

Overseas Investment Act 2005

**Unofficial version showing amendments proposed by
Overseas Investment Amendment Bill 2017 (as
introduced)**

**This document has been prepared to assist public submissions
and select committee consideration of the amendment Bill.**

Note:

- **It does NOT have official status**
- **It does NOT have the status of a Bill**
- **It shows text as at 14 December 2017 (the date of
introduction of the amendment Bill).**

Key

This document shows amendments as follows:

<u>text inserted</u>	new text as proposed by the amendment Bill as introduced
text deleted	text proposed to be deleted by the amendment Bill as introduced
unamended text	unamended text shown to put amendments in context
.....	unamended text not shown

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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.

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~~ information-gathering 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 (and see also Schedule 1AA for further transitional, savings, and related provisions).
- (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
 - conveyancer, conveyancing, and conveyancing services** have the same meanings as in section 6 of the Lawyers and Conveyancers Act 2006

court means the High Court

district valuation roll means the roll that each territorial authority must prepare and maintain under section 7 of the Rating Valuations Act 1998 for its own district in accordance with rules made under that Act

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

excluded accommodation facility means—

- (a) a hospital; or
- (b) a hotel, motel, inn, hostel, or boarding house; or
- (c) a camping ground; or
- (d) any facility within a class set out in regulations as a class of facility to be treated as an additional excluded accommodation facility in this Act

exempted interest means an easement or *profit à prendre*

farm land means land (other than residential (but not otherwise sensitive) 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

interest—

- (a) includes a legal or an equitable interest:
- (b) includes, in relation to land, a right or licence to occupy a specified residential flat by virtue of holding securities of a person who is, or who owns or controls (directly or indirectly), a flat owning company (where terms have the same meanings as in section 121A of the Land Transfer Act 1952)

involved has the meaning set out in subsection (7)

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

long-term accommodation facility—

- (a) means—
 - (i) a retirement village or rest home; or
 - (ii) a hostel within the meaning of section 2 of the Education Act 1989, or other facility used or intended to be used to provide accommodation to students in accordance with the requirements of section 5B of the Residential Tenancies Act 1986; and
- (b) means any other facility that is operated, or is intended to be operated, for long-term accommodation for residential purposes with some degree or provision of assistance or care for persons who dwell there; but
- (c) does not include any facility to the extent that it is, or is part of, an excluded accommodation facility

mandatory conditions,—

- (a) in relation to a consent granted on the basis that the test in section 16A(3) (commitment to New Zealand) is met, means all of the conditions that are set, in accordance with section 34(3)(ba)(i), for the purpose of imposing the occupation and on-selling requirements in section 16B:
- (b) in relation to a consent granted on the basis that the test in section 16C (increased housing on residential land) is met, means all of the conditions that are set, in accordance with section 34(3)(ba)(ii), for the purpose of requiring the outcomes in section 16D:

(c) in relation to a consent granted on the basis that the test in section 16E (benefit to New Zealand) is met, means all of the conditions set, in accordance with section 34(3)(ba)(iii), for the purpose of section 16F

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

provider means a lawyer or a conveyancer who provides conveyancing services

regulations means regulations made under this Act

regulator has the meaning set out in section 30

relevant interest, in relation to residential land, means—

- (a) any interest in the residential land;
- (b) any right or interest in securities of a person who owns or controls (directly or indirectly) any interest in the residential land

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:

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- (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

residential (but not otherwise sensitive) land, in relation to an overseas investment in sensitive land, means that the relevant land is land that—

- (a) is, or includes, residential land; but
- (b) is not otherwise sensitive under Part 1 of Schedule 1

residential dwelling—

- (a) means a building or group of buildings, or part of a building or group of buildings, that is—
 - (i) used, or intended to be used, only or mainly for residential purposes; and
 - (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but
- (b) does not include any dwelling—
 - (i) to the extent that it is, or is part of, a long-term accommodation facility or an excluded accommodation facility; or
 - (ii) within a class set out in regulations as a class of dwellings not to be treated as residential dwellings in this Act

residential land—

- (a) means land that has a property category of residential or lifestyle in, or for the purpose of, the relevant district valuation roll; and
- (b) includes a residential flat in a building owned by a flat owning company (where terms have the same meanings as in section 121A of the Land Transfer Act 1952), regardless of whether the building is on land within a property category referred to in paragraph (a)

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
- (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; 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—

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- (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)).~~
- (2) In this Act, a person is **ordinarily resident in New Zealand**,—
- (a) for the purposes of an overseas investment in sensitive land that is or includes residential land, if the person—
- (i) holds a permanent resident visa granted under the Immigration Act 2009; and
 - (ii) has been residing in New Zealand for the immediately preceding 12 months; and
 - (iii) has been present in New Zealand for 183 days or more in the immediately preceding 12 months (counting presence in New Zealand for part of a day as a presence for a whole day):
- (b) for any other purpose, if the person—
- (i) holds a residence class visa granted under the Immigration Act 2009; and
 - (ii) is in one of the following categories:
 - (A) is domiciled in New Zealand; or
 - (B) 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—

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- (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.
- (7) In this Act, a person is **involved** in a contravention, the commission of an offence, or a failure to comply if the person—
- (a) has aided, abetted, counselled, or procured the contravention, the commission of the offence, or the failure; or
 - (b) has induced, whether by threats or promises or otherwise, the contravention, the commission of the offence, or the failure; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention, the commission of the offence, or the failure; or
 - (d) has conspired with others to effect the contravention, the commission of the offence, or the failure.
- (8) Subsection (7) does not apply to proceedings for offences (but see Part 4 of the Crimes Act 1961, which relates to parties to the commission of offences).

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~~ ordinarily resident in New Zealand 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).

Transitional, savings, and related provisions

8A **Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

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

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- (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:~~

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- (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:~~
- (e) one of the following tests is met:
- (i) the commitment to New Zealand test in section 16A:
 - (ii) the benefit to New Zealand test in section 16E:
 - (iii) the increased housing on residential land test in section 16C (but this test is only available if the relevant land is residential (but not otherwise sensitive) land):
- (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).

16A Commitment to New Zealand test

- (1) In relation to an overseas investment in sensitive land,—
- (a) if the relevant land is or includes residential land, subsection (3) applies:
 - (b) otherwise, subsection (2) applies.
- (2) If this subsection applies, the commitment to New Zealand test is met if the relevant overseas person is (or, if that person is not an individual, each individual with control of the relevant overseas person is)—
- (a) a New Zealand citizen; or
 - (b) ordinarily resident in New Zealand; or
 - (c) intending to reside in New Zealand indefinitely.
- (3) If this subsection applies, the commitment to New Zealand test is met if—
- (a) the relevant overseas person is (or, if that person is not an individual, each relevant individual with control is)—
 - (i) a New Zealand citizen; or
 - (ii) ordinarily resident in New Zealand; or

- (iii) the holder of a residence class visa (within the meaning of the Immigration Act 2009) specified in regulations, or a person with a nationality status specified in regulations, who meets the requirements for showing commitment to reside in New Zealand that are set out in regulations for that visa class or type or specified nationality status (a **qualifying individual**); and
 - (b) if meeting the test relies on paragraph (a)(iii), the relevant Ministers are satisfied that, if consent were granted, the mandatory conditions that the relevant Ministers would attach to the consent (see section 16B) (which relate to occupation and on-selling requirements) would be, or would likely be, met.
- (4) In this section, every individual with control of the relevant overseas person (as determined in accordance with section 15(2)) is a **relevant individual with control** unless the relevant Ministers are satisfied the individual has, and (if consent were granted) would continue to have,—
 - (a) no beneficial interest in or beneficial entitlement to the relevant interest in the residential land; and
 - (b) a satisfactory reason to not occupy the residential dwelling as their main home or residence in New Zealand.

16B Occupation and on-selling requirements and mandatory conditions: commitment to New Zealand test

- (1) This section applies if an application for consent is being considered under the commitment to New Zealand test in section 16A(3) and there are 1 or more qualifying individuals.
- (2) If granted, the consent must be made subject to conditions that attach to the following occupation and on-selling requirements:

Occupation requirement

- (a) the purpose of the overseas investment is to acquire 1 residential dwelling or dwelling in a long-term accommodation facility—
 - (i) that is constructed on, or that is being or will be constructed on, the residential land; and
 - (ii) for occupation, by the relevant overseas person (or, if that person is not an individual, all the relevant individuals with control), as their main home or residence in New Zealand; and

On-selling requirement

- (b) if, in relation to a qualifying individual, a trigger event occurs, the consent holder must dispose of the relevant interest within 12 months of the date that the trigger event occurs (unless, by the required date of disposal, the trigger event is resolved).
- (3) In this section,—

relevant individuals with control and qualifying individual have the meanings set out in section 16A

trigger event, in relation to a qualifying individual, means an event or events set out in regulations for the class or type of visa held or specified nationality status.

- (4) In this section, a **trigger event is resolved** if the qualifying individual becomes—
- (a) a holder of a residence class visa (within the meaning of the Immigration Act 2009) specified in regulations, or a person with a nationality status specified in regulations, who meets the requirements for showing commitment to reside in New Zealand that are set out in regulations for that visa class or type or specified nationality status; or
 - (b) ordinarily resident in New Zealand; or
 - (c) a New Zealand citizen.
- (5) Conditions imposed on a consent in accordance with subsection (2) cease to apply to the consent if the relevant overseas person becomes (or, if that person is not an individual, all the relevant individuals with control become) ordinarily resident in New Zealand or a New Zealand citizen.

16C Increased housing on residential land test

The increased housing on residential land test is met if the relevant Ministers are satisfied that, if consent were granted, the mandatory conditions that the relevant Ministers would attach to the consent (which relate to increased housing and on-selling outcomes, see section 16D) would be, or would likely be, met.

16D Outcomes and mandatory conditions: increased housing on residential land test

- (1) This section applies if an application for consent is being considered under the increased housing on residential land test in section 16C.
- (2) If granted, the consent must be made subject to conditions that attach to either or both of the following required outcomes for the residential land:
- (a) increased residential use and on-sale (see subsection (4)):
 - (b) construction or extension, and operation, of a long-term accommodation facility (see subsection (5)).
- (3) The outcomes that relate to increasing housing are measured by comparing the expected result of the overseas investment against the state of the residential land before the transaction takes effect.
- (4) In subsection (2), **increased residential use and on-sale**, in relation to residential land, means that—
- (a) 1 or more of the following is done to the land:

- (i) the number of residential dwellings constructed on the land is increased (including an increase from 0):
 - (ii) a long-term accommodation facility is constructed on the land, or the number of dwellings in a long-term accommodation facility that is on the land is increased:
 - (iii) development works on the land to support the doing of things described in either or both of subparagraphs (i) and (ii); and
 - (b) within a specified period, the relevant overseas person retains no relevant interest in the residential land; and
 - (c) for so long as the relevant overseas person has a relevant interest in the residential land, neither the relevant overseas person, nor any person with a 25% or more ownership or control interest in the relevant overseas person, nor any of their associates occupy the land for residential purposes.
- (5) In subsection (2), **construction or extension, and operation, of a long-term accommodation facility**, in relation to residential land, means that—
 - (a) a long-term accommodation facility is constructed on the land, or the number of dwellings in a long-term accommodation facility that is on the land is increased; and
 - (b) within a specified period, the whole of the land is operated by the consent holder, or by a grantee under a permitted lease, as a long-term accommodation facility; and
 - (c) for so long as the relevant overseas person has a relevant interest in the residential land, neither the relevant overseas person, nor any person with a 25% or more ownership or control interest in the relevant overseas person, nor any of their associates occupy the land for residential purposes.
- (6) In this section,—
 - development works—**
 - (a) includes the construction, alteration, demolition, or removal of a building or infrastructure; and
 - (b) includes siteworks (including earthworks) that are preparatory to, or associated with, the matters set out in paragraph (a); but
 - (c) does not include subdivision of land without other development works
 - permitted lease means a lease that—**
 - (a) is for a term of 3 years or more (excluding rights of renewal, whether of the grantor or grantee); and
 - (b) is to a grantee who is not an associate of the relevant overseas person.

16E Benefit to New Zealand test

The benefit to New Zealand test is met if all of the following are met:

- (a) 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; and
- (b) if the relevant land is or 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; and
- (c) if the relevant land is or includes residential land, the relevant Ministers are satisfied that, if consent were granted, the mandatory conditions that the relevant Ministers would attach to the consent (see section 16F) would be, or would likely be, met.

16F Mandatory conditions for sensitive land that is residential land: benefit to New Zealand test

- (1) This section applies if an application for consent for an overseas investment in sensitive land is being considered under the benefit to New Zealand test in section 16E and the relevant land is, or includes, residential land.
- (2) If granted, the consent must be made subject to 1 or more of the following conditions in relation to the residential land:
 - (a) conditions that attach to the required outcome or outcomes for the residential land from the list in section 16D(2);
 - (b) a condition that, within a specified period, the relevant overseas person retains no relevant interest in the residential land;
 - (c) a condition that, for so long as the relevant overseas person has a relevant interest in the residential land, the residential land will not be used for residential dwellings or long-term accommodation facilities.

17 Factors for assessing benefit of overseas investments in sensitive land

- (1) ~~If section 16(1)(e)(ii) applies~~For the purposes of section 16E(a) and (b), 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)~~ section 16E(a) and (b) 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 the entry on the New Zealand Heritage List/Rārangī Kōrero of any historic place, historic area, wahi tapu, or wahi tapu area under the Heritage New Zealand Pouhere Taonga Act 2014:
 - (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).

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.

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 person 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
- (ca) if the application is for consent for an overseas investment in sensitive land,—
 - (i) in all cases state the test or tests that the applicant proposes should be applied from the available tests in section 16(1)(e); and

- (ii) if the application is for consent under the increased housing on residential land test in section 16C, state the outcome or outcomes under section 16D(2) that the applicant proposes will result from the transaction; and
 - (iii) if the application is for consent under the benefit to New Zealand test in section 16E and involves sensitive land that is or includes residential land, state the proposed use of the land (including any outcome or outcomes from the list in section 16D(2) that the applicant proposes will result from the transaction); 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.

23A Applications for “standing consent” in advance of transaction

- (1) A person may apply for consent to enter into an unspecified future transaction or transactions in respect of residential (but not otherwise sensitive) land that falls within a class of transactions described in the application (a **standing consent**) in either of the following circumstances:
- (a) if the person applies for consent under the commitment to New Zealand test in section 16A(3) and the class of transactions for which consent is sought is overseas investments for the purpose described in section 16B(2)(a); or
 - (b) if the person applies under the increased housing on residential land test in section 16C.
- (2) The relevant Ministers may, despite section 14(1), grant a standing consent only if the relevant Ministers are satisfied that—
- (a) the criteria in section 16(1)(a) to (d) are met; and
 - (b) the standing consent is subject to a condition that the regulator must be notified of the transaction, or each transaction, to which the consent will apply, at the time, and in the manner, specified by the regulator in the consent; and
 - (c) the standing consent is subject to other conditions that ensure that the commitment to New Zealand test in section 16A(3), or the increased

housing on residential land test in section 16C (as the case may be), is met for each transaction to which the consent will apply, and the relevant Ministers are satisfied those conditions would be, or would likely be, met.

- (3) A standing consent is only a consent for a transaction for the purposes of this Act if the transaction—
- (a) is notified to the regulator as required by the conditions of the consent; and
 - (b) meets the other conditions to which the consent is subject.

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:
 - (e) ~~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.

25A Conditions of consent

- (1) A consent granted under this Act may, in addition to the automatic conditions in section 25B (which apply to every consent) and any conditions that this Act

requires be imposed on the consent, be made subject to such other conditions (if any) that the relevant Minister or Ministers think appropriate.

- (2) Conditions of a consent may—
 - (a) expand on, or be similar to, mandatory conditions for the consent:
 - (b) expand on, be similar to, or be the same as conditions that this Act requires be imposed on other consents.
- (3) Subsection (2) does not limit subsection (1).
- (4) For the purpose of enforcing a condition, the relevant Minister or Ministers may enter into a contract or deed with an applicant.

25B Automatic conditions: every overseas investment

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.

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 subpart 5 of Part 2 of the Contract and Commercial Law Act 2017; 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 sections 43 to 48 of the Contract and Commercial Law Act 2017; 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:
- (ha) monitor compliance with, investigate conduct that constitutes or may constitute a contravention or an involvement in a contravention of, and enforce this Act and the regulations:
- (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:
 - (ba) conditions of consent, including—
 - (i) mandatory conditions for the purpose of imposing the occupation and on-selling requirements in section 16B:
 - (ii) mandatory conditions for the purpose of requiring the outcomes in section 16D:
 - (iii) mandatory conditions for the purpose of section 16F:
 - (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:

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- (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 Information-gathering powers

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, and in the manner, 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, and in the manner, 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, and in the manner, 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 to be provided for purpose of administering or enforcing Act~~

- ~~(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—~~

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- (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.~~
- (1) If the regulator has reasonable grounds to believe that it is necessary or desirable for the purposes of administering or enforcing this Act, the regulator may, by written notice, require any person (A)—
- (a) to provide to the regulator, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
 - (b) to provide to the regulator any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or
 - (c) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any document or class of documents specified in the notice (within the time and in the manner specified in the notice).
- (2) A must comply with the regulator's notice within the time, and in the manner, 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.
- (5) Sections 38 to 40 do not limit this section.

41A Effect of proceedings

- (1) If a person commences a proceeding in any court in respect of the exercise of any powers conferred by any of sections 38 to 41, until a final decision in relation to the proceeding is given,—
- (a) the powers may be, or may continue to be, exercised as if the proceeding had not been commenced; and
 - (b) no person is excused from fulfilling the person's obligations under any of those sections by reason of the proceeding.
- (2) However, the court may make an interim order overriding the effect of subsection (1), but only if the court is satisfied that—
- (a) the applicant has established a prima facie case that the exercise of the power in question is unlawful; and
 - (b) the applicant would suffer substantial harm from the exercise or discharge of the power or obligation; and

- (c) if the power or obligation is exercised or discharged before a final decision is made in the proceeding, none of the remedies specified in subsection (3), or any combination of those remedies, could subsequently provide an adequate remedy for that harm; and
 - (d) the terms of the order do not unduly hinder or restrict the regulator in performing or exercising the regulator's functions, powers, or duties under this Act.
- (3) The remedies are as follows:
- (a) any remedy that the court may grant in making a final decision in relation to the proceeding (for example, a declaration):
 - (b) any damages that the applicant may be able to claim in concurrent or subsequent proceedings:
 - (c) any opportunity that the applicant may have, as defendant in a proceeding, to challenge the admissibility of any evidence obtained as a result of the exercise or discharge of the power or obligation.

Compare: 2011 No 5 s 57

41B Effect of final decision that exercise of powers under sections 38 to 41 unlawful

- (1) This section applies in any case where it is declared, in a final decision given in any proceeding in respect of the exercise of any powers conferred by any of sections 38 to 41, that the exercise of any powers conferred by any of those sections is unlawful.
- (2) If this section applies, to the extent to which the exercise of those powers is declared unlawful, the regulator must ensure that, immediately after the decision of the court is given,—
- (a) any information obtained as a consequence of the exercise of powers declared to be unlawful and any record of that information are destroyed; and
 - (b) any documents, or extracts from documents, that are obtained as a consequence of the exercise of powers declared to be unlawful are returned to the person who previously had possession or control of them, and any copies of those documents or extracts are destroyed; and
 - (c) any information derived from or based on such information, documents, or extracts is destroyed.
- (3) However, the court may order that any information, record, or copy of any document or extract from a document may, instead of being destroyed, be retained by the regulator subject to any terms and conditions that the court imposes.

- (4) No information, and no documents or extracts from documents, obtained as a consequence of the exercise of any powers declared to be unlawful, and no record of any such information or document,—
- (a) are admissible as evidence in any civil proceeding unless the court hearing the proceeding in which the evidence is sought to be adduced is satisfied that there was no unfairness in obtaining the evidence:
 - (b) are admissible as evidence in any criminal proceeding if the evidence is excluded under section 30 of the Evidence Act 2006:
 - (c) may otherwise be used in connection with the exercise of any powers conferred by this Act unless the court that declared the exercise of the powers to be unlawful is satisfied that there was no unfairness in obtaining the evidence.

Compare: 2011 No 5 s 58

41C Confidentiality of information and documents

- (1) This section applies to the following information and documents:
- (a) information and documents supplied or disclosed to, or obtained by, the regulator under section 41:
 - (b) information derived from information and documents referred to in paragraph (a).
- (2) The regulator must not publish or disclose any information or document to which this section applies unless—
- (a) the information or document is available to the public under any enactment or is otherwise publicly available; or
 - (b) the information is in a statistical or summary form; or
 - (c) the publication or disclosure of the information or document is for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the regulator by this Act or any other enactment; or
 - (d) the publication or disclosure of the information or document is made to a law enforcement or regulatory agency for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the law enforcement or regulatory agency by any enactment; or
 - (e) the publication or disclosure of the information or document is to a person who the regulator is satisfied has a proper interest in receiving the information or document; or
 - (f) the publication or disclosure of the information or document is with the consent of the person to whom the information or document relates or of the person to whom the information or document is confidential.

- (3) In relation to personal information, this section applies subject to the Privacy Act 1993.

Compare: 2011 No 5 s 59

41D Conditions relating to publication or disclosure of information or documents

- (1) The regulator may, by written notice to a person to whom any information or document is published or disclosed under section 41C(2)(c) to (f), impose any conditions in relation to the publication, disclosure, or use of the information or document by the person.
- (2) The regulator must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of an individual.
- (3) Conditions imposed under subsection (1) may include, without limitation, conditions relating to—
- (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993);
 - (b) the storing of, the use of, or access to anything provided;
 - (c) the copying, returning, or disposing of copies of documents provided.
- (4) A person who refuses or fails, without reasonable excuse, to comply with any conditions commits an offence and is liable on conviction to a fine not exceeding \$200,000.

Compare: 2011 No 5 s 60

Subpart 5—Enforcement

Disposal of property

41E Regulator may issue notice to dispose of property

- (1) This section applies if the regulator has reasonable grounds to believe 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 condition of a consent or of an exemption.
- (2) The regulator may, by notice in writing, require A to dispose of the property (within the time and in the manner specified in the notice).
- (3) The time specified in the notice must not be less than 90 days after the date on which the notice is given.
- (4) The notice must set out the regulator’s belief and the reasonable grounds for that belief.

- (5) The regulator may withdraw a notice at any time before it is complied with.
- (6) In this section and section 41F, **property** has the meaning set out in section 47(3).

41F Consequences of complying or failing to comply with notice

- (1) If A disposes of the property within the time and in the manner specified in the notice under section 41E, A is not liable for the contravention, offence, or failure referred to in section 41E(1).
- (2) Subsection (1) does not apply if, in connection with the property, A has—
 - (a) made any statement that is false or misleading in any material particular or any material omission in—
 - (i) any offer or representation made for the purposes of this Act or regulations; or
 - (ii) any information or document provided to the regulator; or
 - (iii) any communication with the regulator; or
 - (b) provided the regulator with a document that is false or misleading in any material particular.
- (3) If another person (B) is involved in the contravention, offence, or failure referred to in section 41E(1), B may be ordered to pay a civil penalty under section 48 even though A is not liable under subsection (1).
- (4) See also Part 4 of the Crimes Act 1961, which relates to parties to the commission of offences.
- (5) If A does not dispose of the property within the time and in the manner specified in the notice under section 41E, the regulator may take any other enforcement action it thinks fit in relation to the contravention, offence, or failure referred to in section 41E(1).
- (6) However, the failure to comply with the notice under section 41E is not itself a contravention of this Act that gives rise to any civil or criminal liability.

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.

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.

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.

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]*

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~~ statement that is false or misleading in a material particular 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 in a material particular.
- (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]*

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 or involved 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; or
 - (e) been involved in a contravention of this Act, the commission of an offence under this Act, or a failure to comply referred to in paragraph (c) or (d).
- (2) The court may order A to pay a civil penalty not exceeding the higher of—
- (a) \$300,000; or
 - (b) 3 times the amount of 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.

48A Defences for person involved in contravention, offence, or failure

- (1) This section applies if—
- (a) a person (A) contravenes this Act, commits an offence under this Act, or fails to comply as referred to in section 48(1)(c) or (d); and
 - (b) another person (B) is involved in the contravention, the commission of the offence, or the failure.
- (2) In any proceeding under section 48 against B for involvement in the contravention, the commission of the offence, or the failure, it is a defence if B proves that—
- (a) B's involvement in the contravention, the commission of the offence, or the failure was due to reasonable reliance on information supplied by another person; or
 - (b) B took all reasonable and proper steps to ensure that A complied with this Act, did not commit the offence, or complied with the notice or condition referred to in section 48(1)(c) or (d) (as the case may be).
- (3) In subsection (2)(a), another person does not include a director, an employee, or an agent of B.

Compare: 2013 No 69 s 503

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—

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- (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.~~

51 Court may order compliance with condition of consent or exemption

- (1) This section applies to—
 - (a) a consent holder;
 - (b) a person who is relying on an exemption that is subject to a condition.
- (2) On the application of the regulator, the court may—
 - (a) restrain a person from acting in breach of a condition of a consent or of an exemption;
 - (b) order a person in breach of a condition of a consent or of an exemption to comply with it.

Conveyancing certificate

51A Provider of conveyancing services must give certificate

- (1) This section applies if a provider is providing conveyancing services to a person (A) who is acquiring an interest in residential land.
- (2) Before the transaction to acquire the interest is given effect, the provider must, in the prescribed manner (if any), certify that, to the best of the provider's

knowledge, A will not contravene or commit an offence under this Act by giving effect to the transaction.

- (3) The provider must keep a copy of the certificate for a period of at least 7 years after the date on which the transaction is given effect.
- (4) Every person who, without reasonable excuse, fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$20,000.
- (5) Sections 41E, 45, 47, and 48 do not apply in respect of a contravention of this section.

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.~~

Giving, providing, or serving notices or documents

54 Address for service

Every consent holder must—

- (a) have a postal or street address in New Zealand for service of notices and other documents; and
- (b) notify the regulator of that address; and
- (c) notify the regulator of any change in that address.

54A Notices or other documents given, provided, or served by regulator

(1) Any notice or other document that the regulator may or must give to, provide to, or serve on any person (A) by or under this Act or for the purposes of any proceeding under this Act must be treated as having been given, provided, or served on A if,—

- (a) if A is a consent holder who has complied with section 54, it has been sent by prepaid post to the last address for service for the consent holder that has been notified to the regulator;
- (b) in any other case, it has been served in any of the following ways:
 - (i) by leaving the document for A in a prominent position on the relevant land (whether or not A is in possession of that land) and sending a copy of the document to the provider who provided conveyancing services to A in respect of the land;
 - (ii) if A has a known electronic address, by sending it to A at that address in electronic form;
 - (iii) if A has a known place of residence or business in New Zealand, by sending it by prepaid post addressed to A at that place of residence or business;
 - (iv) if A has an agent in New Zealand and A is absent from New Zealand, by sending it by prepaid post addressed to the agent at the agent's place of residence or business or by sending it in electronic form to the agent at the agent's electronic address.

(2) In subsection (1)(b)(i), **relevant land** means any land in respect of which A has (or is alleged to have)—

- (a) contravened this Act; or
 - (b) committed an offence under this Act; or
 - (c) failed to comply with a notice under section 38, 39, 40, or 41; or
 - (d) failed to comply with a condition of a consent or of an exemption.
- (3) Subsection (1)(b)(iv) applies regardless of whether the agent is acting or has acted on behalf of A in respect of the property to which the document relates.
- (4) This section applies despite any other rule or law.

55 Non-appearance not ground for court to refuse order under Act if person served in accordance with section 54A

The court must not refuse to make an order under sections 47 to 51 on the ground that a person has not appeared or otherwise taken part in the proceeding if the court is satisfied that the proceeding has been served in accordance with section 54A.

55A Proof that documents given, provided, or served

- (1) If a document is given, provided, or served by sending it by prepaid post, then, unless the contrary is shown, the document is given, provided, or served when it would have been delivered in the ordinary course of post, and, in proving that the document was given, provided, or served, it is sufficient to prove that the letter concerned was properly addressed and posted.
- (2) If a document is given, provided, or served by sending it in electronic form, then, unless the contrary is shown, the document is given, provided, or served at the time that the electronic communication first enters an information system that is outside the control of the document's originator, and, in proving that the document was given, provided, or served, it is sufficient to prove that the document concerned was properly addressed and sent.
- (3) In this section, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications.

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.

57 Form and content of search warrant

[Repealed]

58 Powers conferred by search warrant

[Repealed]

59 Requirements when executing search warrant

60 Disposal of things seized under search warrant

[Repealed]

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:
 - (aaa) prescribing classes of dwellings not to be treated as residential dwellings in this Act:
 - (aab) prescribing additional classes of facilities to be treated as excluded accommodation facilities in this Act:
 - (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:
 - (ba) for the purposes of sections 16A(3) and 16B (commitment to New Zealand test),—
 - (i) prescribing classes and types of visa and prescribing factors for assessing commitment to reside in New Zealand for those classes and types of visa:
 - (ii) setting out trigger events:

- (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 calculated 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:

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- (ia) providing, in respect of residential land, for the acquisition by a Māori person of an interest in Māori freehold land for which the person is a member of the preferred classes of alienees (where those terms have the same meaning as in Te Ture Whenua Maori Act 1993):
 - (ib) implementing obligations that have entered into force for New Zealand before the commencement of the Overseas Investment Amendment Act 2017 under any international agreements to which New Zealand is a party and that relate to either or both of overseas investments in sensitive land and overseas investments in significant business assets:
 - (ic) specifying nationality status for the purposes of section 16A(3)(a)(iii) where necessary to implement obligations that have entered into force for New Zealand before the commencement of the Overseas Investment Amendment Act 2017 under any international agreements to which New Zealand is a party and that relate to overseas investments in sensitive land:
 - (id) prescribing factors for assessing commitment to reside in New Zealand for persons with a nationality status specified in regulations made under paragraph (ic), including nil factors:
 - (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).
- (3) Regulations under this Act (including regulations for prescribing fees, charges, bonds, or administrative penalties) may make different provisions for different cases on any differential basis.

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.

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- (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 1AA
Transitional, savings, and related provisions

s 8A

Part 1

Provisions relating to Overseas Investment Amendment Act 2017

1 Existing transactions and applications not affected

- (1) This Act and the Overseas Investment Regulations 2005 (the **regulations**), as in force immediately before commencement, continue to apply to any transaction entered into or occurring before commencement as if the Overseas Investment Amendment Act 2017 had not been enacted.
- (2) In particular, this Act and the regulations, as in force immediately before commencement, continue to apply to the following as if the Overseas Investment Amendment Act 2017 had not been enacted:
 - (a) any application for consent that is made before commencement;
 - (b) any application for consent that is made after commencement and that relates to a transaction entered into before commencement.
- (3) Subclause (2) does not limit subclause (1).
- (4) This clause applies to a transaction even if, immediately before commencement, the transaction is subject to a condition precedent.
- (5) In this clause and in clause 2, **commencement** means the commencement of the Overseas Investment Amendment Act 2017.

2 New information-gathering powers and service provisions apply to matters before or after commencement

- (1) Despite clause 1,—
 - (a) the regulator may exercise a power under section 41 (as in force after commencement) in connection with any transaction, act, omission, or other matter regardless of whether the transaction, act, omission, or matter occurred before or after commencement; and
 - (b) sections 54 to 55A (as in force after commencement) apply to any document that is served after commencement regardless of whether the document relates to a transaction, act, omission, or other matter that occurs before or after commencement.
- (2) Sections 41B to 41D (as in force after commencement) apply for the purposes of subclause (1)(a).

Schedule 1 Sensitive land

s 12

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)
<u>residential land</u>	—
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 Heritage New Zealand Pouhere Taonga under the Heritage New Zealand Pouhere Taonga Act 2014	0.4 hectares
a historic place, historic area, wahi tapu, or wahi tapu area that is entered on the New Zealand Heritage List/Rārangī Kōrero or for which there is an application that is notified under section 67(4) or 68(4) of the Heritage New Zealand Pouhere Taonga Act 2014	0.4 hectares

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

Overseas Investment Act 2005
Unofficial version showing amendments proposed by
Overseas Investment Amendment Bill 2017 (as
introduced)

Schedule 1

Land A is sensitive if it adjoins land of this type	... and land A exceeds this area threshold (if any)
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:	0.4 hectares
<ul style="list-style-type: none"> • 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 	
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 Heritage New Zealand Pouhere Taonga under the Heritage New Zealand Pouhere Taonga Act 2014	0.4 hectares
land over 0.4 hectares that includes a historic place, historic area, wahi tapu, or wahi tapu area that is entered on the New Zealand Heritage List/Rārangī Kōrero or for which there is an application that is notified under section 67(4) or 68(4) of the Heritage New Zealand Pouhere Taonga Act 2014	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
Motuhua Island
Rakino Island
Rangiwaea Island
Slipper Island (Whakahau)
Stewart Island/Rakiura
Waiheke Island
Whanganui Island

Schedule 2 Enactments amended

s 75

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.

**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).