



## Overseas Investment Amendment Regulations (No 2) 2016

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 12th day of December 2016

Present:

The Right Hon Bill English presiding in Council

These regulations are made under section 61 of the Overseas Investment Act 2005 on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Finance made after having regard to the purpose of that Act.

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## Regulations

### 1 Title

These regulations are the Overseas Investment Amendment Regulations (No 2) 2016.

### 2 Commencement

These regulations come into force on 1 February 2017.

### 3 Principal regulations

These regulations amend the Overseas Investment Regulations 2005 (the **principal regulations**).

### 4 New regulation 33A inserted (Exemption for overseas custodians acquiring certain rights and interests in custodial property)

After regulation 33, insert:

#### **33A Exemption for overseas custodians acquiring certain rights and interests in custodial property**

- (1) The requirement for consent does not apply to a transaction to the extent that giving effect to it will result in the acquisition, by an overseas person who is a custodian, of any right or interest in custodial property to be held by that custodian on trust for, or on behalf of, another person (the **customer**).
- (2) In this regulation, unless the context otherwise requires,—
 

**custodial property** means securities or rights or interests in securities or property—

  - (a) bought or obtained by the custodian on the instructions of the customer; and
  - (b) in or to which—
    - (i) the ultimate investor is beneficially interested or entitled; and

- (ii) the custodian acquires no beneficial interest or entitlement other than—
  - (A) a permitted security interest; and
  - (B) if the custodian (**B**) is the customer of another custodian (**A**), any beneficial right or interest acquired that B holds on trust for, or on behalf of, another person who is B's customer and that B acquired in B's capacity as A's customer; and
- (c) in respect of which the custodian makes no decisions, but instead acts on the decisions and instructions of the customer (for example, decisions to sell and decisions on how to exercise any powers or any rights in relation to voting attached to or conferred by that property)

**custodian** means a person—

- (a) who is in the business of obtaining and holding property for, and on the instructions and decisions of, other people; and
- (b) who is acting in the ordinary course of that business

**permitted security interest** means a beneficial interest or entitlement under a security arrangement (if any) that—

- (a) in substance secures the customer's obligation to pay fees to the custodian for the custodian's services to the customer; and
- (b) is entered into by the custodian and the customer in good faith and in the ordinary course of the custodian's business; and
- (c) requires that the beneficial interest in or entitlement to the custodial property be retransferred to the customer or extinguished on the payment of those fees

**ultimate investor** means the person who is ultimately entitled to hold or call for the right to hold the right or interest in the custodial property that the custodian holds for the customer (and who may be the customer or, if the customer is also a custodian, who may be another person).

- (3) To avoid doubt, this regulation does not exempt from the requirement for consent any transaction to the extent that giving effect to it will result in the acquisition of a right or an interest in the custodial property by any person other than an overseas person who is a custodian (in that capacity).

## 5 New regulations 36AA to 36AC and cross-heading inserted

After regulation 36, insert:

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

**36AA Exemption for certain land transactions commonly known as re-grants**

*Application*

- (1) This regulation applies to a transaction that will result in an overseas person (A) acquiring a lease, or any other interest other than a freehold estate, in sensitive land (the **new interest**) where—
- (a) the new interest commences within 3 months of the expiry of an interest of the same type that is owned or possessed by A and no other person in sensitive land (the **previous interest**); and
  - (b) the sensitive land that is the subject of the new interest (**land B**) is the same as or is a portion of the sensitive land that was the subject of the previous interest; and
  - (c) the term of the new interest is the same as or shorter than the term of the previous interest in land B (in each case including rights of renewal, whether of the grantor or A); and
  - (d) the terms and conditions of the new interest differ from the terms and conditions of the previous interest in land B only to the extent that they are permitted changes; and
  - (e) consent has been obtained to a previous transaction that resulted in the acquisition of the previous interest or an earlier-in-time interest (*see* subclause (4)); and
  - (f) the term of the new interest (including rights of renewal, whether of the grantor or A) expires within 20 years of the date that A acquired the interest in land B that resulted from the last consented transaction; and
  - (g) the activity to be conducted by A on or from land B is the same or substantially the same as the activity conducted on or from land B under the interest that resulted from the last consented transaction.

*Exemption*

- (2) The requirement to obtain consent under section 10(1)(a) of the Act (which relates to overseas investments in sensitive land) does not apply to the extent that giving effect to the transaction will result in the acquisition by A of the new interest.
- (3) However, the exemption in subclause (2) applies only if the condition in subclause (4) and the further conditions in subclause (5) are met.

*Condition requiring consent for the acquisition of the previous, or an earlier-in-time, interest*

- (4) The condition is that at least 1 of the following paragraphs applies:

- (a) A obtained consent under section 10(1)(a) of the Act for the transaction that resulted in A acquiring the previous interest, and the previous interest was acquired by A and no other person:
- (b) A obtained consent under section 10(1)(a) of the Act for a transaction that resulted in A, and no other person, acquiring an earlier-in-time interest in sensitive land that includes or comprises land B, and that earlier-in-time interest has been treated by A as a previous interest under sub-clause (1)(a) for the purpose of past reliance by A on this exemption.

*Further conditions relating to compliance with consent conditions, use of land, A, and provision of information to regulator*

- (5) The further conditions are that—
  - (a) A has not breached any condition of the consent granted for the last consented transaction, nor has A breached any condition of any other consent granted to A and related to land B (if any); and
  - (b) A continues to comply with the continuing conditions of the consent granted for the last consented transaction that are related to land B; and
  - (c) A continues to conduct the same or substantially the same activity on or from land B that was conducted under the interest in land B that resulted from the last consented transaction; and
  - (d) if A is an individual, A is not, at the date that A acquires the new interest, an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (or A is an individual for whom a special direction referred to in section 17(1)(a) of that Act has been made permitting a visa or entry permission to be granted to that individual); and
  - (e) if A is not an individual, at the date that A acquires the new interest, each of the following is not an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (or is an individual for whom a special direction referred to in section 17(1)(a) of that Act has been made permitting a visa or entry permission to be granted to that individual):
    - (i) each individual who has a 25% or more ownership or control interest in A; and
    - (ii) each member of the governing body of A who is an individual; and
  - (f) by the date that is 1 month after the date that A acquires the new interest, A provides the regulator with the following information and documents, in writing:
    - (i) a general description of the transaction that resulted in A acquiring the new interest, including a copy of the document or documents setting out the terms and conditions of the new interest; and

- (ii) notification to the effect that the new interest has been acquired in reliance on the exemption in this regulation and that the condition and each of the further conditions of the exemption (other than conditions subsequent) are met; and
  - (iii) a copy of the document or documents setting out the terms and conditions of the previous interest; and
  - (iv) information that identifies or allows the regulator to identify the last consented transaction (if it is not clear from the document or documents provided under subparagraph (iii)); and
  - (v) a list of the continuing conditions of the consent granted for the last consented transaction that are related to land B; and
  - (vi) notification of the activity to be conducted by A on or from land B; and
  - (vii) if A is an individual, A's full name; and
  - (viii) if A is not an individual, the full name of—
    - (A) each individual who has a 25% or more ownership or control interest in A; and
    - (B) each member of the governing body of A (whether or not an individual).
- (6) In this regulation,—
- continuing**, in relation to the conditions of the consent granted for the last consented transaction, means those conditions that—
- (a) have not been met (or have not been met fully) at the date that A acquires the new interest; or
  - (b) are ongoing, even if they are met at that date
- last consented transaction** means the most recent transaction described in subclause (4)(a) or (b) for which A obtained consent under section 10(1)(a) of the Act (or, if only 1, means that transaction)
- monetary terms**, in relation to an interest,—
- (a) means terms of that interest that set out the amount and timing of payments; but
  - (b) does not include any indemnities, guarantees, or terms that limit the liability of a person
- permitted changes** means—
- (a) changes to monetary terms;
  - (b) changes that are necessary because of changes in the law;
  - (c) changes that reflect—

- (i) a change in the length or number of renewal terms so long as the requirements of subclause (1)(c) are met:
- (ii) a change in description of the permitted activity on the land so long as the requirements of subclause (1)(g) are met:
- (iii) any change in grantor:
- (iv) if the previous interest was granted on standard form terms and conditions commonly used in New Zealand, changes (if any) that have been made to the standard form commonly used

**related to land B**, in relation to the conditions of a consent, means conditions that relate to the use of land B or a part of it (whether or not they also relate to the use of other land), including any conditions that—

- (a) require, permit, or prohibit activities on land B; or
- (b) require improvements or changes to land B

**sensitive land** means land that is sensitive under Part 1 of Schedule 1 of the Act.

### **36AB Exemption for certain transactions where relevant land of certain type and area is already in overseas ownership or control**

#### *Application*

- (1) This regulation applies to a transaction that will result in an overseas person (**A**) acquiring an interest in land or rights or interests in securities of a person who owns or controls (directly or indirectly) an interest in land (**A's acquisition**) where—
  - (a) no part of the relevant land is land that is sensitive under paragraph (a) of Part 1 of Schedule 1 of the Act (which relates to land of a type listed in table 1 of that schedule, where the area of that type of land together with any associated land of that type exceeds a corresponding area threshold, if any); and
  - (b) no part of the relevant land, and no part of any associated land, is or adjoins foreshore, seabed, or a bed of a river or lake; and
  - (c) no part of the relevant land, and no part of any associated land, is non-urban land; and
  - (d) the area of the relevant land together with any associated land does not exceed 5 hectares; and
  - (e) the activity to be conducted on or from the relevant land is the same or substantially the same as the activity conducted on or from the relevant land under the previous land consent; and
  - (f) the transaction will not result in an overseas investment in significant business assets; and

- (g) the total value of the consideration for the overseas investment in sensitive land (and in fishing quota, if any) that will result from the transaction does not exceed \$100 million.

*Exemption*

- (2) The requirement to obtain consent under section 10(1)(a) of the Act (which relates to overseas investments in sensitive land) does not apply to the extent that giving effect to the transaction will result in A's acquisition.
- (3) However, the exemption in subclause (2) applies only if the condition in subclause (4) or (5) (as applicable), and the further conditions in subclause (6), are met.

*Condition requiring a previous consent for the acquisition of the interest*

- (4) If A's acquisition is of an interest in land (a **land interest**) (*see* section 12(a) of the Act), the condition is that the following statements apply:
  - (a) a previous acquisition of the land interest (or previous acquisitions of parts of the land interest that, together, comprise that land interest) has (or have) been consented to under section 10(1)(a) of the Act (the **previous land consent**); and
  - (b) the land interest has remained in the ownership or possession of an overseas person at all times since the date of the previous land consent (and, if acquired in parts, each part has remained in the ownership or possession of an overseas person at all times since the date that part was acquired); and
  - (c) if, since the date of the previous land consent, the land interest (or a part of it) has been acquired by another overseas person, that acquisition was in accordance with an exemption in regulation 33(1)(a) or (e) or this regulation.
- (5) If A's acquisition is of rights or interests in securities of a person (**P**) who owns or controls (directly or indirectly) an interest in land (*see* section 12(b) of the Act), the condition is that—
  - (a) the following statements apply:
    - (i) a previous acquisition of the interest in land owned or controlled by P (the **land interest**) (or previous acquisitions of parts of the land interest that, together, comprise that land interest) has (or have) been consented to under section 10(1)(a) of the Act (the **previous land consent**); and
    - (ii) the land interest has remained in the ownership or possession of an overseas person at all times since the date of the previous land consent (and, if acquired in parts, each part has remained in the ownership or possession of an overseas person at all times since the date that part was acquired); and

- (iii) if, since the date of the previous land consent, the land interest (or a part of it) has been acquired by another overseas person, that acquisition was in accordance with an exemption in regulation 33(1)(a) or (e) or this regulation; or
- (b) the following statements apply:
  - (i) P owned or controlled the land interest before becoming an overseas person as a result of an acquisition of rights or interests in P's securities; and
  - (ii) consent was obtained under section 10(1)(a) of the Act to the acquisition of rights or interests in P's securities referred to in subparagraph (i) (the **previous land consent**); and
  - (iii) at all times since the date of the previous land consent, P has remained an overseas person and the land interest has remained in the ownership or control of P; or
- (c) paragraph (a) or (b) applies to different parts of the land interest owned or controlled by P and those parts, together, comprise the land interest.

*Further conditions relating to A, compliance with consent conditions, use of land, and provision of information to regulator*

- (6) The further conditions are that,—
  - (a) if A is an individual, A is not, at the date of A's acquisition, an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (or A is an individual for whom a special direction referred to in section 17(1)(a) of that Act has been made permitting a visa or entry permission to be granted to that individual); and
  - (b) if A is not an individual, at the date of A's acquisition each of the following is not an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (or is an individual for whom a special direction referred to in section 17(1)(a) of that Act has been made permitting a visa or entry permission to be granted to that individual):
    - (i) each individual who has a 25% or more ownership or control interest in A; and
    - (ii) each member of the governing body of A who is an individual; and
  - (c) A continues to comply with the continuing conditions of the previous land consent that are related to the relevant land; and
  - (d) the same or substantially the same activity continues to be conducted on or from the relevant land as the activity conducted on that land under the previous land consent; and
  - (e) by the date that is 1 month after the date of A's acquisition, A provides the regulator with the following information and documents, in writing:

- (i) a general description of the transaction that resulted in A's acquisition, including a copy of the document or documents setting out the terms and conditions of the interest or rights acquired; and
  - (ii) notification to the effect that the interest or rights have been acquired in reliance on the exemption in this regulation and that the condition and each of the further conditions of the exemption (other than conditions subsequent) are met; and
  - (iii) information that identifies or allows the regulator to identify the previous land consent; and
  - (iv) a list of the continuing conditions of the previous land consent that are related to the relevant land; and
  - (v) notification of the activity to be conducted on or from the relevant land; and
  - (vi) if A is an individual, A's full name; and
  - (vii) if A is not an individual, the full name of—
    - (A) each individual who has a 25% or more ownership or control interest in A; and
    - (B) each member of the governing body of A (whether or not an individual).
- (7) In this regulation,—
- continuing**, in relation to the conditions of a previous land consent, means those conditions that—
- (a) have not been met (or have not been met fully) at the date of A's acquisition; or
  - (b) are ongoing, even if they are met at that date
- previous land consent** has the meaning set out in subclause (4) or (5)(a) or (b), whichever applies
- related to the relevant land**, in relation to the conditions of a previous land consent, means conditions that relate to the use of the land or a part of the land that is the relevant land (whether or not they also relate to the use of other land), including any conditions that—
- (a) require, permit, or prohibit activities on that land; or
  - (b) require improvements or changes to that land.

### 36AC Exemption for transactions consequential on certain actions under Public Works Act 1981

The requirement to obtain consent under section 10(1)(a) of the Act does not apply to a transaction to the extent that giving effect to the transaction results in the acquisition, by an overseas person (**A**), of an interest in land (**land B**), if—

- (a) the acquisition is by way of grant, vesting, or other disposal to A in accordance with section 105, 106, 107A, 117, or 119 of the Public Works Act 1981; and
- (b) in the case that land B is or includes land of a type listed in table 1 of Schedule 1 of the Act (but disregarding the row relating to non-urban land), the area of land B that is that type of land does not exceed the corresponding area threshold in that table (if any); and
- (c) land B adjoins land in which A already owns or possesses an interest (other than an exempted interest) or land B is separated from that land only by a public road (including a motorway or a State highway, and whether or not that road is formed).

## 6 New regulation 36B and cross-heading inserted

After regulation 36A, insert:

### *Exemption from definition of overseas person*

#### **36B Exemption for certain bodies corporate who are overseas persons only because overseas custodians have custodial securities**

- (1) This regulation applies to a body corporate in whom an overseas person who is a custodian has any right or interest in custodial securities, if the body corporate—
  - (a) is an overseas person; but
  - (b) would not be an overseas person (but for this exemption) if, instead of the custodian, the ultimate investor had the right or interest in those custodial securities that the custodian has.
- (2) The body corporate is exempt from the definition of overseas person.
- (3) In this regulation, unless the context otherwise requires,—
 

**custodial securities** means securities or rights or interests in securities in the body corporate—

  - (a) bought or obtained by the custodian on the instructions of another person (the **customer**); and
  - (b) in which the custodian holds the right or interest that the custodian acquires (other than any permitted security interest) on trust for, or on behalf of, the customer; and
  - (c) in or to which—
    - (i) the ultimate investor is beneficially interested or entitled; and
    - (ii) the custodian acquires no beneficial interest or entitlement other than—
      - (A) a permitted security interest; and

- (B) if the custodian (B) is the customer of another custodian (A), any beneficial right or interest acquired that B holds on trust for, or on behalf of, another person who is B's customer and that B acquired in B's capacity as A's customer; and
- (d) in respect of which the custodian makes no decisions, but instead acts on the decisions and instructions of the customer (for example, decisions to sell and decisions on how to exercise any powers or any rights in relation to voting attached to or conferred by those securities)

**custodian** means a person—

- (a) who is in the business of obtaining and holding property for, and on the instructions and decisions of, other people; and
- (b) who is acting in the ordinary course of that business

**permitted security interest** means a beneficial interest or entitlement under a security arrangement (if any) that—

- (a) in substance secures the customer's obligation to pay fees to the custodian for the custodian's services to the customer; and
- (b) is entered into by the custodian and the customer in good faith and in the ordinary course of the custodian's business; and
- (c) requires that the beneficial interest in or entitlement to the custodial securities be retransferred to the customer or extinguished on the payment of those fees

**ultimate investor** means the person who is ultimately entitled to hold or call for the right to hold the right or interest in the custodial securities that the custodian holds for the customer (and who may be the customer or, if the customer is also a custodian, who may be another person).

#### Example 1

Overseas Custodian X (an overseas person) has 30% of a particular class of shares in Company Y as custodial securities.

The ultimate investor in respect of those shares is Overseas Custodian X's customer, Person Z, who is not otherwise an overseas person.

No associates of Person Z who are overseas persons have rights or interests in securities in Company Y (other than Overseas Custodian X).

If there is no reason under the Act why Company Y would be an overseas person other than that Overseas Custodian X has those shares, Company Y will not be an overseas person.

#### Example 2

Overseas Custodian A (an overseas person) is looking to obtain the remaining 70% of the shares in a class in Company Y as custodial property for its customer, Person B.

Person B is also a custodian. Person B is looking to obtain half of those shares as custodial securities for its customer, Person C, and the other half as custodial securities for its customer, Person D.

Both Persons C and D will be the ultimate investors in respect of their shares, ie, each will be the ultimate investor for 35% of the class of shares.

Person C is not an overseas person and no associates of Person C who are overseas persons have rights or interests in securities in Company Y (other than Overseas Custodian A).

Person D is an overseas person.

In these circumstances, Company Y would be an overseas person because of Person D's beneficial interest in the shares.

So, after the acquisition by Overseas Custodian A of the remaining 70% of shares, Company Y would no longer be eligible for the exemption under regulation 36B.

## 7 Schedule 1AA amended

In Schedule 1AA, after Part 1, insert the Part 2 set out in the Schedule of these regulations.

### Schedule New Part 2 inserted into Schedule 1AA

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#### Part 2 Provisions relating to Overseas Investment Amendment Regulations (No 2) 2016

##### 2 Transitional provision relating to application

- (1) Regulations 33A and 36AA to 36AC, as inserted by regulations 4 and 5 of the Overseas Investment Amendment Regulations (No 2) 2016, apply only to transactions entered into or occurring on or after 1 February 2017.
- (2) Regulation 36B, as inserted by regulation 6 of the Overseas Investment Amendment Regulations (No 2) 2016, does not apply to a body corporate to the extent that it would have the effect of exempting from the requirement for consent a transaction entered into or occurring before 1 February 2017.

Michael Webster,  
Clerk of the Executive Council.

### Explanatory note

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

These regulations, which come into force on 1 February 2017, amend the Overseas Investment Regulations 2005 (the **principal regulations**).

These regulations provide for—

- 1 new class exemption from the requirement for consent under section 10(1)(a) and (b) of the Overseas Investment Act 2005 (the Act) and section 57B of the Fisheries Act 1996, which relate, respectively, to overseas investment in sensitive land, overseas investment in significant business assets, and overseas investment in fishing quota (*see new regulation 33A*); and
- 3 new class exemptions from the requirement for consent under section 10(1)(a) of the Act, which relates to overseas investments in sensitive land (*see new regulations 36AA to 36AC*); and
- 1 new class exemption from the definition of overseas person (*see new regulation 36B*).

The exemptions do not apply to or in respect of any transaction entered into or occurring before 1 February 2017.

*Exemption from requirement for consent for overseas investments in sensitive land, sensitive business assets, and fishing quota*

The exemption in *new regulation 33A* is for overseas persons who are custodians acquiring shares or other property on behalf of other persons in the ordinary course of their business of acting as a custodian. For this exemption to apply, the custodian must obtain the property on the instructions of a customer, the beneficial interest in or entitlement to the property must be acquired by a person other than the custodian and the custodian must hold any rights or interests it acquires in the property on trust for, or on behalf of, the customer (other than permitted security interests), and the custodian must make no decisions in relation to that property but act only on instructions of the customer (including in relation to any right to vote or control the exercise of any votes that attach to the property).

A feature of the exemption is that, if it applies, it exempts a transaction from the requirement for consent only to the extent of the custodian's acquisition of the rights or interests it holds as custodian. It does not extend to, for instance, exempting from the requirement for consent an investor who is an overseas person acquiring the beneficial interest in, or rights to, the property that is the custodial property.

*Exemptions from requirement for consent for overseas investments in sensitive land*

The exemption in *new regulation 36AA* is for certain acquisitions of leases or other interests in sensitive land (*see section 12(a) of the Act*) but does not extend to freehold estates. It applies where a lease or other interest held in the land is expiring or has recently expired. If certain terms and conditions are met, the person who held that interest will be able to acquire a new interest of the same type in that land without obtaining consent.

The exemption is intended for situations where a lease or other interest in particular sensitive land is effectively being re-granted to the same person who will conduct the

same or substantially the same activity on that land. The terms and conditions of the new interest in relation to that land must be the same as in the previous interest, with some limited exceptions. (For example, the term of the new interest may be shorter.) The exemption could apply to allow any number of re-grants to a person; however, for the exemption to apply, that person must have obtained consent to acquire a previous similar lease or other interest in that land and the term of the new interest (including any rights of renewal) must expire within 20 years of the date that A acquired that interest. Other conditions of the exemption include that the person must continue to comply with any ongoing or unfulfilled land-use conditions of the previous consent that relate to that land and provide the regulator with certain information and documents within 1 month of relying on the exemption.

The exemption in *new regulation 36AB* is for certain transactions between overseas persons where the sensitive land in question (the **relevant land**) has been the subject of overseas investment that was consented to under section 10(1)(a) of the Act, has since remained in overseas ownership or control, and will continue to be used for the same or substantially the same activity. It applies both to certain acquisitions of an interest in sensitive land and to certain acquisitions of rights or interests in securities of a person who owns or controls an interest in sensitive land (*see*, respectively, section 12(a) and (b) of the Act).

The exemption does not apply to all types of sensitive land, and it will not apply if the relevant land together with any associated land (*see* section 8(4) of the Act) exceeds 5 hectares. It will not apply if any of the relevant land or any associated land is foreshore, seabed, a bed of a river or lake, or non-urban land, regardless of size. Nor will it apply if any part of the relevant land or associated land adjoins foreshore, seabed, or a bed of a river or lake. Other terms and conditions apply, including that the transaction cannot result in an overseas investment in significant business assets, that the total value of the consideration for the overseas investment in sensitive land (and in fishing quota, if any) that will result from the transaction does not exceed \$100 million, that the investor must comply with any ongoing or unfulfilled land-use conditions of the previous consent that relate to that land, and that the investor must provide the regulator with certain information and documents within 1 month of relying on the exemption.

The exemption in *new regulation 36AC* applies where an overseas person acquires land in accordance with certain provisions of the Public Works Act 1981. For certain types of sensitive land, the size of the land covered by the exemption is restricted. A further term of the exemption requires that the land adjoin or be separated only by a public road from land in which the overseas person already has an interest (other than an exempted interest).

Some exemption terms and conditions are ongoing, while other terms and conditions are measured at points in time (such as the date of the relevant acquisition). If a person breaches a term or condition of an exemption, then the exemption does not apply and, if the overseas investment has been given effect to (and no other exemption from

the requirement for consent applies), the investor will be in breach of the Act for not having obtained consent for the transaction.

*Exemption from definition of overseas person*

The exemption in *new regulation 36B* relates to bodies corporate in which overseas persons who are custodians hold securities for other persons. These bodies corporate will be exempt from the definition of overseas persons if the only reason they are overseas persons is because the overseas custodian holds rights or interests in those securities, rather than the securities being held outright by the person with the ultimate beneficial interest or entitlement to those securities. The exemption essentially treats the person who ultimately has the beneficial interest or entitlement as having all the rights and interests that the custodian has in those securities.

**Regulatory impact statement**

The Treasury produced a regulatory impact statement on 24 March 2016 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 15 December 2016.  
These regulations are administered by the Treasury.