

**FOREIGN INVESTMENT IN NEW ZEALAND**  
AN OVERVIEW OF NEW ZEALAND'S OVERSEAS INVESTMENT REGIME

November 2016

**INTRODUCTION**

New Zealand generally welcomes foreign investment. The regulation of foreign investment in New Zealand is liberal by international standards.

New Zealand's inbound investment rules regulate investments in New Zealand significant business assets, certain types of sensitive land (including farm land), and fishing quota.

The main inbound investment rules are the Overseas Investment Act 2005 (**Act**) and the Overseas Investment Regulations 2005 (**Regulations**). The "overseas investment regime" established by the Act and the Regulations is a consenting regime, rather than a prohibition. The regime governs who needs to obtain consent, when consent is required, and the process for obtaining consent.

This guide provides an overview of New Zealand's overseas investment regime.

**WHO IS AN OVERSEAS PERSON?**

The overseas investment regime regulates investments by *overseas persons*. An overseas person is a person who is:

- not a New Zealand citizen and is not ordinarily resident in New Zealand;
- a company incorporated outside of New Zealand;
- a company or other entity that is at least 25% owned or controlled by an overseas person or persons.

The Act also extends to investments by *associates* of overseas persons. *Associate* is widely defined by the Act, and is included to ensure that those persons ultimately controlling or owning an investment are caught by the Act.

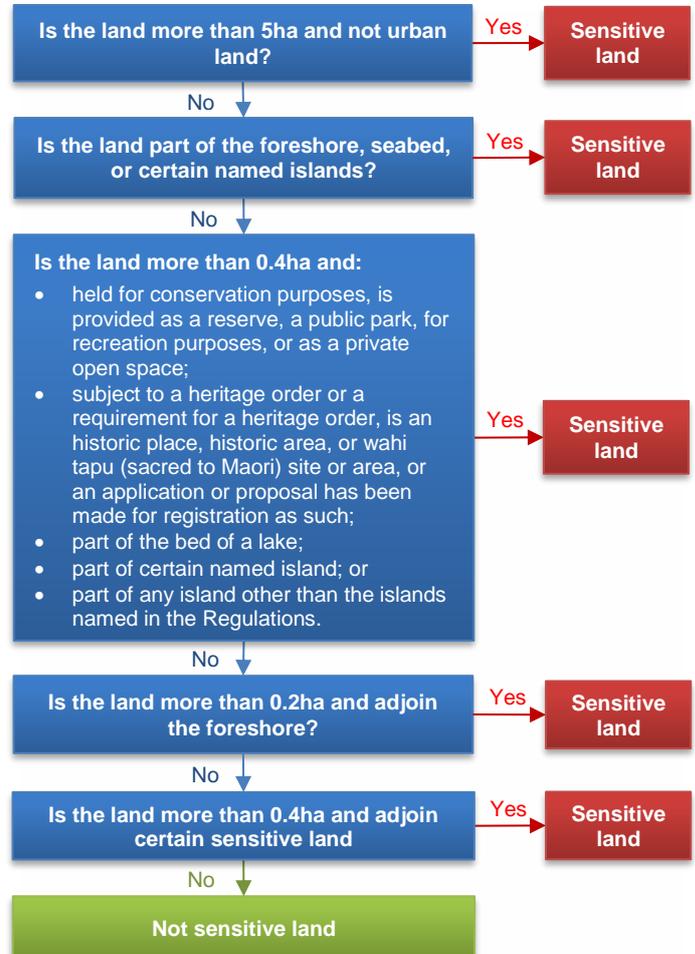
Careful analysis is required where a person is in the process of becoming ordinarily resident in New Zealand to ascertain whether the Act will apply.

**WHEN IS CONSENT REQUIRED?**

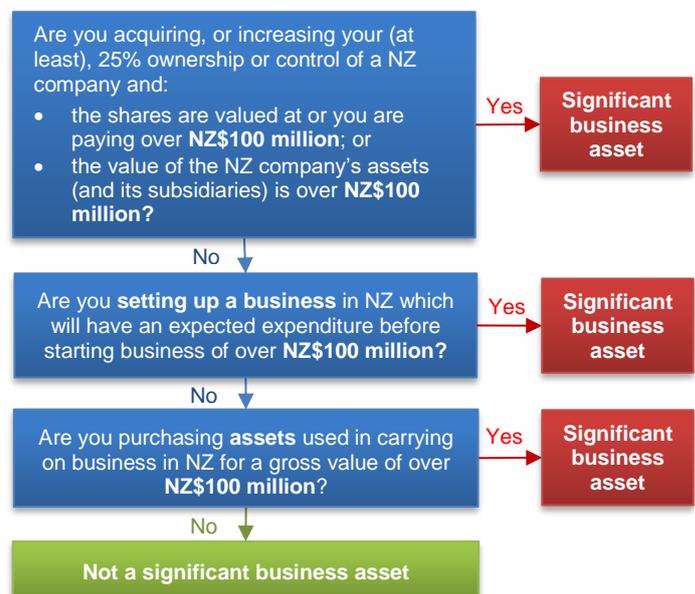
The three key transactions requiring consent are investments (direct or indirect) in:

1. *sensitive land* (including farm land) – see flow chart;
2. *significant business assets* – see flow chart; and/or
3. fishing quota (as regulated under the Fisheries Act 1996).

**Is the land "sensitive land"?**



**Are the assets "significant business assets"?**



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The table on the next page set out factors considered, and relevant tests applied by the regulator, the Overseas Investment Office (OIO), for each of these types of investment.

## **PROCESS FOR OBTAINING CONSENT**

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The process for obtaining consent to an overseas investment can be complex, time consuming and costly. An overseas person will normally need the vendor to provide information and assistance.

### ***Preparing the application***

- **Timing:** Applications must be lodged, and consent granted, before a transaction is given effect to. Any purchase agreement entered before consent is given should be conditional on obtaining OIO consent.
- **Contents:** There are detailed criteria for consent applications. These are more detailed for land applications than non-land applications. An application must cover all of the criteria, including required supporting documentation, and be signed by each applicant.

All applicants must show that the individuals controlling the overseas person are of good character and collectively have the business experience and acumen relevant to the investment. An investment plan is required for investments in sensitive land, including a business plan and other details required by the OIO.

- **Cost:** As of October 2016, the OIO application fees are:
  - NZ\$32,000 for significant business assets applications; and
  - NZ\$43,500 for sensitive land applications.

### ***Consideration of the application***

- **Who decides?** Applications are decided by either the OIO or the responsible government minister. The Act gives these decision makers a broad discretion to refuse or grant consent, and to impose conditions.
- **Timing:** The OIO is not required to make a decision within a specific time period. It has published guidelines for how long a decision may take, depending on the type and complexity of the investment. Guidelines currently range from 50 to 70 working days depending on the type of application. It is common for applications (particularly complex applications) to take longer than these targets – particularly if the OIO needs to request further information from the applicant or third parties (such as the Historic Places Trust), or ministerial approval is required.
- **Decision and monitoring:** Consent may be refused, granted without conditions, or granted subject to conditions. If conditions are imposed on the consent, consent holders will generally be required to report annually to the OIO for the first five years from the date of consent as part of the OIO's monitoring programme.

## **HOW WE CAN HELP**

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Our experienced team can guide you through the consent process, including by:

- advising whether consent is required;
- assisting with your application, and to minimise any delays; and
- dealing with the OIO and assisting with requests for further information.

**Jackson Russell**

**Factors considered by the OIO**

**Exceptions, approaches and comments**

1. SENSITIVE LAND	<ul style="list-style-type: none"> <li>Whether the investment is likely to <b>benefit NZ</b> (unless the overseas person is intending to reside in NZ), including whether it will or is likely to result in:               <ul style="list-style-type: none"> <li>the development of new export markets or increased market access for NZ exports;</li> <li>added market competition, greater efficiency, productivity or enhanced domestic services;</li> <li>the introduction of new technology or technical skills;</li> <li>the creation of new jobs or the retention of jobs that would otherwise be lost;</li> <li>the introduction to NZ of additional capital for development purposes;</li> <li>increased processing in NZ of NZ primary products;</li> <li>adequate mechanisms for protecting or enhancing significant habitats of indigenous vegetation and/or wildlife and for providing, protecting and improving walking access to those habitats by the public;</li> <li>adequate mechanisms being put in place for protecting and enhancing historic heritage within the relevant land;</li> <li>providing, protecting or improving walking access over the relevant land by the public; and</li> <li>the maintenance of NZ control of strategically important infrastructure on sensitive land.</li> </ul> </li> <li>Whether the benefit to NZ is <b>substantial and identifiable</b>, where the investment includes non-urban land that either alone or together with any associated land exceeds 5ha; and</li> <li>All of the criteria set out below that apply for investment in <b>significant business assets</b>.</li> </ul>	<p><b>Counterfactual test</b> To determine whether the “benefit to New Zealand” criteria is satisfied, the OIO uses a counterfactual test. This involves comparing what is likely to happen with the overseas investment, with what is likely to happen without the overseas investment.</p> <p>This is a complicated process. It requires assessment against the plans of others who may have been intending to purchase the land, hypothetical well-funded NZ purchasers, and the vendor’s intentions if the sale does not proceed.</p> <p><b>Special land</b> “Special land” is land that is or includes foreshore, seabed, river bed or lake bed. The owner of special land must offer it to the Crown in accordance with the Regulations before it is offered to an overseas person.</p> <p><b>Farm land</b> Any farm land must have first been offered on the open market in NZ, in accordance with the procedures set out in the Regulations. Limited exemptions apply to this requirement.</p> <p>Under the Act, “farm land” is land exclusively or principally used for the purpose of agriculture, horticulture or pasture, or the keeping of bees, poultry or livestock.</p> <p><b>Investment plan</b> An investment plan is required for investments in sensitive land. The investment plan must include a business plan, and other requirements prescribed by the OIO.</p>
2. SIGNIFICANT BUSINESS ASSETS	<p>Whether the individuals with control of the overseas person:</p> <ul style="list-style-type: none"> <li>have the necessary business experience and acumen;</li> <li>have demonstrated financial commitment to the investment;</li> <li>are of good character; and</li> <li>are not individuals of the kind listed in sections 15 and 16 of the Immigration Act 2009 e.g. persons who have been imprisoned for criminal convictions.</li> </ul>	<p><b>Australian threshold</b> Australian investors are subject to a higher threshold. The current threshold for non-government investors is <b>NZ\$498 million</b>, and NZ\$104 million for government investors.</p> <p><b>TPPA changes</b> If the Trans-Pacific Partnership Agreement is ratified, the threshold will increase from NZ\$100 million to <b>NZ\$200 million</b> for the purchase of significant business assets by non-government investors from Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, the United States, Vietnam, China, Chinese Taipei and Korea.</p> <p><b>Good character threshold</b> The OIO’s current practice is to look right up to the ultimate controlling shareholder to determine whether the “good character” threshold is met. Where a global group of companies is involved, this can involve multiple good character checks and statutory declarations.</p>
3. FISHING QUOTA	<ul style="list-style-type: none"> <li>Whether the criteria for investment in significant business assets (see above) are met;</li> <li>Whether the relevant overseas person is a body corporate;</li> <li>Whether the interest in the fishing quota is capable of being registered in the Quota Register or the Annual Catch Entitlement Register; and</li> <li>Whether the granting of consent is in the “national interest”.</li> </ul>	<p><b>National Interest</b> The following additional factors will be considered to determine whether the investment is in the “national interest”:</p> <ul style="list-style-type: none"> <li>whether the overseas investment will, or is likely to, result in increased processing of NZ fish, aquatic life, or seaweed; and</li> <li>any other factors set out in the Regulations or that the Minister of Finance and the Minister of Fisheries think fit, having regard to the circumstances and nature of the application.</li> </ul>

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