

Reprint  
as at 19 September 2021



## Overseas Investment Regulations 2005 (SR 2005/220)

Silvia Cartwright, Governor-General

### Order in Council

At Wellington this 1st day of August 2005

Present:

Her Excellency the Governor-General in Council

Pursuant to section 61 of the Overseas Investment Act 2005, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Finance, makes the following regulations.

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**These regulations are administered by the Treasury.**

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1	<b>Title</b>	
	These regulations are the Overseas Investment Regulations 2005.	
2	<b>Commencement</b>	
	These regulations come into force on 25 August 2005.	
3	<b>Interpretation</b>	
(1)	In these regulations, unless the context otherwise requires,— <b>Act</b> means the Overseas Investment Act 2005	



**call-in regime** means the regime in Part 3 of the Act in relation to call-in transactions to which subpart 1 of that Part applies

**farm land securities** has the meaning given to it by regulation 4

**owner**, in relation to relevant land,—

- (a) means the owner of that land; and
- (b) includes any person authorised in writing by the owner to act as the owner's agent

**permitted security arrangement** has the meaning set out in regulation 41

**requirement for consent** means the requirement to obtain consent under all or any of the following provisions:

- (a) section 10(1)(a) of the Act (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in sensitive land):
- (b) section 10(1)(b) of the Act (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in significant business assets):
- (c) section 57B of the Fisheries Act 1996 (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in fishing quota)

**requirement for consent provisions of the Act—**

- (a) means either or both of the following provisions:
  - (i) section 10(1)(a) of the Act (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in sensitive land):
  - (ii) section 10(1)(b) of the Act (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in significant business assets); but
- (b) does not include section 57B of the Fisheries Act 1996 (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in fishing quota)

**special land** has the meaning given to it by regulation 12

**specified persons** means persons—

- (a) who are overseas persons only because of their direct or indirect connection with a person listed in Schedule 3 or Schedule 4 (if any); but
- (b) who would not be overseas persons if 1 or more of the persons listed in Schedule 3 or Schedule 4 (if any) were not overseas persons.

(2) *[Revoked]*

(3) Examples used in these regulations have the following status:

- (a) an example is only illustrative of the provision to which it relates and does not limit the provision; and
- (b) if an example and the provision to which it relates are inconsistent, the provision prevails.

Regulation 3(1) **call-in regime**: inserted, on 7 June 2021, by regulation 4 of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

Regulation 3(1) **certificate of title**: revoked, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Regulation 3(1) **Minister**: revoked, on 1 September 2006, by regulation 4 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 3(1) **permitted security arrangement**: inserted, on 22 October 2018, by regulation 4 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 3(1) **specified persons** paragraph (a): amended, on 4 July 2016, by regulation 4 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

Regulation 3(1) **specified persons** paragraph (b): amended, on 4 July 2016, by regulation 4 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

Regulation 3(2): revoked, on 3 September 2009, by regulation 4 of the Overseas Investment Amendment Regulations (No 2) 2009 (SR 2009/210).

### 3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Regulation 3A: inserted, on 4 July 2016, by regulation 5 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

## Part 1AA

### Matters relating to terms defined in Act

Part 1AA: inserted, on 16 June 2020, by regulation 4 of the Overseas Investment Amendment Regulations 2020 (LI 2020/110).

### 3B Sensitive information

- (1) This regulation prescribes classes of information that are not sensitive information for the purposes of the definition of **sensitive information** in section 6(1) of the Act.

#### *Genetic information*

- (2) Genetic information is not sensitive information unless it is information about an individual's inherited or acquired genetic characteristics resulting from the analysis of a biological sample.

#### *Biometric information*

- (3) Biometric information is not sensitive information unless it is—
  - (a) biometric information as defined in section 5(1) of the Customs and Excise Act 2018; or
  - (b) information relating to an individual's behavioural indicators.

*Health information*

- (4) Health information is not sensitive information unless it is information about an individual's mental or physical health history or their history of addiction or substance abuse.

*Financial information*

- (5) Financial information is not sensitive information unless it is information used to determine an individual's financial position or credit score.

*Other exclusions*

- (6) Publicly available information is not sensitive information.
- (7) Information is not sensitive information within paragraph (a) of the definition of that term in section 6(1) of the Act if—
- (a) it is in a form that could not reasonably be expected to identify the individual concerned; or
- (b) it is information held by a person about that person's own employees.

Regulation 3B: inserted, on 16 June 2020, by regulation 4 of the Overseas Investment Amendment Regulations 2020 (LI 2020/110).

Regulation 3B(6) heading: inserted, on 7 June 2021, by regulation 5 of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

Regulation 3B(6): inserted, on 7 June 2021, by regulation 5 of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

Regulation 3B(7): inserted, on 7 June 2021, by regulation 5 of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

**3C Strategically important businesses**

- (1) This regulation prescribes classes of businesses that are SIBs for the purposes of the definition of SIB or strategically important business in section 6(1) of the Act.

*Ports and airports*

- (2) A business that is involved in ports or airports is a SIB if it is a lifeline utility listed in clauses 2 to 6 of Part A of Schedule 1 of the Civil Defence Emergency Management Act 2002.

*Electricity*

- (3) A business that is involved in electricity generation, distribution, metering, or aggregation is a SIB if it—
- (a) is a generator (as defined in section 5 of the Electricity Industry Act 2010) with a total capacity (as defined in section 73 of that Act) exceeding 250MW; or
- (b) provides electricity lines services (as defined in section 54C of the Commerce Act 1986).

*Water*

- (4) A business that is involved in drinking-water, waste water, or storm water infrastructure is a SIB if the business—
- (a) provides a large drinking-water supply or a medium drinking-water supply (as defined in section 69G of the Health Act 1956); or
  - (b) provides a waste water or sewerage network that services 5,000 or more people; or
  - (c) disposes of sewage or storm water for 5,000 or more people.

*Telecommunications*

- (5) A business that is involved in telecommunications infrastructure or services is a SIB if it provides telecommunications services (as defined in section 3 of the Telecommunications (Interception Capability and Security) Act 2013).

*Financial institutions and financial market infrastructure*

- (5A) A business that is a financial institution or is involved in financial market infrastructure is a SIB if the business—
- (a) is carried on by a registered bank (as defined in section 2(1) of the Reserve Bank of New Zealand Act 1989) and the value of the bank's assets is at least \$80 billion; or
  - (b) operates an FMI that is designated under section 20 of the Financial Market Infrastructures Act 2021 by a designation notice that specifies that the FMI is systemically important (within the meaning of those terms in that Act).

*Irrigation*

- (6) A business that is involved in an irrigation scheme is a SIB if—
- (a) the scheme involves a water supply system for the collection and storage or reticulation (or both) of water primarily for agricultural production; and
  - (b) the business has 1 or more resource consents under the Resource Management Act 1991 to take (in total) more than 25 million cubic meters of water per year.

*Business that develops, produces, maintains, or otherwise has access to sensitive information*

- (7) A business is a SIB if it develops, produces, maintains, or otherwise has access to—
- (a) sensitive information in connection with the supply by the business of services to 1 or more of the following:
    - (i) an intelligence or security agency;
    - (ii) the Department of the Prime Minister and Cabinet;
    - (iii) the Ministry of Foreign Affairs and Trade; or

- (b) data sets of sensitive information relating to 30,000 or more individuals.
- (8) However, subclause (7) does not apply until section 53 of the Overseas Investment (Urgent Measures) Amendment Act 2020 has come into force.

Regulation 3C: inserted, on 16 June 2020, by regulation 4 of the Overseas Investment Amendment Regulations 2020 (LI 2020/110).

Regulation 3C(5A) heading: inserted, on 29 July 2021, by regulation 5 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

Regulation 3C(5A): inserted, on 29 July 2021, by regulation 5 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

### **3D Transactions of national interest**

- (1) This regulation is made under section 127(1) of the Act for the purposes of section 20A of the Act (transactions of national interest).
- (2) A transaction that would otherwise be a transaction of national interest under section 20A(1)(a) or (b) of the Act is not a transaction of national interest if—
- (a) in the case of a transaction of a kind described in section 12(a) or 13(1)(c) of the Act, the only property acquired is an estate or interest in residential (but not otherwise sensitive) land:
- (b) in the case of a transaction of a kind described in section 12(b)(i) or (ii), the only estate or interest in land owned or controlled by A is in residential (but not otherwise sensitive) land.

Regulation 3D: inserted, on 16 June 2020, by regulation 4 of the Overseas Investment Amendment Regulations 2020 (LI 2020/110).

### **3E Overseas investments covered by call-in regime**

- (1) This regulation is made under section 127(1)(d)(ii) of the Act for the purposes of section 82(1) of the Act.
- (2) An overseas investment is not a call-in transaction 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.

Regulation 3E: replaced, on 7 June 2021, by regulation 6 of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

## **Part 1 Consent**

### *Procedure for offering farm land or farm land securities for acquisition on open market*

#### **4 Purpose of regulations 5 to 10**

The purpose of regulations 5 to 10 is to—

- (a) prescribe, for the purposes of the criterion in section 16(1)(f) of the Act, the procedure for offering the farm land or the securities to which the overseas investment relates (**farm land securities**) for acquisition on the open market to persons who are not overseas persons; and
- (b) ensure that persons who are not overseas persons but who wish to acquire the farm land or farm land securities have reasonable notice that they are available for acquisition.

**5 Procedure for offering farm land or farm land securities for acquisition on open market**

For the purposes of section 16(1)(f) of the Act, the farm land or farm land securities must be—

- (a) offered for acquisition on the open market, to persons who are not overseas persons, in accordance with regulations 6 to 8; and
- (b) available on the open market for the minimum period required by regulation 9; and
- (c) advertised within the period required by regulation 10.

**6 Obligation of owner to advertise that farm land or farm land securities available for acquisition**

The owner must advertise that the farm land or the farm land securities are available for acquisition.

**7 Content of advertisement**

The advertisement under regulation 6 must—

- (a) contain a general description of the relevant land; and
- (b) contain a statement that says that—
  - (i) the farm land or the farm land securities are available for acquisition; and
  - (ii) offers are sought from potential purchasers; and
- (c) state the contact details of the owner.

**8 Form of advertisement**

The advertisement under regulation 6 must be published—

- (a) in any medium that is—
  - (i) in the list set out in Schedule 1 (or another medium that is generally used for advertising land for acquisition on the open market); and
  - (ii) generally available to persons in the district in which the relevant land is located; and

- (b) in accordance with the minimum requirements set out in Schedule 1 for that particular medium (or, if another medium is used, in accordance with the general practice for advertising land for acquisition on the open market in that medium).

**9 Farm land or farm land securities must be on open market for minimum period**

- (1) The farm land or the farm land securities must be available for acquisition on the open market—
  - (a) for at least 20 working days after an advertisement is first placed under regulation 6; or
  - (b) for a longer period, if the advertisement under regulation 6 has stated or implied that offers will be accepted for that longer period.
- (2) However, the owner may accept an offer for the farm land or the farm land securities before the end of the period referred to in subclause (1)(a) or (b) from a person who is not an overseas person.

**10 Advertisement must be published within previous 12 months**

The advertisement under regulation 6 must be published within the period of 12 months that precedes the earlier of the following dates:

- (a) the date on which an application for consent to the relevant overseas investment transaction is made; or
- (b) the date on which the relevant overseas investment transaction that requires consent (or will require consent before it is given effect) is given effect to.

**11 Effect of regulations 5 to 10**

To avoid doubt, regulations 5 to 10 do not require any person to—

- (a) unconditionally offer the farm land or the farm land securities under any transaction; or
- (b) enter into any transaction for the farm land or the farm land securities.

*Procedure for offering foreshore, seabed, riverbed, or lakebed to the Crown*

**12 Procedure for offering foreshore, seabed, riverbed, or lakebed to the Crown**

For the purposes of section 17(2)(f) of the Act, the foreshore, seabed, riverbed, or lakebed (**special land**) must be offered to the Crown (acting by and through the relevant Ministers) for acquisition in accordance with regulations 13 to 27.

Regulation 12: amended, on 1 September 2006, by regulation 5 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

**13 Obligation of owner to give notice to relevant Ministers and regulator**

The owner must give written notice to the relevant Ministers and the regulator if—

- (a) the owner intends to give effect to an overseas investment transaction in respect of any relevant land; and
- (b) the relevant land is or includes special land.

Regulation 13 heading: amended, on 1 September 2006, by regulation 6 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 13: amended, on 1 September 2006, by regulation 6 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

**14 Content of notice**

A notice under regulation 13 must—

- (a) state that the relevant land is or includes special land; and
- (b) contain a legal description of the relevant land, including a copy of its record of title (if it has one); and
- (c) provide the postal address of the relevant land or, if the relevant land does not have a postal address, a narrative or diagrammatic description of the relevant land that contains sufficient information for a person who was not previously familiar with the land to locate and inspect—
  - (i) the relevant land;
  - (ii) the special land; and
- (d) state the proposed consideration for the relevant overseas investment transaction; and
- (e) state all the other terms and conditions of the relevant overseas investment transaction; and
- (f) if possible, identify the area of the relevant land that is special land; and
- (g) state—
  - (i) whether the special land needs to be surveyed before its market value can be determined and before it can be acquired by the Crown; or
  - (ii) whether the special land has previously been surveyed; and
- (h) if paragraph (g)(ii) applies, be accompanied by a copy of the plan of survey of the special land (if a copy of the plan is available); and
- (i) state the owner's intention to offer to the Crown the right to acquire the special land; and
- (j) state the contact details of the owner.

Regulation 14(b): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).



**15 The Crown may waive right to acquire special land**

- (1) The relevant Ministers may give written notice to the owner at any time that the Crown waives its right to acquire the special land.
- (2) If a notice under subclause (1) is given, the factor set out in section 17(2)(f) of the Act must be taken to have been complied with in respect of the relevant overseas investment.
- (3) To avoid doubt, a notice under subclause (1) may be given—
  - (a) at the outset, after the notice under regulation 13 has been given; or
  - (b) at any other time until an agreement (if any at all) is entered into between the Crown and the owner for the acquisition by the Crown of the special land.

Regulation 15(1): amended, on 1 September 2006, by regulation 7 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

**16 Procedure if the Crown does not waive right to acquire special land at outset**

- (1) This regulation applies if, after the notice under regulation 13 is given, the relevant Ministers decide not to give the notice under regulation 15 that the Crown waives its right to acquire the special land.
- (2) The relevant Ministers may give written notice to the owner that the Crown wishes to have the market value of the special land determined by a public valuer if—
  - (a) the notice under regulation 13 states that the special land has previously been surveyed and a copy of the plan of survey is available; or
  - (b) subclause (3) applies and the special land has been surveyed in accordance with that subclause.
- (3) If the notice under regulation 13 states that the special land needs to be surveyed, the relevant Ministers must arrange for a survey of the special land to be carried out to the standard appropriate for determining—
  - (a) the market value of the special land; and
  - (b) whether the Crown would want to acquire that land.
- (4) The Crown must meet—
  - (a) the costs of the survey of the special land referred to in subclause (3) and of any subsequent surveys of the special land that may be required for the purpose set out in that subclause; and
  - (b) any other incidental costs or expenses relating to those surveys.

Regulation 16(1): amended, on 1 September 2006, by regulation 8(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 16(2): amended, on 1 September 2006, by regulation 8(2) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 16(3): amended, on 1 September 2006, by regulation 8(3) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

## **17 Valuation of special land**

- (1) If a notice under regulation 16(2) is given, the relevant Ministers and the owner must, within 20 working days after the date of the notice, appoint a public valuer to determine the market value of the special land.
- (2) If the relevant Ministers and the owner cannot agree on the public valuer to be appointed under subclause (1), then each party must, within 30 working days after the date of the notice given under regulation 16(2), appoint a public valuer to determine jointly the market value of the special land.
- (3) The public valuer or valuers, as the case may be, must determine the market value of the special land within 20 working days of being appointed or, if the public valuers were appointed on different dates, within 20 working days of the second public valuer being appointed.
- (4) If 2 public valuers have been appointed and they cannot agree on the market value of the special land within the time specified in subclause (3), they must appoint another public valuer to determine that value.
- (5) If the valuers cannot agree on the public valuer to be appointed under subclause (4), then either the relevant Ministers or the owner may request the President of the New Zealand Institute of Valuers to appoint a public valuer to determine the market value of the special land.

Regulation 17(1): amended, on 1 September 2006, by regulation 9(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 17(2): amended, on 1 September 2006, by regulation 9(2) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 17(5): amended, on 1 September 2006, by regulation 9(3) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

## **18 Costs of valuation**

The costs of a public valuer appointed under regulation 17 must be met as follows:

- (a) if the public valuer is appointed jointly by the relevant Ministers and the owner, the costs must be met equally by the Crown and the owner:
- (b) if the public valuer is appointed by the relevant Ministers or the owner, the costs must be met by the Crown or the owner, as the case may be:
- (c) if the public valuer is appointed under regulation 17(4) or (5), the costs must be met as determined by that public valuer.

Regulation 18(a): amended, on 1 September 2006, by regulation 10 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 18(b): amended, on 1 September 2006, by regulation 10 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

**19 Appointment of valuer is not an arbitration**

- (1) The appointment of a public valuer under regulation 17(4) or (5) is not to be regarded as a submission to arbitration or an arbitration agreement.
- (2) A public valuer appointed under regulation 17(4) or (5) is not to be regarded as an arbitrator, and the Arbitration Act 1996 does not apply in respect of the determination of the market value of the special land by that public valuer.

**20 Valuer may determine market value of special land with reference to market value of relevant land**

If only part of the relevant land is special land and that part is of a size, shape, or nature for which there is no general demand or market, the public valuer or public valuers, as the case may be, may—

- (a) determine the market value of the whole of the relevant land; and
- (b) use that value as a basis for determining the market value of the special land.

**21 Valuer must give notice to parties on determining market value of special land**

As soon as practicable after determining the market value of the special land, the public valuer or public valuers, as the case may be, must give written notice of that market value to the relevant Ministers and the owner.

Regulation 21: amended, on 1 September 2006, by regulation 11 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

**22 Relevant Ministers and owner must negotiate in good faith**

- (1) As soon as practicable after receiving notice of the market value of the special land under regulation 21, the relevant Ministers and the owner must negotiate in good faith to attempt to conclude an agreement in principle to the terms and conditions of the acquisition by the Crown of the special land.
- (2) Despite subclause (1), the agreement in principle must provide that the consideration for the acquisition by the Crown of the special land must be equal to, or less than, the market value of that land specified in the notice under regulation 21.
- (3) If the relevant Ministers consider that the market value of the special land is negligible, the relevant Ministers may negotiate the agreement in principle to provide that, subject to consent being given to the relevant overseas investment transaction, the Crown is to acquire the special land for no consideration.
- (4) If the relevant Ministers and the owner conclude the agreement in principle, the owner must offer to the Crown the right to acquire the special land for the consideration and on the terms and conditions stated in that agreement.
- (5) The offer under subclause (4)—
  - (a) must be made in writing; and

(b) must be given to the relevant Ministers.

Regulation 22 heading: amended, on 1 September 2006, by regulation 12(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 22(1): amended, on 1 September 2006, by regulation 12(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 22(3): substituted, on 1 September 2006, by regulation 12(2) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 22(4): amended, on 1 September 2006, by regulation 12(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 22(5)(b): amended, on 1 September 2006, by regulation 12(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

### **23 Effect of offering special land to the Crown**

If the owner makes the offer under regulation 22, the factor set out in section 17(2)(f) of the Act must be taken to have been complied with in respect of the relevant overseas investment.

### **24 Relevant Ministers must decide on whether to accept offer to acquire special land**

- (1) The relevant Ministers must decide whether to take either of the actions specified in subclause (2) within 30 working days after the date on which the offer under regulation 22 is made.
- (2) The actions are—
  - (a) to accept the offer for the consideration, and on the terms and conditions, stated or referred to in the offer; or
  - (b) to waive the Crown's right to acquire the special land in accordance with regulation 15.

Regulation 24 heading: amended, on 1 September 2006, by regulation 13 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 24(1): amended, on 1 September 2006, by regulation 13 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

### **25 Agreement for acquisition of special land by the Crown must be conditional on overseas investment receiving consent and being given effect to**

An agreement between the Crown and the owner for the acquisition by the Crown of the special land must be conditional on—

- (a) consent being granted to the relevant overseas investment; and
- (b) the overseas investment transaction being given effect to.

### **26 What happens if there is material change to terms and conditions of overseas investment transaction**

- (1) This regulation applies if there is a material change to the terms and conditions of the relevant overseas investment transaction after—

- (a) the notice under regulation 13 is given; or
  - (b) the offer under regulation 22 is made.
- (2) If this regulation applies, the provisions of regulations 12 to 25 and of this regulation apply (with all necessary modifications) in respect of the special land as if those provisions had not yet been applied or had not been complied with.

**27 Minister may delegate functions and powers to regulator**

*[Revoked]*

Regulation 27: revoked, on 1 September 2006, by regulation 14 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

*Other factors for assessing benefit of overseas investment in sensitive land*

**28 Other factors for assessing benefit of overseas investment in sensitive land**

The other factors that are referred to in section 17(2)(g) of the Act for assessing whether an overseas investment in sensitive land will, or is likely to, benefit New Zealand are as follows:

- (a) whether the overseas investment will, or is likely to, result in other consequential benefits to New Zealand (whether tangible or intangible benefits (such as, for example, additional investments in New Zealand or sponsorship of community projects)):
- (b) whether the relevant overseas person is a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations:
- (c) whether refusing the application for consent will, or is likely to,—
  - (i) adversely affect New Zealand's image overseas or its trade or international relations:
  - (ii) result in New Zealand breaching any of its international obligations:
- (d) whether granting the application for consent will, or is likely to, result in the owner of the relevant land undertaking other significant investment in New Zealand:
- (e) whether the relevant overseas person has previously undertaken investments that have been, or are, of benefit to New Zealand:
- (f) whether the overseas investment will, or is likely to, give effect to or advance a significant Government policy or strategy:
- (g) whether the overseas investment will, or is likely to, enhance the ongoing viability of other overseas investments undertaken by the relevant overseas person:

- (h) whether the overseas investment will, or is likely to, assist New Zealand to maintain New Zealand control of strategically important infrastructure on sensitive land:
- (i) whether New Zealand's economic interests will be adequately promoted by the overseas investment, including, for example, matters such as all or any of the following:
  - (i) whether New Zealand will become a more reliable supplier of primary products in the future:
  - (ii) whether New Zealand's ability to supply the global economy with a product that forms an important part of New Zealand's export earnings will be less likely to be controlled by a single overseas person or its associates:
  - (iii) whether New Zealand's strategic and security interests are or will be enhanced:
  - (iv) whether New Zealand's key economic capacity is or will be improved:
- (j) the extent to which persons who are not overseas persons (**New Zealanders**) will be, or are likely to be, able to oversee, or participate in, the overseas investment and any relevant overseas person, including, for example, matters such as all or any of the following:
  - (i) whether there is or will be any requirement that 1 or more New Zealanders must be part of a relevant overseas person's governing body:
  - (ii) whether a relevant overseas person is or will be incorporated in New Zealand:
  - (iii) whether a relevant overseas person has or will have its head office or principal place of business in New Zealand:
  - (iv) whether a relevant overseas person is or will be a party to a listing agreement with NZX Limited or any other registered exchange that operates a securities market in New Zealand:
  - (v) the extent to which New Zealanders have or will have any partial ownership or controlling stake in the overseas investment or in a relevant overseas person:
  - (vi) the extent to which ownership or control of the overseas investment or of a relevant overseas person is or will be dispersed amongst a number of non-associated overseas persons.

Regulation 28(h): added, on 4 March 2008, by regulation 5 of the Overseas Investment Amendment Regulations 2008 (SR 2008/48).

Regulation 28(i): added, on 13 January 2011, by regulation 5 of the Overseas Investment Amendment Regulations 2010 (SR 2010/455).

Regulation 28(j): added, on 13 January 2011, by regulation 5 of the Overseas Investment Amendment Regulations 2010 (SR 2010/455).

*Benefit test: special test relating to forestry activities*

Heading: inserted, on 22 October 2018, by regulation 6 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

**29 Special test may be applied and requirements to be met**

*Special test may be applied*

- (1) For the purposes of section 16A(4) of the Act, the benefit to New Zealand test is also met if the relevant Ministers are satisfied of the matters listed in section 16A(4)(a) to (g).

*Requirements for purposes of section 16A(4)(d) of Act*

- (2) For the purposes of section 16A(4)(d) of the Act, the requirements that must be met after the overseas investment is given effect to are as follows:
- (a) any existing arrangement in respect of the relevant land, or any part of the relevant land, that is for 1 or more specified purposes will be implemented and maintained, or will continue to be implemented and maintained:
  - (b) anything that any existing conditions of a consent require to be done, or prohibit from being done, in respect of the relevant land, or any part of the relevant land, for 1 or more specified purposes will be done or not be done, or will continue to be done or not to be done:
  - (c) logs will be supplied, or will continue to be supplied, as required by any existing supply obligation (so long as the obligation remains in place).
- (3) Subclause (2)(a) does not apply to an arrangement to the extent that the arrangement will (in any event) have to be implemented and maintained, or continued to be implemented and maintained, after the overseas investment is given effect to because of—
- (a) a requirement imposed by or under an enactment, other than the Act or these regulations:
  - (b) an interest in the relevant land, or any part of the relevant land, that is recorded in the register under the Land Transfer Act 1952 or the Land Transfer Act 2017 and that benefits or burdens the relevant land or the part of it.
- (4) Subclause (2)(b)—
- (a) does not limit subclause (2)(a):
  - (b) applies in relation to a consent even if, because of the overseas investment or otherwise, the consent holder will cease to own or control (directly or indirectly) any interest in the relevant land or any part of the relevant land.

(5) In subclause (2) (and this subclause),—

**arrangement**—

- (a) means an agreement or other arrangement or understanding, whether or not legally binding; and
- (b) includes (without limitation) a commitment that—
  - (i) is given by a person to an organisation whose functions are or include the setting of standards or other requirements for 1 or more specified purposes; and
  - (ii) is a commitment to comply with a standard or other requirement set by the organisation for 1 or more specified purposes; but
- (c) does not include an agreement or other arrangement or understanding, or a commitment, that is exclusively oral

**existing**, in relation to an arrangement, the conditions of a consent, or a supply obligation, means the arrangement, conditions, or supply obligation is or are in place—

- (a) immediately before the overseas investment transaction is entered into; or
- (b) if the application for consent for the overseas investment transaction is made before the overseas investment transaction is entered into, immediately before the application is made

**specified purpose** means any of the following:

- (a) protecting areas of indigenous vegetation or habitats of indigenous fauna:
- (b) protecting areas of habitats of trout, salmon, wildlife protected under section 3 of the Wildlife Act 1953, or game as defined in section 2(1) of that Act:
- (c) protecting any historic place or historic area that is entered on the New Zealand Heritage List/Rārangī Kōrero under the Heritage New Zealand Pouhere Taonga Act 2014:
- (d) protecting any wāhi tapu or wāhi tapu area that—
  - (i) is entered on the New Zealand Heritage List/Rārangī Kōrero under the Heritage New Zealand Pouhere Taonga Act 2014; or
  - (ii) is identified in the terms of any lease or forestry right, if the lease or forestry right is, in relation to the overseas investment, the interest in land, or one of the interests in land, described in section 12(a) of the Act:
- (e) protecting any land that is set apart as Māori reservation and that is wāhi tapu under section 338 of Te Ture Whenua Māori Act 1993:



- (f) providing access to land for members of the public or any section of the public

**supply obligation** means a contractual obligation under which logs from trees harvested on the relevant land must be supplied to a person who intends to have the logs processed in New Zealand.

- (6) In paragraphs (c) and (d) of the definition of specified purpose in subclause (5), terms defined in section 6 of the Heritage New Zealand Pouhere Taonga Act 2014 have the meanings given in that section.
- (7) For the purposes of the definition of existing in subclause (5), when deciding when the overseas investment transaction is entered into,—
  - (a) entering into a contract or an arrangement is a transaction that must be treated as being entered into when the contract or arrangement is actually entered into even if it is subject to a condition precedent:
  - (b) clause 1(5) of Schedule 1AA of the Act applies with any necessary modifications.
- (8) Paragraph (b) of the definition of existing in subclause (5) does not apply where a standing consent under clause 3 of Schedule 4 of the Act is being relied on for the overseas investment.

*Special land*

- (9) The requirement set out in subclause (10) applies for the purposes of section 16A(4)(f) of the Act if—
  - (a) the relevant land is or includes special land (as defined in section 16A(9) of the Act); and
  - (b) the overseas investment falls within section 12(a) of the Act; and
  - (c) the interest in land described in section 12(a) of the Act is a freehold estate.
- (10) The special land must be offered to the Crown in accordance with regulations 13 to 26.
- (11) In applying regulations 13 to 26 for the purposes of subclause (10), in regulations 15(2) and 23, the reference to the factor set out in section 17(2)(f) of the Act must be read as a reference to the requirement set out in subclause (10).

Regulation 29: inserted, on 22 October 2018, by regulation 6 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

*Matters relating to sensitive land that is residential land*

Heading: inserted, on 22 October 2018, by regulation 6 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

**30 Types of overseas persons specified to be qualifying individuals**

The following persons are specified for the purposes of clause 4(2)(d) of Schedule 2 of the Act:

- (a) an individual who is, under Australian law, an Australian citizen or a permanent resident of Australia;
- (b) an individual who is, under Singaporean law, a national of Singapore or a permanent resident of Singapore.

Regulation 30: inserted, on 22 October 2018, by regulation 6 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

### **31 Factors for considering whether person remains committed to residing in New Zealand**

- (1) This regulation applies for the purposes of clause 8 of Schedule 2 of the Act.
- (2) The factors for considering whether a person (**OP**) remains committed to residing in New Zealand are the following:
  - (a) the reason for OP's absence from New Zealand on application days, including whether the reason is—
    - (i) a qualifying reason; or
    - (ii) any other reason that the relevant Ministers consider is consistent with OP remaining committed to residing in New Zealand; and
  - (b) whether the amount of time that OP was or will be absent from New Zealand on application days is reasonable given the reasons for OP being absent from New Zealand on those days; and
  - (c) OP's ongoing connection to New Zealand; and
  - (d) the nature of OP's connection to the other country or countries where OP was or will be on application days.
- (3) In this regulation,—

**application days** means any days in respect of which OP has applied for a waiver under clause 8 of Schedule 2 of the Act

**qualifying reason** means any of the following:

*Employment reasons*

- (a) Crown service under the New Zealand Government;
- (b) service under an international organisation of which the New Zealand Government is a member;
- (c) service in the employment of a person, company, society, or other body of persons resident or established in New Zealand;
- (d) self-employment in a business that is ordinarily carried on in New Zealand;

*Compassionate reasons*

- (e) attendance at a significant event relating to a family member that a person with OP's relationship to the family member would reasonably be expected to attend (*see* subclause (4)):

- (f) absence because OP or his or her spouse or partner, dependent child, or sibling is receiving medical treatment overseas:
- (g) other absence for the purpose of obtaining any special medical or surgical treatment if the relevant Ministers are satisfied that there are good and sufficient reasons for the person leaving New Zealand to obtain that special treatment:

*Other reasons*

- (h) accompanying a spouse or partner who is overseas for one of the reasons in paragraphs (a) to (g)

**spouse or partner** means spouse, civil union partner, or de facto partner.

- (4) In subclause (3), definition of qualifying reasons, paragraph (e),—

**family member**, in relation to OP, includes a person who is treated by OP as, and acknowledged by OP to be, a member of OP's family

**significant event**, in relation to OP's family member, includes the following events:

- (a) serious illness or serious injury or imminent death:
- (b) any of the following connected to the family member's death:
  - (i) a funeral (however called) or unveiling:
  - (ii) if OP has missed the family member's funeral, a visit to pay respects to a family member of the deceased:
  - (iii) attending to legal matters in relation to the deceased's affairs:
- (c) a wedding or civil union:
- (d) a birth of a child.

Regulation 31: inserted, on 22 October 2018, by regulation 6 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

### 32 **Maximum percentage: dwellings in large apartment developments that are purchased off plans**

- (1) This regulation applies for the purpose of clause 4 of Schedule 3 of the Act.
- (2) The maximum percentage of new residential dwellings in a development that an exemption certificate may be applied to is 60%.

Regulation 32: inserted, on 22 October 2018, by regulation 6 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

### *Fees and charges*

### 33 **Fees and charges**

- (1) The fees and charges set out in Schedule 2 are payable to the regulator for the matters to which they relate.

(2) The hourly fees and charges in Parts 6 and 8 of Schedule 2 are payable for every hour and, on a pro rata basis, for every part-hour of work that is carried out by or on behalf of the regulator.

(3) The fees and charges include goods and services tax.

Regulation 33: replaced, on 22 October 2018, by regulation 7 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 33 regulation number: replaced, on 22 October 2018, by regulation 7 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 33(2): amended, on 13 September 2021, by regulation 4 of the Overseas Investment (Fees) Amendment Regulations 2021 (LI 2021/206).

### **34 When and how fees and charges are payable and refundable**

(1) A fee or charge that is payable under regulation 33 must be paid in accordance with this regulation, regulation 34A, and Schedule 2.

(2) If an application is made but rejected because the requirements in section 23 of the Act are not met, a further fee is also payable on making an application that replaces the rejected application.

(3) Fees payable after acceptance of an application are payable—

(a) after the regulator notifies the applicant that the requirements in section 23 of the Act are met, but before a decision is made on the relevant application; and

(b) within the time frame specified in the invoice issued by or on behalf of the regulator for the matter.

(4) Fees payable for monitoring compliance are payable—

(a) before a decision is made on the relevant application; and

(b) within the time frame specified in the invoice issued by or on behalf of the regulator for the matter.

(5) The regulator must refund a monitoring compliance fee if consent is not granted as a result of the relevant application.

Regulation 34: replaced, on 13 September 2021, by regulation 5 of the Overseas Investment (Fees) Amendment Regulations 2021 (LI 2021/206).

### **34A Further provisions about fees for complex applications**

(1) For the purpose of Schedule 2, a complex application fee applies if either or both of the following applies at the date of the regulator's invoice:

(a) 5 or more persons are to be considered as part of the determination under section 15(1) of the Act as to who is the relevant overseas person for the overseas investment:

(b) 10 or more persons are to be considered as part of the determination under section 15(2) of the Act as to who is within the category of individuals with control of the relevant overseas person.

- (2) The regulator must refund the difference between a complex application fee and a not complex application fee if, at the time that the relevant application is decided,—
- (a) fewer than 5 persons are determined under section 15(1) of the Act to be the relevant overseas person for the overseas investment:
- (b) fewer than 10 persons are determined under section 15(2) of the Act to be within the category of individuals with control of the relevant overseas person.
- (3) Persons who have previously met the investor test are counted under subclauses (1) and (2) in the same way as other persons, even if the circumstances in section 29A(3) of the Act apply.

Regulation 34A: inserted, on 13 September 2021, by regulation 5 of the Overseas Investment (Fees) Amendment Regulations 2021 (LI 2021/206).

### *Administrative penalties*

#### **35 Administrative penalty for late filing**

For the purposes of section 52 of the Act, the administrative penalty that the regulator may require a person to pay if the person files, provides, or produces a document required by or under the Act, these regulations, or a condition of a consent, an exemption, or an exemption certificate with the regulator after the time when the document must be filed, provided, or produced is \$500.

Regulation 35: replaced, on 22 October 2018, by regulation 8 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 35 regulation number: replaced, on 22 October 2018, by regulation 8 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### **36 Administrative penalty for retrospective consent**

- (1) For the purposes of section 53 of the Act, the administrative penalty that the regulator may require an applicant for a retrospective consent to pay is an amount calculated in accordance with the following table:

<b>Consideration provided for overseas investment</b>	<b>Administrative penalties</b>	
	<b>For consent for transaction on basis that only commitment to reside in New Zealand test is met</b>	<b>All other cases</b>
If the value of the consideration provided for the overseas investment is less than \$2 million	\$5,000	\$20,000
If the value of the consideration provided for the overseas investment is \$2 million or more but not more than \$10 million	\$10,000	\$30,000
If the value of the consideration provided for the overseas investment is more than \$10 million	\$10,000	\$40,000

- (2) In determining whether to impose an administrative penalty under subclause (1), the regulator must consider whether requiring the applicant to pay that

amount would be unduly harsh or oppressive given the nature of, and the reasons for, the retrospective consent.

Regulation 36: replaced, on 22 October 2018, by regulation 9 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 36 regulation number: replaced, on 22 October 2018, by regulation 9 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

## Part 2 Exemptions

### *Exemptions from requirement for consent*

#### 37 Exemptions for corporate dealing

- (1) The requirement for consent does not apply to the extent that giving effect to a transaction has any of the following effects:

*Transactions within group where 1 overseas person owns 75% of group*

- (a) the acquisition by an overseas person of property—
- (i) from another member of the same group, being a group that comprises an overseas person and persons that are 75% or more owned by that overseas person, as part of a reconstruction or reorganisation of that group; or
  - (ii) from an overseas person that owns 75% or more of that overseas person:

*Other acquisitions if no increase in ultimate ownership and control by overseas persons*

- (b) the acquisition by an overseas person (**A**) of property from another overseas person (**B**) where one of the following applies:
- (i) A owns 100% of the securities in B; or
  - (ii) B owns 100% of the securities in A that are owned by overseas persons; or
  - (iii) another person (**C**)—
    - (A) owns 100% of the securities in A and in B that are owned by overseas persons; and
    - (B) owns a proportion of the total securities in A that is no greater than the proportion of the total securities that C owns in B; or
  - (iv) 2 or more persons own in the same proportions 100% of the securities in A and in B that are owned by overseas persons:
- (ba) the acquisition by an overseas person that is a body corporate (**A**) of property from 2 or more overseas persons (**B**) where,—

- (i) after the acquisition, each B owns the same proportion of the total securities in A as the proportion that the B owned (before the acquisition) of the property that is being acquired by A; and
- (ii) before the acquisition,—
  - (A) to the extent that the property is securities in a person (C), no overseas person (or their associate) other than a B owns any of the securities in C; and
  - (B) to the extent that the property is not securities, no overseas person (or their associate) other than a B owns any of the property.

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**Example**

Five persons own sensitive land in equal shares. Three of the 5 are overseas persons. The 5 owners set up a holding company and sell the land to the holding company ready to list it. The holding company is 60%-owned by overseas persons, so is an overseas person. So the sale of the land to the holding company requires consent.

This exemption applies if the 3 existing overseas owners each have the same percentage interest in the holding company as they had in the sensitive land, ie, 20% each.

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*Company acquiring own shares*

- (c) the acquisition by a company incorporated under the Companies Act 1993 of its own shares if—
  - (i) the acquisition does not alter the proportions in which shares in the company are held by the shareholders or the relative voting rights of the shareholders; or
  - (ii) the shares are acquired under sections 112 to 112C or section 118 of that Act:

*Amalgamations*

- (d) the acquisition by an overseas person of securities or property in an amalgamated company under an amalgamation effected under the Companies Act 1993 if the overseas person has the same direct or indirect interest in or rights to the assets of that amalgamated company as that overseas person had in relation to those assets prior to the amalgamation.
- (1A) In this regulation, **own**,—
- (a) in relation to securities, means to have, directly or indirectly, a beneficial entitlement to, or a beneficial interest in, the securities;
  - (b) in relation to other property, means to have any direct or indirect interest in the property.
- (2) If relying on an exemption in subclause (1)(a), (b), (ba), or (d), *see also* subpart 1 of Part 3.

Regulation 37: replaced, on 22 October 2018, by regulation 10 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 37 regulation number: replaced, on 22 October 2018, by regulation 10 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 37(1)(a): replaced, on 16 June 2020, by regulation 5 of the Overseas Investment Amendment Regulations 2020 (LI 2020/110).

Regulation 37(1)(a) heading: amended, on 5 July 2021, by regulation 15(1) of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

Regulation 37(1)(a)(i): amended, on 5 July 2021, by regulation 15(2) of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

Regulation 37(1)(a)(ii): amended, on 5 July 2021, by regulation 15(3) of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

Regulation 37(1)(b) proviso: revoked, on 5 July 2021, by regulation 15(4) of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

Regulation 37(1)(ba): inserted, on 5 July 2021, by regulation 15(5) of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

Regulation 37(1A): inserted, on 5 July 2021, by regulation 15(6) of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

Regulation 37(2): amended, on 5 July 2021, by regulation 15(7) of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

### **38 Exemptions for minor increases if ownership or control has dipped below consented level**

- (1) The purpose of this regulation is to provide exemptions in respect of minor increases in ultimate ownership and control by overseas persons or associates of overseas persons if consent has already been granted for those overseas persons to own or control sensitive assets.
- (2) This regulation applies if—
  - (a) the relevant Minister or Ministers have previously granted consent (the **consent**) for the acquisition of securities or rights or interests in securities of another person (**B**) (the **consented securities**); and
  - (b) the consent holder or an associate of the consent holder (**A**) acquired some or all of the consented securities in accordance with the Act but, since that acquisition, A has disposed of some, but not all, of the consented securities and, as a result, A's ownership or control interest limit (*see* section 12(2) of the Act) is less than the consented ownership or control interest limit.
- (3) The requirement for consent does not apply to the extent that giving effect to a transaction results in an acquisition by A of securities or rights or interests in securities of B (the **further securities**) if—
  - (a) A (either alone or together with its associates) does not have an increase in an existing ownership or control interest in B that results in an ownership or control interest in B that equals or exceeds the consented ownership or control interest limit; and



- (b) the further securities and the consented securities are securities of the same class; and
  - (c) the acquisition does not give A (either alone or together with its associates) any or more disproportionate access to or control of a strategically important business.
- (4) However, subclause (3)(a) does not apply if the acquisition of the consented securities resulted, or would have resulted if acquired, in A (either alone or together with its associates) having a 100% ownership or control interest in B.
- (5) If A relies on an exemption in this regulation, the conditions of the consent continue in effect as conditions of the consent as if the further securities were covered by the consent.
- (6) In this regulation, the **consented ownership or control interest limit** must be calculated under section 12(2) of the Act using the existing ownership or control interest that A had before disposing of consented securities.

Regulation 38: replaced, on 5 July 2021, by regulation 16 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

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

*[Revoked]*

Regulation 38A: revoked, on 5 July 2021, by regulation 38A(6).

### **39 Exemption for redeemable preference shares**

The requirement for consent does not apply to the extent that giving effect to a transaction has the effect of the acquisition by an overseas person of redeemable preference shares that are redeemable only in cash and that do not entitle the holder to exercise voting rights except if the dividend payable is in arrears.

Regulation 39: inserted, on 22 October 2018, by regulation 10 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

### **40 Exemptions for trusts**

- (1) The requirement for consent does not apply to the extent that giving effect to a transaction has any of the following effects:
- (a) the transfer of property from a trustee to an overseas person who is a trustee of the same trust on the appointment of a new trustee or the retirement of a trustee or on the resettlement of a trust if that appointment, retirement, or resettlement does not result in the trust becoming an overseas person:
  - (aa) the transfer of property to a trustee, executor, or administrator of the will or of the estate of a deceased person, on appointment as such under that will or estate or under a trust established by that will or estate:
  - (b) the transfer by a trustee, executor, or administrator of the will or of the estate of a deceased person to an overseas person who is a beneficiary of

property under that will or estate or under a trust established by that will or estate:

- (c) the transfer by a trustee of a trust to an overseas person who is a beneficiary of property under that trust if—
  - (i) the trust is an overseas person; and
  - (ii) the acquisition of that property by the trust has been previously consented to under the Act; and
  - (iii) the transfer is not contrary to any conditions of that consent.

(2) *See also* subpart 1 of Part 3.

Regulation 40: inserted, on 22 October 2018, by regulation 10 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 40(1)(aa): inserted, on 5 July 2021, by regulation 17 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

#### 41 Exemptions for permitted security arrangements

- (1) The requirement for consent does not apply to the extent that giving effect to a transaction has any of the following effects:
  - (a) the acquisition by an overseas person of property under a permitted security arrangement;
  - (b) the acquisition by an overseas person of property as a result of the overseas person enforcing a permitted security arrangement in good faith;
  - (c) the reacquisition by an overseas person of property as a result of the discharge of a permitted security arrangement.
- (2) A security arrangement (*see* section 6(1) of the Act) is a **permitted security arrangement** if it—
  - (a) requires that the property be retransferred to the original transferor or extinguished on the payment or performance of the obligation; and
  - (b) to the extent that the term is used in subclause (1)(a),—
    - (i) is entered into by the parties in good faith and in the ordinary course of business; and
    - (ii) is not entered into with the intention of using the security arrangement to make an overseas investment in sensitive land or an overseas investment in significant business assets or an overseas investment in fishing quota without consent.

Regulation 41: inserted, on 22 October 2018, by regulation 10 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### 42 Further exemption for permitted security arrangements

The requirement for consent does not apply to a transaction to the extent that—

- (a) giving effect to the transaction results in the acquisition by an overseas person of—

- (iaaa) 1 permitted security arrangement; or
  - (i) 2 or more permitted security arrangements that are acquired together as a portfolio or bundle; or
  - (ii) securities in a person (A), to the extent of A's property under permitted security arrangements; and
- (b) the acquisition is in good faith and in the ordinary course of business; and
- (c) the transaction is not entered into with the intention of using 1 or more of the permitted security arrangements to make an overseas investment in sensitive land or an overseas investment in significant business assets or an overseas investment in fishing quota without consent.

Regulation 42: inserted, on 22 October 2018, by regulation 10 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 42 heading: replaced, on 28 July 2020, by regulation 7(1) of the Overseas Investment Amendment Regulations (No 2) 2020 (LI 2020/162).

Regulation 42: amended, on 28 July 2020, by regulation 7(2) of the Overseas Investment Amendment Regulations (No 2) 2020 (LI 2020/162).

Regulation 42(a)(iaaa): inserted, on 28 July 2020, by regulation 7(3) of the Overseas Investment Amendment Regulations (No 2) 2020 (LI 2020/162).

Regulation 42(c): amended, on 28 July 2020, by regulation 7(4) of the Overseas Investment Amendment Regulations (No 2) 2020 (LI 2020/162).

#### **42A Further exemption related to certain rights or interests that are ancillary to permitted security arrangements**

- (1) This regulation applies if a person (A) acquires a permitted security arrangement and at the same time, as an ancillary part of that arrangement, acquires an interest or a right under an insurance contract.
- (2) The requirement for consent does not apply to the extent that giving effect to a transaction results in the acquisition by A of an interest or a right under the insurance contract if—
- (a) the insurance contract relates to the same property as the permitted security arrangement; and
  - (b) the contract is a contract of insurance against physical loss or damage of that property; and
  - (c) the acquisition is in good faith and in the ordinary course of business; and
  - (d) the transaction is not entered into with the intention of using the acquisition to make an overseas investment in sensitive land or an overseas investment in significant business assets or an overseas investment in fishing quota without consent.

Regulation 42A: inserted, on 5 July 2021, by regulation 18 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

**42B Exemption for transfer of certain debt obligations**

The requirement for consent does not apply to a transaction to the extent that—

- (a) giving effect to the transaction results in a transfer of an interest or right that is solely an interest in or right to be paid money that has been deposited with or lent to, or is otherwise (actually or contingently) owing by, any person (whether or not the interest or right arises under a financing transaction); and
- (b) the interest or right is not convertible into a security within paragraphs (a) to (d) of the definition of security in section 6(1) of the Act; and
- (c) the transaction is entered into by the parties in good faith and in the ordinary course of business; and
- (d) the transaction is not entered into with the intention of using the transfer to make an overseas investment in sensitive land or an overseas investment in significant business assets or an overseas investment in fishing quota without consent.

Compare: 2005 No 82 Schedule 1AA cl 33

Regulation 42B: inserted, on 5 July 2021, by regulation 18 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

**43 Exemption for life insurance**

The requirement for consent does not apply to the extent that giving effect to a transaction has the effect of the acquisition of property from the investment of funds by an overseas person carrying on in New Zealand the business of life insurance if—

- (a) the investment of the funds is made for the benefit of policy holders at least 75% of whom are New Zealand citizens or persons ordinarily resident in New Zealand; and
- (b) the investment is of funds held in the overseas person's—
  - (i) Life Insurance Fund within the meaning of section 15 of the Life Insurance Act 1908 if the overseas person carries on any other business; or
  - (ii) statutory fund or funds (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010).

Regulation 43: inserted, on 22 October 2018, by regulation 10 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

**44 Exemption for retirement schemes**

The requirement for consent does not apply to the extent that giving effect to a transaction has the effect of the acquisition of property by or on behalf of an overseas person that is the supervisor or manager of a retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) from the investment of all or part of the assets of the scheme for the

benefit of members at least 75% of whom are New Zealand citizens or persons ordinarily resident in New Zealand.

Regulation 44: inserted, on 22 October 2018, by regulation 10 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### 45 Exemptions for relationship property

- (1) The requirement for consent does not apply to the extent that giving effect to a transaction has any of the following effects:
- (a) the acquisition by an overseas person of property if—
    - (i) the property is, or will be as a result of the acquisition, relationship property of the overseas person and the overseas person's spouse or partner; and
    - (ii) the overseas person's spouse or partner is not an overseas person:
  - (b) the acquisition by an overseas person of property as a result of a division of relationship property under the Property (Relationships) Act 1976:
  - (c) the acquisition by a company incorporated in New Zealand (**A Co**) of property if—
    - (i) all of the securities in **A Co** are wholly owned as relationship property by a person (**B**) and **B**'s spouse or partner; and
    - (ii) **B** is not an overseas person.
- (2) In this regulation,—

**relationship property** means relationship property as defined in section 8 of the Property (Relationships) Act 1976

**spouse or partner** means spouse, civil union partner, or de facto partner.

- (3) *See* also regulation 58 for another relationship property exemption.

Regulation 45: inserted, on 22 October 2018, by regulation 10 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### 46 Exemption for underwriting

The requirement for consent does not apply to the extent that giving effect to a transaction has the effect of the underwriting by an overseas person of an issue or sale of securities if that person—

- (a) is a person whose ordinary business includes entering into bona fide underwriting or subunderwriting contracts with respect to offers of securities; and
- (b) acquires the securities as a result of entering into a bona fide underwriting or subunderwriting contract in the course of that person's ordinary business; and
- (c) holds the securities for less than 6 months; and
- (d) does not exercise any voting rights attached to those securities.

Regulation 46: inserted, on 22 October 2018, by regulation 10 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 46: amended, on 5 July 2021, by regulation 19 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

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

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

- (2) In this regulation, unless the context otherwise requires,—

**custodial property** means property—

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

**custodian** means a person—

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

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

- (a) in substance secures the customer's obligation to pay fees to the custodian for the custodian's services to the customer; and
- (b) is entered into by the custodian and the customer in good faith and in the ordinary course of the custodian's business; and

- (c) requires that the beneficial interest in or entitlement to the custodial property be retransferred to the customer or extinguished on the payment of those fees

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

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

Regulation 47: inserted, as regulation 33A, on 1 February 2017, by regulation 4 of the Overseas Investment Amendment Regulations (No 2) 2016 (LI 2016/302).

Regulation 47 regulation number: replaced, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 47(2) **custodial property**: amended, on 22 October 2018, by regulation 11 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### *Exemptions from requirement for consent provisions of Act*

### **48 Exemption for persons connected to portfolio investors or New Zealand controlled persons**

- (1) Every specified person is exempt from the requirement for consent provisions of the Act.
- (2) The exemption under subclause (1) also applies to a specified person if—
  - (a) the exemption does not apply under that subclause only because 1 or more persons (which may include the specified person) are incorporated outside New Zealand; and
  - (b) each of those persons incorporated outside New Zealand is directly or indirectly wholly-owned by a person listed in Schedule 3 or Schedule 4 (if any).
- (3) However, the exemption under subclause (1) does not apply to a specified person if 1 person listed in Schedule 3 has 25% control, or 2 or more overseas persons (including persons listed in Schedule 3, but not persons listed in Schedule 4) have cumulatively 75% control, of the specified person by having (directly or indirectly)—
  - (a) a beneficial entitlement to, or a beneficial interest in, 25% or more or 75% or more (as the case may be) of the specified securities of the specified person; or
  - (b) the right to exercise or control the exercise of 25% or more or 75% or more (as the case may be) of the voting power at a meeting of the specified person; or

- (c) the right to appoint or control the appointment of 25% or more or 75% or more (as the case may be) of the board of directors (or other persons or body exercising powers of management, however described) of the specified person.

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**Example 1**

Company A holds 20% and Company B holds 5% of Company X's shares. Both Company A and Company B are overseas persons but Company A is listed in Schedule 3.

So Company X is exempt under regulation 48 (if there is no other reason why Company X is an overseas person).

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**Example 2**

Company C buys 25% of Company X's shares. Company C is an overseas person because it is a subsidiary of a company listed in Schedule 4 (and is not an overseas person for any other reason).

So Company X is still exempt under regulation 48 (if there is no other reason why Company X is an overseas person).

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**Example 3**

Company D buys 25% of Company X's shares. Company D is an overseas person and is not listed in Schedule 3 or 4.

So Company X no longer qualifies for the exemption under regulation 48.

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**Example 4**

Company A increases its shareholding in Company X to 25%. Company A is listed in Schedule 3.

So Company X no longer qualifies for the exemption under regulation 48.

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Regulation 48 regulation number: replaced, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 48(2)(b): amended, on 4 July 2016, by regulation 8 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

Regulation 48(3) example 1: amended, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 48(3) example 2: amended, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 48(3) example 3: amended, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 48(3) example 4: amended, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

**49 Exemption for New Zealand controlled persons**

Every person listed in Schedule 4 is exempted from the requirement for consent provisions of the Act.

Regulation 49 regulation number: replaced, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).



## 50 Consequential exemption for other transactions

- (1) Every person is exempted from the requirement for consent provisions of the Act for a transaction if, for a transaction that will have a result specified in section 12(b) of the Act, every overseas person to which section 12(b) applies will become a person that is exempted from the requirement for consent provisions of the Act by regulation 48 or regulation 49.
- (2) Every person is exempted from the requirement for consent provisions of the Act for a transaction that will have a result specified in section 13(1) of the Act if every overseas person to which section 13(1) applies is exempted from the requirement for consent provisions of the Act by regulation 48 or regulation 49.

Regulation 50 regulation number: replaced, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 50(1): amended, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 50(2): amended, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

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

Heading: inserted, on 1 February 2017, by regulation 5 of the Overseas Investment Amendment Regulations (No 2) 2016 (LI 2016/302).

## 51 Exemption for certain land transactions commonly known as re-grants

### *Application*

- (1) This regulation applies to a transaction that will result in an overseas person (A) acquiring a lease, or any other interest other than a freehold estate or a regulated *profit à prendre*, in sensitive land (the **new interest**) where—
  - (a) the new interest commences within 3 months of the expiry of an interest of the same type that is owned or possessed by A and no other person in sensitive land (the **previous interest**); and
  - (b) the sensitive land that is the subject of the new interest (**land B**) is the same as or is a portion of the sensitive land that was the subject of the previous interest; and
  - (c) the term of the new interest is the same as or shorter than the term of the previous interest in land B (in each case including rights of renewal, whether of the grantor or A); and
  - (d) the terms and conditions of the new interest differ from the terms and conditions of the previous interest in land B only to the extent that they are permitted changes; and
  - (e) consent has been obtained to a previous transaction that resulted in the acquisition of the previous interest or an earlier-in-time interest (*see* sub-clause (4)); and

- (f) the term of the new interest (including rights of renewal, whether of the grantor or A) expires within 20 years of the date that A acquired the interest in land B that resulted from the last consented transaction; and
- (g) the activity to be conducted by A on or from land B is the same or substantially the same as the activity conducted on or from land B under the interest that resulted from the last consented transaction.

*Exemption*

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

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

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

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

- (5) The further conditions are that—
  - (a) A has not breached any condition of the consent granted for the last consented transaction, nor has A breached any condition of any other consent granted to A and related to land B (if any); and
  - (b) A continues to comply with the continuing conditions of the consent granted for the last consented transaction that are related to land B; and
  - (c) A continues to conduct the same or substantially the same activity on or from land B that was conducted under the interest in land B that resulted from the last consented transaction; and
  - (d) if A is an individual, A is not, at the date that A acquires the new interest, an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (or A is an individual for whom a special direction referred to in section 17(1)(a) of that Act has been made permitting a visa or entry permission to be granted to that individual); and

- (e) if A is not an individual, at the date that A acquires the new interest, each of the following is not an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (or is an individual for whom a special direction referred to in section 17(1)(a) of that Act has been made permitting a visa or entry permission to be granted to that individual):
    - (i) each individual who has a 25% or more ownership or control interest in A; and
    - (ii) each member of the governing body of A who is an individual; and
  - (f) by the date that is 1 month after the date that A acquires the new interest, A provides the regulator with the following information and documents, in writing:
    - (i) a general description of the transaction that resulted in A acquiring the new interest, including a copy of the document or documents setting out the terms and conditions of the new interest; and
    - (ii) notification to the effect that the new interest has been acquired in reliance on the exemption in this regulation and that the condition and each of the further conditions of the exemption (other than conditions subsequent) are met; and
    - (iii) a copy of the document or documents setting out the terms and conditions of the previous interest; and
    - (iv) information that identifies or allows the regulator to identify the last consented transaction (if it is not clear from the document or documents provided under subparagraph (iii)); and
    - (v) a list of the continuing conditions of the consent granted for the last consented transaction that are related to land B; and
    - (vi) notification of the activity to be conducted by A on or from land B; and
    - (vii) if A is an individual, A's full name; and
    - (viii) if A is not an individual, the full name of—
      - (A) each individual who has a 25% or more ownership or control interest in A; and
      - (B) each member of the governing body of A (whether or not an individual).
- (6) In this regulation,—
- continuing**, in relation to the conditions of the consent granted for the last consented transaction, means those conditions that—
- (a) have not been met (or have not been met fully) at the date that A acquires the new interest; or

(b) are ongoing, even if they are met at that date

**last consented transaction** means the most recent transaction described in subclause (4)(a) or (b) for which A obtained consent under section 10(1)(a) of the Act (or, if only 1, means that transaction)

**monetary terms**, in relation to an interest,—

- (a) means terms of that interest that set out the amount and timing of payments; but
- (b) does not include any indemnities, guarantees, or terms that limit the liability of a person

**permitted changes** means—

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

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

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

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

Regulation 51: inserted, as regulation 36AA, on 1 February 2017, by regulation 5 of the Overseas Investment Amendment Regulations (No 2) 2016 (LI 2016/302).

Regulation 51 regulation number: replaced, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 51(1): amended, on 22 October 2018, by regulation 12 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

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

### *Application*

- (1) This regulation applies to a transaction that will result in an overseas person (A) acquiring an interest in land or rights or interests in securities of a person

who owns or controls (directly or indirectly) an interest in land (**A's acquisition**) where—

- (a) no part of the relevant land is land that is sensitive under paragraph (a) of Part 1 of Schedule 1 of the Act (which relates to land of a type listed in table 1 of that schedule, where the area of that type of land together with any associated land of that type exceeds a corresponding area threshold, if any); and
- (b) no part of the relevant land, and no part of any associated land, is or adjoins foreshore, seabed, or a bed of a river or lake; and
- (c) no part of the relevant land, and no part of any associated land, is non-urban land; and
- (d) the area of the relevant land together with any associated land does not exceed 5 hectares; and
- (e) the activity to be conducted on or from the relevant land is the same or substantially the same as the activity conducted on or from the relevant land under the previous land consent; and
- (f) the transaction will not result in an overseas investment in significant business assets; and
- (g) the total value of the consideration for the overseas investment in sensitive land (and in fishing quota, if any) that will result from the transaction does not exceed \$100 million.

*Exemption*

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

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

- (4) If A's acquisition is of an interest in land (a **land interest**) (*see* section 12(a) of the Act), the condition is that the following statements apply:
  - (a) a previous acquisition of the land interest (or previous acquisitions of parts of the land interest that, together, comprise that land interest) has (or have) been consented to under section 10(1)(a) of the Act (the **previous land consent**); and
  - (b) the land interest has remained in the ownership or possession of an overseas person at all times since the date of the previous land consent (and, if acquired in parts, each part has remained in the ownership or possession of an overseas person at all times since the date that part was acquired); and

- (c) if, since the date of the previous land consent, the land interest (or a part of it) has been acquired by another overseas person, that acquisition was in accordance with an exemption in regulation 37(1)(a) or regulation 40(1)(a) or this regulation.
- (5) If A's acquisition is of rights or interests in securities of a person (**P**) who owns or controls (directly or indirectly) an interest in land (*see* section 12(b) of the Act), the condition is that—
- (a) the following statements apply:
    - (i) a previous acquisition of the interest in land owned or controlled by P (the **land interest**) (or previous acquisitions of parts of the land interest that, together, comprise that land interest) has (or have) been consented to under section 10(1)(a) of the Act (the **previous land consent**); and
    - (ii) the land interest has remained in the ownership or possession of an overseas person at all times since the date of the previous land consent (and, if acquired in parts, each part has remained in the ownership or possession of an overseas person at all times since the date that part was acquired); and
    - (iii) if, since the date of the previous land consent, the land interest (or a part of it) has been acquired by another overseas person, that acquisition was in accordance with an exemption in regulation 37(1)(a) or regulation 40(1)(a) or this regulation; or
  - (b) the following statements apply:
    - (i) P owned or controlled the land interest before becoming an overseas person as a result of an acquisition of rights or interests in P's securities; and
    - (ii) consent was obtained under section 10(1)(a) of the Act to the acquisition of rights or interests in P's securities referred to in subparagraph (i) (the **previous land consent**); and
    - (iii) at all times since the date of the previous land consent, P has remained an overseas person and the land interest has remained in the ownership or control of P; or
  - (c) paragraph (a) or (b) applies to different parts of the land interest owned or controlled by P and those parts, together, comprise the land interest.

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

- (6) The further conditions are that,—
- (a) if A is an individual, A is not, at the date of A's acquisition, an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (or A is an individual for whom a special direction referred to in section

- 17(1)(a) of that Act has been made permitting a visa or entry permission to be granted to that individual); and
- (b) if A is not an individual, at the date of A's acquisition each of the following is not an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (or is an individual for whom a special direction referred to in section 17(1)(a) of that Act has been made permitting a visa or entry permission to be granted to that individual):
    - (i) each individual who has a 25% or more ownership or control interest in A; and
    - (ii) each member of the governing body of A who is an individual; and
  - (c) A continues to comply with the continuing conditions of the previous land consent that are related to the relevant land; and
  - (d) the same or substantially the same activity continues to be conducted on or from the relevant land as the activity conducted on that land under the previous land consent; and
  - (e) by the date that is 1 month after the date of A's acquisition, A provides the regulator with the following information and documents, in writing:
    - (i) a general description of the transaction that resulted in A's acquisition, including a copy of the document or documents setting out the terms and conditions of the interest or rights acquired; and
    - (ii) notification to the effect that the interest or rights have been acquired in reliance on the exemption in this regulation and that the condition and each of the further conditions of the exemption (other than conditions subsequent) are met; and
    - (iii) information that identifies or allows the regulator to identify the previous land consent; and
    - (iv) a list of the continuing conditions of the previous land consent that are related to the relevant land; and
    - (v) notification of the activity to be conducted on or from the relevant land; and
    - (vi) if A is an individual, A's full name; and
    - (vii) if A is not an individual, the full name of—
      - (A) each individual who has a 25% or more ownership or control interest in A; and
      - (B) each member of the governing body of A (whether or not an individual).
- (7) In this regulation,—

**continuing**, in relation to the conditions of a previous land consent, means those conditions that—

- (a) have not been met (or have not been met fully) at the date of A's acquisition; or
- (b) are ongoing, even if they are met at that date

**previous land consent** has the meaning set out in subclause (4) or (5)(a) or (b), whichever applies

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

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

Regulation 52: inserted, as regulation 36AB, on 1 February 2017, by regulation 5 of the Overseas Investment Amendment Regulations (No 2) 2016 (LI 2016/302).

Regulation 52 regulation number: replaced, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 52(4)(c): amended, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 52(5)(a)(iii): amended, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

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

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

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

Regulation 53: inserted, as regulation 36AC, on 1 February 2017, by regulation 5 of the Overseas Investment Amendment Regulations (No 2) 2016 (LI 2016/302).

Regulation 53 regulation number: replaced, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).



## 54 Exemption for replacement of forestry right with new forestry right

### *Application*

- (1) This regulation applies if—
  - (a) an overseas person (the **original forestry investor**) acquired a forestry right (the **original forestry right**) as a result of a transaction (the **original transaction**); and
  - (b) one of the following applies:
    - (i) the acquisition of the original forestry right was an overseas investment in sensitive land and—
      - (A) consent was obtained for the original transaction for the purposes of section 10(1)(a) of the Act to the extent that the original transaction resulted in the acquisition of the original forestry right; or
      - (B) because of the exemption in clause 7 of Schedule 3 of the Act, consent was not required for the original transaction for the purposes of section 10(1)(a) of the Act to the extent that the original transaction resulted in the acquisition of the original forestry right:
    - (ii) consent for the original transaction was not required as referred to in subparagraph (i)(A) because the original transaction was entered into before the commencement of clause 1 of Schedule 1AA of the Act.
- (2) This regulation also applies if—
  - (a) a person (the **original forestry investor**) acquired a forestry right (the **original forestry right**); and
  - (b) subsequent to the acquisition of the original forestry right, an overseas person acquired rights or interests in securities of the original forestry investor as a result of a transaction (the **securities transaction**); and
  - (c) one of the following applies:
    - (i) the acquisition of the rights or interests in securities of the original forestry investor was an overseas investment in sensitive land and, in relation to the original forestry right, consent was obtained for the securities transaction for the purposes of section 10(1)(a) of the Act to the extent that the securities transaction resulted in the acquisition of the rights or interests in securities:
    - (ii) consent for the securities transaction was not required as referred to in subparagraph (i) because the securities transaction was entered into before the commencement of clause 1 of Schedule 1AA of the Act.

- (3) For the purposes of subclauses (1) and (2), it does not matter whether an acquisition of a forestry right, or of rights or interests in securities, was given effect to before, on, or after the commencement of this regulation.
- (4) Clause 1(4) and (5) of Schedule 1AA of the Act applies for the purposes of subclauses (1)(b)(ii) and (2)(c)(ii), with any necessary modifications, when deciding when a transaction is entered into.

*Exemption*

- (5) A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that it will result in an overseas investment in sensitive land if—
  - (a) the overseas investment is the acquisition of a forestry right (the **new forestry right**) by the original forestry investor or a person related to the original forestry investor; and
  - (b) immediately before the new forestry right is acquired,—
    - (i) the area of land covered by the new forestry right is fully covered by the original forestry right (whether or not it is the only area of land covered by the original forestry right); and
    - (ii) the original forestry right is held by the original forestry investor or a person related to the original forestry investor; and
  - (c) the term of the new forestry right (including rights of renewal, whether of the grantor or grantee) expires no later than 3 years after the end of the term of the original forestry right (*see* subclause (6)); and
  - (d) the requirements of subclause (7) are met (if applicable).
- (6) For the purposes of subclause (5)(c), the term of the original forestry right must be determined as at the time of its acquisition by the original forestry investor, but including rights of renewal, whether of the grantor or grantee, existing at that time.
- (7) If subclause (11) will apply (*see* subclause (10)), the rights conferred by the new forestry right—
  - (a) must be sufficient to enable any relevant conditions of a consent to continue to be complied with;
  - (b) must not include any right that was not conferred by the forestry right to which the consent related, if the absence of that right from that forestry right was the basis (wholly or partly)—
    - (i) on which the relevant Ministers, when they granted the consent, did not apply or modified a requirement under section 16A(8) of the Act; or
    - (ii) if the consent is a standing consent under clause 3 of Schedule 4 of the Act, on which the relevant Ministers varied the conditions of the consent under clause 3(10) of that schedule in relation to a

requirement set out in regulations made for the purposes of section 16A(4)(d) of the Act.

*Reapplication of exemption*

- (8) Subclause (9) applies if—
- (a) the exemption in subclause (5) is relied upon for the acquisition of a forestry right (including in a case where the exemption is applied by virtue of subclause (9)); and
  - (b) the original forestry investor, or a person related to the original forestry investor, makes a subsequent acquisition of a forestry right.
- (9) The exemption in subclause (5) may be applied to the subsequent acquisition, reading references in subclause (5)(b)(i) and (ii) to the original forestry right as references to the forestry right referred to in subclause (8)(a).

*Conditions of consents to continue in effect*

- (10) If the exemption in subclause (5) is relied upon, subclause (11) applies to the conditions of a consent—
- (a) if the consent was obtained for the purposes of section 10(1)(a) of the Act in relation to a relevant forestry right (*see* subclause (14)); and
  - (b) to the extent that the conditions are in effect immediately before the acquisition of the new forestry right (including in a case where the conditions are in effect by virtue of subclause (11)).
- (11) The conditions continue in effect as conditions of the consent, with any necessary modifications, as if the new forestry right were the relevant forestry right (except to the extent that the area of land that was covered by the relevant forestry right is not covered by the new forestry right).
- (12) If the consent is a consent that was obtained for the transaction referred to in subclause (1)(a) and the person who acquires the new forestry right is not a holder of the consent, that person is treated as a holder of the consent for all purposes.
- (13) However, that person is not required to comply with the conditions of the consent to the extent that they relate to any area of land that is not covered by the new forestry right.
- (14) In subclause (10)(a), **relevant forestry right** means—
- (a) the original forestry right; or
  - (b) another forestry right that was previously acquired in reliance on the exemption in subclause (5).

*Meaning of related*

- (15) For the purposes of this regulation, a person (A) is **related** to the original forestry investor if—
- (a) the original forestry investor owns and controls 95% of A; or

- (b) A owns and controls 95% of the original forestry investor; or
  - (c) a third person owns and controls 95% of the original forestry investor and of A.
- (16) For the purposes of subclause (15), a person (**X**) **owns and controls 95%** of another person (**Y**) if X has—
- (a) a beneficial entitlement to, or a beneficial interest in, 95% or more of Y's securities; and
  - (b) the power to control the composition of 95% or more of the governing body of Y; and
  - (c) the right to exercise, or control the exercise of, 95% or more of the voting power at a meeting of Y.

Regulation 54: inserted, on 22 October 2018, by regulation 13 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

## 55 Exemption for replacement of regulated *profit à prendre* with new regulated *profit à prendre*

### *Application*

- (1) This regulation applies if—
- (a) an overseas person (the **original profit investor**) acquired a regulated *profit à prendre* (the **original profit**) as a result of a transaction (the **original transaction**); and
  - (b) the original *profit* is not a forestry right; and
  - (c) one of the following applies:
    - (i) the acquisition of the original *profit* was an overseas investment in sensitive land and consent was obtained for the original transaction for the purposes of section 10(1)(a) of the Act to the extent that the original transaction resulted in the acquisition of the original *profit*;
    - (ii) consent for the original transaction was not required as referred to in subparagraph (i) because the original transaction was entered into before the commencement of clause 1 of Schedule 1AA of the Act.
- (2) This regulation also applies if—
- (a) a person (the **original profit investor**) acquired a regulated *profit à prendre* (the **original profit**); and
  - (b) the original *profit* is not a forestry right; and
  - (c) subsequent to the acquisition of the original *profit*, an overseas person acquired rights or interests in securities of the original *profit* investor as a result of a transaction (the **securities transaction**); and
  - (d) one of the following applies:

- (i) the acquisition of the rights or interests in securities of the original *profit* investor was an overseas investment in sensitive land and, in relation to the original *profit*, consent was obtained for the securities transaction for the purposes of section 10(1)(a) of the Act to the extent that the securities transaction resulted in the acquisition of the rights or interests in securities:
  - (ii) consent for the securities transaction was not required as referred to in subparagraph (i) because the securities transaction was entered into before the commencement of clause 1 of Schedule 1AA of the Act.
- (3) For the purposes of subclauses (1) and (2), it does not matter whether an acquisition of a regulated *profit à prendre*, or of rights or interests in securities, was given effect to before, on, or after the commencement of this regulation.
- (4) Clause 1(4) and (5) of Schedule 1AA of the Act applies for the purposes of subclauses (1)(c)(ii) and (2)(d)(ii), with any necessary modifications, when deciding when a transaction is entered into.

*Exemption*

- (5) A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that it will result in an overseas investment in sensitive land if—
  - (a) the overseas investment is the acquisition of a regulated *profit à prendre* (the **new profit**) by the original *profit* investor or a person related to the original *profit* investor; and
  - (b) the new *profit* is not a forestry right; and
  - (c) immediately before the new *profit* is acquired,—
    - (i) the area of land covered by the new *profit* (the **covered land**) is fully covered by the original *profit* (whether or not the covered land is the only area of land covered by the original *profit*); and
    - (ii) the original *profit* is held by the original *profit* investor or a person related to the original *profit* investor; and
  - (d) the subject matter of the rights conferred by the new *profit* in respect of the covered land is the same, or substantially the same, as the subject matter of the rights conferred by the original *profit* in respect of the covered land; and
  - (e) the term of the new *profit* (including rights of renewal, whether of the grantor or grantee) expires no later than 3 years after the end of the term of the original *profit* (see subclause (6)); and
  - (f) the requirement of subclause (7) is met (if applicable).
- (6) For the purposes of subclause (5)(e), the term of the original *profit* must be determined as at the time of its acquisition by the original *profit* investor, but

including rights of renewal, whether of the grantor or grantee, existing at that time.

- (7) If subclause (11) will apply (*see* subclause (10)), the rights conferred by the new *profit* must be sufficient to enable any relevant conditions of a consent to continue to be complied with.

*Reapplication of exemption*

- (8) Subclause (9) applies if—
- (a) the exemption in subclause (5) is relied upon for the acquisition of a regulated *profit à prendre* (including in a case where the exemption is applied by virtue of subclause (9)); and
  - (b) the original *profit* investor, or a person related to the original *profit* investor, makes a subsequent acquisition of a regulated *profit à prendre* that is not a forestry right.
- (9) The exemption in subclause (5) may be applied to the subsequent acquisition, reading references in subclause (5)(c)(i) and (ii) to the original *profit* as references to the regulated *profit à prendre* referred to in subclause (8)(a).

*Conditions of consents to continue in effect*

- (10) If the exemption in subclause (5) is relied upon, subclause (11) applies to the conditions of a consent—
- (a) if the consent was obtained for the purposes of section 10(1)(a) of the Act in relation to a relevant *profit* (*see* subclause (14)); and
  - (b) to the extent that the conditions are in effect immediately before the acquisition of the new *profit* (including in a case where the conditions are in effect by virtue of subclause (11)).
- (11) The conditions continue in effect as conditions of the consent, with any necessary modifications, as if the new *profit* were the relevant *profit* (except to the extent that the area of land that was covered by the relevant *profit* is not covered by the new *profit*).
- (12) If the consent is a consent that was obtained for the transaction referred to in subclause (1)(a) and the person who acquires the new *profit* is not a holder of the consent, that person is treated as a holder of the consent for all purposes.
- (13) However, that person is not required to comply with the conditions of the consent to the extent that they relate to any area of land that is not covered by the new *profit*.
- (14) In subclause (10)(a), **relevant *profit*** means—
- (a) the original *profit*; or
  - (b) another regulated *profit à prendre* that was previously acquired in reliance on the exemption in subclause (5).

*Meaning of related*

- (15) For the purposes of this regulation, a person (**A**) is **related** to the original *profit* investor if—
- (a) the original *profit* investor owns and controls 95% of A; or
  - (b) A owns and controls 95% of the original *profit* investor; or
  - (c) a third person owns and controls 95% of the original *profit* investor and of A.
- (16) For the purposes of subclause (15), a person (**X**) **owns and controls 95%** of another person (**Y**) if X has—
- (a) a beneficial entitlement to, or a beneficial interest in, 95% or more of Y's securities; and
  - (b) the power to control the composition of 95% or more of the governing body of Y; and
  - (c) the right to exercise, or control the exercise of, 95% or more of the voting power at a meeting of Y.

Regulation 55: inserted, on 22 October 2018, by regulation 13 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

**55A Exemption for covenants**

- (1) The requirement for consent under section 10(1)(a) of the Act does not apply to a transaction to the extent that giving effect to the transaction results in the acquisition, by an overseas person or an associate of an overseas person (**A**), of a section 12 interest if the estate or interest in land described in section 12(1)(a) of the Act is a benefit that A can enforce under—
- (a) a covenant (whether a positive or restrictive covenant); or
  - (b) a covenant in gross.
- (2) However, the exemption under subclause (1) does not apply if giving effect to the transaction would have the same effect as, or a similar effect to, A acquiring (directly or indirectly) any of the following in relation to the sensitive land to which the section 12 interest relates:
- (a) a freehold or leasehold estate or other right to occupy the land:
  - (b) a mortgage or charge on the land:
  - (c) a *profit à prendre* or other right to take resources from the land.
- (3) In this regulation,—
- covenant** has the same meaning as in section 4 of the Property Law Act 2007
- covenant in gross** has the same meaning as in section 307A of the Property Law Act 2007.

Regulation 55A: inserted, on 5 July 2021, by regulation 20 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

**56 Exemption for freeholder who acquires another interest in land included in freehold**

A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that it will result in an overseas investment in sensitive land if—

- (a) the overseas investment is the acquisition of an interest in land (the **new interest**) by an overseas person; and
- (b) the new interest is not a freehold estate; and
- (c) immediately before and after the acquisition,—
  - (i) the freehold estate in the area of land covered by the new interest has a single (legal and equitable) owner; and
  - (ii) the overseas person is that single owner.

Regulation 56: inserted, on 22 October 2018, by regulation 13 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

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

Heading: inserted, on 22 October 2018, by section 29 of the Overseas Investment Amendment Act 2018 (2018 No 25).

**57 Exemptions for network utility operators**

A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that it will result in an overseas investment in sensitive land if the relevant land—

- (a) is residential (but not otherwise sensitive) land; and
- (b) is acquired by 1 or more of the following:
  - (i) an electricity operator or electricity distributor for the purposes of providing line function services (where those terms have the meanings set out in section 2 of the Electricity Act 1992):
  - (ii) a gas distributor or a gas producer for the purposes of providing line function services (where those terms have the meanings set out in section 2 of the Gas Act 1992):
  - (iii) a network operator for the purposes of providing telecommunications services (where those terms have the meanings set out in section 5 of the Telecommunications Act 2001).

Regulation 57: inserted, as regulation 36AE, on 22 October 2018, by section 29 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Regulation 57 regulation number: replaced, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).



**58 Exemptions relating to relationship property where spouse or partner granted consent under commitment to reside in New Zealand test**

- (1) This regulation applies if—
- (a) a transaction will result in an overseas person acquiring any interest in residential land, or any right or interest in securities of a person who owns or controls (directly or indirectly) an interest in residential land (**relevant interest**); and
  - (b) consent has been, or will be, granted to the transaction on the basis that a person (A) is a key individual and the commitment to reside in New Zealand test has been, or will be, met; and
  - (c) the relevant interest is, or will be as a result of the acquisition, relationship property of A and A's spouse or partner.
- (2) The acquisition by A's spouse or partner does not require consent for the purposes of section 10(1)(a) of the Act.
- (3) In this regulation,—

**relationship property** means relationship property as defined in section 8 of the Property (Relationships) Act 1976

**spouse or partner** means spouse, civil union partner, or de facto partner.

Regulation 58: inserted, as regulation 36AF, on 22 October 2018, by section 29 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Regulation 58 regulation number: replaced, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

**59 Exemption for diplomatic premises**

- (1) A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that it will result in the acquisition by a foreign government of an interest in residential (but not otherwise sensitive) land that is to be used exclusively for both or either of the following:
- (a) for the purposes of a mission or consular post:
  - (b) as a diplomatic or consular residence.
- (2) In this regulation,—

**foreign government** means a foreign government or an entity that is recognised by or under the Diplomatic Privileges and Immunities Act 1968 or the Consular Privileges and Immunities Act 1971 as having the privileges and immunities specified in either of those Acts

**mission** has the same meaning as in section 2 of the Diplomatic Privileges and Immunities Act 1968.

Regulation 59: inserted, on 22 October 2018, by regulation 14 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

**60 Exemption for charitable entities**

A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that it will result in the acquisition of an interest in residential (but not otherwise sensitive) land by a person—

- (a) that is registered as a charitable entity under the Charities Act 2005; and
- (b) that is described in section LD 3(2) of the Income Tax Act 2007; and
- (c) that is not listed in Schedule 32 of that Act.

Regulation 60: inserted, on 22 October 2018, by regulation 14 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

*Exemptions for Australian investors from requirement for consent in respect of certain overseas investments in significant business assets*

*[Revoked]*

Heading: revoked, on 30 December 2018, by regulation 4 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

**61 Exemptions in Schedule 5 apply**

*[Revoked]*

Regulation 61: revoked, on 30 December 2018, by regulation 4 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

*Exemptions from definition of overseas person*

Heading: inserted, on 1 February 2017, by regulation 6 of the Overseas Investment Amendment Regulations (No 2) 2016 (LI 2016/302).

Heading: amended, on 5 July 2021, by regulation 21 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

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

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

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

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

**custodian** means a person—

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

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

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

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

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**Example 1**

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

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

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

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

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**Example 2**

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

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

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

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

Person D is an overseas person.

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

So, after the acquisition by Overseas Custodian A of the remaining 70% of shares, Company Y would no longer be eligible for the exemption under regulation 62.

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Regulation 62: inserted, as regulation 36B, on 1 February 2017, by regulation 6 of the Overseas Investment Amendment Regulations (No 2) 2016 (LI 2016/302).

Regulation 62 regulation number: replaced, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 62(3) example 2: amended, on 22 October 2018, by regulation 5 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 62(3) example 2: amended, on 22 October 2018, by regulation 15 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

**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.  
Regulation 63: inserted, on 28 July 2020, by regulation 8 of the Overseas Investment Amendment Regulations (No 2) 2020 (LI 2020/162).

### **63A Further exemption for redeemable preference shares**

- (1) This regulation applies to an entity incorporated in New Zealand if—
  - (a) the entity issues redeemable preference shares that are redeemable only in cash and that do not entitle the holder to exercise voting rights (except if payment of a dividend is in arrears); and
  - (b) but for this regulation, the entity would be an overseas person as a result only of the ownership or control of those redeemable preference shares.
- (2) The entity is exempt from the definition of overseas person.  
Regulation 63A: inserted, on 5 July 2021, by regulation 22 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

### *Applications for exemptions*

### **37 Application for exemption**

*[Revoked]*

Regulation 37: revoked, on 22 October 2018, by section 29 of the Overseas Investment Amendment Act 2018 (2018 No 25).

### **64 Requirements for application for exemption**

- (1) An application for an exemption under section 61D of the Act (Minister may grant individual exemptions) must—
  - (a) be in writing; and
  - (b) be signed by each applicant; and
  - (c) contain the information specified by the Minister by notice in the *Gazette*; and
  - (d) be accompanied by a statutory declaration verifying that the information contained in the application is true and correct, unless the regulator waives this requirement; and
  - (e) be sent to the regulator; and
  - (f) be accompanied by the relevant fee, unless this has already been paid.
- (2) The statutory declaration must be made by each applicant or, if an applicant is a body corporate, by an officer of that applicant.
- (3) For the purpose of considering the application, the regulator may, by notice in writing, require the applicant or any other person with information relevant to

the application to provide the information specified in the notice and in the form specified by the notice.

Regulation 64: replaced, on 22 October 2018 (immediately after being amended by section 29 of the Overseas Investment Amendment Act 2018 (2018 No 25)), by regulation 16 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 64 regulation number: replaced, on 22 October 2018, by regulation 16 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

## Part 2A

### National security and public order risks management regime

Part 2A: inserted, on 16 June 2020, by regulation 6 of the Overseas Investment Amendment Regulations 2020 (LI 2020/110).

#### 64A Overseas investment covered by the emergency notification regime

*[Revoked]*

Regulation 64A: revoked, on 7 June 2021, by regulation 64A(3).

#### 64B Exemption from requirements under call-in regime

The requirements under the call-in regime do not apply in relation to a call-in transaction if—

- (a) the transaction—
  - (i) is a transaction that requires consent; and
  - (ii) is exempt from that requirement under—
    - (A) Schedule 3 of the Act; or
    - (B) a provision of Part 2 or 4; or
    - (C) any other regulation made under section 61C of the Act; or
    - (D) any exemption granted under section 61D of the Act; or
- (b) the transaction—
  - (i) would be a transaction that requires consent if it met the monetary thresholds under section 13 of the Act; and
  - (ii) would then be exempt from that requirement under a provision referred to in paragraph (a)(ii)(A), (B), or (C); or
- (c) the transaction does not require consent because it relates to the acquisition of an estate or interest in land that is an exempted interest.

Regulation 64B: inserted, on 16 June 2020, by regulation 6 of the Overseas Investment Amendment Regulations 2020 (LI 2020/110).

Regulation 64B heading: amended, on 7 June 2021, by regulation 7(1) of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

Regulation 64B: amended, on 7 June 2021, by regulation 7(2) of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

#### 64C Interim direction orders

- (1) For the purposes of section 91(4)(a) of the Act, the specified date is the last day of the period (specified in regulation 69A) within which the Minister must take a risk management action in the relation to the transaction.
- (2) Subclauses (3) to (5) apply to an interim direction order that is given to a relevant acquirer in relation to a transaction—
  - (a) that has not been notified under section 85 or 86 of the Act; and
  - (b) that the Minister has decided to review under section 84(3) of the Act.
- (3) The date specified for the purpose of section 91(4)(a) of the Act is the close of the 55th working day after the interim direction order is given to the relevant acquirer.
- (4) The Minister may extend that date once, for a further period of up to 30 working days.
- (5) The Minister must give notice of the extension to the relevant acquirer before the initial time limit expires.

Regulation 64C: inserted, on 16 June 2020, by regulation 6 of the Overseas Investment Amendment Regulations 2020 (LI 2020/110).

Regulation 64C(2): inserted, on 7 June 2021, by regulation 8 of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

Regulation 64C(3): inserted, on 7 June 2021, by regulation 8 of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

Regulation 64C(4): inserted, on 7 June 2021, by regulation 8 of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

Regulation 64C(5): inserted, on 7 June 2021, by regulation 8 of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

#### *Exemptions for transactions that are transactions of national interest*

Heading: inserted, on 5 July 2021, by regulation 23 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

#### 64D Criteria for section 20AA exemptions

- (1) This regulation prescribes the criteria relating to control and influence by government that relevant government enterprises must meet for the purpose of an exemption under section 20AA of the Act (which allows for exemptions for transactions that are transactions of national interest only because the relevant estate or interest in land, property, or fishing quota is acquired by a relevant government enterprise).
- (2) The criteria that a relevant government enterprise (**R**) must meet for the purpose of section 20AA(2)(a) of the Act are as follows:
  - (a) the government of any 1 country must not have the right to exercise or control the exercise of more than 25% of the voting power at a meeting of R; and

- (b) there must be appropriate limitations on any government's ability to control or influence R's investment or management decisions that ensure that no government is able to influence any individual investment decisions, or the management of any individual investments, other than on a commercial basis; and
  - (c) any earlier use of influence by a government (for example, any previous strategic directives to R, or to any member of R's governing body) was not contrary to New Zealand's national interest (for example, the directives were only to pursue environmental objectives that were shared by New Zealand).
- (3) In this regulation, **government** means all of the following:
- (a) the government or any part of the government (including regional or local government) of a country or territory, or a part of a country or territory, other than New Zealand:
  - (b) a person who is acting as an agent, a trustee, or a representative of a person described in paragraph (a):
  - (c) a person who is acting in any way on behalf of a person described in paragraph (a):
  - (d) a person who is acting subject to the direction, control, or influence of a person described in paragraph (a).

Regulation 64D: inserted, on 5 July 2021, by regulation 23 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

### Part 3 Miscellaneous

Part 3: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### Subpart 1—When person who relies on exemption to acquire property becomes subject to existing consent or exemption conditions

Part 3 subpart 1: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### **65 Application of, and interpretation for, subpart**

- (1) This subpart prescribes matters for the purposes of section 61G of the Act and applies if—
  - (a) a person (**B**) acquires property (the **relevant property**) in reliance on an exemption listed in subclause (2); and
  - (b) existing conditions apply in connection with the relevant property (whether or not they also apply in connection with other property).
- (2) The listed exemptions are as follows:



- (a) regulation 37(1)(a) (which relates to transactions within a group where 1 overseas person owns 95% of the group):
- (b) regulation 37(1)(b) and (ba) (which relates to acquisitions if no increase in ultimate ownership and control by overseas persons):
- (c) regulation 37(1)(d) (which relates to amalgamations):
- (d) regulation 40(1)(a) (which relates to changes of trustees):
- (e) regulation 40(1)(aa) and (b) (which relates to estates of deceased persons):
- (f) regulation 40(1)(c) (which relates to transfers by trusts to an overseas person who is a beneficiary).

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**Example**

New trustees (**B1**) are appointed to a trust.

They acquire trust property in reliance on the exemption in regulation 40(1)(a).

Existing conditions of consent apply in connection with the trust property.

So this subpart applies.

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- (3) In this subpart, **existing conditions** means any of the following:
  - (a) conditions of consent:
  - (b) conditions of an exemption in the Act or in these regulations:
  - (c) conditions to which, because of the previous operation of section 61G of the Act, a person is treated as being subject.

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

**A** means a person A in section 61G(1)(a) of the Act

**B** means the person who acquires the relevant property as described in subclause (1)

**continuing condition** has the meaning given to it by regulation 66(2)

**listed exemptions** means the exemptions listed, for the purpose of section 61G of the Act, in subclause (2)

**relevant property** means the property acquired by B as described in subclause (1).

Regulation 65: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Regulation 65(2)(b): amended, on 5 July 2021, by regulation 24(1) of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

Regulation 65(2)(e): amended, on 5 July 2021, by regulation 24(2) of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

**66 B treated as subject to existing conditions that are continuing conditions**

- (1) In addition to the conditions (if any) of the listed exemption relied on by B, B is treated under section 61G of the Act as being subject to all existing condi-

tions that apply in connection with the relevant property (if any) that are continuing conditions.

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**Example (continued)**

The previous trustees (**A**) are the consent holders in relation to the trust property that is acquired by B1 (the new trustees), without consent, in reliance on the exemption in regulation 40(1)(a) (a listed exemption).

So B1 is treated as subject to all conditions of A's consent that are continuing conditions.

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**Example (continued)**

The trustees change again. The new trustees (**B2**) acquire the trust property from B1 in reliance on the exemption in regulation 40(1)(a).

B1,—

- because of the previous operation of section 61G of the Act, is treated as subject to all conditions of A's consent that are continuing conditions; and
- relied on an exemption in these regulations to acquire the trust property (the exemption in regulation 40(1)(a)).

So B2 becomes subject to all conditions of A's consent, and all conditions of the exemption that B1 relied on (if any), that are continuing conditions.

- 
- (2) For the purposes of this subpart, every existing condition is a **continuing condition**, except to the extent that it has been met at the date that B acquires the relevant property and is not ongoing.

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**Example (continued)**

The conditions of A's consent include—

Condition	Details	Required date
1	A must acquire the property by 1 January 2018	1 January 2018
2	A must tell the regulator in writing that A has acquired the property	Within 2 months of settlement
3	The individuals who control the trust must continue to meet certain good character and Immigration Act 2009 criteria	Ongoing
4	A must allow the regulator to visit the property that is land to monitor compliance with conditions	Ongoing
5	A must tell the regulator if A disposes of the property or any part of it.	Within 20 working days of disposal

Condition 1 is not a continuing condition.

Condition 2 is not a continuing condition if the required date is in the past and A met the condition.

Conditions 3 to 5 are continuing conditions.

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- (3) Subclause (1) specifies the class of conditions to which section 61G(3) of the Act applies.

- (4) See also section 61G(4) of the Act for when B is treated as a consent holder in respect of continuing conditions.

Regulation 66: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

**67 A ceases to be subject to existing conditions to extent B becomes subject**

- (1) A ceases to be subject to existing conditions to the extent that (including on and from the date that) B is treated as subject to the conditions.
- (2) However, subclause (1) does not release A from liability for performance of, or any breach of, a condition before the date that B becomes treated as subject to the condition.

**New example**

The trustee (**A**) of a trust that is an overseas person transfers to an overseas person who is a beneficiary (**B**) interests in securities under that trust. The acquisition of the interests in securities was previously consented to under the Act and the transfer is not contrary to any conditions of A's consent. B relies on the exemption in regulation 40(1)(c) to acquire the interests in securities.

A's consent also relates to other interests in securities.

<b>A's consent relates to:</b>	<b>B acquires from A:</b>	<b>B treated as subject to:</b>	<b>A is subject to:</b>
100 shares in Company Ltd	50 shares in Company Ltd, on 1 January 2019	Conditions of A's consent that apply in connection with the 50 shares and are continuing conditions, on and from 1 January 2019	<ul style="list-style-type: none"><li>• All conditions of A's consent up to 1 January 2019</li><li>• On and from 1 January 2019, all conditions of A's consent to the extent that B is not treated as subject to those conditions</li></ul>

Regulation 67: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

**Subpart 2—Notices**

Part 3 subpart 2: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

*Notices*

Heading: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

**68 Relevant Minister or Ministers or regulator may give notice of exercise of powers**

- (1) The relevant Minister or Ministers or the regulator may give notice of the exercise of any powers under the Act or these regulations.
- (2) A notice under subclause (1) may be given—
- (a) in the *Gazette*:

- (b) to a particular person.
- (3) Every person is bound by a notice given under subclause (1).
- (4) A notice under subclause (1) may at any time be amended or revoked.

Regulation 68: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

### *Service of notices*

Heading: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

## **69 Service of notices**

*See sections 54 to 55A of the Act.*

Regulation 69: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

## **Subpart 3—Miscellaneous provisions**

Part 3 subpart 3: inserted, on 16 June 2020, by regulation 7 of the Overseas Investment Amendment Regulations 2020 (LI 2020/110).

### **69AAA Time within which notification may be notified**

- (1) This regulation applies for the purpose of section 86(2) of the Act, which provides that any overseas person or associate making the overseas investment in SIB assets may notify the regulator of a call-in transaction at any time before the date set out in regulations.
- (2) That date is 6 months after the transaction is given effect to.

Regulation 69AAA: inserted, on 7 June 2021, by regulation 9 of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

### **69A Time frame for taking risk management action**

- (1) This regulation sets time frames under section 37B(1)(a) of the Act for the purposes of section 84.
- (2) The Minister must take a risk management action in relation to a transaction notified to the regulator under section 85 or 86 no later than 55 working days after the regulator receives the notification.
- (3) The Minister may extend the time limit under subclause (2), once, for a further period of up to 30 working days.
- (4) The Minister may only do so if satisfied that the extension is necessary in order to adequately consider which risk management action should be taken.
- (5) The Minister must give notice of the extension to the person who gave the notification before the initial time limit expires.

Regulation 69A: inserted, on 16 June 2020, by regulation 7 of the Overseas Investment Amendment Regulations 2020 (LI 2020/110).

Regulation 69A(2): replaced, on 7 June 2021, by regulation 10 of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

**69B Land owned or managed by governance entity of collective group of Māori**

- (1) This regulation prescribes enactments for the purposes of table 2 in Part 1 of Schedule 1 of the Act.

*Land owned by governance entity of collective group of Māori under specified enactments*

- (2) The following enactments are specified for the purposes of row 10 of table 2:
- (a) Maori Purposes Act 1931:
  - (b) Maori Purposes Act 1934:
  - (c) Mauao Historic Reserve Vesting Act 2008:
  - (d) Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014:
  - (e) Ngāi Tahu (Tūtaepatu Lagoon Vesting) Act 1998:
  - (f) Reserves and Other Lands Disposal Act 1956:
  - (g) Reserves and Other Lands Disposal Act 1970:
  - (h) Tutae-Ka-Wetoweto Forest Act 2001:
  - (i) Whakarewarewa and Roto-a-Tamaheke Vesting Act 2009.

*Reserves managed by governance entity of collective group of Māori under specified enactments*

- (3) The following enactments are specified for the purposes of row 11 of table 2:
- (a) Maori Purposes Act 1934:
  - (b) Maori Purposes Act 1931:
  - (c) Mauao Historic Reserve Vesting Act 2008:
  - (d) Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014:
  - (e) Ngāi Tahu (Tūtaepatu Lagoon Vesting) Act 1998:
  - (f) Reserves and Other Lands Disposal Act 1970:
  - (g) Reserves and Other Lands Disposal Act 1956:
  - (h) Tutae-Ka-Wetoweto Forest Act 2001:
  - (i) Whakarewarewa and Roto-a-Tamaheke Vesting Act 2009.

Regulation 69B: inserted, on 16 June 2020, by regulation 7 of the Overseas Investment Amendment Regulations 2020 (LI 2020/110).

Regulation 69B(1): replaced, on 5 July 2021, by regulation 25 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

**Subpart 4—Information for tax purposes**

Subpart 4: inserted, on 5 July 2021, by regulation 26 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

**69C Requirements imposed if overseas investment in significant business assets**

- (1) This regulation applies for the purpose of section 38A of the Act.

- (2) Every person that must apply for consent to make an overseas investment in significant business assets under section 10(1)(b) of the Act (an **investor**) must provide to the regulator the information listed in regulation 69D (**tax information**).
- (3) The tax information must be accurate at the time it is provided.
- (4) The tax information must be provided as a separate tax section of the application for consent, at the time the application is made.
- (5) Without limiting subpart 2 of Part 2 of the Act, the tax information must be accompanied by a signed statement by the investor or their duly authorised representative verifying that, to the best of their knowledge, the tax information provided is accurate.

Regulation 69C: inserted, on 5 July 2021, by regulation 26 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

#### **69D What tax information must be provided**

- (1) The tax information that must be provided under regulation 69C is all of the following:

##### *Description of activities*

- (a) a short description of the investor's plan for the significant business assets over the 3-year period that starts when the investment will be given effect to, including details of any significant capital expenditure likely to be made or required over that period:
- (b) the tax residence of the investor:
- (c) if relevant, the tax residence of the investor's holding company and any ultimate holding company:

##### *Capital structure for investment*

- (d) the likely level of equity funding for the investment:
- (e) the likely level of debt funding for the investment:
- (f) whether the investment is likely to involve the use of a hybrid arrangement or entity covered by subpart FH of the Income Tax Act 2007:

##### *Transfer pricing arrangements*

- (g) the likely nature and extent of any arrangements likely to be covered by the rules relating to transfer pricing arrangement in sections GC 6 to GC 14 of the Income Tax Act 2007, including—
  - (i) any likely transfer pricing arrangements that are likely to involve a supply by a New Zealand tax resident to a non-New Zealand tax resident:
  - (ii) any likely transfer pricing arrangements that are likely to involve an acquisition by a New Zealand tax resident from a non-New Zealand tax resident:

*Other*

- (h) any relevant double tax agreements:
  - (i) whether an application is likely to be made to the Commissioner of Inland Revenue for a ruling or advance pricing agreement in respect of any aspect of the investment.
- (2) Unless the context otherwise requires, terms used in this regulation have the same meanings as in the Inland Revenue Acts (within the meaning of section 3(1) of the Tax Administration Act 1994).

Regulation 69D: inserted, on 5 July 2021, by regulation 26 of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

## Part 4

### Exemptions in respect of overseas investments in sensitive land to implement obligations under international agreements

Part 4: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### Subpart 1—Introduction and definitions

Part 4 subpart 1: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### 70 Introduction to this Part

- (1) This Part, which is made under section 61(1)(i) of the Act, is for the purpose of implementing obligations that have entered into force for New Zealand under certain international agreements to which New Zealand is a party and that relate to overseas investments in sensitive land.
- (2) Subpart 2 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**).
- (3) Subpart 3 relates to the Agreement between New Zealand and Singapore on a Closer Economic Partnership done at Singapore on 14 November 2000 (the **Singapore CEP**).

Regulation 70: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### 71 Definitions

- (1) In this Part, unless the context otherwise requires,—  
**Australian CER Investment Protocol** is to be read in accordance with regulation 70(2)  
**Australian individual** is to be read in accordance with regulation 74  
**Australian investor** is to be read in accordance with regulation 78

**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

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

**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

**ordinarily resident in New Zealand** has the relevant meaning in section 6(2)(a) or (b) of the Act, as the case requires, except that the requirement to hold a residence class visa granted under the Immigration Act 2009 does not apply

**ownership and control test** is to be read in accordance with regulation 72

**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 an interest in land referred to in section 12(a) of the Act; or
  - (ii) acquires rights or interests in securities of a person (A) if A owns or controls (directly or indirectly) an interest in land described in section 12(a) of the Act; 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 an interest in land referred to in section 12(a) of the Act; or
  - (ii) acquires rights or interests in securities of a person (A) if A owns or controls (directly or indirectly) an interest in land described in section 12(a) of the Act

**Singapore CEP** is to be read in accordance with regulation 70(3)

**Singaporean individual** is to be read in accordance with regulation 80

**Singaporean investor** is to be read in accordance with regulation 83.

- (2) See regulation 74 for further definitions that apply in subpart 2.



- (3) See regulation 80 for further definitions that apply in subpart 3.

Regulation 71: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

## 72 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 person or persons 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 persons; and
    - (ii) a qualifying person or persons 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 persons; 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 persons; or
  - (c) the enterprise is a unit trust (**U**) and—
    - (i) the manager or trustee (or both) is a qualifying person; and
    - (ii) a qualifying person or persons 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 persons; and
    - (ii) a qualifying person or persons 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 person** means—
- (a) an NZ individual or an Australian individual, if this regulation is being applied for the purposes of subpart 2; or
  - (b) an NZ individual or a Singaporean individual, if this regulation is being applied for the purposes of subpart 3.
- (3) If this regulation is being applied for the purpose of subpart 2, 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 an Australian investor; or
  - (b) acts in any way on behalf of an overseas person who is not an Australian investor; or
  - (c) is subject to the direction, control, or influence of an overseas person who is not an Australian investor.

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#### Example

A company is constituted under Australian law. It does not have substantive business operations in Australia so, in order to be an Australian investor under regulation 78, it must meet the ownership and control test.

It is entering into a transaction to acquire the freehold estate in residential (but not otherwise sensitive) land.

Only New Zealand individuals and Australian individuals are shareholders of the company, and they have all the beneficial entitlement to and interest in the company's securities, the power to control the composition of all of the company's governing body, and the right to exercise all of the voting power at a meeting of the company.

However, in relation to the transaction, the company is acquiring the land as trustee for a overseas person who is not an Australian investor. The ownership and control test is not met in relation to the transaction and the company cannot rely on the exemption in regulation 75.

In addition, the beneficiary would also be a relevant investor under paragraph (b) of the definition of relevant investor in regulation 71, and is an overseas person who is not an Australian investor. That is another reason why the exemption in regulation 75 could not be relied upon.

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- (4) If this regulation is being applied for the purpose of subpart 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 Singaporean investor; or
  - (b) acts in any way on behalf of an overseas person who is not a Singaporean investor; or

- (c) is subject to the direction, control, or influence of an overseas person who is not a Singaporean investor.
- (5) In subclauses (3) and (4), references to the enterprise include, if the enterprise is a trust, the trustees of the trust.

Regulation 72: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

## Subpart 2—Implementation of Australian CER Investment Protocol

Part 4 subpart 2: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

### *Introduction and definitions*

Heading: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### **73 Introduction to subpart 2**

The purpose of this subpart is to implement obligations in the Australian CER Investment Protocol in relation to overseas investments in sensitive land where—

- (a) the relevant land is residential (but not otherwise sensitive) land; or
- (b) the interest in land described in section 12(a) of the Act is a regulated *profit à prendre*.

Regulation 73: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### **74 Definitions for subpart 2**

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** includes—

- (a) the Crown in right of Australia; and
- (b) an Australian State or territory; and
- (c) Australian regional or local government

**Australian individual** means a natural person who is—

- (a) an Australian citizen under Australian law; or
- (b) a permanent resident of Australia under Australian law and who is ordinarily resident in New Zealand

**Australian investor** is to be read in accordance with regulation 78.

Regulation 74: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

### *Exemptions for Australian investors*

Heading: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

## **75 Exemption for Australian investors in respect of residential (but not otherwise sensitive) land**

A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that—

- (a) it will result in an overseas investment in sensitive land where the relevant land is residential (but not otherwise sensitive) land; and
- (b) every relevant investor either is an Australian investor or is not an overseas person.

### **Example 1**

A New Zealand citizen acquires the freehold estate in residential (but not otherwise sensitive) land as the agent for an Australian citizen, such that the New Zealand citizen is a relevant investor under paragraph (b) of the definition of relevant investor in regulation 71, and the Australian citizen is a relevant investor under paragraph (a) of that definition. There are no other associates.

The exemption can be relied upon because the New Zealand citizen is not an overseas person (see section 7(2)(a) of the Act) and the Australian citizen is an Australian investor.

### **Example 2**

A trust is organised under Australian law. The trustees, who are all Australian individuals, are entering into a transaction to acquire the freehold estate in residential (but not otherwise sensitive) land. The trustees will hold the land on trust for an overseas person who is not an Australian investor. That beneficiary's equitable interest in the land is enough to make that beneficiary a relevant investor under paragraph (a) of the definition of relevant investor in regulation 71. As not all of the relevant investors are Australian investors, the exemption cannot be relied upon.

This is the case regardless of whether (and why) the trust is an Australian investor under regulation 78 (ie, regardless of whether it has substantive business operations in Australia or meets the ownership and control test under regulation 72).

Regulation 75: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

## **76 Exemption for Australian investors in respect of regulated *profit à prendre***

A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that—

- (a) it will result in an overseas investment in sensitive land where the interest in land described in section 12(a) of the Act is a regulated *profit à prendre*; and
- (b) every relevant investor either is an Australian investor or is not an overseas person.

Regulation 76: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### 77 Exemption for Australian investors in respect of relationship property

- (1) A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that—
  - (a) the transaction will result in an overseas investment in sensitive land where the relevant land is residential (but not otherwise sensitive) land or where the interest in land described in section 12(a) of the Act is a regulated *profit à prendre* or both (the **exempted land**); and
  - (b) the transaction will result in either of the following:
    - (i) the acquisition by an overseas person of exempted land if—
      - (A) the exempted land is, or will be as a result of the acquisition, relationship property of the overseas person and the overseas person’s spouse or partner; and
      - (B) the overseas person’s spouse or partner is an Australian individual;
    - (ii) the acquisition by a company incorporated in New Zealand (**A Co**) of exempted land if—
      - (A) all of the securities in A Co are wholly owned as relationship property by a person (**B**) and B’s spouse or partner; and
      - (B) B is an Australian individual.

- (2) In this regulation,—

**relationship property** means relationship property as defined in section 8 of the Property (Relationships) Act 1976

**spouse or partner** means spouse, civil union partner, or de facto partner.

Regulation 77: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### 78 Definition of Australian investor

In this subpart, **Australian investor**—

- (a) means—
  - (i) an Australian individual; or
  - (ii) the Australian Government; or

- (iii) an Australian enterprise, if the enterprise—
  - (A) carries on substantive business operations in Australia; or
  - (B) meets the ownership and control test; or
- (iv) 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 an enterprise that is acting through an NZ branch of the enterprise.

Regulation 78: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

### Subpart 3—Implementation of Singapore CEP

Part 4 subpart 3: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### *Introduction and definitions*

Heading: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### **79 Introduction to subpart 3**

The purpose of this subpart is to implement obligations in the Singapore CEP in relation to overseas investments in sensitive land where the relevant land is residential (but not otherwise sensitive) land.

Regulation 79: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### **80 Definitions for subpart 3**

In this subpart, unless the context otherwise requires,—

**Singaporean branch** means a branch of an enterprise if the branch—

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

**Singaporean enterprise** means an enterprise that is constituted or organised under Singaporean law

**Singaporean individual** means a natural person who is—

- (a) a national of Singapore under Singaporean law; or
- (b) a permanent resident of Singapore under Singaporean law and who is ordinarily resident in New Zealand

**Singaporean investor** is to be read in accordance with regulation 83.

Regulation 80: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

*Exemptions for Singaporean investors*

Heading: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

**81 Exemption for Singaporean investors in respect of residential (but not otherwise sensitive) land**

A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that—

- (a) the transaction will result in an overseas investment in sensitive land where the relevant land is residential (but not otherwise sensitive) land; and
- (b) every relevant investor either is a Singaporean investor or is not an overseas person.

Regulation 81: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

**82 Exemption for Singaporean investors in respect of relationship property**

(1) A transaction does not require consent for the purposes of section 10(1)(a) of the Act to the extent that—

- (a) the transaction will result in an overseas investment in sensitive land where the relevant land is residential (but not otherwise sensitive) land (**the exempted land**); and
- (b) the transaction will result in either of the following:
  - (i) the acquisition by an overseas person of exempted land if—
    - (A) the exempted land is, or will be as a result of the acquisition, relationship property of the overseas person and the overseas person's spouse or partner; and
    - (B) the overseas person's spouse or partner is a Singaporean individual;
  - (ii) the acquisition by a company incorporated in New Zealand (**A Co**) of exempted land if—
    - (A) all of the securities in A Co are wholly owned as relationship property by a person (**B**) and B's spouse or partner; and
    - (B) B is a Singaporean individual.

(2) In this regulation,—

**relationship property** means relationship property as defined in section 8 of the Property (Relationships) Act 1976

**spouse or partner** means spouse, civil union partner, or de facto partner.

Regulation 82: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

### 83 Definition of Singaporean investor

In this subpart, **Singaporean investor**—

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

Regulation 83: inserted, on 22 October 2018, by regulation 18 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

## Part 5

### Alternative monetary thresholds for overseas investments in significant business assets

Part 5: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

#### Subpart 1—Introduction and definitions

Subpart 1: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

### 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**).

Regulation 84: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

## 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

**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 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:
- (iva) Peru:
- (v) Singapore:
- (vi) Viet Nam:
- (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:
  - (iva) Peru:
  - (v) Singapore:
  - (vi) Viet Nam:
- (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:
  - (iva) Peru:
  - (v) Singapore:

- (vi) Viet Nam:
  - (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.
- Regulation 85: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).
- Regulation 85(1) **non-NZ government investor**: revoked, on 16 June 2020, by regulation 8 of the Overseas Investment Amendment Regulations 2020 (LI 2020/110).
- Regulation 85(1) **relevant government enterprise**: revoked, on 16 June 2020, by regulation 8 of the Overseas Investment Amendment Regulations 2020 (LI 2020/110).
- Regulation 85(1) **type A enterprise** paragraph (a)(iva): inserted, on 19 September 2021, by regulation 4(1) of the Overseas Investment (CPTPP—Peru) Amendment Regulations 2021 (LI 2021/218).
- Regulation 85(1) **type A enterprise** paragraph (a)(vi): inserted, on 14 January 2019, by regulation 4(1) of the Overseas Investment (CPTPP—Viet Nam) Amendment Regulations 2018 (LI 2018/252).
- Regulation 85(1) **type A individual** paragraph (a)(iva): inserted, on 19 September 2021, by regulation 4(2) of the Overseas Investment (CPTPP—Peru) Amendment Regulations 2021 (LI 2021/218).
- Regulation 85(1) **type A individual** paragraph (a)(vi): inserted, on 14 January 2019, by regulation 4(2) of the Overseas Investment (CPTPP—Viet Nam) Amendment Regulations 2018 (LI 2018/252).
- Regulation 85(1) **type A territory** paragraph (a)(iva): inserted, on 19 September 2021, by regulation 4(3) of the Overseas Investment (CPTPP—Peru) Amendment Regulations 2021 (LI 2021/218).
- Regulation 85(1) **type A territory** paragraph (a)(vi): inserted, on 14 January 2019, by regulation 4(3) of the Overseas Investment (CPTPP—Viet Nam) Amendment Regulations 2018 (LI 2018/252).

## 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).
- Regulation 86: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

## **87 Definition of relevant government enterprise**

*[Revoked]*

Regulation 87: revoked, on 16 June 2020, by regulation 9 of the Overseas Investment Amendment Regulations 2020 (LI 2020/110).

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

Subpart 2: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

## **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).

Regulation 88: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

### *Type 1 investors*

Heading: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

## **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.

Regulation 89: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).



## 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.

Regulation 90: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

### *Type 2 investors*

Heading: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

## 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.

Regulation 91: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

## 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.

Regulation 92: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

### *Type 3 investors*

Heading: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

## **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.

Regulation 93: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

## **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.

Regulation 94: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

*Type 4 investors*

Heading: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

**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.

Regulation 95: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

**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).

Regulation 96: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

### Subpart 3—Implementation of Australian CER Investment Protocol

Subpart 3: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

#### 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.

Regulation 97: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

#### 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.

Regulation 98: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

#### *Australian non-government investors*

Heading: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

### **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.

Regulation 99: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

## 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.



Regulation 100: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

*Australian government investors*

Heading: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

**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.

Regulation 101: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

## 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.

Regulation 102: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

### *Supplementary provision*

Heading: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

## 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*.

Regulation 103: inserted, on 30 December 2018, by regulation 5 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

### **Part 3**

#### **Miscellaneous**

*[Revoked]*

Part 3: revoked, on 22 October 2018, by regulation 17 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154)

*Notices*

*[Revoked]*

Heading: revoked, on 22 October 2018, by regulation 17 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154)

#### **39 Relevant Minister or Ministers may give notice of exercise of powers**

*[Revoked]*

Regulation 39: revoked, on 22 October 2018, by regulation 17 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154)

*Service of notices*

*[Revoked]*

Heading: revoked, on 22 October 2018, by regulation 17 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154)

#### **40 Service of notices**

*[Revoked]*

Regulation 40: revoked, on 22 October 2018, by regulation 17 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154)

## Schedule 1AA

### Transitional, savings, and related provisions

r 3A

Schedule 1AA: inserted, on 4 July 2016, by regulation 10 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

### Part 1

#### Provisions relating to Overseas Investment Amendment Regulations 2016

##### 1 Transitional provision for certain applications and requests

- (1) The old fees and charges continue to apply to applications and requests made before 4 July 2016.
- (2) However, despite the date on which an application for exemption by addition to Schedule 3 or Schedule 4 was or is made, the new fees and charges apply to the monitoring of compliance with the conditions of that exemption that is performed on or after 4 July 2016.
- (3) To avoid doubt, if an application is sent to the regulator in the period starting on the date that these regulations are made and ending on 3 July 2016, and that application is returned by the regulator on the basis that it cannot be decided (for example, because it does not meet the requirements for the application set out in the Act or these regulations), the new fees and charges will apply to any new application made in respect of the same matter (unless that application is made before 4 July 2016, and again subject to this subclause).
- (4) In this clause,—

**new fees and charges** means the fees and charges set out in Schedule 2 as replaced by the Overseas Investment Amendment Regulations 2016

**old fees and charges** means the fees and charges set out in Schedule 2 as in force immediately before 4 July 2016.

Schedule 1AA clause 1(2): amended, on 22 October 2018, by regulation 19(1) of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

## **Part 2**

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

Schedule 1AA Part 2: inserted, on 1 February 2017, by regulation 7 of the Overseas Investment Amendment Regulations (No 2) 2016 (LI 2016/302).

#### **2 Transitional provision relating to application**

- (1) Regulations 47 and 51 to 53, as inserted by regulations 4 and 5 of the Overseas Investment Amendment Regulations (No 2) 2016, apply only to transactions entered into or occurring on or after 1 February 2017.
- (2) Regulation 62, as inserted by regulation 6 of the Overseas Investment Amendment Regulations (No 2) 2016, does not apply to a body corporate to the extent that it would have the effect of exempting from the requirement for consent a transaction entered into or occurring before 1 February 2017.

Schedule 1AA clause 2(1): amended, on 22 October 2018, by regulation 19(2) of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Schedule 1AA clause 2(2): amended, on 22 October 2018, by regulation 19(3) of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

## **Part 3**

### **Provisions relating to Overseas Investment Amendment Regulations 2018**

Schedule 1AA Part 3: inserted, on 22 October 2018, by regulation 19(4) of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

#### **3 Existing transactions and applications not affected**

- (1) The amendments to these regulations made by the Overseas Investment Amendment Regulations 2018 apply only to transactions entered into on or after commencement.
- (2) In particular, these regulations, as in force immediately before commencement, continue to apply to the following as if the Overseas Investment Amendment Regulations 2018 had not been made:
  - (a) any transaction entered into before commencement:
  - (b) any application for consent that is made before commencement and that relates to a transaction entered into before commencement:
  - (c) any application for consent that is made after commencement and that relates to a transaction entered into before commencement.
- (3) Subclause (2) does not limit subclause (1).
- (4) Clause 1(4) and (5) of Schedule 1AA of the Act applies for the purposes of this clause with any necessary modifications.
- (5) In this clause, **commencement** means the commencement of this clause.

**4 Existing transactions: benefit to New Zealand test relating to sensitive land that will be used for forestry activities**

Despite clause 3, these regulations, as amended by the Overseas Investment Amendment Regulations 2018, apply to an application that is to be considered under the benefit to New Zealand test applying section 16A(3) of the Act, or in accordance with section 16A(4) of the Act, under clause 2 of Schedule 1AA of the Act.

**Part 4**

**Provision relating to Overseas Investment (CPTPP) Amendment Regulations 2018**

Schedule 1AA Part 4: inserted, on 30 December 2018, by regulation 6 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

**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.

**Part 5**

**Provisions relating to Overseas Investment (Urgent Measures) Amendment Act 2020**

Schedule 1AA Part 5: inserted, on 16 June 2020, by regulation 4 of the Overseas Investment (Transitional Matters) Amendment Regulations 2020 (LI 2020/117).

**6 Clause 15(2) of Schedule 1AA of the Act applies with additions**

*[Revoked]*

Schedule 1AA clause 6: revoked, on the close of 16 June 2021, by clause 6(4).

**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).

Schedule 1AA clause 7: inserted, on 28 July 2020, by regulation 9 of the Overseas Investment Amendment Regulations (No 2) 2020 (LI 2020/162).

**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.

Schedule 1AA clause 8: inserted, on 28 July 2020, by regulation 9 of the Overseas Investment Amendment Regulations (No 2) 2020 (LI 2020/162).

## 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).

Schedule 1AA clause 9: inserted, on 28 July 2020, by regulation 9 of the Overseas Investment Amendment Regulations (No 2) 2020 (LI 2020/162).

## Part 6

### Provisions relating to Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021

Schedule 1AA Part 6: inserted, on 7 June 2021, by regulation 11(a) of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

#### 10 Commencement of permanent call-in regime: transactions entered into before 7 June 2021

- (1) This clause applies, for the purposes of Part 3 of the Act, to transactions entered into before the commencement of section 53 of the Overseas Investment (Urgent Measures) Amendment Act 2020.
- (2) The following provisions continue to apply:
  - (a) the provisions of the Act that are amended by that section 53, as they exist immediately before that amendment; and
  - (b) Parts 1AA and 2A, and subpart 3 of Part 3, of these regulations, as they exist immediately before the commencement of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021.
- (3) *See* clause 24 of Schedule 1AA of the Act, which provides that the call-in regime enacted by section 53 does not apply.

Schedule 1AA clause 10: inserted, on 7 June 2021, by regulation 11(a) of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

#### 11 Time frame for notifying unpublished critical direct supplier call-in transactions during transitional period

- (1) This clause applies if an overseas person or associate invests in an unpublished CDS on or after 7 June 2021 and before the changes to section 85 of the Act



that are made by the Overseas Investment Amendment Act 2021 come into force.

- (2) For the purpose of section 85(4)(a) of the Act, the later date by which a notice under section 85(2) must be given is the date that is as soon as is reasonably practicable after the investor receives a notice under section 20E(2) of the Act.

Schedule 1AA clause 11: inserted, on 7 June 2021, by regulation 11(a) of the Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116).

## Part 7

### Provisions relating to Overseas Investment Amendment Regulations 2021

Schedule 1AA Part 7: inserted, on 5 July 2021, by regulation 27(a) of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

#### 12 Application of new exemptions

- (1) On and after 5 July 2021, 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 36 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 5 July 2021 (even if an application for consent is made, or consent is given, after that date); or
  - (b) consent for the transaction was given before 5 July 2021 (even if it is entered into, or given effect to, after that date).
- (3) In this clause,—

**new exemption** means an exemption provided under these regulations as amended by the Overseas Investment Amendment Regulations 2021, for a transaction that would not have been exempt before 5 July 2021

**old Act** means the Act immediately before 5 July 2021.

Schedule 1AA clause 12: inserted, on 5 July 2021, by regulation 27(a) of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

#### 13 Change to classes of strategically important business: registered banks and financial market infrastructure

Clause 36 of Schedule 1AA of the Act applies, with necessary modifications, for the purposes of determining whether an overseas investment transaction is a transaction of national interest under section 20A of the Act, in relation to the

commencement of regulation 5 (strategically important businesses) of the Overseas Investment Amendment Regulations 2021.

Schedule 1AA clause 13: inserted, on 5 July 2021, by regulation 27(a) of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

**14 Permanent call-in regime: transactions entered into before commencement**

- (1) The purpose of this clause is to apply amendments to the call-in regime made by the Overseas Investment Amendment Act 2021 and the Overseas Investment Amendment Regulations 2021 to transactions entered into on or after commencement.
- (2) For the purposes of Part 3 of the Act, the following provisions continue to apply to transactions entered into before commencement:
  - (a) the Act as it exists immediately before commencement; and
  - (b) these regulations as they exist immediately before commencement.
- (3) In the case of transactions entered into on or after commencement, the new provisions apply.
- (4) In this clause,—

**commencement** means commencement of the relevant provision

**new provisions** means the provisions immediately after the amendments referred to in subclause (1) are made.

Schedule 1AA clause 14: inserted, on 5 July 2021, by regulation 27(a) of the Overseas Investment Amendment Regulations 2021 (LI 2021/170).

## Schedule 1

### Form of advertisement

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<b>Medium</b>	<b>Minimum requirements</b>
Internet	Must be of usual prominence on an Internet site generally used for advertising acquisition of land on the open market for 20 working days
Newspaper	Must be of usual prominence in the property section of 1 edition
Notice or sign	Must be of usual prominence at the real estate agent's office for 20 working days
Placard	Must be displayed on the relevant land for 20 working days and in a manner that ensures, as far as is reasonably practicable, that it attracts the attention of the persons to whom the advertisement is directed
Real estate sales publication	Must be of usual prominence in 1 edition

## Schedule 2

### Fees and charges

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Schedule 2: replaced, on 13 September 2021, by regulation 6 of the Overseas Investment (Fees) Amendment Regulations 2021 (LI 2021/206).

#### Part 1

#### Applications relating to transaction in category of overseas investment in sensitive land only—residential land

Schedule 2 Part 1: replaced, on 13 September 2021, by regulation 6 of the Overseas Investment (Fees) Amendment Regulations 2021 (LI 2021/206).

The fees and charges in this Part apply to applications relating to transactions that will result in an overseas investment in sensitive land only, where all of the relevant land is residential land.

<b>Matter for which fee or charge payable and when and how payable</b>	<b>(\$)</b>
1 For consent, or a standing consent, for a transaction involving a land decision only, on the basis of section 16(1)(b)(i)(A) of the Act (the commitment to reside in New Zealand test) or clause 1 of Schedule 4 of the Act (residential land: commitment to reside in New Zealand standing consents), where the land is residential (but not otherwise sensitive) land, payable on making application—	
(a) if the applicant is 1 or more individuals	2,040
(b) if the applicant is a company, trust, limited partnership, or any person other than 1 or more individuals	5,800
2 For consent, or a standing consent, for a transaction involving a land decision only, on the basis of section 16(1)(d)(i) of the Act (the commitment to reside in New Zealand test) or clause 1 of Schedule 4 of the Act (residential land: commitment to reside in New Zealand standing consents), where the land is or includes both residential, and otherwise sensitive, land—	
(a) payable on making application	0
(b) payable after acceptance of application	8,100
(c) payable for monitoring compliance	8,800
3 For consent for a transaction involving a land decision only, on the basis of section 16(1)(b)(i)(B) of the Act (the increased housing test), if the investor test does not apply to the overseas investment because circumstance 2 in section 16(3)(b) of the Act applies, payable on making application	2,040
4 For a waiver relating to a trigger event under clause 8 of Schedule 2 of the Act, payable on making application	3,400
5 For an exemption certificate under clause 4(2) of Schedule 3 (dwellings in large apartment developments that are purchased off plans), payable on making application	14,200
6 For consent for a transaction involving a land decision only, on the basis of 1 or more of the tests in section 16(1)(b)(i) of the Act (the commitment to reside in New Zealand test, the increased housing test, the non-residential use test, and the incidental residential use test), other than where any of items 1 or 3 of this Schedule apply,—	34,100
(a) payable on making application	13,300
(b) payable after acceptance of application	16,800
(c) payable for monitoring compliance	4,900

<b>Matter for which fee or charge payable and when and how payable</b>		(\$)
7	For a standing consent under clause 2 of Schedule 4 of the Act (the increased housing test, the non-residential use test, or the incidental residential use test),—	
	(a) payable on making application	13,300
	(b) payable after acceptance of application	40,700
	(c) payable for monitoring compliance	3,500
	(d) for each transaction of which the regulator must be notified under a condition imposed under clause 2(3)(c) of Schedule 4 of the Act, payable when the transaction must be notified	16,800

## Part 2

### **Applications relating to transaction in category of overseas investment in sensitive land only—forestry activities and *profits à prendre***

Schedule 2 Part 2: replaced, on 13 September 2021, by regulation 6 of the Overseas Investment (Fees) Amendment Regulations 2021 (LI 2021/206).

The fees and charges in this Part apply to applications relating to transactions that will result in an overseas investment in sensitive land only, where 1 or more of the following applies:

- (a) the modified benefit to New Zealand test in section 16A(3) of the Act applies, for things described in section 16A(2) (forestry activities):
- (b) the special test relating to forestry activities in section 16A(4) of the Act applies:
- (c) the application is for a standing consent on the basis of clause 3 of Schedule 4 of the Act (which relates to forestry activities):
- (d) the section 12 interest is 1 or more regulated *profits à prendre*.

<b>Matter for which fee or charge payable and when and how payable</b>		(\$)
8	For consent for a transaction involving a land decision only, on the basis that—	
	(a) section 16A(1) of the Act be applied (the benefit to New Zealand test), where the only section 12 interest is 1 or more regulated <i>profits à prendre</i> (other than forestry rights); or	
	(b) section 16A(3) of the Act be applied (the modified benefit to New Zealand test for things described in section 16A(2) of the Act (forestry activities)),—	
	payable—	
	(c) on making application	13,300
	(d) after acceptance of application if the application is complex	42,700
	(e) after acceptance of application if the application is not complex	17,300
	(f) for monitoring compliance	3,000
9	For consent for a transaction involving a land decision only, on the basis of section 16A(4) of the Act (the special test relating to forestry activities), payable—	
	(a) on making application	13,300
	(b) after acceptance of application	17,500

<b>Matter for which fee or charge payable and when and how payable</b>		<b>(\$)</b>
	(c) for monitoring compliance	3,000
10	For a standing consent under clause 3 of Schedule 4 of the Act (forestry activities), payable—	
	(a) on making application	13,300
	(b) after acceptance of application	38,500
	(c) for monitoring compliance	3,000
	(d) for each transaction of which the regulator must be notified under a condition imposed under clause 3(3)(c) of Schedule 4 of the Act, payable when the transaction must be notified	11,200

### Part 3

#### **Applications relating to transaction in category of overseas investment in sensitive land only, significant business assets only, or sensitive land and significant business assets only**

Schedule 2 Part 3: replaced, on 13 September 2021, by regulation 6 of the Overseas Investment (Fees) Amendment Regulations 2021 (LI 2021/206).

The fees and charges in this Part apply to applications relating to transactions to which Part 1, 2, or 4 do not apply.

In this Part, a matter is on the basis of the **modified benefit test for farm land** if consent for a transaction is sought—

- (a) on the basis of section 16A(1C) of the Act (modified benefit test if relevant land is or includes farm land), as it applies after the commencement of section 9 of the Overseas Investment Amendment Act 2021; or
- (b) on the basis of section 16A(1)(b) of the Act, as it applies before the commencement of section 9 of the Overseas Investment Amendment Act 2021 (if the relevant land is or includes non-urban land that, in area (either alone or together with any associated land) exceeds 5 hectares).

<b>Matter for which fee or charge payable and when and how payable</b>		<b>(\$)</b>
11	For consent for a transaction involving a land decision only, on the basis of section 16(1)(c)(i) of the Act, payable—	
	(a) on making application	13,300
	(b) after acceptance of application	29,100
	(c) for monitoring compliance	4,900
12	For consent for a transaction, on the basis of the benefit to New Zealand test (other than where section 16A(3) of the Act applies), where—	
	(a) the application is not on the basis of the modified benefit test for farm land; and	
	(b) the determination is made by the relevant Ministers— (whether or not the transaction also results in an overseas investment in significant business assets), payable—	
	(c) on making application	13,300
	(d) after acceptance of application if the application is complex	114,600
	(e) after acceptance of application if the application is not complex	49,000

<b>Matter for which fee or charge payable and when and how payable</b>		<b>(\$)</b>
	(f) for monitoring compliance	11,700
13	For consent for a transaction, on the basis of the benefit to New Zealand test (other than where section 16A(3) of the Act applies), where—	
	(a) the application is not on the basis of the modified benefit test for farm land; and	
	(b) the determination is made by the regulator under delegation— (whether or not the transaction also results in an overseas investment in significant business assets), payable—	
	(c) on making application	13,300
	(d) after acceptance of application if the application is complex	113,200
	(e) after acceptance of application if the application is not complex	45,900
	(f) for monitoring compliance	9,000
14	For consent for a transaction, on the basis of the benefit to New Zealand test, where—	
	(a) the application is on the basis of the modified benefit test for farm land; and	
	(b) the determination is made by the relevant Ministers— (whether or not the transaction also results in an overseas investment in significant business assets), payable—	
	(c) on making application	13,300
	(d) after acceptance of application if the application is complex	119,600
	(e) after acceptance of application if the application is not complex	56,100
	(f) for monitoring compliance	13,300
15	For consent for a transaction, on the basis of the benefit to New Zealand test, where—	
	(a) the application is on the basis of the modified benefit test for farm land; and	
	(b) the determination is made by the regulator under delegation— (whether or not the transaction also results in an overseas investment in significant business assets), payable—	
	(c) on making application	13,300
	(d) after acceptance of application if the application is complex	119,600
	(e) after acceptance of application if the application is not complex	51,700
	(f) for monitoring compliance	9,000
16	For consent for a transaction involving—	
	(a) any other land decision on the basis of the benefit to New Zealand test (other than on the basis of section 16A(4) of the Act (the special test relating to forestry activities)); and	
	(b) a business decision,— payable—	
	(c) on making application	13,300
	(d) after acceptance of application if the application is complex	67,900
	(e) after acceptance of application if the application is not complex	27,900
	(f) for monitoring compliance	4,400
17	For consent for a transaction involving—	

<b>Matter for which fee or charge payable and when and how payable</b>		<b>(\$)</b>
(a)	any other land decision that is either on the basis of section 16A(4) of the Act (the special test relating to forestry activities) or not on the basis of the benefit to New Zealand test; and	
(b)	a business decision,— payable—	
(c)	on making application	13,300
(d)	after acceptance of application	27,900
(e)	for monitoring compliance	4,400
18	For consent for a transaction involving a business decision only—	
(a)	on making application	13,300
(b)	after acceptance of application	22,100
(c)	for monitoring compliance	3,400

## Part 4

### Applications relating to overseas investment in fishing quota

Schedule 2 Part 4: replaced, on 13 September 2021, by regulation 6 of the Overseas Investment (Fees) Amendment Regulations 2021 (LI 2021/206).

The fees and charges in this Part apply to applications relating to transactions that will result in an overseas investment in fishing quota, whether or not the transaction also results in an overseas investment in sensitive land or an overseas investment in significant business assets.

<b>Matter for which fee or charge payable and when and how payable</b>		<b>(\$)</b>
19	For consent for a transaction, payable—	
(a)	on making application	13,300
(b)	after acceptance of application	119,600
(c)	for monitoring compliance	3,400

## Part 5

### Applications relating to transaction of national interest

Schedule 2 Part 5: replaced, on 13 September 2021, by regulation 6 of the Overseas Investment (Fees) Amendment Regulations 2021 (LI 2021/206).

The fee in this Part is payable in addition to any fee for consent for a transaction set out in any other Part of this schedule.

<b>Matter for which fee payable and when and how payable</b>		<b>(\$)</b>
20	For consent for a transaction of national interest, payable—	83,700
(a)	if the transaction is identified as a transaction of national interest by the applicant in the application, after acceptance of 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	



## Part 6

### Applications for individual exemption or variation of consent or conditions of consent

Schedule 2 Part 6: replaced, on 13 September 2021, by regulation 6 of the Overseas Investment (Fees) Amendment Regulations 2021 (LI 2021/206).

<b>Matter for which fee or charge payable and when and how payable</b>	<b>(\$)</b>
21 For an exemption under section 20AA(3) of the Act (exemptions from definition), payable on making application	25,500
22 For an exemption by way of addition to Schedule 3 (which relates to portfolio investors) or Schedule 4 (which relates to New Zealand controlled persons), payable on the issue of an invoice by or on behalf of the regulator and within the time frame specified in the invoice	\$560 per hour spent considering the application or monitoring compliance
23 For any other exemption under section 61D of the Act (Minister may grant individual exemptions), payable on making application	37,100
24 For a variation of consent or a condition of consent (including addition to and revocation of a condition of consent), where the consent was granted on the basis of section 16(1)(b)(i)(A) or section 16(1)(d)(i) of the Act (the commitment to reside in New Zealand test), or clause 1 of Schedule 4 of the Act (residential land: commitment to reside in New Zealand standing consents), payable on making application	3,400
25 For a variation of consent or a condition of consent, where the only variation is to extend the specified period within which a matter must occur or to extend the use-by-date of the consent and where item 24 does not apply, payable on making application	10,400
26 For any other variation of consent or condition of consent (including addition to and revocation of condition of consent), payable on making application	23,000

## Part 7

### Other applications

Schedule 2 Part 7: replaced, on 13 September 2021, by regulation 6 of the Overseas Investment (Fees) Amendment Regulations 2021 (LI 2021/206).

A fee or charge under this Part is payable on making the application.

<b>Matter for which fee or charge payable and when and how payable</b>	<b>(\$)</b>
27 For an exemption under section 20(5) of the Act (exemptions from farm land offer criterion)	13,000
28 For an assessment under section 29A(1) of the Act if a person or persons (A) have previously met the investor test (whether under section 18A or section 29A(1)) and the assessment is either or both of the following:	13,000
(a) a reassessment of A because of a change in the extent to which investor test factors were established or not established since the investor test was last met:	
(b) an assessment of persons that could apply under section 29A(7) with A	
29 For any other assessment under section 29A of the Act	25,500
30 Discount to be deducted from the total fees in this schedule relating to an application for consent, for any application—	12,500

- Matter for which fee or charge payable and when and how payable** (\$)
- (a) in respect of which all of the persons that are required to meet the investor test in respect of the overseas investment (*see* section 18A(2) of the Act) have previously met the investor test; and
  - (b) to which section 29A(3) and (4) of the Act applies

## Part 8

### Information and services

Schedule 2 Part 8: replaced, on 13 September 2021, by regulation 6 of the Overseas Investment (Fees) Amendment Regulations 2021 (LI 2021/206).

A fee or charge in this Part is payable on the issue of an invoice by or on behalf of the regulator and within the time frame specified in the invoice.

- Matter for which fee or charge payable and when and how payable** (\$)
- |    |   |                |
|----|---|----------------|
| 31 | For each request for provision of information or services | \$337 per hour |
|----|---|----------------|

## Schedule 3

### Portfolio investors

r 48

Schedule 3: amended, on 13 January 2011, by regulation 6 of the Overseas Investment Amendment Regulations 2010 (SR 2010/455).

Schedule 3 Asteron Retirement Investment Limited: revoked, on 1 September 2006, by regulation 15(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Schedule 3 Australia Reinsurance Company Limited: revoked, on 1 September 2006, by regulation 15(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Schedule 3 Citicorp New Zealand Limited: revoked, on 1 September 2006, by regulation 15(2) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Schedule 3 Citicorp Services Limited: revoked, on 4 July 2016, by regulation 12 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

Schedule 3 HSBC Nominees (New Zealand) Limited: revoked, on 19 June 2008, by regulation 4 of the Overseas Investment Amendment Regulations (No 2) 2008 (SR 2008/120).

Schedule 3 J. P. Morgan Securities New Zealand Limited: revoked, on 1 September 2006, by regulation 15(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Schedule 3 The Colonial Mutual Life Assurance Society Limited: revoked, on 1 September 2006, by regulation 15(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Schedule 3 The New Zealand Refining Nominees Limited: revoked, on 1 September 2006, by regulation 15(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

## Schedule 4

### New Zealand controlled persons

rr 48, 49

Fulton Hogan Ltd

Infratil Limited

Schedule 4 Fisher & Paykel Appliances Holdings Ltd: revoked, on 19 June 2008, by regulation 5(1) of the Overseas Investment Amendment Regulations (No 2) 2008 (SR 2008/120).

Schedule 4 Guinness Peat Group PLC: revoked, on 4 July 2016, by regulation 13 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

Schedule 4 Infrastructure & Utilities NZ Limited: revoked, on 19 June 2008, by regulation 5(2) of the Overseas Investment Amendment Regulations (No 2) 2008 (SR 2008/120).

Schedule 4 Infratil Limited: inserted, on 19 June 2008, by regulation 5(2) of the Overseas Investment Amendment Regulations (No 2) 2008 (SR 2008/120).

Schedule 4 TrustPower Limited: revoked, on 22 October 2018, by regulation 21 of the Overseas Investment Amendment Regulations 2018 (LI 2018/154).

Schedule 4 Waste Management N.Z. Limited: revoked, on 1 September 2006, by regulation 16 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

## Schedule 5

### Exemptions for Australian investors from requirement for consent in respect of certain overseas investments in significant business assets

*[Revoked]*

r 61

Schedule 5: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

#### 1 Overview of schedule

*[Revoked]*

Schedule 5 clause 1: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

#### 2 Interpretation of schedule

*[Revoked]*

Schedule 5 clause 2: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

*Australian non-Government investments in significant business assets*

*[Revoked]*

Heading: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

**3 Consent not required for certain Australian non-Government investments**

*[Revoked]*

Schedule 5 clause 3: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

**4 Threshold for Australian non-Government investments**

*[Revoked]*

Schedule 5 clause 4: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

**5 Meaning of Australian non-Government investor**

*[Revoked]*

Schedule 5 clause 5: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

*Australian Government investments in significant business assets*

*[Revoked]*

Heading: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

**6 Consent not required for certain Australian Government investments**

*[Revoked]*

Schedule 5 clause 6: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

**7 Threshold for Australian Government investments**

*[Revoked]*

Schedule 5 clause 7: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

**8 Meaning of Australian Government investor**

*[Revoked]*

Schedule 5 clause 8: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

*Miscellaneous provisions about indexing**[Revoked]*

Heading: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

**9 Meaning of GDP implicit price deflator index value***[Revoked]*

Schedule 5 clause 9: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

**10 Meaning of March 2012 value***[Revoked]*

Schedule 5 clause 10: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

**11 Publication of thresholds***[Revoked]*

Schedule 5 clause 11: revoked, on 30 December 2018, by regulation 7 of the Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224).

Diane Morcom,  
Clerk of the Executive Council.

**Overseas Investment Amendment Regulations (No 2)**  
**2006**  
(SR 2006/231)

Anand Satyanand, Governor-General

**Order in Council**

At Wellington this 28th day of August 2006

Present:

His Excellency the Governor-General in Council

Pursuant to section 61 of the Overseas Investment Act 2005, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Finance, makes the following regulations.

**Regulations**

- 1 Title**  
These regulations are the Overseas Investment Amendment Regulations (No 2) 2006.
- 2 Commencement**  
These regulations come into force on the day after the date of their notification in the *Gazette*.
- 3 Principal regulations amended**  
These regulations amend the Overseas Investment Regulations 2005.
- 17 Transitional provision for offers in relation to special land that have not yet been decided**  
Every notice or offer relating to special land given in accordance with regulations 13 to 26 in respect of which there has not been a Crown decision before the commencement of these regulations must be decided by the relevant Ministers as if the notice or offer had been given after the commencement of these regulations.

Diane Morcom,  
Clerk of the Executive Council.

Date of notification in *Gazette*: 31 August 2006.



## **Overseas Investment Amendment Regulations 2008** (SR 2008/48)

Anand Satyanand, Governor-General

### **Order in Council**

At Wellington this 3rd day of March 2008

Present:

His Excellency the Governor-General in Council

Pursuant to section 61(1)(d) of the Overseas Investment Act 2005, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Finance, makes the following regulations.

### **Regulations**

**1 Title**

These regulations are the Overseas Investment Amendment Regulations 2008.

**2 Commencement**

These regulations come into force on 4 March 2008.

**3 Principal regulations amended**

These regulations amend the Overseas Investment Regulations 2005.

**4 Application**

These regulations apply to all applications under the Overseas Investment Act 2005 that have not been decided as at the date on which these regulations come into force, irrespective of whether the application was made before, or is made after, that date.

Rebecca Kitteridge,  
for Clerk of the Executive Council.

Date of notification in *Gazette*: 4 March 2008.

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**Overseas Investment Amendment Regulations (No 2)  
2009**  
(SR 2009/210)

Anand Satyanand, Governor-General

**Order in Council**

At Wellington this 3rd day of August 2009

Present:

His Excellency the Governor-General in Council

Pursuant to section 61 of the Overseas Investment Act 2005, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Finance, makes the following regulations.

**Regulations**

- 1 Title**  
These regulations are the Overseas Investment Amendment Regulations (No 2) 2009.
- 2 Commencement**  
These regulations come into force on the 28th day after the date of their notification in the *Gazette*.
- 3 Principal regulations amended**  
These regulations amend the Overseas Investment Regulations 2005.
- 6 Transitional provision**  
Schedule 2 of the principal regulations (as in force immediately before the commencement of these regulations) continues to apply to applications and requests made before the commencement of these regulations.

Rebecca Kitteridge,  
Clerk of the Executive Council.

Date of notification in *Gazette*: 3 August 2009.

# Overseas Investment Amendment Regulations 2010

(SR 2010/455)

Anand Satyanand, Governor-General

## Order in Council

At Wellington this 13th day of December 2010

Present:

His Excellency the Governor-General in Council

Pursuant to section 61(1)(d) of the Overseas Investment Act 2005, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Finance, makes the following regulations.

## Regulations

**1 Title**

These regulations are the Overseas Investment Amendment Regulations 2010.

**2 Commencement**

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

**3 Principal regulations amended**

These regulations amend the Overseas Investment Regulations 2005.

**4 Application**

These regulations apply to all applications for consent under the Overseas Investment Act 2005 that are received by the regulator after the date on which these regulations come into force.

Rebecca Kitteridge,  
Clerk of the Executive Council.

Date of notification in *Gazette*: 16 December 2010.

## Reprints notes

### 1 *General*

This is a reprint of the Overseas Investment Regulations 2005 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Overseas Investment (CPTPP—Peru) Amendment Regulations 2021 (LI 2021/218)  
Overseas Investment (Fees) Amendment Regulations 2021 (LI 2021/206)  
Overseas Investment Amendment Regulations 2021 (LI 2021/170)  
Overseas Investment (Commencement of Permanent Call-in Regime) Amendment Regulations 2021 (LI 2021/116)  
Overseas Investment Amendment Regulations (No 2) 2020 (LI 2020/162)  
Overseas Investment (Transitional Matters) Amendment Regulations 2020 (LI 2020/117)  
Overseas Investment Amendment Regulations 2020 (LI 2020/110)  
Overseas Investment (CPTPP—Viet Nam) Amendment Regulations 2018 (LI 2018/252)  
Overseas Investment (CPTPP) Amendment Regulations 2018 (LI 2018/224)  
Overseas Investment Amendment Regulations 2018 (LI 2018/154)  
Overseas Investment Amendment Act 2018 (2018 No 25): section 29  
Land Transfer Act 2017 (2017 No 30): section 250  
Overseas Investment Amendment Regulations (No 2) 2016 (LI 2016/302)  
Overseas Investment Amendment Regulations 2016 (LI 2016/101)  
Overseas Investment Amendment Regulations 2010 (SR 2010/455)  
Overseas Investment Amendment Regulations (No 2) 2009 (SR 2009/210)  
Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69): section 13(2)  
Overseas Investment Amendment Regulations (No 2) 2008 (SR 2008/120)  
Overseas Investment Amendment Regulations 2008 (SR 2008/48)  
Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231)

Overseas Investment Regulations 2005 (SR 2005/220): regulation 38A(6), regulation 64A, Schedule 1AA clause 6(4)