic area, wahi tapu, or wahi tapu area that is entered on the New Zealand Heritage List/Rārangi Kōrero or for which there is an application that is notified under section 67(4) or 68(4) of the Heritage New Zealand Pouhere Taonga Act 2014	0.4 hectares
land that is set apart as Māori reservation and that is wahi tapu under section 338 of Te Ture Whenua Maori Act 1993	0.4 hectares

Schedule 1 Part 1 Table 1: amended, on 22 October 2018, by section 5(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Schedule 1 Part 1 Table 1: amended, on 22 October 2018, by section 5(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Schedule 1 Part 1 Table 1: amended, on 20 May 2014, by section 107 of the Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26).

*Table 2*

<b>Land A is sensitive if it adjoins land of this type</b>	<b>... and land A exceeds this area threshold (if any)</b>
foreshore	0.2 hectares
bed of a lake	0.4 hectares
land held for conservation purposes under the Conservation Act 1987 (if that conservation land exceeds 0.4 hectares in area)	0.4 hectares
any scientific, scenic, historic, or nature reserve under the Reserves Act 1977 that is administered by the Department of Conservation and that exceeds 0.4 hectares in area	0.4 hectares
any regional park created under the Local Government Act 1974	0.4 hectares
land that is listed, or in a class listed, as a reserve, a public park, or other sensitive area by the regulator under section 37	0.4 hectares
land that adjoins the sea or a lake and exceeds 0.4 hectares and is 1 of the following types of land:	0.4 hectares
<ul style="list-style-type: none"> <li>• an esplanade reserve or esplanade strip (within the meaning of section 2(1) of the Resource Management Act 1991); or</li> <li>• a recreation reserve under the Reserves Act 1977; or</li> <li>• a road (as defined in section 315(1) of the Local Government Act 1974); or</li> <li>• a Maori reservation to which section 340 of Te Ture Whenua Maori Act 1993 applies</li> </ul>	
land over 0.4 hectares that is subject to a heritage order, or a requirement for a heritage order, under the Resource Management Act 1991 or by Heritage New Zealand Pouhere Taonga under the Heritage New Zealand Pouhere Taonga Act 2014	0.4 hectares
land over 0.4 hectares that includes a historic place, historic area, wahi tapu, or wahi tapu area that is entered on the New Zealand Heritage List/Rārangī Kōrero or for which there is an application that is notified under section 67(4) or 68(4) of the Heritage New Zealand Pouhere Taonga Act 2014	0.4 hectares
land over 0.4 hectares that is set apart as Māori reservation and that is wahi tapu under section 338 of Te Ture Whenua Maori Act 1993	0.4 hectares

Schedule 1 Part 1 Table 2: amended, on 22 October 2018, by section 5(3) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Schedule 1 Part 1 Table 2: amended, on 20 May 2014, by section 107 of the Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26).

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## **Part 2**

### **Specified islands**

Arapawa Island

Best Island

Great Barrier Island (Aotea Island)

Great Mercury Island (Ahuahu)

Jackett Island

Kawau Island

Matakana Island

Mayor Island (Tuhua)

Motiti Island

Motuhoa Island

Rakino Island

Rangiwaea Island

Slipper Island (Whakahau)

Stewart Island/Rakiura

Waiheke Island

Whanganui Island

## Schedule 2

### Sensitive land that is residential land

ss 6, 16, 16B, 61

Schedule 2: replaced, on 22 October 2018, by section 26 of the Overseas Investment Amendment Act 2018 (2018 No 25).

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**Part 1****Outline and definitions****1 Outline of this schedule**

- (1) In this schedule,—
- (a) Part 2 sets out the commitment to reside in New Zealand test, which is a test that is only available for residential land:
  - (b) Part 3 sets out the increased housing test, the non-residential use test, and the incidental residential use test, which are tests that are only available for overseas investments in sensitive land where the relevant land is residential (but not otherwise sensitive) land:
  - (c) Part 4 explains how more than 1 test can be met for the purpose of section 16(1)(b)(i):
  - (d) Parts 2 and 5 set out conditions that this Act requires be imposed on consents that are granted for certain overseas investments in sensitive land where the relevant land is or includes residential land.
- (2) This clause is only a guide to the general scheme and effect of this schedule.

**2 Interpretation**

In this schedule,—

**key individual**, in relation to an overseas investment, has the meaning set out in clause 4

**qualifying individual** has the meaning set out in clause 4



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

**relevant business** has the meaning set out in clause 12(2) and (3)

**relevant interest**, in relation to residential land, means—

- (a) the interest in the residential land; or
- (b) rights or interests in securities of a person who owns or controls (directly or indirectly) any interest in the residential land

**resolved**, in relation to a trigger event, has the meaning set out in clause 7

**specified period** means the period or periods (or a means of calculating a period or periods) to be specified in the consent for the matter concerned

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

**trigger event** is defined in clause 7.

## Part 2

### Commitment to reside in New Zealand test

#### *Availability of test*

#### 3 For what land is test in this Part available

- (1) The commitment to reside in New Zealand test is only available for residential land.
- (2) It does not matter if the residential land is also sensitive for some other reason under Part 1 of Schedule 1.

#### 4 Who are qualifying individuals and key individuals

- (1) This clause defines certain terms for the purposes of an overseas investment in sensitive land that is considered under the commitment to reside in New Zealand test.
- (2) A person is a **qualifying individual** if the person—
  - (a) is a New Zealand citizen; or
  - (b) is ordinarily resident in New Zealand; or
  - (c) is an overseas person who holds a residence class visa granted under the Immigration Act 2009; or
  - (d) is an overseas person of a type that is specified in regulations made under section 61(1)(j).
- (3) The **key individuals** for the overseas investment are—
  - (a) the relevant overseas person (if an individual); or

- (b) if the relevant overseas person is not an individual, every individual with control of the relevant overseas person (unless the individual is exempt under clause 9).
  - (4) However, if—
    - (a) 2 individuals (**A and B**) who would be key individuals under subclause (3) are the spouse or partner of each other; and
    - (b) either—
      - (i) the relevant interest in the residential land will be acquired as relationship property of A and B and regulations exempt B from the requirement for consent under section 10(1)(a); or
      - (ii) the interest in the residential land will be acquired by a company that is incorporated in New Zealand and in which all of the securities are wholly owned as relationship property by A and B, on the basis that A is a key individual,—
- then B is not a key individual for the overseas investment.
- (5) B (but not A) can also be disregarded for the overseas investment when determining whether the investor test is met if—
    - (a) the application for consent is under the commitment to reside in New Zealand test only; and
    - (b) the investor test applies (because the relevant land is or includes residential land and land that is sensitive under Part 1 of Schedule 1 for some other reason); and
    - (c) the relevant Ministers are satisfied that A is an individual with control of the relevant overseas person (for example, if the relevant overseas person is a company).

#### *Test and conditions*

### **5 How commitment to reside in New Zealand test is met**

- (1) The commitment to reside in New Zealand test is met if all of the following are met:
  - (a) the relevant Ministers are satisfied that—
    - (i) every key individual is a qualifying individual; and
    - (ii) the purpose of acquiring the relevant interest in the residential land is the acquisition of 1 dwelling (whether that dwelling is constructed on, or is being or will be constructed on, the residential land) for all of the key individuals to occupy as their main home or residence; and
  - (b) every key individual who is an overseas person (an **OP**) (if any) provides a statutory declaration that the OP intends,—

- (i) at least until the declaration end date, to be present in New Zealand for at least 183 days in every 12-month period beginning on the date of consent or its anniversary in any year; and
  - (ii) (if not already tax resident in New Zealand) to become tax resident in New Zealand; and
  - (iii) to remain tax resident in New Zealand at least until the declaration end date.
- (2) *See also* clause 6 (which sets out certain conditions to be imposed on certain consents that rely on meeting this test, including a requirement for the consent holder to dispose of all relevant interests in the residential land in certain circumstances).
- (3) In this clause,—

**declaration end date**, in relation to an OP, means the earlier of—

- (a) the date that the OP becomes a New Zealand citizen or ordinarily resident in New Zealand; or
- (b) the date that the relevant overseas person ceases to have a relevant interest in the residential land

**dwelling** means a residential dwelling or a dwelling in a long-term accommodation facility

**tax resident in New Zealand** means a person who is a New Zealand resident under section YD 1 of the Income Tax Act 2007.

## 6 Conditions for consent if commitment to reside in New Zealand test is met

- (1) This clause applies if consent is to be granted for an overseas investment on the basis of the commitment to reside in New Zealand test and 1 or more key individuals are overseas persons.
- (2) Conditions must be imposed on the consent for the purpose of requiring the matters in the first column of the following table.
- (3) Conditions so imposed cease to have effect as set out in the second column of the following table.

**If 1 or more key individuals are overseas persons, conditions that require the following matters must be imposed on the consent**

- 1 All key individuals must occupy the dwelling as their main home or residence (the **occupation requirement**)
- 2 The consent holder must dispose of all relevant interests that the consent holder has in the residential land within 12 months of the date that a trigger event occurs (unless the trigger event is resolved within those 12 months) (the **disposal requirement**)

**... to have effect until**

Every key individual who was an overseas person has become a New Zealand citizen or ordinarily resident in New Zealand  
The trigger event regime ceases for the overseas investment (*see* clause 7)

- (4) *See also* sections 25A and 25B (in relation to the imposition of conditions generally).

### *Trigger events*

#### 7 What are trigger events and how they are resolved

- (1) Trigger events only occur for an overseas investment in relation to key individuals who are overseas persons (each, an **OP**) at the date of consent.
- (2) In the following table,—
- (a) the first column defines each trigger event in relation to an OP; and
- (b) the second column alongside sets out how the trigger event is resolved.

<b>Trigger event</b>	<b>How trigger event is resolved</b>
1 On an anniversary date, OP has been absent from New Zealand for more than 183 days in total in the immediately preceding 12 months without a waiver	<ul style="list-style-type: none"> <li>• OP is present in New Zealand for at least 183 days in total in the 12-month period beginning on the anniversary date; or</li> <li>• A waiver is applied for and granted (<i>see</i> clause 8); or</li> <li>• A prescribed resolution applies; or</li> <li>• The trigger event regime ceases for OP (<i>see</i> subclause (3))</li> </ul>
2 OP ceases to hold a residence class visa granted under the Immigration Act 2009	<ul style="list-style-type: none"> <li>• OP becomes the holder of a residence class visa granted under the Immigration Act 2009; or</li> <li>• OP becomes a person of a type that is specified in regulations made under section 61(1)(j); or</li> <li>• A prescribed resolution applies; or</li> <li>• The trigger event regime ceases for OP (<i>see</i> subclause (3))</li> </ul>
3 OP ceases to be a person of a type that is specified in regulations made under section 61(1)(j)	<ul style="list-style-type: none"> <li>• OP becomes a person of a type that is specified in regulations made under section 61(1)(j); or</li> <li>• OP becomes the holder of a residence class visa granted under the Immigration Act 2009; or</li> <li>• A prescribed resolution applies; or</li> <li>• The trigger event regime ceases for OP (<i>see</i> subclause (3))</li> </ul>

#### *When does trigger event regime cease for OP*

- (3) No further trigger events can occur for an OP—
- (a) who becomes a New Zealand citizen or ordinarily resident in New Zealand; or
- (b) whose spouse or partner becomes a New Zealand citizen or ordinarily resident in New Zealand, but only if clause 4(4)(b) applies.

- (4) Subclause (3) applies regardless of whether the OP (or the OP's spouse or partner, as relevant) again becomes an overseas person.

*When does trigger event regime cease for overseas investment*

- (5) The trigger event regime ceases for the overseas investment when no further trigger events can occur in relation to any key individuals.

*Interpretation*

- (6) For the purposes of this clause, a person who is present in New Zealand for part of a day is treated as present in New Zealand for a whole day.

- (7) In this clause,—

**anniversary date** means the anniversary of the date of consent in any year

**prescribed** means prescribed by regulations made under section 61(1)(ja)(ii).

## **8 Waiver relating to trigger event**

- (1) An application may be made, in respect of a person (an **OP**) in relation to whom a trigger event under item 1 of the table in clause 7(2) may or will occur, or has occurred, for a waiver from the requirement for the consent holder to dispose of all relevant interests in the residential land as a consequence of the trigger event occurring.
- (2) The relevant Ministers must grant the waiver if the relevant Ministers consider, in accordance with regulations made under section 61(1)(ja)(i), that the OP remains committed to residing in New Zealand.
- (3) A waiver—
- (a) may be general or may specify the 1 or more instances of the trigger event to which it applies:
  - (b) may be open-ended or granted for a period:
  - (c) may be made subject to any conditions.
- (4) A waiver may at any time be amended or revoked in the same way as it may be made.

*Exemption*

## **9 Exemption from definition of key individual**

If, for an overseas investment in sensitive land being considered under the commitment to reside in New Zealand test, the relevant overseas person is not an individual, the relevant Ministers may determine that 1 or more of the individuals with control of the relevant overseas person is not a key individual for the overseas investment—

- (a) because of the circumstances relating to the particular relevant overseas person and the purpose of the overseas investment; and
- (b) only if the relevant Ministers are satisfied of both of the following:

- (i) that the individual will not have any beneficial interest in, or beneficial entitlement to, the relevant interest in the residential land; and
- (ii) if the relevant overseas person is a trust, that the individual is not a person who may (directly or indirectly) benefit under the trust at the discretion of the trustees and is not likely to become such a person.

### Part 3

## Increased housing, non-residential use, and incidental residential use tests

### *Availability of tests*

#### 10 For what land are tests in this Part available

The 3 tests in this Part are only available if the relevant land is residential (but not otherwise sensitive) land.

### *Increased housing test*

#### 11 How increased housing test is met

- (1) The increased housing test is met if the relevant Ministers are satisfied that—
  - (a) 1 or more of the following outcomes (the **increased housing outcomes**) will, or are likely to, occur on the residential land:
    - (i) an increase in the number of residential dwellings constructed on the residential land (including an increase from 0);
    - (ii) construction of a long-term accommodation facility on the residential land, or an increase in the number of dwellings in a long-term accommodation facility that is on the residential land;
    - (iii) development works on the land to support the doing of things described in either or both of subparagraphs (i) and (ii); and
  - (b) the following outcomes (as defined in clause 17) will, or are likely to, occur:
    - (i) the on-sale outcome (unless exempt from this outcome under subclause (2)); and
    - (ii) the non-occupation outcome.
- (2) Subclause (1)(b)(i) does not apply,—
  - (a) if the increased housing outcome is as described in subclause (1)(a)(ii) and the relevant Ministers are satisfied that the long-term accommodation facility will, or is likely to, operate from the residential land within a

- specified period, to the extent that the relevant Ministers are satisfied that the land will, or is likely to, be used for those operations; or
- (b) if an exemption under clause 20 (exemption for large developments with shared equity, rent-to-buy, and rental arrangements) applies.
- (3) The increased housing outcomes are measured by comparing the expected result of the overseas investment against the state of the residential land before the transaction takes effect.
  - (4) In this clause (and in clause 19), **development works**—
    - (a) includes the construction, alteration, demolition, or removal of a building or infrastructure; and
    - (b) includes siteworks (including earthworks) that are preparatory to, or associated with, the matters set out in paragraph (a); but
    - (c) does not include subdivision of land without other development works.
  - (5) *See also* clause 18 (which sets out certain conditions to be imposed on consents that rely on meeting this test).

*Non-residential use test and incidental residential use test*

**12 What is the relevant business**

- (1) This clause applies if an overseas investment is being considered under the non-residential use test or the incidental residential use test.
- (2) The relevant Ministers may determine which 1 or more of the following is the **relevant business**:
  - (a) a business of the relevant overseas person (**A**):
  - (b) a business of a person (**B**) if A owns or controls the relevant interest in the residential land primarily for B to use the residential land in that business.
- (3) However, in making that determination, the relevant Ministers must be satisfied that the business is likely to continue for a reasonable period of time, given the circumstances and nature of the business.

**13 How non-residential use test is met**

- (1) The non-residential use test is met if the relevant Ministers are satisfied that the residential land will be, or is likely to be (or will, or is likely to, continue to be)—
  - (a) used for non-residential purposes in the ordinary course of business for the relevant business; and
  - (b) not used, nor held for future use, for any residential purposes.
- (2) In any case where the relevant Ministers are not satisfied that the matters in subclause (1)(a) and (b) (the **non-residential use outcome**) will, or are likely to, occur within a short period after the overseas investment is given effect

under the transaction, they may determine that the non-residential use test is met if—

- (a) either—
    - (i) the relevant Ministers are satisfied that the non-occupation outcome (as defined in clause 17) will, or is likely to, occur; or
    - (ii) the incidental residential use test is applied for and met in respect of the residential land; and
  - (b) the relevant Ministers are satisfied that, within a specified period, the non-residential use outcome will be, or is likely to be, met.
- (3) Subclause (4) applies if the relevant Ministers determine that the non-residential use test is met only in respect of part of the residential land and no other test is applied for and met in respect of the remaining part of the residential land.
  - (4) The relevant Ministers may determine that the non-residential use test is met if they are satisfied that the on-sale outcome (as defined in clause 17) will, or is likely to, occur for the remaining part of the residential land.
  - (5) *See also* clause 18 (which sets out certain conditions to be imposed on consents that rely on meeting this test).

#### 14 How incidental residential use test is met

- (1) The incidental residential use test is met if the relevant Ministers are satisfied that—
  - (a) the residential land will be, or is likely to be (or will, or is likely to, continue to be) used for residential purposes but only in support of the relevant business, where the relevant business is not (or is only exceptionally) in the business of using land for residential purposes (the **incidental residential use outcome**); and
  - (b) having regard to that use of the residential land, the relevant interest in the residential land will be, or is likely to be, acquired in the ordinary course of the business of the relevant overseas person.
- (2) In considering whether the incidental residential use test is met, the relevant Ministers may have regard to all or any of the following:
  - (a) whether any reasonable alternative exists to the acquisition of the relevant interest in the residential land:
  - (b) the proximity of the residential land to the premises or operations of the relevant business:
  - (c) whether the use of the residential land for residential purposes is (without limitation) as accommodation for staff engaged in the relevant business:



- (d) any other factors that seem to the relevant Ministers to be relevant in the circumstances.
- (3) Subclause (4) applies if the relevant Ministers determine that the incidental residential use test is met only in respect of part of the residential land and no other test is applied for and met in respect of the remaining part of the residential land.
- (4) The relevant Ministers may determine that the incidental residential use test is met if they are satisfied that the on-sale outcome (as defined in clause 17) will, or is likely to, occur for the remaining part of the residential land.
- (5) *See also* clause 18 (which sets out certain conditions to be imposed on consents that rely on meeting this test).

## Part 4

### How transaction meets more than 1 test in this schedule

#### 15 How transaction meets more than 1 test in this schedule

For the purposes of section 16(1)(b)(i), different tests in this schedule can be met in respect of different parts of the residential land that is, or is included in, the relevant land so long as at least 1 test is met in respect of each part of the residential land.

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#### Example

A is an overseas person who wishes to buy a company. The company owns land that is residential (but not otherwise sensitive) land and has no other direct or indirect interest in land that is sensitive land. The land contains a house that A wants to live in and part of the land is undeveloped land on which A wants to build houses for on-sale.

A applies for consent on the basis of the commitment to reside in New Zealand test and the increased housing test.

---

## Part 5

### Conditions attached to outcomes for residential land

#### *Conditions*

#### 16 Conditions attached to outcomes for residential land

- (1) This Part sets out conditions to be imposed on consents that are granted for overseas investments in sensitive land on the basis that—
  - (a) 1 or more of the tests in Part 3 are met; or
  - (b) the benefit to New Zealand test is met, the relevant land is or includes residential land, and section 16B applies.
- (2) *See also*—

- (a) clause 6 (for conditions to be imposed on certain consents that are granted on the basis that the commitment to reside in New Zealand test is met):
- (b) sections 25A and 25B in relation to the imposition of conditions generally.

### 17 What are on-sale outcome and non-occupation outcome

- (1) This clause defines the on-sale outcome and the non-occupation outcome for the purposes of various conditions and related tests.
- (2) The **on-sale outcome** is that, within a specified period, the relevant overseas person disposes of all relevant interests in the residential land.
- (3) The **non-occupation outcome** is that, for so long as the relevant overseas person has a relevant interest in the residential land, none of the following occupy the land:
  - (a) the relevant overseas person (**A**):
  - (b) any overseas person (**B**) who has a 25% or more ownership or control interest in A:
  - (c) any overseas person (**C**) who occupies the land otherwise than on arm's-length terms (for example, a relative who occupies rent-free), where **arm's-length terms** means terms that—
    - (i) would be reasonable in the circumstances if the owner of the land (including their property agent) and C (including their associates) were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or
    - (ii) are less favourable to C than the terms referred to in subparagraph (i):
  - (d) any overseas person who has a beneficial interest in, or beneficial entitlement to, the relevant interest in the residential land:
  - (e) if A is a trust, a person who may (directly or indirectly) benefit under the trust at the discretion of the trustees.
- (4) However, subclause (3)(c) to (e) do not apply to a person who is entitled to occupy the land under any consent or any exemption in this Act or the regulations (for example, a person who has consent on the basis of the commitment to reside in New Zealand test may be entitled to lease a new dwelling in respect of which the developer is subject to a non-occupation outcome under the increased housing test).

### 18 Conditions for consent if 1 or more tests in Part 3 are met

- (1) This clause applies if consent is to be granted for an overseas investment on the basis that 1 or more of the tests in Part 3 are met.

- (2) For each test (as set out in the first column of the following table) that is met,—
- (a) the second column sets out the conditions that must be imposed on the consent in relation to the residential land in respect of which the test is met; but
- (b) if any circumstances set out in the third column relating to a condition apply, the condition need not be imposed.

	<b>If consent is granted on the basis of the following test</b>	<b>... conditions that require the following must be imposed on the consent in relation to the residential land</b>	<b>... except in the following circumstances</b>
1	Increased housing test	<p>1 or more increased housing outcomes (as defined in clause 11)</p> <p>The on-sale outcome (as defined in clause 17)</p>	<p>Clause 11(2)(a) applies (which relates to the operation of a long-term accommodation facility) to the extent that that clause applies</p> <p>Or an exemption under clause 20 applies (which relates to large developments with shared equity, rent-to-buy, and rental arrangements) (but <i>see</i> clause 20(3))</p>
2	Non-residential use test	<p>The non-occupation outcome (as defined in clause 17)</p> <p>The non-residential use outcome (as defined in clause 13)</p> <p>If clause 13(2) applies, the non-occupation outcome (as defined in clause 17)</p> <p>If clause 13(4) applies, the on-sale outcome (as defined in clause 17) (but only in relation to the remaining part of the residential land)</p>	<p>The incidental residential use test is applied for and met</p>
3	Incidental residential use test	<p>The incidental residential use outcome (as defined in clause 14)</p> <p>If clause 14(4) applies, the on-sale outcome (as defined in clause 17) (but only in relation to the remaining part of the residential land)</p>	

**19 Conditions for consent if benefit to New Zealand test is met and residential land is involved**

- (1) This clause applies for the purposes of sections 16A(1)(c) and 16B and the grant of a consent for an overseas investment on the basis that the benefit to New Zealand test is met and the relevant land is or includes residential land.
- (2) In the following table,—
- (a) the first column lists a residential land outcome; and
  - (b) the second column describes the set of conditions for the residential land outcome; and
  - (c) the third column describes the circumstances (if any) when an exemption may apply.

<b>If residential land outcome is</b>	<b>... conditions that require the following must be imposed on the consent in relation to the residential land</b>	<b>... except in the following circumstances</b>
1 On-sale	The on-sale outcome (as defined in clause 17)	
2 Use for non-residential purposes	The residential land is not used, nor held for future use, for residential dwellings or long-term accommodation facilities	
3 Operation of a long-term accommodation facility on the residential land (whether the facility is existing or is being or proposed to be constructed)	Operation of the long-term accommodation facility The non-occupation outcome (as defined in clause 17)	
4 Increased residential dwellings	Either or both of the following: <ol style="list-style-type: none"> <li>(a) an increase in the number of residential dwellings constructed on the residential land (including an increase from 0);</li> <li>(b) development works on the land to support the doing of things described in paragraph (a)</li> </ol>	An exemption under clause 20 (which relates to large developments with shared equity, rent-to-buy, and rental arrangements) applies (but <i>see</i> clause 20(3))
	The on-sale outcome (as defined in clause 17)	

If residential land outcome is	... conditions that require the following must be imposed on the consent in relation to the residential land	... except in the following circumstances
5 Residential purposes incidental to a relevant business	The non-occupation outcome (as defined in clause 17) The incidental residential use outcome (as defined in clause 14)	Or an exemption under clause 21 (which relates to indirect and minority interests) applies (but <i>see</i> clause 21(3))
6 Occupation as main home or residence (but this outcome is only available to the extent that the commitment to reside in New Zealand test is met)	The occupation requirement (as defined in clause 6) The disposal requirement (as defined in clause 6)	No key individuals are overseas persons No key individuals are overseas persons
7 Operation of existing shared equity, rent-to-buy, or rental arrangements (as defined in subclause (3)) in a development of 20 or more residential dwellings (but this outcome is only available if the consent holder ( <b>OP</b> ) is in the business of providing residential dwellings by 1 or more of those arrangements)	All of the residential dwellings in the development are dealt with by OP under 1 or more of the arrangements referred to in clause 20(2)(a) The non-occupation outcome (as defined in clause 17)	
8 Any other case	The non-occupation outcome (as defined in clause 17)	

- (3) In item 7 of the table in subclause (2), **shared equity, rent-to-buy, or rental arrangements**, in relation to an existing development, means arrangements corresponding to those referred to in clause 20(2)(a).

*Exemptions from on-sale outcome and condition*

**20 Exemption for large developments with shared equity, rent-to-buy, and rental arrangements**

- (1) The relevant Ministers may decide not to impose a condition requiring the on-sale outcome if—
- (a) a person (**OP**) has applied for consent under either of the following:
- (i) the increased housing test in respect of residential (but not otherwise sensitive) land:

- (ii) the benefit to New Zealand test in respect of land that is or includes residential land; and
  - (b) the relevant Ministers are satisfied that the relevant land is intended to be used for the construction of 1 or more buildings that, taken together, will consist of 20 or more new residential dwellings (the **large development**).
- (2) The exemption in subclause (1) applies if the relevant Ministers are satisfied that—
  - (a) all of the new residential dwellings in the large development will be dealt with under 1 or more of the following arrangements that are satisfactory to the relevant Ministers:
    - (i) OP will jointly own the new residential dwelling with an occupier (for example, an arrangement commonly referred to as a shared equity arrangement);
    - (ii) OP will divest ownership of the new residential dwelling to the occupier over a period of time (for example, an arrangement commonly referred to as a rent-to-buy arrangement);
    - (iii) OP will lease the new residential dwelling to an occupier;
    - (iv) OP will divest ownership of the new residential dwelling; and
  - (b) there is no reason to believe that the large development will not be dealt with according to those arrangements; and
  - (c) OP is in the business of providing new residential dwellings by 1 or more of those arrangements.
- (3) The exemption is subject to the following conditions:
  - (a) all of the new residential dwellings in the large development are dealt with under 1 or more of the arrangements referred to in subclause (2)(a); and
  - (b) OP meets the non-occupation outcome.

## **21 Exemption for indirect or minority interests in overseas persons that own or control land**

- (1) The relevant Ministers may decide not to impose a condition requiring the on-sale outcome if—
  - (a) a person (**OP**) has applied for consent under the benefit to New Zealand test in respect of an acquisition of rights or interests in securities referred to in section 12(b); and
  - (b) as a result of that acquisition, OP will have an indirect interest or a minority interest in an overseas person (**A**) that directly owns or controls an interest in residential land described in section 12(a) (the **relevant land**).

- (2) The exemption applies if the relevant Ministers are satisfied that, by reason of the circumstances relating to OP and the degree of control that OP will have in A, OP and its associates would not have, or would be unlikely to exercise or control the exercise of, any substantial influence over the relevant land.
- (3) The exemption is subject to the conditions that—
  - (a) OP does not increase their ownership or control interest such that this clause would not apply; and
  - (b) OP meets the non-occupation outcome.
- (4) In this clause, OP has an **indirect interest** in A if the relevant Ministers are satisfied that OP is an upstream party that has no direct ownership interest in A.
- (5) In this clause, OP has a **minority interest** in A if the relevant Ministers are satisfied that OP has a less than 50% ownership or control interest in A.
- (6) In this Act, a person (**OP**) has a 50% or more ownership or control interest in another person (**A**) if OP has—
  - (a) a beneficial entitlement to, or a beneficial interest in, 50% or more of A's securities; or
  - (b) the power to control the composition of 50% or more of the governing body of A; or
  - (c) the right to exercise or control the exercise of 50% or more of the voting power at a meeting of A.

## Schedule 3

### Exemptions from requirement for consent

s 11A

Schedule 3: inserted, on 22 October 2018, by section 27 of the Overseas Investment Amendment Act 2018 (2018 No 25).

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#### *Exemptions in respect of overseas investments in sensitive land*

##### 1 Māori freehold land

A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land by a Māori person where the relevant land is Māori freehold land for which the person is a member of the preferred classes of alienees (where those terms have the same meaning as in Te Ture Whenua Maori Act 1993).



*Exemptions in respect of overseas investments in sensitive land that is residential land*

**2 Periodic lease**

- (1) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land if—
  - (a) the interest in land described in section 12(a) is a periodic lease; and
  - (b) the relevant land is residential land.
- (2) In this clause, **periodic lease** means a lease that—
  - (a) is terminable at will, whether by the grantor or the grantee (including a periodic tenancy within the meaning of section 2(1) of the Residential Tenancies Act 1986); and
  - (b) offers no certainty of term of 3 years or more (including rights of renewal, whether of the grantor or the grantee).

*Exemptions in respect of overseas investments in sensitive land that is residential (but not otherwise sensitive) land*

**3 Residential tenancy for less than 5 years**

- (1) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land if—
  - (a) the interest in land described in section 12(a) is a residential tenancy for a term of less than 5 years (including rights of renewal, whether of the grantor or grantee); and
  - (b) the relevant land is residential (but not otherwise sensitive) land.
- (2) In this clause, **residential tenancy** means a tenancy to which the Residential Tenancies Act 1986 applies (including a periodic tenancy within the meaning of section 2(1) of that Act).

**4 Dwellings in large apartment developments that are purchased off plans**

- (1) This clause applies in respect of land that is being used, or intended to be used, for 1 (or more) of the following (a **development**):
  - (a) in the construction of 1 or more multi-storey buildings as 1 development, where each building consists, or will consist, of at least 20 residential dwellings; or
  - (b) to increase the number of residential dwellings in 1 or more multi-storey buildings, where the number of residential dwellings in each building will be increased by 20 or more.

*Exemption certificates*

- (2) A person involved in the development (the **developer**) may apply for an exemption certificate if regulations are in force under section 61(1)(jb).

- (3) The relevant Minister or Ministers may grant an exemption certificate if they are satisfied that the development is likely to be completed, having regard to factors such as—
- (a) whether the development has appropriate resource consent, building consent, and any other relevant authorisations; and
  - (b) the developer's financial strength; and
  - (c) the previous activity of the developer (or its associates or individuals with control) regarding use of residential land; and
  - (d) the previous record of the developer (or its associates or individuals with control) in complying with consent conditions or applying for consent conditions to be varied.
- (4) An exemption certificate may be applied to up to the maximum percentage, as prescribed in the regulations made under section 61(1)(jb), of the residential dwellings in the development.

*Exemptions for dwellings to which exemption certificate applies*

- (5) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land in respect of a residential dwelling in the development if—
- (a) the relevant land is residential (but not otherwise sensitive) land; and
  - (b) an exemption certificate applies to the dwelling under subclause (4); and
  - (c) the person (the **purchaser**) makes the investment before the construction of the dwelling is complete.

---

**Example**

OP1 buys off the plans an apartment to which an exemption certificate applies, using the exemption in subclause (5). So the on-sale outcome does not apply to OP1 (but see subclause (6)(b) for the non-occupation outcome).

OP2 later buys a different apartment to which the exemption certificate does not apply. OP2 must apply for consent (but see section 16(3)(b) for an exemption from the investor test if OP2 applies for consent under the increased housing test.) OP2 must comply with the conditions of that consent as to the on-sale outcome and the non-occupation outcome.

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*Other provisions*

- (6) The relevant Ministers may grant an exemption certificate subject to the conditions that they think appropriate, and must impose conditions as follows:
- (a) conditions that enable the regulator to identify and monitor the dwellings to which the certificate is applied; and
  - (b) conditions that impose the non-occupation outcome on purchasers who rely on the exemption certificate under subclause (5); and
  - (c) conditions that enable the non-occupation outcome to be monitored by the regulator.

- (7) Those conditions may be conditions—
- (a) that apply to either the developer (as a condition of the exemption certificate) or the purchaser (as a condition of the exemption in subclause (5)), or both; and
  - (b) that require both the developer and the purchaser to provide the regulator with the name, contact details, and other details of dwellings to which the certificate is applied and the purchasers of those dwellings.

**5 Hotel units acquired and leased back for hotel use**

- (1) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land if—
- (a) the relevant land is residential (but not otherwise sensitive) land; and
  - (b) the relevant land is being used, or is intended to be used,—
    - (i) in the construction of a hotel that has 20 or more units, or to increase by 20 or more the number of units in a hotel; or
    - (ii) for the operation of a hotel that has 20 or more units; and
  - (c) the interest in land described in section 12(a) is either—
    - (i) an interest in 1 (or more) of those units that is acquired by a person (a **purchaser**) and that is immediately subject to a lease-back to the hotel company; or
    - (ii) a lease of 1 (or more) of those units by the purchaser to the hotel company (a **lease-back**).
- (2) The exemption is subject to the following conditions:
- (a) the lease-back must meet the following requirements at all times on and after the acquisition of the purchaser's interest:
    - (i) the purchaser cannot occupy, reserve, or use the unit for more than 30 days in each year; and
    - (ii) for the rest of the year, the unit must be managed and used for the general purposes of operating the hotel; and
  - (b) when the lease-back period ends, the purchaser must either, within 12 months of that period ending,—
    - (i) grant to the hotel company a new lease-back of the unit that complies with the matters in paragraph (a); or
    - (ii) dispose of its interest in the unit; and
  - (c) the purchaser must not occupy, reserve, or use the unit while it is not leased back to a hotel company.
- (3) In this clause,—
- hotel** means premises used, or intended to be used, in the course of business principally for providing temporary lodging to the public

**hotel company** means—

- (a) the person (**HotelCo**) that operates the hotel or that will operate the hotel after the hotel is completed; or
- (b) any person involved in the development of the hotel (the **developer**), provided that the developer has assigned its interest in the land to HotelCo, or will assign it to HotelCo immediately after the hotel is completed to the extent that it relates to the relevant unit.

*Exemptions in respect of overseas investments in sensitive land involving forestry rights*

**6 Area of forestry right less than 1 000 hectares**

- (1) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land (the **relevant forestry investment**) if—
  - (a) the relevant forestry investment is the acquisition of a forestry right (the **relevant forestry right**); and
  - (b) the area of the relevant forestry right is less than 1 000 hectares.
- (2) Subclause (3) applies to a transaction that will result in an overseas investment in sensitive land (the **relevant forestry investment**) if—
  - (a) the relevant forestry investment is the acquisition of rights or interests in securities of a person who owns or controls (directly or indirectly) a forestry right that is an interest in land described in section 12(a) (the **relevant forestry right**); and
  - (b) the area of the relevant forestry right is less than 1 000 hectares.
- (3) To the extent that the transaction will result in the relevant forestry investment, it does not require consent for the purposes of section 10(1)(a) in relation to the relevant forestry right.
- (4) Subclause (1) or (3) (as the case may be) does not apply if, immediately after the relevant forestry investment is given effect to, the sum of the following areas is 1 000 hectares or more:
  - (a) the area of the relevant forestry right;
  - (b) the combined area of all other forestry rights—
    - (i) that related forestry investors acquire (or are treated as acquiring) in the same calendar year as that in which the relevant forestry investment is given effect to; and
    - (ii) that are for a term of 3 years or more (including rights of renewal, whether of the grantor or grantee).
- (5) For the purposes of subclause (4)(b)(i),—
  - (a) **related forestry investor** means—

- (i) the person who makes the relevant forestry investment; or
  - (ii) any associate of that person; or
  - (iii) a body corporate related to that person or to any associate of that person (as determined in accordance with section 12(2) of the Financial Markets Conduct Act 2013); and
- (b) a related forestry investor (**B**) is treated as acquiring a forestry right if—
- (i) B acquires rights or interests in securities of a person (**C**) who owns or controls (directly or indirectly) the forestry right and, as a result of the acquisition, B has (either alone or together with B's associates) a 25% or more ownership or control interest in C; or
  - (ii) the forestry right comes under the ownership or control (direct or indirect) of a person in whom B has (either alone or together with B's associates) a 25% or more ownership or control interest; and
- (c) it does not matter if a forestry right is acquired (or treated as acquired) by a related forestry investor before the relevant forestry investment is given effect to.
- (6) In this clause, **area**, in relation to a forestry right, means the area of land covered by the forestry right (including any right, whether of the grantor or grantee, to have the original area increased).

## 7 Crown forestry licence converted into forestry right

- (1) A transaction does not require consent for the purposes of section 10(1)(a) 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; and
  - (b) immediately before the forestry right is acquired, the area of land covered by the forestry right (the **covered land**)—
    - (i) is fully covered by a Crown forestry licence granted under section 14 of the Crown Forest Assets Act 1989 (whether or not the covered land is the only area of land covered by the Crown forestry licence); but
    - (ii) is no longer regarded as Crown forest land; and
  - (c) the person who acquires the forestry right is the licensee of the Crown forestry licence immediately before the acquisition of the forestry right or is a person who is related to that licensee; and
  - (d) the term of the forestry right (including rights of renewal, whether of the grantor or grantee) expires no later than 35 years after the date on which the covered land ceased to be regarded as Crown forest land.
- (2) For the purposes of subclause (1)(c), a person (**A**) is **related** to the licensee if—
- (a) the licensee owns and controls 95% of A; or
  - (b) A owns and controls 95% of the licensee; or

- (c) a third person owns and controls 95% of the licensee and of A.
- (3) For the purposes of subclause (2), 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.

*Exemptions in respect of overseas investments in sensitive land involving regulated profits à prendre that are not forestry rights*

**8 Area of regulated profit à prendre less than 5 hectares**

- (1) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land (the **relevant profit investment**) if—
  - (a) the relevant *profit* investment is the acquisition of a regulated *profit à prendre* that is not a forestry right (the **relevant profit**); and
  - (b) the area of the relevant *profit* is less than 5 hectares.
- (2) Subclause (3) applies to a transaction that will result in an overseas investment in sensitive land (the **relevant profit investment**) if—
  - (a) the relevant *profit* investment is the acquisition of rights or interests in securities of a person who owns or controls (directly or indirectly) a regulated *profit à prendre* that is an interest in land described in section 12(a) but is not a forestry right (the **relevant profit**); and
  - (b) the area of the relevant *profit* is less than 5 hectares.
- (3) To the extent that the transaction will result in the relevant *profit* investment, it does not require consent for the purposes of section 10(1)(a) in relation to the relevant *profit*.
- (4) Subclause (1) or (3) (as the case may be) does not apply if, immediately after the relevant *profit* investment is given effect to, the sum of the following areas is 5 hectares or more:
  - (a) the area of the relevant *profit*;
  - (b) the combined area of all other regulated *profits à prendre*—
    - (i) that are not forestry rights; and
    - (ii) that are held (or treated as held) by related *profit* investors; and
    - (iii) the areas of which adjoin the area of the relevant *profit*; and
    - (iv) that are for a term of 3 years or more (including rights of renewal, whether of the grantor or grantee).

- (5) For the purposes of subclause (4)(b)(ii),—
- (a) **related profit investor** means—
    - (i) the person who makes the relevant *profit* investment; or
    - (ii) any associate of that person; or
    - (iii) a body corporate related to that person or to any associate of that person (as determined in accordance with section 12(2) of the Financial Markets Conduct Act 2013); and
  - (b) **held** includes owned or in the possession of by any means; and
  - (c) a related *profit* investor (**B**) is treated as holding a regulated *profit à prendre* if the regulated *profit à prendre* is under the ownership or control (direct or indirect) of a person in whom B has (either alone or together with B's associates) a 25% or more ownership or control interest; and
  - (d) it does not matter if a regulated *profit à prendre* is first held (or treated as first held) by a related *profit* investor before the relevant *profit* investment is given effect to.
- (6) In this clause, **area**, in relation to a regulated *profit à prendre*, means the area of land covered by the regulated *profit à prendre* (including any right, whether of the grantor or grantee, to have the original area increased).

*Other exemptions*

**9 Other exemptions**

*See* the regulations for other exemptions.

## Schedule 4

### Standing consents

s 23A

Schedule 4: inserted, on 22 October 2018, by section 28 of the Overseas Investment Amendment Act 2018 (2018 No 25).

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#### *Different types of standing consents*

- 1 Residential land: commitment to reside in New Zealand standing consents**
- Application*
- (1) A person who applies for consent under the commitment to reside in New Zealand test may apply for a standing consent.
- Criteria for grant of standing consent*
- (2) The relevant Ministers may, despite section 14(1), grant a standing consent if the relevant Ministers are satisfied—
- (a) that the investor test is met, if the transaction for which consent is sought may include residential land that is also sensitive for some other reason under Part 1 of Schedule 1; and
  - (b) that the commitment to reside in New Zealand test is met.
- Conditions*
- (3) The standing consent must be granted subject to the following conditions:
- (a) conditions that ensure that the commitment to reside in New Zealand test continues to be met:
  - (b) the conditions that must be imposed under clause 6 of Schedule 2 on consents granted on the basis of the commitment to reside in New Zealand test:



- (c) a condition that the regulator must be notified of the transaction to which the consent will apply, at the time, and in the manner, specified in the consent.
- (4) The standing consent may be granted subject to additional conditions.  
*Use-by date*
- (5) The standing consent has a use-by date that is the earliest of the following:
  - (a) the date on which the consent holder makes an overseas investment in sensitive land in respect of 1 residential dwelling or dwelling in a long-term accommodation facility:
  - (b) the date on which a trigger event (as defined in clause 7 of Schedule 2) occurs:
  - (c) any date that may be specified in the consent as its use-by date.

## **2 Residential land: other types of standing consents**

### *Application*

- (1) A person may apply for a standing consent in respect of residential (but not otherwise sensitive) land if the person applies under the following tests:
  - (a) the increased housing test; or
  - (b) the non-residential use test; or
  - (c) the incidental residential use test.

### *Criteria for grant of standing consent*

- (2) The relevant Ministers may, despite section 14(1), grant a standing consent if the relevant Ministers are satisfied—
  - (a) that the investor test is met (unless that test does not apply); and
  - (b) that the conditions referred to in subclauses (3) and (4) will be, or are likely to be, met, after having regard to factors such as—
    - (i) the applicant's financial strength; and
    - (ii) the previous activity of the applicant (or associates or individuals with control of the relevant overseas person) regarding use of residential land; and
    - (iii) the previous record of the applicant (or associates or individuals with control of the relevant overseas person) in complying with consent conditions or applying for consent conditions to be varied.

### *Conditions*

- (3) The standing consent must be granted subject to the following conditions:
  - (a) conditions for the purpose of ensuring that the relevant test in subclause (1) is met for each overseas investment to which the consent will apply:

- (b) the conditions that must be imposed under Part 5 of Schedule 2 on consents that are granted on the basis of the relevant test:
  - (c) a condition that the regulator must be notified of the transaction, or each transaction, to which the consent will apply at the time, and in the manner, specified in the consent.
- (4) The standing consent may be granted subject to additional conditions, which may include—
- (a) conditions about the residential land (for example, limits by total land area, location of land, and geographic type of land); and
  - (b) conditions about outcomes (for example, time frames for completing developments); and
  - (c) limits on the number of overseas investments for which the standing consent can be relied on.

*Use-by date*

- (5) The standing consent may specify a use-by date.

### **3 Forestry activities**

*Application*

- (1) A person may apply for a standing consent for transactions in respect of overseas investments in sensitive land for which the benefit to New Zealand test will be met in accordance with section 16A(4).

*Criteria for grant of standing consent*

- (2) The relevant Ministers may, despite section 14(1), grant a standing consent if the relevant Ministers are satisfied—
- (a) that the investor test is met; and
  - (b) that the conditions referred to in subclauses (3) and (4) will be, or are likely to be, met; and
  - (c) without limiting paragraph (b), that the applicant has, and will continue to have, adequate processes in place for meeting, at all relevant times, the requirements set out in regulations made for the purposes of section 16A(4)(d); and
  - (d) without limiting paragraph (b), that the applicant has a strong record of 1 or both of the following or of the following taken together:
    - (i) compliance with this Act and with conditions and other requirements imposed under it (including providing the regulator with complete and accurate information):
    - (ii) compliance with corresponding laws, and with conditions and other requirements imposed under corresponding laws, in territories other than New Zealand (including providing regulators with complete and accurate information).

*Conditions*

- (3) The standing consent must be granted subject to the following conditions:
- (a) conditions for the purpose of ensuring that the benefit to New Zealand test is met in accordance with section 16A(4) for each overseas investment to which the consent will apply (subject to subclauses (5) and (6));
  - (b) for an overseas investment where the relevant land is or includes farm land, a condition that effect must not be given to the overseas investment in reliance on the consent unless the criterion in section 16(1)(f) has been met;
  - (c) a condition—
    - (i) that at the time, and in the manner, specified in the consent, the regulator must be notified—
      - (A) of each transaction to which the consent will apply; and
      - (B) in relation to each such transaction, of how the requirements set out in regulations made for the purposes of section 16A(4)(d) will be met for each overseas investment resulting from the transaction; and
    - (ii) that the notification of a transaction must include any other information required by the regulator in relation to the transaction.
- (4) The standing consent may be granted subject to additional conditions, which may include—
- (a) conditions about the land in relation to which the consent may apply (for example, limits by total land area, location of land, and geographic type of land); and
  - (b) limits on the number of overseas investments for which the standing consent can be relied on.
- (5) For an overseas investment that involves a forestry right, the conditions of the standing consent may provide that, to the extent set out in the conditions, the requirement in section 16A(4)(e) does not have to be met in relation to a crop of trees that is harvested under the forestry right if the forestry right expires—
- (a) upon the completion of the harvesting; or
  - (b) after a short period (as determined in accordance with the conditions) following the completion of the harvesting.
- (6) For the purposes of subclause (5), an overseas investment **involves** a forestry right if the overseas investment is the acquisition of—
- (a) the forestry right; or
  - (b) rights or interests in securities of a person who owns or controls (directly or indirectly) the forestry right.

*Variation of conditions following notification of transaction*

- (7) After the regulator is notified of a transaction as referred to in subclause (3)(c), the relevant Ministers may, in relation to an overseas investment that results (or will result) from the transaction, vary the conditions of the standing consent to reflect any information provided as referred to in subclause (3)(c)(i)(B).

*Variation of conditions on ground that consent holder does not have sufficient ownership or control of relevant land*

- (8) The holder of the standing consent may, before an overseas investment is given effect to in reliance on the consent, apply to the relevant Ministers for a variation of the conditions of the standing consent in relation to the overseas investment.
- (9) The application may be made only on the ground that the holder of the standing consent (together with the holder's associates) will not have sufficient ownership or control (direct or indirect) of rights in respect of the relevant land to ensure—
- (a) that a requirement set out in regulations made for the purposes of section 16A(4)(d) will be met; or
  - (b) that the requirement set out in section 16A(4)(e) will be met.

- (10) If satisfied of that ground, the relevant Ministers may, in relation to the overseas investment, vary the conditions of the standing consent in a way that is consistent with their power under section 16A(7) or (8).

*Variation of conditions to reflect new regulations, etc*

- (11) Subclause (12) applies if, after the standing consent is granted, there come into force any new regulations, or any amendment or revocation of any regulations, that make any provision referred to in section 16A(4).
- (12) The relevant Ministers may vary the conditions of the standing consent to reflect the new regulations or the amendment or revocation.
- (13) *See also* clause 6, which applies in relation to a variation under subclause (12).

*Meaning of vary*

- (14) In subclauses (7) to (13), **vary**, in relation to the conditions of the standing consent, includes to add or revoke 1 or more conditions.

*Use-by date*

- (15) The standing consent may specify a use-by date.

*Provisions applying to all standing consents***4 Revocation or variation of standing consents**

The relevant Ministers may revoke or vary a standing consent (including by varying, adding to, or revoking the conditions of a standing consent) at any time if the relevant Ministers are not satisfied that—

- (a) the criteria for the grant of the standing consent were met or are still met;  
or
- (b) the conditions of the standing consent have been complied with.

**5 Process before revocation or variation of standing consents**

- (1) The relevant Ministers must provide the consent holder with an opportunity to comment before revoking or varying a standing consent under clause 4.
- (2) However, subclause (1) does not apply if the revocation or variation is at the consent holder's request or is done under subpart 2 of Part 2 of this Act.

**6 Effect of revocation or variation of standing consents**

- (1) The revocation or variation of a standing consent under clause 3(12) or 4 does not apply to any transaction entered into in reliance on the consent before the revocation or variation.
- (2) Clause 1(4) and (5) of Schedule 1AA applies with any necessary modifications when deciding when a transaction is entered into.

**7 Schedule does not limit other provisions**

This schedule does not limit other provisions of this Act (for example, subpart 2 of Part 2).

## Reprints notes

### 1 *General*

This is a reprint of the Overseas Investment Act 2005 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Overseas Investment Amendment Act 2018 (2018 No 25)

Contract and Commercial Law Act 2017 (2017 No 5): section 347

Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26): section 107

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Search and Surveillance Act 2012 (2012 No 24): section 286

Criminal Procedure Act 2011 (2011 No 81): section 413

Immigration Act 2009 (2009 No 51): section 406(1)

Policing Act 2008 (2008 No 72): section 116(a)(ii)

Overseas Investment Act Commencement Order 2005 (SR 2005/219)