

Reprint
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Overseas Investment (Urgent Measures) Amendment Act 2020

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Date of assent 2 June 2020
Commencement see section 2

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

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Investment Act 2005**

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Overseas Investment (Urgent Measures) Amendment Act 2020.

2 Commencement

- (1) This Act comes into force on the 14th day after the date on which it receives the Royal assent.
- (2) Subsection (1) applies with the following exceptions:
 - (a) sections 6(4), 12(7) and (8), 14(2), 15, 16, and 63(2) to (4) (which all relate to the investor test) come into force on a date appointed by the Governor-General by Order in Council or, if not earlier brought into force, 1 year after the date on which this Act receives the Royal assent:
 - (b) section 53 (replacement of emergency notification regime with more permanent call-in regime) comes into force on a date appointed by the Governor-General by Order in Council or, if not earlier brought into force, 2 years after the date on which this Act receives the Royal assent.
- (3) In subsection (2), 1 or more orders may be made appointing different dates for different provisions and for different purposes.
- (4) In this section, **provision** includes any item, or any part of an item, in any of the schedules.

Section 2(2)(a): sections 6(4), 12(7) and (8), 14(2), 15, 16, and 63(2) to (4) brought into force, on 22 March 2021, by clause 2 of the Overseas Investment (Urgent Measures) Amendment Act Commencement Order 2021 (LI 2021/8).

Section 2(2)(b): section 53 brought into force, on 7 June 2021, by clause 2 of the Overseas Investment (Urgent Measures) Amendment Act Commencement Order (No 2) 2021 (LI 2021/130).

Part 1
Amendments to Overseas Investment Act 2005

3 Principal Act

This Part amends the Overseas Investment Act 2005 (the **principal Act**).

4 Section 3 amended (Purpose)

In section 3, insert as subsection (2):

- (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.

5 Section 4 amended (Overview)

After section 4(1)(b), insert:

- (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 information:
 - (iv) subpart 4 relates to regulations and other miscellaneous matters.

6 Section 6 amended (Interpretation)

- (1) In section 6(1), repeal the definitions of **25% or more ownership or control interest**, **25% or more subsidiary**, and **foreshore or seabed**.

- (2) In section 6(1), insert in its appropriate alphabetical order:

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

- (3) In section 6(1), insert in their appropriate alphabetical order:

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

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

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

disposal order means an order made under section 93

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

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

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

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

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

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

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

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)

New Zealand listed issuer means a listed issuer that is incorporated in New Zealand

non-NZ government investor means—

- (a) the government, or any part of the government (including regional or local government), of—
 - (i) a territory other than New Zealand; or
 - (ii) a part of a territory other than 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)

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

prohibition order means an order made under section 92

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
- (b) a 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

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

section 12 interest has the meaning set out in section 12

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 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

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

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)

- (4) In section 6(1), replace the definition of **investor test** with:

investor test means the test set out in section 18A

- (5) In section 6(1), replace the definition of **involved** with:

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

- (6) In section 6(1), definition of **relevant land**, replace “referred to in section 12(a) or 12(b)” with “that the estate or interest referred to in section 12(a) or (b) relates to”.
- (7) In section 6(2)(a)(iii), after “New Zealand”, insert “(see subsection (2A))”.
- (8) In section 6(4), replace “**25% or more ownership or control interest**” with “**more than 25% ownership or control interest**”.
- (9) In section 6(4)(a), (b), and (c), replace “25% or more” with “more than 25%”.
- (10) In section 6(5), replace “**25% or more subsidiary**” with “**more than 25% subsidiary**”.
- (11) In section 6(5)(b) and (c), replace “25% or more” with “more than 25%”.
- (12) After section 6(8), insert:
 - (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)).

7 Section 7 amended (Who are overseas persons)

- (1) In section 7, replace “25% or more” with “more than 25%” in each place.
- (2) In section 7(1), replace “25% (or more)” with “more than 25%”.

Consequential amendment

- (3) In section 19(1)(a), replace “25% or more” with “more than 25%”.

8 Section 8 amended (Meaning of associate and associated land)

In section 8(4)(b) and (c), replace “interest in” with “estate or interest in”.

9 Section 12 amended (What are overseas investments in sensitive land)

- (1) In section 12, replace “of—” with “of all or any of the following (a **section 12 interest**):”.
- (2) In section 12(a), replace “an interest in land if” with “an estate or interest in land if”.
- (3) Replace section 12(a)(i) with:
 - (i) the land that the estate or interest relates to is sensitive land under Part 1 of Schedule 1; and
- (4) In section 12(a)(ii), replace “interest acquired” with “estate or interest acquired” and “other interest” with “other estate or interest”.
- (5) In section 12(b), replace “25% or more” with “more than 25%” in each place.
- (6) In section 12(b), replace “interest in land” with “estate or interest in land”.

10 Section 13 amended (What are overseas investments in significant business assets)

In section 13(1)(a)(i) and (ii), replace “25% or more” with “more than 25%” in each place.

11 Section 15 amended (Who are relevant overseas persons, and individuals with control, for overseas investments)

In section 15(2)(a), replace “25% or more” with “more than 25%”.

12 Section 16 amended (Criteria for consent for overseas investments in sensitive land)

- (1) Above section 16(1)(a), insert:

Criteria regardless of type of relevant land

- (2) Above section 16(1)(b), insert:

Criteria if relevant land is exclusively residential and not otherwise sensitive

- (3) Above section 16(1)(c), insert:

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

- (4) Above section 16(1)(d), insert:

Criteria if relevant land is all residential and some or all is sensitive for some other reason

- (5) Above section 16(1)(e), insert:

Criteria if some relevant land is residential and some or all is sensitive for some other reason

- (6) After section 16(1)(f), insert:

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).

- (7) Repeal section 16(2) and (5).

- (8) In section 16(3), replace “Subsection (1)(a) (the investor test)” with “The investor test”.

- (9) In section 16(3)(b)(iii), replace “interest” with “estate or interest”.

13 Section 16A amended (Benefit to New Zealand test)

In section 16A(9), definition of **special land**, replace “foreshore or seabed” with “marine and coastal area”.

14 Section 18 replaced (Criteria for overseas investments in significant business assets)

(1) After section 18(1)(d), insert:

- (e) 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).

(2) Replace section 18 with:

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).

15 New section 18A inserted (Investor test)

After section 18, insert:

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.

16 Section 19 repealed (Applying good character and Immigration Act 2009 criteria)

Repeal section 19.

17 New sections 20A to 20G and cross-heading inserted

After section 20, insert:

Transactions of national interest

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(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(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 10% or more ownership or control interest in A:

Investment in strategically important businesses

- (c) a transaction of a kind described in section 12(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(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 business is or includes a SIB.
- (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).

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.

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.

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.

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 in the *Gazette*.

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 in the *Gazette*; 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.

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.

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).

18 Section 23 amended (Requirements for application for consent)

- (1) Replace section 23(1)(c) with:
- (c) contain the information set out in regulations; and
- (2) After section 23(3), insert:
- (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.

19 Section 25A amended (Conditions of consent)

In section 25A(1), replace “section 25B (which apply to every consent)” with “sections 25B and 25C”.

20 New section 25C inserted (Automatic condition: every transaction of national interest)

After section 25B, insert:

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.

21 Section 31 amended (What regulator does)

- (1) Replace section 31(d) with:

- (d) monitor compliance with consents or orders made under this Act:
- (2) In section 31(i), after “New Zealand assets”, insert “or the management of certain risks, such as national security and public order risks, associated with transactions by overseas persons”.

22 Section 32 amended (Delegation by relevant Minister or Ministers)

In section 32, insert as subsections (2) and (3):

- (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)).

23 Section 34 amended (Ministerial directive letter)

Replace section 34(3)(ba) with:

- (ba) conditions of consents or direction orders, including conditions that this Act requires be imposed:

24 Section 36 amended (Regulator may issue guidelines)

After section 36(1)(e), insert:

- (ea) matters relating to the national interest, national security, public order, and risk management actions:

25 New sections 37A and 37B inserted

After section 37, insert:

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

- (1) This section applies for the purposes of the standing consent in Part 4 of Schedule 1AA and of Schedule 1 (after Schedule 1 is amended by the Overseas Investment Amendment Act (No 3) 2020).
- (2) The regulator must—

- (a) 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; and
 - (b) publish that list on an Internet site maintained by or for the regulator.
- (3) The regulator may amend that list.

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.

26 Section 38 amended (Regulator may require person who is subject to condition to provide information for monitoring purposes)

- (1) In the heading to section 38, delete “**who is subject to condition**”.
- (2) Replace section 38(1) with:
- (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.

27 Section 39 amended (Regulator may require any person to provide information for statistical or monitoring purposes)

- (1) In section 39(1), after “New Zealand assets”, insert “or call-in transactions”.
- (2) Replace section 39(1)(b) with:
- (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.

28 Section 40 amended (Regulator may require person who is subject to condition to provide statutory declaration as to compliance)

- (1) In the heading to section 40, delete “**who is subject to condition**”.
- (2) Replace section 40(1) with:

- (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.

29 Section 41 amended (Regulator may require information and documents to be provided for purpose of monitoring compliance, investigating, and enforcing Act and regulations)

- (1) In the heading to section 41, delete “for purpose of monitoring compliance, investigating, and enforcing Act and regulations”.
- (2) After section 41(1A)(a), insert:
- (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:

30 Section 41G amended (Consequences of disposal or retention of property)

In section 41G(3), replace “civil penalty” with “civil pecuniary penalty”.

31 Section 42 amended (Offence of giving effect to overseas investment without consent)

In section 42(2)(b), replace “in the case of a body corporate” with “in any other case”.

32 Section 43 amended (Offence of defeating, evading, or circumventing operation of Act)

In section 43(2)(b), replace “in the case of a body corporate” with “in any other case”.

33 Section 44 amended (Offence of resisting, obstructing, or deceiving)

In section 44(2)(b), replace “in the case of a body corporate” with “in any other case”.

34 Section 46 amended (Offence of false or misleading statement or omission)

After section 46(1)(aa), insert:

- (ab) any notice under section 85; or

35 New sections 46A to 46E and cross-heading inserted

After section 46, insert:

Enforceable undertakings

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

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

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)

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

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

36 New sections 46F and 46G inserted

Before section 47, insert:

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

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.

37 Section 47 amended (Court may order disposal of property)

- (1) In section 47(1)(d), replace “a consent or of an exemption” with “a consent, an exemption, or a direction order”.
- (2) In section 47(3)(b), replace “interest” with “estate or interest”.

38 Section 48 amended (Court may order person in breach or involved in breach to pay civil penalty)

- (1) In the heading to section 48, replace “civil penalty” with “civil pecuniary penalty”.
- (2) In section 48(1), replace “civil penalty” with “civil pecuniary penalty”.
- (3) Replace section 48(1)(d) with:

- (d) failed to comply with a condition of a consent, an exemption, an exemption certificate, a direction order, or an interim direction order; or
- (4) Replace section 48(2) with:
- (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.
- (5) In section 48(2A), replace “civil penalty” with “civil pecuniary penalty”.

39 Section 49 amended (Court may order mortgage to be registered over land)

- (1) In section 49(1), replace “a consent, an exemption, or an exemption certificate” with “a consent, an exemption, an exemption certificate, a direction order, an interim direction order, a prohibition order, or a disposal order”.
- (2) Replace section 49(1)(a) with:
- (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
- (3) In section 49(1)(b), replace “civil penalty” with “civil pecuniary penalty”.

40 Section 50 amended (Court may order interest to be paid)

In section 50(1),—

- (a) replace “a consent, an exemption, or an exemption certificate” with “a consent, an exemption, an exemption certificate, a direction order, or an interim direction order”; and
- (b) replace “civil penalty” with “civil pecuniary penalty”.

41 Section 51 amended (Court may order compliance with condition of consent, exemption, or exemption certificate)

- (1) In the heading to section 51, replace “**consent, exemption, or exemption certificate**” with “**consent, exemption, exemption certificate, direction order, or interim direction order**”.
- (2) After section 51(1)(b), insert:
 - (c) a person who is subject to a direction order or an interim direction order.
- (3) In section 51(2)(a) and (b), replace “a consent, an exemption, or an exemption certificate” with “a consent, an exemption, an exemption certificate, a direction order, or an interim direction order”.

42 New sections 51AAA to 51AAE inserted

After section 51, insert:

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

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

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.

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

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.

43 Section 51A amended (Person who acquires interest in residential land must make and provide statement)

- (1) In the heading to section 51A, delete “**interest in**”.
- (2) Replace section 51A(1) with:

- (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.

44 Section 51C amended (Conveyancer must obtain and keep statement)

In section 51C(3), replace “civil penalty” with “civil pecuniary penalty”.

45 Section 52 amended (Administrative penalties for late filing)

In section 52(1), replace “a condition of a consent, an exemption, or an exemption certificate” 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”.

46 Section 54 amended (Address for service)

- (1) In section 54, replace “consent holder, holder of an exemption under section 61D, and holder of an exemption certificate” with “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”.
- (2) In section 54, insert as subsection (2):
- (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).

47 Section 54A amended (Notices or other documents given, provided, or served by regulator)

In section 54A(2)(d), replace “a consent, an exemption, or an exemption certificate” with “a consent, an exemption, an exemption certificate, a direction order, or an interim direction order”.

48 Section 61 amended (Regulations)

- (1) After section 61(1)(l), insert:
 - (la) providing for definitions for the purposes of section 82(2):
 - (lb) prescribing enactments for the purposes of the standing consent in Part 4 of Schedule 1AA and of rows 10 and 11 of table 2 in Part 1 of Schedule 1 (after Schedule 1 is amended by the Overseas Investment Amendment Act (No 3) 2020):
 - (lc) exempting, if necessary or desirable to respond to an epidemic in New Zealand, 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) After section 61(2), insert:
- (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.

49 Section 61B amended (Purpose of exemptions)

- (1) Replace section 61B(a) with:
 - (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
- (2) After section 61B(c)(vii), insert:
 - (viii) persons, transactions, rights, interests, or assets that the Minister considers to be fundamentally New Zealand owned or controlled or to have a strong connection to New Zealand:
 - (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.

50 Section 61D amended (Minister may grant individual exemptions)

In section 61D(3), after “regulator”, insert “, unless section 61F(6) applies”.

51 Section 61F amended (Other provisions applying to all exemptions)

In section 61F(6), delete “if they were official information”.

52 New Part 3 inserted

After section 80, insert:

Part 3

National security and public order risks management regime

81 Purpose of Part

- (1) The purpose of this Part is to manage—
 - (a) significant national security and public order risks associated with transactions by overseas persons; and

- (b) while the emergency notification regime is in place, risks associated with transactions by overseas persons that are contrary to New Zealand's national interest.
- (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).

Subpart 1—Call-in transactions during emergency notification regime

Call-in transactions, etc

82 What are call-in transactions and overseas investments covered by emergency notification regime

- (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 covered by the emergency notification regime; but
 - (b) does not require consent (*see* section 10).
- (2) An overseas investment is an **overseas investment covered by the emergency notification regime** if it is—

Securities

- (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, as a result of the acquisition, the overseas person or the associate (either alone or together with its associates) has—
 - (i) a more than 25% ownership or control interest in A; or

- (ii) an increase in an existing more than 25% ownership or control interest in A to either a more than 50% or 75% ownership or control interest in A or a 100% ownership or control interest in A; or
- (iii) an interest defined in the regulations:

Property

- (b) 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) of any value that effectively amounts to a change in control of the business, as defined in the regulations.
- (3) This section is subject to any regulations made under section 127(1).

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.

Review of call-in transactions

84 Review of call-in transactions

- (1) The Minister must review a call-in transaction that is notified under section 85.
- (2) The Minister must take a risk management action following a review under subsection (1).
- (3) The Minister may review any call-in transaction that should have been notified under section 85.
- (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.

Notification of call-in transactions

85 Requirement to notify

- (1) Each overseas person or associate making a call-in transaction must notify the regulator before giving effect to the call-in transaction.
- (2) A call-in transaction must not be given effect to unless the Minister makes a direction order in relation to that transaction.

- (3) A person who fails to comply with this section does not commit an offence under section 45.

86 Measures to ensure emergency notification regime no broader than reasonably necessary

- (1) The Minister must commence an assessment, no later than 45 days after the commencement of this section, to ensure that the classes of transactions that are subject to the emergency notification regime are not broader than are reasonably necessary having regard to the purposes of this Part.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
- (a) extending the effect of any exemption made under this Act so that the exemption also applies to any requirements under the emergency notification regime:
 - (b) doing anything necessary or desirable to ensure that the classes of transactions that are subject to the emergency notification regime are not broader than are reasonably necessary, having regard to the purposes of this Part.

87 Requirements for notification of call-in transaction

- (1) The Minister must, by notice, authorise the manner in which a notification under section 85 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(1) (including the manner for doing so).
- (2) The regulator must—
- (a) notify the making of the notice in the *Gazette*; and
 - (b) publish the notice on an Internet site maintained by, or on behalf of, the regulator.
- (3) The notice is a disallowable instrument but not a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (4) The regulator may, by notice in writing, require 1 or more persons giving a notification under section 85 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, 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 must be accompanied by the relevant fee (if any), unless this has already been paid.

Subpart 2—Risk management actions

Direction orders

88 Direction orders

- (1) The Minister may give a direction order to a relevant acquirer following a review of a call-in transaction,—
- (a) notifying that no conditions are imposed (and that the relevant acquirer may give effect to the transaction accordingly); or
 - (b) if the direction order is subject to conditions, requiring compliance with the conditions of the order if the call-in transaction is or has been given effect to.
- (2) A direction order is subject to any conditions (if any) that the Minister thinks appropriate to manage a risk referred to in section 81.
- (3) The Minister may impose conditions only if the Minister considers that the call-in transaction gives rise, or is likely to give rise, to a risk referred to in section 81.
- (4) When imposing conditions, the Minister must have regard to New Zealand's international obligations.

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.

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 any information provided under section 87(2) contained a statement that was false or misleading in any material particular or any material omission:
 - (ii) a notice under section 85 or any information provided under section 87(2) 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.

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) and (4) 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.

Prohibition orders

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.

Disposal orders

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.

Statutory management

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.

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.

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.

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.

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.

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).

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.

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.

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.

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.

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.

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).

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.

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.

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).

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.

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).

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 Reserve Bank of New Zealand Act 1989):
 - (b) a covered bond SPV (within the meaning of section 139B of the Reserve Bank of New Zealand 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 settlement system (within the meaning of section 156N of the Reserve Bank of New Zealand Act 1989).
- (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.

Risk management actions and transactions of national interest

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.

Subpart 3—Protection of classified information

113 Application of subpart

This subpart applies to any civil proceedings (including public law and judicial review proceedings) in a court relating to the administration or enforcement of this Act.

114 Classified security information and other terms defined

- (1) In this subpart, **classified security information** means information—
 - (a) that is relevant to any proceedings in a court that relate to the administration or enforcement of this Act (or to any intended proceedings); and
 - (b) that is held by an agency listed in section 126(2); and
 - (c) 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 to the extent provided in this subpart 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)(c)(i) if it—
 - (a) might lead to the identification of, or provide details of, the source of the information, the nature, content, or scope of the information, or 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 the Government of another country or by an international organisation, and is information that cannot be disclosed by the agency because the Government or agency or organisation by which the information has been provided will not consent to the disclosure.
- (3) Disclosure of information falls within subsection (1)(c)(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 any 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.

(4) In this subpart,—

intended party has the meaning set out in section 117(1)(a)(i)

intended proceedings means the proceedings that an intended party intends to commence as notified under section 117(1)(a)(ii)

non-Crown party, in relation to proceedings, means a person (other than the Crown) that is a party to the proceedings

representative includes a barrister or solicitor engaged to act on behalf of a party

special advocate means a person appointed under section 118(2).

Compare: 2013 No 91 s 102

115 Obligation to provide court with access to classified security information

- (1) The Crown must, after proceedings are commenced, provide the court with access to the classified security information that is relevant to those proceedings.
- (2) If a special advocate is appointed before proceedings are commenced, the Crown must provide the court with access to the classified security information that is relevant to the intended proceedings.
- (3) The court must keep confidential and must not disclose any information provided as classified security information, even if it considers that the information does not meet the criteria set out in section 114(2) and (3), unless 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) consents to its release.
- (4) Subsection (3) applies both during and after completion of the proceedings.

Compare: 2013 No 91 s 103

116 Court orders

- (1) The court may, in order to comply with section 115(3), make 1 or more of the following orders:

- (a) an order forbidding publication of any report or account of the whole or any part of the evidence adduced or the submissions made in the proceedings:
 - (b) an order forbidding the publication of the name of any witness or witnesses, or any name or particulars likely to lead to the identification of any witness or witnesses:
 - (c) an order forbidding the publication of classified security information or information about classified security information:
 - (d) an order excluding any person from the whole or any part of the court's proceedings, including—
 - (i) the non-Crown party or the non-Crown party's representative; or
 - (ii) staff of the court.
- (2) An order made under subsection (1)—
- (a) may be made for a limited period or permanently; and
 - (b) if it is made for a limited period, may be renewed for a further period or periods by the court; and
 - (c) if it is made permanently, may be reviewed by the court at any time.

Compare: 2013 No 91 s 104

117 Appointment of special advocate

- (1) This section applies if—
- (a) it appears to a court that—
 - (i) a person (the **intended party**) is or may be entitled to commence proceedings to which this subpart will or may apply but it is necessary for a special advocate to be appointed before the proceedings can be commenced; and
 - (ii) the intended party has notified the Crown that the party intends to commence those proceedings and that the party will apply for the appointment of a special advocate; or
 - (b) proceedings have been commenced and information presented, or proposed to be presented, in those proceedings includes classified security information; or
 - (c) proceedings have been commenced but the non-Crown party's claim cannot be fully particularised without the non-Crown party being able to consider classified security information.
- (2) The court may, on the application of an intended party or a non-Crown party, appoint a barrister or solicitor as a special advocate to represent the intended party's or the non-Crown party's interests on the terms that the court may direct if the court is satisfied that it is necessary to do so in order to ensure either or both of the following:

- (a) that the intended party can properly prepare and commence proceedings:
- (b) that a fair hearing will occur.
- (3) The court must, before appointing a person as a special advocate, be satisfied that the person—
 - (a) holds an appropriate security clearance that allows the person to see information that is or may be classified security information; and
 - (b) is suitably qualified and experienced to fulfil the role of a special advocate.
- (4) A special advocate appointed to represent an intended party may, after the proceedings are commenced, continue to act as the special advocate on behalf of that person (as a non-Crown party), subject to the terms that the court may direct.
- (5) The court may make directions as to the terms of the appointment, and on the matters referred to in sections 120 and 121(3), before or after the proceedings are commenced.
- (6) The appointment of a special advocate does not create an obligation requiring the intended party to commence proceedings.
- (7) The agency to which the proceedings or intended proceedings relate must meet the actual and reasonable costs of a special advocate on a basis—
 - (a) agreed between the special advocate and the head of the agency (in the case of an intelligence or security agency) or the Attorney-General (in the case of any other agency); or
 - (b) determined by the court (in default of agreement).

Compare: 2013 No 91 s 105

118 Nomination of person for appointment

- (1) Each of the following may nominate a barrister or solicitor to be appointed as the special advocate:
 - (a) the Crown:
 - (b) the intended party or the non-Crown party (as the case may be).
- (2) The court may appoint a person nominated under subsection (1) or another person.

Compare: 2013 No 91 s 106

119 Role of special advocates

- (1) The role of a special advocate is to represent an intended party or a non-Crown party.
- (2) In particular, a special advocate may—
 - (a) prepare and commence proceedings on behalf of the person:
 - (b) examine and cross-examine witnesses:

- (c) make oral and written submissions to the court:
 - (d) assist in the settlement of the proceedings.
- (3) At all times, a special advocate must act in accordance with his or her duties as an officer of the High Court.
- (4) A special advocate must keep confidential and must not disclose classified security information, except as expressly provided or authorised under this Act.
- Compare: 2013 No 91 s 107

120 Court may provide access to classified security information to special advocate

- (1) A special advocate may, before or after the commencement of proceedings, apply to the court for access to the classified security information.
- (2) The court may provide access to the classified security information to the special advocate on the terms that the court may direct.
- Compare: 2013 No 91 s 108

121 Communication between special advocate and other persons

- (1) A special advocate may communicate with the relevant party or the relevant party's representative on an unlimited basis until the special advocate has been provided with access to the classified security information.
- (2) After the special advocate has been given access to the classified security information, he or she must not communicate with any person about any matter connected with the classified security information except in accordance with this section.
- (3) A special advocate who, after having been given access to the classified security information, wishes to communicate with the relevant party, the relevant party's representative, or any other person not referred to in subsection (4) may do so on the terms that the court may direct.
- (4) A special advocate may, without the approval of the court, communicate about any matter connected with the classified security information with—
- (a) the court:
 - (b) the Crown's security-cleared representative:
 - (c) the Attorney-General:
 - (d) the head of the agency to which the proceedings relate, or the agency's security-cleared representative.
- (5) In this section, **relevant party** means the intended party or non-Crown party.
- Compare: 2013 No 91 s 109

122 Protection of special advocates from liability

- (1) To the extent that a special advocate is acting in accordance with the requirements of this Act, the special advocate is not guilty of—

- (a) misconduct within the meaning of section 7 or 9 of the Lawyers and Conveyancers Act 2006; or
 - (b) unsatisfactory conduct within the meaning of section 12 of that Act.
- (2) This subpart applies despite the requirements of any practice rules made and approved under the Lawyers and Conveyancers Act 2006.
- (3) No person is personally liable for any act done or omitted to be done in good faith, in his or her capacity as a special advocate, in accordance with the requirements or provisions of this Act.

Compare: 2013 No 91 s 110

123 Other matters relating to procedure in proceedings involving classified security information

- (1) The court must determine the proceedings on the basis of information available to it (whether or not that information has been disclosed to or responded to by all parties to the proceedings).
- (2) If information presented, or proposed to be presented, in the proceedings by the Crown includes classified security information,—
- (a) except where proceedings are before the Court of Appeal or the Supreme Court, the proceedings must be heard and determined by the Chief High Court Judge, or by 1 or more Judges nominated by the Chief High Court Judge, or both; and
 - (b) the court must, on a request by the Attorney-General and if satisfied that it is necessary to do so for the protection of (either all or part of) the classified security information, receive or hear (the relevant part or all of) the classified security information in the absence of all or any of—
 - (i) the non-Crown party; and
 - (ii) the barristers or solicitors (if any) representing the non-Crown party; and
 - (iii) journalists; and
 - (iv) members of the public.
- (3) Without limiting subsection (2),—
- (a) the court may approve a summary of the classified security information that is presented by the Attorney-General except to the extent that a summary of any particular part of the information would itself involve disclosure that would be likely to prejudice the interests referred to in section 114(3); and
 - (b) on being approved by the court, a copy of the summary must be given to the non-Crown party.

- (4) Subsections (1) to (3) apply despite any enactment or rule of law to the contrary.

Compare: 2013 No 91 s 111

124 Nothing in this subpart limits other rules of law that authorise or require withholding of document, etc

Nothing in this subpart limits section 27 of the Crown Proceedings Act 1950 or any rule of law that authorises or requires the withholding of a document or the refusal to answer a question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

Compare: 2013 No 91 s 112

125 Ancillary general practices and procedures to protect classified security information

- (1) Any general practices and procedures that may be necessary to implement the procedures specified in this subpart and to ensure that classified security information is protected in all proceedings to which this subpart applies must be agreed between the Chief Justice and the Attorney-General as soon as practicable after the commencement of this section, and revised from time to time.
- (2) General practices and procedures may be agreed under subsection (1) on the following matters:
- (a) measures relating to the physical protection of the information during all proceedings to which this subpart relates;
 - (b) the manner in which the information may be provided to the court;
 - (c) measures to preserve the integrity of the information until any appeals are withdrawn or finally determined.
- (3) Subsection (2) does not limit subsection (1).

Compare: 2013 No 91 s 113

Subpart 4—Miscellaneous provisions

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 only for the purpose of managing national security and public order risks, and only in accordance with this section and the regulations (if any), despite anything to the contrary in the Privacy Act 1993.
- (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.

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.

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.

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.

53 Replacement of emergency notification regime with more permanent call-in regime

Overview

- (1) This section makes changes to Part 3 (as inserted by section 52).

Main amendments—Part 3

- (2) Replace section 81(1) with:
 - (1) The purpose of this Part is to manage significant national security and public order risks associated with transactions by overseas persons.
 - (3) In Part 3, replace the subpart 1 heading with:

Subpart 1—Call-in transactions

- (4) Replace section 82 with:

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 more than 25% ownership or control interest in A; or

Investment in listed issuers

- (ii) in the case of A being a listed issuer 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 1 or more of the following:
 - (A) a beneficial entitlement to, or a beneficial interest in, 10% or more of A's securities;
 - (B) the right to exercise or control the exercise of 10% or more of the voting power at a meeting of A;
 - (C) disproportionate access to or control of A; 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 any ownership or control interest in A; 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.
- (3) For the purposes of subsection (2)(a)(ii)(C), a person has **disproportionate access to or control of 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) the power to control the composition of 10% or more of the governing body of A;
 - (d) 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.

(5) Replace section 84(1) with:

- (1) The Minister must review a call-in transaction that is notified under section 85 or 86.

(6) Replace section 84(3) with:

- (3) The Minister may review any other call-in transaction.

(7) Replace section 85 with:

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 on a later date that may be set out in regulations; 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.

(8) Replace section 86 with:

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.
- (9) In section 87, replace “section 85” with “section 85 or 86” in each place.
- (10) In section 87(1)(c), replace “section 85(1)” with “section 85(2) or 86(2)”.

(11) Replace section 88(1) to (4) with:

(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.

(12) In section 90(a), after “section 85”, insert “or 86” in each place.

(13) Replace section 91(2) with:

(2) Sections 88(2), (3), and (5) and 89 apply to an interim direction order as if it were a direction order.

Consequential amendments

(14) In section 6(1), definition of **SIB**, or **strategically important business**, after paragraph (i), insert:

(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

(15) In section 46(1)(ab), after “section 85”, insert “or 86”.

54 Schedule 1AA amended

(1) In Schedule 1AA, clause 5(1) and (2), replace “interest” with “estate or interest”.

(2) In Schedule 1AA, after Part 2, insert the Parts 3 and 4 set out in the Schedule of this Act.

55 Schedule 2 amended

(1) In Schedule 2, clause 2, definition of **relevant interest**, paragraphs (a) and (b), replace “interest” with “estate or interest”.

(2) In Schedule 2, clause 17(3)(b), replace “25% or more” with “more than 25%”.

- (3) In Schedule 2, clause 21(1)(b), replace “an interest” with “an estate or interest”.

56 Schedule 3 amended

- (1) In Schedule 3, repeal the cross-heading above clause 2.
- (2) In Schedule 3, replace clause 2(1) with:
- (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(a) is a periodic lease.
- (3) In Schedule 3, clause 3(1)(a), replace “interest” with “estate or interest”.
- (4) In Schedule 3, clause 6(5)(b)(i) and (ii), replace “25% or more” with “more than 25%”.
- (5) In Schedule 3, clause 8(5)(c), replace “25% or more” with “more than 25%”.

Part 2

Amendments to other Acts

**Subpart 1—Amendment to Anti-Money Laundering and Countering
Financing of Terrorism Act 2009**

**57 Amendment to Anti-Money Laundering and Countering Financing of
Terrorism Act 2009**

This subpart amends the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

**58 Section 140 amended (Power to use and disclose information supplied or
obtained under other enactments for AML/CFT purposes)**

After section 140(2)(p), insert:

- (pa) the Overseas Investment Act 2005:

Subpart 2—Amendments to Fisheries Act 1996

59 Amendments to Fisheries Act 1996

This subpart amends the Fisheries Act 1996.

**60 Section 57A amended (Interpretation of overseas investment fishing
provisions)**

Replace section 57A(2)(b) with:

- (b) any term or expression that is defined in the Overseas Investment Act 2005 and used in those provisions has the same meaning as in that Act; and

61 Section 57D amended (What are overseas investments in fishing quota)

Replace section 57D(b) with:

- (b) rights or interests in securities of a person (A) if A owns or controls (directly or indirectly) an interest in fishing quota and, as a result of the acquisition, 1 or more of the things referred to in section 12(b)(i) to (iii) of the Overseas Investment Act 2005 happens.

62 Section 57F amended (Who are relevant overseas persons, and individuals with control, for overseas investments)

In section 57F(2)(a), replace “25% or more” with “more than 25%”.

63 Section 57G amended (Criteria for overseas investments in fishing quota)

Amendment coming into force first

- (1) After section 57G(g), insert:

- (h) if the overseas investment in fishing quota is a transaction of national interest, the Minister has not declined consent to the transaction (*see* section 20C of the Overseas Investment Act 2005):

Amendments coming into force with investor test changes

- (2) Replace section 57G(a) to (e) with:

- (a) the investor test is met:

- (3) Repeal section 57G(2).
(4) Repeal section 57I.

Subpart 3—Amendments to Tax Administration Act 1994

64 Amendments to Tax Administration Act 1994

This subpart amends the Tax Administration Act 1994.

65 Schedule 7 amended

In Schedule 7, part C, subpart 1, after clause 39, insert:

39B Regulator under Overseas Investment Act 2005

- (1) Section 18 does not prevent the Commissioner from disclosing sensitive revenue information to any officer or employee of the regulator under the Overseas Investment Act 2005 (the **OIA**) if the officer or employee is authorised by the regulator to receive the information and if the regulator has reasonable grounds to believe that the disclosure of that information is necessary for all or any of the following purposes:
- (a) enabling the regulator to consider whether an investor meets the investor test under the OIA:

- (b) managing national security and public order risks associated with transactions by overseas persons:
- (c) any purpose set out in section 41(1A) of the OIA.
- (2) Information provided for the purpose in subclause (1)(a) may include, for example, information on tax defaults, tax-related penalties, and tax settlement agreements made with the Commissioner.
- (3) Section 18 does not prevent the regulator from disclosing sensitive revenue information to any officer or employee of an agency referred to in section 126(2) of the OIA, if the officer or employee is authorised by the agency to receive the information and the regulator 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.
- (4) Despite subclause (1), the Commissioner may disclose information to the regulator only where it is reasonable and practical to do so, the information is readily available, and it is not undesirable to disclose the information.

Schedule
**New Parts 3 and 4 inserted into Schedule 1AA of Overseas
Investment Act 2005**

s 54

Part 3
**Provisions relating to Overseas Investment (Urgent Measures)
Amendment Act 2020**

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)).

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.

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.

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.

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.

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.

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.

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).

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.

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.

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.

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.

26 Transitionals, savings, and orderly implementation of 2020 Urgent Act

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations for the purpose of providing that, subject to any conditions stated in the regulations, specified provisions of this Act do not apply, or continue to apply or apply with modifications or additions, or both, during the whole or any part of the transitional implementation period ending on the 1-year date.
- (2) The Minister must not recommend the making of regulations under this section unless the Minister is satisfied that the regulations—
- (a) are necessary or desirable for the orderly implementation of the 2020 Urgent Act; and
 - (b) are consistent with the intended purpose of the specified provisions.
- (3) This clause is repealed on the close of the 1-year date.
- (4) Any regulations made under this section that are in force on the 1-year date are revoked on the close of that day.
- (5) In this section,—
- 1-year date** means the date that is 1 year after the date on which this clause comes into force
- specified provisions of the Act** means any specified provisions of this Act to the extent that they are inserted, amended, or otherwise affected by the 2020 Urgent Act (including definitions and any transitional provisions in this schedule).
- (6) This clause is repealed on the 42nd day after the date on which the Overseas Investment Amendment Act (No 3) 2020 receives the Royal assent.

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 commencement of section 53 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (replacement of emergency notification regime with more permanent call-in regime).

Part 4

Provisions relating to period between Overseas Investment (Urgent Measures) Amendment Act 2020 and Overseas Investment Amendment Act (No 3) 2020

28 Purpose and overview of this Part

- (1) The purpose of this Part is to facilitate streamlined assessment criteria for certain lower-risk transactions that are entered into during the epidemic period.
- (2) This Part contains standing consents that apply to certain lower-risk transactions that are entered into during the epidemic period.
- (3) The consents are given on a class-by-class basis, due to the difficulties caused by COVID-19.
- (4) As a result of these consents, no application needs to be made for a consent.

29 Interpretation in this Part

- (1) In this Part,—

2020 Urgent Act means the Overseas Investment (Urgent Measures) Amendment Act 2020

epidemic period means the period commencing with the commencement of this Part and ending with the date that is the 42nd day after the date on which the Overseas Investment Amendment Bill (No 3) receives the Royal assent

new, in relation to a provision, means the provision in the form it was introduced into Parliament, as proposed to be amended or inserted by the Overseas Investment Amendment Bill (No 3).

- (2) Other terms have the same meaning as in clause 14.

30 Application

Part 1 of this schedule applies when determining whether a transaction is entered into during the epidemic period (*see* clause 1(4) and (5)).

31 Standing consent relating to New Zealand listed issuers and managed investment schemes

- (1) Consent is granted in respect of all transactions entered into during the epidemic period that would not require consent if new sections 7 and 12(1)(b) and (2) of this Act had been enacted.
- (2) Consent is granted in respect of all transactions entered into during the epidemic period by managed investment schemes that meet all of the following requirements:
 - (a) the managed investment scheme is a listed issuer;
 - (b) the managed investment scheme is established under New Zealand law;
 - (c) both—
 - (i) 50% or less of the value of the managed investment products in the managed investment scheme is invested on behalf of overseas persons; and
 - (ii) 25% or less of the managed investment products in the managed investment scheme 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).
- (3) Terms used in this clause have the same meanings as in the Financial Markets Conduct Act 2013 unless otherwise defined in this Act.
- (4) The consent is granted unconditionally.

32 Standing consent relating to sensitive adjoining land

- (1) Consent is granted in respect of all transactions entered into during the epidemic period, to the extent a transaction is an overseas investment in sensitive land, that would not require consent if new Schedule 1 of this Act had been enacted.
- (2) The consent is granted unconditionally.
- (3) Section 16 applies to transactions entered into during the epidemic period, to the extent a transaction is an overseas investment in sensitive land, as if new Schedule 1 of this Act had been enacted.

33 Standing consent relating to transfer of certain debt securities

- (1) Consent is granted in respect of all transactions entered into during the epidemic period, for the purposes of section 10(1)(b) of this Act, to the extent that giving effect to the transaction has the effect of a transfer of an interest or right that is solely an interest in or right to be paid money that has been deposited with or lent to, or is otherwise owing by, any person.
- (2) However, this clause does not apply if the interest or right is convertible into a security within paragraphs (a) to (d) of the definition of security in section 6(1).

(3) The consent is granted unconditionally.

34 Effect of standing consents on call-in

See clause 24, which provides, in effect, that a standing consent also exempts the transaction from subpart 1 of Part 3 (which relates to call-in transactions).

35 Provisions do not apply to standing consents in this Part

The following provisions do not apply to standing consents under this Part:

- (a) section 26 (Minister may revoke consent in case of fraud):
- (b) sections 27 (consent may be varied by agreement) and 27A (consent holder may apply for new consent):
- (c) section 54 (address for service):
- (d) any provisions that impose automatic conditions.

36 Other standing consents unaffected

This Part does not affect standing consents granted under Schedule 4 and that schedule does not affect standing consents granted by this Part.

Reprints notes

1 *General*

This is a reprint of the Overseas Investment (Urgent Measures) Amendment Act 2020 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Overseas Investment (Urgent Measures) Amendment Act Commencement Order (No 2) 2021 (LI 2021/130)

Overseas Investment (Urgent Measures) Amendment Act Commencement Order 2021 (LI 2021/8)