

Version
as at 1 May 2024



Overseas Investment Act 2005

Public Act 2005 No 82
Date of assent 21 June 2005
Commencement see section 2

Contents

	Page
1 Title	9
2 Commencement	9
Part 1	
Preliminary provisions	
3 Purpose	9
4 Overview	9
5 Act incorporates sections 56 to 58B of Fisheries Act 1996	11
6 Interpretation	11
7 Who are overseas persons	29
8 Meaning of associate and associated land	32
8A Status of examples	32
<i>Transitional, savings, and related provisions</i>	
8B Transitional, savings, and related provisions	33
<i>Act binds the Crown</i>	
9 Act binds the Crown	33

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Treasury.

Part 2
Consent and conditions regime

Subpart 1—When consent required and criteria for consent

When consent required

10	Consent required for overseas investments in sensitive New Zealand assets	33
11	Consent must be obtained before overseas investment given effect	33
11A	Exemptions from requirement for consent	33

What are overseas investments in sensitive New Zealand assets

12	What are overseas investments in sensitive land	34
13	What are overseas investments in significant business assets	35

Criteria for consent

14	Approach to criteria for consent	36
15	Who are relevant overseas persons, and individuals with control, for overseas investments	37
16	Criteria for consent for overseas investments in sensitive land	37
16A	Benefit to New Zealand test	40
16B	Conditions for consents relating to sensitive land that is residential land: benefit to New Zealand test	44
16C	Conditions for consents relating to sensitive land that will be used for forestry activities	46
17	Factors for assessing benefit of overseas investments in sensitive land	46
18	Criteria for consent for overseas investments in significant business assets	48
18A	Investor test	48
19	Applying good character and Immigration Act 2009 criteria <i>[Repealed]</i>	51
20	Exemptions from farm land offer criterion	51

Transactions of national interest

20A	Transactions that are transactions of national interest	52
20AA	Exemptions from definition	54
20B	Other transactions may be transactions of national interest if notice given	54
20C	Consent may be declined if transaction contrary to national interest	55
20D	Who are critical direct suppliers	55
20E	Provisions relating to unpublished CDS	56
20F	Status of unpublished CDS confidential	57
20G	What are media businesses with significant impact	57

Subpart 2—Procedure for making an application for consent and for granting consent		
21	Application for consent	58
22	Who must apply for consent	58
23	Requirements for application for consent	58
23A	Applications for standing consent in advance of transaction	59
24	Who decides application	59
25	Granting or refusal of consent	60
25A	Conditions of consent	60
25B	Automatic conditions: every overseas investment	60
25C	Automatic condition: every transaction of national interest	61
25D	Automatic condition: transactions involving fresh or seawater areas	61
26	Minister may revoke consent in case of fraud	61
27	Consent may be varied by agreement	61
27A	Consent holder may apply for new consent	62
28	Conditions of consent <i>[Repealed]</i>	63
29	Transaction may be cancelled	63
29A	Investor test applications where no change since investor test last met	63
Subpart 3—Administration		
30	Regulator	64
31	What regulator does	64
32	Delegation by relevant Minister or Ministers	65
33	Rules that apply to delegation under this Act or regulations	66
34	Ministerial directive letter	66
35	Ministerial directive letter must be published, etc <i>[Repealed]</i>	67
36	Regulator may issue guidelines	67
37	Regulator must keep list of reserves, parks, and other sensitive areas <i>[Repealed]</i>	68
37A	Regulator must publish list of sensitive adjoining land relating to collective group of Māori	68
37B	Time frames	69
Subpart 4—Information-gathering powers		
38	Regulator may require person to provide information for monitoring purposes	69
38A	Information for tax purposes	70
39	Regulator may require any person to provide information for statistical or monitoring purposes	71
40	Regulator may require person to provide statutory declaration as to compliance	71
41	Regulator may require information and documents to be provided	72
41A	Privileges for person required to provide information or document	73

41B	Effect of proceedings	73
41C	Effect of final decision that exercise of powers under sections 38 to 41 unlawful	74
41D	Confidentiality of information and documents	75
41E	Conditions relating to publication or disclosure of information or documents	76
Subpart 5—Enforcement		
<i>Disposal of property</i>		
41F	Regulator may issue notice requesting disposal of property	77
41G	Consequences of disposal or retention of property	77
<i>Offences</i>		
42	Offence of giving effect to overseas investment without consent	78
43	Offence of defeating, evading, or circumventing operation of Act	79
44	Offence of resisting, obstructing, or deceiving	79
45	Offence of failing to comply with notice, requirement, or condition	79
46	Offence of false or misleading statement or omission	80
<i>Enforceable undertakings</i>		
46A	Regulator may accept undertakings	81
46B	When undertaking is enforceable	81
46C	Notice of decision	81
46D	Withdrawal or variation of enforceable undertaking	82
46E	Proceedings for alleged contravention	82
46F	Contravention of enforceable undertaking	83
46G	Considerations for court orders	83
<i>Powers of court</i>		
47	Court may order disposal of property	84
48	Court may order person in breach or involved in breach to pay civil pecuniary penalty	84
48A	Defences for person involved in contravention, offence, or failure	85
49	Court may order mortgage to be registered over land	86
50	Court may order interest to be paid	86
51	Court may order compliance with condition of consent, exemption, exemption certificate, direction order, or interim direction order	87
51AAA	Court may grant injunction	87
51AAB	When court may grant restraining injunctions	88
51AAC	When court may grant performance injunctions	88
51AAD	Undertaking as to damages not required by regulator	89
51AAE	Publication under this subpart may be deferred or dispensed with	89
<i>Statement relating to compliance with consent requirement</i>		
51A	Person who acquires residential land must make and provide statement	89

51B	Regulator must authorise manner of providing statement	90
51C	Conveyancer must obtain and keep statement	91
<i>Administrative penalties</i>		
52	Administrative penalties for late filing	91
53	Administrative penalty for retrospective consent	92
<i>Giving, providing, or serving notices or documents</i>		
54	Address for service	92
54A	Notices or other documents given, provided, or served by regulator	92
55	Non-appearance not ground for court to refuse order under Act if person served in accordance with section 54A	93
55A	Proof that documents given, provided, or served	93
<i>Search and seizure</i>		
56	Search warrant	94
57	Form and content of search warrant <i>[Repealed]</i>	95
58	Powers conferred by search warrant <i>[Repealed]</i>	95
59	Requirements when executing search warrant <i>[Not in force]</i>	95
60	Disposal of things seized under search warrant <i>[Repealed]</i>	95
Subpart 6—Miscellaneous provisions		
60A	Reinstatement of emergency notification regime	95
61	Regulations	96
61A	Regulations regarding alternative monetary thresholds for overseas investments in significant business assets	100
61B	Purpose of exemptions	102
61C	Regulations may contain class or individual exemptions	103
61D	Minister may grant individual exemptions	104
61E	Criteria for all exemptions	104
61F	Other provisions applying to all exemptions	105
61G	Person who relies on exemption to acquire property may be subject to existing consent or exemption conditions	105
62	Foreshore, seabed, riverbed, or lakebed acquired by the Crown under consent process is not subdivision <i>[Repealed]</i>	106
Subpart 7—Transitional provisions and amendments to other enactments		
<i>Dissolution of Commission</i>		
63	Commission dissolved	107
64	Assets and liabilities vest in the Crown	107
65	No compensation for loss of office	107
66	Transfer to LINZ	107
67	Transferring employee must be employed in equivalent employment	107
68	Continuity of employment	107

69	No compensation for technical redundancy	108
70	Final report	108
71	References to Commission	108
72	Proceedings of Commission	108
	<i>Amendments to Fisheries Act 1996</i>	
	<i>[Repealed]</i>	
73	New sections 56 to 58B substituted in Fisheries Act 1996 <i>[Repealed]</i>	109
	<i>Amendment to Te Ture Whenua Maori Act 1993</i>	
	<i>[Repealed]</i>	
74	Amendment to Te Ture Whenua Maori Act 1993 <i>[Repealed]</i>	109
	<i>Consequential amendments</i>	
	<i>[Repealed]</i>	
75	Consequential amendments <i>[Repealed]</i>	109
	<i>Transitional provisions</i>	
76	Repeal and revocations	109
77	Transitional provision for acts done or begun under previous overseas investment regime	109
78	Transitional provision for consents, exemptions, and conditions under 1973 Act and Regulations	110
79	Transitional provision for permissions, etc, under Fisheries Act 1996	111
80	Transitional provision relating to clause 6 of Schedule 1AA (Exemption relating to dwellings in large apartment developments where sales of dwellings have begun before assent date)	111
	Part 3	
	National security and public order risks management regime	
81	Purpose of Part	111
	Subpart 1—Call-in transactions	
	<i>Call-in transactions, etc</i>	
82	What is call-in transaction and overseas investment in SIB assets	112
83	Who are relevant acquirers	114
	<i>Review of call-in transactions</i>	
84	Review of call-in transactions	114
	<i>Notification of call-in transactions</i>	
85	Military or dual-use technology and critical direct supplier call-in transactions	115
86	Other call-in transactions	116
87	Requirements for notification of call-in transaction	116

Subpart 2—Risk management actions

Direction orders

88	Direction orders	117
89	Direction orders may be varied by agreement	118
90	Revocation of direction order	118
91	Interim direction orders	119

Prohibition orders

92	Prohibition orders	119
----	--------------------	-----

Disposal orders

93	Disposal orders	120
----	-----------------	-----

Statutory management

94	Purpose of statutory management	121
95	Statutory management of person who owns sensitive assets and associates	121
96	Recommendation of Minister	122
97	Statutory management of New Zealand business only	122
98	Date and time of appointment	122
99	Considerations affecting exercise of powers by statutory manager	123
100	Role of regulator in statutory management	123
101	Statutory manager may form body corporate to acquire business of branch of persons not incorporated in New Zealand	124
102	Body corporate formed and registered also subject to statutory management	125
103	Statutory manager may sell vested assets	125
104	Statutory manager may terminate contracts or arrangements posing significant risk to national security or public order	126
105	Application of Corporations (Investigation and Management) Act 1989	126
106	Termination of statutory management	127
107	Effect of termination of statutory management	128
108	Powers to obtain documents and information	128
109	Protection from liability and indemnity	128
110	Expenses of statutory management	129
111	Modifications where person under statutory management is regulated by Reserve Bank	129

Risk management actions and transactions of national interest

112	When risk management actions may be taken in connection with consented transactions of national interest	130
-----	--	-----

Subpart 3—Protection of classified security information

113	Proceedings involving classified security information	131
114	Meaning of classified security information	132

115	Obligation to provide court with access to classified security information <i>[Repealed]</i>	133
116	Court orders <i>[Repealed]</i>	133
117	Appointment of special advocate <i>[Repealed]</i>	133
118	Nomination of person for appointment <i>[Repealed]</i>	133
119	Role of special advocates <i>[Repealed]</i>	133
120	Court may provide access to classified security information to special advocate <i>[Repealed]</i>	133
121	Communication between special advocate and other persons <i>[Repealed]</i>	133
122	Protection of special advocates from liability <i>[Repealed]</i>	133
123	Other matters relating to procedure in proceedings involving classified security information <i>[Repealed]</i>	134
124	Nothing in this subpart limits other rules of law that authorise or require withholding of document, etc <i>[Repealed]</i>	134
125	Ancillary general practices and procedures to protect classified security information <i>[Repealed]</i>	134
	Subpart 4—Miscellaneous provisions	
126	Power to use and disclose information relevant to managing certain risks	134
127	Regulations regarding transactions of national interest and overseas investments in SIB assets	136
128	Giving effect to and unwinding of call-in transactions	137
129	Minister must publish decisions on call-in transactions and transaction of national interest	137
	Schedule 1AA	139
	Transitional, savings, and related provisions	
	Schedule 1	157
	Sensitive land	
	Schedule 1A	160
	Total term of interest in land	
	Schedule 2	162
	Sensitive land that is residential land	
	Schedule 3	180
	Exemptions from requirement for consent	
	Schedule 4	189
	Standing consents	
	Schedule 5	195
	Fresh or seawater areas	

1 Title

This Act is the Overseas Investment Act 2005.

2 Commencement

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) One or more Orders in Council may be made appointing different dates for the commencement of different provisions.
- (3) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 2: Overseas Investment Act 2005 brought into force, on 25 August 2005, by clause 2 of the Overseas Investment Act Commencement Order 2005 (SR 2005/219).

Section 2(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 1 Preliminary provisions

3 Purpose

- (1) The purpose of this Act is to acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets by—
 - (a) requiring overseas investments in those assets, before being made, to meet criteria for consent; and
 - (b) imposing conditions on those overseas investments.
- (2) This Act also has the purpose of managing certain risks, such as national security and public order risks, associated with transactions by overseas persons.

Section 3(2): inserted, on 16 June 2020, by section 4 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

4 Overview

- (1) In this Act,—
 - (a) this Part deals with preliminary matters, including the purpose of this Act and interpretation;
 - (b) Part 2 contains the consent and conditions regime for overseas investments in sensitive New Zealand assets, and is organised as follows:

- (i) subpart 1 states when consent is required and the criteria for consent (except that those matters are stated in the Fisheries Act 1996 for overseas investments in fishing quota):
 - (ii) subpart 2 sets out the procedure for obtaining consent and imposing conditions of consent:
 - (iii) subpart 3 describes the role of the person (the regulator) who administers the regime:
 - (iv) subpart 4 confers information-gathering powers on the regulator:
 - (v) subpart 5 deals with aspects of enforcement, including offences under this Act, penalties, and the court's powers to make orders for effective enforcement:
 - (vi) subpart 6 relates to regulations and other miscellaneous matters:
 - (vii) subpart 7 contains transitional provisions (mostly relating to the dissolution of the Overseas Investment Commission and the employment consequences for its employees) and amendments to other enactments (and *see also* Schedule 1AA for further transitional, savings, and related provisions):
- (c) Part 3 contains the management regime for certain risks, such as national security and public order risks, for transactions by overseas persons, and is organised as follows:
- (i) subpart 1 provides for the review of call-in transactions:
 - (ii) subpart 2 sets out the details of the risk management actions that may be taken to manage certain risks: direction orders, prohibition orders, disposal orders, and statutory management:
 - (iii) subpart 3 deals with the protection of classified security information:
 - (iv) subpart 4 relates to regulations and other miscellaneous matters.
- (2) This Act replaces the Overseas Investment Act 1973 and the Overseas Investment Regulations 1995.
- (3) This section is a guide only to the general scheme and effect of this Act.
- Section 4(1)(b)(iv): amended, on 22 October 2018, by section 7(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).
- Section 4(1)(b)(vii): amended, on 22 October 2018, by section 7(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).
- Section 4(1)(c): inserted, on 16 June 2020, by section 5 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).
- Section 4(1)(c)(iii): amended, on 28 November 2023, by section 33 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

5 Act incorporates sections 56 to 58B of Fisheries Act 1996

- (1) This Act incorporates sections 56 to 58B of the Fisheries Act 1996 (which in this section are called the **overseas investment fishing provisions**) as if they were part of this Act, so that a reference in this Act to “this Act” includes a reference to the overseas investment fishing provisions.
- (2) *See* section 57A of the Fisheries Act 1996 for further provisions on the interpretation of the overseas investment fishing provisions.

6 Interpretation

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

acquisition includes obtaining ownership or coming into possession by any means

associate has the meaning set out in section 8

associated land has the meaning set out in section 8

bed means—

- (a) in relation to any river, the space of land that the waters of the river cover at its fullest flow without overtopping the banks; and
- (b) in relation to a lake not controlled by artificial means, the space of land that the waters of the lake cover at its highest level without exceeding its physical margin; and
- (c) in relation to a lake controlled by artificial means, the space of land that the waters of the lake cover at the maximum operating level

benefit to New Zealand test means the test set out in section 16A

business decision means a decision under this Act on whether or not to consent to an overseas investment in significant business assets

call-in transaction has the meaning set out in section 82

category, in relation to an overseas investment, means any of the following categories:

- (a) an overseas investment in sensitive land;
- (b) an overseas investment in significant business assets;
- (c) an overseas investment in fishing quota

classified security information has the meaning set out in section 114

Commission means the Overseas Investment Commission

commitment to reside in New Zealand test means the test set out in Part 2 of Schedule 2

consent means a consent granted under this Act for an overseas investment transaction

consent holder means the person or persons to whom a consent is issued

control rights, in respect of a person (A), means—

- (a) the power to participate in the control of the composition of A's governing body; or
- (b) the right to exercise, or control of the exercise of, the voting power at a meeting of A

conveyancing services has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

court means the High Court

critical direct supplier means a person who has been notified by the Minister of their status as a critical direct supplier under section 20D

direction order means an order made under section 88

director, in the case of a limited partnership, includes any general partner

disposal order means an order made under section 93

district valuation roll means the roll that each territorial authority must prepare and maintain under section 7 of the Rating Valuations Act 1998 for its own district in accordance with rules made under that Act

document means any record of information; and includes—

- (a) anything on which there is writing or any image; and
- (b) information recorded by means of any article or device (for example, a disk) from which information is capable of being reproduced with or without the aid of any other article or device; and
- (c) material subsequently derived from information recorded by that means

emergency notification regime means the regime in subpart 1 of Part 3 that is inserted by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020

estate or interest has the meaning set out in section 5(1) of the Land Transfer Act 2017

excluded accommodation facility means—

- (a) a hospital; or
- (b) any TLtP premises as defined in clause 5 of Schedule 3 (which relates to premises used, or intended to be used, in the course of business principally for providing temporary lodging to the public); or
- (c) a camping ground; or
- (d) any facility within a class set out in regulations as a class of facility to be treated as an additional excluded accommodation facility in this Act

exempted interest means—

- (a) an easement; or
- (b) a *profit à prendre* that is not a regulated *profit à prendre*

exemption certificate means a certificate granted under clause 4 of Schedule 3 (dwellings in large apartment developments that are purchased off-the-plans)

farm land means land (other than residential (but not otherwise sensitive) land) used exclusively or principally for agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry, or livestock (which, to avoid doubt, do not include forestry activities within the meaning of section 16A(9))

fishing quota decision means a decision under sections 56 to 58B of the Fisheries Act 1996 on whether or not to consent to an overseas investment in fishing quota

foreshore, seabed has the same meaning as marine and coastal area

forestry right means—

- (a) a right created in accordance with the Forestry Rights Registration Act 1983; or
- (b) any other *profit à prendre* that—
 - (i) relates to taking timber from a forest; and
 - (ii) to the extent (if any) that the *profit à prendre* relates to other things, would, were the *profit à prendre* to be treated as a separate *profit à prendre* in relation to those things, fall within paragraph (b) of the definition of regulated *profit à prendre* in this subsection

fresh or seawater area has the meaning set out in clause 2 of Schedule 5

fresh or seawater interest has the meaning set out in clause 2 of Schedule 5

give effect to a call-in transaction—

- (a) means to acquire or dispose of any property under a call-in transaction; but
- (b) excludes an acquisition or disposition that is conditional on a direction order being made

give effect to an overseas investment—

- (a) means to acquire or dispose of any property, or establish any business, that results in an overseas investment in sensitive land, overseas investment in significant business assets, or overseas investment in fishing quota; but
- (b) excludes an acquisition, disposition, or establishment that is conditional on consent being obtained under this Act

governing body means,—

- (a) in relation to a body corporate, the board of directors (or other persons or body exercising powers of management, however described) of the body corporate;
- (b) in relation to a trust, the trustees;
- (c) in relation to a unit trust, the manager and trustee:

- (ca) in relation to a limited partnership, the general partner or partners:
- (d) in relation to any other partnership, an unincorporated joint venture, or other unincorporated body of persons, either—
 - (i) the board of directors (or other persons or body exercising powers of management, however described) of the partnership, unincorporated joint venture, or other unincorporated body of persons; or
 - (ii) if there is no board or other persons or body as described in subparagraph (i), the partners of the partnership or members of the unincorporated joint venture or other unincorporated body of persons

guidelines means guidelines issued by the regulator under section 36

historic heritage has the meaning set out in section 2(1) of the Resource Management Act 1991

incidental residential use test means the test set out in clause 14 of Schedule 2

increased housing test means the test set out in clause 11 of Schedule 2

individuals with control of the relevant overseas person has the meaning set out in section 15

intelligence or security agency means—

- (a) the New Zealand Defence Force;
- (b) the Government Communications Security Bureau;
- (c) the New Zealand Security Intelligence Service

interim direction order means an order under section 91

interest includes a legal or equitable interest

investor test means the test set out in section 18A

investor test factors means the factors set out in section 18A(4)

involved, in relation to a contravention, an offence, or a failure to comply, has the meaning set out in subsection (7)

kaitiakitanga has the meaning set out in section 2(1) of the Resource Management Act 1991

lake means a lake (as defined in section 2(1) of the Resource Management Act 1991) that has a bed that exceeds 8 hectares in area

land decision means a decision under this Act on whether or not to consent to an overseas investment in sensitive land

LINZ means Land Information New Zealand

listed issuer—

- (a) means a person that is a party to a listing agreement with a licensed market operator in relation to a licensed market (and includes a licensed

market operator that has financial products quoted on its own licensed market); but

- (b) excludes a person that is a listed issuer only because its debt securities are approved for trading on a licensed market,—

where terms used in this definition have the same meanings as in the Financial Markets Conduct Act 2013

long-term accommodation facility—

- (a) means—
 - (i) a retirement village or rest home; or
 - (ii) a hostel within the meaning of section 10(1) of the Education and Training Act 2020, or other facility used or intended to be used to provide accommodation to students in accordance with the requirements of section 5B of the Residential Tenancies Act 1986; but
- (b) does not include any facility to the extent that it is, or is part of, an excluded accommodation facility

managed investment scheme has the meaning set out in section 9 of the Financial Markets Conduct Act 2013

marine and coastal area has the meaning set out in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011, but any reference to land **adjoining the marine and coastal area** is to land that adjoins this land on the landward side only

media business with significant impact has the meaning set out in section 20G

military or dual-use technology means—

- (a) any goods listed in the strategic goods list, but not of a class specified in regulations; and
- (b) any technology—
 - (i) that control of which, or access to which, could pose a significant risk to national security or public order; and
 - (ii) that is within a class of technology set out in regulations

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

more than 25% ownership or control interest has the meaning set out in subsection (4)

more than 25% subsidiary has the meaning set out in subsection (5)

natural and physical resources has the meaning set out in section 2(1) of the Resource Management Act 1991

natural environment includes land, water, air, soil, all forms of plants and animals (whether native to New Zealand or introduced), and ecosystems and their constituent parts

New Zealand listed issuer means a listed issuer that is incorporated in New Zealand or, in the case of a managed investment scheme, established under New Zealand law

non-occupation outcome has the meaning set out in clause 17 of Schedule 2

non-NZ government investor means—

- (a) the government, or any part of the government (including regional or local government), of—
 - (i) a territory other than New Zealand; or
 - (ii) a part of a territory other than 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 person described in paragraph (a) or (b); or
 - (ii) in any way on behalf of a person described in paragraph (a) or (b); or
 - (iii) subject to the direction, control, or influence of a person described in paragraph (a) or (b)

non-residential use test means the test set out in clause 13 of Schedule 2

non-urban land means—

- (a) farm land; and
- (b) any land other than land that is both—
 - (i) in an urban area; and
 - (ii) used for commercial, industrial, or residential purposes

ordinarily resident in New Zealand has the meaning set out in subsection (2)

Overseas Investment Amendment Act (No 3) 2020 means the Act that will result from the Overseas Investment Amendment Bill (No 3)

overseas investment in fishing quota has the meaning set out in section 57D of the Fisheries Act 1996

overseas investment in sensitive land has the meaning set out in section 12

overseas investment in SIB assets has the meaning set out in section 82

overseas investment in significant business assets has the meaning set out in section 13

overseas investment transaction means a transaction that results in an overseas investment in sensitive land, an overseas investment in significant business assets, or an overseas investment in fishing quota

overseas person has the meaning set out in section 7

prohibition order means an order made under section 92

property includes real and personal property, any interest in any real or personal property, any chose in action, and any other right or interest

regulated *profit à prendre*—

- (a) means—
 - (i) a forestry right; or
 - (ii) any other *profit à prendre*, if the area of land covered by the *profit à prendre* is (or will be) used exclusively or principally for the purposes of the *profit à prendre*; but
- (b) does not include a *profit à prendre* that is not a forestry right, if the *profit à prendre*—
 - (i) consists only of rights to take any mineral (as that term is defined in section 2(1) of the Crown Minerals Act 1991); or
 - (ii) is within a class set out in regulations as a class of *profits à prendre* not to be treated as regulated *profits à prendre*

regulations means regulations made under this Act

regulator has the meaning set out in section 30

relevant government enterprise means—

- (a) a body corporate (**W**), if a relevant government investor or investors have, directly or indirectly, a more than 25% ownership or control interest in W; or
- (aa) a limited partnership (**LP**), if—
 - (i) a general partner of LP is a relevant government investor; or
 - (ii) more than 25% of the persons having the right to control the composition of the governing body of LP are relevant government investors; or
 - (iii) more than 25% of the partnership interests (as defined in the Limited Partnerships Act 2008) of the partners of LP are held by relevant government investors; or
 - (iv) a relevant government investor or investors have the right to exercise or control the exercise of more than 25% of the voting power at a meeting of the partners of LP; or
- (b) any other partnership, an unincorporated joint venture, or any other unincorporated body of persons (**Z**) (other than a trust or unit trust or managed investment scheme) if—
 - (i) more than 25% of Z's partners or members are relevant government investors; or

- (ii) 1 or more relevant government investors have a beneficial interest in or entitlement to more than 25% of Z's profits or assets (including on Z's winding up); or
- (iii) 1 or more relevant government investors have the right to exercise, or to control the exercise of, more than 25% of the voting power at a meeting of Z; or
- (c) a trust (X) (other than a managed investment scheme) if—
 - (i) more than 25% of X's governing body are relevant government investors; or
 - (ii) 1 or more relevant government investors have a beneficial interest in or entitlement to more than 25% of X's trust property; or
 - (iii) more than 25% of the persons having the right to amend or control the amendment of X's trust deed are relevant government investors; or
 - (iv) more than 25% of the persons having the right to control the composition of X's governing body are relevant government investors; or
- (d) a unit trust (Y) (other than a managed investment scheme) if—
 - (i) the manager or trustee, or both, are relevant government investors; or
 - (ii) 1 or more relevant government investors have a beneficial interest in or entitlement to more than 25% of Y's trust property; or
- (e) a managed investment scheme if—
 - (i) the manager or the trustee (as the case may be) is a relevant government investor; or
 - (ii) more than 25% of the value of the investment products in the managed investment scheme is invested on behalf of 1 or more relevant government investors,—

where terms used in this paragraph have the same meanings as in the Financial Markets Conduct Act 2013

relevant government investor means a non-NZ government investor or an associate of a non-NZ government investor

relevant land, in relation to an overseas investment in sensitive land, means the land that the estate or interest referred to in section 12(1)(a) or (b) relates to

relevant Minister or Ministers means,—

- (a) in the case of a business decision, the Minister:
- (b) in the case of a fishing quota decision, the Minister and the Minister of Fisheries:

- (c) in the case of a land decision, the Minister and the Minister for Land Information;
- (d) in the case of a decision that is in more than 1 of the above categories, all of the Ministers that are relevant to those categories

relevant overseas person has the meaning set out in section 15

Reserve Bank means the Reserve Bank of New Zealand

residential (but not otherwise sensitive) land means land that—

- (a) is or includes residential land; but
- (b) is not otherwise sensitive under Part 1 of Schedule 1

residential dwelling—

- (a) means a building or group of buildings, or part of a building or group of buildings, that is—
 - (i) used, or intended to be used, only or mainly for residential purposes; and
 - (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but
- (b) does not include any dwelling—
 - (i) to the extent that it is, or is part of, a long-term accommodation facility or an excluded accommodation facility; or
 - (ii) within a class set out in regulations as a class of dwellings not to be treated as residential dwellings in this Act

residential land—

- (a) means land that has a property category of residential or lifestyle in, or for the purpose of, the relevant district valuation roll (for example, the land's first character category code is "R" or "L"); and
- (b) includes a residential flat in a building owned by a flat-owning company (regardless of whether the building is on land within a property category referred to in paragraph (a)), and, for that purpose, references in this Act to interest include a licence to occupy that flat, where terms in this paragraph have a meaning corresponding to those in section 121A of the Land Transfer Act 1952 or section 122 of the Land Transfer Act 2017

risk management action means the making of a direction order, prohibition order, disposal order, or recommendation under section 96 that a person be put into statutory management

river means a river (as defined in section 2(1) of the Resource Management Act 1991) that has a bed of an average width, for its length on or adjoining the relevant land, of 3 metres or more

section 12 interest has the meaning set out in section 12

securities of the same class means securities that have attached to them identical rights, privileges, limitations, and conditions, and securities of a **different class** has a corresponding meaning

security—

- (a) means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person; and
- (b) includes specifically—
 - (i) a share in a company or other body corporate; and
 - (ii) a unit in a unit trust; and
 - (iii) an interest in a partnership or unincorporated joint venture; and
 - (iv) a right, conferred by membership of an incorporated or unincorporated body of persons, to participate in the control or management of the body, vote at a general meeting of the body, or participate in the assets or property of the body on its winding up; and
- (c) includes also any other interest or right that confers rights of ownership of the property of any person, or to participate in the property of any person on the winding up of that person; and
- (d) includes also any other interest that confers rights to exercise control over the property or assets of any person; and
- (e) includes securities within paragraphs (a) to (d) in whatever currency they are expressed and whether they are situated in New Zealand or elsewhere; but
- (f) excludes an interest or right that is—
 - (i) solely an interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (and is not convertible into a security within paragraphs (a) to (d)); or
 - (ii) conferred solely for the purpose of securing the repayment of money of that kind (and is not convertible into a security within paragraphs (a) to (d))

security arrangement means an arrangement that in substance secures payment or performance of an obligation (without regard to the form of the arrangement or the identity of the person who has title to the property that is subject to the arrangement)

sensitive assets means—

- (a) a section 12 interest; and
- (b) any rights or interests in securities, business, or property of a kind described in section 13; and

- (c) any interest in fishing quota, or rights or interests, of a kind described in section 57D of the Fisheries Act 1996; and
- (d) any rights or interests in securities or property of a kind described in section 82(2)

sensitive (but not residential) land means land that—

- (a) is not and does not include residential land; but
- (b) is sensitive under Part 1 of Schedule 1 for some other reason

sensitive information means information, but not of a class set out in regulations, that—

- (a) is genetic, biometric, health, or financial information of individuals or relates to the sexual orientation or sexual behaviour of individuals; or
- (b) is official information (as defined in section 2(1) of the Official Information Act 1982 or section 2(1) of the Local Government Official Information and Meetings Act 1987) that is relevant to the maintenance of national security or public order

SIB, or **strategically important business**, means a business that is 1 or more of the following:

- (a) a business that researches, develops, produces, or maintains military or dual-use technology, but not of a class set out in regulations:
- (b) a business that is a critical direct supplier, but not of a class set out in regulations:
- (c) a business of a class set out in regulations that is involved in ports or airports:
- (d) a business of a class set out in regulations that is involved in electricity generation, distribution, metering, or aggregation:
- (e) a business of a class set out in regulations that is involved in drinking water, waste water, or storm water infrastructure:
- (f) a business of a class set out in regulations that is involved in telecommunications infrastructure or services:
- (g) a business of a class set out in regulations that is a financial institution or is involved in financial market infrastructure:
- (h) a business that is a media business with significant impact:
- (i) in section 20A (relating to transactions of national interest),—
 - (i) a business of a class set out in regulations that is involved in an irrigation scheme:
 - (ii) any other business of a class set out in regulations that is involved in a strategically important industry or that owns or controls high-risk critical national infrastructure:

- (j) in section 82(2) (definition of overseas investment in SIB assets), a business of a class set out in regulations that develops, produces, maintains, or otherwise has access to sensitive information

strategic goods list means the list of all goods and classes of goods whose exportation is prohibited under section 96 of the Customs and Excise Act 2018 because they have or may have a strategic use (within the meaning of section 96(11) of that Act) that the Secretary is required to publish under section 96(7) of that Act

subsidiary has the meaning set out in sections 5 and 6 of the Companies Act 1993

transaction includes—

- (a) the sale or transfer of property or securities; and
- (b) the issue, allotment, buyback, or cancellation of securities; and
- (c) the entering into, or the giving of effect to a provision in, a contract or arrangement; and
- (d) the arriving at, or the giving of effect to, an understanding

transaction of national interest means—

- (a) a transaction of a kind described in section 20A; and
- (b) a transaction that the Minister has identified in a notice given under section 20B

unpublished CDS means a critical direct supplier whose status is not published on the list of critical direct suppliers under section 20D(2)(b)(i)

working day means a day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day; and
- (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (b) a day in the period commencing with 25 December in a year and ending with 15 January in the following year.

(2) In this Act, a person is **ordinarily resident in New Zealand**,—

- (a) for the purposes of a transaction that will result in an overseas investment in sensitive land where the relevant land is or includes residential land, and related matters, if the person—
 - (i) holds a residence class visa granted under the Immigration Act 2009; and
 - (ii) has been residing in New Zealand for at least the immediately preceding 12 months; and
 - (iii) is tax resident in New Zealand (*see* subsection (2A)); and

- (iv) has been present in New Zealand for 183 days or more in total in the immediately preceding 12 months (counting presence in New Zealand for part of a day as a presence for a whole day):
 - (b) for the purposes of a transaction that will not result in an overseas investment in sensitive land where the relevant land is or includes residential land, and related matters, if the person—
 - (i) holds a residence class visa granted under the Immigration Act 2009; and
 - (ii) is in one of the following categories:
 - (A) is domiciled in New Zealand; or
 - (B) is residing in New Zealand with the intention of residing there indefinitely, and has done for the immediately preceding 12 months (*see* subsection (3)).
- (2A) In subsection (2)(a)(iii), **tax resident in New Zealand** means a person who is a New Zealand resident under section YD 1(3) of the Income Tax Act 2007, where the reference in section YD 1(3) to a 12-month period is treated as the immediately preceding 12 months (disregarding the rules in section YD 1(4) to (6) of that Act).
- (3) Absence from New Zealand for no more than 183 days in aggregate in the last 12 months (counting presence in New Zealand for part of a day as presence for a whole day) does not prevent a person from satisfying the requirement for residing in New Zealand for the last 12 months under subsection (2)(b)(ii)(B).
- (4) In this Act, a person (A) has a **more than 25% ownership or control interest** in another person (B) if A has—
 - (a) a beneficial entitlement to, or a beneficial interest in, more than 25% of B's securities; or
 - (b) the power to control the composition of more than 25% of the governing body of B; or
 - (c) the right to exercise or control the exercise of more than 25% of the voting power at a meeting of B,—and references to other ownership or control interests (for example, of 10% or more) have a corresponding meaning.
- (5) In this Act, a body corporate (B) is a **more than 25% subsidiary** of another body corporate (A) if—
 - (a) B is a subsidiary of A under sections 5 to 7 of the Companies Act 1993; or
 - (b) A controls the composition of more than 25% of the governing body of B; or
 - (c) A is in a position to exercise, or control the exercise of, more than 25% of the voting power at a meeting of B.

- (6) Section 7 of the Companies Act 1993 applies for the purposes of determining under this Act whether a person controls the composition of the governing body of another person as if references in that section to a company, a board, and directors were to a person, a governing body, and members of the governing body, respectively.
- (7) In this Act, a person is **involved** in a contravention, the commission of an offence, or a failure to comply if the person—
- (a) has aided, abetted, counselled, or procured the contravention, the commission of the offence, or the failure; or
 - (b) has induced, whether by threats or promises or otherwise, the contravention, the commission of the offence, or the failure; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention, the commission of the offence, or the failure; or
 - (d) has conspired with others to effect the contravention, the commission of the offence, or the failure.
- (8) Subsection (7) does not apply to proceedings for offences (but *see* Part 4 of the Crimes Act 1961, which relates to parties to the commission of offences).
- (9) In sections 13(1)(c) and 82, references to an acquisition of property do not include the making of a loan or subscription for an interest or right that is solely an interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (provided that the loan, interest, or right is not convertible into a security within paragraphs (a) to (d) of the definition of security in section 6(1)).
- (10) A person has **disproportionate access to or control of** a strategically important business (A) if the person has 1 or more of the following:
- (a) access to—
 - (i) information that would not otherwise be available to the person, but that is information that is material to an assessment of the value of shares or other financial products issued by A or a related company; or
 - (ii) sensitive information held by A or its subsidiaries:
 - (b) membership or observer rights on the governing body of A;
 - (c) any involvement, other than through the voting of securities, in the substantive decision-making of A regarding—
 - (i) research, development, production, or maintenance of military or dual-use technology or sensitive information; or
 - (ii) the use of, or access to, the assets of A; or
 - (iii) the supply of goods or services to an intelligence or security agency.

Section 6(1) **25% or more ownership or control interest**: repealed, on 16 June 2020, by section 6(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **25% or more subsidiary**: repealed, on 16 June 2020, by section 6(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **benefit to New Zealand test**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **call-in transaction**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **classified security information**: inserted, on 28 November 2023, by section 34 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

Section 6(1) **commitment to reside in New Zealand test**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **control rights**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **conveyancing services**: inserted, on 22 October 2018, by section 8(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **critical direct supplier**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **cultural heritage**: repealed, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 6(1) **direction order**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **director**: inserted, on 5 July 2021, by section 4(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 6(1) **disposal order**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **district valuation roll**: inserted, on 22 October 2018, by section 4 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **emergency notification regime**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **estate or interest**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **excluded accommodation facility**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **excluded accommodation facility** paragraph (b): replaced, on 5 July 2021, by section 4(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 6(1) **exempted interest**: replaced, on 22 October 2018, by section 6(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **exemption certificate**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **farm land**: amended, on 5 July 2021, by section 4(3) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 6(1) **farm land**: amended, on 22 October 2018, by section 8(3) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **foreshore, seabed**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **foreshore or seabed**: repealed, on 16 June 2020, by section 6(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **forestry right**: inserted, on 22 October 2018, by section 6(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **fresh or seawater area**: inserted, on 5 July 2021, by section 4(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 6(1) **fresh or seawater interest**: inserted, on 5 July 2021, by section 4(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 6(1) **give effect to a call-in transaction**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **governing body** paragraph (ca): inserted, on 5 July 2021, by section 4(4) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 6(1) **governing body** paragraph (d): amended, on 5 July 2021, by section 4(5) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 6(1) **historic heritage**: inserted, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 6(1) **incidental residential use test**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **increased housing test**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **intelligence or security agency**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **interim direction order**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **investor test**: replaced, on 22 March 2021, by section 6(4) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **investor test factors**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **involved**: replaced, on 16 June 2020, by section 6(5) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **kaitiakitanga**: inserted, on 5 July 2021, by section 4(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 6(1) **kaitiakitanga**: amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 6(1) **lake**: amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 6(1) **listed issuer**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **long-term accommodation facility**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **long-term accommodation facility** paragraph (a)(ii): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Section 6(1) **managed investment scheme**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **marine and coastal area**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **media business with significant impact**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **military or dual-use technology**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **more than 25% ownership or control interest**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **more than 25% subsidiary**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **natural and physical resources**: amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 6(1) **natural environment**: inserted, on 5 July 2021, by section 4(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 6(1) **New Zealand listed issuer**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **New Zealand listed issuer**: amended, on 5 July 2021, by section 4(7) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 6(1) **non-NZ government investor**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **non-occupation outcome**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **non-residential use test**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **Overseas Investment Amendment Act (No 3) 2020**: inserted, on 16 June 2020, by section 6(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **overseas investment in SIB assets**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **prohibition order**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **regulated *profit à prendre***: inserted, on 22 October 2018, by section 6(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **relevant government enterprise**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **relevant government enterprise** paragraph (aa): inserted, on 5 July 2021, by section 4(8) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 6(1) **relevant government enterprise** paragraph (b): amended, on 5 July 2021, by section 4(9) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 6(1) **relevant government investor**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **relevant land**: amended, on 16 June 2020, by section 6(6) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **residential (but not otherwise sensitive) land**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **residential dwelling**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **residential land**: inserted, on 22 October 2018, by section 4 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **risk management action**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **river**: amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 6(1) **securities of the same class**: inserted, on 5 July 2021, by section 4(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 6(1) **section 12 interest**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **security arrangement**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **sensitive assets**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **sensitive (but not residential) land**: inserted, on 22 October 2018, by section 8(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(1) **sensitive information**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **SIB**, or **strategically important business**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **SIB**, or **strategically important business** paragraph (j): inserted, on 7 June 2021, by section 53(14) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **strategic goods list**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **transaction of national interest**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **unpublished CDS**: inserted, on 16 June 2020, by section 6(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(1) **working day** paragraph (a): replaced, on 12 April 2022, by wehenga 7 o Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/section 7 of the Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14).

Section 6(1) **working day** paragraph (ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

Section 6(2): replaced, on 22 October 2018, by section 8(4) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(2)(a)(iii): amended, on 16 June 2020, by section 6(7) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(2A): inserted, on 22 October 2018, by section 8(5) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(3): amended, on 22 October 2018, by section 8(6) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(4): amended, on 16 June 2020, by section 6(8) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(4)(a): amended, on 16 June 2020, by section 6(9) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(4)(b): amended, on 16 June 2020, by section 6(9) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(4)(c): amended, on 5 July 2021, by section 4(10) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 6(4)(c): amended, on 16 June 2020, by section 6(9) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(5): amended, on 16 June 2020, by section 6(10) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(5)(b): amended, on 16 June 2020, by section 6(11) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(5)(c): amended, on 16 June 2020, by section 6(11) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(7): inserted, on 22 October 2018, by section 8(7) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(8): inserted, on 22 October 2018, by section 8(7) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 6(9): inserted, on 16 June 2020, by section 6(12) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 6(10): inserted, on 5 July 2021, by section 4(11) of the Overseas Investment Amendment Act 2021 (2021 No 17).

7 Who are overseas persons

(1) *[Repealed]*

(2) In this Act, **overseas person** means—

- (a) an individual who is neither a New Zealand citizen nor ordinarily resident in New Zealand; or
- (b) a body corporate that is incorporated outside New Zealand or is a more than 25% subsidiary of a body corporate incorporated outside New Zealand; or
- (c) a body corporate—
 - (i) that is a New Zealand listed issuer; and
 - (ii) that meets the ownership test in subsection (3)(a), or the control test in subsection (3)(b), or both; or
- (d) a body corporate (**A**) (other than a New Zealand listed issuer) if an overseas person or persons have—
 - (i) more than 25% of any class of A's securities; or
 - (ii) the power to control the composition of more than 25% of A's governing body; or
 - (iii) the right to exercise or control the exercise of more than 25% of the voting power at a meeting of A; or
- (e) a partnership, unincorporated joint venture, or other unincorporated body of persons (other than a trust or unit trust or managed investment scheme or limited partnership) (**A**) if—
 - (i) more than 25% of A's partners or members are overseas persons; or

- (ii) an overseas person or persons have a beneficial interest in or entitlement to more than 25% of A's profits or assets (including on A's winding up); or
 - (iii) an overseas person or persons have the right to exercise or control the exercise of more than 25% of the voting power at a meeting of A; or
- (f) a trust (A) (other than a managed investment scheme) if—
 - (i) more than 25% of A's governing body are overseas persons; or
 - (ii) an overseas person or persons have a beneficial interest in or entitlement to more than 25% of A's trust property; or
 - (iii) more than 25% of the persons having the right to amend or control the amendment of A's trust deed are overseas persons; or
 - (iv) more than 25% of the persons having the right to control the composition of A's governing body are overseas persons; or
- (g) a unit trust (A) (other than a managed investment scheme) if—
 - (i) the manager or trustee, or both, are overseas persons; or
 - (ii) an overseas person or persons have a beneficial interest in or entitlement to more than 25% of A's trust property; or
- (h) a managed investment scheme—
 - (i) that is a New Zealand listed issuer; and
 - (ii) that meets the ownership test in subsection (4)(a), or the control test in subsection (4)(b), or both; or
- (i) a managed investment scheme (other than a New Zealand listed issuer) if—
 - (i) the manager or the trustee (as the case may be) is an overseas person; or
 - (ii) more than 25% of the value of the investment products in the managed investment scheme is invested on behalf of overseas persons; or
- (j) an overseas limited partnership within the meaning set out in section 4 of the Limited Partnerships Act 2008; or
- (k) any other limited partnership registered under the Limited Partnerships Act 2008 (A) if—
 - (i) a general partner of A is an overseas person; or
 - (ii) more than 25% of the persons having the right to control the composition of the governing body of A are overseas persons; or
 - (iii) more than 25% of the partnership interests (as defined in that Act) of the partners of A are held by overseas persons; or

- (iv) an overseas person or persons have the right to exercise or control the exercise of more than 25% of the voting power at a meeting of the partners of A.
- (3) For the purpose of applying subsection (2)(c)(ii) to a New Zealand listed issuer that is a body corporate (A),—
 - (a) the **ownership test** is that an overseas person has, or 2 or more overseas persons cumulatively have, a beneficial entitlement to, or a beneficial interest in, 50% or more of A's securities:
 - (b) the **control test** is that—
 - (i) at least 1 overseas person (alone or together with its associates) has a beneficial entitlement to, or a beneficial interest in, 10% or more of any class of A's securities that confer control rights; and
 - (ii) when the interests of each overseas person to which subparagraph (i) applies are added together, those overseas persons cumulatively have the right to—
 - (A) control the composition of 50% or more of A's governing body; or
 - (B) exercise or control the exercise of more than 25% of the voting power at a meeting of A.
- (4) For the purpose of applying subsection (2)(h)(ii) to a New Zealand listed issuer that is a managed investment scheme (A),—
 - (a) the **ownership test** is that 50% or more of the value of the managed investment products in A is invested on behalf of overseas persons:
 - (b) the **control test** is that more than 25% of the managed investment products in A that entitle holders to vote are beneficially owned by or on behalf of overseas persons who each beneficially own 10% or more of those products (alone or together with their associates).
- (5) Terms used in subsections (2)(i) and (4) have the same meanings as in the Financial Markets Conduct Act 2013 unless otherwise defined in this Act.

Section 7(1): repealed, on 5 July 2021, by section 5(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 7(2): replaced, on 5 July 2021, by section 5(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 7(3): inserted, on 5 July 2021, by section 5(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 7(4): inserted, on 5 July 2021, by section 5(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 7(5): inserted, on 5 July 2021, by section 5(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

8 Meaning of associate and associated land

- (1) In this Act, a person (**A**) is an **associate** of another person (**B**) in relation to an overseas investment or any other matter if—
- (a) A is controlled by B or is subject to B's direction:
 - (b) A is B's agent, trustee, or representative, or acts in any way on behalf of B, or is subject to B's direction, control, or influence, in relation to the overseas investment or the other matter:
 - (c) A acts jointly or in concert with B in relation to the overseas investment or the other matter:
 - (d) A participates in the overseas investment or the other matter as a consequence of any arrangement or understanding with B:
 - (e) A would come within any of paragraphs (a) to (d) if the reference to B in any of those paragraphs were instead a reference to another associate of B.
- (2) If A is an **associate** of B, B is also an **associate** of A.
- (3) For the purposes of subsection (1), it does not matter whether the control, direction, power, influence, arrangement, or other relationship between A and B is—
- (a) direct or indirect:
 - (b) general or specific:
 - (c) legally enforceable or not.
- (4) In this Act, land (**land A**) is **associated land** in respect of other land (**land B**) if—
- (a) land A adjoins land B or, in the case of land on an island listed in Part 2 of Schedule 1, land A and land B are on the same island; and
 - (b) a person owns or controls, or will (as the result of any transaction entered into or to be entered into) own or control, (directly or indirectly) an estate or interest in land A (other than an exempted interest); and
 - (c) the same person, or an associate of that person, owns or controls, or will (as the result of any transaction entered into or to be entered into) own or control, (directly or indirectly) an estate or interest in land B (other than an exempted interest).

Section 8(4)(b): amended, on 16 June 2020, by section 8 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 8(4)(c): amended, on 16 June 2020, by section 8 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

8A Status of examples

- (1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.

- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

Section 8A: inserted, on 22 October 2018, by section 10 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Transitional, savings, and related provisions

Heading: inserted, on 22 October 2018, by section 10 of the Overseas Investment Amendment Act 2018 (2018 No 25).

8B Transitional, savings, and related provisions

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

Section 8B: inserted, on 22 October 2018, by section 10 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Act binds the Crown

9 Act binds the Crown

This Act binds the Crown.

Part 2

Consent and conditions regime

Subpart 1—When consent required and criteria for consent

When consent required

10 Consent required for overseas investments in sensitive New Zealand assets

- (1) A transaction requires consent under this Act if it will result in—
- (a) an overseas investment in sensitive land (*see* section 12);
 - (b) an overseas investment in significant business assets (*see* section 13).
- (2) *See* also sections 56 to 58B of the Fisheries Act 1996, which require consent for a transaction that will result in an overseas investment in fishing quota.

11 Consent must be obtained before overseas investment given effect

- (1) Consent must be obtained for a transaction before the overseas investment is given effect under the transaction.
- (2) The procedure for obtaining consent (including who must obtain consent) is set out in subpart 2.

11A Exemptions from requirement for consent

- (1) The exemptions from the requirement for consent in Schedule 3 have effect.
- (2) *See also* the exemptions in the regulations.

Section 11A: inserted, on 22 October 2018, by section 11 of the Overseas Investment Amendment Act 2018 (2018 No 25).

What are overseas investments in sensitive New Zealand assets

12 What are overseas investments in sensitive land

- (1) An **overseas investment in sensitive land** is the acquisition by an overseas person, or an associate of an overseas person, of all or any of the following (a **section 12 interest**):
- (a) an estate or interest in land if—
 - (i) the land that the estate or interest relates to is sensitive land under Part 1 of Schedule 1; and
 - (ii) the estate or interest acquired is—
 - (A) a freehold estate; or
 - (B) if the land that the interest relates to is residential land, any interest in land (other than an exempted interest) for a total term (as calculated in accordance with Schedule 1A) of 3 years or more; or
 - (C) if the land that the interest relates to is sensitive (but not residential) land, any interest in land (other than an exempted interest) for a total term (as calculated in accordance with Schedule 1A) of 10 years or more:
 - (b) rights or interests in securities of a person (A) if A owns or controls (directly or indirectly) an estate or interest in land described in paragraph (a) and, as a result of the acquisition,—
 - (i) the overseas person or the associate (either alone or together with its associates) has a more than 25% ownership or control interest in A; or
 - (ii) the overseas person or the associate (either alone or together with its associates) has an increase in an existing more than 25% ownership or control interest in A that—
 - (A) results in an ownership or control interest in A that equals or exceeds their ownership or control interest limit as set out in subsection (2); or
 - (B) is in securities of A of a different class to the class in which their existing interest is held; or
 - (C) gives the overseas person or the associate (either alone or together with its associates) any or more disproportionate access to or control of a strategically important business; or
 - (iii) A becomes an overseas person in any of the following circumstances:

- (A) A is a body corporate that is a New Zealand listed issuer and meets the control test in section 7(3)(b):
 - (B) A is a managed investment scheme that is a New Zealand listed issuer and meets the control test in section 7(4)(b):
 - (C) A is not a New Zealand listed issuer.
- (2) The ownership or control interest limits are as follows:
- (a) if their existing ownership or control interest in A amounts to more than 25% but less than 50%, their ownership or control interest limit is 50%:
 - (b) if their existing ownership or control interest in A amounts to 50% or more but less than 75%, their ownership or control interest limit is 75%:
 - (c) if their existing ownership or control interest in A amounts to 75% or more, their ownership or control interest limit is 100%.

Section 12: replaced, on 5 July 2021, by section 6 of the Overseas Investment Amendment Act 2021 (2021 No 17).

13 What are overseas investments in significant business assets

- (1) An overseas investment in significant business assets is—
- (a) the acquisition by an overseas person, or an associate of an overseas person, of rights or interests in securities of a person (A) if—
 - (i) as a result of the acquisition, the overseas person or the associate (either alone or together with its associates) has a more than 25% ownership or control interest in A or an increase in an existing more than 25% ownership or control interest in A of a type referred to in section 12(1)(b)(ii); and
 - (ii) the value of the securities or consideration provided, or the value of the assets of A or A and its more than 25% subsidiaries, exceeds \$100 million or an alternative monetary threshold that applies in accordance with regulations made under section 61A; or
 - (b) the establishment by an overseas person, or an associate of an overseas person, of a business in New Zealand (either alone or with any other person) if—
 - (i) the business is carried on for more than 90 days in any year (whether consecutively or in aggregate); and
 - (ii) the total expenditure expected to be incurred, before commencing the business, in establishing that business exceeds \$100 million or an alternative monetary threshold that applies in accordance with regulations made under section 61A; or
 - (c) the acquisition by an overseas person, or an associate of an overseas person, of 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) if the total

value of consideration provided exceeds \$100 million or an alternative monetary threshold that applies in accordance with regulations made under section 61A.

- (2) However, an overseas person that was lawfully carrying on business in New Zealand on 15 January 1996 (which was when the Overseas Investment Regulations 1995 came into force) does not require consent for an overseas investment in significant business assets described in subsection (1)(b) if the investment requires consent only because it comes within that paragraph.

Section 13(1)(a)(i): amended, on 5 July 2021, by section 7 of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 13(1)(a)(i): amended, on 16 June 2020, by section 10 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 13(1)(a)(ii): amended, on 16 June 2020, by section 10 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 13(1)(a)(ii): amended, on 30 December 2018, by section 68 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 13(1)(b)(ii): amended, on 30 December 2018, by section 68 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 13(1)(c): amended, on 30 December 2018, by section 68 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Criteria for consent

14 Approach to criteria for consent

- (1) The relevant Minister or Ministers, in considering whether or not to grant consent to an overseas investment transaction,—
- (a) must have regard to only the criteria and factors that apply to the relevant category of overseas investment under this subpart (subject to this section); and
 - (b) may consult with any other person or persons, as the Minister or Ministers think appropriate; and
 - (c) must grant consent if satisfied that all of the criteria in section 16 or section 18 (as the case may be) are met; and
 - (d) must decline to grant consent if not satisfied that all of the criteria in section 16 or section 18 are met.
- (2) For a transaction that is in more than 1 category of overseas investment, the relevant Ministers must have regard to the criteria that apply to all of the relevant categories.
- (3) However, if the criteria are the same, the relevant Ministers only need to consider the same criteria once (and not consider them under each relevant category).

15 Who are relevant overseas persons, and individuals with control, for overseas investments

- (1) The relevant Minister or Ministers may determine which 1 or more of the following persons is the **relevant overseas person** for an overseas investment:
- (a) the person making the overseas investment (A), whether A is an overseas person or an associate of an overseas person:
 - (b) any associate of A in relation to the overseas investment.
- (2) The relevant Minister or Ministers may determine which 1 or more of the following categories of persons are the **individuals with control of the relevant overseas person** for an overseas investment:
- (a) the individual or individuals who each have a more than 25% ownership or control interest in the relevant overseas person:
 - (b) the member or members of the governing body of the relevant overseas person:
 - (c) the individual or body of individuals who the Minister or Ministers consider to have that control (whether directly or indirectly).

Section 15(2)(a): amended, on 16 June 2020, by section 11 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

16 Criteria for consent for overseas investments in sensitive land

- (1) The criteria for an overseas investment in sensitive land are all of the following:

Criteria regardless of type of relevant land

- (a) the investor test is met (unless the overseas investment is exempt from this criterion under subsection (3)):

Criteria if relevant land is exclusively residential and not otherwise sensitive

- (b) if the relevant land is residential (but not otherwise sensitive) land,—

- (i) 1 or more of the following tests in Schedule 2 are met:

- (A) the commitment to reside in New Zealand test:
- (B) the increased housing test:
- (C) the non-residential use test:
- (D) the incidental residential use test; or

- (ii) the benefit to New Zealand test is met:

Criteria if relevant land is exclusively non-residential land that is sensitive

- (c) if the relevant land is sensitive (but not residential) land,—

- (i) the relevant overseas person is, or (if that person is not an individual) each of the individuals with control of the relevant over-

- seas person is, a New Zealand citizen, ordinarily resident in New Zealand, or intending to reside in New Zealand indefinitely; or
- (ii) the benefit to New Zealand test is met:
Criteria if relevant land is all residential and some or all is sensitive for some other reason
- (d) if the relevant land is residential land but is not described in paragraph (b),—
- (i) the commitment to reside in New Zealand test is met; or
- (ii) the benefit to New Zealand test is met:
Criteria if some relevant land is residential and some or all is sensitive for some other reason
- (e) if the relevant land is not described in paragraphs (b) to (d), the benefit to New Zealand test is met:
Additional criteria if land includes farm land
- (f) if the relevant land is or includes farm land, before a transaction is entered into with the relevant overseas person, the farm land or section 12 interest has been offered for acquisition on the open market to persons who are not overseas persons as required by the regulations (but *see* section 20):
Additional criteria for transaction of national interest
- (g) if the overseas investment in sensitive land is a transaction of national interest, the Minister has not declined consent to the transaction (*see* section 20C).
- (2) *[Repealed]*
- (3) The investor test does not apply to an overseas investment in sensitive land if either of the following circumstances applies:
- (a) **Circumstance 1:**
- (i) the application for consent is under the commitment to reside in New Zealand test only; and
- (ii) the relevant land is residential (but not otherwise sensitive) land:
- (b) **Circumstance 2:**
- (i) the application for consent is under the increased housing test only; and
- (ii) the increased housing outcome under the test is to be met by a development described in clause 4(1) of Schedule 3 (large apartment developments); and
- (iii) the estate or interest in land relates to 1 or more new residential dwellings in that development; and

- (iv) the transaction is entered into before the construction of the dwelling is complete.
- (4) *See also* clause 4(5) of Schedule 2 (which relates to the commitment to reside in New Zealand test and relationship property) for a circumstance in which an individual with control of the relevant overseas person can be disregarded in determining whether the investor test is met.
- (5) *[Repealed]*
- Section 16(1)(a) heading: inserted, on 16 June 2020, by section 12(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).
- Section 16(1)(a): replaced, on 22 October 2018, by section 12(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).
- Section 16(1)(b) heading: inserted, on 16 June 2020, by section 12(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).
- Section 16(1)(b): replaced, on 22 October 2018, by section 12(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).
- Section 16(1)(c) heading: inserted, on 16 June 2020, by section 12(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).
- Section 16(1)(c): replaced, on 22 October 2018, by section 12(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).
- Section 16(1)(d) heading: inserted, on 16 June 2020, by section 12(4) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).
- Section 16(1)(d): replaced, on 22 October 2018, by section 12(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).
- Section 16(1)(e) heading: inserted, on 16 June 2020, by section 12(5) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).
- Section 16(1)(e): replaced, on 22 October 2018, by section 12(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).
- Section 16(1)(f) heading: inserted, on 24 November 2021, by section 8 of the Overseas Investment Amendment Act 2021 (2021 No 17).
- Section 16(1)(f): replaced, on 24 November 2021, by section 8 of the Overseas Investment Amendment Act 2021 (2021 No 17).
- Section 16(1)(g) heading: inserted, on 16 June 2020, by section 12(6) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).
- Section 16(1)(g): inserted, on 16 June 2020, by section 12(6) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).
- Section 16(2): repealed, on 22 March 2021, by section 12(7) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).
- Section 16(3): inserted, on 22 October 2018, by section 12(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).
- Section 16(3): amended, on 22 March 2021, by section 12(8) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).
- Section 16(3)(b)(iii): amended, on 16 June 2020, by section 12(9) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).
- Section 16(4): inserted, on 22 October 2018, by section 12(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).
- Section 16(5): repealed, on 22 March 2021, by section 12(7) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

16A Benefit to New Zealand test*Outline*

(1AA) This subsection shows the ways in which the benefit to New Zealand test can be met, but it is a guide only to the general scheme and effect of this section.

Pathway	Which subsections apply	Which counterfactual applies
General test	Subsections (1), (1A)	Subsection (1A)(a)
Modified benefit test if relevant land is or includes farm land described in subsection (1C)	Subsections (1), (1A), (1C), (1D), (1E), (2)	Subsection (1A)(a)
Special benefit test relating to forestry activities	Subsections (4) to (9)	N/a

General test

- (1) The benefit to New Zealand test is met if both of the following are met:
- (a) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders) to the extent required by this section, as determined by the relevant Ministers under section 17; and
 - (b) if the relevant land is or includes residential land, the relevant Ministers are satisfied that the conditions that the relevant Ministers will impose on the consent in accordance with section 16B will be, or are likely to be, met.
- (1A) For the purposes of subsection (1)(a), the relevant Ministers—
- (a) must assess the benefit to New Zealand (or any part of it or group of New Zealanders) by comparing the likely result of the overseas investment against the existing state of affairs as at the time the overseas investment transaction is entered into or the time the application is made, whichever occurs first (**counterfactual**); and
 - (b) must take a proportionate approach to whether the benefit test is met, by taking into account whether that benefit is proportionate to the following:
 - (i) the sensitivity of the land (for example, the importance to New Zealand of the purpose for which the land is used, the size and value of the land, any sensitive features associated with the land, and the level of interest that the public have in the land) or the fishing quota; and
 - (ii) the nature of the overseas investment transaction (for example, the estate or interest being acquired, whether the estate or interest is temporary or permanent, and the degree of overseas ownership or control of the land or of the estate or interest in land).
- (1B) However, subsection (1A) does not apply if subsection (4) applies.

Modified benefit test if relevant land is or includes farm land

- (1C) If the relevant land is or includes farm land that in area exceeds 5 hectares, the relevant Ministers must—
- (a) give the following factors high relative importance:
 - (i) the economic benefits factor in section 17(1)(a) and, in particular, the creation or retention of jobs, introduction of technology or business skills, increased export receipts, and increased processing of primary products; and
 - (ii) the oversight or participation factor in section 17(1)(f); and
 - (b) ensure that the applicant has demonstrated, in relation to 1 or more of those factors, that the benefits of the investment are of a size or nature that represent a substantial benefit to New Zealand.
- (1D) However, the relevant Ministers may determine not to apply subsection (1C) if they are satisfied that—
- (a) the transaction is minor or technical; or
 - (b) the transaction does not materially change the level of ownership or control that the relevant overseas person has over the asset; or
 - (c) the farm land has no or limited productive capacity as farm land and will, or is likely to, be used promptly, as a result of the overseas investment, for industrial or commercial development (for example, a supermarket) or for the construction of 1 or more buildings that, taken together, will consist of 20 or more new residential dwellings.
- (1E) Subsection (1C) does not preclude the relevant Ministers also giving other factors high relative importance.
- (2) Subsection (1C) does not apply if the relevant Ministers are satisfied—
- (a) that, as a result of the overseas investment, the farm land will, or is likely to, be used exclusively, or nearly exclusively, for forestry activities; and
 - (b) that, whenever a crop of trees is harvested on the farm land, a new crop will be, or is likely to be, established on the farm land to replace the crop that is harvested (subject to subsection (7)); and
 - (c) that the non-occupation outcome will, or is likely to, occur in relation to the farm land (where that outcome in clause 17(3) to (5) of Schedule 2 applies with necessary modifications as if the reference to residential land were a reference to the farm land).
- (3) *[Repealed]*
- Special test relating to forestry activities*
- (4) Regulations may provide that the benefit to New Zealand test is also met if the relevant Ministers are satisfied—

- (a) that the relevant land is already used when the transaction is entered into, and will continue to be used, exclusively, or nearly exclusively, for forestry activities; and
 - (b) that—
 - (i) the relevant land is not residential land only; and
 - (ii) if the relevant land includes any residential land, the residential land adjoins other land that is included in the relevant land but is not residential land; and
 - (c) that the non-occupation outcome will, or is likely to, occur in relation to the relevant land (where that outcome in clause 17(3) to (5) of Schedule 2 applies with necessary modifications as if the reference to residential land were a reference to the relevant land); and
 - (d) that any requirements set out in regulations in accordance with subsection (5) will be, or are likely to be, met (subject to subsection (8)); and
 - (e) that, whenever a crop of trees is harvested on the relevant land, a new crop will be, or is likely to be, established on the relevant land to replace the crop that is harvested (subject to subsection (7)); and
 - (f) *[Repealed]*
 - (g) that any other requirements set out in regulations are met.
- (4A) To avoid doubt, the reference in subsection (2)(a) to the use of the farm land and the reference in subsection (4)(a) to the use of the relevant land mean the use that arises under the estate or interest referred to in section 12(1)(a).
- (5) Regulations may, for the purposes of subsection (4)(d), set out requirements that must be met after the overseas investment is given effect to.
- (6) Requirements set out in regulations for the purposes of subsection (4)(d) may (without limitation) be about 1 or more of the following:
- (a) activities that must, or must not, be carried out on the relevant land:
 - (b) the maintenance or protection of things that exist when or before the overseas investment transaction is entered into (including (without limitation) the maintenance of existing arrangements relating to historic heritage, biodiversity, environmental matters, public access, or the supply of logs):
 - (c) outcomes that must result from the overseas investment.
- Powers not to apply, or to modify, certain requirements*
- (7) The relevant Ministers may decide—
- (a) not to apply the requirement set out in subsection (2)(b) or (4)(e) if satisfied that the relevant overseas person (together with the relevant overseas person's associates) will not have sufficient ownership or control (direct or indirect) of rights in respect of the relevant land to ensure that the requirement will be met:

- (b) to modify the requirement set out in subsection (2)(b) or (4)(e) by not applying the requirement for a part of the relevant land if satisfied that the relevant overseas person (together with the relevant overseas person's associates) will not have sufficient ownership or control (direct or indirect) of rights in respect of that part of the relevant land to ensure that the requirement will be met for that part of the relevant land.
- (8) The relevant Ministers may decide not to apply, or may modify, any requirement set out in regulations for the purposes of subsection (4)(d) if satisfied that the relevant overseas person (together with the relevant overseas person's associates) will not have sufficient ownership or control (direct or indirect) of rights in respect of the relevant land to ensure that the requirement will be met.

Definitions

- (9) In this section,—

adjoins includes separated only by a public road (including a motorway or a State highway, and whether or not the road is formed)

forestry activities means any of the following activities in respect of any trees (whether exotic or native) that are to be harvested to provide wood:

- (a) maintaining a crop of trees:
- (b) harvesting a crop of trees:
- (c) maintaining the land during the period between harvesting a crop of trees and establishing a new crop of trees:
- (d) establishing a crop of trees.

Section 16A: inserted, on 22 October 2018, by section 13 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 16A(1AA) heading: inserted, on 24 November 2021, by section 9(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 16A(1AA): inserted, on 24 November 2021, by section 9(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 16A(1AA) table: amended, on 16 August 2022, by section 4(1)(a) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16A(1AA) table: amended, on 16 August 2022, by section 4(1)(b) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16A(1) heading: replaced, on 24 November 2021, by section 9(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 16A(1): replaced, on 24 November 2021, by section 9(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 16A(1A): inserted, on 24 November 2021, by section 9(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 16A(1B): inserted, on 24 November 2021, by section 9(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 16A(1B): amended, on 16 August 2022, by section 4(2) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16A(1C) heading: inserted, on 24 November 2021, by section 9(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 16A(1C): inserted, on 24 November 2021, by section 9(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 16A(1D): inserted, on 24 November 2021, by section 9(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 16A(1E): inserted, on 24 November 2021, by section 9(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 16A(2) heading: repealed, on 16 August 2022, by section 4(3) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16A(2): replaced, on 16 August 2022, by section 4(3) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16A(3): repealed, on 16 August 2022, by section 4(3) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16A(4)(a): replaced, on 16 August 2022, by section 4(4) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16A(4)(c): replaced, on 16 August 2022, by section 4(5) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16A(4)(f): repealed, on 24 November 2021, by section 9(3) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 16A(4A): inserted, on 16 August 2022, by section 4(6) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16A(6)(b): amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 16A(7)(a): amended, on 16 August 2022, by section 4(7) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16A(7)(b): amended, on 16 August 2022, by section 4(7) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16A(9) **forestry activities**: replaced, on 16 August 2022, by section 4(8) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16A(9) **special land**: repealed, on 24 November 2021, by section 9(4) of the Overseas Investment Amendment Act 2021 (2021 No 17).

16B Conditions for consents relating to sensitive land that is residential land: benefit to New Zealand test

- (1) This section applies if an application for consent for an overseas investment in sensitive land is being considered under the benefit to New Zealand test and the relevant land is or includes residential land.
- (2) However, this section does not apply (and *see* instead section 16C)—
 - (a) to the extent that the relevant land is farm land and the relevant Ministers are satisfied in accordance with section 16A(2); or
 - (b) where the application is being considered in accordance with section 16A(4).
- (3) If consent is granted, to the extent that the consent relates to the residential land,—

- (a) the relevant Ministers must determine a residential land outcome listed in the table in clause 19 of Schedule 2 as applying to the residential land; and
 - (b) the consent must be made subject to the set of conditions for the residential land outcome, subject to any exemptions applying (in each case, as described in the table).
- (4) Consent may be granted on the basis of different residential land outcomes applying for different parts of the residential land (with different sets of conditions imposed for different parts).

Example

A is an overseas person who wants to buy 100% of the shares in what is currently a 100% New Zealand-owned and -controlled company.

The company owns the following sensitive land (and has no other interests in sensitive land):

- 40 hectares of non-urban land (that is not residential land);
- residential land where 2 houses are being constructed.

No part of the land is, or will be, used for forestry activities.

Criteria for consent

Because the relevant land is a mix of sensitive (but not residential) land and residential land, section 16(1)(e) applies and (in addition to the other criteria in section 16(1) that apply) the benefit to New Zealand test must be met in relation to all of the relevant land.

Residential land outcomes

Because the relevant land includes residential land, section 16A(1)(b) applies.

A wants to complete and sell one of the houses and live in the other house. A's application for consent proposes the following residential land outcomes (from the table in clause 19 of Schedule 2) for the residential land:

- occupation as a main home or residence (on the basis that the commitment to reside in New Zealand test will be met in respect of part of the residential land);
- increased residential dwellings (for the remaining part of the residential land).

Required conditions

If consent is granted, each part of the residential land will be covered by a set of conditions (see clause 19 of Schedule 2) for the residential land outcomes that the relevant Ministers determine apply.

(See also sections 25A and 25B, in relation to the imposition of conditions generally.)

Section 16B: inserted, on 22 October 2018, by section 13 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 16B(2): replaced, on 16 August 2022, by section 5(1) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16B example: amended, on 16 August 2022, by section 5(2) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

16C Conditions for consents relating to sensitive land that will be used for forestry activities

- (1) Subsection (2) applies if an application for consent for an overseas investment in sensitive land is being considered under the benefit to New Zealand test, to the extent that the relevant land is farm land and the relevant Ministers are satisfied in accordance with section 16A(2).
- (2) If granted, the consent must be made subject to conditions for the purpose of ensuring that the requirements set out in section 16A(2) will be met, subject to section 16A(7).
- (3) Subsection (4) applies if an application for consent for an overseas investment in sensitive land is being considered under the benefit to New Zealand test in accordance with section 16A(4).
- (4) If granted, the consent must be made subject to conditions for the purpose of ensuring that the following requirements will be met:
 - (a) the requirements set out in section 16A(4)(a) and (c):
 - (b) the requirements set out in regulations made for the purposes of section 16A(4)(d), subject to section 16A(8):
 - (c) the requirement set out in section 16A(4)(e), subject to section 16A(7).
- (5) A condition imposed in relation to the requirement set out in section 16A(2)(b) or (4)(e) may require the replacement of a crop of trees that is harvested to be on a like-for-like basis or on any similar basis.

Section 16C: inserted, on 22 October 2018, by section 13 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 16C(1): replaced, on 16 August 2022, by section 6(1) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16C(2): replaced, on 16 August 2022, by section 6(1) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 16C(5): amended, on 16 August 2022, by section 6(2) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

17 Factors for assessing benefit of overseas investments in sensitive land

What are the factors

- (1) The factors for assessing the benefit of overseas investments in sensitive land are whether the overseas investment will, or is likely to,—
 - (a) result in economic benefits for New Zealand (for example, the creation or retention of jobs, the introduction of technology or business skills, increases in productivity or export receipts, or a reduced risk of illiquid assets):
 - (b) result in benefits to the natural environment (for example, protection of indigenous flora and fauna or erosion control):

- (c) result in continued or enhanced access by the public, or any section of the public, within or over the sensitive land or the features giving rise to the sensitivity (for example, access for recreational purposes or for the purposes of undertaking stewardship of, or exercising kaitiakitanga in relation to, historic heritage or the natural environment):
- (d) result in continued or enhanced protection of historic heritage in or on the relevant land (for example, agreement to execute a heritage covenant (or comply with existing covenants), agreement to support entry to wāhi tūpuna, wāhi tapu, or wāhi tapu areas on the New Zealand Heritage List/Rārangī Kōrero, taking other actions under the Heritage New Zealand Pouhere Taonga Act 2014 to recognise or protect heritage values, or agreement to land being set apart as a Māori reservation):
- (e) give effect to or advance a significant Government policy:
- (f) involve oversight of, or participation in, the overseas investment or any relevant overseas person by persons who are not overseas persons:
- (g) result in other consequential benefits to New Zealand.

How factors must be considered

- (2) For the purposes of section 16A(1)(a) and (b), the relevant Ministers—
 - (a) must consider all the factors in subsection (1) to determine which factor or factors are relevant to the overseas investment; and
 - (b) must determine whether the criteria in section 16A(1)(a) and (b) are met after having regard to those relevant factors and, in doing so,—
 - (i) must deduct from any benefit arising under a factor any directly comparable aspect of the counterfactual, and any negative impact of the overseas investment that is directly comparable, but must stop deducting at zero unless subsection (3) applies:
 - (ii) must not deduct from any benefit arising under a factor any non-directly comparable aspect of the counterfactual or any negative impact of the overseas investment that is not directly comparable unless subsection (3) applies:

Examples

Directly comparable

If a company is generating \$10 million in export receipts at the time that the overseas investment transaction is entered into and the overseas investment will result in a total of \$15 million in export receipts, the net benefit in respect of export receipts under the economic factor is \$5 million.

Non-directly comparable

If the overseas investment will result in an increase in jobs, but a decrease in export receipts, as compared with the counterfactual,

the decrease in export receipts cannot be deducted from the benefit associated with the increase in jobs.

If an overseas investment will result in the introduction of technology but a decrease in export receipts, the decrease in export receipts must not be deducted from any benefits arising from the introduction of technology.

- (iii) must determine the relative importance to be given to each relevant factor or particular benefit arising under a factor, subject to section 16A(1C).
- (3) If the overseas investment involves the extraction of water for bottling, or other extraction of water in bulk for human consumption,—
- (a) an additional factor is whether the overseas investment will, or is likely to, result in a negative impact on water quality or sustainability; and
- (b) the relevant Ministers must determine the relative importance to be given to this factor and deduct that from any overall benefit to New Zealand that has been determined under section 16A(1)(a).

Section 17: replaced, on 24 November 2021, by section 10 of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 17(1)(c): amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 17(1)(d): amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 17(2): amended, on 16 August 2022, by section 7 of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Section 17(2)(b): amended, on 16 August 2022, by section 7 of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

18 Criteria for consent for overseas investments in significant business assets

The criteria for an overseas investment in significant business assets are both of the following:

- (a) the investor test is met:
- (b) if the overseas investment in significant business assets is a transaction of national interest, the Minister has not declined consent to the transaction (*see* section 20C).

Section 18: replaced, on 22 March 2021, by section 14(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

18A Investor test

Purpose

- (1) The purpose of the investor test is to determine whether investors are unsuitable to own or control any sensitive New Zealand assets, by assessing whether

they are likely to pose risks to New Zealand, based on factors relating to their character and capability.

When investor test is met

- (2) The investor test is met in respect of an overseas investment if the relevant Ministers are satisfied that all of the following persons (**investors**), excluding persons who are not overseas persons, meet the investor test:
- (a) the relevant overseas person; and
 - (b) all the individuals with control of the relevant overseas person, to the extent that the relevant overseas person is not an individual.
- (3) The investor test is met in respect of an investor (**A**) if the relevant Ministers are satisfied that—
- (a) none of the investor test factors are established; or
 - (b) any investor test factor or factors that are established do not make A unsuitable to own or control any sensitive New Zealand assets.

Investor test factors

- (4) The investor test factors are—

Character

- (a) the following, whether in New Zealand or any other jurisdiction:
- (i) whether A has, at any time, been convicted of an offence for which A has been sentenced to imprisonment for a term of 5 years or more, or for an indeterminate period capable of running for 5 years or more:
 - (ii) whether A has, at any time in the preceding 10 years, been convicted of an offence for which A has been sentenced to imprisonment for a term of 12 months or more, or for an indeterminate period capable of running for 12 months or more:
 - (iii) if A is not an individual, whether A has, at any time in the preceding 10 years, been convicted of an offence for which A has been sentenced to pay a fine:
 - (iv) whether A has been ordered, in the preceding 10 years, by a court, any other court in New Zealand, or any equivalent body overseas to pay a civil pecuniary penalty in respect of a contravention of any enactment:
 - (v) whether, at any time in the preceding 10 years, a court has imposed a penalty on A for a contravention of this Act or the regulations:
 - (vi) whether any other proceedings have been begun against A, and have not been completed, for any offence, or contravention of an enactment, that carries a penalty corresponding to those listed in subparagraphs (i) to (v):

- (vii) whether A has entered, in the preceding 10 years, into an enforceable undertaking or an equivalent agreement with any regulator in respect of any contravention or alleged contravention of any enactment:
 - (b) whether A is an individual of a kind referred to in section 16 of the Immigration Act 2009 (certain persons not eligible for visas or entry permission under that Act):
Capability
 - (c) whether A is a person prohibited from being a director or promoter of, or concerned in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Financial Markets Conduct Act 2013, or the Takeovers Act 1993:
 - (d) whether A is a person subject to a management banning order under the Financial Markets Conduct Act 2013 or the Takeovers Act 1993 or is subject to an order under section 108 of the Credit Contracts and Consumer Finance Act 2003:
 - (e) whether A has become liable, in the preceding 10 years, to pay a penalty in respect of any of the following:
 - (i) an abusive tax position under section 141D of the Tax Administration Act 1994 or an equivalent enactment in another jurisdiction:
 - (ii) evasion or a similar act under section 141E of the Tax Administration Act 1994 or an equivalent enactment in another jurisdiction:
 - (f) whether A, at the date on which the application is made, has outstanding unpaid tax of \$5 million or more due and payable in New Zealand or an equivalent amount due and payable in another jurisdiction (where the amount is converted into New Zealand currency by applying the close of trading spot exchange rate on the date or dates on which the tax became due and payable).
- (5) For the purposes of this section,—
- (a) **enactment** means an enactment that is or was part of the law of New Zealand or of any other jurisdiction:
 - (b) **preceding 10 years** means the period of 10 years ending with the date of application:
 - (c) **tax** includes any interest or penalty imposed in respect of any tax (in New Zealand or another jurisdiction):
 - (d) section 15(2) of the Immigration Act 2009 applies to subsection (4)(a) in the same way as it applies to section 15(1)(a) and (b) of that Act:
 - (e) an individual is not **an individual of a kind referred to in section 16 of the Immigration Act 2009** if 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.

Section 18A: inserted, on 22 March 2021, by section 15 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

19 Applying good character and Immigration Act 2009 criteria

[Repealed]

Section 19: repealed, on 22 March 2021, by section 16 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

20 Exemptions from farm land offer criterion

Powers to exempt

- (1) Section 16(1)(f) does not apply to an overseas investment if—
 - (a) the relevant Ministers consider that the overseas investment need not meet this criterion by reason of the circumstances relating to the particular overseas investment or section 12 interest or the nature of the land to which the section 12 interest relates (for example, its productive capacity); or
 - (b) the overseas person making the overseas investment belongs to a class of overseas persons, or the overseas investment transaction belongs to a class of transactions, that is exempted from this criterion by the relevant Ministers.
- (2) The relevant Ministers may also exempt a person or transaction from—
 - (a) the requirement that offers for acquisition must be on the open market;
 - (b) any other requirement in regulations about how farm land or section 12 interests must be advertised.

Restrictions on powers to exempt

- (3) The relevant Ministers may grant an exemption under this section only if those Ministers consider that—
 - (a) there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption; and
 - (b) the extent of the exemption is not broader than is reasonably necessary to address those circumstances.
- (4) In so considering, the relevant Ministers—
 - (a) must have regard to the purpose of this Act; and
 - (b) may have regard to any other factors that seem to those Ministers to be relevant to the circumstances.

Applications

- (5) An application for an exemption under this section may be made at any time by written notice to the regulator accompanied by the fee required by regulations.

Conditions

- (6) An exemption under this section may be made subject to any conditions.

Class exemptions

- (7) An exemption made under subsection (1)(b) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (8) The reasons of the relevant Ministers for granting the exemption must be published with the exemption.

Other exemptions

- (9) An exemption made under subsection (1)(a) or (2) must be published on an Internet site maintained by, or on behalf of, the regulator, together with the reasons of the relevant Ministers for granting the exemption.
- (10) However, publication under subsection (9) may be deferred or dispensed with (in whole or in part) if the relevant Ministers are satisfied on reasonable grounds that good reason for withholding the exemption or the reasons (as the case may be) would exist under the Official Information Act 1982, in which case the relevant Ministers must publish the reason for deferring or dispensing with publication and the grounds in support of that reason.

Maximum duration

- (11) An exemption under this section may continue in force for not more than 5 years (and at the close of the date that is 5 years after the exemption first comes into force, the exemption must be treated as having been revoked unless it sooner is revoked or expires).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must:	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	• publish it in the <i>Gazette</i>	
	• publish it on a website maintained by, or on behalf of, the regulator	

Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
---------------------	--	----------------------------------

Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116
---------------------	--	------------------

This note is not part of the Act.

Section 20: replaced, on 24 November 2021, by section 11 of the Overseas Investment Amendment Act 2021 (2021 No 17).

Transactions of national interest

Heading: inserted, on 16 June 2020, by section 17 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

20A Transactions that are transactions of national interest*Transactions involving non-NZ government investors or SIB*

- (1) The following kinds of overseas investment transactions are transactions of national interest:

Investment by non-NZ government investors

- (a) a transaction of a kind described in section 12(1)(a) or 13(1)(c) of this Act, or in section 57D(a) of the Fisheries Act 1996, where, as a result of the acquisition, the relevant estate or interest in land, property, or fishing quota is acquired by a non-NZ government investor:
- (b) a transaction of a kind described in section 12(1)(b)(i) or (ii) or 13(1)(a) of this Act, or in section 57D(b) of the Fisheries Act 1996, where, as a result of the acquisition, a non-NZ government investor has more than 25% ownership or control interest in A:

Investment in strategically important businesses

- (c) a transaction of a kind described in section 12(1)(a) where the estate or interest in land is used in carrying on a SIB:
 - (d) a transaction of a kind described in section 12(1)(b)(i) or (ii) or 13(1)(a) where A is carrying on a SIB:
 - (e) a transaction of a kind described in section 13(1)(c) where the acquisition is of or includes property (including goodwill and other intangible assets) in New Zealand used in carrying on a SIB.
- (1A) However, for the purpose of subsection (1)(a) and (b), references to a “relevant government investor or investors” in the definition of relevant government enterprise in section 6(1) include only relevant government investors from the same country.

Example

An acquisition by a company of which a New South Wales Government pension fund owns 15% and a Victorian Government pension fund owns 15% is a transaction of national interest (because Australia is the single country). But an acquisition by a company of which a New South Wales Government pension fund owns 15% and a Belgian Government pension fund owns 15% is not a transaction of national interest.

-
- (2) The Minister must notify an applicant if the Minister considers that an application for consent involves a transaction of the kind set out in subsection (1), unless the applicant has already identified this in their application.
 - (3) However, failure to notify an applicant does not affect a transaction’s status as a transaction of national interest and does not invalidate any action taken by the Minister in reliance on a transaction’s status as a transaction of national interest.
 - (4) This section is subject to any regulations made under section 127(1).

Section 20A: inserted, on 16 June 2020, by section 17 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 20A(1)(b): amended, on 5 July 2021, by section 12(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 20A(1)(e): replaced, on 5 July 2021, by section 12(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 20A(1A): inserted, on 5 July 2021, by section 12(3) of the Overseas Investment Amendment Act 2021 (2021 No 17).

20AA Exemptions from definition

- (1) The purpose of this section is to allow 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, provided there are appropriate limitations on the extent to which government control or influence could affect the pursuit of non-commercial objectives.
- (2) The Minister may exempt any relevant government enterprise from the definition of non-NZ government investor in section 6(1) for the purpose of section 20A(1)(a) or (b) if the Minister considers—
 - (a) that the enterprise meets the criteria relating to control or influence that are prescribed in the regulations; and
 - (b) that there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption; and
 - (c) that the extent of the exemption is not broader than is reasonably necessary.
- (3) An application for an exemption may be made at any time by written notice to the regulator accompanied by the fee required by regulations.
- (4) The Minister must publish each exemption granted under this section on an Internet site maintained by, or on behalf of, the regulator, together with the reasons of the Minister for granting the exemption.
- (5) However, publication may be deferred or dispensed with (in whole or in part) if the Minister is satisfied on reasonable grounds that good reason for withholding the exemption or the reasons (as the case may be) would exist under the Official Information Act 1982.
- (6) An exemption may be made subject to any conditions.
- (7) An exemption under this section may continue in force for not more than 5 years (and at the close of the date that is 5 years after the exemption first comes into force, the exemption must be treated as having been revoked unless it sooner is revoked or expires).

Section 20AA: inserted, on 5 July 2021, by section 13 of the Overseas Investment Amendment Act 2021 (2021 No 17).

20B Other transactions may be transactions of national interest if notice given

- (1) If the Minister considers that any other overseas investment transaction for which an application for consent has been made could be contrary to New Zealand's national interest, the Minister may notify the applicant in writing that the transaction is a transaction of national interest.

- (2) The person making a decision under section 24 in relation to a particular application cannot exercise the Minister's power under subsection (1) in relation to that application.

Section 20B: inserted, on 16 June 2020, by section 17 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

20C Consent may be declined if transaction contrary to national interest

- (1) The Minister may decline consent to a transaction of national interest if the Minister considers that the transaction is contrary to New Zealand's national interest.
- (2) The person making a decision under section 24 in relation to a particular application cannot exercise the Minister's power under subsection (1) in relation to that application.
- (3) If the Minister does not decline consent to a transaction of national interest, the Minister may impose any conditions on any consent that may be granted under this Act, and section 25A applies with necessary modifications.

Section 20C: inserted, on 16 June 2020, by section 17 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 20C(3): inserted, on 5 July 2021, by section 14 of the Overseas Investment Amendment Act 2021 (2021 No 17).

20D Who are critical direct suppliers

- (1) The Minister may identify a person as a critical direct supplier if the Minister is satisfied that—
- (a) the person is a direct supplier of goods or services to an intelligence or security agency; and
 - (b) the goods or services are integral to the functioning of the agency as an intelligence or security agency; and
 - (c) the supply of those goods or services cannot readily be replaced.
- (2) The Minister must—
- (a) notify a person that they are a critical direct supplier; and
 - (b) either—
 - (i) publish that person's name in a list of critical direct suppliers on an Internet site maintained by or for the regulator; or
 - (ii) if subsection (3) applies, notify the person that they are an unpublished CDS.
- (3) The Minister may defer or dispense with publication if the Minister is satisfied on reasonable grounds that good reason for withholding the publication would exist under the Official Information Act 1982.
- (4) The Minister must—
- (a) notify a person if the person ceases to be a critical direct supplier; and

- (b) if relevant, remove that person's name from the list of critical direct suppliers on the Internet site maintained by or for the regulator.

Section 20D: inserted, on 16 June 2020, by section 17 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

20E Provisions relating to unpublished CDS

- (1) This section applies if a critical direct supplier has been notified that it is an unpublished CDS.

Notice to prospective investors and new investors of status as critical direct supplier

- (2) An unpublished CDS must notify a person of the unpublished CDS's status as a critical direct supplier as soon as is reasonably practicable after the earlier of—
- (a) the date on which there are reasonable grounds for an unpublished CDS to conclude that the person is likely to become an investor in that unpublished CDS; and
 - (b) the date on which an unpublished CDS knows or ought reasonably to know or believes that the person has become an investor in that unpublished CDS.
- (3) A notice under subsection (2) must—
- (a) be in writing; and
 - (b) contain any other information specified by the Minister by notice.

Notice to regulator of investment or prospective investment

- (4) An unpublished CDS must notify the regulator that it has given a notice under subsection (2) as soon as is reasonably practicable after the notice under subsection (2) is given.
- (5) A notice under subsection (4) must—
- (a) be in writing; and
 - (b) contain any information specified by the Minister by notice; and
 - (c) be accompanied by a copy of the notice given under subsection (2).

Contravention is not offence

- (6) A person who fails to comply with this section does not commit an offence for the purposes of section 45.
- (7) In this section, an **investor** is a person who, under a call-in transaction or a transaction of national interest, acquires sensitive assets that relate to a critical direct supplier.
- (8) A notice under subsection (3)(b) or (5)(b) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication The maker must publish it in the *Gazette*

LA19 ss 73, 74(1)(a),
Sch 1 cl 14

Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives <i>This note is not part of the Act.</i>	LA19 ss 115, 116

Section 20E: inserted, on 16 June 2020, by section 17 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 20E(3)(b): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 20E(5)(b): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 20E(8): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

20F Status of unpublished CDS confidential

- (1) This section applies to—
 - (a) a critical direct supplier who has been notified that it is an unpublished CDS; and
 - (b) a person who receives a notice under section 20E; and
 - (c) a person to whom the status of an unpublished CDS as a critical direct supplier has been disclosed in confidence, if that person knows the critical direct supplier is an unpublished CDS.
- (2) A person to whom this section applies must not knowingly or recklessly disclose the fact that an unpublished CDS is a critical direct supplier.
- (3) Subsection (2) does not apply to the extent that disclosure is—
 - (a) required under section 20E, 23, or 87; or
 - (b) otherwise authorised by the regulator.

Section 20F: inserted, on 16 June 2020, by section 17 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

20G What are media businesses with significant impact

- (1) A **media business with significant impact**, in relation to an overseas investment transaction or a call-in transaction, is a business that publishes content, or causes content to be published, if—
 - (a) all or a significant part of the business involves the generation or aggregation of content; and
 - (b) the business has a significant impact on the plurality of content available to the public or a particular section of the public, either before or as a result of the overseas person's (or their associate's) acquisition.
- (2) Content is **available to the public or a particular section of the public** whether or not—
 - (a) a receiver has to pay for the content; or

- (b) a receiver is required to be a subscriber or member of the publishing service; or
 - (c) the content is delivered on the demand of a receiver; or
 - (d) the content is aimed at particular groups of people (for example, people who are located in a particular area of New Zealand, who have a particular interest, or who speak a particular language).
- (3) In this section,—
- content** means news, information, or opinion
- publish** includes to transmit or broadcast by any means (including, but not limited to, Internet sites, applications, and software).
- Section 20G: inserted, on 16 June 2020, by section 17 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Subpart 2—Procedure for making an application for consent and for granting consent

21 Application for consent

An application for consent must be made in accordance with this Act and regulations.

22 Who must apply for consent

- (1) The following persons must apply for consent to an overseas investment transaction:
- (a) each overseas person or associate making the overseas investment; and
 - (b) if the transaction comes within section 12(1)(b) or section 13(1)(a) because of the issue, buyback, or cancellation of securities, and consent has not been obtained by a person under paragraph (a), the issuer of the securities.
- (2) In addition, the regulator may require any other party to the overseas investment transaction, or any associate of the person referred to in subsection (1)(a) in relation to the overseas investment, to be a party to the application.

23 Requirements for application for consent

- (1) An application for consent must—
- (a) be in writing; and
 - (b) be signed by each applicant; and
 - (c) contain the information set out in regulations; 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.
- (4) A person required to provide information under subsection (3) must comply with the regulator's notice within the time, and in the manner, specified in it.

Section 23(1)(c): replaced, on 16 June 2020, by section 18(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 23(4): inserted, on 16 June 2020, by section 18(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

23A Applications for standing consent in advance of transaction

- (1) A person may, in the circumstances set out in Schedule 4, apply for a consent (a **standing consent**) for 1 or more transactions in respect of 1 or more overseas investments in sensitive land—
 - (a) that have not been entered into at the time when the application is made and when the standing consent is granted; and
 - (b) that fall within a class of transactions described in the application.
- (2) A standing consent is a consent to give effect to an overseas investment under a transaction for the purposes of section 10(1)(a), subject to Schedule 4.
- (3) However, a standing consent is not a consent to give effect to an overseas investment under a transaction of a type referred to in section 20A(1)(c) or (d).

Section 23A: inserted, on 22 October 2018, by section 16 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 23A(3): inserted, on 5 July 2021, by section 15 of the Overseas Investment Amendment Act 2021 (2021 No 17).

24 Who decides application

- (1) An application must be decided,—
 - (a) in the case of a land decision, by the Minister and the Minister for Land Information:
 - (b) in the case of a business decision, by the Minister:
 - (c) in the case of a fishing quota decision, by the Minister and the Minister of Fisheries:
 - (d) in the case of a decision that is in more than 1 of the above categories, by all of the Ministers that are relevant to those categories.
- (2) However, a Minister or Ministers may delegate the power to decide (*see* section 32).

25 Granting or refusal of consent

- (1) A consent under this Act may be—
- (a) granted in respect of a proposed or specified transaction, instrument, or person:
 - (b) granted in respect of classes of transactions, instruments, or persons that the relevant Minister or Ministers determine:
 - (c) *[Repealed]*
 - (d) granted subject to the payment of a bond:
 - (e) granted in whole or in part:
 - (f) granted retrospectively:
 - (g) refused.
- (2) A transaction may not be cancelled under section 29(1)(c) if it has been granted retrospective consent.

Section 25(1)(c): repealed, on 22 October 2018, by section 17 of the Overseas Investment Amendment Act 2018 (2018 No 25).

25A Conditions of consent

- (1) A consent granted under this Act may, in addition to the automatic conditions in sections 25B, 25C, and 25D and any conditions that this Act requires be imposed on the consent, be made subject to such other conditions (if any) that the relevant Minister or Ministers think appropriate.
- (2) Nothing in this Act limits the discretion of the relevant Minister or Ministers under subsection (1). For example, conditions of a consent may—
- (a) expand on, or be similar to, conditions that this Act requires be imposed on the consent (if any):
 - (b) expand on, be similar to, or be the same as conditions that this Act requires be imposed on other consents:
 - (c) require the consent holder to dispose of property in certain circumstances (for example, if a condition of consent is breached).
- (3) For the purpose of enforcing a condition, the relevant Minister or Ministers may enter into a contract or deed with an applicant (including a mortgage or other security arrangement).

Section 25A: inserted, on 22 October 2018, by section 18 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 25A(1): amended, on 5 July 2021, by section 16 of the Overseas Investment Amendment Act 2021 (2021 No 17).

25B Automatic conditions: every overseas investment

It is a condition of every consent, whether or not it is stated in the consent, that—

- (a) the information provided by each applicant to the regulator or the relevant Minister or Ministers in connection with the application was correct at the time it was provided; and
- (b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent is granted, unless compliance should reasonably be excused.

Section 25B: inserted, on 22 October 2018, by section 18 of the Overseas Investment Amendment Act 2018 (2018 No 25).

25C Automatic condition: every transaction of national interest

It is a condition of every consent relating to a transaction of national interest, whether or not it is stated in the consent, that each consent holder must not, in relation to sensitive assets in which the relevant investment is made, act or omit to act with a purpose or an intention of adversely affecting national security or public order.

Section 25C: inserted, on 16 June 2020, by section 20 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

25D Automatic condition: transactions involving fresh or seawater areas

- (1) Schedule 5 applies if—
 - (a) an overseas person or their associate obtains consent for an overseas investment in sensitive land; and
 - (b) the section 12 interest to be acquired is or includes a fresh or seawater interest; and
 - (c) the criteria that were satisfied as part of the application for consent included the benefit to New Zealand test.
- (2) If Schedule 5 applies, it is a condition of every consent, whether or not it is stated in the consent, that each consent holder must comply with the provisions of that schedule.

Section 25D: inserted, on 24 November 2021, by section 17 of the Overseas Investment Amendment Act 2021 (2021 No 17).

26 Minister may revoke consent in case of fraud

The Minister may revoke a consent for an overseas investment transaction before the overseas investment has been given effect if, in the Minister's opinion, the consent has been obtained by fraud.

27 Consent may be varied by agreement

- (1) A consent granted under this Act may be varied by the relevant Minister or Ministers with the agreement of the consent holder.
- (2) Any conditions of a consent may be varied or added to by the relevant Minister or Ministers with the agreement of the consent holder.

- (3) A condition of a consent may be revoked by the relevant Minister or Ministers.
- (3A) Subsection (3) does not apply in respect of a condition that this Act required to be imposed but the relevant Ministers may, with the agreement of the consent holder, vary the condition (for example, by varying the specified period within which a matter must occur).
- (4) An application for variation of a consent or a condition of a consent may be made by written notice to the regulator accompanied by the fee required by regulations.

Section 27(3A): inserted, on 22 October 2018, by section 19 of the Overseas Investment Amendment Act 2018 (2018 No 25).

27A Consent holder may apply for new consent

- (1) This section applies to a consent for a transaction that is subject to 1 or more conditions that this Act required to be imposed in relation to the consent.
- (2) The holder of the consent may apply for a new consent for the transaction.
- (3) The application must be made on the basis that any overseas investments that have resulted from the transaction are instead to be treated as if they will be given effect to on a future date specified or determined in accordance with the application.
- (4) The relevant Ministers—
- (a) must consider the application in accordance with section 14; and
 - (b) may grant the new consent if satisfied that all of the applicable criteria are met.
- (5) Despite subsection (3), if the application asks for the benefit to New Zealand test to be applied to any overseas investment, the relevant Ministers may—
- (a) assess the benefit to New Zealand (or any part of it or group of New Zealanders) by comparing the likely result of the overseas investment from the date on which the overseas investment was actually given effect to:
 - (b) otherwise apply (wholly or partly) any provision of sections 16A to 16C as they would have done had they been considering the application at the time of the original application for consent for the transaction.
- (6) If the relevant Ministers grant the new consent, the new consent (including its conditions) replaces the previous consent (including its conditions) with effect from the start of—
- (a) the date referred to in subsection (3); or
 - (b) if later, the date after the date on which the new consent is granted.

Section 27A: inserted, on 22 October 2018, by section 20 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 27A(5)(a): amended, on 5 July 2021, by section 18 of the Overseas Investment Amendment Act 2021 (2021 No 17).

28 Conditions of consent

[Repealed]

Section 28: repealed, on 22 October 2018, by section 21 of the Overseas Investment Amendment Act 2018 (2018 No 25).

29 Transaction may be cancelled

- (1) A transaction for which consent is required under this Act and under which the overseas investment has been given effect without that consent—
 - (a) is not an illegal contract for the purposes of subpart 5 of Part 2 of the Contract and Commercial Law Act 2017; and
 - (b) is not void only because the overseas investment has been given effect to without the requisite consent or because giving effect to the overseas investment without the requisite consent is an offence; but
 - (c) may be cancelled by—
 - (i) a party to the transaction who was not required to obtain consent to the transaction under this Act, by giving notice in writing to all the other parties; or
 - (ii) the court, on the application of the regulator.
- (2) On cancellation under this section,—
 - (a) the court has the same powers as it has under sections 43 to 48 of the Contract and Commercial Law Act 2017; and
 - (b) if the court orders the cancellation on the regulator's application, the court may also make any other order necessary to give effect to the cancellation.

Section 29(1)(a): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 29(2)(a): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

29A Investor test applications where no change since investor test last met

- (1) A person (**A**) may apply at any time for an assessment of whether the person meets the investor test, in which case the Minister must determine the matter in accordance with section 18A(3) to (5).
- (2) Subsections (3) and (4) apply if the investor test has to be met in respect of a particular overseas investment (a **new investment**) and a person (**A**) is a person who previously met the investor test.
- (3) In that case, the investor test is met, to the extent that it applies to A, if the relevant Ministers are satisfied, in respect of A, that—
 - (a) there has been no change in the extent to which the investor test factors are established; or

- (b) any change in the extent to which the investor test factors are established does not make A unsuitable to own or control any sensitive New Zealand assets.
- (4) The statutory declaration required to accompany the application must include verification as to whether there has been any change in the extent to which the investor test factors are established since the information previously provided to the regulator about those factors.
- (5) However, if A has ever been the investor (or one of the investors) referred to in section 18A(2) in respect of a transaction of national interest for which consent was declined for reasons connected to A under section 20C, then—
 - (a) subsection (1) does not apply; and
 - (b) subsection (3) does not apply unless A has met the investor test since that consent was declined.
- (6) Section 23 applies with necessary modifications to an application for an assessment of whether a person meets the investor test.
- (7) A single application may relate to all or any of the following applicants:
 - (a) 1 or more persons who together are contemplating an overseas investment transaction (or a series of related or linked transactions); and
 - (b) 1 or more persons who would be associates of the persons in paragraph (a) in relation to those transactions, if they went ahead.

Section 29A: inserted, on 5 July 2021, by section 19 of the Overseas Investment Amendment Act 2021 (2021 No 17).

Subpart 3—Administration

30 Regulator

- (1) The regulator is the chief executive of the department that for the time being is designated by the Minister by notice in writing to the chief executive as the regulating department.
- (2) The Minister may at any time by notice in writing to the chief executive revoke the designation of his or her department as the regulating department.

31 What regulator does

The regulator's functions are to—

- (a) consider each application and advise the relevant Minister or Ministers on how the application should be determined;
- (b) exercise any of the powers or functions that have been delegated to him or her under this Act or regulations;
- (c) in relation to an application, consult as the regulator thinks appropriate;
- (d) monitor compliance with consents or orders made under this Act;
- (e) issue guidelines when necessary;

- (f) compile and keep records relating to applications, for example, the number of applications in a particular year:
- (g) compile and make available statistics relating to applications:
- (h) provide general information for the benefit of applicants for consent about New Zealand's overseas investment rules:
- (ha) do the following:
 - (i) monitor compliance with this Act and the regulations:
 - (ii) investigate conduct that constitutes or may constitute a contravention, or an involvement in a contravention, of this Act or the regulations:
 - (iii) investigate conduct that constitutes or may constitute an offence under this Act:
 - (iv) enforce this Act and the regulations:
- (i) do anything else that is necessary for the efficient operation of the rules relating to overseas investment in sensitive New Zealand assets or the management of certain risks, such as national security and public order risks, associated with transactions by overseas persons.

Section 31(d): replaced, on 16 June 2020, by section 21(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 31(ha): inserted, on 22 October 2018, by section 22 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 31(i): amended, on 16 June 2020, by section 21(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

32 Delegation by relevant Minister or Ministers

- (1) The relevant Minister or Ministers may delegate to the regulator or any other person any of his or her or their powers or functions under this Act or regulations (including this power of delegation).
- (2) However, the following cannot be delegated in accordance with subsection (1):
 - (a) a decision under section 20B to advise an applicant that a transaction is a transaction of national interest:
 - (b) a decision under section 20C that a transaction of national interest is contrary to New Zealand's national interest:
 - (c) a decision under section 88, 90, 92, 93, or 96 that a call-in transaction, or an event, or the actions of an overseas person or their associate, gives rise, or is likely to give rise, to a risk referred to in section 81:
 - (d) a decision under section 92, 93, or 96 that a risk referred to in section 81 cannot be adequately managed in another manner or that the risk is too significant to allow a transaction to be given effect to.
- (3) *See* also section 20B(2) or 20C(2) (a person making a decision under section 24 cannot also exercise the Minister's power under section 20B(1) or 20C(1)).

Section 32(2): inserted, on 16 June 2020, by section 22 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 32(3): inserted, on 16 June 2020, by section 22 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

33 Rules that apply to delegation under this Act or regulations

- (1) The delegation—
 - (a) must be in writing;
 - (b) in the case of delegation by the Minister, may (but does not have to) be made in a Ministerial directive letter;
 - (c) may be made generally or in relation to any particular matter or class of matters;
 - (d) may be made to—
 - (i) a specified person; or
 - (ii) persons of a specified class; or
 - (iii) the holder for the time being of a specified office or appointment; or
 - (iv) the holders of offices or appointments of a specified class;
 - (e) may be revoked at any time.
- (2) The delegation may be made subject to any conditions or restrictions that the delegator thinks appropriate.
- (3) Subject to any general or special directions or conditions or restrictions given or imposed by the delegator, the person to whom a power or function is delegated may exercise that power or function in the same way and with the same effect as if it had been conferred directly by this Act or regulations and not by delegation.
- (4) A person who purports to act under a delegation is presumed to act in accordance with the terms of the delegation, unless the contrary is proved.
- (5) A delegation does not prevent the delegator from exercising the power or function that has been delegated.

34 Ministerial directive letter

- (1) The Minister may direct the regulator by a Ministerial directive letter, and the regulator must comply with it.
- (2) Subsection (1) applies even if the subject matter of the Ministerial directive letter relates to a power that has been delegated to the regulator.
- (3) A Ministerial directive letter may direct the regulator about the following things:

- (a) the Government’s general policy approach to overseas investment in sensitive New Zealand assets, including the relative importance of different criteria or factors in relation to particular assets:
 - (b) the asset types, value thresholds, and area thresholds over which the regulator has power to make decisions:
 - (ba) conditions of consents or direction orders, including conditions that this Act requires be imposed:
 - (c) the level of monitoring required in relation to conditions of consent:
 - (d) *[Repealed]*
 - (e) any general or specific matter relating to the regulator’s functions, powers, or duties.
- (4) A Ministerial directive letter is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must publish it in the <i>Gazette</i>	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 34(3)(ba): replaced, on 16 June 2020, by section 23 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 34(3)(d): repealed, on 5 July 2021, by section 20(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 34(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

35 Ministerial directive letter must be published, etc

[Repealed]

Section 35: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

36 Regulator may issue guidelines

- (1) The regulator may issue guidelines about the following things:
 - (a) the offer of foreshore, seabed, riverbed, or lakebed to the Crown:
 - (b) offer requirements for farm land:
 - (c) monitoring compliance with conditions of consent:
 - (d) the level of information that must be provided in an application:

- (e) the criteria to be taken into account in deciding whether an overseas person intends to reside in New Zealand indefinitely:
 - (ea) matters relating to the national interest, national security, public order, and risk management actions:
 - (f) any other matters relating to applications, the criteria and consent process, and the rules on overseas investment in sensitive New Zealand assets.
- (2) The regulator must not issue a guideline unless it has first been approved by the Minister.

Section 36(1)(ea): inserted, on 16 June 2020, by section 24 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

37 Regulator must keep list of reserves, parks, and other sensitive areas

[Repealed]

Section 37: repealed, on 5 July 2021, by section 20(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

37A Regulator must publish list of sensitive adjoining land relating to collective group of Māori

- (1) *[Repealed]*
- (2) The regulator must compile and keep a list of land and reserves for which the adjoining land is sensitive under rows 10 and 11 of table 2 in Part 1 of Schedule 1.
- (3) The regulator may amend that list.
- (4) The list is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must publish it on a website maintained by, or on behalf of, the regulator	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 37A: inserted, on 16 June 2020, by section 25 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 37A(1): repealed, on 5 July 2021, by section 21 of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 37A(2): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 37A(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

37B Time frames

- (1) The Governor-General may, by Order in Council, make regulations—
 - (a) setting time frames for the exercise of powers, performance of functions and duties, and provision of services under this Act:
 - (b) requiring information to be included in the annual report of the regulator about the extent to which those time frames are met.
- (2) The time frames do not create any legal right enforceable in a court of law or affect or limit the way in which a person (for example, a Minister or the regulator) is required to exercise a statutory power of decision.
- (3) In particular, no form of monetary compensation or relief, or injunctive relief, is available as a remedy if the time frames are not met.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 37B: inserted, on 16 June 2020, by section 25 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 37B(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 4—Information-gathering powers

Heading: replaced, on 22 October 2018, by section 30 of the Overseas Investment Amendment Act 2018 (2018 No 25).

38 Regulator may require person to provide information for monitoring purposes

- (1) For the purpose of monitoring compliance with the terms or conditions of a consent, an exemption, an exemption certificate, a direction order, an interim direction order, a prohibition order, or a disposal order, the regulator may, by notice in writing, require a person (A) who is required to comply with any of the terms or conditions to provide the regulator with the information or documents (or both) that are specified in the notice.
- (2) A must—
 - (a) comply with the regulator’s notice within the time, and in the manner, specified in it; and

- (b) certify that the information provided to the regulator, including information contained in any documents provided, is correct.
- (3) The regulator may retain or copy any information or document that is provided under this section.

Section 38: replaced, on 22 October 2018, by section 31 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 38 heading: amended, on 16 June 2020, by section 26(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 38(1): replaced, on 16 June 2020, by section 26(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

38A Information for tax purposes

- (1) The purpose of this section is to enable the making of regulations to impose requirements under which overseas persons who make, or apply to make, an overseas investment in sensitive New Zealand assets must provide information that the Commissioner of Inland Revenue considers necessary or relevant for any purpose relating to—
- (a) the administration or enforcement of an Inland Revenue Act (within the meaning of the Income Tax Act 2007);
 - (b) the administration or enforcement of any matter arising from, or connected with, a function lawfully conferred on the Commissioner.
- (2) For the purpose of this section, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that impose requirements on all or any persons who make, or apply to make, an overseas investment in sensitive assets, including prescribing all or any of the following:
- (a) overseas investments to which all or any requirements apply (for example, by reference to a type of investment, a pathway, or a type of land);
 - (b) what information or other evidence or documents must be provided;
 - (c) by whom, when, where, and how the information must be provided;
 - (d) to whom the information must be provided;
 - (e) the form that must be used;
 - (f) requirements with which information, evidence, or documents that are provided must comply.
- (3) The Commissioner may treat information obtained under this section as information obtained for the purposes of administering the Inland Revenue Acts.
- (4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication PCO must publish it on the legislation website and notify LA19 s 69(1)(c) it in the *Gazette*

Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 38A: inserted, on 5 July 2021, by section 22 of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 38A(4): inserted, on 28 October 2021, by regulation 111 of the Legislation Act (Amendments to Legislation) Regulations 2021 (LI 2021/247).

39 Regulator may require any person to provide information for statistical or monitoring purposes

- (1) The regulator may, by notice in writing, require any person with information relevant to overseas investments in sensitive New Zealand assets or call-in transactions to provide the regulator with the information specified in the notice for the purpose of—
 - (a) compiling statistical information relating to overseas investment in New Zealand; or
 - (b) monitoring compliance with a term or condition of a consent, an exemption, an exemption certificate, a direction order, an interim direction order, a prohibition order, or a disposal order.
- (2) The person must—
 - (a) comply with the regulator’s notice within the time, and in the manner, specified in it; and
 - (b) provide the information in the form specified in the notice.
- (3) The regulator may retain or copy any information that is provided under this section.

Section 39(1): amended, on 16 June 2020, by section 27(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 39(1)(b): replaced, on 16 June 2020, by section 27(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 39(2)(a): amended, on 22 October 2018, by section 32(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

40 Regulator may require person to provide statutory declaration as to compliance

- (1) The regulator may, by notice in writing, require a person (A) who is required to comply with a term or condition of a consent, an exemption, an exemption certificate, a direction order, an interim direction order, a prohibition order, or a disposal order to provide the regulator with a statutory declaration verifying—
 - (a) the extent to which A has complied with the term or condition; and
 - (b) if A is in breach of a term or condition, the reasons for the breach and the steps that A intends to take to remedy the breach.
- (2) A must provide the declaration—

- (a) within the time, and in the manner, specified in the notice; or
 - (b) if the notice specifies that A must provide the declaration at intervals, at those intervals.
- (3) A declaration that is made under this section is not admissible in evidence in any proceedings under this Act except proceedings under section 46.

Section 40: replaced, on 22 October 2018, by section 33 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 40 heading: amended, on 16 June 2020, by section 28(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 40(1): replaced, on 16 June 2020, by section 28(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

41 Regulator may require information and documents to be provided

- (1) If the regulator has reasonable grounds to believe that it is necessary or desirable for 1 or more of the purposes set out in subsection (1A), the regulator may, by written notice, require any person (A)—
- (a) to provide to the regulator, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
 - (b) to provide to the regulator any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or
 - (c) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any document or class of documents specified in the notice (within the time and in the manner specified in the notice).
- (1A) The purposes are as follows:
- (a) monitoring compliance with this Act or the regulations (or both):
 - (aa) investigating whether a transaction is an overseas investment transaction or a call-in transaction:
 - (ab) investigating whether a transaction, an event, or a matter is contrary to the national interest or gives rise to, or is likely to give rise to, a significant risk to national security or public order:
 - (b) investigating conduct that constitutes or may constitute a contravention, or an involvement in a contravention, of this Act or the regulations (or both):
 - (c) investigating conduct that constitutes or may constitute an offence under this Act:
 - (d) enforcing this Act or the regulations (or both).
- (2) A must comply with the regulator's notice within the time, and in the manner, specified in it.

- (3) *[Repealed]*
- (4) The regulator may retain or copy any information or document that is provided under this section.
- (5) Sections 38 to 40 do not limit this section.

Section 41 heading: amended, on 16 June 2020, by section 29(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 41 heading: amended, on 22 October 2018, by section 34(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 41(1): replaced, on 22 October 2018, by section 34(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 41(1A): inserted, on 22 October 2018, by section 34(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 41(1A)(aa): inserted, on 16 June 2020, by section 29(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 41(1A)(ab): inserted, on 16 June 2020, by section 29(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 41(2): amended, on 22 October 2018, by section 34(3) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 41(3): repealed, on 22 October 2018, by section 34(4) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 41(5): inserted, on 22 October 2018, by section 34(5) of the Overseas Investment Amendment Act 2018 (2018 No 25).

41A Privileges for person required to provide information or document

A person who is required to provide information or a document under any of sections 38 to 41 has the same privileges in relation to the provision of the information or document as witnesses have in any court.

Section 41A: inserted, on 22 October 2018, by section 35 of the Overseas Investment Amendment Act 2018 (2018 No 25).

41B Effect of proceedings

- (1) If a person commences a proceeding in any court in respect of the exercise of any powers conferred by any of sections 38 to 41, until a final decision in relation to the proceeding is given,—
- (a) the powers may be, or may continue to be, exercised as if the proceeding had not been commenced; and
 - (b) no person is excused from fulfilling the person's obligations under any of those sections by reason of the proceeding.
- (2) However, the court may make an interim order overriding the effect of subsection (1), but only if the court is satisfied that—
- (a) the applicant has established a prima facie case that the exercise of the power in question is unlawful; and
 - (b) the applicant would suffer substantial harm from the exercise or discharge of the power or obligation; and

- (c) if the power or obligation is exercised or discharged before a final decision is made in the proceeding, none of the remedies specified in subsection (3), or any combination of those remedies, could subsequently provide an adequate remedy for that harm; and
 - (d) the terms of the order do not unduly hinder or restrict the regulator in performing or exercising the regulator's functions, powers, or duties under this Act.
- (3) The remedies are as follows:
- (a) any remedy that the court may grant in making a final decision in relation to the proceeding (for example, a declaration):
 - (b) any damages that the applicant may be able to claim in concurrent or subsequent proceedings:
 - (c) any opportunity that the applicant may have, as defendant in a proceeding, to challenge the admissibility of any evidence obtained as a result of the exercise or discharge of the power or obligation.

Compare: 2011 No 5 s 57

Section 41B: inserted, on 22 October 2018, by section 35 of the Overseas Investment Amendment Act 2018 (2018 No 25).

41C Effect of final decision that exercise of powers under sections 38 to 41 unlawful

- (1) This section applies in any case where it is declared, in a final decision given in any proceeding in respect of the exercise of any powers conferred by any of sections 38 to 41, that the exercise of any powers conferred by any of those sections is unlawful.
- (2) If this section applies, to the extent to which the exercise of those powers is declared unlawful, the regulator must ensure that, immediately after the decision of the court is given,—
 - (a) any information obtained as a consequence of the exercise of powers declared to be unlawful and any record of that information are destroyed; and
 - (b) any documents, or extracts from documents, that are obtained as a consequence of the exercise of powers declared to be unlawful are returned to the person who previously had possession or control of them, and any copies of those documents or extracts are destroyed; and
 - (c) any information derived from or based on such information, documents, or extracts is destroyed.
- (3) However, the court may order that any information, record, or copy of any document or extract from a document may, instead of being destroyed, be retained by the regulator subject to any terms and conditions that the court imposes.

- (4) No information, and no documents or extracts from documents, obtained as a consequence of the exercise of any powers declared to be unlawful, and no record of any such information or document,—
- (a) are admissible as evidence in any civil proceeding unless the court hearing the proceeding in which the evidence is sought to be adduced is satisfied that there was no unfairness in obtaining the evidence:
 - (b) are admissible as evidence in any criminal proceeding if the evidence is excluded under section 30 of the Evidence Act 2006:
 - (c) may otherwise be used in connection with the exercise of any powers conferred by this Act unless the court that declared the exercise of the powers to be unlawful is satisfied that there was no unfairness in obtaining the evidence.

Compare: 2011 No 5 s 58

Section 41C: inserted, on 22 October 2018, by section 35 of the Overseas Investment Amendment Act 2018 (2018 No 25).

41D Confidentiality of information and documents

- (1) This section applies to the following information and documents:
- (a) information and documents supplied or disclosed to, or obtained by, the regulator under section 41:
 - (b) information derived from information and documents referred to in paragraph (a).
- (2) The regulator must not publish or disclose any information or document to which this section applies unless—
- (a) the information or document is available to the public under any enactment or is otherwise publicly available; or
 - (b) the information is in a statistical or summary form; or
 - (c) the publication or disclosure of the information or document is for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on a Minister or Ministers or the regulator by this Act or any other enactment; or
 - (d) the publication or disclosure of the information or document is made to a law enforcement or regulatory agency for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the law enforcement or regulatory agency by any enactment; or
 - (e) the publication or disclosure of the information or document is to a person who the regulator is satisfied has a proper interest in receiving the information or document; or

- (f) the publication or disclosure of the information or document is with the consent of the person to whom the information or document relates or of the person to whom the information or document is confidential.
- (3) In relation to personal information, this section applies subject to the Privacy Act 2020.

Compare: 2011 No 5 s 59

Section 41D: inserted, on 22 October 2018, by section 35 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 41D(3): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

41E Conditions relating to publication or disclosure of information or documents

- (1) The regulator may, by written notice to a person to whom any information or document is published or disclosed under section 41D(2)(c) to (f), impose any conditions in relation to the publication, disclosure, or use of the information or document by the person.
- (2) The regulator must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of an individual.
- (3) Conditions imposed under subsection (1) may include, without limitation, conditions relating to—
- (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 2020);
 - (b) the storing of, the use of, or access to anything provided;
 - (c) the copying, returning, or disposing of copies of documents provided.
- (4) A person who refuses or fails, without reasonable excuse, to comply with any conditions commits an offence and is liable on conviction to a fine not exceeding \$200,000.

Compare: 2011 No 5 s 60

Section 41E: inserted, on 22 October 2018, by section 35 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 41E(3)(a): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Subpart 5—Enforcement

Disposal of property

Heading: inserted, on 22 October 2018, by section 36 of the Overseas Investment Amendment Act 2018 (2018 No 25).

41F Regulator may issue notice requesting disposal of property

- (1) This section applies if the regulator has reasonable grounds to believe that a person (A) has, in relation to property,—
 - (a) contravened this Act; or
 - (b) committed an offence under this Act; or
 - (c) failed to comply with a condition of a consent or of an exemption.
- (2) The regulator may, by notice in writing,—
 - (a) ask A to dispose of the property (within the time and in the manner specified in the notice for the purposes of this paragraph); and
 - (b) require A, if A wants to rely on section 41G(1), to notify the regulator of that fact (within the time and in the manner specified in the notice for the purposes of this paragraph).
- (3) The time specified in the notice for the purposes of subsection (2)(a) must not be less than 90 days after the date on which the notice is given (but this does not limit the power to specify any time under subsection (2)(b)).
- (4) The notice must set out the regulator’s belief and the reasonable grounds for that belief.
- (5) The regulator may withdraw a notice at any time before A does both of the following:
 - (a) disposes of the property within the time and in the manner specified in the notice under subsection (2)(a); and
 - (b) complies with subsection (2)(b) within the time and in the manner specified in the notice under that paragraph.
- (6) This section does not limit any other power that the regulator has.
- (7) In this section and section 41G, **property** has the meaning set out in section 47(3).

Section 41F: inserted, on 22 October 2018, by section 36 of the Overseas Investment Amendment Act 2018 (2018 No 25).

41G Consequences of disposal or retention of property

- (1) A person (A) is not liable for the contravention, offence, or failure referred to in section 41F(1) if A—
 - (a) disposes of the property within the time and in the manner specified in the notice under section 41F(2)(a); and

- (b) complies with section 41F(2)(b) within the time and in the manner specified in the notice under that paragraph.
- (2) Subsection (1) does not apply if, in connection with the property, A has—
 - (a) made any statement that is false or misleading in any material particular or any material omission in—
 - (i) any offer or representation made for the purposes of this Act or regulations; or
 - (ii) any information or document provided to the regulator; or
 - (iii) any communication with the regulator; or
 - (b) provided the regulator with a document that is false or misleading in any material particular.
- (3) If another person (**B**) is involved in the contravention, offence, or failure referred to in section 41F(1), B may be ordered to pay a civil pecuniary penalty under section 48 even though A is not liable under subsection (1).
- (4) *See also* Part 4 of the Crimes Act 1961, which relates to parties to the commission of offences.
- (5) The regulator may take any other enforcement action it thinks fit in relation to the contravention, offence, or failure referred to in section 41F(1) if—
 - (a) A fails to notify the regulator under section 41F(2)(b) within the time and in the manner specified in the notice under that paragraph; or
 - (b) A does not dispose of the property within the time and in the manner specified in the notice under section 41F(2)(a).
- (6) However, the failure to comply with the notice under section 41F is not itself a contravention of this Act that gives rise to any civil or criminal liability.

Section 41G: inserted, on 22 October 2018, by section 36 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 41G(3): amended, on 16 June 2020, by section 30 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Offences

42 Offence of giving effect to overseas investment without consent

- (1) A person who is required to apply for consent to an overseas investment transaction commits an offence if that person gives effect to the overseas investment without the consent required by this Act.
- (2) A person who commits an offence under subsection (1) is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$300,000;
 - (b) in any other case, to a fine not exceeding \$300,000.

- (3) In imposing a penalty under subsection (2), the court must, if the transaction resulted in an overseas investment in fishing quota and the fishing quota or an interest in it has been forfeited under section 58 or section 58A of the Fisheries Act 1996, have regard to the effect of the forfeiture on the defendant.

Section 42(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 42(2)(b): amended, on 16 June 2020, by section 31 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

43 Offence of defeating, evading, or circumventing operation of Act

- (1) Every person commits an offence who knowingly or recklessly enters into a transaction, executes an instrument, or takes any other step, for the purpose of, or having the effect of, in any way, directly or indirectly, defeating, evading, or circumventing the operation of this Act.
- (2) A person who commits an offence under subsection (1) is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$300,000;
- (b) in any other case, to a fine not exceeding \$300,000.

Section 43(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 43(2)(b): amended, on 16 June 2020, by section 32 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

44 Offence of resisting, obstructing, or deceiving

- (1) Every person commits an offence who resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under this Act or regulations.
- (2) A person who commits an offence under subsection (1) is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$300,000;
- (b) in any other case, to a fine not exceeding \$300,000.

Section 44(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 44(2)(b): amended, on 16 June 2020, by section 33 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

45 Offence of failing to comply with notice, requirement, or condition

- (1) Every person commits an offence who, without lawful excuse, fails to comply with—
- (a) this Act or regulations; or

- (b) a notice, requirement, or condition given or imposed under this Act or regulations.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$100,000.
- (3) *[Repealed]*
Section 45(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).
Section 45(3): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

46 Offence of false or misleading statement or omission

- (1) Every person commits an offence who knowingly or recklessly makes any statement that is false or misleading in a material particular or any material omission in—
 - (a) any offer or representation made for the purposes of this Act or regulations; or
 - (aa) any statement made under section 51A; or
 - (ab) any notice under section 85 or 86; or
 - (b) any information or document provided to the regulator; or
 - (c) any communication with the regulator; or
 - (d) any information provided to the regulator or the Commissioner of Inland Revenue under section 38A.
- (2) Every person commits an offence who knowingly or recklessly provides the regulator with a document that is false or misleading in a material particular.
- (3) A person who commits an offence under subsection (1) or subsection (2) is liable on conviction to a fine not exceeding \$300,000.
- (4) *[Repealed]*
Section 46(1): amended, on 22 October 2018, by section 37(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).
Section 46(1)(aa): inserted, on 22 October 2018, by section 37(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).
Section 46(1)(ab): inserted, on 16 June 2020, by section 34 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).
Section 46(1)(ab): amended, on 7 June 2021, by section 53(15) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).
Section 46(1)(d): inserted, on 5 July 2021, by section 23 of the Overseas Investment Amendment Act 2021 (2021 No 17).
Section 46(2): amended, on 22 October 2018, by section 37(3) of the Overseas Investment Amendment Act 2018 (2018 No 25).
Section 46(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).
Section 46(4): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Enforceable undertakings

Heading: inserted, on 16 June 2020, by section 35 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

46A Regulator may accept undertakings

- (1) The regulator may accept an enforceable undertaking given by, or on behalf of, a person in writing in connection with a matter relating to a contravention or an alleged contravention by the person of this Act or regulations (including any matter referred to in section 48(1)).
- (2) An undertaking may include—
 - (a) an undertaking to pay compensation to any person or otherwise take action to avoid, remedy, or mitigate any actual or likely adverse effects arising from a contravention or possible contravention of this Act;
 - (b) an undertaking to pay to the regulator all or part of the regulator's costs incurred in investigating, or bringing proceedings in relation to, a contravention or an alleged contravention.
- (3) However, the regulator may not accept an undertaking to pay an amount in lieu of a civil pecuniary penalty (for example, a donation to a charity that is not connected with any loss).
- (4) An undertaking may include an admission of liability by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates, but otherwise does not constitute an admission of liability.

Compare: 2015 No 70 s 123

Section 46A: inserted, on 16 June 2020, by section 35 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

46B When undertaking is enforceable

- (1) The regulator must give the person making an undertaking written notice of—
 - (a) its decision to accept or reject the undertaking; and
 - (b) the reasons for the decision.
- (2) An enforceable undertaking takes effect and becomes enforceable when the regulator's decision to accept the undertaking is given to the person who made the undertaking, or at any later date specified by the regulator.
- (3) A person must not contravene an enforceable undertaking given by that person that is in force.

Compare: 2015 No 70 ss 124(1), 125

Section 46B: inserted, on 16 June 2020, by section 35 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

46C Notice of decision

- (1) The regulator must publish, on an Internet site maintained by, or on behalf of, the regulator, notice of the decision to accept an enforceable undertaking.

- (2) The notice must include—
- (a) a summary of the circumstances and nature of the contravention or alleged contravention of this Act or regulations to which the undertaking relates:
 - (b) a summary of the reasons for that decision:
 - (c) any amounts payable under the undertaking.
- (3) Alternatively, the notice may include a copy of the undertaking if the undertaking contains all of the information in subsection (2).

Compare: 2015 No 70 s 124(2)

Section 46C: inserted, on 16 June 2020, by section 35 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

46D Withdrawal or variation of enforceable undertaking

- (1) A person who has given an enforceable undertaking may at any time, with the written agreement of the regulator,—
- (a) withdraw the undertaking; or
 - (b) vary the undertaking.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of this Act or regulations.
- (3) The regulator must publish on an Internet site maintained by, or on behalf of, the regulator notice of the withdrawal or variation of an enforceable undertaking.

Compare: 2015 No 70 s 128

Section 46D: inserted, on 16 June 2020, by section 35 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

46E Proceedings for alleged contravention

- (1) No proceedings may be brought for a contravention or an alleged contravention of this Act or regulations against—
- (a) a person who made an undertaking in relation to that contravention, while the undertaking is enforceable and there is no contravention of the undertaking:
 - (b) a person who made, and has completely discharged, an enforceable undertaking in relation to that contravention.
- (2) The regulator may accept an enforceable undertaking in relation to a contravention or an alleged contravention before proceedings in relation to that contravention have been completed.
- (3) If the regulator accepts an enforceable undertaking before the proceedings are completed, the regulator must take all reasonable steps to have the proceedings discontinued as soon as practicable.

Compare: 2015 No 70 s 129

Section 46E: inserted, on 16 June 2020, by section 35 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

46F Contravention of enforceable undertaking

- (1) The regulator may apply to the court for an order if a person contravenes an enforceable undertaking.
- (2) If the court is satisfied that the person who made the enforceable undertaking has contravened the undertaking, the court may make any of the following orders:
 - (a) a civil pecuniary penalty not exceeding \$50,000 for an individual or \$300,000 in any other case:
 - (b) an order directing the person to comply with the undertaking:
 - (c) an order discharging the undertaking.
- (3) In addition to the orders referred to in subsection (2), the court may make any other order that the court considers appropriate in the circumstances, including—
 - (a) orders directing the person to pay to the regulator the costs of the proceedings and the reasonable costs of the regulator in monitoring compliance with the enforceable undertaking in the future:
 - (b) an order in respect of the contravention or alleged contravention of this Act or regulations to which the enforceable undertaking relates, as if no undertaking had been made.

Compare: 2015 No 70 s 127

Section 46F: inserted, on 16 June 2020, by section 36 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

46G Considerations for court orders

The court must, before making an order under section 46F, take into account—

- (a) the nature and extent of the contravention; and
- (b) any loss or damage caused by the contravention; and
- (c) any financial gain made, or loss avoided, from the contravention; and
- (d) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence); and
- (e) the purpose of this Act; and
- (f) any other matters that it considers relevant.

Section 46G: inserted, on 16 June 2020, by section 36 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

*Powers of court***47 Court may order disposal of property**

- (1) This section applies if the court is satisfied that a person (**A**) has, in relation to property,—
- (a) contravened this Act; or
 - (b) committed an offence under this Act; or
 - (c) failed to comply with a notice under section 38 or section 39 or section 40 or section 41; or
 - (d) failed to comply with a condition of a consent, an exemption, or a direction order.
- (2) The court may, on the application of the regulator,—
- (a) order the disposal of the property (whether by A or by some other person appointed by the court, for example, the regulator); and
 - (b) make any other order or give any direction that is necessary to give effect to an order under paragraph (a).
- (3) In this section, **property** means—
- (a) a right or interest in any security; or
 - (b) an estate or interest in land; or
 - (c) an interest in fishing quota; or
 - (d) any other property or any rights or interests in any other property.

Section 47(1)(d): amended, on 16 June 2020, by section 37(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 47(3)(b): amended, on 16 June 2020, by section 37(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

48 Court may order person in breach or involved in breach to pay civil pecuniary penalty

- (1) On the application of the regulator, the court may order a person (**A**) to pay a civil pecuniary penalty to the Crown or any other person specified by the court if A has—
- (a) contravened this Act; or
 - (b) committed an offence under this Act; or
 - (c) failed to comply with a notice under section 38 or section 39 or section 40 or section 41; or
 - (d) failed to comply with a condition of a consent, an exemption, an exemption certificate, a direction order, or an interim direction order; or
 - (e) been involved in a contravention of this Act, the commission of an offence under this Act, or a failure to comply referred to in paragraph (c) or (d).

- (2) The court may order A to pay a civil pecuniary penalty not exceeding the highest of the following:
- (a) \$500,000 in the case of an individual or \$10 million in any other case:
 - (b) 3 times the amount of any quantifiable gain (for example, the increase in the value since acquisition) by A in relation to the property to which the consent, exemption, exemption certificate, direction order, interim direction order, prohibition order, or disposal order relates or for which a consent should have been obtained:
 - (c) the cost of remedying the breach of condition:
 - (d) the cost of remedying the breach of a term of a prohibition order or a direction order:
 - (e) the loss suffered by a person in relation to a breach of a term of a condition.
- (2A) However, in the case of a contravention of section 51C, the amount of the civil pecuniary penalty must not exceed \$20,000.
- (3) A person cannot be ordered to pay a penalty under this section and be required to pay a fine under any of sections 42 to 46 for the same conduct.
- (4) For the purposes of this section, the court must determine whether a person's conduct falls within subsection (1) on a balance of probabilities.

Section 48 heading: amended, on 16 June 2020, by section 38(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 48 heading: amended, on 22 October 2018, by section 38(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 48(1): amended, on 16 June 2020, by section 38(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 48(1)(d): replaced, on 16 June 2020, by section 38(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 48(1)(e): inserted, on 22 October 2018, by section 38(3) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 48(2): replaced, on 16 June 2020, by section 38(4) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 48(2A): inserted, on 22 October 2018, by section 38(6) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 48(2A): amended, on 16 June 2020, by section 38(5) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

48A Defences for person involved in contravention, offence, or failure

- (1) This section applies if—
- (a) a person (**A**) contravenes this Act, commits an offence under this Act, or fails to comply as referred to in section 48(1)(c) or (d); and
 - (b) another person (**B**) is involved in the contravention, the commission of the offence, or the failure.

- (2) In any proceeding under section 48 against B for involvement in the contravention, the commission of the offence, or the failure, it is a defence if B proves that—
- (a) B's involvement in the contravention, the commission of the offence, or the failure was due to reasonable reliance on information supplied by another person; or
 - (b) B took all reasonable and proper steps to ensure that A complied with this Act, did not commit the offence, or complied with the notice or condition referred to in section 48(1)(c) or (d) (as the case may be).
- (3) In subsection (2)(a), **another person** does not include a director, an employee, or an agent of B.

Compare: 2013 No 69 s 503

Section 48A: inserted, on 22 October 2018, by section 39 of the Overseas Investment Amendment Act 2018 (2018 No 25).

49 Court may order mortgage to be registered over land

- (1) The court may, on the application of the regulator, order that a mortgage in favour of the Crown or any other person be registered over land to which a consent, an exemption, an exemption certificate, a direction order, an interim direction order, a prohibition order, or a disposal order relates for the purpose of securing—
- (a) the performance of any obligation, or the repayment of any money, under a term or condition of the consent, the exemption, the exemption certificate, the direction order, the interim direction order, the prohibition order, or the disposal order; or
 - (b) the payment of a fine or civil pecuniary penalty imposed under this Act; or
 - (c) the payment of interest that must be paid under an order made under section 50.
- (2) The court must approve the terms of the mortgage before it is registered.
- (3) The court may make any other order or make any direction that is necessary to give effect to an order under subsection (1).

Section 49(1): amended, on 16 June 2020, by section 39(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 49(1)(a): replaced, on 16 June 2020, by section 39(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 49(1)(b): amended, on 16 June 2020, by section 39(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

50 Court may order interest to be paid

- (1) The court may order that a person who is in breach of this Act or a condition of a consent, an exemption, an exemption certificate, a direction order, or an interim direction order requiring the payment of money or on whom a fine or

civil pecuniary penalty has been imposed under this Act must also pay interest on the amount to be paid.

- (2) The court may fix the amount of interest in its discretion.

Section 50(1): amended, on 16 June 2020, by section 40(a) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 50(1): amended, on 16 June 2020, by section 40(b) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 50(1): amended, on 22 October 2018, by section 41 of the Overseas Investment Amendment Act 2018 (2018 No 25).

51 Court may order compliance with condition of consent, exemption, exemption certificate, direction order, or interim direction order

- (1) This section applies to—

- (a) a consent holder:
- (b) a person who is relying on an exemption or an exemption certificate that is subject to a condition:
- (c) a person who is subject to a direction order or an interim direction order.

- (2) On the application of the regulator, the court may—

- (a) restrain a person from acting in breach of a condition of a consent, an exemption, an exemption certificate, a direction order, or an interim direction order:
- (b) order a person in breach of a condition of a consent, an exemption, an exemption certificate, a direction order, or an interim direction order to comply with it.

Section 51 heading: amended, on 16 June 2020, by section 41(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 51: replaced, on 22 October 2018, by section 42 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 51(1)(c): inserted, on 16 June 2020, by section 41(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 51(2)(a): amended, on 16 June 2020, by section 41(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 51(2)(b): amended, on 16 June 2020, by section 41(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

51AAA Court may grant injunction

- (1) The court may, on the application of the regulator or any other person, grant an injunction—

- (a) restraining a person from engaging in conduct that constitutes or would constitute a contravention of this Act or regulations (including any matter referred to in section 48(1));
- (b) requiring a person to do an act or a thing if—

- (i) that person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do that act or thing; and
 - (ii) the refusal or failure was, is, or would be a breach of this Act or regulations.
- (2) The court may at any time rescind or vary an injunction granted under this Part.
Compare: 2013 No 69 s 480
Section 51AAA: inserted, on 16 June 2020, by section 42 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

51AAB When court may grant restraining injunctions

- (1) The court may grant an injunction restraining a person from engaging in conduct of a particular kind if—
 - (a) it is satisfied that the person has engaged in conduct of that kind; or
 - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.
- (2) The court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if in its opinion it is desirable to do so.
- (3) Subsections (1)(a) and (2) apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.
- (4) Subsections (1)(b) and (2) apply whether or not the person has previously engaged in conduct of that kind or there is an imminent danger of substantial damage to any other person if that person engages in conduct of that kind.
Compare: 2013 No 69 s 481
Section 51AAB: inserted, on 16 June 2020, by section 42 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

51AAC When court may grant performance injunctions

- (1) A court may grant an injunction requiring a person to do an act or a thing if—
 - (a) it is satisfied that the person has refused or failed to do that act or thing; or
 - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that thing.
- (2) The court may grant an interim injunction requiring a person to do an act or a thing if in its opinion it is desirable to do so.
- (3) Subsections (1)(a) and (2) apply whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing.
- (4) Subsections (1)(b) and (2) apply—
 - (a) whether or not the person has previously refused or failed to do that act or thing; or

- (b) where there is an imminent danger of substantial damage to any other person if that person refuses or fails to do that act or thing.

Section 51AAC: inserted, on 16 June 2020, by section 42 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

51AAD Undertaking as to damages not required by regulator

- (1) If the regulator applies to the court for the grant of an interim injunction under this subpart, the court must not, as a condition of granting an interim injunction, require the regulator to give an undertaking as to damages.
- (2) In determining the regulator's application for the grant of an interim injunction, the court must not take into account that the regulator is not required to give an undertaking as to damages.

Compare: 2013 No 69 s 482

Section 51AAD: inserted, on 16 June 2020, by section 42 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

51AAE Publication under this subpart may be deferred or dispensed with

The regulator may defer or dispense with publication of a matter under this subpart (in whole or in part) if the regulator is satisfied on reasonable grounds that good reason for withholding the publication would exist under the Official Information Act 1982.

Section 51AAE: inserted, on 16 June 2020, by section 42 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Statement relating to compliance with consent requirement

Heading: inserted, on 22 October 2018, by section 43 of the Overseas Investment Amendment Act 2018 (2018 No 25).

51A Person who acquires residential land must make and provide statement

- (1) This section applies if—
- (a) a person (**A**) is acquiring an estate or interest in residential land under a transaction, other than an interest under a mortgage, an interest under any other security arrangement, or an exempted interest; and
- (b) an instrument recording A's acquisition of the estate or interest will be lodged by or under the direction of a conveyancer.
- (2) A must, in respect of the acquisition, make a statement, to the best of A's knowledge and belief, relating to whether the transaction requires consent under this Act and, if so, confirming that—
- (a) A has complied or will comply with the requirement; and
- (b) if A is acting on behalf of another person (**B**), B has complied or will comply with the requirement.
- (3) The statement must be made in a manner that is authorised by the regulator in a notice under section 51B.

- (4) The statement—
- (a) may be in a single document; or
 - (b) may be included as part of another document (for example, an agreement for sale and purchase) if this is authorised by the regulator.
- (5) A must, before the instrument is lodged, provide the statement, or a copy of the statement, to the conveyancer who will lodge, or direct the lodgement of, the instrument.
- (6) A statement may be made and provided on A's behalf by another person (C) in either of the following ways (in which case the statement must be made to the best of C's knowledge and belief):
- (a) by C acting under an enduring power of attorney granted by A under the Protection of Personal and Property Rights Act 1988; or
 - (b) by C acting in a manner authorised by the regulator in a notice under section 51B.

- (7) In this section and sections 51B and 51C,—

conveyancer means a lawyer or conveyancer (where lawyer and conveyancer have the same meanings as in the Lawyers and Conveyancers Act 2006)

lodged means lodged for registration or notation under the Land Transfer Act 2017.

Section 51A: inserted, on 22 October 2018, by section 43 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 51A heading: amended, on 16 June 2020, by section 43(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 51A(1): replaced, on 16 June 2020, by section 43(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

51B Regulator must authorise manner of providing statement

- (1) The regulator must, by notice, authorise the manner in which the statement must be made, including by doing any of the following:
- (a) specifying the required content of the statement, which may include any information that the regulator thinks relevant (for example, information relating to whether A or B is an overseas person, has or will have a consent, or is relying or will rely on an exemption);
 - (b) approving or prescribing 1 or more forms for the statement or 1 or more methods for making the statement (or both);
 - (c) allowing the statement to be included in another document (for example, in an agreement for sale and purchase);
 - (d) authorising the statement to be made and provided on A's behalf (including the manner for doing so).
- (2) The notice is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

(3) *[Repealed]*

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must: <ul style="list-style-type: none">• notify it in the <i>Gazette</i>• publish it on an Internet site maintained by, or on behalf of, the regulator	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 51B: inserted, on 22 October 2018, by section 43 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 51B(2): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 51B(3): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

51C Conveyancer must obtain and keep statement

- (1) A conveyancer must not lodge, or direct the lodgement of, the instrument referred to in section 51A(1)(b) if the conveyancer—
 - (a) has not obtained the statement or a copy of the statement that is required to be provided under section 51A(5) or (6); or
 - (b) has reasonable grounds for believing that the statement or copy that is provided is not correct in a material particular.
- (2) The conveyancer must take reasonable steps to ensure that a copy of the statement is kept for a period of at least 7 years after the date on which the instrument is lodged.
- (3) Sections 41F, 45, and 47 do not apply in respect of a contravention of this section (but a conveyancer may be liable to a civil pecuniary penalty under section 48).

Section 51C: inserted, on 22 October 2018, by section 43 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 51C(3): amended, on 16 June 2020, by section 44 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Administrative penalties

52 Administrative penalties for late filing

- (1) The regulator may require a person to pay an administrative penalty if the person files, provides, or produces a document required by or under this Act, regulations, or a term or condition of a consent, an exemption, an exemption certificate, a direction order, an interim direction order, a prohibition order, or a disposal order with the regulator after the time when the document must be filed, provided, or produced.

- (2) The regulator may refuse to accept the document if the penalty has not been paid.
- (3) The penalty is recoverable by the regulator in any court of competent jurisdiction as a debt due to the Crown.

Section 52(1): amended, on 16 June 2020, by section 45 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

53 Administrative penalty for retrospective consent

The regulator may require the applicant for a retrospective consent to pay an administrative penalty before the consent is granted.

Giving, providing, or serving notices or documents

Heading: replaced, on 22 October 2018, by section 45 of the Overseas Investment Amendment Act 2018 (2018 No 25).

54 Address for service

- (1) Every consent holder, holder of an exemption under section 61D, holder of an exemption certificate, and recipient of a direction order, an interim direction order, a prohibition order, or a disposal order must—
 - (a) have a postal or street address in New Zealand for service of notices and other documents; and
 - (b) notify the regulator of that address; and
 - (c) notify the regulator of any change in that address.
- (2) However, subsection (1) does not apply to a recipient of a direction order referred to in section 88(1)(a) (which relates to transactions in respect of which no conditions are imposed).

Section 54: replaced, on 22 October 2018, by section 45 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 54(1): amended, on 16 June 2020, by section 46(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 54(2): inserted, on 16 June 2020, by section 46(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

54A Notices or other documents given, provided, or served by regulator

- (1) Any notice or other document that the regulator may or must give to, provide to, or serve on any person (A) by or under this Act or for the purposes of any proceeding under this Act must be treated as having been given, provided, or served on A if,—
 - (a) if A is a person who has complied with section 54, it has been sent by prepaid post to the last address for service for the person that has been notified to the regulator;
 - (b) in any other case, it has been served in any of the following ways:

- (i) by leaving the document for A in a prominent position on the relevant land (whether or not A is in possession of that land) and sending a copy of the document to any lawyer or conveyancer who provided conveyancing services to A in respect of the land (where lawyer and conveyancer have the same meanings as in the Lawyers and Conveyancers Act 2006):
 - (ii) if A has a known electronic address, by sending it to A at that address in electronic form:
 - (iii) if A has a known place of residence or business in New Zealand, by sending it by prepaid post addressed to A at that place of residence or business:
 - (iv) if A has an agent in New Zealand and A is absent from New Zealand, by sending it by prepaid post addressed to the agent at the agent's place of residence or business or by sending it in electronic form to the agent at the agent's electronic address.
- (2) In subsection (1)(b)(i), **relevant land** means any land in respect of which A has (or is alleged to have)—
- (a) contravened this Act; or
 - (b) committed an offence under this Act; or
 - (c) failed to comply with a notice under section 38, 39, 40, or 41; or
 - (d) failed to comply with a condition of a consent, an exemption, an exemption certificate, a direction order, or an interim direction order.
- (3) Subsection (1)(b)(iv) applies regardless of whether the agent is acting or has acted on behalf of A in respect of the matter to which the document relates.
- (4) This section applies despite any other rule or law.

Section 54A: inserted, on 22 October 2018, by section 45 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 54A(2)(d): amended, on 16 June 2020, by section 47 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

55 Non-appearance not ground for court to refuse order under Act if person served in accordance with section 54A

The court must not refuse to make an order under sections 47 to 51 on the ground that a person has not appeared or otherwise taken part in the proceeding if the court is satisfied that the proceeding has been served in accordance with section 54A.

Section 55: replaced, on 22 October 2018, by section 45 of the Overseas Investment Amendment Act 2018 (2018 No 25).

55A Proof that documents given, provided, or served

- (1) If a document is given, provided, or served by sending it by prepaid post, then, unless the contrary is shown, the document is given, provided, or served when

it would have been delivered in the ordinary course of post, and, in proving that the document was given, provided, or served, it is sufficient to prove that the letter concerned was properly addressed and posted.

- (2) If a document is given, provided, or served by sending it in electronic form, then, unless the contrary is shown, the document is given, provided, or served at the time that the electronic communication first enters an information system that is outside the control of the document's originator, and, in proving that the document was given, provided, or served, it is sufficient to prove that the document concerned was properly addressed and sent.
- (3) In this section, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications.

Section 55A: inserted, on 22 October 2018, by section 45 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Search and seizure

56 Search warrant

- (1) The regulator may apply for a search warrant to search a place or thing.
- (2) The application must be made in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012 to an issuing officer (within the meaning of section 3 of that Act).
- (3) The issuing officer may issue a search warrant if there are reasonable grounds for believing that—
 - (a) an offence under this Act has been, or is being, committed at the place or thing; or
 - (b) there is in, on, over, or under the place or thing any thing that is evidence of an offence under this Act.
- (4) The issuing officer may issue the warrant to—
 - (a) the regulator; or
 - (b) a person authorised by the regulator in writing to execute the warrant; or
 - (c) a constable.
- (5) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply.

Section 56(2): amended, on 1 October 2012, by section 286(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 56(3): amended, on 1 October 2012, by section 286(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 56(4): amended, on 1 October 2012, by section 286(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 56(4)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 56(5): inserted, on 1 October 2012, by section 286(5) of the Search and Surveillance Act 2012 (2012 No 24).

57 Form and content of search warrant

[Repealed]

Section 57: repealed, on 1 October 2012, by section 286(6) of the Search and Surveillance Act 2012 (2012 No 24).

58 Powers conferred by search warrant

[Repealed]

Section 58: repealed, on 1 October 2012, by section 286(6) of the Search and Surveillance Act 2012 (2012 No 24).

59 Requirements when executing search warrant

Section 59: repealed, on 1 October 2012, by section 286(6) of the Search and Surveillance Act 2012 (2012 No 24).

60 Disposal of things seized under search warrant

[Repealed]

Section 60: repealed, on 1 October 2012, by section 286(6) of the Search and Surveillance Act 2012 (2012 No 24).

Subpart 6—Miscellaneous provisions

60A Reinstatement of emergency notification regime

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that have the broad effect of reinstating, in respect of an emergency, all or part of the emergency notification regime (in subpart 1 of Part 3 (as inserted by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020)).
- (2) The Minister may make a recommendation only if the Minister is satisfied that the effects of the emergency justify the emergency notification regime being reinstated, having had regard to the following:
 - (a) the economic, social, and other effects of the emergency in New Zealand;
 - (b) any risks to New Zealand's national interest associated with transactions by overseas persons;
 - (c) New Zealand's international relations and international obligations.
- (3) The emergency notification regime—
 - (a) must be limited in scope to transactions that do not require consent (*see* section 10) and that relate to the acquisition by an overseas person, or an associate of an overseas person, of either or both of the following:
 - (i) rights or interests in securities of a person:

- (ii) property (including goodwill and other intangible assets) in New Zealand used in carrying on business in New Zealand:
- (b) must provide for risk management actions only in respect of risks associated with transactions by overseas persons that are contrary to New Zealand's national interest.
- (4) The Minister must consult the Minister of Foreign Affairs before making a recommendation.
- (5) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (6) The Minister must present the reasons for making a recommendation to the House of Representatives not more than 6 sitting days after making the recommendation.
- (7) The Minister must review, at intervals that are no more than 90 working days apart, whether the effects of the emergency continue to justify the emergency notification regime continuing in place.
- (8) In doing so, the Minister must have regard to the matters in subsection (2).
- (9) If the Minister is not satisfied that the emergency notification regime should continue, the Minister must recommend to the Governor-General that the regulations made under this section be revoked.

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 60A: inserted, on 5 July 2021, by section 24 of the Overseas Investment Amendment Act 2021 (2021 No 17).

61 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
 - (aaa) prescribing classes of dwellings not to be treated as residential dwellings in this Act:
 - (aab) prescribing additional classes of facilities to be treated as excluded accommodation facilities in this Act:
 - (aac) prescribing classes of *profits à prendre* not to be treated as regulated *profits à prendre* in this Act:
 - (a) determining how to measure value or apply the value thresholds under section 13:

- (b) prescribing, for the purposes of the criteria in section 16(1)(f), when and how farm land or section 12 interests must be advertised for acquisition to persons who are not overseas persons (including what is required for open market advertising):
- (ba) making provision referred to in section 16A(4):
- (c) *[Repealed]*
- (ca) *[Repealed]*
- (d) *[Repealed]*
- (e) prescribing fees and charges to be paid, or the amounts to be charged, a means by which they may be calculated and ascertained, or a rate at which they may be calculated or ascertained, for the purpose of meeting or assisting in meeting costs of Ministers and the regulator in exercising functions and powers, and performing duties, and providing services, under this Act (and those fees and charges may be set so as to meet any shortfall in cost recovery for any of the preceding 4 financial years, and allowance may be made for any over-recovery of costs in those years, including any estimated shortfall or over-recovery for the immediately preceding financial year):
- (ea) prescribing the criteria relating to control and influence by government that relevant government enterprises must meet for the purpose of an exemption under section 20AA:
- (f) prescribing maximum bonds to be charged under section 25, a means by which bonds may be calculated or ascertained, or a rate at which bonds may be calculated or ascertained, for the purpose of meeting estimated reasonable costs of Ministers and the regulator in monitoring compliance with a condition or conditions of consent or exemption, and providing for the payment, and repayment if conditions are met, of those bonds:
- (g) prescribing maximum administrative penalties to be charged by the regulator, a means by which administrative penalties may be calculated or ascertained, or a rate at which administrative penalties may be calculated or ascertained, for the purposes of sections 52 and 53:
- (h) exempting or providing for exemptions from, or waivers, refunds, or discounting of, fees, charges, amounts, or administrative penalties:
- (i) implementing obligations that have entered into force for New Zealand before the commencement of section 46 of the Overseas Investment Amendment Act 2018 under any international agreements to which New Zealand is a party and that relate to overseas investments in sensitive land:
- (j) specifying types of overseas persons for the purposes of clauses 4(2)(d) and 7 of Schedule 2 where necessary to implement obligations that have entered into force for New Zealand before the commencement of

section 46 of the Overseas Investment Amendment Act 2018 under any international agreements to which New Zealand is a party and that relate to overseas investments in sensitive land:

- (ja) prescribing, for the purposes of clauses 7 and 8 of Schedule 2,—
 - (i) the process for considering whether a person remains committed to residing in New Zealand, including relevant factors (which may be non-exhaustive):
 - (ii) additional ways in which a trigger event is resolved:
- (jb) setting a maximum percentage of new residential dwellings in a development that an exemption certificate may be applied to, including a nil percentage:
- (k) providing for applications for exemptions:
 - (ka) prescribing matters for the purposes of section 61G, including listing exemptions for the purposes of that section, prescribing circumstances in which that section does not apply, specifying classes of conditions to which section 61G(3) applies, and providing for matters under section 61G(5):
 - (l) providing for and regulating the giving or service of notices for the purposes of this Act, and the effect of those notices:
 - (la) *[Repealed]*
 - (lb) prescribing enactments for the purposes of rows 10 and 11 of table 2 in Part 1 of Schedule 1:
 - (lc) *[Repealed]*
 - (m) providing for transitional provisions:
 - (n) providing for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.
- (2) Regulations under this Act (including regulations for prescribing fees, charges, bonds, or administrative penalties) may make different provisions for different cases on any differential basis.
- (3) Any exemptions made in respect of the matters in subsection (1)(lc) are revoked on the 42nd day after the date on which the Overseas Investment Amendment Act (No 3) 2020 receives the Royal assent.
- (4) The Minister must, at least once in every period of 4 financial years, commence a review of fees and charges set under subsection (1)(e).
- (5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (6) If regulations authorise a person to grant exemptions, waivers, refunds, or discounts referred to in subsection (1)(h),—

- (a) an instrument granting an exemption or a waiver, refund, or discount is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to 1 or more named persons; and
- (b) the regulations must contain a statement to that effect.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (3)

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)(a)

Publication	See the relevant publication, presentation, and disallowance table in the secondary legislation referred to in subsection (3)	LA19 ss 73, 74, Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives, unless a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 61(1)(aaa): inserted, on 22 October 2018, by section 46(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(aab): inserted, on 22 October 2018, by section 46(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(aac): inserted, on 22 October 2018, by section 46(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(b): replaced, on 5 July 2021, by section 25(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 61(1)(ba): inserted, on 22 October 2018, by section 46(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(ba): amended, on 5 July 2021, by section 25(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 61(1)(c): repealed, on 5 July 2021, by section 25(3) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 61(1)(ca): repealed, on 5 July 2021, by section 25(3) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 61(1)(d): repealed, on 5 July 2021, by section 25(3) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 61(1)(e): amended, on 5 July 2021, by section 25(4) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 61(1)(ea): inserted, on 5 July 2021, by section 25(5) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 61(1)(i): replaced, on 22 October 2018, by section 46(4) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(i): amended, on 30 December 2018, by section 68A of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 61(1)(j): replaced, on 22 October 2018, by section 46(4) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(ja): inserted, on 22 October 2018, by section 46(4) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(jb): inserted, on 22 October 2018, by section 46(4) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(ka): inserted, on 22 October 2018, by section 46(5) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(1)(la): repealed, on 5 July 2021, by section 25(3) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 61(1)(lb): replaced, on 5 July 2021, by section 25(6) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 61(1)(lc): repealed, on 5 July 2021, by section 25(3) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 61(2): replaced, on 22 October 2018, by section 46(6) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61(3): inserted, on 16 June 2020, by section 48(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 61(4): inserted, on 5 July 2021, by section 25(7) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 61(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 61(6): inserted, on 28 October 2021, by regulation 112 of the Legislation Act (Amendments to Legislation) Regulations 2021 (LI 2021/247).

61A Regulations regarding alternative monetary thresholds for overseas investments in significant business assets

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations in order to implement obligations in all or any of the following international agreements in respect of certain overseas investments in New Zealand in significant business assets by certain investors:
- (aaa) *[Repealed]*
 - (a) *[Repealed]*
 - (b) 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:
 - (c) the New Zealand–Hong Kong, China Closer Economic Partnership Agreement, done at Hong Kong on 29 March 2010:
 - (d) the Protocol on Investment to the New Zealand–Australia Closer Economic Relations Trade Agreement, done at Wellington on 16 February 2011:
 - (e) 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:

- (f) the Free Trade Agreement between New Zealand and the Republic of Korea, done at Seoul on 23 March 2015:
 - (g) the Trans-Pacific Partnership Agreement, done at Auckland on 4 February 2016:
 - (ga) the Pacific Agreement on Closer Economic Relations Plus, done at Nuku'alofa on 14 June 2017:
 - (h) the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago on 8 March 2018:
 - (i) the Free Trade Agreement between New Zealand and the United Kingdom of Great Britain and Northern Ireland, done at London on 28 February 2022:
 - (j) the Free Trade Agreement between New Zealand and the European Union, done at Brussels on 9 July 2023.
- (2) Regulations made under subsection (1) may provide for alternative monetary thresholds under section 13 that apply, on terms and conditions (if any), to 1 or more classes of transactions, persons, interests, rights, and assets.
 - (3) The Minister must be satisfied, before making a recommendation under this section, that the regulations do not provide for an alternative monetary threshold that is higher than the amount provided for in the relevant international agreement referred to in subsection (1), but the text of the regulations may otherwise differ from the text of an agreement.
 - (4) Regulations made under subsection (1) may incorporate by reference any provisions of an international agreement referred to in that subsection.
 - (5) Regulations made under subsection (1) may be made only to implement obligations in an international agreement that has entered into force for New Zealand.
 - (6) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 61A: inserted, on 30 December 2018, by section 69 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 61A(1)(aaa): repealed, on 31 May 2023, by section 14 of the United Kingdom Free Trade Agreement Legislation Act 2022 (2022 No 59).

Section 61A(1)(a): repealed, on 1 May 2024, by section 89(1) of the European Union Free Trade Agreement Legislation Amendment Act 2024 (2024 No 10).

Section 61A(1)(b): replaced, on 31 May 2023, by section 14 of the United Kingdom Free Trade Agreement Legislation Act 2022 (2022 No 59).

Section 61A(1)(c): replaced, on 31 May 2023, by section 14 of the United Kingdom Free Trade Agreement Legislation Act 2022 (2022 No 59).

Section 61A(1)(d): replaced, on 31 May 2023, by section 14 of the United Kingdom Free Trade Agreement Legislation Act 2022 (2022 No 59).

Section 61A(1)(e): replaced, on 31 May 2023, by section 14 of the United Kingdom Free Trade Agreement Legislation Act 2022 (2022 No 59).

Section 61A(1)(f): replaced, on 31 May 2023, by section 14 of the United Kingdom Free Trade Agreement Legislation Act 2022 (2022 No 59).

Section 61A(1)(g): replaced, on 31 May 2023, by section 14 of the United Kingdom Free Trade Agreement Legislation Act 2022 (2022 No 59).

Section 61A(1)(ga): inserted, on 1 May 2024, by section 89(2) of the European Union Free Trade Agreement Legislation Amendment Act 2024 (2024 No 10).

Section 61A(1)(h): inserted, on 31 May 2023, by section 14 of the United Kingdom Free Trade Agreement Legislation Act 2022 (2022 No 59).

Section 61A(1)(i): inserted, on 31 May 2023, by section 14 of the United Kingdom Free Trade Agreement Legislation Act 2022 (2022 No 59).

Section 61A(1)(j): inserted, on 1 May 2024, by section 89(3) of the European Union Free Trade Agreement Legislation Amendment Act 2024 (2024 No 10).

Section 61A(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

61B Purpose of exemptions

The purpose of sections 61C and 61D is to—

- (a) provide flexibility where compliance with this Act is impractical, inefficient, unduly costly, or unduly burdensome, taking into account the sensitivity of the sensitive assets and the nature of the overseas investment transaction; or
- (b) allow for exemptions that are minor or technical; or
- (c) allow for exemptions in respect of all or any of the following matters:
 - (i) interests in land to be used for diplomatic or consular purposes:
 - (ii) persons registered as a charitable entity under the Charities Act 2005:
 - (iii) 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:
 - (iv) security arrangements that are entered into in the ordinary course of business:
 - (v) relationship property as defined in section 8 of the Property (Relationships) Act 1976:
 - (vi) interests in land acquired for the purpose of providing network utility services:

- (vii) interests in residential (but not otherwise sensitive) land acquired in order to comply with a requirement imposed by or under the Resource Management Act 1991 and to support a business that is not principally in the business of using land for residential purposes:
- (viii) persons, transactions, rights, interests, or assets that the Minister considers to be majority owned and substantively controlled by New Zealanders:
- (ix) persons, transactions, rights, interests, or assets that the Minister considers support, or are related to, the issuance or management of residential mortgage-backed securities complying with a standard created or endorsed by the Reserve Bank:
- (x) estates or interests in land other than freehold or leasehold (for example, covenants).

Section 61B: inserted, on 22 October 2018, by section 47 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61B(a): replaced, on 16 June 2020, by section 49(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 61B(c)(iii): replaced, on 5 July 2021, by section 26(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 61B(c)(vii): amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 61B(c)(viii): replaced, on 5 July 2021, by section 26(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 61B(c)(ix): inserted, on 16 June 2020, by section 49(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 61B(c)(x): inserted, on 5 July 2021, by section 26(3) of the Overseas Investment Amendment Act 2021 (2021 No 17).

61C Regulations may contain class or individual exemptions

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations exempting any transaction, person, interest, right, or assets, or any class of transactions, persons, interests, rights, or assets, from the requirement for consent or from the definition of overseas person or associate or associated land.
- (2) *See* sections 61E (criteria for all exemptions) and 61F (other provisions applying to all exemptions).
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)

Disallowance It may be disallowed by the House of Representatives LA19 ss 115, 116
This note is not part of the Act.

Section 61C: inserted, on 22 October 2018, by section 47 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61C(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

61D Minister may grant individual exemptions

- (1) The Minister may exempt any transaction, person, interest, right, or assets from the requirement for consent or from the definition of overseas person or associate or associated land.
- (2) *See* sections 61E (criteria for all exemptions) and 61F (other provisions applying to all exemptions).
- (3) The Minister must publish each exemption granted under subsection (1) on an Internet site maintained by or for the regulator, unless section 61F(6) applies.

Section 61D: inserted, on 22 October 2018, by section 47 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61D(3): amended, on 16 June 2020, by section 50 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

61E Criteria for all exemptions

- (1) The Minister may recommend any regulations under section 61C, or grant an exemption under section 61D, only if the Minister considers—
 - (a) that there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption for any of the matters referred to in section 61B(a) to (c); and
 - (b) that the extent of the exemption is not broader than is reasonably necessary to address those circumstances.
- (2) In so considering, the Minister—
 - (a) must have regard to the purpose of this Act; and
 - (b) may have regard to all or any of the following:
 - (i) the extent to which effective ownership or control is changed by the overseas investment or remains with persons who are not overseas persons:
 - (ii) the extent to which a sensitive asset is already held in overseas ownership or control:
 - (iii) the extent to which the acquisition is the result of the operation of other legislation or an event outside the control of the overseas person:
 - (iv) the extent of time an overseas person is likely to have ownership or control of a right or an interest, for what purpose, and the

likely impact on the sensitive asset of that overseas ownership or control:

- (v) any other factors that seem to the Minister to be relevant to the circumstances.

Section 61E: inserted, on 22 October 2018, by section 47 of the Overseas Investment Amendment Act 2018 (2018 No 25).

61F Other provisions applying to all exemptions

- (1) This section applies to regulations under section 61C and exemptions granted under section 61D.
- (2) An exemption may be made subject to any conditions.
- (3) Regulations under section 61C may provide, where a person relies on an exemption in the regulations, for the following:
 - (a) for conditions of consents, to the extent set out in the regulations, to continue in effect as conditions of the consents but on the basis set out in the regulations (whether or not the person who relies on the exemption is a consent holder):
 - (b) for the person who relies on the exemption to be treated as a consent holder to the extent set out in the regulations:
 - (c) for consent holders to cease to be subject to the conditions of their consents to the extent set out in the regulations.
- (4) An exemption may at any time be amended or revoked in the same way as it may be made (for example, section 61E applies with all necessary modifications).
- (5) The reasons of the Minister for recommending the regulations or granting an exemption (including why the exemption is necessary, appropriate, or desirable) must be published together with the regulations or exemption.
- (6) However, the publication of an exemption under section 61D, or of the reasons for granting any exemption, may be deferred or dispensed with (in whole or in part) if the Minister is satisfied on reasonable grounds that good reason for withholding the exemption or the reasons (as the case may be) would exist under the Official Information Act 1982.

Compare: 1993 No 107 ss 45, 45A; 2013 No 69 ss 571(5), 572

Section 61F: inserted, on 22 October 2018, by section 47 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Section 61F(6): amended, on 16 June 2020, by section 51 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

61G Person who relies on exemption to acquire property may be subject to existing consent or exemption conditions

- (1) This section applies if—
 - (a) 1 or more of the following apply:

- (i) a consent holder (A) is subject to 1 or more conditions that apply in connection with property;
 - (ii) a person (A) relies on an exemption in, or an exemption granted under, this Act or the regulations that is subject to 1 or more conditions that apply in connection with property;
 - (iii) because of the previous operation of this section, a person (A) is treated as being subject to 1 or more conditions that apply in connection with property; and
- (b) another person (B) acquires the property (in whole or in part) under an overseas investment transaction, but B does not obtain consent because B relies on an exemption listed in the regulations; and
 - (c) the regulations specify 1 or more classes of conditions to which subsection (3) applies.
- (2) However, this section does not apply in the circumstances prescribed in the regulations (if any).
 - (3) B must be treated as being subject to the conditions referred to in subsection (1)(a) that are of the class specified in the regulations (and those conditions apply as conditions of a consent or an exemption, as the case may be, with all necessary modifications as if B were the person who was originally subject to the conditions).
 - (4) If the conditions that apply to B are conditions of a consent, B must be treated as being a consent holder in respect of the property and in respect of the conditions (for example, B may agree to the variation of the conditions under section 27).
 - (5) A ceases to be subject to the conditions in the circumstances, and to the extent, provided for in the regulations.
 - (6) Subsection (5) does not limit subsection (4).
 - (7) This section does not limit section 61F(3).

Section 61G: inserted, on 22 October 2018, by section 47 of the Overseas Investment Amendment Act 2018 (2018 No 25).

62 Foreshore, seabed, riverbed, or lakebed acquired by the Crown under consent process is not subdivision

[Repealed]

Section 62: repealed, on 24 November 2021, by section 27 of the Overseas Investment Amendment Act 2021 (2021 No 17).

Subpart 7—Transitional provisions and amendments to other enactments

Dissolution of Commission

63 Commission dissolved

The Commission is dissolved.

64 Assets and liabilities vest in the Crown

All rights, assets, liabilities, and debts that the Commission had immediately before the commencement of section 63 must be treated as the rights, assets, liabilities, and debts of the Crown on that commencement.

65 No compensation for loss of office

The Crown is not liable to make a payment to, or otherwise compensate, any person in respect of that person ceasing to hold any office established by or under the Overseas Investment Act 1973.

66 Transfer to LINZ

A person who was employed by the Reserve Bank in a position with the Commission immediately before the commencement of section 63 and who has given a written notice of transfer of employment to the chief executive of LINZ is entitled on the commencement of section 63 to be transferred to LINZ.

67 Transferring employee must be employed in equivalent employment

- (1) An employee who transfers to LINZ under section 66 must be employed in equivalent employment to his or her employment immediately before the commencement of section 63.
- (2) In subsection (1), **equivalent employment** means employment by LINZ of the employee—
 - (a) in substantially the same position; and
 - (b) in the same general locality; and
 - (c) on terms and conditions that are no less favourable.
- (3) The requirement that the terms and conditions of the employee's employment with LINZ are no less favourable continues to apply until those terms and conditions are varied by agreement between the employee and the chief executive of LINZ.

68 Continuity of employment

- (1) Every transferring employee becomes an employee of LINZ on the commencement of section 63.
- (2) However, for the purposes of every enactment, law, determination, contract, and agreement relating to the employment of the employee,—

- (a) the employee's contract of employment with LINZ must be treated as a continuation of the employee's contract of employment with the Reserve Bank; and
- (b) the employee's period of service with the Reserve Bank, and every other period of service of that employee that was recognised by the Reserve Bank as continuous service, must be treated as a period of service with LINZ.

69 No compensation for technical redundancy

A transferring employee is not entitled to receive any payment or any other benefit on the ground that—

- (a) the position held by the person with the Reserve Bank has ceased to exist (as a result of the dissolution of the Commission); or
- (b) the person has ceased (as a result of the transfer to LINZ) to be an employee of the Reserve Bank.

70 Final report

- (1) Before the commencement of section 63, the Commission must prepare and submit to the Minister a final report of its operations for the period beginning on 1 July 2005 and ending with the close of the day before the commencement of section 63.
- (2) The Minister must present a copy of the report to the House of Representatives not more than 6 sitting days after receiving it.

71 References to Commission

Unless the context otherwise requires, every reference to the Commission in any enactment, agreement, deed, instrument, application, notice, or any other document in force immediately before the commencement of section 63, on and after that commencement, must be read as a reference to the regulator.

72 Proceedings of Commission

- (1) Any proceedings to which the Commission is a party before the commencement of section 63 may be continued, completed, and enforced by or against the Crown.
- (2) This section is for the avoidance of doubt.

Amendments to Fisheries Act 1996

[Repealed]

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

73 New sections 56 to 58B substituted in Fisheries Act 1996

[Repealed]

Section 73: repealed, on 22 October 2018, by section 25 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Amendment to Te Ture Whenua Maori Act 1993

[Repealed]

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

74 Amendment to Te Ture Whenua Maori Act 1993

[Repealed]

Section 74: repealed, on 22 October 2018, by section 25 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Consequential amendments

[Repealed]

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

75 Consequential amendments

[Repealed]

Section 75: repealed, on 22 October 2018, by section 25 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Transitional provisions

76 Repeal and revocations

(1) In this section and in the rest of this subpart,—

1973 Act means the Overseas Investment Act 1973

Regulations means the Overseas Investment Regulations 1995.

(2) The 1973 Act is repealed and the Regulations and the Overseas Investment Exemption Notice 2001 are revoked.

77 Transitional provision for acts done or begun under previous overseas investment regime

(1) In this section, the 1973 Act, the Regulations, sections 56 to 58 of the Fisheries Act 1996, and section 152(3) of Te Ture Whenua Maori Act 1993, as they were

in force immediately before the commencement of sections 73, 74, and 76, are called the **previous regime**.

- (2) The previous regime continues to have effect as if it had not been replaced by this Act (subject to section 71) for the purpose of—
 - (a) investigating any offence under or breach of the previous regime committed before the commencement of this section (**commencement**), commencing or completing proceedings for the offence or breach, or imposing a penalty or other remedy for the offence or breach;
 - (b) considering and determining any application for consent or exemption under the Regulations that is made before commencement or that relates to a transaction entered into before commencement;
 - (c) considering and determining any application for a declaration under section 56(2), or a permission under section 57, of the Fisheries Act 1996 that is made before commencement or that relates to a transaction entered into before commencement;
 - (d) considering and determining an application for confirmation of an alienation under section 152(3) of Te Ture Whenua Maori Act 1993;
 - (e) completing any proceedings commenced under the previous regime before commencement.

78 Transitional provision for consents, exemptions, and conditions under 1973 Act and Regulations

- (1) This section applies to consents granted under the Regulations, exemptions granted under the 1973 Act or regulation 16 of the Regulations, and conditions of those consents and exemptions, that are in effect immediately before the commencement of section 76 or that are granted after that commencement by virtue of section 77(2).
- (2) Those consents, exemptions, and conditions must be treated as if they were consents and exemptions granted under this Act, or conditions applied under this Act,—
 - (a) for the purposes of subpart 4 (monitoring);
 - (b) for the purposes of subpart 5 (enforcement), in relation to any act or omission that occurs after the commencement of section 76.
- (3) However, the following provisions, as in force immediately before the commencement of section 76, continue to apply:
 - (a) regulation 14(2) of the Regulations, to those consents and conditions of those consents;
 - (b) regulation 16(3) of the Regulations, to those exemptions.

79 Transitional provision for permissions, etc, under Fisheries Act 1996

- (1) This section applies to permissions granted under section 28Z(9) of the Fisheries Act 1983 or under section 57(3) of the Fisheries Act 1996, and conditions of those permissions, that are in effect immediately before the commencement of section 73 or that are granted after that commencement by virtue of section 77(2).
- (2) Those permissions and conditions must be treated as if they were consents granted and conditions applied under this Act.
- (3) However, regulation 14(2) of the Regulations, as in force immediately before the commencement of section 76, continues to apply to those permissions and conditions of those permissions.

80 Transitional provision relating to clause 6 of Schedule 1AA (Exemption relating to dwellings in large apartment developments where sales of dwellings have begun before assent date)

A person may apply for an exemption certificate, and the application may be dealt with, before the commencement of clause 6 of Schedule 1AA as if that clause and the relevant fee prescribed in the regulations were in force.

Section 80: inserted, on 5 September 2018, by section 48 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Part 3

National security and public order risks management regime

Part 3: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

81 Purpose of Part

- (1) The purpose of this Part is to manage significant national security and public order risks associated with transactions by overseas persons.
- (2) In order to give effect to that purpose, the Minister may—
 - (a) review call-in transactions in accordance with subpart 1; and
 - (b) take any of the following actions in accordance with subpart 2:
 - (i) make a direction order in relation to a call-in transaction (*see* sections 88 to 90):
 - (ii) make a prohibition order in relation to a call-in transaction (*see* section 92):
 - (iii) make a disposal order in relation to an investment given effect to under a call-in transaction or a transaction of national interest (*see* section 93):
 - (iv) make a recommendation that a person be put into statutory management (*see* section 96).

- (3) The Minister may also make an interim direction order if the Minister is considering whether to take any of those actions, or what kind of action to take, in relation to a call-in transaction (*see* section 91).

Section 81: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 81(1): replaced, on 7 June 2021, by section 53(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Subpart 1—Call-in transactions

Subpart 1: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Subpart 1 heading: replaced, on 7 June 2021, by section 53(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Call-in transactions, etc

Heading: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

82 What is call-in transaction and overseas investment in SIB assets

- (1) A **call-in transaction** is a transaction by an overseas person or an associate of an overseas person that—
- (a) is an overseas investment in SIB assets; but
 - (b) does not require consent (*see* section 10).
- (2) An **overseas investment in SIB assets** is—

Investment in strategically important businesses

- (a) the acquisition by an overseas person, or an associate of an overseas person, of rights or interests in securities of a person (**A**) who is (directly or indirectly) carrying on a SIB if,—

Investment in media businesses with significant impact

- (i) in the case of a SIB that is a media business with significant impact, as a result of the acquisition the overseas person or the associate (either alone or together with its associates) has—
- (A) a more than 25% ownership or control interest in A; or
 - (B) an increase in an existing more than 25% ownership or control interest in A of a type referred to in subsection (3);
- or

Investment in listed issuers

- (ii) in the case of A being a listed issuer (or an issuer that would be within the definition of listed issuer if references in that definition to a licensed market operator included equivalent overseas market operators) that is not carrying on a media business with significant

impact, as a result of the acquisition the overseas person or the associate (either alone or together with its associates) has—

- (A) a 10% or more ownership or control interest in A; or
- (B) an increase in an existing 10% or more ownership or control interest in A that is of a type referred to in subsection (3); or
- (C) any or more disproportionate access to or control of a SIB; or

Any other investment in SIB business

- (iii) in any other case, as a result of the acquisition the overseas person or the associate (either alone or together with its associates) has—
 - (A) any ownership or control interest in A; or
 - (B) an increase in any existing ownership or control interest in A that is of a type referred to in subsection (3); or

Investment in SIB property

- (b) the acquisition by the overseas person or the associate of property (including goodwill and other intangible assets) in New Zealand used in carrying on a SIB,—
 - (i) in the case of an acquisition of property used by a critical direct supplier, if that supplier considers that the acquisition may impact its ability to provide contracted services to an intelligence or security agency; or
 - (ii) in the case of an acquisition of property that is used by a media business with significant impact, if the value of the property acquired is more than 25% of the value of all property owned by the media business immediately before the acquisition; or
 - (iii) in any other case, if the acquisition of the property would result in the overseas person or associate becoming or being a SIB, or being capable of being a SIB if it were to use the property for an activity of a type referred to in the definition of a SIB in section 6, (for example, because it acquires intellectual property on military or dual-use technology).
- (3) An increase is of a type referred to in this subsection if it—
 - (a) results in an ownership or control interest in A that equals or exceeds their ownership or control interest limit as follows:
 - (i) if their existing ownership or control interest in A amounted to 25% or less, their ownership or control interest limit is 25%;
 - (ii) if their existing ownership or control interest in A amounted to more than 25% but less than 50%, their ownership or control interest limit is 50%;

- (iii) if their existing ownership or control interest in A amounted to 50% or more but less than 75%, their ownership or control interest limit is 75%;
 - (iv) if their existing ownership or control interest in A amounted to 75% or more, their ownership or control interest limit is 100%; or
 - (b) is in securities of A of a different class to the class in which their existing interest is held; or
 - (c) gives the overseas person or the associate (either alone or together with its associates) any or more disproportionate access to or control of a SIB.
- (4) A supplier referred to in subsection (2)(b)(i) must notify the overseas person or the associate of its obligations under section 85 no later than the date on which the transaction is entered into.

Section 82: replaced, on 7 June 2021, by section 53(4) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 82(2): replaced, on 5 July 2021, by section 28(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 82(3): replaced, on 5 July 2021, by section 28(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 82(4): inserted, on 5 July 2021, by section 28(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

83 Who are relevant acquirers

The Minister may determine which 1 or more of the following persons is the **relevant acquirer** for a call-in transaction:

- (a) the person making the overseas investment (A), whether A is an overseas person or an associate of an overseas person:
- (b) any associate of A in relation to the overseas investment.

Section 83: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Review of call-in transactions

Heading: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

84 Review of call-in transactions

- (1) The Minister must review a call-in transaction that is notified under section 85 or 86.
- (2) The Minister must take a risk management action following a review under subsection (1).
- (3) The Minister may review any other call-in transaction.
- (4) The purpose of a review is to determine whether the transaction gives rise, or is likely to give rise, to a risk referred to in section 81.

- (5) However, if a direction order has already been made in relation to a call-in transaction, the Minister cannot review that transaction, or take another risk management action in relation to the transaction, unless the direction order is revoked in accordance with section 90.

Section 84: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 84(1): replaced, on 7 June 2021, by section 53(5) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 84(3): replaced, on 7 June 2021, by section 53(6) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Notification of call-in transactions

Heading: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

85 Military or dual-use technology and critical direct supplier call-in transactions

- (1) This section applies to a call-in transaction relating to a SIB that is—
- (a) a business that researches, develops, produces, or maintains military or dual-use technology; or
 - (b) a critical direct supplier.
- (2) Each overseas person or associate making the overseas investment in SIB assets must notify the regulator before giving effect to the call-in transaction.
- (3) A call-in transaction must not be given effect to unless the Minister makes a direction order in relation to that transaction.
- (4) However, in the case of an overseas person or associate investing in an unpublished CDS,—
- (a) a notice under subsection (2) must be given before the date of giving effect to the call-in transaction or as soon as is reasonably practicable after the overseas person or associate receives a notice under section 20E; and
 - (b) that person does not breach subsection (2) if the reason the person fails to give the notice is that the person had not received a notice under section 20E.
- (5) A person who fails to comply with this section does not commit an offence under section 45.

Section 85: replaced, on 7 June 2021, by section 53(7) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 85(4)(a): amended, on 5 July 2021, by section 29(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

86 Other call-in transactions

- (1) This section applies to a call-in transaction that is not a call-in transaction of a kind referred to in section 85.
- (2) 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.

Section 86: replaced, on 7 June 2021, by section 53(8) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

87 Requirements for notification of call-in transaction

- (1) The Minister must, by notice, authorise the manner in which a notification under section 85 or 86 must be given, including by doing any of the following:
 - (a) specifying the required content of the notification, which may include any information that the Minister thinks relevant:
 - (b) approving or prescribing 1 or more forms for the notification or 1 or more methods for making the notification (or both):
 - (c) authorising the notification to be given on behalf of the overseas person or associate referred to in section 85(2) or 86(2) (including the manner for doing so).
- (2) A notice under subsection (1) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (3) *[Repealed]*
- (4) The regulator may, by notice in writing, require 1 or more persons giving a notification under section 85 or 86 to provide a statutory declaration verifying that the information contained in the notification is true and correct.
- (5) For the purpose of considering the notification under section 85 or 86, the regulator may, by notice in writing, require a relevant acquirer, or any other person with information relevant to the notification, to provide the information specified in the regulator's notice and in a form specified by the regulator's notice.
- (6) A notification under section 85 or 86 must be accompanied by the relevant fee (if any), unless this has already been paid.

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must: <ul style="list-style-type: none"> • notify it in the <i>Gazette</i> • publish it on an Internet site maintained by, or on behalf of, the regulator 	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 87: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 87(1): amended, on 7 June 2021, by section 53(9) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 87(1)(c): amended, on 7 June 2021, by section 53(10) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 87(2): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 87(3): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 87(4): amended, on 7 June 2021, by section 53(9) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 87(5): amended, on 7 June 2021, by section 53(9) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 87(6): amended, on 7 June 2021, by section 53(9) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Subpart 2—Risk management actions

Subpart 2: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Direction orders

Heading: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

88 Direction orders

- (1) The Minister may give a direction order to a relevant acquirer, following a review of a call-in transaction, requiring compliance with the conditions of the order if the call-in transaction is or has been given effect to.

Automatic condition: every direction order

- (2) It is a condition of every direction order, whether or not it is stated in the order, that the relevant acquirer must not, in relation to the SIB, act or omit to act with a purpose or an intention of adversely affecting national security or public order.

Other conditions: to manage national security or public order risks

- (3) A direction order is subject to any other conditions (if any) that the Minister thinks appropriate to manage the risks to national security or public order posed by the transaction.
- (4) The Minister may impose other conditions only if the Minister considers that the call-in transaction gives rise, or is likely to give rise, to a significant risk to national security or public order.
- (5) When imposing other conditions, the Minister must have regard to New Zealand's international obligations.

Section 88: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 88(1): replaced, on 7 June 2021, by section 53(11) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 88(2) heading: inserted, on 7 June 2021, by section 53(11) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 88(2): replaced, on 7 June 2021, by section 53(11) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 88(3) heading: inserted, on 7 June 2021, by section 53(11) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 88(3): replaced, on 7 June 2021, by section 53(11) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 88(4): replaced, on 7 June 2021, by section 53(11) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 88(5): inserted, on 7 June 2021, by section 53(11) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

89 Direction orders may be varied by agreement

- (1) A direction order may be varied by the Minister with the agreement of the relevant acquirer.
- (2) Any conditions of a direction order may be varied or added to by the Minister with the agreement of the relevant acquirer.
- (3) A condition of a direction order may be revoked by the Minister.

Section 89: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

90 Revocation of direction order

The Minister may revoke a direction order if the Minister is satisfied that—

- (a) 1 or more of the following events or matters have occurred in connection with the direction order or the call-in transaction that the order relates to:
 - (i) a notice under section 85 or 86 or any information provided under section 87(5) contained a statement that was false or misleading in any material particular or any material omission:
 - (ii) a notice under section 85 or 86 or any information provided under section 87(5) provided the Minister with a document that was false or misleading in any material particular:
 - (iii) a person has breached a condition of a direction order:
 - (iv) a person has contravened an enforceable undertaking (*see* sections 46A to 46F); and
- (b) the event or matter gives rise, or is likely to give rise, to a risk referred to in section 81.

Section 90: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 90(a)(i): amended, on 7 June 2021, by section 53(12) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 90(a)(ii): amended, on 7 June 2021, by section 53(12) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

91 Interim direction orders

- (1) The Minister may give an interim order of the kind referred to in section 88 to a relevant acquirer if the Minister is considering whether to take a risk management action, or what kind of risk management action to take, in relation to a call-in transaction.
- (2) Sections 88(2), (3), and (5) and 89 apply to an interim direction order as if it were a direction order.
- (3) The Minister may impose conditions only if the Minister considers that the call-in transaction could give rise to a risk referred to in section 81.
- (4) An interim direction order is in force until the earlier of—
 - (a) the date specified in regulations; and
 - (b) the date on which the Minister takes a risk management action in relation to the relevant call-in transaction.
- (5) The Minister may revoke an interim direction order at any time.

Section 91: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 91(2): replaced, on 7 June 2021, by section 53(13) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Prohibition orders

Heading: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

92 Prohibition orders

- (1) The Minister may give a prohibition order to a relevant acquirer following a review of a call-in transaction, prohibiting the call-in transaction from being given effect to.
- (2) A prohibition order may—
 - (a) specify any reasonable steps that must be taken in order to comply with the prohibition order;
 - (b) require the person to report to the regulator within the time specified in the order stating how and when the order has been or will be implemented.
- (3) The Minister may give a prohibition order only if the Minister is satisfied on reasonable grounds that—

- (a) the call-in transaction gives rise, or is likely to give rise, to a risk referred to in section 81; and
 - (b) the risk cannot be adequately managed by giving the relevant acquirer a direction order.
- (4) When acting under this section, the Minister must have regard to New Zealand's international obligations.
- (5) A person who is given a prohibition order must comply with it.

Section 92: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Disposal orders

Heading: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

93 Disposal orders

- (1) The Minister may give a disposal order to an overseas person, or an associate of an overseas person, who acquired sensitive assets under a transaction of national interest or a call-in transaction.
- (2) A disposal order may—
- (a) require disposal of the whole or any part of the sensitive assets owned by the person or their associate:
 - (b) specify the time within which or manner in which the disposal must be made:
 - (c) specify any reasonable steps that must be taken in order to comply with the disposal order:
 - (d) require the person to report to the regulator within the time specified in the order stating how and when the order has been or will be implemented.
- (3) The Minister may give a disposal order to a person only if the Minister is satisfied on reasonable grounds that—
- (a) the transaction gives rise, or is likely to give rise, or has given rise to a risk referred to in section 81; and
 - (b) the risk cannot be adequately managed by taking an enforcement action under subpart 5 of Part 2 or (in the case of sensitive assets acquired under a call-in transaction) giving a direction order to the relevant acquirer.
- (4) *See also* section 112, which applies when the Minister is giving a disposal order in connection with a transaction of national interest.
- (5) The Minister must have regard to New Zealand's international obligations when acting under this section.

- (6) A person who is given a disposal order must comply with it within the time, and in the manner, specified in the order.

Section 93: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Statutory management

Heading: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

94 Purpose of statutory management

The purpose of statutory management under this subpart is to manage the risks to national security or public order associated with actions by an overseas person, or an associate of an overseas person, who has an interest in sensitive assets, including (without limitation) removing the overseas person's, or their associate's, access to or control over the sensitive assets.

Section 94: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

95 Statutory management of person who owns sensitive assets and associates

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister,—
- (a) declare that a person who owns sensitive assets is subject to statutory management; and
 - (b) declare that an associate of a person who owns sensitive assets is subject to statutory management; and
 - (c) vest the assets identified in accordance with section 103 in the statutory manager for the purposes of disposing of those assets under that section; and
 - (d) appoint 1 or more persons as statutory manager or statutory managers of the person for a specified period.
- (2) If an order is made under subsection (1),—
- (a) every subsidiary of a person declared to be subject to statutory management, except any subsidiary declared to be a subsidiary to which the order does not apply, is subject to statutory management; and
 - (b) the appointment of a statutory manager for the specified period in respect of the person under statutory management also applies to those subsidiaries.
- (3) If the order appoints 2 or more persons as statutory managers,—
- (a) the order must state whether the powers of a statutory manager are to be exercised by those persons acting jointly or may be exercised individually; and

- (b) references in this Act to a statutory manager include references to the statutory managers.
- (4) In this section, a **person** includes a body of persons whether incorporated or not.

Section 95: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

96 Recommendation of Minister

- (1) The Minister may make a recommendation under section 95 only if—
- (a) an overseas person, or an associate of the overseas person, acquired sensitive assets under a transaction of national interest or a call-in transaction; and
- (b) the Minister is satisfied on reasonable grounds that,—
- (i) in relation to the sensitive assets, the overseas person or their associate has acted, is acting, or is likely to act in a manner that gives or is likely to give rise to a significant risk to national security or public order; and
- (ii) the risk cannot be adequately managed by making a direction order (in the case of assets acquired under a call-in transaction), a disposal order, or taking an enforcement action under subpart 5 of Part 2.
- (2) The Minister must have regard to New Zealand's international obligations when acting under this section.
- (3) *See also* section 112, which applies when the Minister is making a recommendation in connection with a transaction of national interest.

Section 96: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

97 Statutory management of New Zealand business only

Section 95 applies only to the person's property, rights, assets, and liabilities relating to its New Zealand business or, if the person has business undertakings unrelated to the sensitive assets, that part of its New Zealand business that relates to the sensitive assets.

Section 97: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

98 Date and time of appointment

- (1) Every order made under section 95 must specify the date on which, and the time at which, it comes into force.
- (2) The date and time specified must not be earlier than the date on which, and the time at which, the order is made.

- (3) If a question arises as to whether, on the date on which a statutory manager was appointed, an act was done or a transaction was entered into or effected before or after the appointment, the act or transaction must, in the absence of proof to the contrary, be treated as having been done, entered into, or effected, as the case may be, after the appointment of the statutory manager.

Section 98: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

99 Considerations affecting exercise of powers by statutory manager

- (1) In exercising the powers conferred on them under this subpart, a statutory manager must have regard to—

- (a) the purpose of statutory management (*see* section 94); and
- (b) to the extent not inconsistent with paragraph (a), the desirability of preserving the interests of members and creditors of the person under statutory management and the overseas person or, where appropriate, the need to protect the beneficiaries under any trust administered by the person under statutory management or the overseas person or the public interest; and
- (c) to the extent not inconsistent with paragraphs (a) and (b), the need to preserve the business or undertaking of the person under statutory management and the overseas person.

- (2) A statutory manager must, in relation to the statutory management,—

- (a) consult the regulator as and when required by the regulator; and
- (b) have regard to any advice given to the statutory manager by the regulator; and
- (c) comply with any directions given under section 100; and
- (d) provide any reports required under section 100; and
- (e) notify the regulator before taking an action under—
 - (i) section 50(1) or (2) of the Corporations (Investigation and Management) Act 1989 (power of statutory manager to sell business undertaking of corporation) (as applied by section 105(i));
 - (ii) section 52(1) of the Corporations (Investigation and Management) Act 1989 (power of statutory manager to put corporation into liquidation) (as applied by section 105(j));
 - (iii) section 103 (power to sell vested property);
 - (iv) section 104 (power to terminate contracts).

Section 99: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

100 Role of regulator in statutory management

- (1) The regulator may, in relation to the conduct of the statutory management,—

- (a) give advice to the statutory manager; and
 - (b) give written directions to the statutory manager; and
 - (c) require a statutory manager to give to the regulator, or to other persons specified by the regulator, reports about the conduct of the statutory management and the state of the affairs or business of the person under statutory management.
- (2) A report required under subsection (1)(c) must be given in the way, and within the period, required by the regulator.
- (3) When acting under this section, the regulator must have regard to—
- (a) the purpose of statutory management (*see* section 94); and
 - (b) New Zealand's international obligations.

Section 100: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

101 Statutory manager may form body corporate to acquire business of branch of persons not incorporated in New Zealand

- (1) If a person declared to be subject to statutory management is a body corporate incorporated outside New Zealand or an unincorporated body that has its head office or principal place of business outside New Zealand, the statutory manager may—
- (a) form and register a body corporate under the Companies Act 1993 or any other Act;
 - (b) subscribe for or acquire, as trustee for the person, all or any of the shares of the body corporate;
 - (c) allot or issue all or any of the shares in the body corporate as fully or partly paid, as the case may be, up to the value of any property, rights, and assets vested in the body corporate under subsection (2) (after deducting the value of any liabilities so vested).
- (2) The Governor-General may, by Order in Council, on the recommendation of the Minister, declare that the whole or any part of any property, rights, assets, and liabilities of the person relating to its New Zealand business will vest in the body corporate referred to in subsection (1)(a) on a date specified in the order (and the property, rights, assets, and liabilities vest in the body corporate on the date specified).
- (3) Nothing in subsection (2) reduces, extinguishes, or affects any obligation or liability of a person.
- (4) If a body corporate is formed under subsection (1)(a),—
- (a) the body corporate is subject to statutory management under this subpart as if it had been declared to be so by an order under section 95; and
 - (b) the body corporate has the same statutory manager as the person under statutory management; and

- (c) the provisions in this Act relating to statutory management apply (with any necessary modifications) as if the body corporate were a person under statutory management.

Section 101: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

102 Body corporate formed and registered also subject to statutory management

If a body corporate is formed and registered under section 50(2)(a) of the Corporations (Investigation and Management) Act 1989, as applied by section 105(i),—

- (a) the body corporate is subject to statutory management under this subpart as if it had been declared to be so by an order under section 95; and
- (b) the body corporate has the same statutory manager as the person under statutory management; and
- (c) the provisions in this Act relating to statutory management apply (with any necessary modifications) as if the body corporate were a person under statutory management.

Section 102: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

103 Statutory manager may sell vested assets

- (1) This section applies to sensitive assets owned by any overseas person or their associate if—
 - (a) the overseas person or their associate is acting in the manner described in section 96(1)(b); but
 - (b) the order under section 95 will not make that overseas person or associate subject to statutory management.
- (2) The order may identify the whole or any part of the sensitive assets as assets to be vested in the statutory manager.
- (3) The order may identify the assets either individually or as a group or class.
- (4) The assets identified in the order are vested in the statutory manager on the date on which and time at which the order comes into force (*see* section 98).
- (5) The statutory manager may sell or otherwise dispose of the whole or any part of the vested assets to any person, on any terms and conditions, that the statutory manager considers appropriate.
- (6) The provisions of sections 51 and 72 of the Corporations (Investigation and Management) Act 1989 apply, with any necessary modifications, to a sale of vested assets under this section as if the sale were a sale under section 50(1) of that Act.

Section 103: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

104 Statutory manager may terminate contracts or arrangements posing significant risk to national security or public order

- (1) If the statutory manager considers that a contract or an arrangement entered into by the person under statutory management gives rise, or is likely to give rise, to a significant risk to national security or public order, the statutory manager may cancel that contract or arrangement.
- (2) If a contract or an arrangement is cancelled under this section,—
 - (a) the person under statutory management is discharged from the further performance of the contract or arrangement and from all liabilities for subsequent non-performance of the contract or arrangement; and
 - (b) the other party to the contract or arrangement may apply to the court for compensation in respect of the contract or arrangement.
- (3) An application under subsection (2)(b) must be made within 3 months of the person receiving notice of the cancellation.
- (4) The court may award any compensation that it considers just and reasonable, having regard to—
 - (a) the value of the consideration provided by the person; and
 - (b) all amounts and benefits that the person has received under the contract or arrangement; and
 - (c) the conduct of the parties.

Section 104: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

105 Application of Corporations (Investigation and Management) Act 1989

The following provisions of the Corporations (Investigation and Management) Act 1989 apply for the purposes of a statutory management under this Act, with all necessary modifications as if a person declared to be subject to statutory management under this Act were a corporation declared to be subject to statutory management under that Act:

- (a) section 42 (moratorium):
- (b) section 43 (prohibition against removal of assets from New Zealand), except that a person who commits an offence under section 43(2) is liable on conviction,—
 - (i) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$300,000:
 - (ii) in any other case, to a fine not exceeding \$300,000:
- (c) section 44 (statutory manager may suspend payment of money owing):
- (d) section 45 (management of corporation to vest in statutory manager):
- (e) section 46 (powers of statutory manager):
- (f) section 47 (statutory manager may carry on business of corporation):

- (g) section 48 (statutory manager may pay creditors and compromise claims):
- (h) section 49 (termination of contract of agency or service):
- (i) sections 50, 51, 53, and 72 (statutory manager may sell business undertaking of corporation), but subject to the modifications in section 110:
- (j) section 52 (liquidation of corporations):
- (k) section 54 (power to trace property improperly disposed of):
- (l) section 55 (application of certain provisions of Companies Act 1993):
- (m) section 58 (statutory manager may apply to court for directions):
- (n) section 59 (court may confer additional powers on statutory manager):
- (o) section 61 (prior winding up, liquidation, or receivership to cease):
- (p) section 64 (corporation not entitled to be consulted about exercise of powers):
- (q) section 66 (advances to statutory managers and members of advisory committees):
- (r) section 67 (duty to deliver books and property to statutory manager):
- (s) section 68 (offence to destroy, alter, or conceal records), except that a person who commits an offence under section 68(1) is liable on conviction,—
 - (i) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$300,000:
 - (ii) in any other case, to a fine not exceeding \$300,000:
- (t) section 69 (duty to report offences), except that—
 - (i) the reference to a person being guilty of an offence includes a person being liable to a civil pecuniary penalty under this Act:
 - (ii) in relation to an offence, or to a liability to a civil pecuniary penalty, under this Act, the duty to report the matter to the Solicitor-General includes a duty also to report the matter to the regulator:
- (u) sections 71 and 71A (application of other Acts).

Section 105: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

106 Termination of statutory management

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, declare that a person under statutory management is to cease to be subject to statutory management.
- (2) The order must specify the date on which, and the time at which, it comes into force.

- (3) A person under statutory management ceases to be subject to statutory management if the person is put into liquidation on the application of the statutory manager.

Section 106: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

107 Effect of termination of statutory management

- (1) If an order is made under section 106, or a person under statutory management is put into liquidation as referred to in section 106(3), the following happens at the specified time:

- (a) the person under statutory management ceases to be subject to statutory management;
- (b) the appointment of the statutory manager terminates.

- (2) In subsection (1), **specified time** means, as the case requires,—

- (a) the date and time specified in the order; or
- (b) the date and time of the liquidator's appointment.

Section 107: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

108 Powers to obtain documents and information

A statutory manager has, and may exercise, all of the powers conferred on a liquidator of a company by sections 261 to 267 of the Companies Act 1993 in the same manner as if the statutory manager were the liquidator of a company in liquidation under that Act (and, for that purpose, section 373(3) of that Act applies with all necessary modifications).

Section 108: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

109 Protection from liability and indemnity

- (1) No statutory manager is liable for an act done or omitted to be done in the performance or exercise in good faith of the statutory manager's functions, duties, or powers under this Act.
- (2) The Crown indemnifies the statutory manager for any liability that arises from the exercise or purported exercise of, or omission to exercise, any power conferred by this Act unless it is shown that the exercise or purported exercise of, or omission to exercise, the power was in bad faith.
- (3) Any money required for the purposes of this section must be paid out of a Crown Bank Account without further authority than this section.
- (4) The indemnity conferred by subsection (2) extends to legal costs incurred in defending a proceeding.

Section 109: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

110 Expenses of statutory management

- (1) All costs, charges, and expenses properly incurred by a statutory manager in the exercise of the manager's functions or powers under this subpart (including any remuneration approved by the Minister) are payable by the Crown.
- (2) The Crown is entitled to recover the amounts paid under subsection (1) from either of the following:
 - (a) the proceeds of sale or other disposition of any vested assets:
 - (b) the proceeds of sale or other disposition of the sensitive assets of the overseas person or their associate's (whether sold or disposed of as part of the sale of the business undertaking of the person under statutory management or otherwise).
- (3) Section 51 of the Corporations (Investigation and Management) Act 1989 (as applied by section 105(i)) must be read as if a reference to the costs of the statutory manager in selling or disposing of the relevant property were a reference to the Crown's rights to be repaid under subsection (2).

Section 110: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

111 Modifications where person under statutory management is regulated by Reserve Bank

- (1) This section applies if a person who will be made subject to statutory management by an order under section 95 is any of the following:
 - (a) a registered bank (within the meaning of section 2(1) of the Banking (Prudential Supervision) Act 1989):
 - (b) a covered bond SPV (within the meaning of section 139B of the Banking (Prudential Supervision) Act 1989):
 - (c) a licensed insurer (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010):
 - (d) a non-bank deposit taker (within the meaning of NBDT in section 5 of the Non-bank Deposit Takers Act 2013):
 - (e) an operator of a designated FMI (within the meaning of section 5 of the Financial Market Infrastructures Act 2021).
- (2) The Minister must consult the Reserve Bank before making a recommendation under section 96.
- (3) Section 99(1) does not apply and instead the statutory manager must have regard to—
 - (a) the purpose of statutory management (*see* section 94):
 - (b) the need to maintain public confidence in the operation and soundness of the financial system:
 - (c) the need to avoid significant damage to the financial system:

- (d) to the extent not inconsistent with paragraphs (a), (b), and (c), the desirability of preserving the interests of members and creditors of the person under statutory management and the overseas person or, where appropriate, the need to protect the beneficiaries under any trust administered by the person under statutory management or the overseas person or the public interest:
 - (e) to the extent not inconsistent with paragraphs (a), (b), (c), and (d), the need to preserve the business or undertaking of the person under statutory management and the overseas person.
- (4) The statutory manager must have regard to any advice given to the statutory manager by the Reserve Bank.
 - (5) A notice under section 99(2)(e) must also be given to the Reserve Bank.
 - (6) Section 100 is amended as it relates to directions so that—
 - (a) a direction under section 100(1)(b) must be given jointly by the Reserve Bank and the regulator; and
 - (b) section 100(3) applies to the regulator and the Reserve Bank; and
 - (c) when making a joint direction, the Reserve Bank and the regulator must have regard to the matters set out in subsection (3)(b) and (c).
 - (7) A requirement for a report under section 100(1)(c) may be made by the regulator or the Reserve Bank.

Section 111: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 111(1)(a): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 111(1)(b): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 111(1)(e): replaced, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

Risk management actions and transactions of national interest

Heading: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

112 When risk management actions may be taken in connection with consented transactions of national interest

The Minister may only make a disposal order or a recommendation that a person be put into statutory management in connection with a transaction of national interest for which consent has been granted if the Minister is satisfied that—

- (a) 1 or more of the following events or matters have occurred in connection with the relevant consent or the transaction of national interest that the consent relates to:

- (i) an application under section 23 or any information provided under section 23(3) contained a statement that was false or misleading in any material particular or any material omission:
 - (ii) an application under section 23 or any information provided under section 23(3) provided the Minister with a document that was false or misleading in any material particular:
 - (iii) a person has breached a condition of a consent:
 - (iv) a person has contravened an enforceable undertaking (*see* sections 46A to 46G); and
- (b) that the event or matter gives rise, or is likely to give rise,—
- (i) in the case of a disposal order, to a risk referred to in section 81:
 - (ii) in the case of a recommendation that a person be put into statutory management, to a significant risk to national security or public order.

Section 112: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Subpart 3—Protection of classified security information

Subpart 3: replaced, on 28 November 2023, by section 35 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

113 Proceedings involving classified security information

- (1) This section applies to any civil proceedings (including public law and judicial review proceedings) in a court relating to the administration or enforcement of this Act.
- (2) If the Crown proposes to present classified security information in proceedings, the Attorney-General must—
 - (a) make an application to an authorised court under section 32 of the 2022 Act for a security information order to protect the confidentiality of the information to be given as evidence in the proceedings; and
 - (b) submit to the court the certification described in section 114(1)(b).
- (3) If the classified security information is also national security information, the Crown may submit with the application and certification referred to in subsection (2) an NSI certificate under section 41 of the 2022 Act and seek a security information order as set out in section 36(3) of that Act (under which the types of orders available to the court are limited).
- (4) In this section,—

2022 Act means the Security Information in Proceedings Act 2022

authorised court, national security information, NSI certificate, and security information order have the meanings set out in section 4 of the 2022 Act.

Section 113: replaced, on 28 November 2023, by section 35 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

114 Meaning of classified security information

- (1) In this Act, **classified security information** means information—
- (a) that is held by an agency listed in section 126(2); and
 - (b) that the head of the agency (in the case of information held by an intelligence or security agency) or the Attorney-General (in the case of information held by any other agency) certifies in writing cannot be disclosed (except as authorised by or under an Act or other rule of law) because, in the opinion of the head of the agency or the Attorney-General (as applicable),—
 - (i) the information is information of a kind specified in subsection (2); and
 - (ii) disclosure of the information would be disclosure of a kind specified in subsection (3).
- (2) Information falls within subsection (1)(b)(i) if it—
- (a) might lead to the identification of, or provide details of,—
 - (i) the source of the information; or
 - (ii) the nature, content, or scope of the information; or
 - (iii) the nature or type of the assistance or operational methods available to the agency; or
 - (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in relation to any of the functions of the agency; or
 - (c) has been provided to the agency by the Government of another country or by an agency of such a Government or by an international organisation, and is information that cannot be disclosed by the agency because the Government, agency, or organisation that provided the information will not consent to the disclosure.
- (3) Disclosure of information falls within subsection (1)(b)(ii) if the disclosure would be likely—
- (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of another country or by an agency of such a Government or by any international organisation; or
 - (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences and the right to a fair trial; or

(d) to endanger the safety of any person.

Section 114: replaced, on 28 November 2023, by section 35 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

115 Obligation to provide court with access to classified security information

[Repealed]

Section 115: repealed, on 28 November 2023, by section 35 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

116 Court orders

[Repealed]

Section 116: repealed, on 28 November 2023, by section 35 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

117 Appointment of special advocate

[Repealed]

Section 117: repealed, on 28 November 2023, by section 35 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

118 Nomination of person for appointment

[Repealed]

Section 118: repealed, on 28 November 2023, by section 35 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

119 Role of special advocates

[Repealed]

Section 119: repealed, on 28 November 2023, by section 35 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

120 Court may provide access to classified security information to special advocate

[Repealed]

Section 120: repealed, on 28 November 2023, by section 35 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

121 Communication between special advocate and other persons

[Repealed]

Section 121: repealed, on 28 November 2023, by section 35 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

122 Protection of special advocates from liability

[Repealed]

Section 122: repealed, on 28 November 2023, by section 35 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

123 Other matters relating to procedure in proceedings involving classified security information

[Repealed]

Section 123: repealed, on 28 November 2023, by section 35 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

124 Nothing in this subpart limits other rules of law that authorise or require withholding of document, etc

[Repealed]

Section 124: repealed, on 28 November 2023, by section 35 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

125 Ancillary general practices and procedures to protect classified security information

[Repealed]

Section 125: repealed, on 28 November 2023, by section 35 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

Subpart 4—Miscellaneous provisions

Subpart 4: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

126 Power to use and disclose information relevant to managing certain risks

- (1) Any agency identified in subsection (2) (a **disclosing agency**) may disclose to any other agency identified in subsection (2) (a **receiving agency**) any information held by the disclosing agency if the disclosing agency has reasonable grounds to believe that the disclosure of that information is necessary for the purpose of managing national security and public order risks associated with transactions by overseas persons.
- (2) The agencies are—
 - (a) an intelligence or security agency:
 - (b) the Department of Internal Affairs:
 - (c) the Department of the Prime Minister and Cabinet:
 - (d) the Inland Revenue Department:
 - (e) Land Information New Zealand:
 - (f) the Ministry of Business, Innovation, and Employment:
 - (g) the Ministry of Defence:
 - (h) the Ministry of Foreign Affairs and Trade:
 - (i) the New Zealand Customs Service:
 - (j) the New Zealand Police:
 - (k) New Zealand Trade and Enterprise:

- (l) the Reserve Bank:
 - (m) the Treasury:
 - (n) the regulator:
 - (o) any other agency set out in regulations.
- (3) A receiving agency may use information that is disclosed in reliance on this section—
- (a) only for the purpose of, or in connection with, the management of national security and public order risks and, if the receiving agency is the New Zealand Security Intelligence Service or the Government Communications Security Bureau, for the performance of their functions; and
 - (b) only in accordance with this section and the regulations (if any), despite anything to the contrary in any other enactment.
- (4) Before disclosing information in reliance on this section, a disclosing agency must impose conditions that the disclosing agency considers are needed to ensure that subsection (3) is complied with, including conditions relating to—
- (a) the storage and use of, or access to, anything provided:
 - (b) the copying, returning, or disposing of copies of any documents provided.
- (5) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
- (a) prescribing agencies for the purposes of subsection (2)(o):
 - (b) governing the disclosure and use of information under this section, including—
 - (i) the types of information that may be disclosed:
 - (ii) the conditions that must be imposed when the information is disclosed.
- (6) The Minister must consult with the Privacy Commissioner before recommending that regulations be made under this section.
- (7) The Minister must, before making a recommendation that an agency be prescribed under subsection (2)(o), be satisfied that it is necessary that information is able to be disclosed to that agency for the purpose of managing national security and public order risks.
- (8) This section applies despite anything to the contrary in any contract, deed, or document.
- (9) Subsection (1) does not limit a disclosing agency from using any other lawful means to disclose information (whether personal information or other information).
- (10) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 126: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 126(3): replaced, on 5 July 2021, by section 30(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 126(9): inserted, on 5 July 2021, by section 30(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Section 126(10): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

127 Regulations regarding transactions of national interest and overseas investments in SIB assets

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
 - (a) prescribing classes of technology that are or are not military or dual-use technology:
 - (b) prescribing classes of information that are not sensitive information:
 - (c) prescribing classes of businesses that are or are not strategically important businesses:
 - (d) prescribing classes of transactions that are not—
 - (i) transactions of national interest:
 - (ii) call-in transactions:
 - (iii) overseas investments covered by the emergency notification regime:
 - (iv) overseas investments in SIB assets:
 - (e) prescribing a date for notification for the purposes of section 86.
- (2) The Minister must have regard to New Zealand's international obligations when making a recommendation relating to a regulation for the purposes set out in subsection (1)(a) to (e).
- (3) The Minister must, before making a recommendation for the purpose set out in subsection (1)(c) that applies in section 82, be satisfied that a class of business is not broader than is reasonably necessary to manage risks to national security or public order.
- (4) Regulations made under subsection (1)(c) may prescribe a class of business using 1 or more of the following methods:

- (a) minimum criteria for a business to be a strategically important business (for example, minimum capacity of a generator):
 - (b) the geographic area in which the business is located or provides services:
 - (c) any other circumstances in which the business must operate.
- (5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 127: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Section 127(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

128 Giving effect to and unwinding of call-in transactions

A call-in transaction that has been given effect to in contravention of section 85 or a prohibition order—

- (a) is not an illegal contract for the purposes of subpart 5 of Part 2 of the Contract and Commercial Law Act 2017; and
- (b) is not void only because the transaction has been given effect to without a direction notice or because giving effect to the overseas investment in contravention of a prohibition order is an offence.

Section 128: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

129 Minister must publish decisions on call-in transactions and transaction of national interest

- (1) The Minister must publish, on an Internet site maintained by or for the regulator, notice of—
 - (a) a decision about whether or not to decline consent to a transaction of national interest under section 20C:
 - (b) a decision to take a risk management action.
- (2) However, subsection (1)(b) does not apply if the risk management action is a direction order referred to in section 88(1)(a) (which relates to transactions in respect of which no conditions are imposed).
- (3) The notice must include a summary of the decision made and the reasons for that decision.

- (4) However, the Minister may defer or dispense with publication (in whole or in part) if the Minister is satisfied on reasonable grounds that good reason for withholding the publication would exist under the Official Information Act 1982.

Section 129: inserted, on 16 June 2020, by section 52 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Schedule 1AA

Transitional, savings, and related provisions

s 8B

Schedule 1AA: inserted, on 22 October 2018, by section 49 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Part 1

Provisions relating to Overseas Investment Amendment Act 2018

1 Existing transactions and applications not affected

- (1) The amendments made by the Overseas Investment Amendment Act 2018 apply only to transactions entered into on or after commencement.
- (2) In particular, this Act and the regulations, as in force immediately before commencement, continue to apply to the following as if the Overseas Investment Amendment Act 2018 had not been enacted:
 - (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) In this clause, entering into a contract or an arrangement before commencement is a transaction that must be treated as being entered into before commencement even if, immediately before commencement, the transaction is subject to a condition precedent.
- (5) If a sale or transfer of property or securities, or the issue, allotment, buyback, or cancellation of securities, occurs without a contract or an arrangement being entered into or an understanding being arrived at, the transaction must be treated as being entered into for the purpose of subclauses (1) and (2) when the property or securities are sold or transferred or the securities are issued, allotted, bought back, or cancelled (as the case may be).
- (6) In this clause, clause 2, and clause 3, **commencement** means the commencement of this clause.

Example

A is an overseas person.

Before commencement, A enters into a sale and purchase agreement to buy a house that is on residential (but not otherwise sensitive) land. At that time, the land is not sensitive under this Act. The agreement is subject to a finance condition.

After commencement, the finance condition is satisfied and the agreement becomes unconditional. Settlement occurs 1 month later.

The transaction does not require consent under this Act because the transaction was entered into before commencement (that is, at a time when the residential land was not sensitive land and its purchase did not require consent).

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

- (1) This clause applies to a transaction entered into before commencement if consent is not given for the transaction before commencement.
- (2) Despite clause 1,—
 - (a) an application for consent for the transaction may be considered under the benefit to New Zealand test applying section 16A(3) or in accordance with section 16A(4), as inserted by the Overseas Investment Amendment Act 2018; and
 - (b) the other provisions of this Act, as amended by the Overseas Investment Amendment Act 2018, apply accordingly.
- (3) Clause 1(4) and (5) applies for the purposes of this clause.

3 New information-gathering powers and service provisions apply to matters before or after commencement

- (1) Despite clause 1,—
 - (a) the regulator may exercise a power under section 41 (as in force after commencement) in connection with any transaction, act, omission, or other matter regardless of whether the transaction, act, omission, or other matter occurred before or after commencement; and
 - (b) sections 54 to 55A (as in force after commencement) apply to any document that is served after commencement regardless of whether the document relates to a transaction, act, omission, or other matter that occurs before or after commencement.
- (2) However, section 54 (as in force after commencement) does not apply to a holder of an exemption under section 61D if the exemption was continued in force under clause 4(2) of this schedule.
- (3) Sections 41A to 41E (as in force after commencement) apply for the purposes of subclause (1)(a).

4 Existing exemptions saved

- (1) An exemption made under section 61(1)(i) that is in force immediately before the commencement of section 46 of the Overseas Investment Amendment Act 2018 continues in force as if it were made under section 61C of this Act.
- (2) An exemption granted under regulation 37 of the Overseas Investment Regulations 2005 that is in force immediately before the commencement of section 46 of the Overseas Investment Amendment Act 2018 continues in force as if it were granted under section 61D of this Act.

- (3) However, sections 61B, 61D(3), 61E, and 61F(5)—
- (a) do not apply to those exemptions as granted; and
 - (b) do not apply (other than section 61D(3)) to a minor or technical amendment to those exemptions, or to a replacement of those exemptions with only minor or technical amendments, made after the commencement of section 46 of the Overseas Investment Amendment Act 2018.

5 Exemption relating to existing Resource Management Act 1991 requirements

- (1) This clause applies if an overseas person (**A**), or a person (**B**) on behalf of an overseas person, is (in effect) required to acquire an estate or interest in residential (but not otherwise sensitive) land because of—
- (a) a condition of a resource consent granted under the Resource Management Act 1991 before the commencement of this clause; or
 - (b) any other requirement imposed by or under that Act and that is imposed on A or B before the commencement of this clause.
- (2) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land that is the acquisition of that estate or interest in residential (but not otherwise sensitive) land and is entered into by A or B for the purpose of satisfying that condition or other requirement.

Schedule 1AA clause 5(1): amended, on 16 June 2020, by section 54(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Schedule 1AA clause 5(2): amended, on 16 June 2020, by section 54(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

6 Exemption relating to dwellings in large apartment developments where sales of dwellings have begun before assent date

- (1) This clause applies in respect of land that is being used, or intended to be used, for 1 (or more) of the following (a **development**):
- (a) in the construction of 1 or more multi-storey buildings as 1 development, where each building consists, or will consist, of at least 20 residential dwellings; or
 - (b) to increase the number of residential dwellings in 1 or more multi-storey buildings, where the number of residential dwellings in each building will be increased by 20 or more.

Exemption certificates

- (2) A person involved in the development (the **developer**) may apply for an exemption certificate no later than the expiry of the 6-month period that starts on the date of Royal assent of the Overseas Investment Amendment Act 2018 (the **assent date**), specifying the land that constitutes the development (in a way that enables its boundaries to be clearly identified).

- (3) The relevant Minister or Ministers may grant an exemption certificate if they are satisfied that—
- (a) at least 20 new residential dwellings that are not completed at the assent date (the **new dwellings**) will be, or are likely to be, completed in the development before the expiry of the 5-year period that starts on the assent date; and
 - (b) on or before the assent date, a transaction has been entered into by the parties in good faith in the ordinary course of business for the acquisition of 1 or more of the new dwellings that the relevant Minister or Ministers are satisfied will be, or are likely to be, completed in the development before the expiry of that 5-year period.
- (4) In considering whether the matters in subclause (3) are met, the relevant Minister or Ministers may have regard to factors such as—
- (a) whether the development has appropriate resource consent, building consent, and any other relevant authorisations; and
 - (b) the developer's financial strength; and
 - (c) the previous activity of the developer (or its associates or individuals with control) regarding use of residential land; and
 - (d) the previous record of the developer (or its associates or individuals with control) in complying with consent conditions or applying for consent conditions to be varied.
- (5) An exemption certificate must be applied to 100% of the new dwellings in the development.

Exemptions for dwellings to which exemption certificate applies that are purchased from developer

- (6) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land in respect of a residential dwelling in the development if—
- (a) the relevant land is residential (but not otherwise sensitive) land; and
 - (b) an exemption certificate applies to the dwelling under subclause (5); and
 - (c) the person (the **purchaser**) acquires the relevant land before the expiry of the 5-year period that starts on the assent date; and
 - (d) the purchaser acquires the relevant land from—
 - (i) the developer; or
 - (ii) another person from whom the exemption certificate permits the purchaser to acquire the relevant land in reliance on this exemption.

Other provisions

- (7) In any exemption certificate granted under this clause, the relevant Minister or Ministers—
 - (a) must specify the land that constitutes the development; and
 - (b) may specify persons or classes of persons for the purposes of subclause (6)(d) having regard to the purpose of this exemption, which is to allow persons involved in the construction of new dwellings to sell those dwellings (but not the development) to an overseas person as the first sale of the dwelling without the overseas person requiring consent.
- (8) The relevant Minister or Ministers may, with the agreement of the developer, vary an exemption certificate granted under this clause to the extent that it relates to the following:
 - (a) the developer:
 - (b) the persons specified under subclause (7)(b).
- (9) For the purposes of Part 2 of the Act, **exemption certificate** includes an exemption certificate granted under this clause.
- (10) Clause 1(4) and (5) applies for the purposes of this clause as if references to commencement were references to assent date.

7 References to Land Transfer Act 2017

- (1) This clause applies until the Land Transfer Act 1952 ceases to apply to instruments lodged for registration or endorsement.
- (2) The definition of **lodged** in section 51A of this Act must be treated as including lodged for registration or endorsement under the Land Transfer Act 1952 or the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

8 Section 61G applies to conditions before and after commencement

Section 61G may apply to a condition regardless of whether the condition came into effect before or after the commencement of this clause.

9 Provisions relating to exemptions in clauses 6 and 8 of Schedule 3

- (1) For the purposes of clause 6(4)(b)(i) of Schedule 3, the acquisition (or treated acquisition) of a forestry right by a related forestry investor is to be disregarded if the acquisition (or treated acquisition)—
 - (a) was made before commencement; or
 - (b) was made on or after commencement but resulted from a transaction referred to in clause 1(2)(a) of this schedule.
- (2) For the purposes of clause 8(4)(b)(ii) of Schedule 3, it does not matter if a regulated *profit à prendre* was first held (or treated as first held) by a related *profit* investor—

- (a) before commencement; or
 - (b) on or after commencement as a result of a transaction referred to in clause 1(2)(a) of this schedule.
- (3) In this clause, **commencement** means the commencement of clause 1 of this schedule.

10 Review of amendments relating to forestry

- (1) The Minister must—
- (a) carry out a review of the operation and effectiveness of the amendments made by the Overseas Investment Amendment Act 2018 relating to forestry (including forestry rights); and
 - (b) prepare a report on that review, including the Minister’s recommendations for amendments to this Act (if any); and
 - (c) present the report to the House of Representatives as soon as practicable after it has been prepared.
- (2) The review must be started within 2 years after the commencement of this clause.

Part 2

Provisions relating to Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018

Schedule 1AA Part 2: inserted, on 30 December 2018, by section 70 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

11 Application

The amendments to the Act made by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018, and the regulations made under section 61A, 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 the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018.

12 No refunds

No person is entitled to a refund of any fee or charge paid to the regulator for a matter under Schedule 2 of the Overseas Investment Regulations 2005 on the ground that regulations made under section 61A mean that the matter is no longer relevant (for example, that a consent that had been applied for is no longer required).

13 Validation of exemptions for Australian investors

Nothing in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 affects the validity of the Overseas Invest-

ment (Australia) Amendment Regulations 2013, which are also declared to have been lawfully made and to be and always have been valid.

Part 3

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

Schedule 1AA Part 3: inserted, on 16 June 2020, by section 54(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

14 Interpretation in this Part

(1) In this Part,—

2020 Urgent Act means the Overseas Investment (Urgent Measures) Amendment Act 2020

commencement, in relation to a provision that is being inserted or amended by the 2020 Urgent Act, means the commencement of the insertion or amendment

new, in relation to a provision of this Act, means the provision as it reads immediately after commencement

new Act means this Act as it reads immediately after the relevant provision of the 2020 Urgent Act commenced

old, in relation to a provision of this Act, means the provision as it read immediately before commencement

old Act means this Act as it read immediately before the relevant provision of the 2020 Urgent Act commenced.

(2) Part 1 of this schedule applies when determining whether a transaction is entered into before commencement or on or after commencement (*see* clause 1(4) and (5)).

Schedule 1AA clause 14: inserted, on 16 June 2020, by section 54(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

15 Existing transactions and applications, etc

(1) This clause applies for the purposes of applying a provision of this Act that relates to—

(a) determining who are overseas persons, what are overseas investments in sensitive assets, and other matters in Part 1 of this Act; and

(b) determining when consent is required and the criteria for consent under subpart 1 of Part 2 of this Act; and

(c) the making an applications for consent and for granting consent under subpart 2 of Part 2 of this Act.

(2) Except as provided in this Part, the new Act applies to—

(a) transactions entered into on or after commencement:

- (b) applications received by the regulator on or after commencement, regardless of when the transaction is or was entered into;
 - (c) transactions entered into before commencement in respect of which this Act requires an application to be made on or after commencement (for example, for retrospective consent);
 - (d) any other matters that relate to events or circumstances on or after commencement.
- (3) The requirement for consent does not apply to a transaction that meets all of the following requirements:
- (a) the transaction has not been given effect to before commencement; and
 - (b) consent has not been granted before commencement; and
 - (c) the transaction would not require consent under the new Act or would be eligible for a standing consent under Part 4.
- (4) In other cases, the old Act continues to apply.

Schedule 1AA clause 15: inserted, on 16 June 2020, by section 54(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

16 Persons who are no longer overseas persons

- (1) A person who has been granted consent before commencement of section 7 of the 2020 Urgent Act (section 7 amended (who are overseas persons)), and who would have been entitled to the benefit of the standing consent granted by clause 31 (standing consent relating to New Zealand listed issuers and managed investment schemes), may apply to the regulator under section 27 for a variation of a consent granted to them while they were an overseas person.
- (2) To avoid doubt, this clause does not require a variation to be granted.

Schedule 1AA clause 16: inserted, on 16 June 2020, by section 54(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

17 Investor test

When applying new section 18A after commencement, the factors in new section 18A(4) apply to events (for example, convictions) before commencement in the same way as they apply to events after commencement.

Schedule 1AA clause 17: inserted, on 16 June 2020, by section 54(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

18 Time frames

Time frames set under new section 37B do not apply to any functions, powers, duties, or services under this Act that first arose for exercise, performance, or provision in respect of a matter before commencement.

Schedule 1AA clause 18: inserted, on 16 June 2020, by section 54(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

19 Administration

The powers in subpart 3 of Part 2 of the new Act apply to any circumstances for which the powers are conferred, whether occurring before, on, or after commencement.

Schedule 1AA clause 19: inserted, on 16 June 2020, by section 54(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

20 New information-gathering powers apply to matters before, on, or after commencement

The regulator may exercise a power under subpart 4 of Part 2 of the new Act in connection with any transaction, act, omission, or other matter, regardless of whether the transaction, act, omission, or other matter was entered into or otherwise occurred before, on, or after commencement.

Schedule 1AA clause 20: inserted, on 16 June 2020, by section 54(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

21 Enforcement

General rule: exceptions

- (1) Except as provided in this Part,—
 - (a) subpart 5 of Part 2 of the old Act continues to apply in relation to contraventions, or alleged contraventions, of this Act or the regulations that occurred before commencement; and
 - (b) subpart 5 of Part 2 of the new Act applies to contraventions, or alleged contraventions, of this Act or the regulations that occur on or after commencement.

Exceptions

- (2) However, the following apply to contraventions, or alleged contraventions, of this Act or the regulations, whether occurring before, on, or after commencement:
 - (a) new sections 46A to 46E (enforceable undertakings):
 - (b) new sections 51AAA to 51AAE (injunctions, etc).

Schedule 1AA clause 21: inserted, on 16 June 2020, by section 54(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

22 Existing regulations saved

Regulations that are made under an old provision, and in force immediately before commencement, continue in force until revoked as if made under the new Act.

Schedule 1AA clause 22: inserted, on 16 June 2020, by section 54(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

23 Existing exemptions saved

Exemptions that are granted under an old provision, and in force immediately before commencement, continue in force until revoked as if made under the new Act.

Schedule 1AA clause 23: inserted, on 16 June 2020, by section 54(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

24 Call-in transactions

- (1) Subpart 1 of Part 3 applies only to transactions entered into on or after commencement.
- (2) Subpart 1 of Part 3 does not apply to transactions that would have required consent under the old Act but that would not require consent under the new Act.
- (3) Subpart 1 of Part 3 does not apply to transactions in respect of which a standing consent applies under Part 4.
- (4) A notification may be given under new subpart 1 of Part 3 early, that is, at any time before the commencement of section 52 or 53 of the 2020 Urgent Act.

Schedule 1AA clause 24: inserted, on 16 June 2020, by section 54(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

25 Overseas investment fishing provisions

This Part applies to matters under sections 56 to 58B of the Fisheries Act 1996 in the same way as it applies to similar matters under the rest of this Act.

Schedule 1AA clause 25: inserted, on 16 June 2020, by section 54(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

26 Transitionals, savings, and orderly implementation of 2020 Urgent Act

[Repealed]

Schedule 1AA clause 26: repealed, on the close of 16 June 2021, by clause 26(3).

27 Review of emergency notification regime

- (1) The Minister must review, at intervals that are no more than 90 days apart, whether the effects of the emergency continue to justify the emergency notification regime continuing in place.
- (2) In doing so, the Minister must have regard to the following:
 - (a) the economic, social, and other effects of the emergency in New Zealand;
 - (b) any risks to New Zealand's national interest associated with transactions by overseas persons;
 - (c) New Zealand's international relations and international obligations.
- (3) If the Minister is not satisfied that the emergency notification regime should continue, the Minister must recommend to the Governor-General the com-

mencement of section 53 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (replacement of emergency notification regime with more permanent call-in regime).

Schedule 1AA clause 27: inserted, on 16 June 2020, by section 54(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Part 4

Provisions relating to period between Overseas Investment (Urgent Measures) Amendment Act 2020 and Overseas Investment Amendment Act (No 3) 2020

[Repealed]

Schedule 1AA Part 4: repealed, on 5 July 2021, by section 31(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

28 Purpose and overview of this Part

[Repealed]

Schedule 1AA clause 28: repealed, on 5 July 2021, by section 31(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

29 Interpretation in this Part

[Repealed]

Schedule 1AA clause 29: repealed, on 5 July 2021, by section 31(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

30 Application

[Repealed]

Schedule 1AA clause 30: repealed, on 5 July 2021, by section 31(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

31 Standing consent relating to New Zealand listed issuers and managed investment schemes

[Repealed]

Schedule 1AA clause 31: repealed, on 5 July 2021, by section 31(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

32 Standing consent relating to sensitive adjoining land

[Repealed]

Schedule 1AA clause 32: repealed, on 5 July 2021, by section 31(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

33 Standing consent relating to transfer of certain debt securities

[Repealed]

Schedule 1AA clause 33: repealed, on 5 July 2021, by section 31(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

34 Effect of standing consents on call-in

[Repealed]

Schedule 1AA clause 34: repealed, on 5 July 2021, by section 31(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

35 Provisions do not apply to standing consents in this Part

[Repealed]

Schedule 1AA clause 35: repealed, on 5 July 2021, by section 31(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

36 Other standing consents unaffected

[Repealed]

Schedule 1AA clause 36: repealed, on 5 July 2021, by section 31(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Part 5**Provisions relating to Overseas Investment Amendment Act 2021**

Schedule 1AA Part 5: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

37 Interpretation in this Part

(1) In this Part,—

2021 Amendment Act means the Overseas Investment Amendment Act 2021
commencement, in relation to a provision that is being inserted or amended by the 2021 Amendment Act, means the commencement of the insertion or amendment

new, in relation to a provision of this Act, means the provision as it reads immediately after commencement

new Act means this Act as it reads immediately after the relevant provision of the 2021 Amendment Act commenced

old, in relation to a provision of this Act, means the provision as it read immediately before commencement

old Act means this Act as it read immediately before the relevant provision of the 2021 Amendment Act commenced.

(2) Part 1 of this schedule applies when determining whether a transaction is entered into before commencement or on or after commencement (*see* clause 1(4) and (5)).

Schedule 1AA clause 37: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

38 Existing transactions and applications, etc

- (1) This clause applies for the purposes of applying a provision of this Act that relates to—
 - (a) determining who are overseas persons, what are overseas investments in sensitive assets, and other matters in Part 1 of this Act; and
 - (b) determining when consent is required and the criteria for consent under subpart 1 of Part 2 of this Act; and
 - (c) the making of applications for consent and for granting consent under subpart 2 of Part 2 of this Act.
- (2) Except as provided in this Part,—
 - (a) old section 16(1)(f) (farm land advertising) continues to apply to transactions entered into before commencement of section 8 of the 2021 Amendment Act (regardless of when the application is received), and regulations 4 to 11 of the regulations as they read immediately before commencement of that section 8 continue to apply to those transactions accordingly; and
 - (b) the rest of the old Act continues to apply to applications received by the regulator before commencement (regardless of when the transaction is or was entered into or whether it has been given effect to) and any other matters that relate to events or circumstances before commencement; and
 - (c) in other cases, the new Act applies (including to transactions entered into but not given effect to).

Schedule 1AA clause 38: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

39 Persons who are no longer overseas persons

- (1) A person who ceases to be an overseas person on commencement of section 5 (section 7 amended (who are overseas persons)) may apply to the regulator under section 27 for a variation of a consent granted to them while they were an overseas person.
- (2) In addition to the powers in section 27, the relevant Ministers may revoke a condition of a consent that this Act required to be imposed.
- (3) To avoid doubt, this clause does not require a variation to be granted.

Schedule 1AA clause 39: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

40 Calculating total term of interest in land under Schedule 1A

When calculating the total term of an interest in land under Schedule 1A, the duration of a previous interest acquired before commencement must be disregarded (whether the term of the previous interest commences before or after commencement).

Schedule 1AA clause 40: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

41 Benefit test

When applying section 16A after commencement, section 16A(1A)(a) applies in the same way regardless of whether the counterfactual relates to the existing state of affairs before, on, or after commencement.

Schedule 1AA clause 41: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

42 Investor test

New section 29A(3) and (4) (investor test applications where no change since investor test last met) does not apply to a person until the person has met the investor test under new section 18A (which, to avoid doubt, may be after an application made under new section 29A(1)).

Schedule 1AA clause 42: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

43 Existing regulations saved

Regulations that are made under an old provision, and in force immediately before commencement, continue in force until revoked as if made under the new Act.

Schedule 1AA clause 43: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

44 Fees and charges

- (1) New section 61(1)(e) applies to enable fees and charges to be prescribed that meet any shortfall in cost recovery for any of the preceding 4 financial years even if 1 or more of the preceding 4 financial years occurs before commencement.
- (2) The Minister must commence the first review under section 61(4) before 30 June 2023.

Schedule 1AA clause 44: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

45 Existing exemptions saved

Exemptions that are granted under an old provision, and in force immediately before commencement, continue in force until revoked as if made under the new Act.

Schedule 1AA clause 45: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

46 Exactly 25% ownership or control interests and consents

- (1) This clause applies if—

- (a) an overseas person or associate has an exactly 25% ownership or control interest immediately before commencement; and
 - (b) consent was granted to the overseas person or associate to acquire that interest; and
 - (c) the amendments made by the Overseas Investment (Urgent Measures) Amendment Act 2020 did not apply to the consent (for example, because it was granted before 16 June 2020).
- (2) The person is treated as if their existing ownership or control interest limit is 50% for the purpose of sections 12(2) and 82(3) provided that the person or associate continues to have an exactly 25% ownership or control interest immediately before the increase referred to in the relevant provision.

Schedule 1AA clause 46: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

47 Overseas investment fishing provisions

This Part applies to matters under sections 56 to 58B of the Fisheries Act 1996 in the same way as it applies to similar matters under the rest of this Act.

Schedule 1AA clause 47: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Part 6 Provisions relating to Legislation Act 2019

Schedule 1AA Part 6: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

48 Application of this Part

- (1) This Part, other than clause 51, applies until the main commencement date (as defined in clause 2 of Schedule 1 of the Legislation Act 2019).
- (2) If this Part comes into force on or after the main commencement date, clause 51 has effect when this Part comes into force; otherwise clause 51 has no effect.

Schedule 1AA clause 48: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

49 Exemption under section 20

An exemption made under section 20(1)(b) must be published—

- (a) on an Internet site maintained by, or on behalf of, the regulator; and
- (b) in the *Gazette*.

Schedule 1AA clause 49: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

50 Orders in Council relating to statutory management

An Order in Council made under section 95, 101, or 106 is not a legislative instrument or a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

Schedule 1AA clause 50: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

51 Amendment of sections 95, 101, and 106

Sections 95(5), 101(5), and 106(4) (as inserted by the Secondary Legislation Act 2021) are repealed.

Schedule 1AA clause 51: inserted, on 5 July 2021, by section 31(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Part 7**Provisions relating to Overseas Investment (Forestry) Amendment Act 2022**

Schedule 1AA Part 7: inserted, on 16 August 2022, by section 8(a) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

52 Interpretation in this Part

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

commencement means the day after the date on which the Overseas Investment (Forestry) Amendment Act 2022 receives the Royal assent

new Act means this Act as it reads immediately after commencement

old Act means this Act as it read immediately before commencement.

- (2) Part 1 of this schedule applies when determining whether a transaction is entered into before commencement or on or after commencement (*see* clause 1(4) and (5)).

Schedule 1AA clause 52: inserted, on 16 August 2022, by section 8(a) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

53 Existing transactions and applications, etc

- (1) This clause applies for the purposes of applying a provision of this Act that relates to—

(a) determining when consent is required and the criteria for consent under subpart 1 of Part 2 of this Act; and

(b) the making of applications for consent and for granting consent under subpart 2 of Part 2 of this Act.

- (2) Except as provided in this Part, the old Act continues to apply to—

- (a) any application for consent (including for standing consent) received by the regulator before commencement (regardless of when the transaction is or was entered into or whether it has been given effect to); and
 - (b) any transaction entered into before commencement; and
 - (c) any other matter that relates to events or circumstances before commencement.
- (3) In other cases, the new Act applies.
- (4) Subclause (2)(b) does not apply to a transaction that is given effect to before commencement without consent in breach of this Act.

Compare: Schedule 1AA, cls 15(2)(c), 38

Schedule 1AA clause 53: inserted, on 16 August 2022, by section 8(a) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

54 Standing consents granted in respect of forestry activities

- (1) This clause applies to a standing consent—
- (a) that is granted before commencement under clause 3 of Schedule 4; or
 - (b) that is granted after commencement pursuant to an application described in clause 53(2)(a).
- (2) The standing consent and the old Act continue to apply in respect of any overseas investments in sensitive land that are given effect to in reliance on the standing consent.

Schedule 1AA clause 54: inserted, on 16 August 2022, by section 8(a) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Part 8

Provisions relating to Security Information in Proceedings (Repeals and Amendments) Act 2022

Schedule 1AA Part 8: inserted, on 28 November 2023, by section 36 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

55 Interpretation

In this Part, unless the context otherwise requires,—

2022 Act means sections 32 to 36 of the Security Information in Proceedings (Repeals and Amendments) Act 2022

commencement date means the date on which the 2022 Act comes into force.

Schedule 1AA clause 55: inserted, on 28 November 2023, by section 36 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

56 Proceedings involving classified security information

- (1) The amendments made to this Act by the 2022 Act (except for this clause) apply to proceedings to which subpart 3 of Part 3 of this Act applies that are commenced on or after the commencement date.

-
- (2) To avoid doubt, subclause (1) applies to proceedings to which subpart 3 of Part 3 of this Act applies that commence on or after the commencement date, but that relate to a decision that occurred before, on, or after that date.
 - (3) Proceedings to which subpart 3 of Part 3 of this Act applies that are commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if the amendments made to this Act by the 2022 Act had not been enacted.

Schedule 1AA clause 56: inserted, on 28 November 2023, by section 36 of the Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72).

Schedule 1

Sensitive land

s 12

Part 1

What land is sensitive

What land is sensitive

Land is **sensitive** under this Act if—

- (a) the land is or includes land of a type listed in table 1 and the area of that type of land exceeds the corresponding area threshold (either alone or together with any associated land of that type), if any; or
- (b) the land (**land A**) adjoins land of a type listed in table 2 and the area of land A exceeds the corresponding area threshold (either alone or together with any associated land), if any.

Table 1

Row	Land is sensitive if it is or includes this type of land	... and that type exceeds this area threshold (if any)
1	residential land	—
2	non-urban land	5 hectares
3	land on islands specified in Part 2 of this schedule	0.4 hectares
4	land on other islands (other than North or South Island, but including the islands adjacent to the North or South Island)	—
5	marine and coastal area	—
6	bed of a lake	0.4 hectares
7	land held for conservation purposes under the Conservation Act 1987	0.4 hectares
8	land that a district plan or proposed district plan under the Resource Management Act 1991 provides is to be used as a reserve, as a public park, for recreation purposes, or as open space	0.4 hectares
9	land subject to a heritage order, or a requirement for a heritage order, under the Resource Management Act 1991 or by Heritage New Zealand Pouhere Taonga under the Heritage New Zealand Pouhere Taonga Act 2014	0.4 hectares
10	a historic place, historic area, wahi tapu, or wahi tapu area that is entered on the New Zealand Heritage List/Rārangi Kōrero or for which there is an application that is notified under section 67(4) or 68(4) of the Heritage New Zealand Pouhere Taonga Act 2014	0.4 hectares
11	land that is set apart as Māori reservation and that is wahi tapu under section 338 of Te Ture Whenua Maori Act 1993	0.4 hectares

Schedule 1 Part 1 Table 1: amended, on 5 July 2021, by section 32(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Schedule 1 Part 1 Table 1 item 1: inserted, on 22 October 2018, by section 5(1) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Schedule 1 Part 1 Table 1 item 5: amended, on 5 July 2021, by section 32(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Schedule 1 Part 1 Table 1 item 8: amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Schedule 1 Part 1 Table 1 item 9: amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Schedule 1 Part 1 Table 1 item 9: amended, on 20 May 2014, by section 107 of the Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26).

Schedule 1 Part 1 Table 1 item 10: amended, on 20 May 2014, by section 107 of the Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26).

Schedule 1 Part 1 Table 1 item 11: inserted, on 22 October 2018, by section 5(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Table 2

Row	Land A is sensitive if it adjoins land of this type	... and land A exceeds this area threshold (if any)
1	marine and coastal area	0.2 hectares
2	bed of a lake	0.4 hectares
3	land held for conservation purposes under the Conservation Act 1987 (if that conservation land exceeds 0.4 hectares in area)	0.4 hectares
4	any reserve under the Reserves Act 1977 that is administered by the Department of Conservation (if that reserve land exceeds 0.4 hectares in area)	0.4 hectares
5	any regional park or part of a regional park that is subject to a declaration under section 139 of the Local Government Act 2002 (if that park or part of the park exceeds 80 hectares)	0.4 hectares
6	any national park held under the National Parks Act 1980	0.4 hectares
7	land that adjoins the marine and coastal area or a lake and is a Māori reservation to which section 340 of Te Ture Whenua Maori Act 1993 applies (if that land/reservation exceeds 0.4 hectares in area)	0.4 hectares
8	land over 0.4 hectares that includes a wahi tapu or wahi tapu area that is entered on the New Zealand Heritage List/Rārangi Kōrero or for which there is an application that is notified under section 68(4) of the Heritage New Zealand Pouhere Taonga Act 2014	0.4 hectares
9	land over 0.4 hectares that is set apart as Māori reservation and that is wahi tapu under section 338 of Te Ture Whenua Maori Act 1993	0.4 hectares
10	land (if that land exceeds 0.4 hectares in area) that, pursuant to an enactment specified in Schedule 3 of the Treaty of Waitangi Act 1975 or in regulations,—	0.4 hectares
	(a) is owned by the governance entity of a collective group of Māori such as an iwi or a hapū; and	
	(b) is managed in accordance with the Conservation Act 1987 or an enactment referred to in Schedule 1 of that Act	
11	any reserve under the Reserves Act 1977 (if that reserve exceeds 0.4 hectares in area) that, pursuant to an enactment specified in Schedule 3 of the Treaty of Waitangi Act 1975 or in regulations, is managed wholly or jointly by the governance entity of a collective group of Māori such as an iwi or a hapū	0.4 hectares
12	Te Urewera land (as defined in section 7 of the Te Urewera Act 2014)	0.4 hectares

Row	Land A is sensitive if it adjoins land of this type	... and land A exceeds this area threshold (if any)
13	Whanganui River (as defined in section 7 of the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017)	0.4 hectares
14	Maungatautari Mountain Scenic Reserve (as defined in section 71(1) of the Ngāti Koroki Kahukura Claims Settlement Act 2014)	0.4 hectares

Schedule 1 Part 1 Table 2: replaced, on 5 July 2021, by section 32(3) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Part 2

Specified islands

Arapawa Island

Best Island

Great Barrier Island (Aotea Island)

Great Mercury Island (Ahuahu)

Jackett Island

Kawau Island

Matakana Island

Mayor Island (Tuhua)

Motiti Island

Motuhoa Island

Rakino Island

Rangiwaea Island

Slipper Island (Whakahau)

Stewart Island/Rakiura

Waiheke Island

Whanganui Island

Schedule 1A

Total term of interest in land

s 12

Schedule 1A: inserted, on 5 July 2021, by section 33 of the Overseas Investment Amendment Act 2021 (2021 No 17).

1 Calculation of total term of interest in land

- (1) The **total term** of an interest in land is the duration of—
- (a) either—
 - (i) the term of the interest acquired; or
 - (ii) in the case of an interest that is part-way through its current term, the remainder of any current term of the interest as at the time the overseas investment transaction is entered into; and
 - (b) any rights of renewal of that interest (whether of the grantor or grantee); and
 - (c) any previous interest that relates to the same or substantially the same land; and
 - (d) if a previous interest was separated in time by a periodic interest, that periodic interest.

Example

An overseas person was a tenant of a lease of sensitive land for a term of 9 years with no rights of renewal. At the end of that lease, the parties enter into a 2-year extension.

The total term of the interest is 11 years: 2 years' extension plus 9 years under the previous lease. The acquisition of the extension is an overseas investment in sensitive land, and consent is required.

-
- (2) A **previous interest**, in relation to an interest in land, is an estate (other than a freehold estate) or interest in land that—
- (a) was held by—
 - (i) the overseas person or an associate of the overseas person; or
 - (ii) a person in which the overseas person or their associate (either alone or together with its associates) had a more than 25% ownership or control interest; and
 - (b) was consecutive in time to the relevant interest or to another previous interest of the relevant interest.

- (3) The duration of a previous interest before the overseas person or their associate had a more than 25% ownership or control interest in the person who held that previous interest must be disregarded from the calculation of the total term.

Example

A tenant has a lease of land for a term of 10 years. In year 6 of the lease, an overseas person increases their ownership interest in the tenant from 15% interest to 30%. At the end of the lease, the tenant enters into a new lease of the same land for a 5-year term.

The total term of the interest is 9 years: 5 years in the new lease plus 4 years of the previous lease from the point that the overseas person invested in the tenant. The acquisition of the new lease is not an overseas investment in sensitive land.

-
- (4) In this clause,—
consecutive includes separated by—

- (a) any periodic interest; or
- (b) a period of less than 4 months

periodic interest means any interest in land that—

- (a) is terminable at will, whether by the grantor or the grantee; and
- (b) offers no certainty of term of 4 months or more (including rights of renewal, whether of the grantor or the grantee).

Example

An overseas person was a tenant under a lease of sensitive land for 5 years. The tenant held over after the lease expired. No consent is required for that periodic lease (see clause 2 of Schedule 3).

After a year of holding over, the tenant enters into a new lease with the landlord for another 5 years.

The new lease is the acquisition of an interest in land. The total term of the interest is 11 years: 5 years in the new lease, 1 year of holding over, and 5 years under the previous lease. The acquisition of the new lease is an overseas investment in sensitive land, and consent is required.

Schedule 1A clause 1: inserted, on 5 July 2021, by section 33 of the Overseas Investment Amendment Act 2021 (2021 No 17).

Schedule 2

Sensitive land that is residential land

ss 6, 16, 16B, 61

Schedule 2: replaced, on 22 October 2018, by section 26 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Contents

		Page
Part 1		
Outline and definitions		
1	Outline of this schedule	163
2	Interpretation	163
Part 2		
Commitment to reside in New Zealand test		
<i>Availability of test</i>		
3	For what land is test in this Part available	164
4	Who are qualifying individuals and key individuals	164
<i>Test and conditions</i>		
5	How commitment to reside in New Zealand test is met	165
6	Conditions for consent if commitment to reside in New Zealand test is met	166
<i>Trigger events</i>		
7	What are trigger events and how they are resolved	167
8	Waiver relating to trigger event	168
<i>Exemption</i>		
9	Exemption from definition of key individual	168
Part 3		
Increased housing, non-residential use, and incidental residential use tests		
<i>Availability of tests</i>		
10	For what land are tests in this Part available	169
<i>Increased housing test</i>		
11	How increased housing test is met	169
<i>Non-residential use test and incidental residential use test</i>		
12	What is the relevant business	170
13	How non-residential use test is met	171
14	How incidental residential use test is met	171

Part 4

How transaction meets more than 1 test in this schedule

15	How transaction meets more than 1 test in this schedule	172
----	---	-----

Part 5

Conditions attached to outcomes for residential land

Conditions

16	Conditions attached to outcomes for residential land	173
17	What are on-sale outcome and non-occupation outcome	173
18	Conditions for consent if 1 or more tests in Part 3 are met	174
19	Conditions for consent if benefit to New Zealand test is met and residential land is involved	175

Exemptions from on-sale outcome and condition

20	Exemption for large developments with shared equity, rent-to-buy, and rental arrangements	177
21	Exemption for indirect or minority interests in overseas persons that own or control land	178

Part 1

Outline and definitions

1 Outline of this schedule

- (1) In this schedule,—
 - (a) Part 2 sets out the commitment to reside in New Zealand test, which is a test that is only available for residential land:
 - (b) Part 3 sets out the increased housing test, the non-residential use test, and the incidental residential use test, which are tests that are only available for overseas investments in sensitive land where the relevant land is residential (but not otherwise sensitive) land:
 - (c) Part 4 explains how more than 1 test can be met for the purpose of section 16(1)(b)(i):
 - (d) Parts 2 and 5 set out conditions that this Act requires be imposed on consents that are granted for certain overseas investments in sensitive land where the relevant land is or includes residential land.
- (2) This clause is only a guide to the general scheme and effect of this schedule.

2 Interpretation

In this schedule,—

key individual, in relation to an overseas investment, has the meaning set out in clause 4

qualifying individual has the meaning set out in clause 4

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

relevant business has the meaning set out in clause 12(2) and (3)

relevant interest, in relation to residential land, means—

- (a) the estate or interest in the residential land; or
- (b) rights or interests in securities of a person who owns or controls (directly or indirectly) any estate or interest in the residential land

resolved, in relation to a trigger event, has the meaning set out in clause 7

specified period means the period or periods (or a means of calculating a period or periods) to be specified in the consent for the matter concerned

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

trigger event is defined in clause 7.

Schedule 2 clause 2 **relevant interest** paragraph (a): amended, on 16 June 2020, by section 55(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Schedule 2 clause 2 **relevant interest** paragraph (b): amended, on 16 June 2020, by section 55(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Part 2

Commitment to reside in New Zealand test

Availability of test

3 For what land is test in this Part available

- (1) The commitment to reside in New Zealand test is only available for residential land.
- (2) It does not matter if the residential land is also sensitive for some other reason under Part 1 of Schedule 1.

4 Who are qualifying individuals and key individuals

- (1) This clause defines certain terms for the purposes of an overseas investment in sensitive land that is considered under the commitment to reside in New Zealand test.
- (2) A person is a **qualifying individual** if the person—
 - (a) is a New Zealand citizen; or
 - (b) is ordinarily resident in New Zealand; or
 - (c) is an overseas person who holds a residence class visa granted under the Immigration Act 2009; or
 - (d) is an overseas person of a type that is specified in regulations made under section 61(1)(j).
- (3) The **key individuals** for the overseas investment are—

- (a) the relevant overseas person (if an individual); or
 - (b) if the relevant overseas person is not an individual, every individual with control of the relevant overseas person (unless the individual is exempt under clause 9).
- (4) However, if—
- (a) 2 individuals (**A and B**) who would be key individuals under subclause (3) are the spouse or partner of each other; and
 - (b) either—
 - (i) the relevant interest in the residential land will be acquired as relationship property of A and B and regulations exempt B from the requirement for consent under section 10(1)(a); or
 - (ii) the interest in the residential land will be acquired by a company that is incorporated in New Zealand and in which all of the securities are wholly owned as relationship property by A and B, on the basis that A is a key individual,—
- then B is not a key individual for the overseas investment.
- (5) B (but not A) can also be disregarded for the overseas investment when determining whether the investor test is met if—
- (a) the application for consent is under the commitment to reside in New Zealand test only; and
 - (b) the investor test applies (because the relevant land is or includes residential land and land that is sensitive under Part 1 of Schedule 1 for some other reason); and
 - (c) the relevant Ministers are satisfied that A is an individual with control of the relevant overseas person (for example, if the relevant overseas person is a company).

Test and conditions

5 How commitment to reside in New Zealand test is met

- (1) The commitment to reside in New Zealand test is met if all of the following are met:
- (a) the relevant Ministers are satisfied that—
 - (i) every key individual is a qualifying individual; and
 - (ii) the purpose of acquiring the relevant interest in the residential land is the acquisition of 1 dwelling (whether that dwelling is constructed on, or is being or will be constructed on, the residential land) for all of the key individuals to occupy as their main home or residence; and

- (b) every key individual who is an overseas person (an **OP**) (if any) provides a statutory declaration that the OP intends,—
- (i) at least until the declaration end date, to be present in New Zealand for at least 183 days in every 12-month period beginning on the date of consent or its anniversary in any year; and
 - (ii) (if not already tax resident in New Zealand) to become tax resident in New Zealand; and
 - (iii) to remain tax resident in New Zealand at least until the declaration end date.
- (2) *See also* clause 6 (which sets out certain conditions to be imposed on certain consents that rely on meeting this test, including a requirement for the consent holder to dispose of all relevant interests in the residential land in certain circumstances).
- (3) In this clause,—

declaration end date, in relation to an OP, means the earlier of—

- (a) the date that the OP becomes a New Zealand citizen or ordinarily resident in New Zealand; or
- (b) the date that the relevant overseas person ceases to have a relevant interest in the residential land

dwelling means a residential dwelling or a dwelling in a long-term accommodation facility

tax resident in New Zealand means a person who is a New Zealand resident under section YD 1 of the Income Tax Act 2007.

6 Conditions for consent if commitment to reside in New Zealand test is met

- (1) This clause applies if consent is to be granted for an overseas investment on the basis of the commitment to reside in New Zealand test and 1 or more key individuals are overseas persons.
- (2) Conditions must be imposed on the consent for the purpose of requiring the matters in the first column of the following table.
- (3) Conditions so imposed cease to have effect as set out in the second column of the following table.

If 1 or more key individuals are overseas persons, conditions that require the following matters must be imposed on the consent

- 1 All key individuals must occupy the dwelling as their main home or residence (the **occupation requirement**)
- 2 The consent holder must dispose of all relevant interests that the consent holder has in the residential land within 12 months of the date that a trigger event

... to have effect until

- Every key individual who was an overseas person has become a New Zealand citizen or ordinarily resident in New Zealand
- The trigger event regime ceases for the overseas investment (*see* clause 7)

If 1 or more key individuals are overseas persons, conditions that require the following matters must be imposed on the consent

... to have effect until

occurs (unless the trigger event is resolved within those 12 months) (the **disposal requirement**)

- (4) *See also* sections 25A and 25B (in relation to the imposition of conditions generally).

Trigger events

7 What are trigger events and how they are resolved

- (1) Trigger events only occur for an overseas investment in relation to key individuals who are overseas persons (each, an **OP**) at the date of consent.
- (2) In the following table,—
- (a) the first column defines each trigger event in relation to an **OP**; and
- (b) the second column alongside sets out how the trigger event is resolved.

	Trigger event	How trigger event is resolved
1	On an anniversary date, OP has been absent from New Zealand for more than 183 days in total in the immediately preceding 12 months without a waiver	<ul style="list-style-type: none"> • OP is present in New Zealand for at least 183 days in total in the 12-month period beginning on the anniversary date; or • A waiver is applied for and granted (<i>see</i> clause 8); or • A prescribed resolution applies; or • The trigger event regime ceases for OP (<i>see</i> subclause (3))
2	OP ceases to hold a residence class visa granted under the Immigration Act 2009	<ul style="list-style-type: none"> • OP becomes the holder of a residence class visa granted under the Immigration Act 2009; or • OP becomes a person of a type that is specified in regulations made under section 61(1)(j); or • A prescribed resolution applies; or • The trigger event regime ceases for OP (<i>see</i> subclause (3))
3	OP ceases to be a person of a type that is specified in regulations made under section 61(1)(j)	<ul style="list-style-type: none"> • OP becomes a person of a type that is specified in regulations made under section 61(1)(j); or • OP becomes the holder of a residence class visa granted under the Immigration Act 2009; or • A prescribed resolution applies; or • The trigger event regime ceases for OP (<i>see</i> subclause (3))

When does trigger event regime cease for OP

- (3) No further trigger events can occur for an **OP**—

- (a) who becomes a New Zealand citizen or ordinarily resident in New Zealand; or
 - (b) whose spouse or partner becomes a New Zealand citizen or ordinarily resident in New Zealand, but only if clause 4(4)(b) applies.
- (4) Subclause (3) applies regardless of whether the OP (or the OP's spouse or partner, as relevant) again becomes an overseas person.

When does trigger event regime cease for overseas investment

- (5) The trigger event regime ceases for the overseas investment when no further trigger events can occur in relation to any key individuals.

Interpretation

- (6) For the purposes of this clause, a person who is present in New Zealand for part of a day is treated as present in New Zealand for a whole day.
- (7) In this clause,—

anniversary date means the anniversary of the date of consent in any year

prescribed means prescribed by regulations made under section 61(1)(ja)(ii).

8 Waiver relating to trigger event

- (1) An application may be made, in respect of a person (an **OP**) in relation to whom a trigger event under item 1 of the table in clause 7(2) may or will occur, or has occurred, for a waiver from the requirement for the consent holder to dispose of all relevant interests in the residential land as a consequence of the trigger event occurring.
- (2) The relevant Ministers must grant the waiver if the relevant Ministers consider, in accordance with regulations made under section 61(1)(ja)(i), that the OP remains committed to residing in New Zealand.
- (3) A waiver—
- (a) may be general or may specify the 1 or more instances of the trigger event to which it applies;
 - (b) may be open-ended or granted for a period;
 - (c) may be made subject to any conditions.
- (4) A waiver may at any time be amended or revoked in the same way as it may be made.

Exemption

9 Exemption from definition of key individual

If, for an overseas investment in sensitive land being considered under the commitment to reside in New Zealand test, the relevant overseas person is not an individual, the relevant Ministers may determine that 1 or more of the

individuals with control of the relevant overseas person is not a key individual for the overseas investment—

- (a) because of the circumstances relating to the particular relevant overseas person and the purpose of the overseas investment; and
- (b) only if the relevant Ministers are satisfied of both of the following:
 - (i) that the individual will not have any beneficial interest in, or beneficial entitlement to, the relevant interest in the residential land; and
 - (ii) if the relevant overseas person is a trust, that the individual is not a person who may (directly or indirectly) benefit under the trust at the discretion of the trustees and is not likely to become such a person.

Part 3

Increased housing, non-residential use, and incidental residential use tests

Availability of tests

10 For what land are tests in this Part available

The 3 tests in this Part are only available if the relevant land is residential (but not otherwise sensitive) land.

Increased housing test

11 How increased housing test is met

- (1) The increased housing test is met if the relevant Ministers are satisfied that—
 - (a) 1 or more of the following outcomes (the **increased housing outcomes**) will, or are likely to, occur on the residential land:
 - (i) an increase in the number of residential dwellings constructed on the residential land (including an increase from 0);
 - (ii) construction of a long-term accommodation facility on the residential land, or an increase in the number of dwellings in a long-term accommodation facility that is on the residential land;
 - (iii) development works on the land to support the doing of things described in either or both of subparagraphs (i) and (ii); and
 - (b) the following outcomes (as defined in clause 17) will, or are likely to, occur:
 - (i) the on-sale outcome (unless exempt from this outcome under subclause (2)); and
 - (ii) the non-occupation outcome.

- (2) Subclause (1)(b)(i) does not apply,—
- (a) if the increased housing outcome is as described in subclause (1)(a)(ii) and the relevant Ministers are satisfied that the long-term accommodation facility will, or is likely to, operate from the residential land within a specified period, to the extent that the relevant Ministers are satisfied that the land will, or is likely to, be used for those operations; or
 - (b) if an exemption under clause 20 (exemption for large developments with shared equity, rent-to-buy, and rental arrangements) applies.
- (3) The increased housing outcomes are measured by comparing the expected result of the overseas investment against the state of the residential land before the transaction takes effect.
- (4) In this clause (and in clause 19), **development works**—
- (a) includes the construction, alteration, demolition, or removal of a building or infrastructure; and
 - (b) includes siteworks (including earthworks) that are preparatory to, or associated with, the matters set out in paragraph (a); but
 - (c) does not include subdivision of land without other development works.
- (5) *See also* clause 18 (which sets out certain conditions to be imposed on consents that rely on meeting this test).

Non-residential use test and incidental residential use test

12 What is the relevant business

- (1) This clause applies if an overseas investment is being considered under the non-residential use test or the incidental residential use test.
- (2) The relevant Ministers may determine which 1 or more of the following is the **relevant business**:
- (a) a business of the relevant overseas person (**A**):
 - (b) a business of a person (**B**) if A owns or controls the relevant interest in the residential land primarily for B to use the residential land in that business:
 - (c) a business of a person (**C**) if C owns or controls the relevant interest in the residential land and A has rights or interests in securities of C.
- (3) However, in making that determination, the relevant Ministers must be satisfied that the business is likely to continue for a reasonable period of time, given the circumstances and nature of the business.

Schedule 2 clause 12(2)(c): inserted, on 5 July 2021, by section 34(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

13 How non-residential use test is met

- (1) The non-residential use test is met if the relevant Ministers are satisfied that the residential land will be, or is likely to be (or will, or is likely to, continue to be)—
 - (a) used for non-residential purposes in the ordinary course of business for the relevant business; and
 - (b) not used, nor held for future use, for any residential purposes.
- (2) In any case where the relevant Ministers are not satisfied that the matters in subclause (1)(a) and (b) (the **non-residential use outcome**) will, or are likely to, occur within a short period after the overseas investment is given effect under the transaction, they may determine that the non-residential use test is met if—
 - (a) either—
 - (i) the relevant Ministers are satisfied that the non-occupation outcome (as defined in clause 17) will, or is likely to, occur; or
 - (ii) the incidental residential use test is applied for and met in respect of the residential land; and
 - (b) the relevant Ministers are satisfied that, within a specified period, the non-residential use outcome will be, or is likely to be, met.
- (3) Subclause (4) applies if the relevant Ministers determine that the non-residential use test is met only in respect of part of the residential land and no other test is applied for and met in respect of the remaining part of the residential land.
- (4) The relevant Ministers may determine that the non-residential use test is met if they are satisfied that the on-sale outcome (as defined in clause 17) will, or is likely to, occur for the remaining part of the residential land.
- (5) *See also* clause 18 (which sets out certain conditions to be imposed on consents that rely on meeting this test).

14 How incidental residential use test is met

- (1) The incidental residential use test is met if the relevant Ministers are satisfied that—
 - (a) the residential land will be, or is likely to be (or will, or is likely to, continue to be) used for residential purposes but only in support of the relevant business, where the relevant business is not (or is only exceptionally) in the business of using land for residential purposes (the **incidental residential use outcome**); and
 - (b) having regard to that use of the residential land, the relevant interest in the residential land will be, or is likely to be, acquired in the ordinary course of the business of the relevant overseas person.

-
- (2) In considering whether the incidental residential use test is met, the relevant Ministers may have regard to all or any of the following:
- (a) whether any reasonable alternative exists to the acquisition of the relevant interest in the residential land:
 - (b) the proximity of the residential land to the premises or operations of the relevant business:
 - (c) whether the use of the residential land for residential purposes is (without limitation) as accommodation for staff engaged in the relevant business:
 - (d) any other factors that seem to the relevant Ministers to be relevant in the circumstances.
- (3) Subclause (4) applies if the relevant Ministers determine that the incidental residential use test is met only in respect of part of the residential land and no other test is applied for and met in respect of the remaining part of the residential land.
- (4) The relevant Ministers may determine that the incidental residential use test is met if they are satisfied that the on-sale outcome (as defined in clause 17) will, or is likely to, occur for the remaining part of the residential land.
- (5) *See also* clause 18 (which sets out certain conditions to be imposed on consents that rely on meeting this test).

Part 4

How transaction meets more than 1 test in this schedule

15 How transaction meets more than 1 test in this schedule

For the purposes of section 16(1)(b)(i), different tests in this schedule can be met in respect of different parts of the residential land that is, or is included in, the relevant land so long as at least 1 test is met in respect of each part of the residential land.

Example

A is an overseas person who wishes to buy a company. The company owns land that is residential (but not otherwise sensitive) land and has no other direct or indirect interest in land that is sensitive land. The land contains a house that A wants to live in and part of the land is undeveloped land on which A wants to build houses for on-sale.

A applies for consent on the basis of the commitment to reside in New Zealand test and the increased housing test.

Part 5 Conditions attached to outcomes for residential land

Conditions

16 Conditions attached to outcomes for residential land

- (1) This Part sets out conditions to be imposed on consents that are granted for overseas investments in sensitive land on the basis that—
 - (a) 1 or more of the tests in Part 3 are met; or
 - (b) the benefit to New Zealand test is met, the relevant land is or includes residential land, and section 16B applies.
- (2) *See also*—
 - (a) clause 6 (for conditions to be imposed on certain consents that are granted on the basis that the commitment to reside in New Zealand test is met):
 - (b) sections 25A and 25B in relation to the imposition of conditions generally.

17 What are on-sale outcome and non-occupation outcome

- (1) This clause defines the on-sale outcome and the non-occupation outcome for the purposes of various conditions and related tests.
- (2) The **on-sale outcome** is that, within a specified period, the relevant overseas person disposes of all relevant interests in the residential land.
- (3) The **non-occupation outcome** is that, for so long as the relevant overseas person has a relevant interest in the residential land, none of the following occupy the land for residential purposes:
 - (a) the relevant overseas person (**A**):
 - (b) any overseas person (**B**) who has a more than 25% ownership or control interest in A:
 - (c) any overseas person (**C**) who occupies the land otherwise than on arm's-length terms (for example, a relative who occupies rent-free), where **arm's-length terms** means terms that—
 - (i) would be reasonable in the circumstances if the owner of the land (including their property agent) and C (including their associates) were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or
 - (ii) are less favourable to C than the terms referred to in subparagraph (i):
 - (d) any overseas person who has a beneficial interest in, or beneficial entitlement to, the relevant interest in the residential land:

- (e) if A is a trust, a person who may (directly or indirectly) benefit under the trust at the discretion of the trustees.
- (4) However, subclause (3)(c) to (e) do not apply to a person who is entitled to occupy the land under any consent or any exemption in this Act or the regulations (for example, a person who has consent on the basis of the commitment to reside in New Zealand test may be entitled to lease a new dwelling in respect of which the developer is subject to a non-occupation outcome under the increased housing test).
- (5) For the purposes of section 16A(2)(c) and (4)(c), subclause (3)(c) does not apply to the extent that—
- (a) accommodation is being provided for the purpose only of supporting forestry activities (as defined in section 16A(9)) being carried out on the farm land (in the case of section 16A(2)(c)) or the relevant land (in the case of section 16A(4)(c)); and
- (b) all the buildings being used for that accommodation are located on land on which some or all of those forestry activities are being carried out or on land that adjoins land on which some or all of those forestry activities are being carried out.

Schedule 2 clause 17(3): amended, on 5 July 2021, by section 34(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Schedule 2 clause 17(3)(b): amended, on 16 June 2020, by section 55(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Schedule 2 clause 17(5): inserted, on 16 August 2022, by section 9 of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

18 Conditions for consent if 1 or more tests in Part 3 are met

- (1) This clause applies if consent is to be granted for an overseas investment on the basis that 1 or more of the tests in Part 3 are met.
- (2) For each test (as set out in the first column of the following table) that is met,—
- (a) the second column sets out the conditions that must be imposed on the consent in relation to the residential land in respect of which the test is met; but
- (b) if any circumstances set out in the third column relating to a condition apply, the condition need not be imposed.

If consent is granted on the basis of the following test	... conditions that require the following must be imposed on the consent in relation to the residential land	... except in the following circumstances
1 Increased housing test	1 or more increased housing outcomes (as defined in clause 11)	

If consent is granted on the basis of the following test	... conditions that require the following must be imposed on the consent in relation to the residential land	... except in the following circumstances
2 Non-residential use test	The on-sale outcome (as defined in clause 17)	Clause 11(2)(a) applies (which relates to the operation of a long-term accommodation facility) to the extent that that clause applies Or an exemption under clause 20 applies (which relates to large developments with shared equity, rent-to-buy, and rental arrangements) (but <i>see</i> clause 20(3))
3 Incidental residential use test	The non-occupation outcome (as defined in clause 17) The non-residential use outcome (as defined in clause 13) If clause 13(2) applies, the non-occupation outcome (as defined in clause 17) If clause 13(4) applies, the on-sale outcome (as defined in clause 17) (but only in relation to the remaining part of the residential land) The incidental residential use outcome (as defined in clause 14) If clause 14(4) applies, the on-sale outcome (as defined in clause 17) (but only in relation to the remaining part of the residential land)	The incidental residential use test is applied for and met

19 Conditions for consent if benefit to New Zealand test is met and residential land is involved

- (1) This clause applies for the purposes of sections 16A(1)(c) and 16B and the grant of a consent for an overseas investment on the basis that the benefit to New Zealand test is met and the relevant land is or includes residential land.
- (2) In the following table,—
 - (a) the first column lists a residential land outcome; and
 - (b) the second column describes the set of conditions for the residential land outcome; and

- (c) the third column describes the circumstances (if any) when an exemption may apply.

If residential land outcome is	... conditions that require the following must be imposed on the consent in relation to the residential land	... except in the following circumstances
1 On-sale	The on-sale outcome (as defined in clause 17)	
2 Use for non-residential purposes	The residential land is not used, nor held for future use, for residential dwellings or long-term accommodation facilities	
3 Operation of a long-term accommodation facility on the residential land (whether the facility is existing or is being or proposed to be constructed)	Operation of the long-term accommodation facility The non-occupation outcome (as defined in clause 17)	
4 Increased residential dwellings	Either or both of the following: (a) an increase in the number of residential dwellings constructed on the residential land (including an increase from 0): (b) development works on the land to support the doing of things described in paragraph (a)	
	The on-sale outcome (as defined in clause 17)	An exemption under clause 20 (which relates to large developments with shared equity, rent-to-buy, and rental arrangements) applies (but <i>see</i> clause 20(3)) Or an exemption under clause 21 (which relates to indirect and minority interests) applies (but <i>see</i> clause 21(3))
5 Residential purposes incidental to a relevant business	The non-occupation outcome (as defined in clause 17) The incidental residential use outcome (as defined in clause 14)	
6 Occupation as main home or residence (but this outcome is only	The occupation requirement (as defined in clause 6)	No key individuals are overseas persons

If residential land outcome is	... conditions that require the following must be imposed on the consent in relation to the residential land	... except in the following circumstances
available to the extent that the commitment to reside in New Zealand test is met)	The disposal requirement (as defined in clause 6)	No key individuals are overseas persons
7 Operation of existing shared equity, rent-to-buy, or rental arrangements (as defined in subclause (3)) in a development of 20 or more residential dwellings (but this outcome is only available if the consent holder (OP) is in the business of providing residential dwellings by 1 or more of those arrangements)	All of the residential dwellings in the development are dealt with by OP under 1 or more of the arrangements referred to in clause 20(2)(a) The non-occupation outcome (as defined in clause 17)	
8 Any other case	The non-occupation outcome (as defined in clause 17)	

(3) In item 7 of the table in subclause (2), **shared equity, rent-to-buy, or rental arrangements**, in relation to an existing development, means arrangements corresponding to those referred to in clause 20(2)(a).

Exemptions from on-sale outcome and condition

20 Exemption for large developments with shared equity, rent-to-buy, and rental arrangements

- (1) The relevant Ministers may decide not to impose a condition requiring the on-sale outcome if—
- (a) a person (**OP**) has applied for consent under either of the following:
 - (i) the increased housing test in respect of residential (but not otherwise sensitive) land;
 - (ii) the benefit to New Zealand test in respect of land that is or includes residential land; and
 - (b) the relevant Ministers are satisfied that the relevant land is intended to be used for the construction of 1 or more buildings that, taken together, will consist of 20 or more new residential dwellings (the **large development**).
- (2) The exemption in subclause (1) applies if the relevant Ministers are satisfied that—

- (a) all of the new residential dwellings in the large development will be dealt with under 1 or more of the following arrangements that are satisfactory to the relevant Ministers:
 - (i) OP will jointly own the new residential dwelling with an occupier (for example, an arrangement commonly referred to as a shared equity arrangement):
 - (ii) OP will divest ownership of the new residential dwelling to the occupier over a period of time (for example, an arrangement commonly referred to as a rent-to-buy arrangement):
 - (iii) OP will lease the new residential dwelling to an occupier:
 - (iv) OP will divest ownership of the new residential dwelling; and
 - (b) there is no reason to believe that the large development will not be dealt with according to those arrangements; and
 - (c) OP is in the business of providing new residential dwellings by 1 or more of those arrangements.
- (3) The exemption is subject to the following conditions:
- (a) all of the new residential dwellings in the large development are dealt with under 1 or more of the arrangements referred to in subclause (2)(a); and
 - (b) OP meets the non-occupation outcome.

21 Exemption for indirect or minority interests in overseas persons that own or control land

- (1) The relevant Ministers may decide not to impose a condition requiring the on-sale outcome if—
- (a) a person (**OP**) has applied for consent under the benefit to New Zealand test in respect of an acquisition of rights or interests in securities referred to in section 12(1)(b); and
 - (b) as a result of that acquisition, OP will have an indirect interest or a minority interest in an overseas person (**A**) that directly owns or controls an estate or interest in residential land described in section 12(1)(a) (the **relevant land**).
- (2) The exemption applies if the relevant Ministers are satisfied that, by reason of the circumstances relating to OP and the degree of control that OP will have in A, OP and its associates would not have, or would be unlikely to exercise or control the exercise of, any substantial influence over the relevant land.
- (3) The exemption is subject to the conditions that—
- (a) OP does not increase their ownership or control interest such that this clause would not apply; and
 - (b) OP meets the non-occupation outcome.

- (4) In this clause, OP has an **indirect interest** in A if the relevant Ministers are satisfied that OP is an upstream party that has no direct ownership interest in A.
- (5) In this clause, OP has a **minority interest** in A if the relevant Ministers are satisfied that OP has a less than 50% ownership or control interest in A.
- (6) In this Act, a person (**OP**) has a 50% or more ownership or control interest in another person (**A**) if OP has—
- (a) a beneficial entitlement to, or a beneficial interest in, 50% or more of A's securities; or
 - (b) the power to control the composition of 50% or more of the governing body of A; or
 - (c) the right to exercise or control the exercise of 50% or more of the voting power at a meeting of A.

Schedule 2 clause 21(1)(b): amended, on 16 June 2020, by section 55(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Schedule 3

Exemptions from requirement for consent

s 11A

Schedule 3: inserted, on 22 October 2018, by section 27 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Contents

		Page
	<i>Exemptions in respect of overseas investments in sensitive land</i>	
1	Māori freehold land	180
	<i>Exemptions in respect of overseas investments in sensitive land that is residential land</i>	
	<i>[Repealed]</i>	
2	Periodic lease	181
	<i>Exemptions in respect of overseas investments in sensitive land that is residential (but not otherwise sensitive) land</i>	
3	Residential tenancy for less than 5 years	181
4	Dwellings in large apartment developments that are purchased off plans	181
5	Certain units acquired and leased back	183
	<i>Exemptions in respect of overseas investments in sensitive land involving forestry rights</i>	
6	Area of forestry right less than 1 000 hectares	184
7	Crown forestry licence converted into forestry right	186
	<i>Exemptions in respect of overseas investments in sensitive land involving regulated profits à prendre that are not forestry rights</i>	
8	Area of regulated <i>profit à prendre</i> less than 5 hectares	187
	<i>Other exemptions</i>	
9	Other exemptions	188

Exemptions in respect of overseas investments in sensitive land

1 Māori freehold land

A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land by a Māori person where the relevant land is Māori freehold land for which the person is a member of the preferred classes of alienees (where those terms have the same meaning as in Te Ture Whenua Maori Act 1993).

Exemptions in respect of overseas investments in sensitive land that is residential land

[Repealed]

Heading: repealed, on 16 June 2020, by section 56(1) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

2 Periodic lease

- (1) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land if the estate or interest in land described in section 12(1)(a) is a periodic lease.
- (2) In this clause, **periodic lease** means a lease that—
 - (a) is terminable at will, whether by the grantor or the grantee (including a periodic tenancy within the meaning of section 2(1) of the Residential Tenancies Act 1986); and
 - (b) offers no certainty of term of 4 months or more (including rights of renewal, whether of the grantor or the grantee).

Schedule 3 clause 2(1): replaced, on 16 June 2020, by section 56(2) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Schedule 3 clause 2(2)(b): amended, on 5 July 2021, by section 35(1) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Exemptions in respect of overseas investments in sensitive land that is residential (but not otherwise sensitive) land

3 Residential tenancy for less than 5 years

- (1) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land if—
 - (a) the estate or interest in land described in section 12(1)(a) is a residential tenancy for a term of less than 5 years (including rights of renewal, whether of the grantor or grantee); and
 - (b) the relevant land is residential (but not otherwise sensitive) land.
- (2) In this clause, **residential tenancy** means a tenancy to which the Residential Tenancies Act 1986 applies (including a periodic tenancy within the meaning of section 2(1) of that Act).

Schedule 3 clause 3(1)(a): amended, on 16 June 2020, by section 56(3) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

4 Dwellings in large apartment developments that are purchased off plans

- (1) This clause applies in respect of land that is being used, or intended to be used, for 1 (or more) of the following (a **development**):
 - (a) in the construction of 1 or more multi-storey buildings as 1 development, where each building consists, or will consist, of at least 20 residential dwellings; or

- (b) to increase the number of residential dwellings in 1 or more multi-storey buildings, where the number of residential dwellings in each building will be increased by 20 or more.

Exemption certificates

- (2) A person involved in the development (the **developer**) may apply for an exemption certificate if regulations are in force under section 61(1)(jb).
- (3) The relevant Minister or Ministers may grant an exemption certificate if they are satisfied that the development is likely to be completed, having regard to factors such as—
 - (a) whether the development has appropriate resource consent, building consent, and any other relevant authorisations; and
 - (b) the developer's financial strength; and
 - (c) the previous activity of the developer (or its associates or individuals with control) regarding use of residential land; and
 - (d) the previous record of the developer (or its associates or individuals with control) in complying with consent conditions or applying for consent conditions to be varied.
- (4) An exemption certificate may be applied to up to the maximum percentage, as prescribed in the regulations made under section 61(1)(jb), of the residential dwellings in the development.

Exemptions for dwellings to which exemption certificate applies

- (5) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land in respect of a residential dwelling in the development if—
 - (a) the relevant land is residential (but not otherwise sensitive) land; and
 - (b) an exemption certificate applies to the dwelling under subclause (4); and
 - (c) the person (the **purchaser**) makes the investment before the construction of the dwelling is complete.

Example

OP1 buys off the plans an apartment to which an exemption certificate applies, using the exemption in subclause (5). So the on-sale outcome does not apply to OP1 (but see subclause (6)(b) for the non-occupation outcome).

OP2 later buys a different apartment to which the exemption certificate does not apply. OP2 must apply for consent (but see section 16(3)(b) for an exemption from the investor test if OP2 applies for consent under the increased housing test.) OP2 must comply with the conditions of that consent as to the on-sale outcome and the non-occupation outcome.

Other provisions

- (6) The relevant Ministers may grant an exemption certificate subject to the conditions that they think appropriate, and must impose conditions as follows:

- (a) conditions that enable the regulator to identify and monitor the dwellings to which the certificate is applied; and
 - (b) conditions that impose the non-occupation outcome on purchasers who rely on the exemption certificate under subclause (5); and
 - (c) conditions that enable the non-occupation outcome to be monitored by the regulator.
- (7) Those conditions may be conditions—
- (a) that apply to either the developer (as a condition of the exemption certificate) or the purchaser (as a condition of the exemption in subclause (5)), or both; and
 - (b) that require both the developer and the purchaser to provide the regulator with the name, contact details, and other details of dwellings to which the certificate is applied and the purchasers of those dwellings.

5 Certain units acquired and leased back

- (1) In this clause,—

TLtP participant means—

- (a) the person (**A**) that operates the TLtP premises or that will operate the TLtP premises after the TLtP premises are completed; or
- (b) any person involved in the development of the TLtP premises (the **developer**), provided that the developer has assigned its estate or interest in the land to A, or will assign it to A immediately after the TLtP premises are completed to the extent that it relates to the relevant unit

TLtP premises means premises used, or intended to be used, in the course of business principally for providing temporary lodging to the public.

- (2) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land if—
- (a) the relevant land is residential (but not otherwise sensitive) land; and
 - (b) the relevant land is being used, or is intended to be used,—
 - (i) in the construction of TLtP premises that have 20 or more units, or to increase by 20 or more the number of units in TLtP premises; or
 - (ii) for the operation of TLtP premises that have 20 or more units; and
 - (c) the estate or interest in land described in section 12(1)(a) is—
 - (i) an estate or interest in 1 (or more) of those units that is acquired by a person (a **purchaser**) and that is immediately subject to a lease-back to the TLtP participant; or
 - (ii) a lease of 1 (or more) of those units by the purchaser to the TLtP participant (a **lease-back**).

- (3) The exemption is subject to the following conditions:
- (a) the lease-back must meet the following requirements at all times on and after the acquisition of the purchaser's estate or interest:
 - (i) the purchaser cannot occupy, reserve, or use the unit for more than 30 days in each year; and
 - (ii) for the rest of the year, the unit must be managed and used for the general purposes of operating the TLtP premises; and
 - (b) when the lease-back period ends, the purchaser must either, within 12 months of that period ending,—
 - (i) grant to the TLtP participant a new lease-back of the unit that complies with the matters in paragraph (a); or
 - (ii) dispose of its estate or interest in the unit; and
 - (c) the purchaser must not occupy, reserve, or use the unit while it is not leased back to a TLtP participant.

Schedule 3 clause 5: replaced, on 5 July 2021, by section 35(2) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Exemptions in respect of overseas investments in sensitive land involving forestry rights

6 Area of forestry right less than 1 000 hectares

- (1) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land (the **relevant forestry investment**) if—
- (a) the relevant forestry investment is the acquisition of a forestry right (the **relevant forestry right**); and
 - (b) the area of the relevant forestry right is less than 1 000 hectares.
- (2) Subclause (3) applies to a transaction that will result in an overseas investment in sensitive land (the **relevant forestry investment**) if—
- (a) the relevant forestry investment is the acquisition of rights or interests in securities of a person who owns or controls (directly or indirectly) a forestry right that is an interest in land described in section 12(1)(a) (the **relevant forestry right**); and
 - (b) the area of the relevant forestry right is less than 1 000 hectares.
- (3) To the extent that the transaction will result in the relevant forestry investment, it does not require consent for the purposes of section 10(1)(a) in relation to the relevant forestry right.
- (4) Subclause (1) or (3) (as the case may be) does not apply if, immediately after the relevant forestry investment is given effect to, the sum of the following areas is 1 000 hectares or more:

- (a) the area of the relevant forestry right:
- (b) the combined area of all unconsented forestry rights—
 - (i) that related forestry investors acquire (or are treated as acquiring) in the same calendar year as that in which the relevant forestry investment is given effect to; and
 - (ii) that are for a total term (as calculated in accordance with Schedule 1A) of 10 years or more.
- (5) For the purposes of subclause (4)(b),—
 - (a) **related forestry investor** means—
 - (i) the person who makes the relevant forestry investment; or
 - (ii) any associate of that person; or
 - (iii) a body corporate related to that person or to any associate of that person (as determined in accordance with section 12(2) of the Financial Markets Conduct Act 2013); and
 - (b) a related forestry investor (**B**) is treated as acquiring a forestry right if—
 - (i) B acquires rights or interests in securities of a person (**C**) who owns or controls (directly or indirectly) the forestry right and, as a result of the acquisition, B has (either alone or together with B's associates) a more than 25% ownership or control interest in C; or
 - (ii) the forestry right comes under the ownership or control (direct or indirect) of a person in whom B has (either alone or together with B's associates) a more than 25% ownership or control interest; and
 - (c) it does not matter if a forestry right is acquired (or treated as acquired) by a related forestry investor before the relevant forestry investment is given effect to.
- (6) In this clause, **area**, in relation to a forestry right, means the area of land covered by the forestry right (including any right, whether of the grantor or grantee, to have the original area increased).
- (7) In this clause, **unconsented forestry right** means a forestry right that is acquired otherwise than in reliance on any of the following:
 - (a) a consent:
 - (b) an exemption in, or an exemption granted under, this Act or the regulations (other than an exemption under this clause).

Schedule 3 clause 6(4)(b): amended, on 16 August 2022, by section 10(1) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Schedule 3 clause 6(4)(b)(ii): replaced, on 5 July 2021, by section 35(3) of the Overseas Investment Amendment Act 2021 (2021 No 17).

Schedule 3 clause 6(5): amended, on 16 August 2022, by section 10(2) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Schedule 3 clause 6(5)(b)(i): amended, on 16 June 2020, by section 56(4) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Schedule 3 clause 6(5)(b)(ii): amended, on 16 June 2020, by section 56(4) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Schedule 3 clause 6(7): inserted, on 16 August 2022, by section 10(3) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

7 Crown forestry licence converted into forestry right

- (1) A transaction does not require consent for the purposes of section 10(1)(a) 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; and
 - (b) immediately before the forestry right is acquired, the area of land covered by the forestry right (the **covered land**)—
 - (i) is fully covered by a Crown forestry licence granted under section 14 of the Crown Forest Assets Act 1989 (whether or not the covered land is the only area of land covered by the Crown forestry licence); but
 - (ii) is no longer regarded as Crown forest land; and
 - (c) the person who acquires the forestry right is the licensee of the Crown forestry licence immediately before the acquisition of the forestry right or is a person who is related to that licensee; and
 - (d) the term of the forestry right (including rights of renewal, whether of the grantor or grantee) expires no later than 35 years after the date on which the covered land ceased to be regarded as Crown forest land.
- (2) For the purposes of subclause (1)(c), a person (**A**) is **related** to the licensee if—
 - (a) the licensee owns and controls 95% of A; or
 - (b) A owns and controls 95% of the licensee; or
 - (c) a third person owns and controls 95% of the licensee and of A.
- (3) For the purposes of subclause (2), 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.

Exemptions in respect of overseas investments in sensitive land involving regulated profits à prendre that are not forestry rights

8 Area of regulated *profit à prendre* less than 5 hectares

- (1) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land (the **relevant *profit investment***) if—
 - (a) the relevant *profit investment* is the acquisition of a regulated *profit à prendre* that is not a forestry right (the **relevant *profit***); and
 - (b) the area of the relevant *profit* is less than 5 hectares.
- (2) Subclause (3) applies to a transaction that will result in an overseas investment in sensitive land (the **relevant *profit investment***) if—
 - (a) the relevant *profit investment* is the acquisition of rights or interests in securities of a person who owns or controls (directly or indirectly) a regulated *profit à prendre* that is an interest in land described in section 12(1)(a) but is not a forestry right (the **relevant *profit***); and
 - (b) the area of the relevant *profit* is less than 5 hectares.
- (3) To the extent that the transaction will result in the relevant *profit investment*, it does not require consent for the purposes of section 10(1)(a) in relation to the relevant *profit*.
- (4) Subclause (1) or (3) (as the case may be) does not apply if, immediately after the relevant *profit investment* is given effect to, the sum of the following areas is 5 hectares or more:
 - (a) the area of the relevant *profit*;
 - (b) the combined area of all other regulated *profits à prendre*—
 - (i) that are not forestry rights; and
 - (ii) that are held (or treated as held) by related *profit investors*; and
 - (iii) the areas of which adjoin the area of the relevant *profit*; and
 - (iv) that are for a term of 3 years or more (including rights of renewal, whether of the grantor or grantee).
- (5) For the purposes of subclause (4)(b)(ii),—
 - (a) **related *profit investor*** means—
 - (i) the person who makes the relevant *profit investment*; or
 - (ii) any associate of that person; or
 - (iii) a body corporate related to that person or to any associate of that person (as determined in accordance with section 12(2) of the Financial Markets Conduct Act 2013); and
 - (b) **held** includes owned or in the possession of by any means; and

- (c) a related *profit* investor (**B**) is treated as holding a regulated *profit à prendre* if the regulated *profit à prendre* is under the ownership or control (direct or indirect) of a person in whom B has (either alone or together with B's associates) a more than 25% ownership or control interest; and
 - (d) it does not matter if a regulated *profit à prendre* is first held (or treated as first held) by a related *profit* investor before the relevant *profit* investment is given effect to.
- (6) In this clause, **area**, in relation to a regulated *profit à prendre*, means the area of land covered by the regulated *profit à prendre* (including any right, whether of the grantor or grantee, to have the original area increased).

Schedule 3 clause 8(5)(c): amended, on 16 June 2020, by section 56(5) of the Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21).

Other exemptions

9 Other exemptions

See the regulations for other exemptions.

Schedule 4 Standing consents

s 23A

Schedule 4: inserted, on 22 October 2018, by section 28 of the Overseas Investment Amendment Act 2018 (2018 No 25).

Contents

	Page
<i>Different types of standing consents</i>	
1 Residential land: commitment to reside in New Zealand standing consents	189
2 Residential land: other types of standing consents	190
3 Forestry activities	191
<i>Provisions applying to all standing consents</i>	
4 Revocation or variation of standing consents	194
5 Process before revocation or variation of standing consents	194
6 Effect of revocation or variation of standing consents	194
7 Schedule does not limit other provisions	194

Different types of standing consents

1 Residential land: commitment to reside in New Zealand standing consents

Application

- (1) A person who applies for consent under the commitment to reside in New Zealand test may apply for a standing consent.

Criteria for grant of standing consent

- (2) The relevant Ministers may, despite section 14(1), grant a standing consent if the relevant Ministers are satisfied—
- (a) that the investor test is met, if the transaction for which consent is sought may include residential land that is also sensitive for some other reason under Part 1 of Schedule 1; and
 - (b) that the commitment to reside in New Zealand test is met.

Conditions

- (3) The standing consent must be granted subject to the following conditions:
- (a) conditions that ensure that the commitment to reside in New Zealand test continues to be met:
 - (b) the conditions that must be imposed under clause 6 of Schedule 2 on consents granted on the basis of the commitment to reside in New Zealand test:

- (c) a condition that the regulator must be notified of the transaction to which the consent will apply, at the time, and in the manner, specified in the consent.
- (4) The standing consent may be granted subject to additional conditions.
Use-by date
- (5) The standing consent has a use-by date that is the earliest of the following:
 - (a) the date on which the consent holder makes an overseas investment in sensitive land in respect of 1 residential dwelling or dwelling in a long-term accommodation facility;
 - (b) the date on which a trigger event (as defined in clause 7 of Schedule 2) occurs;
 - (c) any date that may be specified in the consent as its use-by date.

2 Residential land: other types of standing consents

Application

- (1) A person may apply for a standing consent in respect of residential (but not otherwise sensitive) land if the person applies under the following tests:
 - (a) the increased housing test; or
 - (b) the non-residential use test; or
 - (c) the incidental residential use test.

Criteria for grant of standing consent

- (2) The relevant Ministers may, despite section 14(1), grant a standing consent if the relevant Ministers are satisfied—
 - (a) that the investor test is met (unless that test does not apply); and
 - (b) that the conditions referred to in subclauses (3) and (4) will be, or are likely to be, met, after having regard to factors such as—
 - (i) the applicant's financial strength; and
 - (ii) the previous activity of the applicant (or associates or individuals with control of the relevant overseas person) regarding use of residential land; and
 - (iii) the previous record of the applicant (or associates or individuals with control of the relevant overseas person) in complying with consent conditions or applying for consent conditions to be varied.

Conditions

- (3) The standing consent must be granted subject to the following conditions:
 - (a) conditions for the purpose of ensuring that the relevant test in subclause (1) is met for each overseas investment to which the consent will apply:

- (b) the conditions that must be imposed under Part 5 of Schedule 2 on consents that are granted on the basis of the relevant test:
 - (c) a condition that the regulator must be notified of the transaction, or each transaction, to which the consent will apply at the time, and in the manner, specified in the consent.
- (4) The standing consent may be granted subject to additional conditions, which may include—
- (a) conditions about the residential land (for example, limits by total land area, location of land, and geographic type of land); and
 - (b) conditions about outcomes (for example, time frames for completing developments); and
 - (c) limits on the number of overseas investments for which the standing consent can be relied on.

Use-by date

- (5) The standing consent may specify a use-by date.

3 Forestry activities

Application

- (1) A person may apply for a standing consent for transactions in respect of overseas investments in sensitive land for which the benefit to New Zealand test will be met in accordance with section 16A(4).

Criteria for grant of standing consent

- (2) The relevant Ministers may, despite section 14(1), grant a standing consent if the relevant Ministers are satisfied—
- (a) that the investor test is met; and
 - (b) that the conditions referred to in subclauses (3) and (4) will be, or are likely to be, met; and
 - (c) without limiting paragraph (b), that the applicant has, and will continue to have, adequate processes in place for meeting, at all relevant times, the requirements set out in regulations made for the purposes of section 16A(4)(d); and
 - (d) without limiting paragraph (b), that the persons referred to in subclause (2A) have a strong record of 1 or both of the following or of the following taken together:
 - (i) compliance with this Act and with conditions and other requirements imposed under it (including providing the regulator with complete and accurate information):
 - (ii) compliance with corresponding laws, and with conditions and other requirements imposed under corresponding laws, in territor-

ies other than New Zealand (including providing regulators with complete and accurate information).

(2A) For the purposes of subclause (2)(d), the persons are the following (viewed as a group):

- (a) the applicant;
- (b) the applicant's associates;
- (c) the individuals with control of the relevant overseas person.

Conditions

(3) The standing consent must be granted subject to the following conditions:

- (a) conditions for the purpose of ensuring that the benefit to New Zealand test is met in accordance with section 16A(4) for each overseas investment to which the consent will apply (subject to subclauses (5) and (6));
- (b) for an overseas investment where the relevant land is or includes farm land, a condition that effect must not be given to the overseas investment in reliance on the consent unless the criterion in section 16(1)(f) has been met;
- (c) a condition—
 - (i) that at the time, and in the manner, specified in the consent, the regulator must be notified—
 - (A) of each transaction to which the consent will apply; and
 - (B) in relation to each such transaction, of how the requirements set out in regulations made for the purposes of section 16A(4)(d) will be met for each overseas investment resulting from the transaction; and
 - (ii) that the notification of a transaction must include any other information required by the regulator in relation to the transaction.

(4) The standing consent may be granted subject to additional conditions, which may include—

- (a) conditions about the land in relation to which the consent may apply (for example, limits by total land area, location of land, and geographic type of land); and
- (b) limits on the number of overseas investments for which the standing consent can be relied on.

(5) For an overseas investment that involves a forestry right, the conditions of the standing consent may provide that, to the extent set out in the conditions, the requirement in section 16A(4)(e) does not have to be met in relation to a crop of trees that is harvested under the forestry right if the forestry right expires—

- (a) upon the completion of the harvesting; or

- (b) after a short period (as determined in accordance with the conditions) following the completion of the harvesting.
- (6) For the purposes of subclause (5), an overseas investment **involves** a forestry right if the overseas investment is the acquisition of—
 - (a) the forestry right; or
 - (b) rights or interests in securities of a person who owns or controls (directly or indirectly) the forestry right.

Variation of conditions following notification of transaction

- (7) After the regulator is notified of a transaction as referred to in subclause (3)(c), the relevant Ministers may, in relation to an overseas investment that results (or will result) from the transaction, vary the conditions of the standing consent to reflect any information provided as referred to in subclause (3)(c)(i)(B).

Variation of conditions on ground that consent holder does not have sufficient ownership or control of relevant land

- (8) The holder of the standing consent may, before an overseas investment is given effect to in reliance on the consent, apply to the relevant Ministers for a variation of the conditions of the standing consent in relation to the overseas investment.
- (9) The application may be made only on the ground that the holder of the standing consent (together with the holder's associates) will not have sufficient ownership or control (direct or indirect) of rights in respect of the relevant land to ensure—
 - (a) that a requirement set out in regulations made for the purposes of section 16A(4)(d) will be met; or
 - (b) that the requirement set out in section 16A(4)(e) will be met.
- (10) If satisfied of that ground, the relevant Ministers may, in relation to the overseas investment, vary the conditions of the standing consent in a way that is consistent with their power under section 16A(7) or (8).

Variation of conditions to reflect new regulations, etc

- (11) Subclause (12) applies if, after the standing consent is granted, there come into force any new regulations, or any amendment or revocation of any regulations, that make any provision referred to in section 16A(4).
- (12) The relevant Ministers may vary the conditions of the standing consent to reflect the new regulations or the amendment or revocation.
- (13) *See also* clause 6, which applies in relation to a variation under subclause (12).

Meaning of vary

- (14) In subclauses (7) to (13), **vary**, in relation to the conditions of the standing consent, includes to add or revoke 1 or more conditions.

Use-by date

- (15) The standing consent may specify a use-by date.

Schedule 4 clause 3(2)(d): amended, on 16 August 2022, by section 11(1) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

Schedule 4 clause 3(2A): inserted, on 16 August 2022, by section 11(2) of the Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42).

*Provisions applying to all standing consents***4 Revocation or variation of standing consents**

The relevant Ministers may revoke or vary a standing consent (including by varying, adding to, or revoking the conditions of a standing consent) at any time if the relevant Ministers are not satisfied that—

- (a) the criteria for the grant of the standing consent were met or are still met; or
- (b) the conditions of the standing consent have been complied with.

5 Process before revocation or variation of standing consents

- (1) The relevant Ministers must provide the consent holder with an opportunity to comment before revoking or varying a standing consent under clause 4.
- (2) However, subclause (1) does not apply if the revocation or variation is at the consent holder's request or is done under subpart 2 of Part 2 of this Act.

6 Effect of revocation or variation of standing consents

- (1) The revocation or variation of a standing consent under clause 3(12) or 4 does not apply to any transaction entered into in reliance on the consent before the revocation or variation.
- (2) Clause 1(4) and (5) of Schedule 1AA applies with any necessary modifications when deciding when a transaction is entered into.

7 Schedule does not limit other provisions

This schedule does not limit other provisions of this Act (for example, subpart 2 of Part 2).

Schedule 5 Fresh or seawater areas

s 25D

Schedule 5: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

Contents

		Page
Part 1		
Application and interpretation		
1	Which owners of land this schedule applies to	196
2	Interpretation	196
Part 2		
Crown acquisition of fresh or seawater interest		
3	Crown must acquire fresh or seawater interest	197
4	Acquisition not required if amenity and conservation value outweighed	197
5	Acquisition not required if Minister not satisfied with amount of compensation to be paid	197
6	Terms of acquisition	198
7	Manner of acquisition	198
8	Effect of acquisition on estates or interests in land	199
9	Compensation payable to owner of fresh or seawater interest	199
10	Compensation payable for other registered interests in land	199
Part 3		
Water areas acquisition notice		
11	Crown's right is interest in land	200
12	Registration of water areas acquisition notice	200
13	Variation of water areas acquisition notice	200
14	Expiration of water areas acquisition notice	201
15	Cancellation of water areas acquisition notice	201
Part 4		
Miscellaneous provisions		
16	Cancellation and issue of records of title	201
17	Acquisition relating to Māori freehold land	202
18	Water areas acquisition notice relating to fresh or seawater interest held off-register: notice on adjacent title	202
19	Water areas acquisition notice relating to fresh or seawater interest held off-register: owner does not own adjacent title	203
20	Acquisition relating to fresh or seawater interest held off-register	203
21	Acquisition is not subdivision	203

22	Regulations regarding acquisition of fresh or seawater areas	204
----	--	-----

Part 1

Application and interpretation

Schedule 5 Part 1: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

1 Which owners of land this schedule applies to

- (1) This schedule gives the Crown the right to acquire fresh or seawater interests from the owners of the fresh or seawater interests.
- (2) In this schedule, **owner**, in relation to a fresh or seawater interest, means—

Overseas person and their associate

- (a) the relevant overseas person that acquires the fresh or seawater interest as a result of an overseas investment in sensitive land; and
- (b) any owner (as defined in section 5(1) of the Land Transfer Act 2017) of the fresh or seawater interest that is an associate of the relevant overseas person; and

Other owners, but only if a notice is registered or covenant is entered into

- (c) if a water areas acquisition notice has been registered under clause 12 or 18 in relation to the fresh or seawater interest, any other owner (as defined in section 5(1) of the Land Transfer Act 2017) of that fresh or seawater interest; and
- (d) if a water areas acquisition notice has been provided under clause 19, any owner (as defined in section 5(1) of the Land Transfer Act 2017) of that fresh or seawater interest that has notice of the Crown's right to acquire the fresh or seawater interest.

Schedule 5 clause 1: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

2 Interpretation

In this schedule,—

fresh or seawater area means any part of the relevant land that is marine or coastal area, the bed of a lake, or the bed of a river, and a reference to a **fresh or seawater area** is a reference to the whole or any part of that area

fresh or seawater interest means the freehold estate or pastoral lease interest that relates to the fresh or seawater area

owner has the meaning set out in clause 1(2)

pastoral lease has the meaning set out in section 2 of the Crown Pastoral Land Act 1998

prescribed manner means the manner prescribed in regulations under clause 22

record of title has the meaning set out in section 5(1) of the Land Transfer Act 2017

Registrar means the Registrar-General of Land

water areas acquisition notice means a notice under clause 12 or 19

water areas covenant means a covenant between an owner and the Crown under clause 20 on the terms and in the form prescribed by regulations.

Schedule 5 clause 2: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

Part 2

Crown acquisition of fresh or seawater interest

Schedule 5 Part 2: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

3 Crown must acquire fresh or seawater interest

- (1) The Crown must acquire, and the owner must allow the Crown to acquire, the fresh or seawater interest in accordance with this schedule.
- (2) The Crown must acquire the fresh or seawater interest before the water areas acquisition notice expires (*see* clause 14).
- (3) However, the Crown need not acquire the fresh or seawater interest if the owner is notified of a decision not to acquire in accordance with clause 4 or 5.

Schedule 5 clause 3: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

4 Acquisition not required if amenity and conservation value outweighed

- (1) The Crown may decide not to acquire a fresh or seawater interest (in whole or in part) if the Minister for Land Information is not satisfied that the amenity and conservation value of the fresh or seawater area outweighs the potential risks, liability, and costs of acquisition and ownership of the area.
- (2) A decision not to acquire a fresh or seawater interest must be notified in writing to the owner of the fresh or seawater interest.
- (3) The notice must be given no later than the date prescribed in regulations.

Schedule 5 clause 4: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

5 Acquisition not required if Minister not satisfied with amount of compensation to be paid

- (1) The Crown may decide not to acquire a fresh or seawater interest (in whole or in part) if the Minister for Land Information is not satisfied with—
 - (a) the amount of compensation to be paid under clauses 9 and 10; or

- (b) if the compensation payable under clause 10 has not yet been assessed, the amount of compensation to be paid under clause 9 and likely to be paid under clause 10.
 - (2) A decision not to acquire a fresh or seawater interest must be notified in writing to the owner of the fresh or seawater interest.
 - (3) The notice must be given no later than the date prescribed in regulations.
- Schedule 5 clause 5: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

6 Terms of acquisition

- (1) Unless the Crown and the owner of a fresh or seawater interest agree otherwise, the terms of the acquisition are those prescribed in regulations.
 - (2) The Crown and the owner may agree amendments, additions, and deletions to the terms of the acquisition.
 - (3) An agreement under subclause (2), when recorded in an instrument registered under clause 13, runs with and binds the land that is subject to the water areas acquisition notice.
- Schedule 5 clause 6: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

7 Manner of acquisition

- (1) The Minister for Land Information may, by notice in the *Gazette*, vest a fresh or seawater area in the Crown.
- (2) Before making a notice under subclause (1), the Minister for Land Information must—
 - (a) ensure that any requirements or steps prescribed in regulations are met or taken; and
 - (b) agree or determine the amount of compensation to be paid to the owner in accordance with clause 9.
- (3) If a notice is made under subclause (1),—
 - (a) any part of the fresh or seawater area that is marine and coastal area vests in the Crown (and, to avoid doubt, becomes part of the common marine and coastal area under the Marine and Coastal Area (Takutai Moana) Act 2011); and
 - (b) any other part of the fresh or seawater area that is the bed of a lake or a river vests in the Crown as Crown land under the Land Act 1948.
- (4) The Minister for Land Information must lodge the notice with the Registrar in the prescribed manner.
- (5) On receipt of a notice, the Registrar must—
 - (a) register the notice:
 - (b) cancel any relevant water areas acquisition notice:

- (c) comply with clause 16 (if applicable).

Schedule 5 clause 7: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

8 Effect of acquisition on estates or interests in land

A fresh or seawater area is vested in the Crown free from all estates or interests in land including any encumbrances (without the necessity of any instrument of release or discharge or otherwise), except any estate or interest in land prescribed in regulations or specified in the notice under clause 7 as an interest to which the vesting does not apply.

Schedule 5 clause 8: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

9 Compensation payable to owner of fresh or seawater interest

- (1) An owner of a fresh or seawater interest is entitled to claim compensation from the Crown.
- (2) The compensation may be claimed and must be determined in the manner prescribed by regulations.
- (3) However, the Crown and the owner may agree a different amount or procedure for determining an amount of compensation.
- (4) An agreement under subclause (3), when recorded in an instrument registered under clause 13, runs with and binds the land that is subject to the water areas acquisition notice.

Schedule 5 clause 9: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

10 Compensation payable for other registered interests in land

- (1) Any other registered owner of an estate or interest in land that is extinguished because of the operation of clause 8 is entitled to claim compensation from the Crown.
- (2) The compensation may be claimed and must be determined in the manner prescribed by regulations.
- (3) However, the Crown and the person may agree a different amount or procedure for determining an amount of compensation.
- (4) However, a person is not entitled to compensation if either or both of the following apply:
 - (a) the water areas acquisition notice has priority over the instrument relating to the person's estate or interest (*see* section 35 of the Land Transfer Act 2017);
 - (b) the person consented to the registration of the water areas acquisition notice.
- (5) The consent of a person under subclause (4) binds—

- (a) that person; and
- (b) any person who subsequently derives their estate or interest from that person.

Schedule 5 clause 10: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

Part 3

Water areas acquisition notice

Schedule 5 Part 3: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

11 Crown's right is interest in land

The Crown's right to acquire a fresh or seawater area under this schedule is an interest in land within the meaning of section 51 of the Land Transfer Act 2017.

Schedule 5 clause 11: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

12 Registration of water areas acquisition notice

- (1) The Crown's right must be registered by lodging a water areas acquisition notice for registration with the Registrar in the prescribed manner.
- (2) The Registrar must register a water areas acquisition notice on receipt of a notice.
- (3) Every water areas acquisition notice, when registered, runs with and binds the land that is subject to the water areas acquisition notice.
- (4) Subclause (3) applies despite anything to the contrary in section 103 of the Land Transfer Act 2017.

Schedule 5 clause 12: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

13 Variation of water areas acquisition notice

- (1) The following may be registered by lodging an instrument varying the water areas acquisition notice with the Registrar in the prescribed manner:
 - (a) an agreement under clause 6 (relating to the terms of the acquisition):
 - (b) an agreement under clause 9 (relating to the compensation payable to the owner of the fresh or seawater interest):
 - (c) an extension under clause 14 (relating to the term of the water areas acquisition notice).
- (2) The Registrar must register a variation instrument on receipt of an instrument.
- (3) The consent of a registered mortgagee of an estate or interest in the fresh or seawater area must be obtained before registration of the instrument.
- (4) The consent of a mortgagee under subclause (3) binds—

- (a) the mortgagee; and
- (b) any person who subsequently derives an interest in the mortgage from the mortgagee.

Schedule 5 clause 13: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

14 Expiration of water areas acquisition notice

- (1) A water areas acquisition notice expires at the end of the term prescribed in regulations.
- (2) However, the Crown and the owner may agree an extension (but not a reduction) of the term of a water areas acquisition notice.
- (3) An extension under subclause (2), when recorded in an instrument registered under clause 13, runs with and binds the land that is subject to the water areas acquisition notice.

Schedule 5 clause 14: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

15 Cancellation of water areas acquisition notice

- (1) A water areas acquisition notice may be cancelled if—
 - (a) the Crown gives a notice under clause 4 or 5:
 - (b) the water areas acquisition notice has expired (*see* clause 14):
 - (c) the Minister for Land Information is satisfied that a record of title does not contain any fresh or seawater areas:
 - (d) any other event specified in regulations occurs.
- (2) The cancellation of a water areas acquisition notice may be registered by lodging an instrument cancelling the notice with the Registrar in the prescribed manner.
- (3) The Registrar must cancel a water areas acquisition notice on receipt of an instrument.

Schedule 5 clause 15: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

Part 4

Miscellaneous provisions

Schedule 5 Part 4: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

16 Cancellation and issue of records of title

- (1) If any record of title comprises any fresh or seawater area that is vested under clause 7 and any adjacent land (the **adjacent land**), the Registrar must, despite anything in the Land Transfer Act 2017,—

- (a) cancel the record of title that comprises the fresh or seawater area and the adjacent land; and
 - (b) issue a record of title in the name of the owner of the adjacent land for the adjacent land; and
 - (c) note any current registered interest or current registered notification that relates to the adjacent land against that record of title in the order in which it appears on the record of title cancelled under paragraph (a); and
 - (d) issue a record of title for any current registered notification, or registered estate or interest not extinguished because of the operation of clause 8, that relates to the fresh or seawater area that was part of the record of title cancelled under paragraph (a).
- (2) The Registrar may require the Minister for Land Information or the owner to deposit any survey plan necessary for the issue of a record of title under subclause (1).

Schedule 5 clause 16: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

17 Acquisition relating to Māori freehold land

If the owner's acquisition of the relevant fresh or seawater interest is confirmed by the Māori Land Court under Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993), that confirmation includes a confirmation of the Crown's right to acquire the fresh or seawater interest (and, for the avoidance of doubt, the notice under clause 7 and the water areas acquisition notice (including any variations to that notice) need not be separately confirmed by the court).

Schedule 5 clause 17: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

18 Water areas acquisition notice relating to fresh or seawater interest held off-register: notice on adjacent title

- (1) This clause applies if—
- (a) a water areas acquisition notice cannot be registered against a record of title relating to a fresh or seawater area (for example, because it is a presumptive interest only or there is no record of title for the fresh or seawater interest for any other reason); and
 - (b) the owner of the fresh or seawater interest is also the registered owner of a record of title relating to land adjoining the fresh or seawater area (an **adjacent title**).
- (2) A water areas acquisition notice may instead be registered against the adjacent title.
- (3) Clauses 7, 8, and 10 do not apply in relation to the fresh or seawater interest.

Schedule 5 clause 18: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

19 Water areas acquisition notice relating to fresh or seawater interest held off-register: owner does not own adjacent title

- (1) This clause applies if—
 - (a) a water areas acquisition notice cannot be registered against a record of title relating to a fresh or seawater area under clause 12 (for example, because it is a presumptive interest only or there is no record of title for the fresh or seawater interest for any other reason); and
 - (b) clause 18(1)(b) does not apply (that is, the owner of the fresh or seawater interest is not also the registered owner of an adjacent title).
- (2) The owner of the fresh or seawater interest must provide a water areas acquisition notice to the Crown in the prescribed manner.
- (3) Clauses 7, 8, 10, 12, 13, 14(3), and 15(2) and (3) do not apply in relation to the fresh or seawater interest.

Schedule 5 clause 19: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

20 Acquisition relating to fresh or seawater interest held off-register

- (1) This clause applies, in place of clause 7, in the circumstances described in clauses 18(1) and 19(1).
- (2) The Minister for Land Information may, by requiring the owner to grant a water areas covenant to the Crown, acquire the fresh or seawater interest.
- (3) Before requiring the grant of a water areas covenant, the Minister for Land Information must—
 - (a) ensure that any requirements or steps prescribed in regulations are met or taken; and
 - (b) agree or determine the amount of compensation to be paid to the owner in accordance with clause 9.
- (4) If the owner of the fresh or seawater interest is also the registered owner of an adjacent title, a water areas covenant may be registered against the adjacent title.
- (5) The Crown only acquires the fresh or seawater interest under this clause to the extent that there is no better claim to the fresh or seawater interest than the claim that the owner had immediately prior to the vesting.

Schedule 5 clause 20: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

21 Acquisition is not subdivision

Nothing in section 11 and Part 10 of the Resource Management Act 1991 applies to—

- (a) any acquisition by the Crown of land as a direct or indirect consequence of the operation of this schedule; or

- (b) any matter incidental to, or required for the purpose of, any acquisition of that kind.

Schedule 5 clause 21: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

Schedule 5 clause 21: amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

22 Regulations regarding acquisition of fresh or seawater areas

- (1) For the purposes of this schedule, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the purposes of this schedule that prescribe any or all of the following:
- (a) the terms and form of a water areas acquisition notice:
 - (b) the date before which a notice under clause 4 or 5 must be given:
 - (c) the terms of the acquisition for the purposes of clause 6:
 - (d) processes or steps for the purposes of clause 7 (for example, requirements to survey the fresh or seawater area or the adjacent land (as defined in clause 16)):
 - (e) interests in land for the purposes of clause 8:
 - (f) the process for claiming and determining compensation payable to an owner of a fresh or seawater interest for the purposes of clauses 9 and 10, including—
 - (i) the manner in which compensation may be claimed and the consequences of failure to claim compensation:
 - (ii) a procedure for determining compensation:
 - (g) an event for the purposes of clause 15:
 - (h) the terms and form of a water areas covenant:
 - (i) for the purposes of any provision of this schedule that requires a thing to be done in a prescribed manner, the manner in which the thing must be done, including—
 - (i) by whom, when, where, and how the thing must be done:
 - (ii) any form that must be used in connection with doing the thing:
 - (iii) any information or other evidence or documents that must be provided in connection with the thing.
- (2) Regulations made under this clause are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 5 clause 22: inserted, on 24 November 2021, by section 36 of the Overseas Investment Amendment Act 2021 (2021 No 17).

Notes

1 *General*

This is a consolidation of the Overseas Investment Act 2005 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

European Union Free Trade Agreement Legislation Amendment Act 2024 (2024 No 10): section 89
Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68): section 6
Security Information in Proceedings (Repeals and Amendments) Act 2022 (2022 No 72): sections 33–36
United Kingdom Free Trade Agreement Legislation Act 2022 (2022 No 59): section 14
Overseas Investment (Forestry) Amendment Act 2022 (2022 No 42)
Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14): wehenga 7/section 7
Legislation Act (Amendments to Legislation) Regulations 2021 (LI 2021/247): Part 15
Reserve Bank of New Zealand Act 2021 (2021 No 31): section 300(1)
Overseas Investment Amendment Act 2021 (2021 No 17)
Financial Market Infrastructures Act 2021 (2021 No 13): section 163(1)
Secondary Legislation Act 2021 (2021 No 7): section 3
Education and Training Act 2020 (2020 No 38): section 668
Privacy Act 2020 (2020 No 31): section 217
Overseas Investment (Urgent Measures) Amendment Act 2020 (2020 No 21)
Overseas Investment Amendment Act 2018 (2018 No 25)
Contract and Commercial Law Act 2017 (2017 No 5): section 347

Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90): Part 6 (as amended by Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41) and Overseas Investment Amendment Act 2018 (2018 No 25))

Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26): section 107

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Search and Surveillance Act 2012 (2012 No 24): section 286

Criminal Procedure Act 2011 (2011 No 81): section 413

Policing Act 2008 (2008 No 72): section 116(a)(ii)

Overseas Investment Act Commencement Order 2005 (SR 2005/219)

Overseas Investment Act 2005 (2005 No 82): Schedule 1AA clause 26(3)