

The Overseas Investment Amendment Act 2021 (**Amendment Act**) was passed on 24 May 2021 and introduces a number of key changes to the Overseas Investment Act 2005 (**Act**), including:

- the replacement of the Emergency Notification Regime (**ENR**) introduced as a response to Covid-19 with a new National Security and Public Order (**NSPO**) notification regime, which will give the Government the power to 'call in' investments into strategically important businesses; and
- the introduction of the final tranche of Act reform that has been in the pipeline since 2018, with some of the key changes applying from 5 July 2021.

We have summarised these changes below.

NSPO NOTIFICATION REGIME

The NSPO notification regime replaced the ENR on 7 June 2021 (but the ENR will continue to apply to transactions entered into before that date).

The NSPO regime will apply to investments into "strategically important businesses" that would not otherwise require consent under the OIA, such as investment into ports, airports, electricity and water. The NSPO regime gives the Government the ability to call-in these investments to review them and ensure they do not pose a risk to NZ's national interest.

KEY CHANGES FROM 5 JULY 2021

Control thresholds for increase in investments

Previously under the Act, any increase in an investment in sensitive land above 25% requires consent from the Overseas Investment Office (**OIO**), regardless of how much the interest has increased. The Amendment Act changes this so that investors will only require consent if the increase crosses an ownership or control threshold of either 25, 50, 75 or 100 percent. For example, if an investor currently has a 51% interest in sensitive land and this increases to 74%, the investor will not need consent from the OIO.

This simplifies the process for investors and means less time and money will need to be spent on OIO applications where increases in investment do not result in a change of control.

Refining the 'national interest' test

The 'national interest' test applies to transactions where investment is by a foreign government or the investment is in a "strategically important business". The previous investment threshold of 10% for the test to apply has now been increased to 25%. The new changes also clarify that the 25% ownership threshold applies to a single foreign government investor and exemptions may apply to the test, including for passive investments such as pension funds.

Narrower definition of "overseas person"

Certain NZ listed companies are now exempt from the definition of 'overseas person' where they meet specified ownership and control thresholds. This includes managed investment schemes where the scheme is NZ listed, is 50% or more invested on behalf of New Zealanders and where at least 25% of the invested products are widely held.

Changes to "sensitive" land

Leases for non-residential sensitive land now only need consent if their term is for 10 years or more. The consent threshold for residential leases remains the same, at three years or more. The requirement for consent has also been removed for certain categories of land that adjoin sensitive land.

Simplification of the investor test application

Investors who have already satisfied the investor test now do not need to pass the test again for repeat investments, provided that their circumstances have not substantially changed. Instead, they need to complete a simplified assessment.

FURTHER CHANGES

Further changes to the assessment of applications and other technical changes are expected to come into force in the next 6 to 12 months. These include:

- **Benefit to New Zealand test:** simplified by being reduced to 7 factors instead of 21 factors.
- **Sale of farm land:** higher thresholds for consent, and a new requirement for local advertising to be completed *before* an overseas transaction is entered into.

For more information on the changes above and other upcoming changes, please contact one of Jackson Russell's experts.

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