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Overseas Investment Act 2005

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Commencement	see section 2

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Note
Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Treasury.

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1 Title

This Act is the Overseas Investment Act 2005.

2 Commencement

(1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

(2) One or more Orders in Council may be made appointing different dates for the commencement of different provisions.

Section 2: Overseas Investment Act 2005 brought into force, on 25 August 2005, by the Overseas Investment Act Commencement Order 2005 (SR 2005/219).

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets by—

(a) requiring overseas investments in those assets, before being made, to meet criteria for consent; and

(b) imposing conditions on those overseas investments.

4 Overview

(1) In this Act,—

(a) this Part deals with preliminary matters, including the purpose of this Act and interpretation:

(b) Part 2 contains the consent and conditions regime for overseas investments in sensitive New Zealand assets, and is organised as follows:

(i) subpart 1 states when consent is required and the criteria for consent (except that those matters are stated in the Fisheries Act 1996 for overseas investments in fishing quota):

(ii) subpart 2 sets out the procedure for obtaining consent and imposing conditions of consent:

(iii) subpart 3 describes the role of the person (the regulator) who administers the regime:

(iv) subpart 4 confers monitoring powers on the regulator:

(v) subpart 5 deals with aspects of enforcement, including offences under this Act, penalties, and the court's powers to make orders for effective enforcement:

(vi) subpart 6 relates to regulations and other miscellaneous matters:

(vii) subpart 7 contains transitional provisions (mostly relating to the dissolution of the Overseas Investment Commission and the employment consequences for its employees) and amendments to other enactments.

(2) This Act replaces the Overseas Investment Act 1973 and the Overseas Investment Regulations 1995.

(3) This section is a guide only to the general scheme and effect of this Act.

5 Act incorporates sections 56 to 58B of Fisheries Act 1996

(1) This Act incorporates sections 56 to 58B of the Fisheries Act 1996 (which in this section are called the **overseas investment fishing provisions**) as if they were part of this Act, so that a reference in this Act to "this Act" includes a reference to the overseas investment fishing provisions.

(2) *See* section 57A of the Fisheries Act 1996 for further provisions on the interpretation of the overseas investment fishing provisions.

6 Interpretation

(1) In this Act, unless the context requires otherwise,—

25% or more ownership or control interest has the meaning set out in subsection (4)

25% or more subsidiary has the meaning set out in subsection (5)

acquisition includes obtaining ownership or coming into possession by any means

associate has the meaning set out in section 8

associated land has the meaning set out in section 8

bed means—

(a) in relation to any river, the space of land that the waters of the river cover at its fullest flow without overtopping the banks; and

(b) in relation to a lake not controlled by artificial means, the space of land that the waters of the lake cover at its highest level without exceeding its physical margin; and

(c) in relation to a lake controlled by artificial means, the space of land that the waters of the lake cover at the maximum operating level

business decision means a decision under this Act on whether or not to consent to an overseas investment in significant business assets

category, in relation to an overseas investment, means any of the following categories:

(a) an overseas investment in sensitive land:

(b) an overseas investment in significant business assets:

(c) an overseas investment in fishing quota

Commission means the Overseas Investment Commission

consent means a consent granted under this Act for an overseas investment transaction

consent holder means the person or persons to whom a consent is issued

court means the High Court

document means any record of information; and includes—

(a) anything on which there is writing or any image; and

(b) information recorded by means of any article or device (for example, a disk) from which information is capable of being reproduced with or without the aid of any other article or device; and

(c) material subsequently derived from information recorded by that means

exempted interest means an easement or *profit à prendre*

farm land means land used exclusively or principally for agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry, or livestock

fishing quota decision means a decision under sections 56 to 58B of the Fisheries Act 1996 on whether or not to consent to an overseas investment in fishing quota

foreshore or seabed—

(a) means the marine area that is bounded,—

(i) on the landward side by the line of mean high water springs; and

(ii) on the seaward side, by the outer limits of the territorial sea (within the meaning of section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977); and

(b) includes the beds of rivers that are part of the coastal marine area (within the meaning of the Resource Management Act 1991); and

(c) includes the bed of Te Whaanga Lagoon in the Chatham Islands; and

(d) includes the air space and the water space above the areas described in paragraphs (a) to (c); and

(e) includes the subsoil, bedrock, and other matters below the areas described in paragraphs (a) to (c),—

but any reference to land **adjoining the foreshore** is to land that adjoins this land on the landward side only

give effect to an overseas investment—

(a) means to acquire or dispose of any property, or establish any business, that results in an overseas investment in sensitive land, overseas investment in significant business assets, or overseas investment in fishing quota; but

(b) excludes an acquisition, disposition, or establishment that is conditional on consent being obtained under this Act

governing body means,—

(a) in relation to a body corporate, the board of directors (or other persons or body exercising powers of management, however described) of the body corporate:

(b) in relation to a trust, the trustees:

(c) in relation to a unit trust, the manager and trustee:

(d) in relation to a partnership, unincorporated joint venture, or other unincorporated body of persons, either—

(i) the board of directors (or other persons or body exercising powers of management, however described) of the partnership, unincorporated joint venture, or other unincorporated body of persons; or

(ii) if there is no board or other persons or body as described in subparagraph (i), the partners of the partnership or members of the unincorporated joint venture or other unincorporated body of persons

guidelines means guidelines issued by the regulator under section 36

historic heritage—

(a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:

(i) archaeological:

(ii) architectural:

(iii) cultural:

(iv) historic:

(v) scientific:

(vi) technological; and

(b) includes—

(i) historic sites, structures, places, and areas; and

(ii) archaeological sites; and

(iii) sites of significance to Maori, including wahi tapu; and

(iv) surroundings associated with the natural and physical resources

individuals with control of the relevant overseas person has the meaning set out in section 15

interest includes a legal or equitable interest

lake means a lake (as defined in section 2(1) of the Resource Management Act 1991) that has a bed that exceeds 8 hectares in area

land decision means a decision under this Act on whether or not to consent to an overseas investment in sensitive land

LINZ means Land Information New Zealand

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

natural and physical resources has the meaning set out in section 2(1) of the Resource Management Act 1991

non-urban land means—

(a) farm land; and

(b) any land other than land that is both—

(i) in an urban area; and

(ii) used for commercial, industrial, or residential purposes

ordinarily resident in New Zealand has the meaning set out in subsection (2)

overseas investment in fishing quota has the meaning set out in section 57D of the Fisheries Act 1996

overseas investment in sensitive land has the meaning set out in section 12

overseas investment in significant business assets has the meaning set out in section 13

overseas investment transaction means a transaction that results in an overseas investment in sensitive land, an overseas investment in significant business assets, or an overseas investment in fishing quota

overseas person has the meaning set out in section 7

property includes real and personal property, any interest in any real or personal property, any chose in action, and any other right or interest

regulations means regulations made under this Act

regulator has the meaning set out in section 30

relevant land, in relation to an overseas investment in sensitive land, means the land referred to in section 12(a) or 12(b)

relevant Minister or Ministers means,—

(a) in the case of a business decision, the Minister:

(b) in the case of a fishing quota decision, the Minister and the Minister of Fisheries:

(c) in the case of a land decision, the Minister and the Minister for Land Information:

(d) in the case of a decision that is in more than 1 of the above categories, all of the Ministers that are relevant to those categories

relevant overseas person has the meaning set out in section 15

Reserve Bank means the Reserve Bank of New Zealand

river means a river (as defined in section 2(1) of the Resource Management Act 1991) that has a bed of an average width, for its length on or adjoining the relevant land, of 3 metres or more

security—

(a) means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person; and

(b) includes specifically—

(i) a share in a company or other body corporate; and

(ii) a unit in a unit trust; and

(iii) an interest in a partnership or unincorporated joint venture; and

(iv) a right, conferred by membership of an incorporated or unincorporated body of persons, to participate in the control or management of the body, vote at a general meeting of the body, or participate in the assets or property of the body on its winding up; and

(c) includes also any other interest or right that confers rights of ownership of the property of any person, or to participate in the property of any person on the winding up of that person; and

(d) includes also any other interest that confers rights to exercise control over the property or assets of any person; and

(e) includes securities within paragraphs (a) to (d) in whatever currency they are expressed and whether they are situated in New Zealand or elsewhere; but

(f) excludes an interest or right that is—

(i) solely an interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (and is not convertible into a security within paragraphs (a) to (d)); or

(ii) conferred solely for the purpose of securing the repayment of money of that kind (and is not convertible into a security within paragraphs (a) to (d))

subsidiary has the meaning set out in sections 5 and 6 of the Companies Act 1993

transaction includes—

(a) the sale or transfer of property or securities; and

(b) the issue, allotment, buyback, or cancellation of securities; and

(c) the entering into, or the giving of effect to a provision in, a contract or arrangement; and

(d) the arriving at, or the giving of effect to, an understanding

working day means a day of the week other than—

(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and

(b) a day in the period commencing with 25 December in a year and ending with 15 January in the following year.

(2) In this Act, a person is **ordinarily resident in New Zealand** if the person—

(a) holds a residence class visa granted under the Immigration Act 2009; and

(b) is in one of the following categories:
  (i) is domiciled in New Zealand; or
  (ii) is residing in New Zealand with the intention of residing there indefinitely, and has done for the immediately preceding 12 months (*see* subsection (3)).

(3) Absence from New Zealand for no more than 183 days in aggregate in the last 12 months (counting presence in New Zealand for part of a day as presence for a whole day) does not prevent a person from satisfying the requirement for residing in New Zealand for the last 12 months under subsection (2)(b)(ii).

(4) In this Act, a person (**A**) has a **25% or more ownership or control interest** in another person (**B**) if A has—
  (a) a beneficial entitlement to, or a beneficial interest in, 25% or more of B's securities; or
  (b) the power to control the composition of 25% or more of the governing body of B; or
  (c) the right to exercise or control the exercise of 25% or more of the voting power at a meeting of B.

(5) In this Act, a body corporate (**B**) is a **25% or more subsidiary** of another body corporate (**A**) if—
  (a) B is a subsidiary of A under sections 5 to 7 of the Companies Act 1993; or
  (b) A controls the composition of 25% or more of the governing body of B; or
  (c) A is in a position to exercise, or control the exercise of, 25% or more of the voting power at a meeting of B.

(6) Section 7 of the Companies Act 1993 applies for the purposes of determining under this Act whether a person controls the composition of the governing body of another person as if references in that section to a company, a board, and directors were to a person, a governing body, and members of the governing body, respectively.

Section 6(2)(a): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

7 Who are overseas persons

(1) The purpose of this definition is to provide that persons are overseas persons if they themselves are overseas persons (for example, not a New Zealand citizen or resident or, for companies, incorporated overseas) or they are 25% (or more) owned or controlled by an overseas person or persons.

(2) In this Act, **overseas person** means—

(a) an individual who is neither a New Zealand citizen nor ordinarily resident in New Zealand; or

(b) a body corporate that is incorporated outside New Zealand or is a 25% or more subsidiary of a body corporate incorporated outside New Zealand; or

(c) a body corporate (**A**) if an overseas person or persons have—

(i) 25% or more of any class of A's securities; or

(ii) the power to control the composition of 25% or more of A's governing body; or

(iii) the right to exercise or control the exercise of 25% or more of the voting power at a meeting of A; or

(d) a partnership, unincorporated joint venture, or other unincorporated body of persons (other than a trust or unit trust) (**A**) if—

(i) 25% or more of A's partners or members are overseas persons; or

(ii) an overseas person or persons have a beneficial interest in or entitlement to 25% or more of A's profits or assets (including on A's winding up); or

(iii) an overseas person or persons have the right to exercise or control the exercise of 25% or more of the voting power at a meeting of A; or

(e) a trust (**A**) if—

(i) 25% or more of A's governing body are overseas persons; or

(ii) an overseas person or persons have a beneficial interest in or entitlement to 25% or more of A's trust property; or

(iii) 25% or more of the persons having the right to amend or control the amendment of A's trust deed are overseas persons; or

(iv) 25% or more of the persons having the right to control the composition of A's governing body are overseas persons; or

(f) a unit trust (**A**) if—

(i) the manager or trustee, or both, are overseas persons; or

(ii) an overseas person or persons have a beneficial interest in or entitlement to 25% or more of A's trust property.

8 Meaning of associate and associated land

(1) In this Act, a person (**A**) is an **associate** of another person (**B**) in relation to an overseas investment or any other matter if—

(a) A is controlled by B or is subject to B's direction:

(b) A is B's agent, trustee, or representative, or acts in any way on behalf of B, or is subject to B's direction, control, or influence, in relation to the overseas investment or the other matter:

(c) A acts jointly or in concert with B in relation to the overseas investment or the other matter:

(d) A participates in the overseas investment or the other matter as a consequence of any arrangement or understanding with B:

(e) A would come within any of paragraphs (a) to (d) if the reference to B in any of those paragraphs were instead a reference to another associate of B.

(2) If A is an **associate** of B, B is also an **associate** of A.

(3) For the purposes of subsection (1), it does not matter whether the control, direction power, influence, arrangement, or other relationship between A and B is—

(a) direct or indirect:

(b) general or specific:

(c) legally enforceable or not.

(4) In this Act, land (**land A**) is **associated land** in respect of other land (**land B**) if—

(a) land A adjoins land B or, in the case of land on an island listed in Part 2 of Schedule 1, land A and land B are on the same island; and

(b) a person owns or controls, or will (as the result of any transaction entered into or to be entered into) own or control, (directly or indirectly) an interest in land A (other than an exempted interest); and

(c) the same person, or an associate of that person, owns or controls, or will (as the result of any transaction entered into or to be entered into) own or control, (directly or indirectly) an interest in land B (other than an exempted interest).

Act binds the Crown

9 Act binds the Crown

This Act binds the Crown.

Part 2
Consent and conditions regime

Subpart 1—When consent required and criteria for consent

When consent required

10 Consent required for overseas investments in sensitive New Zealand assets

(1) A transaction requires consent under this Act if it will result in—

(a) an overseas investment in sensitive land (*see* section 12):

(b) an overseas investment in significant business assets (*see* section 13).

(2) *See* also sections 56 to 58B of the Fisheries Act 1996, which require consent for a transaction that will result in an overseas investment in fishing quota.

11 Consent must be obtained before overseas investment given effect

(1) Consent must be obtained for a transaction before the overseas investment is given effect under the transaction.

(2) The procedure for obtaining consent (including who must obtain consent) is set out in subpart 2.

What are overseas investments in sensitive New Zealand assets

12 What are overseas investments in sensitive land

An **overseas investment in sensitive land** is the acquisition by an overseas person, or an associate of an overseas person, of—

(a) an interest in land if—

(i) the land is sensitive under Part 1 of Schedule 1; and

(ii) the interest acquired is a freehold estate or a lease, or any other interest, for a term of 3 years or more (including rights of renewal, whether of the grantor or grantee), and is not an exempted interest; or

(b) rights or interests in securities of a person (**A**) if A owns or controls (directly or indirectly) an interest in land described in paragraph (a) and, as a result of the acquisition,—

(i) the overseas person or the associate (either alone or together with its associates) has a 25% or more ownership or control interest in A; or

(ii) the overseas person or the associate (either alone or together with its associates) has an increase in an existing 25% or more ownership or control interest in A; or

(iii) A becomes an overseas person.

13 What are overseas investments in significant business assets

(1) An **overseas investment in significant business assets** is—

(a) the acquisition by an overseas person, or an associate of an overseas person, of rights or interests in securities of a person (**A**) if—
  (i) as a result of the acquisition, the overseas person or the associate (either alone or together with its associates) has a 25% or more ownership or control interest in A or an increase in an existing 25% or more ownership or control interest in A; and
  (ii) the value of the securities or consideration provided, or the value of the assets of A or A and its 25% or more subsidiaries, exceeds $100 million; or

(b) the establishment by an overseas person, or an associate of an overseas person, of a business in New Zealand (either alone or with any other person) if—
  (i) the business is carried on for more than 90 days in any year (whether consecutively or in aggregate); and
  (ii) the total expenditure expected to be incurred, before commencing the business, in establishing that business exceeds $100 million; or

(c) the acquisition by an overseas person, or an associate of an overseas person, of property (including goodwill and other intangible assets) in New Zealand used in carrying on business in New Zealand (whether by 1 transaction or a series of related or linked transactions) if the total value of consideration provided exceeds $100 million.

(2) However, an overseas person that was lawfully carrying on business in New Zealand on 15 January 1996 (which was when the Overseas Investment Regulations 1995 came into force) does not require consent for an overseas investment in significant business assets described in subsection (1)(b) if the investment requires consent only because it comes within that paragraph.

Criteria for consent

14 Approach to criteria for consent

(1) The relevant Minister or Ministers, in considering whether or not to grant consent to an overseas investment transaction,—

(a) must have regard to only the criteria and factors that apply to the relevant category of overseas investment under this subpart (subject to this section); and
(b) may consult with any other person or persons, as the Minister or Ministers think appropriate; and
(c) must grant consent if satisfied that all of the criteria in section 16 or section 18 (as the case may be) are met; and
(d) must decline to grant consent if not satisfied that all of the criteria in section 16 or section 18 are met.

(2) For a transaction that is in more than 1 category of overseas investment, the relevant Ministers must have regard to the criteria that apply to all of the relevant categories.

(3) However, if the criteria are the same, the relevant Ministers only need to consider the same criteria once (and not consider them under each relevant category).

15 Who are relevant overseas persons, and individuals with control, for overseas investments

(1) The relevant Minister or Ministers may determine which 1 or more of the following persons is the **relevant overseas person** for an overseas investment:
(a) the person making the overseas investment (**A**), whether A is an overseas person or an associate of an overseas person:
(b) any associate of A in relation to the overseas investment.

(2) The relevant Minister or Ministers may determine which 1 or more of the following categories of persons are the **individuals with control of the relevant overseas person** for an overseas investment:
(a) the individual or individuals who each have a 25% or more ownership or control interest in the relevant overseas person:
(b) the member or members of the governing body of the relevant overseas person:
(c) the individual or body of individuals who the Minister or Ministers consider to have that control (whether directly or indirectly).

16 Criteria for consent for overseas investments in sensitive land

(1) The criteria for an overseas investment in sensitive land are all of the following:

(a) the relevant overseas person has, or (if that person is not an individual) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to that overseas investment:

(b) the relevant overseas person has demonstrated financial commitment to the overseas investment:

(c) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, of good character:

(d) the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (which sections list certain persons not eligible for visas or entry permission under that Act):

(e) either subparagraph (i) is met or subparagraph (ii) and (if applicable) subparagraph (iii) are met:

(i) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, New Zealand citizens, ordinarily resident in New Zealand, or intending to reside in New Zealand indefinitely:

(ii) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined by the relevant Ministers under section 17:

(iii) if the relevant land includes non-urban land that, in area (either alone or together with any associated land) exceeds 5 hectares, the relevant Ministers determine that that benefit will be, or is likely to be, substantial and identifiable:

(f) if the relevant land is or includes farm land, either that farm land or the securities to which the overseas investment relates have been offered for acquisition on the

open market to persons who are not overseas persons in accordance with the procedure set out in regulations (unless the overseas investment is exempt from this criterion under section 20).

(2) *See* section 19 in relation to subsection (1)(c) and (d).

Section 16(1)(d): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

17 Factors for assessing benefit of overseas investments in sensitive land

(1) If section 16(1)(e)(ii) applies, the relevant Ministers—

(a) must consider all the factors in subsection (2) to determine which factor or factors (or parts of them) are relevant to the overseas investment; and

(b) must determine whether the criteria in section 16(1)(e)(ii) and (iii) are met after having regard to those relevant factors; and

(c) may, in doing so, determine the relative importance to be given to each relevant factor (or part).

(2) The factors are the following:

(a) whether the overseas investment will, or is likely to, result in—

(i) the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost; or

(ii) the introduction into New Zealand of new technology or business skills; or

(iii) increased export receipts for New Zealand exporters; or

(iv) added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand; or

(v) the introduction into New Zealand of additional investment for development purposes; or

(vi) increased processing in New Zealand of New Zealand's primary products:

(b) whether there are or will be adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats

of indigenous fauna, for example, any 1 or more of the following:

(i) conditions as to pest control, fencing, fire control, erosion control, or riparian planting:

(ii) covenants over the land:

(c) whether there are or will be adequate mechanisms in place for—

(i) protecting or enhancing existing areas of significant habitats of trout, salmon, wildlife protected under section 3 of the Wildlife Act 1953, and game as defined in sections 2(1) of that Act (for example, any 1 or more of the mechanisms referred to in paragraph (b)(i) and (ii)); and

(ii) providing, protecting, or improving walking access to those habitats by the public or any section of the public:

(d) whether there are or will be adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land, for example, any 1 or more of the following:

(i) conditions for conservation (including maintenance and restoration) and access:

(ii) agreement to support registration of any historic place, historic area, wahi tapu, or wahi tapu area under the Historic Places Act 1993:

(iii) agreement to execute a heritage covenant:

(iv) compliance with existing covenants:

(e) whether there are or will be adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land or a relevant part of that land by the public or any section of the public:

(f) if the relevant land is or includes foreshore, seabed, or a bed of a river or lake, whether that foreshore, seabed, riverbed, or lakebed has been offered to the Crown in accordance with regulations:

(g) any other factors set out in regulations.

18 Criteria for overseas investments in significant business assets

(1) The criteria for an overseas investment in significant business assets are all of the following:

(a) the relevant overseas person has, or (if that person is not an individual) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to that overseas investment:

(b) the relevant overseas person has demonstrated financial commitment to the overseas investment:

(c) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, of good character:

(d) the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (which sections list certain persons not eligible for visas or entry permission under that Act).

(2) *See* section 19 in relation to subsection (1)(c) and (d).

Section 18(1)(d): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

19 Applying good character and Immigration Act 2009 criteria

(1) For the purposes of sections 16(1)(c) and 18(1)(c), the relevant Minister or Ministers must take the following factors into account (without limitation) in assessing whether or not a person (**A**) is of good character:

(a) offences or contraventions of the law by A, or by any person in which A has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not):

(b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

(2) For the purposes of sections 16(1)(d) and 18(1)(d), an individual is not an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 if a special direction referred

to in section 17(1)(a) of that Act has been made permitting a visa or entry permission to be granted to that individual.

Section 19 heading: amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 19(2): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

20 Exemptions from farm land offer criterion

Section 16(1)(f) does not apply to an overseas investment if—

(a) the relevant Ministers consider that the overseas investment need not meet this criterion by reason of the circumstances relating to the particular overseas investment, interest in land, or rights or interests in securities; or

(b) the overseas person making the overseas investment belongs to a class of overseas persons, or the overseas investment transaction belongs to a class of transactions, that is exempted from this criterion by the relevant Ministers by notice in the *Gazette*.

Subpart 2—Procedure for making an application for consent and for granting consent

21 Application for consent

An application for consent must be made in accordance with this Act and regulations.

22 Who must apply for consent

(1) The following persons must apply for consent to an overseas investment transaction:

(a) each overseas person or associate making the overseas investment; and

(b) if the transaction comes within section 12(b) or section 13(1)(a) because of the issue, buyback, or cancellation of securities, and consent has not been obtained by a person under paragraph (a), the issuer of the securities.

(2) In addition, the regulator may require any other party to the overseas investment transaction, or any associate of the per-

son referred to in subsection (1)(a) in relation to the overseas investment, to be a party to the application.

23 Requirements for application for consent

(1) An application for consent must—
- (a) be in writing; and
- (b) be signed by each applicant; and
- (c) contain the information specified by the Minister by notice in the *Gazette*; and
- (d) be accompanied by a statutory declaration verifying that the information contained in the application is true and correct, unless the regulator waives this requirement; and
- (e) be sent to the regulator; and
- (f) be accompanied by the relevant fee, unless this has already been paid.

(2) The statutory declaration must be made by each applicant or, if an applicant is a body corporate, by an officer of that applicant.

(3) For the purpose of considering the application, the regulator may, by notice in writing, require the applicant or any other person with information relevant to the application to provide the information specified in the notice and in the form specified by the notice.

24 Who decides application

(1) An application must be decided,—
- (a) in the case of a land decision, by the Minister and the Minister for Land Information:
- (b) in the case of a business decision, by the Minister:
- (c) in the case of a fishing quota decision, by the Minister and the Minister of Fisheries:
- (d) in the case of a decision that is in more than 1 of the above categories, by all of the Ministers that are relevant to those categories.

(2) However, a Minister or Ministers may delegate the power to decide (*see* section 32).

25 Granting or refusal of consent

(1) A consent under this Act may be—

(a) granted in respect of a proposed or specified transaction, instrument, or person:

(b) granted in respect of classes of transactions, instruments, or persons that the relevant Minister or Ministers determine:

(c) unconditional or subject to the conditions that the relevant Minister or Ministers think appropriate:

(d) granted subject to the payment of a bond:

(e) granted in whole or in part:

(f) granted retrospectively:

(g) refused.

(2) A transaction may not be cancelled under section 29(1)(c) if it has been granted retrospective consent.

26 Minister may revoke consent in case of fraud

The Minister may revoke a consent for an overseas investment transaction before the overseas investment has been given effect if, in the Minister's opinion, the consent has been obtained by fraud.

27 Consent may be varied by agreement

(1) A consent granted under this Act may be varied by the relevant Minister or Ministers with the agreement of the consent holder.

(2) Any conditions of a consent may be varied or added to by the relevant Minister or Ministers with the agreement of the consent holder.

(3) A condition of a consent may be revoked by the relevant Minister or Ministers.

(4) An application for variation of a consent or a condition of a consent may be made by written notice to the regulator accompanied by the fee required by regulations.

28 Conditions of consent

(1) It is a condition of every consent, whether or not it is stated in the consent, that—

(a) the information provided by each applicant to the regulator or the relevant Minister or Ministers in connection with the application was correct at the time it was provided; and

(b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent is granted, unless compliance should reasonably be excused.

(2) For the purpose of enforcing a condition, the relevant Minister or Ministers may enter into a contract or deed with an applicant.

29 Transaction may be cancelled

(1) A transaction for which consent is required under this Act and under which the overseas investment has been given effect without that consent—

(a) is not an illegal contract for the purposes of the Illegal Contracts Act 1970; and

(b) is not void only because the overseas investment has been given effect to without the requisite consent or because giving effect to the overseas investment without the requisite consent is an offence; but

(c) may be cancelled by—

(i) a party to the transaction who was not required to obtain consent to the transaction under this Act, by giving notice in writing to all the other parties; or

(ii) the court, on the application of the regulator.

(2) On cancellation under this section,—

(a) the court has the same powers as it has under section 9 of the Contractual Remedies Act 1979; and

(b) if the court orders the cancellation on the regulator's application, the court may also make any other order necessary to give effect to the cancellation.

Subpart 3—Administration

30 Regulator

(1) The regulator is the chief executive of the department that for the time being is designated by the Minister by notice in writing to the chief executive as the regulating department.

(2) The Minister may at any time by notice in writing to the chief executive revoke the designation of his or her department as the regulating department.

31 What regulator does

The regulator's functions are to—

(a) consider each application and advise the relevant Minister or Ministers on how the application should be determined:

(b) exercise any of the powers or functions that have been delegated to him or her under this Act or regulations:

(c) in relation to an application, consult as the regulator thinks appropriate:

(d) monitor compliance with conditions of consent:

(e) issue guidelines when necessary:

(f) compile and keep records relating to applications, for example, the number of applications in a particular year:

(g) compile and make available statistics relating to applications:

(h) provide general information for the benefit of applicants for consent about New Zealand's overseas investment rules:

(i) do anything else that is necessary for the efficient operation of the rules relating to overseas investment in sensitive New Zealand assets.

32 Delegation by relevant Minister or Ministers

The relevant Minister or Ministers may delegate to the regulator or any other person any of his or her or their powers or functions under this Act or regulations (including this power of delegation).

33 Rules that apply to delegation under this Act or regulations

(1) The delegation—
- (a) must be in writing:
- (b) in the case of delegation by the Minister, may (but does not have to) be made in a Ministerial directive letter:
- (c) may be made generally or in relation to any particular matter or class of matters:
- (d) may be made to—
  - (i) a specified person; or
  - (ii) persons of a specified class; or
  - (iii) the holder for the time being of a specified office or appointment; or
  - (iv) the holders of offices or appointments of a specified class:
- (e) may be revoked at any time.

(2) The delegation may be made subject to any conditions or restrictions that the delegator thinks appropriate.

(3) Subject to any general or special directions or conditions or restrictions given or imposed by the delegator, the person to whom a power or function is delegated may exercise that power or function in the same way and with the same effect as if it had been conferred directly by this Act or regulations and not by delegation.

(4) A person who purports to act under a delegation is presumed to act in accordance with the terms of the delegation, unless the contrary is proved.

(5) A delegation does not prevent the delegator from exercising the power or function that has been delegated.

34 Ministerial directive letter

(1) The Minister may direct the regulator by a Ministerial directive letter, and the regulator must comply with it.

(2) Subsection (1) applies even if the subject matter of the Ministerial directive letter relates to a power that has been delegated to the regulator.

(3) A Ministerial directive letter may direct the regulator about the following things:

(a) the Government's general policy approach to overseas investment in sensitive New Zealand assets, including the relative importance of different criteria or factors in relation to particular assets:
(b) the asset types, value thresholds, and area thresholds over which the regulator has power to make decisions:
(c) the level of monitoring required in relation to conditions of consent:
(d) the criteria for including reserves, public parks, or other sensitive areas on the list kept by the regulator under section 37:
(e) any general or specific matter relating to the regulator's functions, powers, or duties.

35 Ministerial directive letter must be published, etc

Each Ministerial directive letter must be published in the *Gazette* and presented to the House of Representatives within 6 sitting days after it was sent to the regulator.

36 Regulator may issue guidelines

(1) The regulator may issue guidelines about the following things:
(a) the offer of foreshore, seabed, riverbed, or lakebed to the Crown:
(b) offer requirements for farm land:
(c) monitoring compliance with conditions of consent:
(d) the level of information that must be provided in an application:
(e) the criteria to be taken into account in deciding whether an overseas person intends to reside in New Zealand indefinitely:
(f) any other matters relating to applications, the criteria and consent process, and the rules on overseas investment in sensitive New Zealand assets.

(2) The regulator must not issue a guideline unless it has first been approved by the Minister.

37 Regulator must keep list of reserves, parks, and other sensitive areas

(1) The regulator must—

(a) compile and keep a list of reserves and public parks, and other areas described in subsection (2), for which the adjoining land is sensitive under table 2 in Part 1 of Schedule 1; and

(b) publish that list on a website maintained by or for the regulator.

(2) Other areas of land may be included in the list only if they are held under statute and have a primary purpose, by or under statute, relating to—

(a) protecting natural and physical resources or historic heritage; or

(b) providing public access to natural and physical resources or historic heritage.

(3) The list may set out the reserves, public parks, and other areas specifically or by class.

(4) The regulator may amend that list.

Subpart 4—Monitoring

38 Regulator may require consent holder to provide information for monitoring purposes

(1) For the purpose of monitoring compliance with the conditions of a consent, the regulator may, by notice in writing, require the consent holder to provide the regulator with the information or documents or both that are specified in the notice.

(2) The consent holder must—

(a) comply with the regulator's notice within the time specified in it; and

(b) certify that the information provided to the regulator, including information contained in any documents provided, is correct.

(3) The regulator may retain or copy any information or document that is provided under this section.

39 Regulator may require any person to provide information for statistical or monitoring purposes

(1) The regulator may, by notice in writing, require any person with information relevant to overseas investments in sensitive

New Zealand assets to provide the regulator with the information specified in the notice for the purpose of—

(a) compiling statistical information relating to overseas investment in New Zealand; or

(b) monitoring compliance with a condition or conditions.

(2) The person must—

(a) comply with the regulator's notice within the time specified in it; and

(b) provide the information in the form specified in the notice.

(3) The regulator may retain or copy any information that is provided under this section.

40 Regulator may require consent holder to provide statutory declaration as to compliance

(1) The regulator may, by notice in writing, require a consent holder to provide the regulator with a statutory declaration verifying—

(a) the extent to which the consent holder has complied with the conditions of the consent; and

(b) if the consent holder is in breach of a condition or conditions, the reasons for the breach and the steps that the consent holder intends to take to remedy the breach.

(2) The consent holder must provide the declaration—

(a) within the time specified by the notice; or

(b) if the notice specifies that the consent holder must provide the declaration at intervals, at those intervals.

(3) A declaration that is made under this section is not admissible in evidence in any proceedings under this Act except proceedings under section 46.

41 Regulator may require information and documents for purpose of detecting offences

(1) If the regulator has reason to suspect that a person has committed an offence under this Act, the regulator may, by notice in writing, require any person (**A**) to—

(a) provide the regulator with any information that in the regulator's opinion may furnish evidence in relation to that offence:

(b) provide the regulator with any document that in the regulator's opinion may furnish evidence in relation to that offence.

(2) A must comply with the regulator's notice within the time specified in it.

(3) A person who is required to provide information or a document under this section has the same privileges in relation to the provision of the information or document as witnesses have in any court.

(4) The regulator may retain or copy any information or document that is provided under this section.

Subpart 5—Enforcement

Offences

42 Offence of giving effect to overseas investment without consent

(1) A person who is required to apply for consent to an overseas investment transaction commits an offence if that person gives effect to the overseas investment without the consent required by this Act.

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding $300,000:

(b) in the case of a body corporate, to a fine not exceeding $300,000.

(3) In imposing a penalty under subsection (2), the court must, if the transaction resulted in an overseas investment in fishing quota and the fishing quota or an interest in it has been forfeited under section 58 or section 58A of the Fisheries Act 1996, have regard to the effect of the forfeiture on the defendant.

Section 42(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

43 Offence of defeating, evading, or circumventing operation of Act

(1) Every person commits an offence who knowingly or recklessly enters into a transaction, executes an instrument, or takes any other step, for the purpose of, or having the effect of, in any way, directly or indirectly, defeating, evading, or circumventing the operation of this Act.

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding $300,000:

(b) in the case of a body corporate, to a fine not exceeding $300,000.

Section 43(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

44 Offence of resisting, obstructing, or deceiving

(1) Every person commits an offence who resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under this Act or regulations.

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding $300,000:

(b) in the case of a body corporate, to a fine not exceeding $300,000.

Section 44(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

45 Offence of failing to comply with notice, requirement, or condition

(1) Every person commits an offence who, without lawful excuse, fails to comply with—

(a) this Act or regulations; or

(b) a notice, requirement, or condition given or imposed under this Act or regulations.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding $100,000.

(3) *[Repealed]*

Section 45(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 45(3): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

46 Offence of false or misleading statement or omission

(1) Every person commits an offence who knowingly or recklessly makes any false or misleading statement or any material omission in—

(a) any offer or representation made for the purposes of this Act or regulations; or

(b) any information or document provided to the regulator; or

(c) any communication with the regulator.

(2) Every person commits an offence who knowingly or recklessly provides the regulator with a document that is false or misleading.

(3) A person who commits an offence under subsection (1) or subsection (2) is liable on conviction to a fine not exceeding $300,000.

(4) *[Repealed]*

Section 46(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 46(4): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Powers of court

47 Court may order disposal of property

(1) This section applies if the court is satisfied that a person (**A**) has, in relation to property,—

(a) contravened this Act; or

(b) committed an offence under this Act; or

(c) failed to comply with a notice under section 38 or section 39 or section 40 or section 41; or

(d) failed to comply with a condition of a consent or of an exemption.

(2) The court may, on the application of the regulator,—
  (a) order the disposal of the property (whether by A or by some other person appointed by the court, for example, the regulator); and
  (b) make any other order or give any direction that is necessary to give effect to an order under paragraph (a).

(3) In this section, **property** means—
  (a) a right or interest in any security; or
  (b) an interest in land; or
  (c) an interest in fishing quota; or
  (d) any other property or any rights or interests in any other property.

48 Court may order person in breach to pay civil penalty

(1) On the application of the regulator, the court may order a person (**A**) to pay a civil penalty to the Crown or any other person specified by the court if A has—
  (a) contravened this Act; or
  (b) committed an offence under this Act; or
  (c) failed to comply with a notice under section 38 or section 39 or section 40 or section 41; or
  (d) failed to comply with a condition of a consent or of an exemption.

(2) The court may order A to pay a civil penalty not exceeding the higher of—
  (a) $300,000; or
  (b) any quantifiable gain (for example, the increase in the value since acquisition) by A in relation to the property to which the consent or exemption relates or for which a consent should have been obtained; or
  (c) the cost of remedying the breach of condition; or
  (d) the loss suffered by a person in relation to a breach of condition.

(3) A person cannot be ordered to pay a penalty under this section and be required to pay a fine under any of sections 42 to 46 for the same conduct.

(4) For the purposes of this section, the court must determine whether a person's conduct falls within subsection (1) on a balance of probabilities.

49 Court may order mortgage to be registered over land

(1) The court may, on the application of the regulator, order that a mortgage in favour of the Crown or any other person be registered over land to which a consent or an exemption relates for the purpose of securing—

(a) the performance of any obligation, or the payment of any money, under a condition of the consent; or

(b) the payment of a fine or civil penalty imposed under this Act; or

(c) the payment of interest that must be paid under an order made under section 50.

(2) The court must approve the terms of the mortgage before it is registered.

(3) The court may make any other order or make any direction that is necessary to give effect to an order under subsection (1).

50 Court may order interest to be paid

(1) The court may order that a person who is in breach of this Act or a condition of a consent requiring the payment of money or on whom a fine or civil penalty has been imposed under this Act must also pay interest on the amount to be paid.

(2) The court may fix the amount of interest in its discretion.

51 Court may order consent holder to comply with condition of consent or exemption

On the application of the regulator, the court may—

(a) restrain a consent holder from acting in breach of a condition of a consent or of an exemption:

(b) order a consent holder in breach of a condition of a consent or of an exemption to comply with it.

Administrative penalties

52 Administrative penalties for late filing

(1) The regulator may require a person to pay an administrative penalty if the person files, provides, or produces a document required by or under this Act, regulations, or a condition of a consent or of an exemption with the regulator after the time when the document must be filed, provided, or produced.

(2) The regulator may refuse to accept the document if the penalty has not been paid.

(3) The penalty is recoverable by the regulator in any court of competent jurisdiction as a debt due to the Crown.

53 Administrative penalty for retrospective consent

The regulator may require the applicant for a retrospective consent to pay an administrative penalty before the consent is granted.

Address for service

54 Address for service

(1) Every consent holder must—

(a) have a postal or street address in New Zealand for service of documents; and

(b) notify the regulator of that address; and

(c) notify the regulator of any change in that address.

(2) Any document that must be served on a consent holder under this Act or for the purposes of any proceeding under this Act is deemed to have been served on the consent holder if it has been sent to the last address for service for the consent holder that has been notified to the regulator.

(3) Subsection (2) applies despite any other rule or law.

55 Non-appearance not ground for court to refuse order under Act if consent holder served at address for service

The court must not refuse to make an order under sections 47 to 51 on the ground that the consent holder has not appeared or otherwise taken part in the proceeding if the court is satisfied that the proceeding has been served by delivery to the postal or street address that is the consent holder's address for service in New Zealand.

Search and seizure

56 Search warrant

(1) The regulator may apply for a search warrant to search a place or thing.

(2) The application must be made in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012 to an issuing officer (within the meaning of section 3 of that Act).

(3) The issuing officer may issue a search warrant if there are reasonable grounds for believing that—

(a) an offence under this Act has been, or is being, committed at the place or thing; or

(b) there is in, on, over, or under the place or thing any thing that is evidence of an offence under this Act.

(4) The issuing officer may issue the warrant to—

(a) the regulator; or

(b) a person authorised by the regulator in writing to execute the warrant; or

(c) a constable.

(5) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply.

Section 56(2): amended, on 1 October 2012, by section 286(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 56(3): amended, on 1 October 2012, by section 286(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 56(4): amended, on 1 October 2012, by section 286(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 56(4)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 56(5): inserted, on 1 October 2012, by section 286(5) of the Search and Surveillance Act 2012 (2012 No 24).

57 Form and content of search warrant

[Repealed]

Section 57: repealed, on 1 October 2012, by section 286(6) of the Search and Surveillance Act 2012 (2012 No 24).

58 Powers conferred by search warrant

[Repealed]

Section 58: repealed, on 1 October 2012, by section 286(6) of the Search and Surveillance Act 2012 (2012 No 24).

59 Requirements when executing search warrant

Section 59: repealed, on 1 October 2012, by section 286(6) of the Search and Surveillance Act 2012 (2012 No 24).

60 Disposal of things seized under search warrant

[Repealed]

Section 60: repealed, on 1 October 2012, by section 286(6) of the Search and Surveillance Act 2012 (2012 No 24).

Subpart 6—Miscellaneous provisions

61 Regulations

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:

(a) determining how to measure value or apply the value thresholds under section 13:

(b) prescribing, for the purposes of the criteria in section 16(1)(f), procedures for offering the farm land or the securities to which the overseas investment relates for acquisition on the open market to persons who are not overseas persons:

(c) providing what is required for an offer of foreshore, seabed, riverbed, or lakebed to the Crown to be sufficient for the purposes of section 17(2)(f), including prescribing—

(i) the maximum period for which the offer must be open:

(ii) at what price the land must be offered, and a valuation procedure for fixing that price:

(iii) on what terms and conditions the land must be offered to the Crown, with the purpose of ensuring it is offered on terms and conditions equivalent to those offered to the overseas person:

(iv) power for the relevant Ministers to reject an offer as not being sufficient for the purposes of section 17(2)(f) because it is not on terms and conditions equivalent to those offered to the overseas person:

(d) prescribing other factors that the relevant Ministers may apply under section 17(2)(g) of this Act or under section 57H of the Fisheries Act 1996:

(e) prescribing fees and charges to be paid, or the amounts to be charged, a means by which they may be calcu-

lated and ascertained, or a rate at which they may be calculated or ascertained, for the purpose of meeting or assisting in meeting costs of Ministers and the regulator in exercising functions and powers, and performing duties, and providing services, under this Act (but also the previous costs of Ministers and the Commission in relation to those matters under the Overseas Investment Act 1973):

(f) prescribing maximum bonds to be charged under section 25, a means by which bonds may be calculated or ascertained, or a rate at which bonds may be calculated or ascertained, for the purpose of meeting estimated reasonable costs of Ministers and the regulator in monitoring compliance with a condition or conditions of consent or exemption, and providing for the payment, and repayment if conditions are met, of those bonds:

(g) prescribing maximum administrative penalties to be charged by the regulator, a means by which administrative penalties may be calculated or ascertained, or a rate at which administrative penalties may be calculated or ascertained, for the purposes of sections 52 and 53:

(h) exempting or providing for exemptions from, or waivers, refunds, or discounting of, fees, charges, amounts, or administrative penalties:

(i) exempting (on terms and conditions, if appropriate) any transaction, person, interest, right, or assets, or class of transactions, persons, interests, rights, or assets, from the requirement for consent or from the definition of overseas person or associate or associated land:

(j) providing for the relevant Minister or Ministers to exempt (on terms and conditions, if appropriate), after having regard to the purpose of this Act, any transaction, person, interest, right, or asset from the requirement for consent or from the definition of overseas person or associate or associated land (and to amend or revoke those exemptions):

(k) providing for applications for exemptions:

(l) providing for and regulating the giving or service of notices for the purposes of this Act, and the effect of those notices:
(m) providing for transitional provisions:
(n) providing for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.

(2) The Minister must have regard to the purpose of this Act before recommending any regulations be made under subsection (1)(i).

62 Foreshore, seabed, riverbed, or lakebed acquired by the Crown under consent process is not subdivision

Nothing in section 11 or Part 10 of the Resource Management Act 1991 applies to—
(a) any acquisition by the Crown of land as a direct or indirect consequence of an offer made to the Crown to satisfy section 17(2)(f); or
(b) any matter incidental to, or required for the purpose of, any acquisition of that kind.

Subpart 7—Transitional provisions and amendments to other enactments

Dissolution of Commission

63 Commission dissolved

The Commission is dissolved.

64 Assets and liabilities vest in the Crown

All rights, assets, liabilities, and debts that the Commission had immediately before the commencement of section 63 must be treated as the rights, assets, liabilities, and debts of the Crown on that commencement.

65 No compensation for loss of office

The Crown is not liable to make a payment to, or otherwise compensate, any person in respect of that person ceasing to hold any office established by or under the Overseas Investment Act 1973.

66 Transfer to LINZ

A person who was employed by the Reserve Bank in a position with the Commission immediately before the commencement of section 63 and who has given a written notice of transfer of employment to the chief executive of LINZ is entitled on the commencement of section 63 to be transferred to LINZ.

67 Transferring employee must be employed in equivalent employment

(1) An employee who transfers to LINZ under section 66 must be employed in equivalent employment to his or her employment immediately before the commencement of section 63.

(2) In subsection (1), **equivalent employment** means employment by LINZ of the employee—
  (a) in substantially the same position; and
  (b) in the same general locality; and
  (c) on terms and conditions that are no less favourable.

(3) The requirement that the terms and conditions of the employee's employment with LINZ are no less favourable continues to apply until those terms and conditions are varied by agreement between the employee and the chief executive of LINZ.

68 Continuity of employment

(1) Every transferring employee becomes an employee of LINZ on the commencement of section 63.

(2) However, for the purposes of every enactment, law, determination, contract, and agreement relating to the employment of the employee,—
  (a) the employee's contract of employment with LINZ must be treated as a continuation of the employee's contract of employment with the Reserve Bank; and
  (b) the employee's period of service with the Reserve Bank, and every other period of service of that employee that was recognised by the Reserve Bank as continuous service, must be treated as a period of service with LINZ.

69 No compensation for technical redundancy

A transferring employee is not entitled to receive any payment or any other benefit on the ground that—

(a) the position held by the person with the Reserve Bank has ceased to exist (as a result of the dissolution of the Commission); or

(b) the person has ceased (as a result of the transfer to LINZ) to be an employee of the Reserve Bank.

70 Final report

(1) Before the commencement of section 63, the Commission must prepare and submit to the Minister a final report of its operations for the period beginning on 1 July 2005 and ending with the close of the day before the commencement of section 63.

(2) The Minister must present a copy of the report to the House of Representatives not more than 6 sitting days after receiving it.

71 References to Commission

Unless the context otherwise requires, every reference to the Commission in any enactment, agreement, deed, instrument, application, notice, or any other document in force immediately before the commencement of section 63, on and after that commencement, must be read as a reference to the regulator.

72 Proceedings of Commission

(1) Any proceedings to which the Commission is a party before the commencement of section 63 may be continued, completed, and enforced by or against the Crown.

(2) This section is for the avoidance of doubt.

Amendments to Fisheries Act 1996

73 New sections 56 to 58B substituted in Fisheries Act 1996

Amendment(s) incorporated in the Act(s).

Amendment to Te Ture Whenua Maori Act 1993

74 Amendment to Te Ture Whenua Maori Act 1993

Amendment(s) incorporated in the Act(s).

Consequential amendments

75 Consequential amendments

The enactments specified in Schedule 2 are consequentially amended in the manner set out in that schedule.

Transitional provisions

76 Repeal and revocations

(1) In this section and in the rest of this subpart,—

1973 Act means the Overseas Investment Act 1973

Regulations means the Overseas Investment Regulations 1995.

(2) The 1973 Act is repealed and the Regulations and the Overseas Investment Exemption Notice 2001 are revoked.

77 Transitional provision for acts done or begun under previous overseas investment regime

(1) In this section, the 1973 Act, the Regulations, sections 56 to 58 of the Fisheries Act 1996, and section 152(3) of Te Ture Whenua Maori Act 1993, as they were in force immediately before the commencement of sections 73, 74, and 76, are called the **previous regime**.

(2) The previous regime continues to have effect as if it had not been replaced by this Act (subject to section 71) for the purpose of—

(a) investigating any offence under or breach of the previous regime committed before the commencement of this section (**commencement**), commencing or completing proceedings for the offence or breach, or imposing a penalty or other remedy for the offence or breach:

(b) considering and determining any application for consent or exemption under the Regulations that is made before commencement or that relates to a transaction entered into before commencement:

(c) considering and determining any application for a declaration under section 56(2), or a permission under section 57, of the Fisheries Act 1996 that is made before commencement or that relates to a transaction entered into before commencement:

(d) considering and determining an application for confirmation of an alienation under section 152(3) of Te Ture Whenua Maori Act 1993:

(e) completing any proceedings commenced under the previous regime before commencement.

78 Transitional provision for consents, exemptions, and conditions under 1973 Act and Regulations

(1) This section applies to consents granted under the Regulations, exemptions granted under the 1973 Act or regulation 16 of the Regulations, and conditions of those consents and exemptions, that are in effect immediately before the commencement of section 76 or that are granted after that commencement by virtue of section 77(2).

(2) Those consents, exemptions, and conditions must be treated as if they were consents and exemptions granted under this Act, or conditions applied under this Act,—

(a) for the purposes of subpart 4 (monitoring):

(b) for the purposes of subpart 5 (enforcement), in relation to any act or omission that occurs after the commencement of section 76.

(3) However, the following provisions, as in force immediately before the commencement of section 76, continue to apply:

(a) regulation 14(2) of the Regulations, to those consents and conditions of those consents:

(b) regulation 16(3) of the Regulations, to those exemptions.

79 Transitional provision for permissions, etc, under Fisheries Act 1996

(1) This section applies to permissions granted under section 28Z(9) of the Fisheries Act 1983 or under section 57(3) of the Fisheries Act 1996, and conditions of those permissions, that are in effect immediately before the commencement of

section 73 or that are granted after that commencement by virtue of section 77(2).

(2) Those permissions and conditions must be treated as if they were consents granted and conditions applied under this Act.

(3) However, regulation 14(2) of the Regulations, as in force immediately before the commencement of section 76, continues to apply to those permissions and conditions of those permissions.

Schedule 1
Sensitive land

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Part 1
What land is sensitive

What land is sensitive

Land is **sensitive** under this Act if—

(a) the land is or includes land of a type listed in table 1 and the area of that type of land exceeds the corresponding area threshold (either alone or together with any associated land of that type), if any; or

(b) the land (**land A**) adjoins land of a type listed in table 2 and the area of land A exceeds the corresponding area threshold (either alone or together with any associated land), if any.

Table 1

Land is sensitive if it is or includes this type of land	... and that type exceeds this area threshold (if any)
non-urban land	5 hectares
land on islands specified in Part 2 of this schedule	0.4 hectares
land on other islands (other than North or South Island, but including the islands adjacent to the North or South Island)	—
foreshore or seabed	—
bed of a lake	0.4 hectares
land held for conservation purposes under the Conservation Act 1987	0.4 hectares
land that a district plan or proposed district plan under the Resource Management Act 1991 provides is to be used as a reserve, as a public park, for recreation purposes, or as open space	0.4 hectares
land subject to a heritage order, or a requirement for a heritage order, under the Resource Management Act 1991 or by the Historic Places Trust under the Historic Places Act 1993	0.4 hectares
a historic place, historic area, wahi tapu, or wahi tapu area that is registered or for which there is an application or proposal for registration under the Historic Places Act 1993	0.4 hectares

Part 1—*continued*

Table 2

Land A is sensitive if it adjoins land of this type	**… and land A exceeds this area threshold (if any)**
foreshore	0.2 hectares
bed of a lake	0.4 hectares
land held for conservation purposes under the Conservation Act 1987 (if that conservation land exceeds 0.4 hectares in area)	0.4 hectares
any scientific, scenic, historic, or nature reserve under the Reserves Act 1977 that is administered by the Department of Conservation and that exceeds 0.4 hectares in area	0.4 hectares
any regional park created under the Local Government Act 1974	0.4 hectares
land that is listed, or in a class listed, as a reserve, a public park, or other sensitive area by the regulator under section 37	0.4 hectares
land that adjoins the sea or a lake and exceeds 0.4 hectares and is 1 of the following types of land: • an esplanade reserve or esplanade strip (within the meaning of section 2(1) of the Resource Management Act 1991); or • a recreation reserve under the Reserves Act 1977; or • a road (as defined in section 315(1) of the Local Government Act 1974); or • a Maori reservation to which section 340 of Te Ture Whenua Maori Act 1993 applies	0.4 hectares
land over 0.4 hectares that is subject to a heritage order, or a requirement for a heritage order, under the Resource Management Act 1991 or by the Historic Places Trust under the Historic Places Act 1993	0.4 hectares
land over 0.4 hectares that includes a historic place, historic area, wahi tapu, or wahi tapu area that is registered or for which there is an application or proposal for registration under the Historic Places Act 1993	0.4 hectares

Part 2
Specified islands

Arapawa Island
Best Island
Great Barrier Island (Aotea Island)
Great Mercury Island (Ahuahu)
Jackett Island
Kawau Island
Matakana Island
Mayor Island (Tuhua)
Motiti Island
Motuhoa Island
Rakino Island
Rangiwaea Island
Slipper Island (Whakahau)
Stewart Island/Rakiura
Waiheke Island
Whanganui Island

Schedule 2

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Enactments amended

Part 1
Amendments to other Acts

Antarctic Marine Living Resources Act 1981 (1981 No 53)
Amendment(s) incorporated in the Act(s).

Citizenship Act 1977 (1977 No 61)
Amendment(s) incorporated in the Act(s).

Credit Contracts and Consumer Finance Act 2003 (2003 No 52)
Amendment(s) incorporated in the Act(s).

Fisheries Act 1996 (1996 No 88)
Amendment(s) incorporated in the Act(s).

Inspector-General of Intelligence and Security Act 1996 (1996 No 47)
Amendment(s) incorporated in the Act(s).

Official Information Act 1982 (1982 No 156)
Amendment(s) incorporated in the Act(s).

Public Audit Act 2001 (2001 No 10)
Amendment(s) incorporated in the Act(s).

Reserve Bank of New Zealand Act 1989 (1989 No 157)
Amendment(s) incorporated in the Act(s).

Summary Proceedings Act 1957 (1957 No 87)
Amendment(s) incorporated in the Act(s).

Part 2
Regulations amended

Fisheries (Registers) Regulations 2001 (SR 2001/187)
Amendment(s) incorporated in the regulations.

Part 2—*continued*

Fisheries (Transfer of Functions, Duties, and Powers to The New Zealand Seafood Industry Council Limited) Order 2001 (SR 2001/282)

Amendment(s) incorporated in the order(s).

Contents

1 General
2 Status of reprints
3 How reprints are prepared
4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
5 List of amendments incorporated in this reprint (most recent first)

Notes

1 General

This is a reprint of the Overseas Investment Act 2005. The reprint incorporates all the amendments to the Act as at 1 July 2013, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* http://www.pco.parliament.govt.nz/reprints/.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see* http://www.pco.parliament.govt.nz/editorial-conventions/ or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 List of amendments incorporated in this reprint (most recent first)

Search and Surveillance Act 2012 (2012 No 24): section 286
Criminal Procedure Act 2011 (2011 No 81): section 413
Immigration Act 2009 (2009 No 51): section 406(1)
Policing Act 2008 (2008 No 72): section 116(a)(ii)
Overseas Investment Act Commencement Order 2005 (SR 2005/219)

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