

## Who is an overseas person?

An overseas person needs to have consent from the Overseas Investment Office (OIO) before acquiring an interest in sensitive land in New Zealand. But who is an overseas person?

A New Zealand citizen is not an overseas person, even if they are currently living overseas. An exemption allows an overseas person who is the spouse, civil union partner or de facto partner of a New Zealand citizen to buy sensitive land without OIO consent, provided that the land will become "relationship property" of the couple.

A person who is ordinarily resident in New Zealand is not an overseas person. To be "ordinarily resident" in New Zealand the person must hold a residence class visa granted under the Immigration Act 2009 and either be domiciled in New Zealand or be residing in New Zealand with the intention of residing here indefinitely, and must have done so for the immediately preceding 12 months.

A person who is neither a New Zealand citizen, nor ordinarily resident in New Zealand, is an overseas person.

For example, the following are all overseas persons:

- A person who does not live in New Zealand but intends to move here in the near future;
- A person who lives in New Zealand but hasn't been here for 12 months; and
- A person who has been living in New Zealand but doesn't intend to reside here indefinitely.

What about companies and trusts and other entities? To start with, any company or other body corporate that is incorporated outside New Zealand is an overseas person.

For New Zealand incorporated and unincorporated entities, the general rule of thumb is a 25% test. If 25% or more of control or ownership is in the hands of one or more overseas persons, then that entity is also an overseas person.

For example the following are all overseas persons:

- A trust where an overseas person has the power to control the appointment and removal of the trustees;
- A company where one of the three directors is an overseas person;
- A company with three New Zealand shareholders and two overseas shareholders who each hold 20% of the shares in that company with equal voting rights; and
- An unincorporated 50/50 joint venture between a New Zealand person and an overseas person.

These general principles are subject to a long list of exemptions which are available in defined circumstances.

Let us know if we can help clarify whether any person or entity is an overseas person or whether there might be a relevant exemption.

### Contact Us



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