

## New material changes to overseas investment rules – national interest test and others

**On 19 November 2019 the Government released some of its proposed changes under its "Phase 2" reforms to the Overseas Investment Act 2005 (OIA). Below is a high level summary of the proposed changes.**

### **National interest test**

Under this test overseas investment in ports and airports, telecommunications and electricity infrastructure, other critical national infrastructure, certain media entities and strategically important industries will be subject to a new national interest test. In "rare cases" the test could also be applied to other investments that pose "material risk". The Government could then stop the sale of those assets to an overseas investor if was considered "not in the interest of New Zealand".

The Government states this test "will be used rarely and only where necessary to protect New Zealand's core national interests".

### **Call in power**

A "call in" power will also be introduced. This will allow the Government to "call in" and require overseas investors to obtain consent to purchase strategically important New Zealand assets.

The assets have been indicated to include military or dual use technology and direct suppliers to defence and security agencies. Transactions involving these assets will be subject to mandatory notification and consent procedures.

It will be interesting to see the detail of the application and decision making process for the new national interest test and call in power – and whether they cause concern for both overseas investors in New Zealand and New Zealanders wanting to freely sell their assets.

### **Investor test**

The existing investor test will be simplified.

New Zealanders involved with OIA transactions will no longer have to satisfy the investor test.

Overseas investors will only have to satisfy the investor test once, provided there has been no material change in circumstances.

The "good character test" will be replaced with factors such as:

- significant overseas criminal offences;
- civil offences resulting in pecuniary penalty; and
- allegations where formal proceedings have commenced.

### **Benefits test**

The existing twenty one factor benefits to New Zealand test will be replaced with fewer and broader factors.

The "substantial and identifiable" benefit requirement to purchase non-urban land over five hectares will be removed and replaced with a proportionate approach – where the benefits to obtain an interest in land must be proportional to the land's sensitivity and the type of interest being acquired in it (e.g. leasehold versus freehold interests).

The benefits test will also be able to take into account the overseas investor's plans to protect wāhi tūpuna, wāhi tapu areas and Māori reservations.

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(Continued)

**Removal of OIA requirements**

The following transactions will not be caught by the OIA:

- leases and other "less than freehold interests" in sensitive land for under ten years (excluding residential land); and
- transactions that do not materially impact on the ownership or control of sensitive assets.

New OIA exemptions will be introduced for companies that are majority owned and controlled by New Zealanders. We expect this will assist some of the NZX listed companies that are still majority Government owned.

Other non-listed entities and managed investment schemes that are majority New Zealand owned may apply for an OIA exemption.

**Other changes**

The introduction of clear statutory timeframes for the Overseas Investment Office (**OIO**) to make a decision. Timeframes will be tailored for each type of application. This will be welcomed by investors. The OIO will have the ability to extend a timeframe once for a prescribed period of time.

Overseas investment in water bottling enterprises will now require increased consideration of the impact on water quality and sustainability when conducted on sensitive land.

Increased enforcement penalties, with the maximum corporate fine for non-compliance increasing from \$300,000 to \$10 million. The maximum fine for non-compliant individuals will increase to \$500,000.

**Want to know more?**

We will provide further updates in early 2020 when the Bill for the "Phase 2" reforms is expected to be released. If you have any questions about these reforms or require any further information, please contact our specialist [Overseas Investment Team](#).