

Commencement of the Overseas Investment (Urgent Measures) Amendment Act

The Overseas Investment (Urgent Measures) Amendment Act 2020 (Urgent Measures Act) has received Royal Assent and the majority of the changes will come into force on 16 June 2020.

As covered in our 19 May [article](#), the Urgent Measures Act implements a number of changes to the Overseas Investment Act 2005 (OIA), including the introduction of the temporary notification regime. This regime will require a large number of transactions that were not previously captured by the OIA to be notified (and potentially blocked).

Since our earlier article, the following changes and clarifications have been made as part of the Parliamentary process:

Application

The Urgent Measures Act is not intended to apply retrospectively and, importantly, the new temporary notification regime will only apply to transactions entered into on or after 16 June 2020.

However, any application for consent relating to "strategically important business assets" or certain investments involving foreign governments, submitted on or after 16 June 2020, will be subject to the new national interest test regardless of when the transaction was entered into.

The new (simplified) investor test will unfortunately not be implemented immediately upon the commencement of the Urgent Measures Act but will come into force at a later date by Order in Council (at the latest by 2 June 2021).

Temporary notification requirement

The new Overseas Investment Amendment Regulations (2020) confirm that the Minister must make a decision in relation to a notified transaction within 40 working days of the transaction being notified. This timeframe may be extended once by 30 working days.

For all new transactions and capital raisings involving overseas persons, it will be very important to consider whether notification will be required under the new rules. If notification is required, we recommend that any agreement entered into is made conditional on passing the screening test without any conditions (or, if any conditions are imposed, the overseas investor being satisfied with these). The timeframe for satisfying this condition will be a matter for the parties to decide, however, a conservative time period (to allow for statutory extensions) would be no less than 70 working days. Our expectation however is that most transactions will be given the 'all clear' in a much shorter timeframe.

The Overseas Investment Office has indicated that transactions will be notified through an online process, and will not require any form of payment.

In recognition of the rushed nature of this legislation, the Urgent Measures Act now requires the Minister to review the temporary notification power on 31 July 2020 (45 days after the Urgent Measures Act comes into force) to determine whether it is capturing too many low-risk transactions or overly discouraging beneficial investment.

In addition, the power will continue to be reviewed every 90 days, with the intention that it remains in place for only as long as necessary to protect vulnerable New Zealand businesses under strain due to COVID-19.

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National interest test

The New Regulations have clarified that the national interest test will not apply to transactions involving land that is residential, but not otherwise considered sensitive under the OIA. It has also been clarified that the national interest test will only be applied to strategically important businesses, and not related secondary activities.

Exemptions from consent

Under the Urgent Measures Act, certain low risk transactions will be exempt from consent on or after 16 June 2020. The following transactions will no longer require consent:

- Investments in land that would no longer be considered sensitive if Schedule 1 of the new Overseas Investment Amendment Bill (No 3) (currently at the Select Committee stage of the Parliamentary process) was in force. This largely applies to land that is currently only considered sensitive because it adjoins other types of sensitive land.
- Transactions entered into by New Zealand listed management investment schemes if:
 - 50% or less of the value of the managed investment products are invested on behalf of overseas persons; and
 - 25% or less of the managed investment products in the managed investment scheme that grant voting rights are beneficially owned by or on behalf of an overseas person, each who own beneficially 10% or more of those products.
- Transfers of securities that are solely debts relating to an interest or right to be paid money.

The above transactions will also not require notification under the new temporary notification requirements.

Want to know more?

If you have any questions about these changes, please contact our specialist [Overseas Investment Team](#).