



## **Overseas Investment Amendment Regulations (No 2) 2020**

Patsy Reddy, Governor-General

### **Order in Council**

At Wellington this 27th day of July 2020

Present:

The Right Hon Jacinda Ardern presiding in Council

These regulations are made under sections 61, 61C, and 127 of the Overseas Investment Act 2005—

- (a) on the advice and with the consent of the Executive Council; and
- (b) to the extent that they are made under section 61C of that Act, on the recommendation of the Minister of Finance made in accordance with section 61E of that Act; and
- (c) to the extent that they are made under section 127 of that Act, on the recommendation of the Minister of Finance made after having had regard to New Zealand's international obligations in accordance with section 127(2) of that Act.

### **Contents**

		Page
1	Title	2
2	Commencement	2
3	Principal regulations	2
4	New regulation 3E inserted (Overseas investments covered by emergency notification regime)	2
	3E Overseas investments covered by emergency notification regime	2

5	Regulation 34 amended (When fees and charges are payable)	2
6	Regulation 38 replaced (Exemptions for shareholding creep)	3
	38 Exemptions for shareholding creep by consent holder	3
	38A Exemptions for shareholding creep by persons other than consent holder	5
7	Regulation 42 amended (Exemption for portfolios or bundles of permitted security arrangements)	7
8	New regulation 63 inserted (Further exemption for retirement schemes)	7
	63 Further exemption for retirement schemes	7
9	Schedule 1AA amended	7
10	Schedule 2 amended	9

## Regulations

### 1 Title

These regulations are the Overseas Investment Amendment Regulations (No 2) 2020.

### 2 Commencement

These regulations come into force on 28 July 2020.

### 3 Principal regulations

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

### 4 New regulation 3E inserted (Overseas investments covered by emergency notification regime)

After regulation 3D, insert:

#### **3E Overseas investments covered by emergency notification regime**

- (1) This regulation is made under section 127(1)(d)(iii) of the Act for the purposes of section 82(2) of the Act.
- (2) An overseas investment is not an overseas investment covered by the emergency notification regime if it is the acquisition by an overseas person, or an associate of an overseas person, of rights or interests in securities of an entity (A) as a result of the initial issue of those securities on the creation of A.

### 5 Regulation 34 amended (When fees and charges are payable)

After regulation 34(1), insert:

- (1A) However, a fee or charge in Part 6A of Schedule 2 is payable,—

- (a) if the transaction is identified as a transaction of national interest by the applicant in the application, on the making of the application; or
- (b) if the Minister notifies the applicant under section 20A(2) or 20B(1) of the Act,—
  - (i) on the issue of an invoice by or on behalf of the regulator; and
  - (ii) within the time frame specified in the invoice.

**6 Regulation 38 replaced (Exemptions for shareholding creep)**

Replace regulation 38 with:

**38 Exemptions for shareholding creep by consent holder**

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

*Exemption 1*

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

$$t < (c \times 1.05) - q$$

where—

t is the number of initial consented securities plus the number of further securities held by A

c is the number of securities that are initial consented securities

q is the number of securities of that class that—

- (a) are held by A and its associates, immediately after the acquisition of the further securities, that are not further securities; and

- (b) were acquired without consent in reliance on any exemption.

*Exemption 2*

- (3) The requirement for consent does not apply to the extent that giving effect to a transaction has the effect of an acquisition by A of securities or rights or interests in securities of B (the **further securities**) if—

- (a) the further securities and the initial consented securities are securities of the same class (**class Z securities**); and
- (b) the further securities are acquired by A in 1 or more transactions; and
- (c) on completion of each acquisition of further securities, both of the following are true:
  - (i) the resulting percentage of class Z securities that A or an associate of A (either alone or together with its associates) holds or controls, or has consent to hold or control, (directly or indirectly) does not exceed by more than 10 percentage points the percentage of class Z securities that A or an associate of A (either alone or together with its associates) held or controlled, or had consent to hold or control, (directly or indirectly) at the relevant time; and
  - (ii) the level of control in B is less than the control limit.

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**Example**

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

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

Under subclause (2), A would be able to acquire 2 further class Z shares (that is, less than 5% of 60).

Under subclause (3), A may be able to acquire up to 10 further shares (that is, 60% plus 10 percentage points for a total of 70%). However, the number of shares A could acquire may be limited because A's level of control in B, after the acquisition, must be less than A's control limit.

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*Interpretation*

- (4) In this regulation, unless the context otherwise requires,—
- control limit** is defined in relation to the level of control in B as follows:
- (a) if the level of control in B at the relevant time amounted to 25% or less, the control limit is 25%;
  - (b) if the level of control in B at the relevant time amounted to more than 25%, but less than 50%, the control limit is 50%;
  - (c) if the level of control in B at the relevant time amounted to 50% or more, but less than 75%, the control limit is 75%;
  - (d) if the level of control in B at the relevant time amounted to 75% or more, the control limit is 100%
- hold** includes to have a beneficial entitlement to or a beneficial interest in
- level of control in B**, expressed as a percentage, is the higher of the following:
- (a) the proportion of the governing body of B of which A and its associates (either alone or together with their associates) have power to control the composition:

- (b) the proportion of the voting power at a meeting of B that A and its associates have the right to exercise, or of which A and its associates have the right to control the exercise, (either alone or together with their associates)

**relevant time** means immediately after A's consent was granted

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

*Conditions*

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

**38A Exemptions for shareholding creep by persons other than consent holder**

- (1) Subclause (3) applies to a person (E) if—
  - (a) E has (either alone or together with its associates) an existing more than 25% ownership or control interest in another person (P) (the **existing interest**); and
  - (b) the relevant Minister or Ministers have not previously granted consent to E for the acquisition of securities or rights or interests in securities of P.
- (2) However, subclause (3) does not apply if any of the existing interest in P was acquired in contravention of the Act.
- (3) The requirement for consent under section 12(b)(ii) or 13(1)(a) of the Act or section 57D of the Fisheries Act 1996 in respect of an increase in the existing interest does not apply to the extent that giving effect to a transaction has the effect of an acquisition by E of securities or rights or interests in securities of P (the **further securities**) if—
  - (a) the further securities are securities of the same class as any of the securities that form part of the existing interest; and
  - (b) on completion of each acquisition of further securities, both of the following are true:
    - (i) the resulting percentage of securities of P of any class that E or an associate of E (either alone or together with its associates) holds or controls (directly or indirectly) does not exceed by more than 10 percentage points the percentage of securities of that class that were held or controlled (directly or indirectly) by E or an associate of E (either alone or together with its associates) at the relevant time; and
    - (ii) the level of control in P is less than the control limit.
- (4) In this regulation, unless the context otherwise requires,—

**control limit** is defined in relation to the level of control in P as follows:

- (a) if the level of control in P at the relevant time amounted to 25% or less, the control limit is 25%:
- (b) if the level of control in P at the relevant time amounted to more than 25%, but less than 50%, the control limit is 50%:
- (c) if the level of control in P at the relevant time amounted to 50% or more, but less than 75%, the control limit is 75%:
- (d) if the level of control in P at the relevant time amounted to 75% or more, the control limit is 100%

**level of control in P**, expressed as a percentage, is the higher of the following:

- (a) the proportion of the governing body of P of which E and its associates (either alone or together with their associates) have power to control the composition:
- (b) the proportion of the voting power at a meeting of P that E and its associates have the right to exercise, or of which E and its associates have the right to control the exercise, (either alone or together with their associates)

**relevant time** means,—

- (a) if the relevant Minister or Ministers have previously granted 1 or more consents for the acquisition by an associate of E of securities or rights or interests in securities of P, immediately after the grant of the most recent of those consents:
  - (b) in any other case, immediately before E or any associate of E first relies on this regulation to acquire securities of P.
- (5) Other terms have the same meaning as in regulation 38(4).
- (6) This regulation will be revoked on the 42nd day after the date on which the Overseas Investment Amendment Act (No 3) 2020 receives the Royal assent (*see* section 61(3) of the Act).

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**Example**

E has owned and controlled 30% of A and 30% of P since 2017. E, A, and P are all overseas persons.

B is a New Zealand company that owns residential land. A obtained consent to acquire 30% of B. P acquired 30% of B in 2017 before its residential land assets became sensitive.

A and P are associates. For the purposes of the exemption in this regulation, the level of control in B held by A and P is aggregated, in this case to 60%, giving a control limit of 75%.

If A has used the exemption in regulation 38 to acquire the maximum shares in B permitted under that exemption, P cannot use the exemption in this regulation to acquire further shares in B. Otherwise, P may be able to use the exemption in this regulation to acquire further shares in B.

E may be able to acquire up to 10% further shares in both A and P using the exemption in this regulation (subject to the control limit in each case).

**7 Regulation 42 amended (Exemption for portfolios or bundles of permitted security arrangements)**

- (1) Replace the heading to regulation 42 with “**Further exemption for permitted security arrangements**”.
- (2) In regulation 42, replace “The requirement to obtain consent under section 10(1)(a) of the Act or section 57B of the Fisheries Act 1996” with “The requirement for consent”.
- (3) Before regulation 42(a)(i), insert:
  - (iaaa) 1 permitted security arrangement; or
- (4) In regulation 42(c), after “sensitive land”, insert “or an overseas investment in significant business assets”.

**8 New regulation 63 inserted (Further exemption for retirement schemes)**

After regulation 62, insert:

**63 Further exemption for retirement schemes**

- (1) This regulation applies to a retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) if—
  - (a) the investment of all of the assets of the scheme is for the benefit of members at least 75% of whom are New Zealand citizens or persons ordinarily resident in New Zealand; and
  - (b) but for this regulation, the retirement scheme would be an overseas person (for example, because its supervisor or manager (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) is an overseas person).
- (2) The retirement scheme is exempt from the definition of overseas person.

**9 Schedule 1AA amended**

In Schedule 1AA, after clause 6, insert:

**7 Fees for transactions of national interest**

A fee or charge in Part 6A of Schedule 2 is not payable in relation to an application made before the commencement of the Overseas Investment Amendment Regulations (No 2) 2020 (even if the Minister notifies the applicant under section 20A(2) or 20B(1) of the Act after that date).

**8 Refund of fees in certain cases when new standing consent applies**

- (1) This clause applies in relation to a transaction if—

- (a) the transaction involves an overseas investment in residential (but not otherwise sensitive) land; and
- (b) before commencement,—
  - (i) residential standing consent had been granted for the transaction; or
  - (ii) an application for residential standing consent for the transaction had been made and consent had not been declined; and
- (c) as at commencement, the transaction had not been given effect to; and
- (d) consent for the transaction is now granted by clause 31 of Schedule 1AA of the Act.

(2) The regulator may refund to the consent holder or applicant all or part of the fee paid under item 11(b) of Schedule 2 for the application for the consent.

(3) In this clause,—

**commencement** means the commencement of clause 31 of Schedule 1AA of the Act

**residential standing consent** means standing consent for a transaction under clause 2 of Schedule 4 of the Act.

## 9 Existing transactions, applications, consents, etc

(1) After commencement, for the purpose of determining whether consent for a transaction is required, the new exemptions apply—

- (a) regardless of when the transaction is entered into and when the application for consent is made; and
- (b) even if, under clause 15 of Schedule 1AA of the Act, the old Act applies to the transaction.

(2) However, the new exemptions do not apply if—

- (a) the transaction was entered into, and given effect to, before commencement (even if an application for consent is made, or consent is given, after commencement); or
- (b) consent for the transaction was given before commencement (even if it is entered into, or given effect to, after commencement).

(3) If, before commencement, person A under regulation 38 had received consent for the acquisition by A (alone or with its associates) of 25% of a class of B's securities, the exemption in new regulations 38 and 38A (as replaced by the 2020 (No 2) Regulations) applies as if A's control limit were 50%.

(4) In this clause,—

**2020 (No 2) Regulations** means the Overseas Investment Amendment Regulations (No 2) 2020

**commencement** means commencement of the 2020 (No 2) Regulations

**new exemption** means any of the following:

- (a) the exemption in regulation 38 (as replaced by the 2020 (No 2) Regulations) for a transaction that would not have been exempt under that regulation before commencement:
- (b) the exemption in regulation 38A (as inserted by the 2020 (No 2) Regulations):
- (c) the exemption in regulation 42 (as amended by the 2020 (No 2) Regulations) for a transaction that would not have been exempt under that regulation before commencement:
- (d) the exemption in regulation 63 (as inserted by the 2020 (No 2) Regulations).

## 10 Schedule 2 amended

In Schedule 2, after Part 6, insert:

### Part 6A

#### Applications relating to transaction of national interest

The fee in this Part applies to transactions of national interest. It is payable in addition to any fee for consent for the transaction set out in any other Part of this schedule.

<b>Application</b>	<b>(\$)</b>
34A For consent for a transaction of national interest	52,000

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 amend the Overseas Investment Regulations 2005 (the **OI Regulations**) as part of the package of measures that included the enactment of the Overseas Investment (Urgent Measures) Amendment Act 2020, which amends the Overseas Investment Act 2005 (the **OI Act**).

These regulations come into force on 28 July 2020.

*Regulation 4* provides that certain acquisitions of securities on the creation of an entity are not overseas investments covered by the emergency notification regime. This is consistent with the exclusion of investments under section 13(1)(b) of the OI Act (which relates to establishment of a business) from the emergency notification regime.

*Regulations 5 and 10* amend regulation 34 and Schedule 2 of the OI Regulations to impose a fee of \$52,000 for consent for a transaction of national interest. The fee is payable in addition to the fee ordinarily payable for consent for the transaction.

*Regulation 6* replaces regulation 38 of the OI regulations, which currently permits shareholders who have previously received consent to make certain incremental increases in their shareholdings. The main effect of the changes is follows:

- the 5-year time limit currently contained in regulation 38(2)(b) is removed for persons using the second option for making incremental increases in shareholding (*see* the 2 options noted in the example):
- in that second option, if A has consent to acquire 75% or more, then A's control limit will be 100%. In other words, there are no longer separate control limits for persons who have consent to acquire 75% or more (currently their control limit is 90%) and persons who have consent to acquire 90% or more (currently, these are the only persons with a control limit of 100%):
- the interests of associates are taken into account, in determining the incremental increases that can be made under the exemption.

*Regulation 6* also inserts *new regulation 38A* of the OI regulations, which provides a new exemption for persons who have not previously received consent. The 2 circumstances where the new exemption will be able to be used are as follows:

- if a person (**A**) previously received consent to acquire shares in an entity (**B**) and is entitled to an exemption under regulation 38, the new exemption allows incremental increases in shareholdings in entities other than B by entities within the same group as A:
- the new exemption also allows incremental increases in shareholdings that were acquired at a time when consent was not required.

In both circumstances, the new exemption in *new regulation 38A* permits incremental acquisitions of up to a further 10%, provided that the control limits are not crossed. These limits will be 50% or 75%, depending on the size of the shareholding before the increases.

The new exemption in *new regulation 38A* will be revoked on the 42nd day after the date on which the Overseas Investment Amendment Act (No 3) 2020 receives the Royal assent.

*Regulation 7* extends the current exemption in regulation 42 (which is for portfolios or bundles of permitted security arrangements) so that it also applies to acquisitions of significant business assets and to acquisitions of 1 permitted security arrangement.

*Regulation 8* grants a further exemption for retirement schemes, so that a scheme that is currently exempt from the requirement for consent (*see* regulation 44) is also exempt from being an overseas person (*new regulation 63*).

*Regulation 9* adds transitional provisions to Schedule 1AA of the OI Regulations. *New clause 7* makes it clear that the new fee for transactions of national interest is only payable for applications made after commencement of these regulations.

*New clause 8* provides for a refund of fees paid by people who had previously been granted consents for certain kinds of transactions but who no longer need to rely on them because the transactions now qualify for a standing consent under the OI Act.

*New clause 9* provides that, for the purpose of determining whether consent for a transaction is required, the new exemptions created by these regulations apply to all transactions regardless of when the transaction is entered into and when the application for consent is made. The only exceptions are if consent had already been given before commencement of these regulations, or if the transaction had been given effect to before commencement of these regulations.

### Statement of reasons

*The following statement of reasons is published for the purposes of section 61F(5) of the Overseas Investment Act 2005. This statement also covers exemptions made in respect of matters in section 61(1)(lc) of that Act.*

- (1) This statement sets out the Minister's reasons for recommending the new exemptions in regulations 38, 38A, 42, and 63 of the Overseas Investment Regulations 2005, and why the Minister considers each exemption to be necessary, appropriate or desirable. The Minister Responsible for the Act (the Minister of Finance) formally delegated authority to recommend the making of regulations under the Act to the Associate Minister of Finance (Hon Parker).
- (2) Under section 61E of the Act, the Minister may recommend exemptions under sections 61C and 61D only if the Minister considers:
  - that there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption for any of the matters referred to in section 61B(a) to (c) of the Act; and
  - that the extent of the exemption is not broader than is reasonably necessary to address those circumstances.
- (3) When considering whether to recommend that an exemption be made, the Minister must have regard to the purpose of the Act, which acknowledges that it is a privilege for overseas persons to own or control sensitive New Zealand assets. It is therefore appropriate for overseas investments in those assets to meet consent criteria and be subject to prescribed conditions.
- (4) The Minister may also have regard to all or any of the factors set out in section 61E(2)(b) of the Act, which includes discretion to consider any other factor that the Minister considers relevant to the circumstances.

*Reasons for exemption for shareholder creep by consent holder (new regulation 38(2) and (3))*

- (5) The following 2 exemptions are for the matter referred to in section 61B(c)(iii) of the Act—allowing for exemptions for minor increases in ultimate ownership

and control by overseas persons, if consent has already been granted for those overseas persons to own or control sensitive New Zealand assets.

*Exemption One (new regulation 38(2))*

- (6) New regulation 38(2) allows a consent holder (**A**) to acquire, without consent, more securities than they were initially consented to hold (by number), as long as:
- the securities are of the same class as those that A had consent to hold; and
  - the securities are acquired in 1 or more transactions, all within 5 years of A receiving consent for the initial securities acquisition; and
  - the number of securities being acquired is less than 5% of the number of securities that they were initially consented to hold.
- (7) For example, under this exemption, if A was initially consented to hold 100 securities in another entity (**B**), A would be able to acquire up to 4 additional securities in B within 5 years of receiving consent, without needing to obtain further consent.
- (8) I consider this exemption is appropriate and desirable, having regard to the Act's purpose. Requiring entities to obtain further consent in these circumstances would be inefficient, unduly costly, or unduly burdensome, particularly given the limited value in the Government screening those investments from a risk management perspective.
- (9) I also consider that the extent of the exemption is not broader than reasonably necessary to address those circumstances. The exemption is limited to increases in ownership of less than 5% (by number) of securities the investor was initially consented to hold. An increase of this size would not materially change an entity's ownership in sensitive New Zealand assets (having regard to sections 61E(2)(b)(i) and 61E(2)(b)(ii) of the Act).

*Exemption Two (new regulation 38(3))*

- (10) New regulation 38(3) allows a consent holder (**A**) (alone or together with their associates) to acquire more securities in an entity (**B**) than A was initially granted consent to hold, without further consent, so long as:
- the securities are in the same class that A was initially granted consent to hold; and
  - the acquisition of more securities in B is by less than 10% of the total securities available in that class; and
  - the securities are acquired through 1 or more transactions; and
  - the acquisition does not result in A breaching a "control limit" in B.
- (11) There is no time limit on A's ability to access this exemption.
- (12) Control limits are defined in relation to the level of control that A was previously granted consent to hold in B, prior to the relevant transaction. The con-

trol limits are 25%, 50%, 75%, and 100% respectively. For example, if A's level of control in B prior to the relevant transaction was 35%, the relevant control limit is 50%.

- (13) This means that, under this exemption, if A had initially been consented to hold:
- 30% of a class of securities in B: A would be able to acquire additional securities up until A held 40% of the securities in B available in that class, without obtaining consent. This is because, in this example, A can acquire up to 10% of the securities available in that class without breaching the relevant control limit; or
  - 45% of a class of securities in B: A would be able to acquire further securities up until they held just less than 50% of the securities in B available in that class, without obtaining consent. This is because, in this example, the relevant control limit is 50%.
- (14) I consider this exemption is appropriate and desirable, having regard to the Act's purpose, because increases in ownership of 10% or less of the total share of securities available do not materially change an entity's ownership or control over sensitive New Zealand assets (having regard to sections 61E(2)(b)(i) and 61E(2)(b)(ii) of the Act). Requiring entities to obtain consent in these circumstances would be inefficient, unduly costly, or unduly burdensome, particularly given the limited value in the Government screening those investments from a risk management perspective.
- (15) I also consider that the extent of the exemption is not broader than reasonably necessary to address those circumstances. The exemption is limited to increases in ownership of 10% or less of the total number of securities available in a class and is restricted to increases in ownership within relevant control limits. This ensures that the exemption does not allow an investor to materially increase their ownership or control over sensitive New Zealand assets (having regard to sections 61E(2)(b)(i) and 61E(2)(b)(ii) of the Act).

*Reasons for exemption for shareholder creep by persons other than consent holder (new regulation 38A)*

- (16) New regulation 38A allows overseas persons or their associates, who have an interest in sensitive New Zealand assets for which they have not previously received consent, to acquire additional securities in the asset without obtaining consent, as long as:
- the overseas person or their associates are acquiring securities of the same class that they already own. For example, an overseas person that owns ordinary shares in a company will only be able to use this exemption to either themselves acquire, or for another member of their corporate group to acquire, additional ordinary shares; and

- the transaction involves the acquisition of no more than 10% of all total securities in each relevant class by all associated investors. For example, if an overseas person already has consent to own 55% of the company's ordinary shares, an associate of the overseas person would only be able to acquire shares to the point that the entities' combined holding (that is, the holdings of the consent holder and their associate) is not more than 65% of the company's ordinary shares); and
  - the transaction does not result in the overseas person's overall control interest (combined with their associates) reaching control limits of 25%, 50%, 75%, or 100%. For example, if the overseas person has consent to own 45% of the company's ordinary shares, an associate of the overseas person could only use the exemption to increase the entities' combined holding (that is, the holdings of the consent holder and their associates) of ordinary shares to less than 50% of the company's ordinary shares.
- (17) This exemption is desirable to respond to an epidemic in New Zealand because it will improve access to low-risk capital for entities holding sensitive New Zealand assets. This is particularly important in the current and forecast economic environment, where access to New Zealand equity capital is expected to be constrained. The exemption is also generally aligned with the Government's economic strategy and foreign investment policy, which welcome productive and sustainable foreign investment.
- (18) This exemption is no broader than reasonably necessary because entities are still restricted to increases of not more than 10%, and are prevented from crossing control limits. As such, the use of this exemption should not materially change an entity's degree of control over sensitive New Zealand assets.

*Reasons for extension of exemption for portfolios or bundles of permitted security arrangements to significant business assets (regulation 42)*

- (19) This exemption is for the matter referred to in section 61B(c)(iv) of the Act—security arrangements that are entered into in the ordinary course of business. The term “security arrangement” is defined in section 6 of the Act as “an arrangement that in substance secures payment or performance of an obligation (without regard to the form of the arrangement or the identity of the person who has title to the property that is subject to the arrangement)”.
- (20) The existing exemption in regulation 42 allows an overseas person to acquire 2 or more “permitted security arrangements”, or to acquire securities in a person (A), to the extent of A's property under “permitted security arrangements”, relating to sensitive land or fishing quota without obtaining consent. This amendment extends that exemption to include:
- trade in a single security arrangement (to resolve ambiguity around whether the exemptions currently apply to such trades, rather than just trades involving more than one security arrangement); and

- securities in “permitted security arrangements”, relating to significant business assets. This means that the exemption could be used in transactions involving the acquisition of securitised assets valued at \$100 million or more.
- (21) I consider these exemptions are appropriate and desirable because, having regard to the Act’s purpose, the security interest exempted does not relate to the acquisition of a tangible sensitive asset in New Zealand. An overseas person holding a permitted security arrangement (given how that term is defined in the Act) is very unlikely to change the effective ownership and control of the secured asset and, to the extent that there is any impact, this will be limited to the period of the security.
- (22) Given this, the rationale for exempting trade in multiple permitted security arrangements relating to sensitive land and fishing quota applies equally to trade in a single permitted security arrangement, and single and multiple security arrangements relating to significant business assets.
- (23) In addition, facilitating the trading of security arrangements is important to support access to finance on reasonable terms. As such, the exemption is also desirable to avoid limiting overseas persons’ willingness to lend money to people acquiring significant business assets in New Zealand.
- (24) Further, I consider this exemption is not broader than reasonably necessary because it is limited to:
- transactions entered into in good faith and in the ordinary course of business; and
  - with no intention of using the security arrangement to acquire sensitive land, significant business assets, or fishing quota without consent (instead, the interest is taken as security that secures the performance of the obligations associated with that security arrangement).
- (25) For example, under this exemption, an overseas person could not intentionally acquire security arrangements securing debts with debtors that are struggling to meet their obligations, and then enforce the security arrangements in order to acquire the secured assets. Also, where the exemption is being used to acquire securities in a person (A) that owns 1 or more “permitted security arrangements”, the exemption only applies to A’s permitted security arrangements and not any other sensitive New Zealand assets A may own.

*Reasons for further exemption for retirement schemes (new regulation 63)*

- (26) This exemption is for the matter referred to in section 61B(c)(viii) of the Act—persons, transactions, rights, interests, or assets that the Minister considers to be fundamentally New Zealand owned or controlled, or that have a strong connection to New Zealand.
- (27) Existing regulation 44 of the regulations exempts retirement schemes from consent requirements if at least 75% of participants are New Zealand citizens

or persons ordinarily resident in New Zealand. However, retirement schemes are not exempt from the definition of “overseas person”. This means that retirement schemes can purchase sensitive New Zealand assets without consent, but their investments may contribute to target entities being deemed to be overseas persons. This amendment addresses that by exempting retirement schemes from the definition of overseas person on the same basis.

- (28) I consider this exemption is appropriate and desirable, having regard to the Act’s purpose and the matters in section 61B(c)(vii). This is because retirement schemes which satisfy the criteria for the exemption are effectively owned by non-overseas persons (having regard to the factor in section 61E(2)(b)(i) of the Act), even though the assets may be managed or held by overseas persons. For example, the assets held by a KiwiSaver scheme that is managed by an Australian-owned bank could be treated as being overseas-owned. Requiring retirement schemes to obtain consent (including indirectly requiring entities that the schemes have an interest in to obtain consent) discourages those schemes from investing in sensitive New Zealand assets, therefore limiting beneficial ownership of sensitive New Zealand assets by New Zealanders.
- (29) I consider this exemption is no broader than reasonably necessary, because it only applies to retirement schemes as defined in the Financial Markets Conduct Act 2013 (KiwiSaver schemes, workplace savings schemes, and certain single-person superannuation schemes) rather than managed investment schemes or portfolio investment schemes more broadly.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 27 July 2020.  
These regulations are administered by the Treasury.