

Overseas Investment Amendment Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Overseas Investment Amendment Bill, and recommends by majority that it be passed with the amendments shown.

Introduction

The Overseas Investment Amendment Bill seeks to amend the Overseas Investment Act 2005 to ensure that investments in New Zealand made by overseas persons will benefit New Zealand. It would introduce greater limitations on the types of property that can be purchased by overseas persons, by bringing residential land into the category of “sensitive land” in the Act.

The bill seeks to ensure that overseas people who are not ordinarily resident in New Zealand would generally not be able to purchase existing houses or other land classed as “residential” under the bill.

The bill provides that overseas investors could only obtain consent to buy residential land (that is not otherwise sensitive) in certain situations. They are, broadly:

- if they would be developing the land and adding to New Zealand’s housing supply
- if they would use the land for non-residential purposes or a residential purpose relating to a core business purpose (for example, accommodating pilots at a remote airport)
- if they held an appropriate visa and could show they had committed to reside in New Zealand.

Overseas persons can currently acquire residential land under the Act in some circumstances, by satisfying the Act’s existing “Benefit to New Zealand” test.

The bill would require certain conditions for people who received consent to acquire land under one of the consent pathways above. For example, in most cases, if an overseas person purchased residential land to build houses on, they would be required to sell the land when the houses were built.

The bill would also enhance the information-gathering and enforcement powers of the Overseas Investment Office (OIO), which is responsible for administering and enforcing the Act.

While we were considering this bill, the Associate Minister of Finance Hon David Parker introduced Supplementary Order Paper (SOP) No. 19 for us to consider and seek submissions on. The SOP relates to overseas investors' ability to acquire certain profits à prendre, including forestry rights. We discuss our major recommended amendments to the SOP at the end of this commentary.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Expanding the pool of ordinary residents

The bill would allow a person who is “ordinarily resident in New Zealand” to purchase residential land in New Zealand without OIO consent. Under the bill as introduced, one of the requirements to be considered ordinarily resident in New Zealand is holding a permanent resident visa (clause 7(4)). This would exclude resident visa holders, who have the same rights as permanent residents to live and work in New Zealand. Resident visa holders must also demonstrate a commitment to New Zealand to be granted a resident visa. We consider that it is appropriate that all residence class visa holders be treated the same under the bill. Therefore, we recommend amending clause 7(4), replacing section 6(2) of the Act, to provide that all residence class holders who meet the other requirements of that section be considered ordinarily resident in New Zealand.

Supporting large developments

Clause 11 of the bill as introduced provides that overseas persons could purchase residential land if it was used to increase the supply of housing. Properties built on land purchased under this pathway must not be lived in by the owner, and generally must be on-sold once they are completed.

We recognise that large developments often rely on the pre-sales of units to raise funds and satisfy financiers that a project is viable to ensure developers can access sufficient funding to build. We consider that requiring overseas persons to on-sell could reduce the attractiveness of some large projects and hurt their viability. This is contrary to the intention of the bill. Therefore, we recommend including clause 4 in new Schedule 3, to provide that developers of large multi-storey apartment buildings of 20 or more units could apply for an exemption to sell a percentage of the units to overseas buyers “off the plans”, without the need for consent or the requirement to

on-sell once the unit is complete. However, buyers would not be allowed to occupy the units themselves.

To ensure that exemptions granted under these circumstances remain responsive to the conditions in New Zealand's housing market, we recommend amending clause 33(3), inserting new section 61(1)(if). This would allow the percentage of units per development that could be sold in this manner to overseas buyers to be set and changed by regulation to any level between zero and 100 percent. We understand that this would initially be set at 60 percent.

We recommend including clause 20 in new Schedule 2. This would provide that overseas persons building or investing in large residential developments of at least 20 dwellings are not required to on-sell once construction is complete, if the dwellings are maintained as rental properties or a shared equity development, or sold under a rent-to-buy model.

Regulations for land required to be offered to the Crown

We unanimously expressed concern about the drafting of new section 61(1)(c)(iii), inserted by clause 33(2A), which relates to the terms and conditions upon which a person may be required to offer special land to the Crown. Paragraph (c)(iii), unlike the corresponding provision in the current legislation, does not require the terms and conditions to be equivalent to those offered to the overseas person. We consider that the new wording may now be too wide, and we invite the Government to consider amending this provision at the Committee of the whole House stage.

Recommendations to support business

Exemption of overseas investors purchasing hotel units

New Zealand has a shortage of hotel accommodation. The financing of hotel developments can rely on investors purchasing individual units and leasing them back to the hotel. Such arrangements can also involve an agreement where the owner may use the unit for their own interests for a certain period of time each year. Under the bill as introduced, overseas investors would need OIO approval to purchase hotel units if the land was categorised as "residential" or "lifestyle". We consider that this could discourage further development of large hotels.

We recommend including clause 5 in new Schedule 3 to allow an overseas investor to purchase and continue to own any number of units in hotels with 20 or more units, provided they enter into a lease-back arrangement with the hotel's developer or operator.

We recommend providing that the room must be used for the general purpose of operating the hotel, and that the overseas investor may not reside in or reserve the unit for more than 30 days in a year.

Exemption for network companies providing essential services

We recommend inserting clause 2 to Schedule 5, inserting new regulation 36AE into the Regulations. This would allow residential land to be acquired without consent for business purposes by electricity and gas distributors, telecommunication companies, and transmission network operators. Many of these companies are overseas persons, but they provide essential services to New Zealand; the residential land they purchase is used for network infrastructure, such as cell towers and substations. We consider that the risks of companies being able to use this provision to circumvent the Act are low. The three utility services are clearly defined in law, and there is little incentive for these companies to circumvent the Act. Our recommended approach would only allow for residential land to be acquired without consent for the purposes of the relevant utility services.

Leases and periodic tenancies

The Act currently screens leases for a term of three years or more. Submitters noted that many overseas persons (for example, international students) reside temporarily in New Zealand in rented accommodation, and a significant proportion may do so for three years or more. We propose allowing overseas persons to take leases of up to five years over residential land, compared to the existing three-year limit for sensitive land, without requiring consent (see clause 3 of new Schedule 3).

Submitters also noted ambiguity over whether periodic tenancies, which do not provide the tenant with certainty over the length of the tenancy, were covered in circumstances where they rolled over past three (or five) years in time. We propose clarifying that periodic leases (including residential tenancies) are not covered by the Overseas Investment Act (see clause 2 of new Schedule 3).

Streamlined approval path

The Act's existing "Benefit to New Zealand" test acts as a pathway for consent. We recommend some modifications for overseas persons seeking to acquire residential land. The various permutations of the benefit to New Zealand test are defined in section 16E.

A number of submitters highlighted instances where the counterfactual analysis required by the OIO for investors to satisfy the benefit to New Zealand test would impose significant compliance costs on the investor. We consider that these are disproportionate to the risks associated with the relevant kinds of investment. We therefore recommend including clauses 13 and 14 in Schedule 2 to introduce a streamlined approval path for businesses to purchase residential land for non-residential purposes, or for residential purposes to support a business. Such purchases would not be subject to a counterfactual analysis, but would be subject to conditions imposed by the relevant Minister to ensure that the land was being used for the purposes for which it was purchased.

Reducing compliance burden on conveyancers

We are concerned by many of the new requirements that would be imposed on the conveyancers of purchases under the bill as introduced. Clause 31 of the bill as introduced inserts new section 51A, providing that conveyancers must certify, to the best of their knowledge, that a purchaser will not contravene or commit an offence under the Act. It also provides that anyone who failed to comply with that section would be committing an offence and liable on conviction to a fine of up to \$20,000.

We consider that the burden placed on conveyancers in the bill as introduced is too high, and that “the best of the provider’s knowledge” is too subjective. Instead, we recommend replacing clause 31 and inserting new sections 51A and 51B to place the primary responsibility for compliance on the purchaser. Under new section 51A, someone acquiring an interest in residential land would be required to provide to a conveyancer a statement related to whether the transaction requires consent under the Act. New section 51C would require the conveyancer to obtain and keep the statement. If they had not received such a statement, or had reasonable grounds to doubt the accuracy of a statement, the conveyancer would not be allowed to effect the transfer of the property.

Clarifying the regulation-making powers

The Overseas Investment Act contains powers to make exemptions from the need for consent via regulations. Exemptions are important for New Zealand’s overseas investment regime to operate efficiently. The Act captures a broad range of transactions in order to prevent opportunities for avoidance and close any possible loopholes.

This creates a stronger need to allow exemptions to be granted to manage the higher risk of unintended consequences and of imposing requirements in cases where compliance would be impractical, inefficient, or unduly burdensome.

The current exemption-making powers in the Act do not include much guidance as to the purposes for which exemptions can be made. We recommend amending clause 33 and adding clause 33A, which would amend section 61 and add new sections 61B to 61F to the Act. These would provide more detailed exemption-making powers, along with a requirement to provide reasons for exemptions.

The power to grant individual exemptions is currently contained in the Overseas Investment Regulations 2005 (regulation 37). We consider that the power to grant individual exemptions should come from the bill rather than from regulations, so we have proposed a new power in the bill to this effect.

We have recommended several exemptions from the need for consent in Schedule 5 to be included in the Regulations.

Recommended amendments to Supplementary Order Paper No. 19

Amendments to new approval pathways

The SOP on forestry rights and other profits à prendre contains three pathways that would allow overseas persons to invest in forestry on sensitive land in New Zealand. The existing test requires potential buyers to demonstrate that their purchase will have a substantial and identifiable benefit to New Zealand. This assessment includes a counterfactual analysis. This is most often a hypothetical New Zealand purchaser, but in some cases it can be continued ownership by the existing land owner.

The second pathway is a modified benefits test, which would continue to require the potential buyer to demonstrate that their purchase will have a substantial and identifiable benefit to New Zealand, but would clarify and simplify the process by providing that the counterfactual analysis assess the benefits of the purchase against those of the current owner continuing to own the land.

The third pathway is a special benefits test, which has requirements set in regulations and does not require a counterfactual analysis. Satisfying the benefits test would be dependent upon the new investor meeting the requirements set in regulations.

In the SOP as introduced, the modified benefits test could not be used when purchasing forestry rights—essentially, the control of the forestry crops and land, but not ownership of the freehold estate in the land. We recommend allowing the modified benefits test to be used by overseas persons when acquiring forestry rights. This would create an alternative pathway for investors when the new special benefits test could not be used. This could be applied, for example, when the requirements set in the regulations could not be met.

The SOP as introduced would not allow the special benefits test to be used to acquire a freehold or leasehold interest in land to convert to forest. We recommend providing that the special benefits test can be applied for this purpose. This would ensure consistency across the regime with no limitations to the choice of pathway that investors can apply through.

Standing consents to be used only alongside special benefits test

The SOP as introduced would allow standing consents to be granted for purchases made under the modified benefits test or the special benefits test. We recommend providing that standing consents may only be used alongside the special benefits test. Standing consents are designed to be available where the investor has confidence that they can apply the tests as the OIO or the Minister would. We consider that the risk is too high that investors could apply the modified benefits test in a way that the Minister or OIO disagrees with.

New Zealand National Party and ACT New Zealand minority view

Overview

Opposition members of the committee oppose the bill on the basis that it will negatively affect the development of new housing in New Zealand at a time when we need to grow our housing stock and will hamper the ability of New Zealand businesses to access foreign capital. Growing our supply of new housing is the most important part of meeting the housing needs of New Zealanders. In addition, the bill will impose significant cost and delay on parts of the housing sector that do not impact the ability of New Zealanders to enter into home ownership without clear benefit of the extension of the restrictions to these areas.

The bill is a case study in bad law making. The Government has not presented sound evidence that house prices are inflated by foreign investment to any great degree, that legislating for the legal (rather than beneficial) interest would have any effect if it was, or that the complications introduced to foreign investment in residential property development will not actually reduce the supply of housing.

Perhaps most worrying is the arbitrary way exemptions and amendments have been introduced by the Government during the Select Committee process. We heard from 240 submitters, most of them substantial businesses making robust submissions about how the law as introduced would affect their day-to-day operations.

To give an example: when it was realised that the law would inadvertently restrict many telecommunications, gas, and electricity lines companies (who often have more than 25 percent foreign holdings) from installing infrastructure in residential developments, an exemption was made. However, major developers of retirement villages have not been afforded the same reasonableness.

Apartment and residential building developments

In particular, Opposition members are concerned that last minute changes to enable a proportion of units in large multi-unit developments (both in respect to apartment and residential property developments) to be sold off the plan to overseas owners have not been well thought out in respect of their implementation and the rules that seek to prevent those foreign buyers living in the units are likely to be unworkable or unenforceable. Officials have confirmed that these changes will still allow such units to be overseas owned and overseas occupied. This is an example of the Government realising late that the bill would significantly constrain new housing developments and trying to alleviate that impact without undertaking the necessary proper policy development work.

Opposition members are also concerned with the new provisions that allow for the granting of standing consents to buy any number of residential or forestry properties without further oversight or public awareness. These consents give Ministers the ability to effectively determine which foreign investors are welcome and which are not. There is inadequate transparency and criteria for the granting and use of such con-

sents and leaves Ministers open to complaints that those approvals are not being consistently dealt with.

Forestry and profit à prendre arrangements

The bill also makes significant changes to facilitate the investment by foreigners in forests (both new plantings and existing forests) either by way of acquiring land the foreigner intends to plant or already has planted, or by way of profits à prendre arrangements. The net effect of the accommodations is that the bill makes it as easy as possible for foreign investors to acquire forestry interests. For example, while non-forestry profits à prendre will require OIO approval when they exceed five hectares, forestry land or land intended to be turned into forestry land will not require any consent until the total holding exceeds 1,000 hectares. Given New Zealand forests are currently owned 72 percent by foreigners, making the OIO process inconsistently more permissive lacks justification.

In respect of non-forestry profits à prendre, such as commonly used in the viticulture and horticulture industries, no such accommodations have been made. We believe there is a logic for similar accommodation given foreigners often use profit à prendre arrangements as way of securing grape and other fruit supply. There is a real risk that the changes for non-forestry profits à prendre could, perversely, see more land move into foreign ownership as the test and requirements for a profit à prendre (which do not involve ownership of the land) and for buying the land are now to be the same, any investor will likely opt to acquire the land outright if they do wish to proceed.

Officials have confirmed that no analysis has been undertaken on either the extent to which these arrangements are used or the economic impact of the outcomes of the new restrictions, and it is clear that many participants in the viticulture and other affected sectors are not aware of the likely impact of the proposals.

Inclusion of private exemption in primary legislation

Finally, Opposition members do not believe that the inclusion in the primary legislation of a private exemption for the Te Arai development in Northland by way of an amendment to a public bill is appropriate. The Office of the Clerk gave advice to the committee that this amendment is in breach of Speaker's Ruling 118/1 and should not proceed in this manner. Opposition members agree with the Office of the Clerk.

Appendix

Committee process

The Overseas Investment Amendment Bill was referred to the committee on 19 December 2017. The closing date for submissions was 10 April 2018. We received and considered 213 submissions on the bill from interested groups and individuals, and 27 submissions on Supplementary Order Paper No. 19. We heard oral evidence from 63 submitters at hearings in Auckland and Wellington. We received advice from The Treasury.

Committee membership

Michael Wood (Chairperson)

Hon Amy Adams

Kiritapu Allan

Andrew Bayly

Rt Hon David Carter

Tamati Coffey

Ian McKelvie

Willow-Jean Prime

Dr Deborah Russell

David Seymour

Fletcher Tabuteau

Dr Duncan Webb

Lawrence Yule

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon David Parker

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Overseas Investment Amendment Act **2017**.

2 Commencement

~~This Act comes into force on the 10th day after the date on which it receives the Royal assent.~~ 5

(1) This Act comes into force on the date appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates and appointing different dates for different purposes. 10

(2) To the extent that it is not earlier brought into force, this Act comes into force immediately after the expiry of the 2-month period that starts on the date of Royal assent.

(3) In this section, **provision** includes any item, or any part of an item, in any of the schedules. 15

3 Principal Act

This Act amends the Overseas Investment Act 2005 (the **principal Act**).

Part 1
Sensitive land

Subpart 1—Residential land 20

4 Section 6 amended (Interpretation)

(1) In section 6(1), insert in their appropriate alphabetical order:

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

residential land—

25

- (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 (where terms have the same meanings as in section 121A of the Land Transfer Act 1952), regardless of whether the building is on land within a property category referred to in **paragraph (a)**~~ 5
- (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 10
- (2) ~~In section 6(1), replace the definition of **interest** with:~~ 15
- ~~**interest**—~~
- (a) ~~includes a legal or an equitable interest:~~
- (b) ~~includes, in relation to land, a right or licence to occupy a specified residential flat by virtue of holding securities of a person who is, or who owns or controls (directly or indirectly), a flat owning company (where terms have the same meanings as in section 121A of the Land Transfer Act 1952)~~ 20

5 Schedule 1 amended

- (1) In Schedule 1, table 1, above the item relating to non-urban land, insert:
- | | |
|------------------|---|
| residential land | — |
|------------------|---|
- (2) In Schedule 1, table 2, after the item relating to 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, insert: 25
- | | |
|---|---------------------|
| <u>land over 0.4 hectares that is set apart as Māori reservation and that is wahi tapu under section 338 of Te Ture Whenua Māori Act 1993</u> | <u>0.4 hectares</u> |
|---|---------------------|

Subpart 2—Forestry rights and other *profits à prendre*

- 5A Section 6 amended (Interpretation)** 30
- (1) In section 6(1), replace the definition of **exempted interest** with:
- exempted interest** means—
- (a) an easement; or
- (b) a *profit à prendre* that is not a regulated *profit à prendre*
- (2) In section 6(1), insert in their appropriate alphabetical order: 35

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

regulated *profit à prendre*—

- (a) means—
- (i) a forestry right; or
- (ii) any other *profit à prendre*, if the 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*

Part 2**Amendments relating to consent and conditions regime for overseas investments in sensitive New Zealand assets****6 Section 4 amended (Overview)**

- (1) In section 4(1)(b)(iv), replace “monitoring” with “information-gathering”.
- (2) In section 4(1)(b)(vii), after “enactments”, insert “(and *see also* **Schedule 1AA** for further transitional, savings, and related provisions)”.

7 Section 6 amended (Interpretation)

- (1) In section 6(1), insert in their appropriate alphabetical order:

benefit to New Zealand test means the test set out in **section 16E**

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

excluded accommodation facility means—

- (a) a hospital; or

- (b) ~~a hotel, motel, inn, hostel, or boarding house~~ 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 5
- exemption certificate** means a certificate granted under **clause 4 of Schedule 3** (dwellings in large apartment developments that are purchased off-the-plans)
- incidental residential use test** means the test set out in **clause 14 of Schedule 2** 10
- increased housing test** means the test set out in **clause 11 of Schedule 2**
- investor test**, in relation to an overseas investment in sensitive land, means the test set out in **section 16(2)**
- long-term accommodation facility**— 15
- (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; ~~and but~~ 20
- (b) ~~means any other facility that is operated, or is intended to be operated, for long term accommodation for residential purposes with some degree or provision of assistance or care for persons who dwell there; but~~
- (c) does not include any facility to the extent that it is, or is part of, an excluded accommodation facility 25
- mandatory conditions**,—
- (a) ~~in relation to a consent granted on the basis that the test in **section 16A(3)** (commitment to New Zealand) is met, means all of the conditions that are set, in accordance with **section 34(3)(ba)(i)**, for the purpose of imposing the occupation and on selling requirements in **section 16B**;~~ 30
- (b) ~~in relation to a consent granted on the basis that the test in **section 16C** (increased housing on residential land) is met, means all of the conditions that are set, in accordance with **section 34(3)(ba)(ii)**, for the purpose of requiring the outcomes in **section 16D**;~~ 35
- (c) ~~in relation to a consent granted on the basis that the test in **section 16E** (benefit to New Zealand) is met, means all of the conditions set, in accordance with **section 34(3)(ba)(iii)**, for the purpose of **section 16F**~~

- 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**
- ~~**relevant interest**, in relation to residential land, means—~~
- (a) ~~any interest in the residential land;~~ 5
- (b) ~~any right or interest in securities of a person who owns or controls (directly or indirectly) any interest in the residential land~~
- ~~**residential (but not otherwise sensitive) land**, in relation to an overseas investment in sensitive land, means that the relevant land is land that—~~
- (a) ~~is, or includes, residential land; but~~ 10
- (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 15
- (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 20
- (ii) within a class set out in regulations as a class of dwellings not to be treated as residential dwellings in this Act
- 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) 25
- 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 30
- (2) In section 6(1), insert in their appropriate alphabetical order:
- ~~**conveyancer, conveyancing, and conveyancing services**~~ have has the same meanings as in section 6 of the Lawyers and Conveyancers Act 2006
- involved** has the meaning set out in **subsection (7)**
- ~~**provider** means a lawyer or a conveyancer who provides conveyancing services~~ 35
- (3) In section 6(1), definition of **farm land**, after “means land”, insert “(other than residential (but not otherwise sensitive) land)”.

- (4) Replace section 6(2) with:
- (2) In this Act, a person is **ordinarily resident in New Zealand**,—
- (a) for the ~~purposes~~ purpose of an overseas investment in sensitive land ~~that~~ where the relevant land is or includes residential land, if the person—
- (i) holds a ~~permanent resident~~ residence class visa granted under the Immigration Act 2009; and 5
- (ii) has been residing in New Zealand for at least the immediately preceding 12 months; and
- (iia) is tax resident in New Zealand; and
- (iii) 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): 10
- (b) for any other purpose, if the person—
- (i) holds a residence class visa granted under the Immigration Act 2009; and 15
- (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)). 20
- (4A) After section 6(2), insert:
- (2A) In **subsection (2)(a)(iia)**, **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). 25
- (4B) In section 6(3), replace “subsection (2)(b)(ii)” with “**subsection (2)(b)(ii)(B)**”.
- (5) After section 6(6), insert:
- (7) In this Act, a person is **involved** in a contravention, the commission of an offence, or a failure to comply if the person— 30
- (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 35
- (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).
- 8 Section 7 amended (Who are overseas persons)** 5
In section 7(1), replace “resident” with “ordinarily resident in New Zealand”.
- 9 New sections 8AA and 8A and cross-heading inserted**
After section 8, insert:
- 8AA 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. 10
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.
- Transitional, savings, and related provisions*
- 8A Transitional, savings, and related provisions** 15
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 9A New section 11A inserted (Exemptions from requirement for consent)**
After section 11, insert:
- 11A Exemptions from requirement for consent** 20
- (1) The exemptions from the requirement for consent in **Schedule 3** have effect.
- (2) See also the exemptions in the regulations.
- ~~10 Section 16 amended (Criteria for consent for overseas investments in sensitive land)~~** 25
Replace section 16(1)(e) with:
- (e) ~~one of the following tests is met:~~
- (i) ~~the commitment to New Zealand test in **section 16A**:~~
- (ii) ~~the benefit to New Zealand test in **section 16E**:~~
- (iii) ~~the increased housing on residential land test in **section 16G** (but this test is only available if the relevant land is residential (but not otherwise sensitive) land):~~ 30
- 10 Section 16 amended (Criteria for consent for overseas investments in sensitive land)**
- (1) Replace section 16(1)(a) to (e) with:

- (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: 5
- (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,— 10
- (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: 15
- (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: 20
- (2) Replace section 16(2) with:
- (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 25
- (b) the relevant overseas person has demonstrated financial commitment to the overseas investment; and 30
- (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). 35

- (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 5
- (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 10
- (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. 15
- (4) See section 19 in relation to **subsection (2)(c) and (d).**

11 New sections 16AE to 16FG inserted

After section 16, insert:

- 16A Commitment to New Zealand test** 20
- (1) ~~In relation to an overseas investment in sensitive land,~~
- (a) ~~if the relevant land is or includes residential land, **subsection (3)** applies;~~
- (b) ~~otherwise, **subsection (2)** applies.~~
- (2) ~~If this subsection applies, the commitment to New Zealand test is met if the relevant overseas person is (or, if that person is not an individual, each individual with control of the relevant overseas person is) —~~ 25
- (a) ~~a New Zealand citizen; or~~
- (b) ~~ordinarily resident in New Zealand; or~~
- (c) ~~intending to reside in New Zealand indefinitely.~~ 30
- (3) ~~If this subsection applies, the commitment to New Zealand test is met if —~~
- (a) ~~the relevant overseas person is (or, if that person is not an individual, each relevant individual with control is) —~~
- (i) ~~a New Zealand citizen; or~~
- (ii) ~~ordinarily resident in New Zealand; or~~ 35
- (iii) ~~the holder of a residence class visa (within the meaning of the Immigration Act 2009) specified in regulations, or a person with a~~

	nationality status specified in regulations, who meets the requirements for showing commitment to reside in New Zealand that are set out in regulations for that visa class or type or specified nationality status (a qualifying individual); and	
	(b) if meeting the test relies on paragraph (a)(iii), the relevant Ministers are satisfied that, if consent were granted, the mandatory conditions that the relevant Ministers would attach to the consent (see section 16B) (which relate to occupation and on-selling requirements) would be, or would likely be, met.	5
(4)	In this section, every individual with control of the relevant overseas person (as determined in accordance with section 15(2)) is a relevant individual with control unless the relevant Ministers are satisfied the individual has, and (if consent were granted) would continue to have,—	10
	(a) no beneficial interest in or beneficial entitlement to the relevant interest in the residential land; and	15
	(b) a satisfactory reason to not occupy the residential dwelling as their main home or residence in New Zealand.	
16B	Occupation and on-selling requirements and mandatory conditions: commitment to New Zealand test	
(1)	This section applies if an application for consent is being considered under the commitment to New Zealand test in section 16A(3) and there are 1 or more qualifying individuals.	20
(2)	If granted, the consent must be made subject to conditions that attach to the following occupation and on-selling requirements:	
	<i>Occupation requirement</i>	25
	(a) the purpose of the overseas investment is to acquire 1 residential dwelling or dwelling in a long-term accommodation facility—	
	(i) that is constructed on, or that is being or will be constructed on, the residential land; and	
	(ii) for occupation, by the relevant overseas person (or, if that person is not an individual, all the relevant individuals with control), as their main home or residence in New Zealand; and	30
	<i>On-selling requirement</i>	
	(b) if, in relation to a qualifying individual, a trigger event occurs, the consent holder must dispose of the relevant interest within 12 months of the date that the trigger event occurs (unless, by the required date of disposal, the trigger event is resolved).	35
(3)	In this section,—	
	relevant individuals with control and qualifying individual have the meanings set out in section 16A	40

~~trigger event, in relation to a qualifying individual, means an event or events set out in regulations for the class or type of visa held or specified nationality status.~~

~~(4) In this section, a trigger event is resolved if the qualifying individual becomes —~~ 5

~~(a) a holder of a residence class visa (within the meaning of the Immigration Act 2009) specified in regulations, or a person with a nationality status specified in regulations, who meets the requirements for showing commitment to reside in New Zealand that are set out in regulations for that visa class or type or specified nationality status; or~~ 10

~~(b) ordinarily resident in New Zealand; or~~

~~(c) a New Zealand citizen.~~

~~(5) Conditions imposed on a consent in accordance with **subsection (2)** cease to apply to the consent if the relevant overseas person becomes (or, if that person is not an individual, all the relevant individuals with control become) ordinarily resident in New Zealand or a New Zealand citizen.~~ 15

16C Increased housing on residential land test

~~The increased housing on residential land test is met if the relevant Ministers are satisfied that, if consent were granted, the mandatory conditions that the relevant Ministers would attach to the consent (which relate to increased housing and on-selling outcomes, see **section 16D**) would be, or would likely be, met.~~ 20

16D Outcomes and mandatory conditions: increased housing on residential land test

~~(1) This section applies if an application for consent is being considered under the increased housing on residential land test in **section 16C**.~~ 25

~~(2) If granted, the consent must be made subject to conditions that attach to either or both of the following required outcomes for the residential land:~~

~~(a) increased residential use and on-sale (see **subsection (4)**);~~

~~(b) construction or extension, and operation, of a long-term accommodation facility (see **subsection (5)**).~~ 30

~~(3) The outcomes that relate to increasing housing 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 **subsection (2)**, increased residential use and on-sale, in relation to residential land, means that —~~ 35

~~(a) 1 or more of the following is done to the land:~~

~~(i) the number of residential dwellings constructed on the land is increased (including an increase from 0);~~

- (ii) ~~a long term accommodation facility is constructed on the land, or the number of dwellings in a long term accommodation facility that is on the land is increased;~~
- (iii) ~~development works on the land to support the doing of things described in either or both of **subparagraphs (i) and (ii)**; and~~ 5
- (b) ~~within a specified period, the relevant overseas person retains no relevant interest in the residential land; and~~
- (e) ~~for so long as the relevant overseas person has a relevant interest in the residential land, neither the relevant overseas person, nor any person with a 25% or more ownership or control interest in the relevant overseas person, nor any of their associates occupy the land for residential purposes.~~ 10
- (5) ~~In **subsection (2), construction or extension, and operation, of a long term accommodation facility**, in relation to residential land, means that—~~
- (a) ~~a long term accommodation facility is constructed on the land, or the number of dwellings in a long term accommodation facility that is on the land is increased; and~~ 15
- (b) ~~within a specified period, the whole of the land is operated by the consent holder, or by a grantee under a permitted lease, as a long term accommodation facility; and~~ 20
- (e) ~~for so long as the relevant overseas person has a relevant interest in the residential land, neither the relevant overseas person, nor any person with a 25% or more ownership or control interest in the relevant overseas person, nor any of their associates occupy the land for residential purposes.~~ 25
- (6) ~~In this section,—~~
- ~~**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~~ 30
- (c) ~~does not include subdivision of land without other development works~~
- ~~**permitted lease** means a lease that—~~
- (a) ~~is for a term of 3 years or more (excluding rights of renewal, whether of the grantor or grantee); and~~ 35
- (b) ~~is to a grantee who is not an associate of the relevant overseas person.~~

16E 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, ~~if consent were granted, the mandatory~~ the conditions that the relevant Ministers ~~would attach to~~ will impose on the consent in accordance with **section 16F** will be, or are likely to be, met. ~~the consent (see **section 16F**) would be, or would likely 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— 5
- (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 10
- (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 15
- (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 20
- (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 25
- (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 30
- (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, including the times at or by which, or the periods throughout which, the requirements must be met. 35
- (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 the transaction from which the overseas investment results is entered into (including 40

(without limitation) requirements about maintaining any existing historic heritage, biodiversity, environmental, or public access commitments or existing commitments relating to 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.

- 16F ~~Mandatory conditions for~~ **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 ~~in~~ **section 16E** and the relevant land is, or includes, residential land.

- (1A) However, this section does not apply where **section 16E(3)** is being applied or the application is being considered in accordance with **section 16E(4)** (*see instead **section 16G***).

- (2) ~~If granted, the consent must be made subject to 1 or more of the following conditions in relation to the residential land:~~
- ~~(a) conditions that attach to the required outcome or outcomes for the residential land from the list in **section 16D(2)**;~~
- ~~(b) a condition that, within a specified period, the relevant overseas person retains no relevant interest in the residential land;~~
- ~~(c) a condition that, for so long as the relevant overseas person has a relevant interest in the residential land, the residential land will not be used for residential dwellings or long term accommodation facilities.~~
- (2) 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).
- (3) 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).
- 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 (non-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 16E(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.)

16G 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 16E(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 16E(2)(a) and (c)**:

(b) the requirement set out in **section 16E(2)(d)**, subject to **section 16E(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 16E(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 16E(4)(a) and (c)**:

(b) the requirements set out in regulations made for the purposes of **section 16E(4)(d)**, subject to **section 16E(8)**:

(c) the requirement set out in **section 16E(4)(e)**, subject to **section 16E(7)**.

(5) A condition imposed in relation to the requirement set out in **section 16E(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.

12 Section 17 amended (Factors for assessing benefit of overseas investments in sensitive land)

(1) In section 17(1), replace “If section 16(1)(e)(ii) applies” with “For the purposes of **section 16E(1)(a) and (b)** (including where **section 16E(3)** is being applied)”.

(2) In section 17(1)(b), replace “section 16(1)(e)(ii) and (iii)” with “**section 16E(1)(a) and (b)** (including where **section 16E(3)** is being applied)”.

13 Section 19 amended (Applying good character and Immigration Act 2009 criteria)

- (1) In section 19(1), replace “sections 16(1)(c)” with “**sections 16(2)(c)**”.
- (2) In section 19(2), replace “sections 16(1)(d)” with “**sections 16(2)(d)**”.

13 Section 23 amended (Requirements for application for consent)

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After section 23(1)(e), insert:

- (ea) ~~if the application is for consent for an overseas investment in sensitive land,—~~
- (i) ~~in all cases state the test or tests that the applicant proposes should be applied from the available tests in **section 16(1)(c)**; and~~
- (ii) ~~if the application is for consent under the increased housing on residential land test in **section 16C**, state the outcome or outcomes under **section 16D(2)** that the applicant proposes will result from the transaction; and~~
- (iii) ~~if the application is for consent under the benefit to New Zealand test in **section 16E** and involves sensitive land that is or includes residential land, state the proposed use of the land (including any outcome or outcomes from the list in **section 16D(2)** that the applicant proposes will result from the transaction); and~~

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14 New section 23A inserted (Applications for standing consent in advance of transaction)

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After section 23, insert:

23A Applications for standing consent in advance of transaction

- (1) ~~A person may apply for consent to enter into an unspecified future transaction or transactions in respect of residential (but not otherwise sensitive) land that falls within a class of transactions described in the application (a **standing consent**) in either of the following circumstances:~~
- (a) ~~if the person applies for consent under the commitment to New Zealand test in **section 16A(3)** and the class of transactions for which consent is sought is overseas investments for the purpose described in **section 16B(2)(a)**; or~~
- (b) ~~if the person applies under the increased housing on residential land test in **section 16C**.~~
- (2) ~~The relevant Ministers may, despite section 14(1), grant a standing consent only if the relevant Ministers are satisfied that —~~
- (a) ~~the criteria in section 16(1)(a) to (d) are met; and~~
- (b) ~~the standing consent is subject to a condition that the regulator must be notified of the transaction, or each transaction, to which the consent will~~

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	apply, at the time, and in the manner, specified by the regulator in the consent; and	
	(e) the standing consent is subject to other conditions that ensure that the commitment to New Zealand test in section 16A(3), or the increased housing on residential land test in section 16C (as the case may be), is met for each transaction to which the consent will apply, and the relevant Ministers are satisfied those conditions would be, or would likely be, met.	5
(3)	A standing consent is only a consent for a transaction for the purposes of this Act if the transaction—	10
	(a) is notified to the regulator as required by the conditions of the consent; and	
	(b) meets the other conditions to which the consent is subject.	
(1)	A person may, in the circumstances set out in Schedule 4, apply for a consent <u>(a standing consent)</u> for 1 or more transactions in respect of 1 or more overseas investments in sensitive land—	15
	(a) <u>that have not been entered into at the time when the application is made and when the standing consent is granted; and</u>	
	(b) <u>that fall within a class of transactions described in the application.</u>	
(2)	A standing consent is a consent to give effect to an overseas investment under a transaction for the purposes of this Act, subject to Schedule 4.	20
15	Section 25 amended (Granting or refusal of consent)	
	Repeal section 25(1)(c).	
16	New sections 25A and 25B inserted	
	After section 25, insert:	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.	30
(2)	Conditions— 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, mandatory conditions for <u>that this Act requires be imposed on the consent (if any):</u>	
	(b) expand on, be similar to, or be the same as conditions that this Act requires be imposed on other consents;	35
	(c) <u>require the consent holder to dispose of property in certain circumstances (for example, if a condition of consent is breached).</u>	

(3)	Subsection (2) does not limit subsection (1):	
(4)	For the purpose of enforcing a condition, the relevant Minister or Ministers may enter into a contract or deed with an applicant <u>(including a mortgage or other security arrangement)</u> .	
25B	Automatic conditions: every overseas investment	5
	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	10
(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.	
16AA	<u>Section 27 amended (Consent may be varied by agreement)</u>	15
	<u>After section 27(3), insert:</u>	
(3A)	<u>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).</u>	20
16A	<u>New section 27A inserted (Consent holder may apply for new consent)</u>	
	<u>After section 27, insert:</u>	
27A	<u>Consent holder may apply for new consent</u>	
(1)	<u>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.</u>	25
(2)	<u>The holder of the consent may apply for a new consent for the transaction.</u>	
(3)	<u>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.</u>	30
(4)	<u>The relevant Minister or Ministers—</u>	
(a)	<u>must consider the application in accordance with section 14; and</u>	
(b)	<u>may grant the new consent if satisfied that all of the applicable criteria are met.</u>	
(5)	<u>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—</u>	35

- (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 16E to 16G** as they would have done had they been considering the application at the time of the original application for consent for the transaction. 5
- (6) If the relevant Minister or Ministers grant the new consent, the new consent (including its conditions) replaces the previous consent (including its conditions) with effect from the start of— 10
- (a) the date referred to in **subsection (3)**; or
- (b) if later, the date after the date on which the new consent is granted.
- 17 Section 28 repealed (Conditions of consent)**
- Repeal section 28.
- 18 Section 31 amended (What regulator does)** 15
- ~~After section 31(h), insert:~~
- ~~(ha) monitor compliance with, investigate conduct that constitutes or may constitute a contravention or an involvement in a contravention of, and enforce this Act and the regulations:~~
- After section 31(h), insert: 20
- (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: 25
- (iii) investigate conduct that constitutes or may constitute an offence under this Act:
- (iv) enforce this Act and the regulations:
- 19 Section 34 amended (Ministerial directive letter)**
- After section 34(3)(b), insert: 30
- (ba) conditions of consent, including— conditions that this Act requires be imposed:
- (i) ~~mandatory conditions for the purpose of imposing the occupation and on-selling requirements in **section 16B**:~~
- (ii) ~~mandatory conditions for the purpose of requiring the outcomes in **section 16B**:~~ 35
- (iii) ~~mandatory conditions for the purpose of **section 16F**:~~

- 19A** **Section 62 amended (Foreshore, seabed, riverbed, or lakebed acquired by the Crown under consent process is not subdivision)**
 In section 62(a), replace “section 17(2)(f)” with “section **16E(4)(f)** or 17(2)(f)”.
- 19B** **Sections 73 to 75 and cross-headings repealed** 5
 Repeal sections 73 to 75 and the cross-heading above each section.
- 19C** **Schedule 2 replaced**
 Replace Schedule 2 with the **Schedule 2** set out in **Schedule 2** of this Act (which relates to sensitive land that is residential land).
- 19D** **New Schedule 3 inserted** 10
 After Schedule 2, insert the **Schedule 3** set out in **Schedule 3** of this Act (which relates to exemptions from the requirement for consent for overseas investments in sensitive land).
- 19E** **New Schedule 4 inserted**
 After Schedule 3 (as inserted by **section 19D**), insert the **Schedule 4** set out in **Schedule 4** of this Act (which relates to standing consents). 15
- 19F** **Amendments to regulations**
 Amend the Overseas Investment Regulations 2005 as set out in **Schedule 5**.
- Part 3**
- Enforcement and other miscellaneous matters** 20
- Subpart 1—Amendments relating to enforcement
- 20** **Subpart 4 heading in Part 2 replaced**
 In Part 2, replace the subpart 4 heading with:
- Subpart 4—Information-gathering powers
- ~~21~~** **~~Section 38 amended (Regulator may require consent holder to provide information for monitoring purposes)~~** 25
 In section ~~38(2)(a)~~, after “within the time”, insert “, and in the manner,”.
- 21** **Section 38 replaced (Regulator may require consent holder to provide information for monitoring purposes)**
 Replace section 38 with: 30

<u>38</u>	<u>Regulator may require person who is subject to condition to provide information for monitoring purposes</u>	
(1)	<u>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.</u>	5
(2)	<u>A must—</u>	
	(a) <u>comply with the regulator’s notice within the time, and in the manner, specified in it; and</u>	10
	(b) <u>certify that the information provided to the regulator, including information contained in any documents provided, is correct.</u>	
(3)	<u>The regulator may retain or copy any information or document that is provided under this section.</u>	
22	Section 39 amended (Regulator may require any person to provide information for statistical or monitoring purposes)	15
(1)	<u>Replace section 39(1)(b) with:</u>	
	(b) <u>monitoring compliance with a condition or conditions of a consent, an exemption, or an exemption certificate.</u>	
(2)	In section 39(2)(a), after “within the time”, insert “, and in the manner,”.	20
23	Section 40 amended (Regulator may require consent holder to provide statutory declaration as to compliance)	
	In section 40(2)(a), after “within the time”, insert “, and in the manner,”.	
<u>23</u>	<u>Section 40 replaced (Regulator may require consent holder to provide statutory declaration as to compliance)</u>	25
	<u>Replace section 40 with:</u>	
<u>40</u>	<u>Regulator may require person who is subject to condition to provide statutory declaration as to compliance</u>	
(1)	<u>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—</u>	30
	(a) <u>the extent to which A has complied with the condition or conditions; and</u>	
	(b) <u>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.</u>	35
(2)	<u>A must provide the declaration—</u>	
	(a) <u>within the time, and in the manner, specified in the notice; or</u>	

- (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.
- 24 Section 41 amended (Regulator may require information and documents for purpose of detecting offences)** 5
- (1) In the heading to section 41, replace “**for purpose of detecting offences**” with “**to be provided for purpose of ~~administering or enforcing Act~~ monitoring compliance, investigating, and enforcing Act and regulations**”.
- (2) Replace section 41(1) with: 10
- (1) If the regulator has reasonable grounds to believe that it is necessary or desirable for ~~the purposes of administering or enforcing this Act~~ 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 15
- (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 20
- (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: 25
- (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: 30
- (d) enforcing this Act or the regulations (or both).
- (3) In section 41(2), after “within the time”, insert “, and in the manner,”.
- (3A) Repeal section 41(3).
- (4) After section 41(4), insert: 35
- (5) Sections 38 to 40 do not limit this section.
- 25 New sections 41AA to 41D inserted**
- After section 41, insert:

41AA 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.

41A Effect of proceedings

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(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

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(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

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(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

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(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.

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(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:

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(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

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

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(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,— 5
- (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 10
- (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. 15
- (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,— 20
- (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: 25
- (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. 30
- Compare: 2011 No 5 s 58
- 41C 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: 35
- (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 5
- (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 10
- (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 15
- (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. 20
Compare: 2011 No 5 s 59
- 41D 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 41C(2)(c) to (f)**, impose any conditions in relation to the publication, disclosure, or use of the information or document by the person. 25
- (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. 30
- (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); 35
- (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

26 New sections 41E and 41F and cross-heading inserted

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In Part 2, after the subpart 5 heading, insert:

Disposal of property

41E Regulator may issue notice to dispose 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, require A to dispose of the property (within the time and in the manner specified in the notice).~~
- (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 41F(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 ~~it is complied with.~~ 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.
- (5A) This section does not limit any other power that the regulator has.
- (6) In this section and **section 41F**, **property** has the meaning set out in section 47(3).

- 41F Consequences of ~~complying or failing to comply with notice~~ disposal or retention of property**
- ~~(1) If A disposes of the property within the time and in the manner specified in the notice under **section 41E**, A is not liable for the contravention, offence, or failure referred to in **section 41E(1)**.~~ 5
- (1) A person (A) is not liable for the contravention, offence, or failure referred to in **section 41E(1)** if A—
- (a) disposes of the property within the time and in the manner specified in the notice under **section 41E(2)(a)**; and
- (b) complies with **section 41E(2)(b)** within the time and in the manner specified in the notice under that paragraph. 10
- (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 15
- (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. 20
- (3) If another person (B) is involved in the contravention, offence, or failure referred to in **section 41E(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. 25
- ~~(5) If A does not dispose of the property within the time and in the manner specified in the notice under **section 41E**, the regulator may take any other enforcement action it thinks fit in relation to the contravention, offence, or failure referred to in **section 41E(1)**.~~
- (5) The regulator may take any other enforcement action it thinks fit in relation to the contravention, offence, or failure referred to in **section 41E(1)** if— 30
- (a) A fails to notify the regulator under **section 41E(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 41E(2)(a)**. 35
- (6) However, the failure to comply with the notice under **section 41E** is not itself a contravention of this Act that gives rise to any civil or criminal liability.

27 Section 46 amended (Offence of false or misleading statement or omission)

(1) In section 46(1), replace “false or misleading statement” with “statement that is false or misleading in a material particular”.

(1A) After section 46(1)(a), insert:

(aa) any statement made under **section 51A**; or

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(2) In section 46(2), after “misleading”, insert “in a material particular”.

28 Section 48 amended (Court may order person in breach to pay civil penalty)

(1) In the heading to section 48, after “**breach**”, insert “**or involved in breach**”.

~~(2) In section 48(1)(d), after “exemption”, insert “; or”.~~

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(2) Replace section 48(1)(d) with:

(d) failed to comply with a condition of a consent, an exemption, or an exemption certificate; or

(3) After section 48(1)(d), insert:

(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)**.

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(4) In section 48(2)(b), before “any quantifiable gain”, insert “3 times the amount of”.

(5) After section 48(2), insert:

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(2A) However, in the case of a contravention of **section 51C**, the amount of the civil penalty must not exceed \$20,000.

29 New section 48A inserted (Defences for person involved in contravention, offence, or failure)

After section 48, insert:

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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.

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(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

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- (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. 5
- Compare: 2013 No 69 s 503

29A Section 49 amended (Court may order mortgage to be registered over land)

- (1) In section 49(1), replace “a consent or an exemption” with “a consent, an exemption, or an exemption certificate”. 10
- (2) In section 49(1)(a), replace “condition of the consent” with “condition of the consent, the exemption, or the exemption certificate”.

29B Section 50 amended (Court may order interest to be paid)

In section 50(1), replace “a condition of a consent” with “a condition of a consent, an exemption, or an exemption certificate”. 15

30 Section 51 replaced (Court may order consent holder to comply with condition of consent or exemption)

Replace section 51 with:

51 Court may order compliance with condition of consent ~~or~~, exemption, or exemption certificate 20

- (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— 25
- (a) restrain a person from acting in breach of a condition of a consent ~~or of~~, an exemption, or an exemption certificate;
- (b) order a person in breach of a condition of a consent ~~or of~~, an exemption, or an exemption certificate to comply with it.

31 New section 51A and cross-heading inserted 30

After section 51, insert:

Conveyancing certificate

51A Provider of conveyancing services must give certificate

- (1) ~~This section applies if a provider is providing conveyancing services to a person (A) who is acquiring an interest in residential land.~~ 35

- (2) ~~Before the transaction to acquire the interest is given effect, the provider must, in the prescribed manner (if any), certify that, to the best of the provider's knowledge, A will not contravene or commit an offence under this Act by giving effect to the transaction.~~
- (3) ~~The provider must keep a copy of the certificate for a period of at least 7 years after the date on which the transaction is given effect.~~ 5
- (4) ~~Every person who, without reasonable excuse, fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$20,000.~~
- (5) ~~Sections 41E, 45, 47, and 48 do not apply in respect of a contravention of this section.~~ 10

31 New sections 51A to 51C and cross-heading inserted

After section 51, insert:

Statement relating to compliance with consent requirement

51A Person who acquires interest in residential land must make and provide statement 15

- (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 20
- (c) an instrument in respect of 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, whether and how— 25
- (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. 30
- (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. 35

- (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): 5
- (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.** 10
- (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. 15
- 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); 20
- (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); 25
- (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 30
- (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. 35
- 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
- (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. 5
- (3) Sections **41E**, 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).

31A Section 52 amended (Administrative penalties for late filing) 10

In section 52(1), replace “a condition of a consent or of an exemption” with “a condition of a consent, an exemption, or an exemption certificate”.

32 Sections 54 and 55 and cross-heading replaced

Replace sections 54 and 55 and the cross-heading above section 54 with:

Giving, providing, or serving notices or documents 15

54 Address for service

Every consent holder, holder of an exemption under **section 61C**, 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 20
- (b) notify the regulator of that address; and
- (c) notify the regulator of any change in that address.

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,— 25
- (a) if A is a ~~consent holder~~ person who has complied with **section 54**, it has been sent by prepaid post to the last address for service for the ~~consent holder~~ person that has been notified to the regulator: 30
- (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 ~~the provider~~ 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): 35

- (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: 5
- (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)— 10
- (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 ~~or of an exemption~~, an exemption, or an exemption certificate. 15
- (3) **Subsection (1)(b)(iv)** applies regardless of whether the agent is acting or has acted on behalf of A in respect of the property matter to which the document relates.
- (4) This section applies despite any other rule or law. 20
- 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**. 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. 30
- (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. 35

- (3) In this section, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications.

Subpart 2—Miscellaneous provisions

- 33 Section 61 amended (Regulations)** 5
- (1) Before section 61(1)(a), insert:
- (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: 10
- (aac) prescribing classes of *profits à prendre* not to be treated as regulated *profits à prendre* in this Act:
- (2) After section 61(1)(b), insert:
- ~~(ba) for the purposes of **sections 16A(3)** and **16B** (commitment to New Zealand test),—~~ 15
- ~~(i) prescribing classes and types of visa and prescribing factors for assessing commitment to reside in New Zealand for those classes and types of visa:~~
- ~~(ii) setting out trigger events:~~
- (ba) making provision referred to in **section 16E(4)** (see also **paragraphs (c) and (ca)** of this subsection): 20
- (2A) Replace section 61(1)(c) with:
- (c) setting out what must be done to make an offer to the Crown count for the purposes of section **16E(4)(f)** or 17(2)(f), including prescribing—
- (i) a maximum or minimum period for which an offer must be open: 25
- (ii) the maximum price at which the land may be offered, and a valuation procedure for fixing that maximum price:
- (iii) on what terms and conditions the land must be offered:
- (iv) power for the relevant Ministers—
- (A) to determine that an offer does not count for the purposes of section **16E(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: 30
- (B) to waive the requirement that an offer be made for the purposes of section **16E(4)(f)** or 17(2)(f): 35
- (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 **16E(4)(f)** or 17(2)(f): 5
- (3) ~~After section 61(1)(i), insert~~ Replace section 61(1)(i) and (j) with:
- (ia) ~~providing, in respect of residential land, for the acquisition by a Māori person of an interest in 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 Māori Act 1993):~~ 10
- (ib) implementing obligations that have entered into force for New Zealand before the commencement of the **Overseas Investment Amendment Act 2017** 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: 15
- (ic) ~~specifying nationality status types of overseas persons for the purposes of ~~section 16A(3)(a)(iii)~~ **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 the **Overseas Investment Amendment Act 2017** under any international agreements to which New Zealand is a party and that relate to overseas investments in sensitive land:~~ 20
- (id) ~~prescribing factors for assessing commitment to reside in New Zealand for persons with a nationality status specified in regulations made under **paragraph (ic)**, including nil factors:~~ 25
- (ie) 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): 30
- (ii) additional ways in which a trigger event is resolved:
- (if) setting a maximum percentage of new residential dwellings in a development that an exemption certificate may be applied to, including a nil percentage:
- (3A) After section 61(1)(k), insert: 35
- (ka) prescribing matters for the purposes of **section 61F**, including listing exemptions for the purposes of that section, prescribing circumstances in which that section applies, specifying classes of conditions to which **section 61F(2)** applies, and providing for matters under **section 61F(4)**: 40
- (4) ~~After section 61(2), insert:~~ Replace section 61(2) with:

- (32) 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.

33A New sections 61B to 61F inserted

Before section 62, insert:

5

61B 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 61D (criteria for all exemptions) and 61E (other provisions applying to all exemptions).

10

61C 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 61D (criteria for all exemptions) and 61E (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.

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61D Criteria for all exemptions

- (1) The Minister may recommend any regulations under section 61B, or grant an exemption under section 61C, only if the Minister considers—
- (a) that there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption from the provisions of this Act; 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;

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- (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: 5
- (v) any other factors that seem to the Minister to be relevant to the circumstances.

61E Other provisions applying to all exemptions 10

- (1) This section applies to regulations under **section 61B** and exemptions granted under **section 61C**.
- (2) An exemption may be made subject to any conditions.
- (3) An exemption may at any time be amended or revoked in the same way as it may be made (for example, **section 61D** applies with all necessary modifications). 15
- (4) The reasons of the Minister for recommending the regulations or granting an exemption (including why the exemption is appropriate) must be published together with the regulations or exemption.
- (5) However, the publication of an exemption under **section 61C**, or of the reasons for granting any exemption, may be deferred, or need not be published, (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. 20

Compare: 1993 No 107 ss 45, 45A; 2013 No 69 ss 571(5), 572 25

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

- (1) This section applies if—
 - (a) either of the following apply: 30
 - (i) a consent holder (A) is subject to 1 or more conditions:
 - (ii) a person (A) relies on an exemption in, or an exemption granted by or under, this Act or the regulations that is subject to 1 or more conditions; 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 35
 - (c) the circumstances prescribed in the regulations apply; and

- (d) the regulations specify 1 or more classes of conditions to which **subsection (2)** applies.
- (2) B must be treated as being subject to the conditions of the consent or the exemption of the class specified in the regulations that apply in connection with the property (and those conditions apply with all necessary modifications as if B were the person who was originally subject to the conditions). 5
- (3) In the case of **subsection (1)(a)(i)**, B must be treated as being a consent holder in respect of the property and in respect of the conditions that apply to B (for example, B may agree to the variation of the condition under section 27).
- (4) A ceases to be subject to the conditions in the circumstances, and to the extent, provided for in the regulations. 10
- (5) **Subsection (4)** does not limit **subsection (3)**.

34 **New Schedule 1AA inserted**

Insert the **Schedule 1AA** set out in ~~the~~ **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act. 15

35 **Consequential amendment to Fisheries Act 1996**

- (1) This section amends the Fisheries Act 1996.
- (2) In section 57(1)(e), replace “monitoring” with “information-gathering”.

Schedule 1
New Schedule 1AA inserted

s 34

Schedule 1AA
Transitional, savings, and related provisions

5

s 8A

Part 1

Provisions relating to Overseas Investment Amendment Act 2017

1 Existing transactions and applications not affected

- (1) ~~This Act and the Overseas Investment Regulations 2005 (the **regulations**), as in force immediately before commencement, continue to apply to any transaction entered into or occurring before commencement as if the Overseas Investment Amendment Act 2017 had not been enacted.~~ 10
- (1) The amendments made by the Overseas Investment Amendment Act 2017 apply only to transactions entered into on or after commencement. 15
- (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 2017 had not been enacted:
- (aa) any transaction entered into before commencement:
- (a) any application for consent that is made before commencement and that relates to a transaction entered into before commencement: 20
- (b) 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) ~~This clause applies to a transaction~~ 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. 25
- (4A) 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). 30
- (5) In this clause, **clause 1A**, and ~~in clause 2~~, **commencement** means the commencement of ~~the Overseas Investment Amendment Act 2017~~ this clause. 35

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.

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).

1A 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 16E(3)** or in accordance with **section 16E(4)**, as inserted by the Overseas Investment Amendment Act **2017**; and

(b) the other provisions of this Act, as amended by the Overseas Investment Amendment Act **2017**, apply accordingly.

(3) **Clause 1(4) and (4A)** applies for the purposes of this clause.

2 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) **Sections 41B to 41D** (as in force after commencement) apply for the purposes of **subclause (1)(a)**.

3 Existing exemptions saved

(1) An exemption made under section 61(1)(i) that is in force immediately before the commencement of **section 33** of the Overseas Investment Amendment Act **2017** continues in force as if it were made under **section 61B** 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 33** of the Overseas Investment Amendment Act 2017 continues in force as if it were granted under **section 61C** of this Act.
- (3) However, **sections 61C(3), 61D, and 61E(4)** do not apply to those exemptions as granted (but do apply to an amendment to, or revocation of, those exemptions made after the commencement of **section 33**). 5
- 4 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— 10
- (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. 15
- (2) A transaction does not require consent under this Act 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 another requirement. 20
- 5 Exemption for Te Arai property development**
- (1) A transaction does not require consent to the extent that it will result in an overseas investment in sensitive land that is the acquisition of an interest in residential (but not otherwise sensitive) land within the Te Arai property development. 25
- (2) The **Te Arai property development** means the area comprising all of the land identified as follows:
- (a) Lots 1, 2, 3, and 4 DP 138523;
- (b) Lot 1 DP 138524;
- (c) Lots 1, 2, 3, and 4 DP 138522. 30
- (3) This clause ceases to apply to transactions entered into on or after the 15th anniversary of the date on which this clause commences.
- 6 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. 35
- (2) The definition of **lodged** in **section 51A** of this Act must be treated as including being lodged for registration or endorsement under the Land Transfer Act 1952 or the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

- 7** **Section 61F applies to conditions before and after commencement**
Section 61F may apply to a condition regardless of whether the condition came into effect before or after the commencement of this clause.
- 8** **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 2017 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.

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Schedule 2
Schedule 2 replaced

s 19C

Schedule 2
Sensitive land that is residential land

ss 6, 16, 16F, 61

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<u>1</u>	<u>Outline of this schedule</u>	
<u>(1)</u>	<u>In this schedule,—</u>	
	<u>(a) Part 2 sets out the commitment to reside in New Zealand test, which is a test that is only available for residential land:</u>	<u>5</u>
	<u>(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:</u>	<u>10</u>
	<u>(c) Part 4 explains how more than 1 test can be met for the purpose of section 16(1)(b)(i):</u>	
	<u>(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.</u>	<u>15</u>
<u>(2)</u>	<u>This clause is only a guide to the general scheme and effect of this schedule.</u>	
<u>2</u>	<u>Interpretation</u>	
	<u>In this schedule,—</u>	
	<u>key individual, in relation to an overseas investment, has the meaning set out in clause 4</u>	<u>20</u>

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)**

relevant interest, in relation to residential land, means—

- (a) any interest in the residential land;
- (b) any right or interest 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)(ic)**.
- (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 **sub-clause (3)** are the spouse or partner of each other; and 5
- (b) the relevant interest in the residential land will be acquired as relationship property of A and B; and
- (c) the regulations exempt B from the requirement for consent under section 10(1)(a),— 10
- then B is not a key individual for the overseas investment.

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: 15
- (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 20
- (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 25
- (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. 30
- (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). 35
- (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**).
- (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.

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

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 the residential land is relationship property of the OP and the OP's spouse or partner.

(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.

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

8 Waiver relating to trigger event

- (1) An application may be made, in respect of a person (an OP) who is, or will be, or has been, absent from New Zealand for more than 183 days in any 12-month period (the trigger event), for a waiver from the requirement to dispose of all relevant interests in the residential land as a consequence of the trigger event occurring. 5
- (2) The relevant Ministers must grant the waiver if the relevant Ministers consider, in accordance with regulations made under **section 61(1)(ie)(i)**, that the OP remains committed to residing in New Zealand.
- (3) A waiver— 10
- (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. 15

*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— 20

- (a) because of the circumstances relating to the particular relevant overseas person and the purpose of the overseas investment; and 25
- (b) 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. 30

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** 5

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—** 10

(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: 15

(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:** 20

(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,— 25

(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** 30

(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. 35**(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
- (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. 10
- (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. 15
- (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. 20
- 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 25
- (b) not used, or 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— 30
- (a) either—
- (i) the relevant Ministers are satisfied that the non-occupation outcome (as defined in **clause 17**) will, or is likely to, occur; 35
- (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. 5
- (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). 10
- 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 15
- (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. 20
- (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; 25
- (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; 30
- (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. 35
- (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**) would, or would likely, occur for the remaining part of the residential land. 40

- (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

5

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.

Example

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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.

15

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

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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 16F** applies.

25

- (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.

30

17 What is 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.

35

- (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: 5
- (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** mean terms that— 10
- (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 15
- (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: 20
- (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). 25
- 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. 30
- (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 35

(b) if any circumstances set out in the third column relating to a condition apply, the condition need not be imposed.

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

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 16E(1)(c) and 16F** 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,—

5

- (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.

5

<u>If residential land outcome is</u>	<u>... conditions that require the following must be imposed on the consent in relation to the residential land</u>	<u>... except in the following circumstances</u>
1 <u>On-sale</u>	<u>The on-sale outcome (as defined in clause 17)</u>	
2 <u>Use for non-residential purposes</u>	<u>The residential land is not used, or held for future use, for residential dwellings or long-term accommodation facilities</u>	
3 <u>Operation of a long-term accommodation facility on the residential land (whether or not the facility is new or is proposed to be constructed)</u>	<u>Operation of the long-term accommodation facility</u> <u>The non-occupation outcome (as defined in clause 17)</u>	
4 <u>Increased residential dwellings</u>	<u>Either or both of the following:</u> (a) <u>an increase in the number of residential dwellings constructed on the residential land (including an increase from 0):</u> (b) <u>development works on the land to support the doing of things described in paragraph (a)</u>	
	<u>The on-sale outcome (as defined in clause 17)</u>	<u>An exemption under clause 20 (which relates to large developments with shared equity, rent-to-buy, and rental arrangements) applies (but see clause 20(3))</u>
	<u>The non-occupation outcome (as defined in clause 17)</u>	<u>Or an exemption under clause 21 (which relates to indirect and minority interests) applies (but see clause 21(3))</u>

<u>If residential land outcome is</u>	<u>... conditions that require the following must be imposed on the consent in relation to the residential land</u>	<u>... except in the following circumstances</u>	
5 <u>Residential purposes incidental to a relevant business</u>	<u>The incidental residential use outcome (as defined in clause 14)</u>		
6 <u>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)</u>	<u>The occupation requirement (as defined in clause 6)</u> <u>The disposal requirement (as defined in clause 6)</u>	<u>No key individuals are overseas persons</u> <u>No key individuals are overseas persons</u>	
7 <u>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 (OP) is in the business of providing residential dwellings by 1 or more of those arrangements)</u>	<u>All of the residential dwellings in the development are dealt with under 1 or more of the arrangements referred to in clause 20(2)(a)</u> <u>The non-occupation outcome (as defined in clause 17)</u>		
8 <u>Any other case</u>	<u>The non-occupation outcome (as defined in clause 17)</u>		
(3) <u>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).</u>			
<i><u>Exemptions from on-sale outcome and condition</u></i>			
20	<u>Exemption for large developments with shared equity, rent-to-buy, and rental arrangements</u>		5
(1)	<u>The relevant Ministers may decide not to impose a condition requiring the on-sale outcome if—</u>		
	(a) <u>a person (OP) has applied for consent under either of the following:</u>		
	(i) <u>the increased housing test in respect of residential (but not otherwise sensitive) land;</u>		10
	(ii) <u>the benefit to New Zealand test in respect of land that is or includes residential land; and</u>		
	(b) <u>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</u>		15

- 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
- (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— 10
- (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. 15

Schedule 3
New Schedule 3 inserted

s 19D

Schedule 3
Exemptions from requirement for consent

5

s 11A

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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

5

(1) A transaction does not require consent 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—**

10

- (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).**

15

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 to the extent that it will result in an overseas investment in sensitive land if—

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- (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).**

25

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):**

30

- (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.**

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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)(if)**.
- (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— 5
- (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 10
- (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)(if)**, of the residential dwellings in the development. 15

Exemptions for dwellings to which exemption certificate applies

- (5) A transaction does not require consent to the extent that it will result in an overseas investment in sensitive land in respect of a residential dwelling in the development if— 20
- (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. 25

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). 30

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. 35

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 40

- (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— 5
- (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. 10
- 5 Hotel units acquired and leased back for hotel use**
- (1) A transaction does not require consent 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 15
- (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— 20
- (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**). 25
- (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 30
- (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 35
- (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 5
- 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. 10
- Exemptions in respect of overseas investments in sensitive land involving forestry rights*
- 6** **Area of forestry right less than 1 000 hectares** 15
- (1) A transaction does not require consent 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. 20
- (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 25
- (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 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: 30
- (a) the area of the relevant forestry right;
- (b) the combined area of all other forestry rights—
- (i) that related forestry investors acquire in the same calendar year as that in which the relevant forestry investment is given effect to; and 35

- (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 5
- (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— 10
- (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 15
- (c) it does not matter if a forestry right is 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). 20
- 7** **Crown forestry licence converted into forestry right**
- (1) A transaction does not require consent to the extent that it will result in an overseas investment in sensitive land if— 25
- (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 30
- (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 35
- (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) A is a body corporate and the licensee directly or indirectly owns at least 95% of A; or
- (b) the licensee is a body corporate and A directly or indirectly owns at least 95% of the licensee; or
- (c) the licensee and A are bodies corporate and a third person directly or indirectly owns at least 95% of each of them.

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8 Replacement of forestry right with new forestry right

Application

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(1) This clause applies if a person (the **original forestry investor**) acquired a forestry right (the **original forestry right**) as a result of a transaction (the **original transaction**) and—

- (a) the acquisition of the original forestry right was an overseas investment in sensitive land and—
 - (i) consent was given for the original transaction to the extent that it resulted in the acquisition of the original forestry right (whether or not the consent was also given in relation to other results of the original transaction); or
 - (ii) because of the exemption given by **clause 7**, consent was not required for the original transaction to the extent that it resulted in the acquisition of the original forestry right; or
- (b) consent for the original transaction was not required as referred to in **paragraph (a)(i)** because the original transaction was entered into at a time before commencement when forestry rights were exempted interests.

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(2) This clause also applies if—

- (a) a person (the **original forestry investor**) acquired a forestry right (the **original forestry right**); and
- (b) subsequently, another person acquired rights or interests in securities of the original forestry investor as a result of a transaction (the **securities transaction**) and—
 - (i) the acquisition of the rights or interests in securities of the original forestry investor was an overseas investment in sensitive land and, in relation to the original forestry right, consent was given for the securities transaction to the extent that it resulted in that acquisition; or
 - (ii) consent for the securities transaction was not required as referred to in **subparagraph (i)** because the securities transaction was en-

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- tered into at a time before commencement when forestry rights were exempted interests.
- (3) Despite **clause 1 of Schedule 1AA, subclauses (1) and (2)** apply to acquisitions of forestry rights, or of rights or interests in securities, whether given effect to before, on, or after commencement. 5
- (4) **Clause 1(4) and (4A) of Schedule 1AA** applies for the purposes of **subclauses (1)(b) and (2)(b)(ii).**
- (5) In **subclauses (1) to (3), commencement** means the commencement of **clause 1 of Schedule 1AA.**
- Exemption* 10
- (6) A transaction does not require consent to the extent that it will result in an overseas investment in sensitive land if—
- (a) the overseas investment is the acquisition of a forestry right (the **new forestry right**) by the original forestry investor or a person related to the original forestry investor; and 15
- (b) immediately before the new forestry right is acquired,—
- (i) the area of land covered by the new forestry right is fully covered by the original forestry right (whether or not it is the only area of land covered by the original forestry right); and
- (ii) the original forestry right is held by the original forestry investor or a person related to the original forestry investor; and 20
- (c) the term of the new forestry right (including rights of renewal, whether of the grantor or grantee) expires no later than 3 years after the end of the term of the original forestry right (see **subclause (7)**); and
- (d) the requirements of **subclause (8)** are met (if applicable). 25
- (7) For the purposes of **subclause (6)(c)**, the term of the original forestry right must be determined as at the time of its acquisition by the original forestry investor, but including rights of renewal, whether of the grantor or grantee, existing at that time.
- (8) If this clause applies by virtue of **subclause (1)(a)(i) or (2)(b)(i)**, the rights conferred by the new forestry right— 30
- (a) must be sufficient to enable the conditions of the consent to be complied with in accordance with **subclauses (11) to (13)**;
- (b) must not include any right that was not conferred by the original forestry right, if the absence of that right from the original forestry right was the basis (wholly or partly)— 35
- (i) on which the relevant Ministers, when they granted the consent, did not apply or modified a requirement under **section 16E(8)**;
- or

- (ii) if the consent was a standing consent under **clause 3 of Schedule 4**, on which the relevant Ministers varied the conditions of the consent under **clause 3(10)** of that schedule in relation to a requirement set out in regulations made for the purposes of **section 16E(4)(d)**.

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Reapplication of exemption

- (9) **Subclause (10)** applies if—

- (a) the exemption given by **subclause (6)** is applied to the acquisition of a forestry right (including in a case where the exemption is applied by virtue of **subclause (10)**); and
- (b) the original forestry investor, or a person related to the original forestry investor, makes a subsequent acquisition of a forestry right.

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- (10) The exemption given by **subclause (6)** may be applied to the subsequent acquisition by reading references in **subclause (6)(b)(i) and (ii)** to the original forestry right as references to the forestry right referred to in **subclause (9)(a)**.

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Conditions of original consent to continue

- (11) **Subclauses (12) and (13)** apply if—

- (a) this clause applies by virtue of **subclause (1)(a)(i) or (2)(b)(i)**; and
- (b) the consent (the **original consent**) was subject to conditions that applied in relation to the original forestry right; and
- (c) the exemption given by **subclause (6)** is applied to the acquisition of a forestry right (the **exempted forestry right**) (including in a case where the exemption is applied by virtue of **subclause (10)**).

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- (12) The conditions of the original consent apply in relation to the exempted forestry right as they applied in relation to the original forestry right (except to the extent that any area of land covered by the original forestry right is not covered by the exempted forestry right).

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- (13) The person who acquires the exempted forestry right must comply with the conditions accordingly as if—

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- (a) the original consent applied to the acquisition of the exempted forestry right; and
- (b) that person were the holder of the original consent (if that is not the case anyway).

Meaning of related

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- (14) For the purposes of this clause, a person (A) is **related** to the original forestry investor if—

- (a) A is a body corporate and the original forestry investor directly or indirectly owns at least 95% of A; or

- (b) the original forestry investor is a body corporate and A directly or indirectly owns at least 95% of the original forestry investor; or
- (c) the original forestry investor and A are bodies corporate and a third person directly or indirectly owns at least 95% of each of them.

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

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

- (1) A transaction does not require consent 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 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 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 5
- (d) it does not matter if a regulated *profit à prendre* is first held by a related *profit* investor before the relevant *profit* investment is given effect to. 10
- (4) 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* 15
- 10** **Other exemptions**
- See the regulations for other exemptions.

Schedule 4
New Schedule 4 inserted

s 19E

Schedule 4
Standing consents

5

s 23A

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Different types of standing consents

<u>1</u>	<u>Residential land: commitment to reside in New Zealand standing consents</u>	
	<i><u>Application</u></i>	
<u>(1)</u>	<u>A person who applies for consent under the commitment to reside in New Zealand test may apply for a standing consent.</u>	10
	<i><u>Criteria for grant of standing consent</u></i>	
<u>(2)</u>	<u>The relevant Ministers may, despite section 14(1), grant a standing consent if the relevant Ministers are satisfied—</u>	
	<u>(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</u>	15
	<u>(b) that the commitment to reside in New Zealand test is met.</u>	
	<i><u>Conditions</u></i>	
<u>(3)</u>	<u>The standing consent must be granted subject to the following conditions:</u>	20
	<u>(a) conditions that ensure that the commitment to reside in New Zealand test continues to be met:</u>	

- (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. 5
- (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: 10
- (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. 15
- 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 20
- (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— 25
- (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 30
- (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. 35
- 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 **sub-clause (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: 5
- (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— 10
- (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. 15
- Use-by date*
- (5) The standing consent may specify a use-by date.
- 3 Forestry activities**
- Application* 20
- (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 16E(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— 25
- (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 16E(4)(d)**; and 30
- (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: 35
- (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* 5
- (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 16E(4)** for each overseas investment to which the consent will apply (subject to **subclauses (5) and (6)**): 10
- (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— 15
- (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 16E(4)(d)** will be met for each overseas investment resulting from the transaction; and 20
- (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— 25
- (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. 30
- (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 16E(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— 35
- (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— 40

- (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)**. 5
- Variation of conditions on ground that consent holder does not have sufficient ownership or control of relevant land* 10
- (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. 15
- (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 16E(4)(d)** will be met; or 20
- (b) that the requirement set out in **section 16E(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 16E(7) or (8)**. 25
- Variation of conditions to reflect new regulations, etc*
- (11) **Subclause (12)** applies if, after the standing consent is granted, there comes into force any new regulations, or any amendment or revocation of any regulations, that make any provision referred to in **section 16E(4)**.
- (12) The relevant Ministers may vary the conditions of the standing consent to reflect the new regulations or the amendment or revocation. 30
- (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. 35
- 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 (4A) 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).

Schedule 5
Amendments to Overseas Investment Regulations 2005

s 19F

1 New regulations and cross-heading inserted

Before the cross-heading above regulation 36A, insert:

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

36AE Exemptions for network utility operators

A transaction does not require consent to the extent that it will result in an overseas investment in sensitive land if the relevant land—

- (a) is residential (but not otherwise sensitive) land; and
- (b) is acquired by 1 or more of the following:
 - (i) an electricity operator or electricity distributor for the purposes of providing line function services (where those terms have the meanings set out in section 2 of the Electricity Act 1992);
 - (ii) a gas distributor or a gas producer for the purposes of providing line function services (where those terms have the meanings set out in section 2 of the Gas Act 1992);
 - (iii) a network operator for the purposes of providing telecommunications services (where those terms have the meanings set out in section 5 of the Telecommunications Act 2001).

36AF Exemptions relating to relationship property where spouse or partner granted consent under commitment to reside in New Zealand test

- (1) This regulation applies if—
 - (a) a transaction will result in an overseas person acquiring any interest in residential land, or any right or interest in securities of a person who owns or controls (directly or indirectly) an interest in residential land (relevant interest); and
 - (b) consent has been, or will be, granted to the transaction on the basis that a person (A) is a key individual and the commitment to reside in New Zealand test has been, or will be, met; and
 - (c) the relevant interest is, or will be as a result of the acquisition, relationship property of A and A's spouse or partner.
- (2) The acquisition by A's spouse or partner does not require consent under section 10(1)(a) of the Act.
- (3) In this regulation,—

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

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

2 **Regulation 37**

Revoke regulation 37.

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3 **Regulation 38**

In regulation 38(1), replace “An application for an exemption under regulation 37(1)” with “An application for an exemption under **section 61C** of the Act (Minister may grant individual exemptions)”.

4 **Schedule 2**

In Schedule 2, replace “For each exemption under regulation 37” with “For each exemption under **section 61C** of the Act (Minister may grant individual exemptions)” in each place.

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Legislative history

14 December 2017
19 December 2017

Introduction (Bill 5–1)
First reading and referral to Finance and Expenditure Committee