

Who is an "Associate" of an Overseas Person?

It is not only overseas persons but also their New Zealand associates who need to have consent to buy sensitive land in New Zealand. An attempt by an overseas person to avoid applying for consent by arranging for a New Zealander to buy the land instead, is likely to fall foul of the "associate" rules.

That is also likely to be a criminal offence, either giving effect to an overseas investment without consent, or knowingly or recklessly taking a step with the effect of evading the Overseas Investment Act obligations. The maximum fine is \$300,000, and imprisonment is also possible. Both the New Zealand associate and the overseas person could be liable.

So who is an associate? An overseas person's associates are the people who are under their control, subject to their direction, under their influence, acting as their agent or representative or otherwise on their behalf. Associates are also people who are acting jointly with the overseas person, who are participating in some arrangement or have some understanding with the overseas person relevant to the investment. The associate relationship can be direct or indirect, so there could be one or more intermediaries who are also associates. The associate relationship does not have to be legally enforceable, it could be quite informal.

The following New Zealanders may be associates of the relevant overseas person:

- The New Zealander buys land, to hold and on-sell to the overseas person as soon as the overseas person gets consent for the overseas investment;
- The New Zealander buys land pursuant to an unwritten arrangement with the overseas person's New Zealand agent, in order to subdivide for the overseas person to buy part that would be non-sensitive land;
- The New Zealander buys a holiday house with an interest-free unsecured loan from the overseas person, when it's understood the overseas person will stay there for a holiday once or twice a year;
- The overseas person signs an agreement for his company to buy land subject to Overseas Investment Office consent, then transfers the shares to the New Zealander without payment and waives the condition.
- The New Zealander is sole trustee of a trust where an overseas person is the advisory trustee with power to direct the trustee and remove the trustee.

This list is not exhaustive, there may be other situations where New Zealanders are acting as associates of overseas persons.

The Overseas Investment Office is alert to possible associate relationships. Where warranted, if a real estate agent or solicitor promotes an "associate" arrangement to try and avoid the need for consent, the Overseas Investment Office may refer the matter to the Real Estate Agents Authority or New Zealand Law Society due to breach of the relevant professional obligations. It's not worth it.

Contact Us



Lesley Brook, Partner

p: 03 467 7164

m: 027 434 5295

e: lesley.brook@andersonlloyd.co.nz