

Solar farms and the OIO: a bright future for investment

The OIO recently provided guidance on solar and wind farms under the Overseas Investment Act. A copy of the guidance can be found [here](#).

The new guidance consolidates the OIO's position (see [here](#) for our key takeaways on the OIO's quarterly update last year) and demonstrates the OIO's intent to facilitate overseas investments in renewable energy, aligning with the government's goal to double New Zealand's renewable energy output

Solar vs wind: why the different treatment?

The Overseas Investment Office (**OIO**) applies a heightened level of scrutiny to solar farms than it does to wind farms. This is because solar farms typically require larger land areas and offer fewer opportunities for complementary land uses compared to wind farms. This increased scrutiny introduces uncertainty for overseas investors in large-scale solar projects.

A key distinction in the OIO's approach involves the use of easements. As easements are exempted interests under the Overseas Investment Act (**Act**) they are regularly used by large-scale wind farm operators, as consent under the Act is not then required.

However, the OIO considers that arrangements for solar farms often extend beyond the traditional scope of easements. In these cases, the rights granted to solar farm developers are so extensive that they effectively exclude landowners from using their land, rendering such arrangements more akin to leases than an easement right. Leases of sensitive land are captured interests under the Act. Consequently, these require OIO consent.

This increased OIO scrutiny can create uncertainty for overseas investors in large-scale solar projects. However the OIO guidance confirms that solar farm investments generally result in benefits to New Zealand, and these benefits have previously been sufficient to secure OIO consent, with several applications for consent for solar farms leases being granted, and none yet declined.

Farm land advertising exemptions

As solar farms developers frequently target farm land, this necessitates compliance with the Act's farm land advertising rules.

These rules require the target farm land to be advertised on the open market before any binding agreement with an overseas investor can be reached.

The OIO recognises the potential conflict between this requirement and the commercial realities of solar energy projects, and for this reason a number of solar investors have been granted exemptions from the farm land advertising requirements.

National interest test considerations

The guidance also clarifies when a "national interest" assessment may be triggered for a renewable energy investment. Under the Act, the responsible Minister has the discretion to deny consent to transactions deemed contrary to the national interest. A consent application may be deemed a transaction of national interest in two scenarios:

- it involves non-New Zealand government investors or strategically important businesses, or
- the Minister determines, at their discretion, that the transaction qualifies as one of national interest.

For solar or wind energy developments, acquiring bare land without overseas government ownership is unlikely to meet the criteria for a national interest transaction. However, if the development involves electricity generation with a capacity exceeding 250MW, or if the development would increase the investor's total generating capacity to over 250MW for the first time, it may trigger a national interest review.

Want to know more?

We regularly assist renewable energy operators in navigating the complexities of the Act and the OIO process. If you are looking to invest or have any questions, feel free to reach out to our OIO specialist team - Anton Trixl, Clare O'Shea, Anita Wan, Bede Maher or Robert Huse.