

## New Zealand

### Overseas Investment Act 2005 (2005)

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Reprint as at 22 October 2018

# Overseas Investment Act 2005

Public Act 2005 No 82

Date of assent 21 June 2005

Commencement see section 2

### **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 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

[...]

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

conveyancing services has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

court means the High Court

[...]

document means any record of information; and includes—

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

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

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

accommodation facility means—

(a) a hospital; or

(b) any premises used, or intended to be used, in the course of business principally for providing temporary lodging to the public; 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—

(a) an easement; or

(b) a profit à prendre that is not a regulated profit à prendre

[...]

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

investor test, in relation to an overseas investment in sensitive land, means the test set out in section 16(2)

involved has the meaning set out in subsection (7)

[...]

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; but

(b) does not include any facility to the extent that it is, or is part of, an

excluded accommodation facility

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-occupation outcome has the meaning set out in clause 17 of Schedule 2

non-residential use test means the test set out in clause 13 of Schedule [...]

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

[...]

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

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

overseas person has the meaning set out in section 7

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

[...]

regulations means regulations made under this Act regulator has the meaning set out in section 30

[...]

relevant Minister or Ministers means,—

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

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

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

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

relevant overseas person has the meaning set out in section 15 Reserve Bank means the Reserve Bank of New Zealand

[...]

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))

security arrangement means an arrangement that in substance secures payment or performance of an obligation (without regard to the form of the arrangement or the identity of the person who has title to the property that is subject to the arrangement)

[...]

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,—

(a) [...]

(b) for the purposes of a transaction that will not result in an overseas investment in sensitive land where the relevant land is or includes residential land, and related matters, 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)).

(2A) In subsection (2)(a)(iii), tax resident in New Zealand means a person who is a New Zealand resident under section YD 1(3) of the Income Tax Act 2007, where the reference in section YD 1(3) to a 12-month period is treated as the immediately preceding 12 months (disregarding the rules in section YD 1(4) to (6) of that Act).

(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)(B).

(4) In this Act, a person (A) has a 25% or more ownership or control interest in another person (B) if A has—

(a) a beneficial entitlement to, or a beneficial interest in, 25% or more of B's securities; or

(b) the power to control the composition of 25% or more of the governing body of B; or

(c) the right to exercise or control the exercise of 25% or more of the voting power at a meeting of B.

(5) In this Act, a body corporate (B) is a 25% or more subsidiary of another body corporate (A) if—

(a) B is a subsidiary of A under sections 5 to 7 of the Companies Act 1993; or

(b) A controls the composition of 25% or more of the governing body of B; or

(c) A is in a position to exercise, or control the exercise of, 25% or more of the voting power at a meeting of B.

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

(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 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.
- [...]

#### **8A Status of examples**

- (1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.
  - (2) If an example and a provision to which it relates are inconsistent, the provision prevails.
- [...]

## **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**

[...]

#### **13 What are overseas investments in significant business assets**

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

(a) the acquisition by an overseas person, or an associate of an overseas person, of rights or interests in securities of a person (A) if—

(i) as a result of the acquisition, the overseas person or the associate (either alone or together with its associates) has a 25% or more ownership or control interest in A or an increase in an existing 25% or more ownership or control interest in A; and

(ii) the value of the securities or consideration provided, or the value of the assets of A or A and its 25% or more subsidiaries, exceeds \$100 million; or

(b) the establishment by an overseas person, or an associate of an overseas person, of a business in New Zealand (either alone or with any other person) if—

(i) the business is carried on for more than 90 days in any year (whether consecutively or in aggregate); and

(ii) the total expenditure expected to be incurred, before commencing the business, in establishing that business exceeds \$100 million; or

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

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

### **Criteria for consent**

#### **14 Approach to criteria for consent**

- (1) The relevant Minister or Ministers, in considering whether or not to grant consent to an overseas investment transaction,—
- (a) must have regard to only the criteria and factors that apply to the relevant category of overseas investment under this subpart (subject to this section); and
  - (b) may consult with any other person or persons, as the Minister or Ministers think appropriate; and
  - (c) must grant consent if satisfied that all of the criteria in section 16 or section 18 (as the case may be) are met; and
  - (d) must decline to grant consent if not satisfied that all of the criteria in section 16 or section 18 are met.
- (2) For a transaction that is in more than 1 category of overseas investment, the relevant Ministers must have regard to the criteria that apply to all of the relevant categories.
- (3) However, if the criteria are the same, the relevant Ministers only need to consider the same criteria once (and not consider them under each relevant category).

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

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

[...]

#### **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(2)(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(2)(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.

[...]

## **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
    - (d) be accompanied by a statutory declaration verifying that the information contained in the application is true and correct, unless the regulator waives this requirement; and
    - (e) be sent to the regulator; and
    - (f) be accompanied by the relevant fee, unless this has already been paid.
  - (2) The statutory declaration must be made by each applicant or, if an applicant is a body corporate, by an officer of that applicant.
  - (3) For the purpose of considering the application, the regulator may, by notice in writing, require the applicant or any other person with information relevant to the application to provide the information specified in the notice and in the form specified by the notice.
- [...]

### **24 Who decides application**

- (1) An application must be decided,—
  - (a) in the case of a land decision, by the Minister and the Minister for Land Information:
  - (b) in the case of a business decision, by the Minister:
  - (c) in the case of a fishing quota decision, by the Minister and the Minister of Fisheries:
  - (d) in the case of a decision that is in more than 1 of the above categories, by all of the Ministers that are relevant to those categories.
- (2) However, a Minister or Ministers may delegate the power to decide (see section 32).

### **25 Granting or refusal of consent**

- (1) A consent under this Act may be—
  - (a) granted in respect of a proposed or specified transaction, instrument, or person:
  - (b) granted in respect of classes of transactions, instruments, or persons that the relevant Minister or Ministers determine:
  - (c) [Repealed]
  - (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) Nothing in this Act limits the discretion of the relevant Minister or Ministers under subsection (1). For example, conditions of a consent may—

(a) expand on, or be similar to, conditions that this Act requires be imposed on the consent (if any):

(b) expand on, be similar to, or be the same as conditions that this Act requires be imposed on other consents:

(c) require the consent holder to dispose of property in certain circumstances (for example, if a condition of consent is breached).

(3) For the purpose of enforcing a condition, the relevant Minister or Ministers may enter into a contract or deed with an applicant (including a mortgage or other security arrangement).

### **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.



(3A) Subsection (3) does not apply in respect of a condition that this Act required to be imposed but the relevant Ministers may, with the agreement of the consent holder, vary the condition (for example, by varying the specified period within which a matter must occur).

(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.

#### **27A Consent holder may apply for new consent**

(1) This section applies to a consent for a transaction that is subject to 1 or more conditions that this Act required to be imposed in relation to the consent.

(2) The holder of the consent may apply for a new consent for the transaction.

(3) The application must be made on the basis that any overseas investments that have resulted from the transaction are instead to be treated as if they will be given effect to on a future date specified or determined in accordance with the application.

(4) The relevant Ministers—

(a) must consider the application in accordance with section 14; and

(b) may grant the new consent if satisfied that all of the applicable criteria are met.

(5) Despite subsection (3), if the application asks for the benefit to New Zealand test to be applied to any overseas investment, the relevant Ministers may—

(a) assess the benefit to New Zealand (or any part of it or group of New Zealanders) by comparing the expected result of the overseas investment from the date on which the overseas investment was actually given effect to:

(b) otherwise apply (wholly or partly) any provision of sections 16A to 16C as they would have done had they been considering the application at the time of the original application for consent for the transaction.

(6) If the relevant Ministers grant the new consent, the new consent (including its conditions) replaces the previous consent (including its conditions) with effect from the start of—

(a) the date referred to in subsection (3); or

(b) if later, the date after the date on which the new consent is granted.

[...]

#### **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) do the following:
  - (i) monitor compliance with this Act and the regulations:
  - (ii) investigate conduct that constitutes or may constitute a contravention, or an involvement in a contravention, of this Act or the regulations:
  - (iii) investigate conduct that constitutes or may constitute an offence under this Act:
  - (iv) 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 conditions that this Act requires be imposed:
- (c) the level of monitoring required in relation to conditions of consent:
- (d) the criteria for including reserves, public parks, or other sensitive areas on the list kept by the regulator under section 37:
- (e) any general or specific matter relating to the regulator's functions, powers, or duties.

**35 Ministerial directive letter must be published, etc**

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

**36 Regulator may issue guidelines**

- (1) The regulator may issue guidelines about the following things:
    - (a) the offer of foreshore, seabed, riverbed, or lakebed to the Crown:
    - (b) offer requirements for farm land:
    - (c) monitoring compliance with conditions of consent:
    - (d) the level of information that must be provided in an application:
    - (e) the criteria to be taken into account in deciding whether an overseas person intends to reside in New Zealand indefinitely:
    - (f) any other matters relating to applications, the criteria and consent process, and the rules on overseas investment in sensitive New Zealand assets.
  - (2) The regulator must not issue a guideline unless it has first been approved by the Minister.
- [...]

**Subpart 4—Information-gathering powers**

**38 Regulator may require person who is subject to condition to provide information for monitoring purposes**

- (1) For the purpose of monitoring compliance with the conditions of a consent, an exemption, or an exemption certificate, the regulator may, by notice in writing, require a person (A) who is required to comply with any of the conditions to provide the regulator with the information or documents (or both) that are specified in the notice.
- (2) A 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 of a consent, an exemption, or an exemption certificate.

(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 person who is subject to condition to provide statutory declaration as to compliance**

(1) The regulator may, by notice in writing, require a person (A) who is required to comply with a condition or conditions of a consent, an exemption, or an exemption certificate to provide the regulator with a statutory declaration verifying—

(a) the extent to which A has complied with the condition or conditions; and

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

(2) A must provide the declaration—

(a) within the time, and in the manner, specified in the notice; or

(b) if the notice specifies that A 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 to be provided for purpose of monitoring compliance, investigating, and enforcing Act and regulations**

(1) If the regulator has reasonable grounds to believe that it is necessary or desirable for 1 or more of the purposes set out in subsection (1A), 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).

(1A) The purposes are as follows:

(a) monitoring compliance with this Act or the regulations (or both):

(b) investigating conduct that constitutes or may constitute a contravention, or an involvement in a contravention, of this Act or the regulations (or both):

(c) investigating conduct that constitutes or may constitute an offence under this Act:

(d) enforcing this Act or the regulations (or both).

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

(3) [Repealed]

(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 Privileges for person required to provide information or document**

A person who is required to provide information or a document under any of sections 38 to 41 has the same privileges in relation to the provision of the information or document as witnesses have in any court.

#### **41B 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.

#### **41C 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.

#### **41D 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 a Minister or Ministers or 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.

#### **41E 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 41D(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.

## **Subpart 5—Enforcement Disposal of property**

### **41F Regulator may issue notice requesting disposal 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,—

(a) ask A to dispose of the property (within the time and in the manner specified in the notice for the purposes of this paragraph); and

(b) require A, if A wants to rely on section 41G(1), to notify the regulator of that fact (within the time and in the manner specified in the notice for the purposes of this paragraph).

(3) The time specified in the notice for the purposes of subsection (2)(a) must not be less than 90 days after the date on which the notice is given (but this does not limit the power to specify any time under subsection (2)(b)).

(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 A does both of the following:

(a) disposes of the property within the time and in the manner specified in the notice under subsection (2)(a); and

(b) complies with subsection (2)(b) within the time and in the manner specified in the notice under that paragraph.

(6) This section does not limit any other power that the regulator has.

(7) In this section and section 41G, property has the meaning set out in section 47(3).

### **41G Consequences of disposal or retention of property**

(1) A person (A) is not liable for the contravention, offence, or failure referred to in section 41F(1) if A—

(a) disposes of the property within the time and in the manner specified in the notice under section 41F(2)(a); and

(b) complies with section 41F(2)(b) within the time and in the manner specified in the notice under that paragraph.

- (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 41F(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) The regulator may take any other enforcement action it thinks fit in relation to the contravention, offence, or failure referred to in section 41F(1) if—
- (a) A fails to notify the regulator under section 41F(2)(b) within the time and in the manner specified in the notice under that paragraph; or
  - (b) A does not dispose of the property within the time and in the manner specified in the notice under section 41F(2)(a).
- (6) However, the failure to comply with the notice under section 41F 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 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

(aa) any statement made under section 51A; 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, an exemption, or an exemption certificate; 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, exemption, or exemption certificate 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.

(2A) However, in the case of a contravention of section 51C, the amount of the civil penalty must not exceed \$20,000.

(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.

#### **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, an exemption, or an exemption certificate relates for the purpose of securing—

(a) the performance of any obligation, or the payment of any money, under a condition of the consent, the exemption, or the exemption certificate; 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, an exemption, or an exemption certificate 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 compliance with condition of consent, exemption, or exemption certificate**

(1) This section applies to—

(a) a consent holder:

(b) a person who is relying on an exemption or an exemption certificate 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, an exemption, or an exemption certificate:

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

[...]

#### **51B Regulator must authorise manner of providing statement**

(1) The regulator must, by notice, authorise the manner in which the statement must be made, including by doing any of the following:

(a) specifying the required content of the statement, which may include any information that the regulator thinks relevant (for example, information relating to whether A or B is an overseas person, has or will have a consent, or is relying or will rely on an exemption):

(b) approving or prescribing 1 or more forms for the statement or 1 or more methods for making the statement (or both):

(c) allowing the statement to be included in another document (for example, in an agreement for sale and purchase):

(d) authorising the statement to be made and provided on A's behalf (including the manner for doing so).

(2) The regulator must—

(a) notify the making of the notice in the Gazette; and

(b) publish the notice on an Internet site maintained by, or on behalf of, the regulator.

(3) The notice is a disallowable instrument but not a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

#### **51C Conveyancer must obtain and keep statement**

- (1) A conveyancer must not lodge, or direct the lodgement of, the instrument referred to in section 51A(1)(c) if the conveyancer—
- (a) has not obtained the statement or a copy of the statement that is required to be provided under section 51A(5) or (6); or
  - (b) has reasonable grounds for believing that the statement or copy that is provided is not correct in a material particular.
- (2) The conveyancer must take reasonable steps to ensure that a copy of the statement is kept for a period of at least 7 years after the date on which the instrument is lodged.
- (3) Sections 41F, 45, and 47 do not apply in respect of a contravention of this section (but a conveyancer may be liable to a civil penalty under section 48).

## **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, an exemption, or an exemption certificate 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.

## **Giving, providing, or serving notices or documents**

### **54 Address for service**

Every consent holder, holder of an exemption under section 61D, and holder of an exemption certificate 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 person who has complied with section 54, it has been sent by prepaid post to the last address for service for the person 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 any lawyer or conveyancer who provided conveyancing services to A in respect of the land (where lawyer and conveyancer have the same meanings as in the Lawyers and Conveyancers Act 2006):

(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, an exemption, or an exemption certificate.

(3) Subsection (1)(b)(iv) applies regardless of whether the agent is acting or has acted on behalf of A in respect of the matter 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.

[...]

## **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:
  - (aac) prescribing classes of profits à prendre not to be treated as regulated profits à prendre 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) making provision referred to in section 16A(4) (see also paragraphs (c) and (ca) of this subsection):

(c) setting out what must be done to make an offer to the Crown count for the purposes of section 16A(4)(f) or 17(2)(f), including prescribing—

(i) a maximum or minimum period for which an offer must be open:

(ii) the maximum price at which the land may be offered, and a valuation procedure for fixing that maximum price:

(iii) requirements about the non-price terms and conditions on which the land must be offered, with the purpose of ensuring that it is offered to the Crown on terms and conditions that are equivalent to those offered to the overseas person—

(A) to the extent that the offer to the Crown is equivalent to the offer made to the overseas person; and

(B) subject to the person making the offer choosing to make the terms and conditions more favourable to the Crown:

(iv) power for the relevant Ministers—

(A) to determine that an offer does not count for the purposes of section 16A(4)(f) or 17(2)(f) on the basis that any requirements set out in regulations under this paragraph have not been met in relation to the offer:

(B) to waive the requirement that an offer be made for the purposes of section 16A(4)(f) or 17(2)(f):

(v) other processes that the person making an offer must follow, or other requirements that that person must meet, in relation to the preparation, making, assessment, acceptance, or implementation of the offer, including requirements to meet costs that are, or that would otherwise be, incurred by the Crown:

(ca) setting out processes that the Crown must follow, or other requirements that the Crown must meet, in relation to the preparation, making, assessment, acceptance, or implementation of an offer made, or to be made, for the purposes of section 16A(4)(f) or 17(2)(f):

(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) implementing obligations that have entered into force for New Zealand

before the commencement of section 46 of the Overseas Investment Amendment Act 2018 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:

(j) specifying types of overseas persons for the purposes of clauses 4(2)(d) and 7 of Schedule 2 where necessary to implement obligations that have entered into force for New Zealand before the commencement of section 46 of the Overseas Investment Amendment Act 2018 under any international agreements to which New Zealand is a party and that relate to overseas investments in sensitive land:

(ja) prescribing, for the purposes of clauses 7 and 8 of Schedule 2,—

(i) the process for considering whether a person remains committed to residing in New Zealand, including relevant factors (which may be non-exhaustive):

(ii) additional ways in which a trigger event is resolved:

(jb) setting a maximum percentage of new residential dwellings in a development that an exemption certificate may be applied to, including a nil percentage:

(k) providing for applications for exemptions:

(ka) prescribing matters for the purposes of section 61G, including listing exemptions for the purposes of that section, prescribing circumstances in which that section does not apply, specifying classes of conditions to which section 61G(3) applies, and providing for matters under section 61G(5):

(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) 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.

### **61B Purpose of exemptions**

The purpose of sections 61C and 61D is to—

- (a) provide flexibility where compliance with this Act is impractical, inefficient, or unduly burdensome but where the purpose of this Act can still be substantially achieved through terms and conditions of the exemption; or
- (b) allow for exemptions that are minor or technical; or
- (c) allow for exemptions in respect of all or any of the following matters:
  - (i) interests in land to be used for diplomatic or consular purposes:
  - (ii) persons registered as a charitable entity under the Charities Act 2005:
  - (iii) minor increases in ultimate ownership and control by overseas persons if consent has already been granted for those overseas persons to own or control sensitive assets:
  - (iv) security arrangements that are entered into in the ordinary course of business:
  - (v) relationship property as defined in section 8 of the Property (Relationships) Act 1976:
  - (vi) interests in land acquired for the purpose of providing network utility services:
  - (vii) interests in residential (but not otherwise sensitive) land acquired in order to comply with a requirement imposed by or under the Resource Management Act 1991 and to support a business that is not principally in the business of using land for residential purposes.

#### **61C Regulations may contain class or individual exemptions**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations exempting any transaction, person, interest, right, or assets, or any 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.
- (2) See sections 61E (criteria for all exemptions) and 61F (other provisions applying to all exemptions).

#### **61D Minister may grant individual exemptions**

- (1) The Minister may exempt any transaction, person, interest, right, or assets from the requirement for consent or from the definition of overseas person or associate or associated land.
- (2) See sections 61E (criteria for all exemptions) and 61F (other provisions applying to all exemptions).
- (3) The Minister must publish each exemption granted under subsection (1) on an Internet site maintained by or for the regulator.

#### **61E Criteria for all exemptions**

- (1) The Minister may recommend any regulations under section 61C, or grant an exemption under section 61D, only if the Minister considers—
  - (a) that there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption for any of the matters referred to in section 61B(a) to (c); and

(b) that the extent of the exemption is not broader than is reasonably necessary to address those circumstances.

(2) In so considering, the Minister—

(a) must have regard to the purpose of this Act; and

(b) may have regard to all or any of the following:

(i) the extent to which effective ownership or control is changed by the overseas investment or remains with persons who are not overseas persons:

(ii) the extent to which a sensitive asset is already held in overseas ownership or control:

(iii) the extent to which the acquisition is the result of the operation of other legislation or an event outside the control of the overseas person:

(iv) the extent of time an overseas person is likely to have ownership or control of a right or an interest, for what purpose, and the likely impact on the sensitive asset of that overseas ownership or control:

(v) any other factors that seem to the Minister to be relevant to the circumstances.

#### **61F Other provisions applying to all exemptions**

(1) This section applies to regulations under section 61C and exemptions granted under section 61D.

(2) An exemption may be made subject to any conditions.

(3) Regulations under section 61C may provide, where a person relies on an exemption in the regulations, for the following:

(a) for conditions of consents, to the extent set out in the regulations, to continue in effect as conditions of the consents but on the basis set out in the regulations (whether or not the person who relies on the exemption is a consent holder):

(b) for the person who relies on the exemption to be treated as a consent holder to the extent set out in the regulations:

(c) for consent holders to cease to be subject to the conditions of their consents to the extent set out in the regulations.

(4) An exemption may at any time be amended or revoked in the same way as it may be made (for example, section 61E applies with all necessary modifications).

(5) The reasons of the Minister for recommending the regulations or granting an exemption (including why the exemption is necessary, appropriate, or desirable) must be published together with the regulations or exemption.

(6) However, the publication of an exemption under section 61D, or of the reasons for granting any exemption, may be deferred or dispensed with (in whole or in part) if the Minister is satisfied on reasonable grounds that good reason for withholding the exemption or the reasons (as the case may be) would exist under the Official Information Act 1982 if they were official information.

**61G Person who relies on exemption to acquire property may be subject to existing consent or exemption conditions**

(1) This section applies if—

(a) 1 or more of the following apply:

(i) a consent holder (A) is subject to 1 or more conditions that apply in connection with property:

(ii) a person (A) relies on an exemption in, or an exemption granted under, this Act or the regulations that is subject to 1 or more conditions that apply in connection with property:

(iii) because of the previous operation of this section, a person (A) is treated as being subject to 1 or more conditions that apply in connection with property; and

(b) another person (B) acquires the property (in whole or in part) under an overseas investment transaction, but B does not obtain consent because B relies on an exemption listed in the regulations; and

(c) the regulations specify 1 or more classes of conditions to which subsection (3) applies.

(2) However, this section does not apply in the circumstances prescribed in the regulations (if any).

(3) B must be treated as being subject to the conditions referred to in subsection (1)(a) that are of the class specified in the regulations (and those conditions apply as conditions of a consent or an exemption, as the case may be, with all necessary modifications as if B were the person who was originally subject to the conditions).

(4) If the conditions that apply to B are conditions of a consent, B must be treated as being a consent holder in respect of the property and in respect of the conditions (for example, B may agree to the variation of the conditions under section 27).

(5) A ceases to be subject to the conditions in the circumstances, and to the extent, provided for in the regulations.

(6) Subsection (5) does not limit subsection (4).

(7) This section does not limit section 61F(3).

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 16A(4)(f) or 17(2)(f); or

(b) any matter incidental to, or required for the purpose of, any acquisition of that kind.

[...]

[Schedules 1AA-4 not included]