



Overseas Investment (CPTPP—Brunei Darussalam) Amendment Regulations 2023

Cindy Kiro, Governor-General

Order in Council

At Wellington this 12th day of June 2023

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 61A of the Overseas Investment Act 2005—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Finance made in accordance with section 61A(3) of that Act.

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal regulations	2
4 Regulation 85 amended (Definitions)	2
5 Regulation 86 amended (Definition of ownership and control test)	2
6 Regulation 92 amended (Definition of type 2 investor)	2
7 Regulation 94 amended (Definition of type 3 investor)	3

Regulations

1 Title

These regulations are the Overseas Investment (CPTPP—Brunei Darussalam) Amendment Regulations 2023.

2 Commencement

These regulations come into force on 12 July 2023.

3 Principal regulations

These regulations amend the Overseas Investment Regulations 2005.

4 Regulation 85 amended (Definitions)

(1) In regulation 85(1), revoke the definitions of **Brunei branch**, **Brunei enterprise**, **Brunei individual**, and **Brunei territory**.

(2) In regulation 85(1), definition of **type A enterprise**, after paragraph (a)(i), insert:

(ia) Brunei Darussalam:

(3) In regulation 85(1), definition of **type A individual**, after paragraph (a)(i), insert:

(ia) Brunei Darussalam:

(4) In regulation 85(1), definition of **type A territory**, after paragraph (a)(i), insert:

(ia) Brunei Darussalam:

5 Regulation 86 amended (Definition of ownership and control test)

(1) In regulation 86(2)(b), replace “a Hong Kong individual, or a Brunei individual” with “or a Hong Kong individual”.

(2) In regulation 86(2)(c), replace “a China individual, or a Brunei individual” with “or a China individual”.

6 Regulation 92 amended (Definition of type 2 investor)

(1) In regulation 92(1)(a)(i), delete “or a Brunei individual”.

(2) In regulation 92(1)(a)(ii), delete “or a Brunei enterprise”.

(3) In regulation 92(1)(a)(ii)(A), delete “or the Brunei territory”.

(4) In regulation 92(1)(a)(iii), delete “or a Brunei branch”.

(5) In regulation 92(1)(a)(iii)(A), delete “or the Brunei territory”.

(6) In regulation 92(3), definition of **commercial presence**, delete “or the Brunei territory”.

7 Regulation 94 amended (Definition of type 3 investor)

- (1) In regulation 94(1)(a)(i), replace “a China individual, or a Brunei individual” with “or a China individual”.
- (2) In regulation 94(1)(a)(ii), replace “a China enterprise, or a Brunei enterprise” with “or a China enterprise”.
- (3) In regulation 94(1)(a)(ii)(A), replace “the China customs territory, or the Brunei territory” with “or the China customs territory”.
- (4) In regulation 94(1)(a)(iii), replace “a China branch, or a Brunei branch” with “or a China branch”.
- (5) In regulation 94(1)(a)(iii)(A), replace “the China customs territory, or the Brunei territory” with “or the China customs territory”.

Rachel Hayward,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations come into force on 12 July 2023, which is the date on which the Comprehensive and Progressive Agreement for Trans-Pacific Partnership done at Santiago on 8 March 2018 (the **CPTPP Agreement**) enters into force for Brunei Darussalam.

These regulations amend Part 5 of the Overseas Investment Regulations 2005 (the **principal regulations**), which provides for alternative monetary thresholds for overseas investments in significant business assets for the purpose of implementing New Zealand’s obligations under the CPTPP Agreement. The thresholds apply for the purpose of determining whether overseas investments in business assets require consent under the Overseas Investment Act 2005 (the **Act**).

These regulations bring Brunei Darussalam into the same overseas investment position as countries for which the CPTPP Agreement has already entered into force. Monetary thresholds in section 13 of the Act increase from \$100 million to \$200 million for investors from those countries.

The CPTPP Agreement also triggered “most favoured nation” obligations that New Zealand has under the Korea FTA, ANZTEC, the Hong Kong CEP, the China FTA, and the P4 Agreement. Brunei Darussalam is a party to the P4 Agreement. Those “most favoured nation” obligations require New Zealand to treat investors from the other parties to those agreements in the same way as, or in a similar way to, the way it treats investors from other parties to the CPTPP Agreement. These regulations remove Brunei Darussalam’s “most favoured nation” treatment under Part 5 of the

principal regulations, which will no longer be needed once Brunei Darussalam has become a party to the CPTPP Agreement.

Regulatory impact statement

The Ministry of Foreign Affairs and Trade produced a national interest analysis (which incorporated all elements of a regulatory impact assessment) to help inform the decisions taken by the Government relating to the CPTPP Agreement.

A copy of the national interest analysis can be found (appended to the report of the Foreign Affairs, Defence and Trade Committee) at—

- https://www.parliament.nz/en/pb/sc/reports/document/SCR_78363/international-treaty-examination-of-the-comprehensive-and#RelatedAnchor
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.
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These regulations are administered by the Treasury.