



Overseas Investment (CPTPP) Amendment Regulations 2018

Patsy Reddy, Governor-General

Order in Council

At Wellington this 12th day of November 2018

Present:

Her Excellency the Governor-General in Council

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

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Finance made in accordance with section 61A(3) of that Act.

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Alternative monetary thresholds for overseas investments in significant business assets

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Regulations

1 Title

These regulations are the Overseas Investment (CPTPP) Amendment Regulations 2018.

2 Commencement

These regulations come into force on 30 December 2018.

3 Principal regulations

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

4 Regulation 61 and cross-heading revoked

Revoke regulation 61 and the cross-heading above regulation 61.

5 New Part 5 inserted

After Part 4, insert:

Part 5 Alternative monetary thresholds for overseas investments in significant business assets

Subpart 1—Introduction and definitions

84 Introduction to Part 5

- (1) This Part, which is made under section 61A of the Act, provides for alternative monetary thresholds under section 13 of the Act (overseas investments in significant business assets).
- (2) The details of the alternative monetary thresholds are in subparts 2 and 3.
- (3) Subpart 2 relates to the following:
 - (a) the Comprehensive and Progressive Agreement for Trans-Pacific Partnership done at Santiago on 8 March 2018 (the **CPTPP Agreement**):
 - (b) the Free Trade Agreement between New Zealand and the Republic of Korea done at Seoul on 23 March 2015 (the **Korea FTA**):

- (c) the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation done at Wellington on 10 July 2013 (**ANZTEC**):
 - (d) the New Zealand–Hong Kong, China Closer Economic Partnership Agreement done at Hong Kong on 29 March 2010 (the **Hong Kong CEP**):
 - (e) the Free Trade Agreement between the Government of New Zealand and the Government of the People’s Republic of China done at Beijing on 7 April 2008 (the **China FTA**):
 - (f) the Trans-Pacific Strategic Economic Partnership Agreement done at Wellington on 18 July 2005 (the **P4 Agreement**).
- (4) Subpart 3 relates to the Protocol on Investment to the New Zealand–Australia Closer Economic Relations Trade Agreement done at Wellington on 16 February 2011 (the **Australian CER Investment Protocol**).

85 Definitions

- (1) In this Part, unless the context otherwise requires,—
- ANZTEC** is to be read in accordance with regulation 84(3)(c)
- Australian CER Investment Protocol** is to be read in accordance with regulation 84(4)
- Brunei branch** means a branch of an enterprise if the branch—
- (a) is located in the Brunei territory; and
 - (b) is carrying out business activities in the Brunei territory
- Brunei enterprise** means an enterprise constituted or organised under the law of Brunei Darussalam
- Brunei individual** means a natural person who is a national of Brunei Darussalam under its laws
- Brunei territory** means the territory of Brunei Darussalam as defined by the definition of territory in Annex 2.A of the P4 Agreement
- Chile branch** means a branch of an enterprise if the branch—
- (a) is located in the Chile territory; and
 - (b) is carrying out business activities in the Chile territory
- Chile enterprise** means an enterprise constituted or organised under the law of the Republic of Chile
- Chile individual** means a natural person who is a national of the Republic of Chile as defined under Article 10 of the Constitución Política de la República de Chile
- Chile territory** means the territory of the Republic of Chile as defined by the definition of territory in Annex 2.A of the P4 Agreement

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

- (a) is located in the China customs territory; and
- (b) is carrying out business activities in the China customs territory

China customs territory means the entire customs territory of the People's Republic of China

China enterprise means an enterprise that is constituted or organised under the law of the People's Republic of China

China FTA is to be read in accordance with regulation 84(3)(e)

China individual means a natural person who is a national or permanent resident of the People's Republic of China under its laws

CPTPP Agreement is to be read in accordance with regulation 84(3)(a)

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

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

Hong Kong area means the Hong Kong Special Administrative Region of the People's Republic of China, together with the Shenzhen Bay Port Hong Kong Port Area

Hong Kong branch means a branch of an enterprise if the branch—

- (a) is located in the Hong Kong area; and
- (b) is carrying out business activities in the Hong Kong area

Hong Kong CEP is to be read in accordance with regulation 84(3)(d)

Hong Kong enterprise means an enterprise that is constituted or organised under the law of the Hong Kong Special Administrative Region of the People's Republic of China

Hong Kong individual means a natural person who is a permanent resident of the Hong Kong Special Administrative Region of the People's Republic of China under its domestic law

Korea FTA is to be read in accordance with regulation 84(3)(b)

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

non-NZ government investor means—

- (a) the government, or any part of the government (including regional or local government), of—

- (i) a territory other than New Zealand; or
- (ii) a part of a territory other than a part of New Zealand; or
- (b) a relevant government enterprise; or
- (c) a person who is acting—
 - (i) as an agent, a trustee, or a representative of a non-NZ government investor; or
 - (ii) in any way on behalf of a non-NZ government investor; or
 - (iii) subject to the direction, control, or influence of a non-NZ government investor

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

NZ individual means—

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

ownership and control test is to be read in accordance with regulation 86

P4 Agreement is to be read in accordance with regulation 84(3)(f)

relevant government enterprise is to be read in accordance with regulation 87

relevant investor, in relation to a transaction, means—

- (a) an overseas person if, as a result of the transaction and either alone or with any other person, the overseas person—
 - (i) acquires rights or interests in securities of a person; or
 - (ii) establishes a business in New Zealand; or
 - (iii) acquires property (including goodwill and other intangible assets) in New Zealand used in carrying on business in New Zealand (whether by 1 transaction or a series of related or linked transactions); or
- (b) an associate of an overseas person if, as a result of the transaction and either alone or with any other person, the associate—
 - (i) acquires rights or interests in securities of a person; or
 - (ii) establishes a business in New Zealand; or
 - (iii) acquires property (including goodwill and other intangible assets) in New Zealand used in carrying on business in New Zealand (whether by 1 transaction or a series of related or linked transactions)

type 1 investor is to be read in accordance with regulation 90

type 2 investor is to be read in accordance with regulation 92(1)

type 3 investor is to be read in accordance with regulation 94(1)

type 4 investor is to be read in accordance with regulation 96(1)

type A branch means a branch of an enterprise if the branch—

- (a) is located in a type A territory; and
- (b) is carrying out business activities in that type A territory

type A enterprise means an enterprise that is constituted or organised under the law of any of the following:

- (a) any of the following parties to the CPTPP Agreement:
 - (i) Australia:
 - (ii) Canada:
 - (iii) Japan:
 - (iv) Mexico:
 - (v) Singapore:
- (b) the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu:
- (c) the Republic of Korea

type A individual means a natural person who is any of the following:

- (a) a national of any of the following parties to the CPTPP Agreement as defined by the definition of natural person who has the nationality of a Party in Annex 1-A of the Trans-Pacific Partnership Agreement (done at Auckland on 4 February 2016) as incorporated into the CPTPP Agreement by Article 1.1 of that agreement:
 - (i) Australia:
 - (ii) Canada:
 - (iii) Japan:
 - (iv) Mexico:
 - (v) Singapore:
- (b) a person who is a permanent resident of a party to the CPTPP Agreement listed in paragraph (a):
- (c) a person who is a citizen or permanent resident under the laws of the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu:
- (d) a national of the Republic of Korea as defined by paragraph (a) of the definition of national in Article 1.5 of the Korea FTA

type A territory means any of the following:

- (a) the territory for any of the following parties to the CPTPP Agreement as defined by the definition of territory in Annex 1-A of the Trans-Pacific Partnership Agreement (done at Auckland on 4 February 2016) as incorporated into the CPTPP Agreement by Article 1.1 of that agreement:

- (i) Australia:
 - (ii) Canada:
 - (iii) Japan:
 - (iv) Mexico:
 - (v) Singapore:
 - (b) the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu:
 - (c) the territory for the Republic of Korea as defined by paragraph (a) of the definition of territory in Article 1.5 of the Korea FTA.
- (2) *See* regulation 98 for further definitions that apply in subpart 3.

86 Definition of ownership and control test

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

- (d) the enterprise is a partnership, an unincorporated joint venture, or any other unincorporated body of persons (**V**) that is not a trust and—
 - (i) more than 75% of **V**'s partners or members are qualifying individuals; and
 - (ii) a qualifying individual or individuals have, directly or indirectly,—
 - (A) a beneficial entitlement to, or a beneficial interest in, more than 75% of **V**'s profits or assets (including on **V**'s winding up); and
 - (B) the right to exercise, or to control the exercise of, more than 75% of the voting power at a meeting of **V**.
- (2) In subclause (1), **qualifying individual** means—
 - (a) an NZ individual or a type A individual, if this regulation is being applied for the purposes of regulation 90(a)(ii)(B) or (iii)(B); or
 - (b) an NZ individual, a type A individual, a Hong Kong individual, a Brunei individual, or a Chile individual, if this regulation is being applied for the purposes of regulation 92(1)(a)(ii)(B) or (iii)(B); or
 - (c) an NZ individual, a type A individual, a Hong Kong individual, a China individual, a Brunei individual, or a Chile individual, if this regulation is being applied for the purposes of regulation 94(1)(a)(ii)(B) or (iii)(B); or
 - (d) an NZ individual, a type A individual, or a China individual, if this regulation is being applied for the purposes of regulation 96(1)(a)(ii)(B) or (iii)(B); or
 - (e) an NZ individual or an Australian individual (as defined in regulation 98(1)), if this regulation is being applied for the purposes of regulation 100(a)(ii)(B) or (iii)(B).
- (3) An enterprise cannot meet the **ownership and control test** in relation to a transaction if, in relation to the transaction, the enterprise—
 - (a) is an agent, a trustee, or a representative of an overseas person who is not a qualifying investor; or
 - (b) acts in any way on behalf of an overseas person who is not a qualifying investor; or
 - (c) is subject to the direction, control, or influence of an overseas person who is not a qualifying investor.
- (4) In subclause (3), references to an enterprise include, if the enterprise is a trust, the trustees of the trust.
- (5) In subclause (3), **qualifying investor** means—
 - (a) a type 1 investor, if this regulation is being applied for the purposes of regulation 90(a)(ii)(B) or (iii)(B); or

- (b) a type 2 investor, if this regulation is being applied for the purposes of regulation 92(1)(a)(ii)(B) or (iii)(B); or
 - (c) a type 3 investor, if this regulation is being applied for the purposes of regulation 94(1)(a)(ii)(B) or (iii)(B); or
 - (d) a type 4 investor, if this regulation is being applied for the purposes of regulation 96(1)(a)(ii)(B) or (iii)(B); or
 - (e) an Australian non-government investor (as defined in regulation 98(1)), if this regulation is being applied for the purposes of regulation 100(a)(ii)(B) or (iii)(B).
- (6) See the example in regulation 72(3).

87 Definition of relevant government enterprise

- (1) In this Part, **relevant government enterprise** means—
- (a) a body corporate (**W**), if a relevant government investor or investors have, directly or indirectly,—
 - (i) a beneficial entitlement to, or a beneficial interest in, 25% or more of W's securities; or
 - (ii) the power to control the composition of 25% or more of W's governing body; or
 - (iii) the right to exercise, or to control the exercise of, 25% or more of the voting power at a meeting of W; or
 - (b) a trust (**X**) that is not a unit trust, if—
 - (i) 25% or more of X's governing body are relevant government investors; or
 - (ii) a relevant government investor or investors have, directly or indirectly, a beneficial entitlement to, or a beneficial interest in, 25% or more of X's trust property; or
 - (iii) 25% or more of the persons having, directly or indirectly, the right to amend, or to control the amendment of, X's trust deed are relevant government investors; or
 - (iv) 25% or more of the persons having, directly or indirectly, the right to control the composition of X's governing body are relevant government investors; or
 - (c) a unit trust (**Y**), if—
 - (i) the manager or trustee (or both) is a relevant government investor; or
 - (ii) a relevant government investor or investors have, directly or indirectly, a beneficial entitlement to, or a beneficial interest in, 25% or more of Y's trust property; or

- (d) a partnership, an unincorporated joint venture, or any other unincorporated body of persons (**Z**), if **Z** is not a trust and—
 - (i) 25% or more of **Z**'s partners or members are relevant government investors; or
 - (ii) a relevant government investor or investors have, directly or indirectly,—
 - (A) a beneficial entitlement to, or a beneficial interest in, 25% or more of **Z**'s profits or assets (including on **Z**'s winding up); or
 - (B) the right to exercise, or to control the exercise of, 25% or more of the voting power at a meeting of **Z**.
- (2) In subclause (1), **relevant government investor** means a non-NZ government investor or an associate of a non-NZ government investor, subject to regulation 98(2).

Subpart 2—Implementation of CPTPP Agreement, Korea FTA, ANZTEC, Hong Kong CEP, China FTA, and P4 Agreement

88 Introduction to subpart 2 and interaction between regulations in Part 5

- (1) The purpose of this subpart is to implement obligations in the CPTPP Agreement, the Korea FTA, ANZTEC, the Hong Kong CEP, the China FTA, and the P4 Agreement.
- (2) For that purpose, this subpart is to be applied subject to the exclusions contained in the following provisions:
 - (a) Article 9.12.6 of the Trans-Pacific Partnership Agreement (done at Auckland on 4 February 2016) as incorporated into the CPTPP Agreement by Article 1.1 of that agreement:
 - (b) Articles 10.3.3 and 10.15.5 of the Korea FTA:
 - (c) Articles 3.3 and 9.5 of Chapter 12 of ANZTEC:
 - (d) Article 2 of Chapter 13 of the Hong Kong CEP:
 - (e) Articles 105 and 137.5 of the China FTA:
 - (f) Article 12.3 of the P4 Agreement.
- (3) This subpart is subject to regulation 97(2) and (3) (which deals with the interaction between this subpart and subpart 3).

Type 1 investors

89 Alternative monetary thresholds for overseas investments in significant business assets by type 1 investors

- (1) This regulation applies to a transaction if every relevant investor either is a type 1 investor or is not an overseas person.

- (2) In applying section 13 of the Act (overseas investments in significant business assets) to the transaction,—
- (a) an alternative monetary threshold of \$200 million applies in subsection (1)(a)(ii), subject to subclause (3); and
 - (b) an alternative monetary threshold of \$200 million applies in subsection (1)(b)(ii) and (c).
- (3) Subclause (2)(a) does not apply to the acquisition by a type 1 investor (**Z**) of rights or interests in securities of a person (**A**) if—
- (a) an associate of **Z** has—
 - (i) a beneficial entitlement to, or a beneficial interest in, any of **A**'s securities; or
 - (ii) the power to control (otherwise than indirectly through **Z**) the composition of **A**'s governing body to any extent; or
 - (iii) a right to exercise, or to control the exercise of, any voting power (other than voting power of **Z**) at a meeting of **A**; and
 - (b) that associate is an overseas person and is not a type 1 investor.
- (4) *See* the examples in regulation 75.

90 Definition of type 1 investor

In this Part, **type 1 investor**—

- (a) means—
 - (i) a type A individual; or
 - (ii) a type A enterprise, if the enterprise—
 - (A) has substantial business activities in a type A territory; or
 - (B) meets the ownership and control test; or
 - (iii) a non-NZ enterprise that is acting through a type A branch of the enterprise if—
 - (A) the branch has substantial business activities in a type A territory; or
 - (B) the enterprise meets the ownership and control test; but
- (b) does not include—
 - (i) a non-NZ government investor; or
 - (ii) an enterprise that is acting through an NZ branch of the enterprise.

Type 2 investors

91 Alternative monetary thresholds for overseas investments in significant business assets by type 2 investors

- (1) This regulation applies to a transaction if every relevant investor either is a type 2 investor or is not an overseas person.
- (2) In applying section 13 of the Act (overseas investments in significant business assets) to the transaction,—
 - (a) an alternative monetary threshold of \$200 million applies in subsection (1)(a)(ii), subject to subclause (3); and
 - (b) an alternative monetary threshold of \$200 million applies in subsection (1)(b)(ii) and (c).
- (3) Subclause (2)(a) does not apply to the acquisition by a type 2 investor (**Z**) of rights or interests in securities of a person (**A**) if—
 - (a) an associate of **Z** has—
 - (i) a beneficial entitlement to, or a beneficial interest in, any of **A**'s securities; or
 - (ii) the power to control (otherwise than indirectly through **Z**) the composition of **A**'s governing body to any extent; or
 - (iii) a right to exercise, or to control the exercise of, any voting power (other than voting power of **Z**) at a meeting of **A**; and
 - (b) that associate is an overseas person and is not a type 2 investor.

92 Definition of type 2 investor

- (1) In this Part, **type 2 investor**—
 - (a) means any of the following who is also a type 2 service supplier:
 - (i) a type A individual or a Hong Kong individual or a Brunei individual or a Chile individual;
 - (ii) a type A enterprise or a Hong Kong enterprise or a Brunei enterprise or a Chile enterprise if the enterprise—
 - (A) has substantial business activities in a type A territory or the Hong Kong area or the Brunei territory or the Chile territory; or
 - (B) meets the ownership and control test;
 - (iii) a non-NZ enterprise that is acting through a type A branch or a Hong Kong branch or a Brunei branch or a Chile branch of the enterprise if—
 - (A) the branch has substantial business activities in a type A territory or the Hong Kong area or the Brunei territory or the Chile territory; or

- (B) the enterprise meets the ownership and control test; but
- (b) does not include—
 - (i) a non-NZ government investor; or
 - (ii) an enterprise that is acting through an NZ branch of the enterprise.
- (2) In subclause (1)(a), **type 2 service supplier** means a person who—
 - (a) is supplying, or seeking to supply, a service in New Zealand; and
 - (b) for the purpose of doing that,—
 - (i) is investing to establish in New Zealand a commercial presence through which the person will supply the service; or
 - (ii) is investing in a commercial presence that the person has already established in New Zealand and through which the person is supplying, or will supply, the service.
- (3) In subclause (2),—

commercial presence means any type of business or professional establishment, including through the constitution, acquisition, or maintenance of an enterprise, including a representative office within the Hong Kong area, the Brunei territory, or the Chile territory for the purpose of supplying a service

supply, in relation to a service, includes the production, distribution, marketing, sale, and delivery of a service.

Type 3 investors

93 Alternative monetary thresholds for overseas investments in significant business assets by type 3 investors

- (1) This regulation applies to a transaction if every relevant investor either is a type 3 investor or is not an overseas person.
- (2) In applying section 13 of the Act (overseas investments in significant business assets) to the transaction,—
 - (a) an alternative monetary threshold of \$200 million applies in subsection (1)(a)(ii), subject to subclause (3); and
 - (b) an alternative monetary threshold of \$200 million applies in subsection (1)(b)(ii) and (c).
- (3) Subclause (2)(a) does not apply to the acquisition by a type 3 investor (**Z**) of rights or interests in securities of a person (**A**) if—
 - (a) an associate of Z has—
 - (i) a beneficial entitlement to, or a beneficial interest in, any of A's securities; or
 - (ii) the power to control (otherwise than indirectly through Z) the composition of A's governing body to any extent; or

- (iii) a right to exercise, or to control the exercise of, any voting power (other than voting power of Z) at a meeting of A; and
- (b) that associate is an overseas person and is not a type 3 investor.

94 Definition of type 3 investor

(1) In this Part, **type 3 investor**—

- (a) means any of the following who is also a type 3 service supplier:
 - (i) a type A individual, a Hong Kong individual, a China individual, a Brunei individual, or a Chile individual;
 - (ii) a type A enterprise, a Hong Kong enterprise, a China enterprise, a Brunei enterprise, or a Chile enterprise if the enterprise—
 - (A) has substantial business activities in a type A territory, the Hong Kong area, the China customs territory, the Brunei territory, or the Chile territory; or
 - (B) meets the ownership and control test:
 - (iii) a non-NZ enterprise that is acting through a type A branch, a Hong Kong branch, a China branch, a Brunei branch, or a Chile branch of the enterprise if—
 - (A) the branch has substantial business activities in a type A territory, the Hong Kong area, the China customs territory, the Brunei territory, or the Chile territory; or
 - (B) the enterprise meets the ownership and control test; but
- (b) does not include—
 - (i) a non-NZ government investor; or
 - (ii) an enterprise that is acting through an NZ branch of the enterprise.

(2) In subclause (1)(a), **type 3 service supplier** means a person who—

- (a) is supplying, or seeking to supply, an Annex 9 service in New Zealand; and
- (b) for the purpose of doing that,—
 - (i) is investing to establish in New Zealand a commercial presence through which the person will supply the Annex 9 service; or
 - (ii) is investing in a commercial presence that the person has already established in New Zealand and through which the person is supplying, or will supply, the Annex 9 service.

(3) In subclause (2),—

Annex 9 service means a service within a sector set out in the column titled “Sector” in Annex 9 of the China FTA (which relates to trade in services)

commercial presence is to be read in accordance with the definition of that term in Article 103 of the China FTA (which relates to trade in services)

supply, in relation to a service, is to be read in accordance with the definition of supply of a service in Article 103 of the China FTA.

Type 4 investors

95 Alternative monetary thresholds for overseas investments in significant business assets by type 4 investors

- (1) This regulation applies to a transaction if every relevant investor either is a type 4 investor or is not an overseas person.
- (2) In applying section 13 of the Act (overseas investments in significant business assets) to the transaction,—
 - (a) an alternative monetary threshold of \$200 million applies in subsection (1)(a)(ii), subject to subclause (3); and
 - (b) an alternative monetary threshold of \$200 million applies in subsection (1)(b)(ii) and (c).
- (3) Subclause (2)(a) does not apply to the acquisition by a type 4 investor (**Z**) of rights or interests in securities of a person (**A**) if—
 - (a) an associate of Z has—
 - (i) a beneficial entitlement to, or a beneficial interest in, any of A's securities; or
 - (ii) the power to control (otherwise than indirectly through Z) the composition of A's governing body to any extent; or
 - (iii) a right to exercise, or to control the exercise of, any voting power (other than voting power of Z) at a meeting of A; and
 - (b) that associate is an overseas person and is not a type 4 investor.

96 Definition of type 4 investor

- (1) In this Part, **type 4 investor**—
 - (a) means—
 - (i) a type A individual or a China individual; or
 - (ii) a type A enterprise or a China enterprise, if the enterprise—
 - (A) has substantial business activities in a type A territory or the China customs territory; or
 - (B) meets the ownership and control test; or
 - (iii) a non-NZ enterprise that is acting through a type A branch, or a China branch, of the enterprise if—
 - (A) the branch has substantial business activities in a type A territory or the China customs territory; or
 - (B) the enterprise meets the ownership and control test; but

- (b) does not include—
- (i) a person who is acting for the purpose of supplying, or seeking to supply, a service in New Zealand; or
 - (ii) a non-NZ government investor; or
 - (iii) an enterprise that is acting through an NZ branch of the enterprise.
- (2) In subclause (1)(b)(i), **supply**, in relation to a service, is to be read in accordance with the definition of supply of a service in Article 103 of the China FTA (which relates to trade in services).

Subpart 3—Implementation of Australian CER Investment Protocol

97 Introduction to subpart 3 and interaction between regulations in Part 5

- (1) The purpose of this subpart is to implement obligations in the Australian CER Investment Protocol.
- (2) Subclause (3) applies if more than 1 regulation in this Part applies to a transaction.
- (3) Regulation 99 overrides subpart 2 and regulation 101 if, or to the extent to which, it gives an alternative monetary threshold for the transaction.

98 Definitions for subpart 3

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

Australia does not include its external territories

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

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

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

Australian government investor is to be read in accordance with regulation 102(1)

Australian individual means a natural person who is, under Australian law,—

- (a) an Australian citizen; or
- (b) a permanent resident of Australia

Australian non-government investor is to be read in accordance with regulation 100

GDP implicit price deflator index value is to be read in accordance with regulation 103(1)

March 2012 value is to be read in accordance with regulation 103(2)

non-ANZ government investor means—

- (a) the government, or any part of the government (including regional or local government), of—
 - (i) a territory other than Australia or New Zealand; or
 - (ii) a part of a territory other than a part of Australia or New Zealand; or
 - (b) a relevant government enterprise; or
 - (c) a person who is acting—
 - (i) as an agent, a trustee, or a representative of a non-ANZ government investor; or
 - (ii) in any way on behalf of a non-ANZ government investor; or
 - (iii) subject to the direction, control, or influence of a non-ANZ government investor.
- (2) In applying regulation 87(1) for the purposes of paragraph (b) of the definition of non-ANZ government investor in subclause (1), **relevant government investor** means a non-ANZ government investor or an associate of a non-ANZ government investor.

Australian non-government investors

99 Alternative monetary thresholds for overseas investments in significant business assets by Australian non-government investors

- (1) This regulation applies to a transaction if every relevant investor either is an Australian non-government investor or is not an overseas person.
- (2) In applying section 13 of the Act (overseas investments in significant business assets) to the transaction,—
 - (a) an alternative monetary threshold of the amount given by subclause (3) applies in subsection (1)(a)(ii), subject to subclause (5); and
 - (b) an alternative monetary threshold of the amount given by subclause (3) applies in subsection (1)(b)(ii) and (c).
- (3) The amount to be used under subclause (2)(a) and (b) is determined on the following basis:
 - (a) the amount is \$477 million for 2013;
 - (b) for each subsequent year starting with 1 January, the amount is the higher of the following:
 - (i) the amount given by the formula in subclause (4) (rounded to the nearest \$1 million);
 - (ii) the amount for the previous year.
- (4) The formula is—

(\$477 million × GDP implicit price deflator index value) ÷ March 2012 value

- (5) Subclause (2)(a) does not apply to the acquisition by an Australian non-government investor (**Z**) of rights or interests in securities of a person (**A**) if—
- (a) an associate of **Z** has—
 - (i) a beneficial entitlement to, or a beneficial interest in, any of **A**'s securities; or
 - (ii) the power to control (otherwise than indirectly through **Z**) the composition of **A**'s governing body to any extent; or
 - (iii) a right to exercise, or to control the exercise of, any voting power (other than voting power of **Z**) at a meeting of **A**; and
 - (b) that associate is an overseas person and is not an Australian non-government investor.

100 Definition of Australian non-government investor

In this subpart, **Australian non-government investor**—

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

Australian government investors

101 Alternative monetary thresholds for overseas investments in significant business assets by Australian government investors

- (1) This regulation applies to a transaction if every relevant investor is 1 of the following:
- (a) an Australian government investor;
 - (b) an Australian non-government investor;
 - (c) not an overseas person.

- (2) In applying section 13 of the Act (overseas investments in significant business assets) to the transaction,—
- (a) an alternative monetary threshold of the amount given by subclause (3) applies in subsection (1)(a)(ii), subject to subclause (5); and
 - (b) an alternative monetary threshold of the amount given by subclause (3) applies in subsection (1)(b)(ii) and (c).
- (3) The amount to be used under subclause (2)(a) and (b) is determined on the following basis:
- (a) the amount is \$100 million for 2013:
 - (b) for each subsequent year starting with 1 January, the amount is the higher of the following:
 - (i) the amount given by the formula in subclause (4) (rounded to the nearest \$1 million):
 - (ii) the amount for the previous year.
- (4) The formula is—
- $$(\$100 \text{ million} \times \text{GDP implicit price deflator index value}) \div \text{March 2012 value}$$
- (5) Subclause (2)(a) does not apply to the acquisition by an Australian non-government investor or an Australian government investor (**Z**) of rights or interests in securities of a person (**A**) if—
- (a) an associate of **Z** has—
 - (i) a beneficial entitlement to, or a beneficial interest in, any of **A**'s securities; or
 - (ii) the power to control (otherwise than indirectly through **Z**) the composition of **A**'s governing body to any extent; or
 - (iii) a right to exercise, or to control the exercise of, any voting power (other than voting power of **Z**) at a meeting of **A**; and
 - (b) that associate is an overseas person and is neither an Australian non-government investor nor an Australian government investor.

102 Definition of Australian government investor

- (1) In this subpart, **Australian government investor**—
- (a) means—
 - (i) the Australian Government; or
 - (ii) an Australian enterprise in which the Australian Government has a 25% or more ownership or control interest; or
 - (iii) a non-NZ enterprise that is acting through an Australian branch of the enterprise, if the Australian Government has a 25% or more ownership or control interest in the enterprise; but
 - (b) does not include—

- (i) a non-ANZ government investor; or
 - (ii) an enterprise that is acting through an NZ branch of the enterprise.
- (2) In subclause (1)(a), **Australian Government** includes—
- (a) the Crown in right of Australia; and
 - (b) an Australian State or territory; and
 - (c) Australian regional or local government.

Supplementary provision

103 Supplementary provision relating to Australian investments

- (1) The **GDP implicit price deflator index value** to be used in the calculations in regulations 99(4) and 101(4) is the first value published by Statistics New Zealand in the implicit price deflator table in the quarterly gross domestic product release for the most recent year ended on 31 March.
- (2) For the purposes of regulations 99(4) and 101(4), **March 2012 value** means the latest version of the GDP implicit price deflator index value for the year ended on 31 March 2012 as published by Statistics New Zealand.
- (3) The regulator must, each year,—
 - (a) publish the amounts given by regulations 99(3) and 101(3) for that year on an Internet site maintained by or on behalf of the regulator; and
 - (b) notify those amounts in the *Gazette*.

6 Schedule 1AA amended

In Schedule 1AA, after clause 4, insert:

Part 4
Provision relating to Overseas Investment (CPTPP) Amendment Regulations 2018

5 Transitional provision relating to application

The amendments to these regulations made by the Overseas Investment (CPTPP) Amendment Regulations 2018 apply only to the acquisition of rights or interests in securities or of other property, or the establishment of any business, after the commencement of those regulations.

7 Schedule 5 revoked

Revoke Schedule 5.

Rachel Hayward,
for the Clerk of the Executive Council.

Explanatory note

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

Overview of regulations

Introduction

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

Section 61A of the Act is inserted into the Act by section 69 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (the **CPTPP Amendment Act**). The CPTPP Amendment Act implements, for New Zealand, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership done at Santiago on 8 March 2018 (the **CPTPP Agreement**). The text of the CPTPP Agreement can be found at the Ministry of Foreign Affairs and Trade website, www.mfat.govt.nz/cptpp.

Section 13 of the Act (overseas investments in significant business assets) sets out monetary thresholds (ie, value thresholds) for the purpose of determining whether overseas investments in business assets require consent under the Act. These regulations provide for alternative monetary thresholds for the purpose of implementing New Zealand's obligations under the CPTPP Agreement and the following other international agreements:

- the Free Trade Agreement between New Zealand and the Republic of Korea done at Seoul on 23 March 2015 (the **Korea FTA**), the text of which can be found at <https://www.mfat.govt.nz/assets/FTAs-agreed-not-signed/Korea-FTA/NZ-Korea-FTA-consolidated-text.pdf>
- the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation done at Wellington on 10 July 2013 (**ANZTEC**), the text of which can be found at <https://www.nzcio.com/assets/ANZTEC/ANZTEC-Final-Text-10-July-2013-NZ.pdf>
- the Protocol on Investment to the New Zealand–Australia Closer Economic Relations Trade Agreement done at Wellington on 16 February 2011 (the **Australian CER Investment Protocol**), the text of which can be found at <https://www.mfat.govt.nz/assets/FTAs-agreements-in-force/Australia/CER-investment-protocol-16-2-11.pdf>
- the New Zealand–Hong Kong, China Closer Economic Partnership Agreement done at Hong Kong on 29 March 2010 (the **Hong Kong CEP**), the text of which can be found at <https://www.mfat.govt.nz/assets/FTAs-agreements-in-force/Hong-Kong-FTA/NZ-HK-CEP.pdf>
- the Free Trade Agreement between the Government of New Zealand and the Government of the People's Republic of China done at Beijing on 7 April 2008 (the **China FTA**), the text of which can be found at <https://www.mfat.govt.nz/>

assets/FTAs-agreements-in-force/China-FTA/NZ-ChinaFTA-Agreement-text.pdf

- the Trans-Pacific Strategic Economic Partnership Agreement done at Wellington on 18 July 2005 (the **P4 Agreement**), the text of which can be found at <https://www.mfat.govt.nz/assets/FTAs-agreements-in-force/P4/Full-text-of-P4-agreement.pdf>

Commencement and application

These regulations come into force on 30 December 2018. This is the same date as the date on which the CPTPP Agreement enters into force for New Zealand.

The amendments to the principal regulations made by these regulations apply only to the acquisition of rights or interests in securities or of other property, or the establishment of any business, after the commencement of these regulations (*see* clause 11 of Schedule 1AA of the Act and *new clause 5* of Schedule 1AA of the principal regulations inserted by *regulation 6*).

Amendments to principal regulations

Regulation 5 is made under section 61A of the Act. It inserts *new Part 5* into the principal regulations. *New Part 5* is discussed in more detail in the notes below.

Regulations 4 and 7 are made under section 61 of the Act and revoke *regulation 36A* and *Schedule 5* of the principal regulations. The revoked provisions implemented the Australian CER Investment Protocol and are superseded by *new subpart 3 of new Part 5* (*see* notes below).

New Part 5 of principal regulations

New subpart 1—Introduction and definitions

New regulation 84 is an introductory provision.

New regulations 85 to 87 contain definitions that apply for the purposes of *new Part 5*.

New subpart 2—Implementation of CPTPP Agreement, Korea FTA, ANZTEC, Hong Kong CEP, China FTA, and P4 Agreement

Under the CPTPP Agreement, New Zealand is obliged to increase the monetary thresholds in section 13 of the Act from \$100 million to \$200 million for investors from other parties to the CPTPP Agreement. This obligation on New Zealand under the CPTPP Agreement also triggers “most favoured nation” obligations that New Zealand has under the Korea FTA, ANZTEC, the Hong Kong CEP, the China FTA, and the P4 Agreement. These “most favoured nation” obligations require New Zealand to treat investors from the other parties to those agreements in the same way as, or in a similar way to, investors from other parties to the CPTPP Agreement. The purpose of *new subpart 2* is to implement New Zealand’s obligation under the CPTPP

Agreement in relation to section 13 of the Act and New Zealand’s “most favoured nation” obligations as triggered under the other agreements.

New subpart 2 is structured according to the “types” of investors to whom New Zealand is obliged to apply the \$200 million alternative monetary threshold. Broadly speaking, these “types” of investors are as follows:

- type 1 investors: non-government investors from other parties to the CPTPP Agreement, Chinese Taipei, or the Republic of Korea:
- type 2 investors: non-government investors that are service suppliers investing in a commercial presence in New Zealand and that are from Hong Kong or from any of the other parties to the CPTPP Agreement, Chinese Taipei, the Republic of Korea, Brunei Darussalam, or Chile:
- type 3 investors: non-government investors that are service suppliers investing in a commercial presence in New Zealand in a sector listed in Annex 9 of the China FTA and that are from the People’s Republic of China or from any of the other parties to the CPTPP Agreement, Chinese Taipei, the Republic of Korea, Hong Kong, Brunei Darussalam, or Chile:
- type 4 investors: non-government investors that are not service suppliers and that are from the People’s Republic of China or from any of the other parties to the CPTPP Agreement, Chinese Taipei, or the Republic of Korea.

New regulation 88 is an introductory provision.

New regulation 89 relates to type 1 investors. If every relevant investor (as defined in *new regulation 85(1)*) in relation to a transaction is a type 1 investor (as defined in *new regulation 90*), the alternative monetary threshold of \$200 million applies for the transaction, subject to the additional rule in *new regulation 89(3)* that applies for the purposes of section 13(1)(a)(ii) of the Act.

New regulation 90 defines type 1 investor. The definition needs to be read with other relevant definitions in *new subpart 1*.

New regulation 91 relates to type 2 investors. If every relevant investor (as defined in *new regulation 85(1)*) in relation to a transaction is a type 2 investor (as defined in *new regulation 92*), the alternative monetary threshold of \$200 million applies for the transaction, subject to the additional rule in *new regulation 91(3)* that applies for the purposes of section 13(1)(a)(ii) of the Act.

New regulation 92 defines type 2 investor. The definition needs to be read with other relevant definitions in *new subpart 1*.

New regulation 93 relates to type 3 investors. If every relevant investor (as defined in *new regulation 85(1)*) in relation to a transaction is a type 3 investor (as defined in *new regulation 94*), the alternative monetary threshold of \$200 million applies for the transaction, subject to the additional rule in *new regulation 93(3)* that applies for the purposes of section 13(1)(a)(ii) of the Act.

New regulation 94 defines type 3 investor. The definition needs to be read with other relevant definitions in *new subpart 1*.

New regulation 95 relates to type 4 investors. If every relevant investor (as defined in *new regulation 85(1)*) in relation to a transaction is a type 4 investor (as defined in *new regulation 96*), the alternative monetary threshold of \$200 million applies for the transaction, subject to the additional rule in *new regulation 95(3)* that applies for the purposes of section 13(1)(a)(ii) of the Act.

New regulation 96 defines type 4 investor. The definition needs to be read with other relevant definitions in *new subpart 1*.

New subpart 3—Implementation of Australian CER Investment Protocol

New subpart 3 reflects the provisions that were contained in Schedule 5 of the principal regulations that implemented the Australian CER Investment Protocol. As mentioned above, Schedule 5 is revoked.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 15 November 2018.

These regulations are administered by the Treasury.