

Reprint  
as at 4 July 2016



## Overseas Investment Regulations 2005 (SR 2005/220)

Silvia Cartwright, Governor-General

### Order in Council

At Wellington this 1st day of August 2005

Present:

Her Excellency the Governor-General in Council

Pursuant to section 61 of the Overseas Investment Act 2005, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Finance, makes the following regulations.

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**These regulations are administered by the Treasury.**

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## Regulations

### 1 Title

These regulations are the Overseas Investment Regulations 2005.

### 2 Commencement

These regulations come into force on 25 August 2005.

### 3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

**Act** means the Overseas Investment Act 2005

**certificate of title** means a certificate of title or computer register issued or created under the Land Transfer Act 1952

**farm land securities** has the meaning given to it by regulation 4

**owner**, in relation to relevant land,—

- (a) means the owner of that land; and
- (b) includes any person authorised in writing by the owner to act as the owner's agent

**requirement for consent** means the requirement to obtain consent under all or any of the following provisions:

- (a) section 10(1)(a) of the Act (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in sensitive land):
- (b) section 10(1)(b) of the Act (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in significant business assets):

- (c) section 57B of the Fisheries Act 1996 (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in fishing quota)

**requirement for consent provisions of the Act—**

- (a) means either or both of the following provisions:
- (i) section 10(1)(a) of the Act (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in sensitive land):
  - (ii) section 10(1)(b) of the Act (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in significant business assets); but
- (b) does not include section 57B of the Fisheries Act 1996 (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in fishing quota)

**special land** has the meaning given to it by regulation 12

**specified persons** means persons—

- (a) who are overseas persons only because of their direct or indirect connection with a person listed in Schedule 3 or Schedule 4 (if any); but
  - (b) who would not be overseas persons if 1 or more of the persons listed in Schedule 3 or Schedule 4 (if any) were not overseas persons.
- (2) *[Revoked]*
- (3) Examples used in these regulations have the following status:
- (a) an example is only illustrative of the provision to which it relates and does not limit the provision; and
  - (b) if an example and the provision to which it relates are inconsistent, the provision prevails.

Regulation 3(1) **Minister**: revoked, on 1 September 2006, by regulation 4 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 3(1) **specified persons** paragraph (a): amended, on 4 July 2016, by regulation 4 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

Regulation 3(1) **specified persons** paragraph (b): amended, on 4 July 2016, by regulation 4 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

Regulation 3(2): revoked, on 3 September 2009, by regulation 4 of the Overseas Investment Amendment Regulations (No 2) 2009 (SR 2009/210).

### 3A Transitional, savings, and related provisions

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

Regulation 3A: inserted, on 4 July 2016, by regulation 5 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

## Part 1

### Consent

#### *Procedure for offering farm land or farm land securities for acquisition on open market*

#### **4 Purpose of regulations 5 to 10**

The purpose of regulations 5 to 10 is to—

- (a) prescribe, for the purposes of the criterion in section 16(1)(f) of the Act, the procedure for offering the farm land or the securities to which the overseas investment relates (**farm land securities**) for acquisition on the open market to persons who are not overseas persons; and
- (b) ensure that persons who are not overseas persons but who wish to acquire the farm land or farm land securities have reasonable notice that they are available for acquisition.

#### **5 Procedure for offering farm land or farm land securities for acquisition on open market**

For the purposes of section 16(1)(f) of the Act, the farm land or farm land securities must be—

- (a) offered for acquisition on the open market, to persons who are not overseas persons, in accordance with regulations 6 to 8; and
- (b) available on the open market for the minimum period required by regulation 9; and
- (c) advertised within the period required by regulation 10.

#### **6 Obligation of owner to advertise that farm land or farm land securities available for acquisition**

The owner must advertise that the farm land or the farm land securities are available for acquisition.

#### **7 Content of advertisement**

The advertisement under regulation 6 must—

- (a) contain a general description of the relevant land; and
- (b) contain a statement that says that—
  - (i) the farm land or the farm land securities are available for acquisition; and
  - (ii) offers are sought from potential purchasers; and
- (c) state the contact details of the owner.

## **8 Form of advertisement**

The advertisement under regulation 6 must be published—

- (a) in any medium that is—
  - (i) in the list set out in Schedule 1 (or another medium that is generally used for advertising land for acquisition on the open market); and
  - (ii) generally available to persons in the district in which the relevant land is located; and
- (b) in accordance with the minimum requirements set out in Schedule 1 for that particular medium (or, if another medium is used, in accordance with the general practice for advertising land for acquisition on the open market in that medium).

## **9 Farm land or farm land securities must be on open market for minimum period**

- (1) The farm land or the farm land securities must be available for acquisition on the open market—
  - (a) for at least 20 working days after an advertisement is first placed under regulation 6; or
  - (b) for a longer period, if the advertisement under regulation 6 has stated or implied that offers will be accepted for that longer period.
- (2) However, the owner may accept an offer for the farm land or the farm land securities before the end of the period referred to in subclause (1)(a) or (b) from a person who is not an overseas person.

## **10 Advertisement must be published within previous 12 months**

The advertisement under regulation 6 must be published within the period of 12 months that precedes the earlier of the following dates:

- (a) the date on which an application for consent to the relevant overseas investment transaction is made; or
- (b) the date on which the relevant overseas investment transaction that requires consent (or will require consent before it is given effect) is given effect to.

## **11 Effect of regulations 5 to 10**

To avoid doubt, regulations 5 to 10 do not require any person to—

- (a) unconditionally offer the farm land or the farm land securities under any transaction; or
- (b) enter into any transaction for the farm land or the farm land securities.

*Procedure for offering foreshore, seabed, riverbed, or lakebed to the Crown*

**12 Procedure for offering foreshore, seabed, riverbed, or lakebed to the Crown**

For the purposes of section 17(2)(f) of the Act, the foreshore, seabed, riverbed, or lakebed (**special land**) must be offered to the Crown (acting by and through the relevant Ministers) for acquisition in accordance with regulations 13 to 27.

Regulation 12: amended, on 1 September 2006, by regulation 5 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

**13 Obligation of owner to give notice to relevant Ministers and regulator**

The owner must give written notice to the relevant Ministers and the regulator if—

- (a) the owner intends to give effect to an overseas investment transaction in respect of any relevant land; and
- (b) the relevant land is or includes special land.

Regulation 13 heading: amended, on 1 September 2006, by regulation 6 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 13: amended, on 1 September 2006, by regulation 6 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

**14 Content of notice**

A notice under regulation 13 must—

- (a) state that the relevant land is or includes special land; and
- (b) contain a legal description of the relevant land, including a copy of its certificate of title (if it has one); and
- (c) provide the postal address of the relevant land or, if the relevant land does not have a postal address, a narrative or diagrammatic description of the relevant land that contains sufficient information for a person who was not previously familiar with the land to locate and inspect—
  - (i) the relevant land;
  - (ii) the special land; and
- (d) state the proposed consideration for the relevant overseas investment transaction; and
- (e) state all the other terms and conditions of the relevant overseas investment transaction; and
- (f) if possible, identify the area of the relevant land that is special land; and
- (g) state—
  - (i) whether the special land needs to be surveyed before its market value can be determined and before it can be acquired by the Crown; or

- (ii) whether the special land has previously been surveyed; and
- (h) if paragraph (g)(ii) applies, be accompanied by a copy of the plan of survey of the special land (if a copy of the plan is available); and
- (i) state the owner's intention to offer to the Crown the right to acquire the special land; and
- (j) state the contact details of the owner.

**15 The Crown may waive right to acquire special land**

- (1) The relevant Ministers may give written notice to the owner at any time that the Crown waives its right to acquire the special land.
- (2) If a notice under subclause (1) is given, the factor set out in section 17(2)(f) of the Act must be taken to have been complied with in respect of the relevant overseas investment.
- (3) To avoid doubt, a notice under subclause (1) may be given—
  - (a) at the outset, after the notice under regulation 13 has been given; or
  - (b) at any other time until an agreement (if any at all) is entered into between the Crown and the owner for the acquisition by the Crown of the special land.

Regulation 15(1): amended, on 1 September 2006, by regulation 7 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

**16 Procedure if the Crown does not waive right to acquire special land at outset**

- (1) This regulation applies if, after the notice under regulation 13 is given, the relevant Ministers decide not to give the notice under regulation 15 that the Crown waives its right to acquire the special land.
- (2) The relevant Ministers may give written notice to the owner that the Crown wishes to have the market value of the special land determined by a public valuer if—
  - (a) the notice under regulation 13 states that the special land has previously been surveyed and a copy of the plan of survey is available; or
  - (b) subclause (3) applies and the special land has been surveyed in accordance with that subclause.
- (3) If the notice under regulation 13 states that the special land needs to be surveyed, the relevant Ministers must arrange for a survey of the special land to be carried out to the standard appropriate for determining—
  - (a) the market value of the special land; and
  - (b) whether the Crown would want to acquire that land.
- (4) The Crown must meet—

- (a) the costs of the survey of the special land referred to in subclause (3) and of any subsequent surveys of the special land that may be required for the purpose set out in that subclause; and
- (b) any other incidental costs or expenses relating to those surveys.

Regulation 16(1): amended, on 1 September 2006, by regulation 8(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 16(2): amended, on 1 September 2006, by regulation 8(2) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 16(3): amended, on 1 September 2006, by regulation 8(3) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

## 17 Valuation of special land

- (1) If a notice under regulation 16(2) is given, the relevant Ministers and the owner must, within 20 working days after the date of the notice, appoint a public valuer to determine the market value of the special land.
- (2) If the relevant Ministers and the owner cannot agree on the public valuer to be appointed under subclause (1), then each party must, within 30 working days after the date of the notice given under regulation 16(2), appoint a public valuer to determine jointly the market value of the special land.
- (3) The public valuer or valuers, as the case may be, must determine the market value of the special land within 20 working days of being appointed or, if the public valuers were appointed on different dates, within 20 working days of the second public valuer being appointed.
- (4) If 2 public valuers have been appointed and they cannot agree on the market value of the special land within the time specified in subclause (3), they must appoint another public valuer to determine that value.
- (5) If the valuers cannot agree on the public valuer to be appointed under subclause (4), then either the relevant Ministers or the owner may request the President of the New Zealand Institute of Valuers to appoint a public valuer to determine the market value of the special land.

Regulation 17(1): amended, on 1 September 2006, by regulation 9(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 17(2): amended, on 1 September 2006, by regulation 9(2) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 17(5): amended, on 1 September 2006, by regulation 9(3) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

## 18 Costs of valuation

The costs of a public valuer appointed under regulation 17 must be met as follows:

- (a) if the public valuer is appointed jointly by the relevant Ministers and the owner, the costs must be met equally by the Crown and the owner:

- (b) if the public valuer is appointed by the relevant Ministers or the owner, the costs must be met by the Crown or the owner, as the case may be:
- (c) if the public valuer is appointed under regulation 17(4) or (5), the costs must be met as determined by that public valuer.

Regulation 18(a): amended, on 1 September 2006, by regulation 10 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 18(b): amended, on 1 September 2006, by regulation 10 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

### **19 Appointment of valuer is not an arbitration**

- (1) The appointment of a public valuer under regulation 17(4) or (5) is not to be regarded as a submission to arbitration or an arbitration agreement.
- (2) A public valuer appointed under regulation 17(4) or (5) is not to be regarded as an arbitrator, and the Arbitration Act 1996 does not apply in respect of the determination of the market value of the special land by that public valuer.

### **20 Valuer may determine market value of special land with reference to market value of relevant land**

If only part of the relevant land is special land and that part is of a size, shape, or nature for which there is no general demand or market, the public valuer or public valuers, as the case may be, may—

- (a) determine the market value of the whole of the relevant land; and
- (b) use that value as a basis for determining the market value of the special land.

### **21 Valuer must give notice to parties on determining market value of special land**

As soon as practicable after determining the market value of the special land, the public valuer or public valuers, as the case may be, must give written notice of that market value to the relevant Ministers and the owner.

Regulation 21: amended, on 1 September 2006, by regulation 11 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

### **22 Relevant Ministers and owner must negotiate in good faith**

- (1) As soon as practicable after receiving notice of the market value of the special land under regulation 21, the relevant Ministers and the owner must negotiate in good faith to attempt to conclude an agreement in principle to the terms and conditions of the acquisition by the Crown of the special land.
- (2) Despite subclause (1), the agreement in principle must provide that the consideration for the acquisition by the Crown of the special land must be equal to, or less than, the market value of that land specified in the notice under regulation 21.

- (3) If the relevant Ministers consider that the market value of the special land is negligible, the relevant Ministers may negotiate the agreement in principle to provide that, subject to consent being given to the relevant overseas investment transaction, the Crown is to acquire the special land for no consideration.
- (4) If the relevant Ministers and the owner conclude the agreement in principle, the owner must offer to the Crown the right to acquire the special land for the consideration and on the terms and conditions stated in that agreement.
- (5) The offer under subclause (4)—
  - (a) must be made in writing; and
  - (b) must be given to the relevant Ministers.

Regulation 22 heading: amended, on 1 September 2006, by regulation 12(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 22(1): amended, on 1 September 2006, by regulation 12(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 22(3): substituted, on 1 September 2006, by regulation 12(2) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 22(4): amended, on 1 September 2006, by regulation 12(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 22(5)(b): amended, on 1 September 2006, by regulation 12(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

### **23 Effect of offering special land to the Crown**

If the owner makes the offer under regulation 22, the factor set out in section 17(2)(f) of the Act must be taken to have been complied with in respect of the relevant overseas investment.

### **24 Relevant Ministers must decide on whether to accept offer to acquire special land**

- (1) The relevant Ministers must decide whether to take either of the actions specified in subclause (2) within 30 working days after the date on which the offer under regulation 22 is made.
- (2) The actions are—
  - (a) to accept the offer for the consideration, and on the terms and conditions, stated or referred to in the offer; or
  - (b) to waive the Crown's right to acquire the special land in accordance with regulation 15.

Regulation 24 heading: amended, on 1 September 2006, by regulation 13 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Regulation 24(1): amended, on 1 September 2006, by regulation 13 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

**25 Agreement for acquisition of special land by the Crown must be conditional on overseas investment receiving consent and being given effect to**

An agreement between the Crown and the owner for the acquisition by the Crown of the special land must be conditional on—

- (a) consent being granted to the relevant overseas investment; and
- (b) the overseas investment transaction being given effect to.

**26 What happens if there is material change to terms and conditions of overseas investment transaction**

- (1) This regulation applies if there is a material change to the terms and conditions of the relevant overseas investment transaction after—
  - (a) the notice under regulation 13 is given; or
  - (b) the offer under regulation 22 is made.
- (2) If this regulation applies, the provisions of regulations 12 to 25 and of this regulation apply (with all necessary modifications) in respect of the special land as if those provisions had not yet been applied or had not been complied with.

**27 Minister may delegate functions and powers to regulator**

*[Revoked]*

Regulation 27: revoked, on 1 September 2006, by regulation 14 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

*Other factors for assessing benefit of overseas investment in sensitive land*

**28 Other factors for assessing benefit of overseas investment in sensitive land**

The other factors that are referred to in section 17(2)(g) of the Act for assessing whether an overseas investment in sensitive land will, or is likely to, benefit New Zealand are as follows:

- (a) whether the overseas investment will, or is likely to, result in other consequential benefits to New Zealand (whether tangible or intangible benefits (such as, for example, additional investments in New Zealand or sponsorship of community projects));
- (b) whether the relevant overseas person is a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations;
- (c) whether refusing the application for consent will, or is likely to,—
  - (i) adversely affect New Zealand's image overseas or its trade or international relations;
  - (ii) result in New Zealand breaching any of its international obligations:

- (d) whether granting the application for consent will, or is likely to, result in the owner of the relevant land undertaking other significant investment in New Zealand:
- (e) whether the relevant overseas person has previously undertaken investments that have been, or are, of benefit to New Zealand:
- (f) whether the overseas investment will, or is likely to, give effect to or advance a significant Government policy or strategy:
- (g) whether the overseas investment will, or is likely to, enhance the ongoing viability of other overseas investments undertaken by the relevant overseas person:
- (h) whether the overseas investment will, or is likely to, assist New Zealand to maintain New Zealand control of strategically important infrastructure on sensitive land:
- (i) whether New Zealand's economic interests will be adequately promoted by the overseas investment, including, for example, matters such as all or any of the following:
  - (i) whether New Zealand will become a more reliable supplier of primary products in the future:
  - (ii) whether New Zealand's ability to supply the global economy with a product that forms an important part of New Zealand's export earnings will be less likely to be controlled by a single overseas person or its associates:
  - (iii) whether New Zealand's strategic and security interests are or will be enhanced:
  - (iv) whether New Zealand's key economic capacity is or will be improved:
- (j) the extent to which persons who are not overseas persons (**New Zealanders**) will be, or are likely to be, able to oversee, or participate in, the overseas investment and any relevant overseas person, including, for example, matters such as all or any of the following:
  - (i) whether there is or will be any requirement that 1 or more New Zealanders must be part of a relevant overseas person's governing body:
  - (ii) whether a relevant overseas person is or will be incorporated in New Zealand:
  - (iii) whether a relevant overseas person has or will have its head office or principal place of business in New Zealand:
  - (iv) whether a relevant overseas person is or will be a party to a listing agreement with NZX Limited or any other registered exchange that operates a securities market in New Zealand:

- (v) the extent to which New Zealanders have or will have any partial ownership or controlling stake in the overseas investment or in a relevant overseas person:
- (vi) the extent to which ownership or control of the overseas investment or of a relevant overseas person is or will be dispersed amongst a number of non-associated overseas persons.

Regulation 28(h): added, on 4 March 2008, by regulation 5 of the Overseas Investment Amendment Regulations 2008 (SR 2008/48).

Regulation 28(i): added, on 13 January 2011, by regulation 5 of the Overseas Investment Amendment Regulations 2010 (SR 2010/455).

Regulation 28(j): added, on 13 January 2011, by regulation 5 of the Overseas Investment Amendment Regulations 2010 (SR 2010/455).

### *Fees and charges*

#### **29 Fees and charges**

- (1) The fees and charges set out in Schedule 2 are payable to the regulator for the matters to which they relate.
- (1A) The fees and charges in Parts 5 and 6 of Schedule 2 are payable for every hour and, on a pro rata basis, for every part-hour of work that is carried out by or on behalf of the regulator.
- (2) The fees and charges are inclusive of goods and services tax.

Regulation 29(1A): inserted, on 4 July 2016, by regulation 6 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

#### **30 When fees and charges are payable**

- (1) A fee or charge that is payable under regulation 29 must be paid on the making of an application or a request, as the case may be.
- (2) However, a fee or charge in Part 5 or 6 of Schedule 2 is payable—
  - (a) on the issue of an invoice by or on behalf of the regulator; and
  - (b) within the time frame specified in the invoice.

Regulation 30(2): inserted, on 4 July 2016, by regulation 7 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

### *Administrative penalties*

#### **31 Administrative penalty for late filing**

For the purposes of section 52 of the Act, the administrative penalty that the regulator may require a person to pay if the person files, provides, or produces a document required by or under the Act, these 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 is \$500.

**32 Administrative penalty for retrospective consent**

- (1) For the purposes of section 53 of the Act, the administrative penalty that the regulator may require an applicant for a retrospective consent to pay is an amount that is not more than \$20,000.
- (2) In determining the amount of the administrative penalty under subclause (1), the regulator must consider whether requiring the applicant to pay that amount would be unduly harsh or oppressive given—
  - (a) the value of the consideration for the asset that was acquired under the relevant overseas investment transaction; or
  - (b) the nature of, and the reasons for, the retrospective consent.

## **Part 2 Exemptions**

### *Exemptions from requirement for consent*

**33 Certain transactions exempted from requirement for consent**

- (1) The requirement for consent does not apply to the extent that giving effect to a transaction has any of the following effects:
  - (a) the acquisition by an overseas person of the securities or rights or interests in securities or property—
    - (i) from another member of the same group, being a group that comprises an overseas person and persons that are directly or indirectly at least 95% owned by that overseas person, as part of a reconstruction or reorganisation of that group; or
    - (ii) from an overseas person that directly or indirectly owns at least 95% of that overseas person:
  - (b) the acquisition by a company incorporated under the Companies Act 1993 of its own shares if—
    - (i) the acquisition does not alter the proportions in which shares in the company are held by the shareholders or the relative voting rights of the shareholders; or
    - (ii) the shares are acquired under sections 112 to 112C or section 118 of that Act:
  - (c) the acquisition by an overseas person of securities or property in an amalgamated company under an amalgamation effected under the Companies Act 1955 or the Companies Act 1993 if the overseas person has the same direct or indirect interest in or rights to the assets of that amalgamated company as that overseas person had in relation to those assets prior to the amalgamation:

- (d) the acquisition by an overseas person of redeemable preference shares that are redeemable only in cash and that do not entitle the holder to exercise voting rights except if the dividend payable is in arrears:
- (e) the transfer of securities or rights or interests in securities or property from a trustee to an overseas person who is a trustee of the same trust on the appointment of a new trustee or the retirement of a trustee or on the resettlement of a trust if that appointment, retirement, or resettlement does not result in the trust becoming an overseas person:
- (f) the transfer by a trustee, executor, or administrator of the will or of the estate of a deceased person to an overseas person who is a beneficiary of securities or rights or interests in securities or property under that will or estate or under a trust established by that will or estate:
- (g) the transfer by a trustee of a trust to an overseas person who is a beneficiary of securities or rights or interests in securities or property under that trust if—
  - (i) the trust is an overseas person; and
  - (ii) the acquisition of those securities or rights or interests in securities or property by the trust has been previously consented to under the Act; and
  - (iii) the transfer is not contrary to any conditions of that consent:
- (h) the acquisition by an overseas person of securities or rights or interests in securities or property under an arrangement (**security arrangement**) that—
  - (i) in substance secures payment or performance of an obligation (regardless of the form of the transaction or the identity of the person who has title to the securities or rights or interests); and
  - (ii) is entered into by the parties in good faith and in the ordinary course of business; and
  - (iii) requires that the securities or rights or interests be retransferred to the original transferor or extinguished on the payment or performance of the obligation:
- (i) the acquisition by an overseas person of securities or rights or interests in securities or property as a result of the overseas person enforcing a security arrangement in good faith:
- (j) the reacquisition by an overseas person of securities or rights or interests in securities or property as a result of the discharge of a security arrangement:
- (ja) the acquisition by an overseas person of 2 or more security arrangements to which paragraph (h) applies—
  - (i) that are acquired together as a portfolio or bundle; and

- (ii) if the total value of consideration provided for that portfolio or bundle is \$100 million or less:
- (k) the acquisition of securities or rights or interests in securities or property from the investment of funds by an overseas person carrying on in New Zealand the business of life insurance if—
  - (i) the investment of the funds is made for the benefit of policy holders at least 75% of whom are New Zealand citizens or persons ordinarily resident in New Zealand; and
  - (ii) the investment is of funds held in the overseas person's—
    - (A) Life Insurance Fund within the meaning of section 15 of the Life Insurance Act 1908 if the overseas person carries on any other business; or
    - (B) statutory fund or funds (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010):
- (l) the acquisition of securities or rights or interests in securities or property by or on behalf of an overseas person that is the supervisor or manager of a retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) from the investment of all or part of the assets of the scheme for the benefit of members at least 75% of whom are New Zealand citizens or persons ordinarily resident in New Zealand:
- (m) the acquisition by an overseas person of securities or rights or interests in securities or property if—
  - (i) the securities or rights or interests are, or will be as a result of the acquisition, relationship property (as defined in section 8 of the Property (Relationships) Act 1976) of the overseas person and the overseas person's spouse, civil union partner, or de facto partner; and
  - (ii) the overseas person's spouse, civil union partner, or de facto partner is not an overseas person:
- (n) the acquisition by an overseas person of securities or rights or interests in securities or property as a result of a division of relationship property under the Property (Relationships) Act 1976:
- (o) the underwriting by an overseas person of an issue of securities if that person—
  - (i) is a person whose ordinary business includes entering into bona fide underwriting or subunderwriting contracts with respect to offers of securities; and
  - (ii) acquires the securities as a result of entering into a bona fide underwriting or subunderwriting contract in the course of that person's ordinary business; and

- (iii) holds the securities for less than 6 months; and
  - (iv) does not exercise any voting rights attached to those securities:
- (p) the acquisition by an overseas person of securities or rights or interests in securities (the **further securities**) if—
- (i) consent for the acquisition of securities or rights or interests in securities (the **initial securities**) has previously been granted to the overseas person by the relevant Minister or Ministers; and
  - (ii) the rights, privileges, limitations, and conditions attached to the further securities are identical to those attached to the initial securities; and
  - (iii) the further securities are acquired by the overseas person in 1 or more transactions, all of which are completed within 5 years of the date on which consent for the acquisition of the initial securities was granted to that person by the relevant Minister or Ministers; and
  - (iv) the total number of further securities acquired by the overseas person is less than 5% of the total number of initial securities acquired by that person.

(2) *[Revoked]*

Regulation 33(1)(a)(i): amended, on 9 July 2009, by regulation 4(1) of the Overseas Investment Amendment Regulations 2009 (SR 2009/162).

Regulation 33(1)(a)(ii): amended, on 9 July 2009, by regulation 4(2) of the Overseas Investment Amendment Regulations 2009 (SR 2009/162).

Regulation 33(1)(b)(ii): amended, on 17 September 2008, by section 13(2) of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

Regulation 33(1)(ja): inserted, on 9 July 2009, by regulation 4(3) of the Overseas Investment Amendment Regulations 2009 (SR 2009/162).

Regulation 33(1)(k)(ii): substituted, on 1 February 2011, by section 241(2) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Regulation 33(1)(l): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Regulation 33(1)(o): added, on 9 July 2009, by regulation 4(4) of the Overseas Investment Amendment Regulations 2009 (SR 2009/162).

Regulation 33(1)(p): added, on 9 July 2009, by regulation 4(4) of the Overseas Investment Amendment Regulations 2009 (SR 2009/162).

Regulation 33(2): revoked, on 9 July 2009, by regulation 4(5) of the Overseas Investment Amendment Regulations 2009 (SR 2009/162).

*Exemptions from requirement for consent provisions of Act*

**34 Exemption for persons connected to portfolio investors or New Zealand controlled persons**

- (1) Every specified person is exempt from the requirement for consent provisions of the Act.

- (2) The exemption under subclause (1) also applies to a specified person if—
- (a) the exemption does not apply under that subclause only because 1 or more persons (which may include the specified person) are incorporated outside New Zealand; and
  - (b) each of those persons incorporated outside New Zealand is directly or indirectly wholly-owned by a person listed in Schedule 3 or Schedule 4 (if any).
- (3) However, the exemption under subclause (1) does not apply to a specified person if 1 person listed in Schedule 3 has 25% control, or 2 or more overseas persons (including persons listed in Schedule 3, but not persons listed in Schedule 4) have cumulatively 75% control, of the specified person by having (directly or indirectly)—
- (a) a beneficial entitlement to, or a beneficial interest in, 25% or more or 75% or more (as the case may be) of the specified securities of the specified person; or
  - (b) the right to exercise or control the exercise of 25% or more or 75% or more (as the case may be) of the voting power at a meeting of the specified person; or
  - (c) the right to appoint or control the appointment of 25% or more or 75% or more (as the case may be) of the board of directors (or other persons or body exercising powers of management, however described) of the specified person.

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**Example 1**

Company A holds 20% and Company B holds 5% of Company X's shares. Both Company A and Company B are overseas persons but Company A is listed in Schedule 3.

So Company X is exempt under regulation 34 (if there is no other reason why Company X is an overseas person).

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**Example 2**

Company C buys 25% of Company X's shares. Company C is an overseas person because it is a subsidiary of a company listed in Schedule 4 (and is not an overseas person for any other reason).

So Company X is still exempt under regulation 34 (if there is no other reason why Company X is an overseas person).

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**Example 3**

Company D buys 25% of Company X's shares. Company D is an overseas person and is not listed in Schedule 3 or 4.

So Company X no longer qualifies for the exemption under regulation 34.

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**Example 4**

Company A increases its shareholding in Company X to 25%. Company A is listed in Schedule 3.

So Company X no longer qualifies for the exemption under regulation 34.

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Regulation 34(2)(b): amended, on 4 July 2016, by regulation 8 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

**35 Exemption for New Zealand controlled persons**

Every person listed in Schedule 4 is exempted from the requirement for consent provisions of the Act.

**36 Consequential exemption for other transactions**

- (1) Every person is exempted from the requirement for consent provisions of the Act for a transaction if, for a transaction that will have a result specified in section 12(b) of the Act, every overseas person to which section 12(b) applies will become a person that is exempted from the requirement for consent provisions of the Act by regulation 34 or regulation 35.
- (2) Every person is exempted from the requirement for consent provisions of the Act for a transaction that will have a result specified in section 13(1) of the Act if every overseas person to which section 13(1) applies is exempted from the requirement for consent provisions of the Act by regulation 34 or regulation 35.

*Exemptions for Australian investors from requirement for consent in respect of certain overseas investments in significant business assets*

Heading: inserted, on 1 March 2013, by regulation 4 of the Overseas Investment (Australia) Amendment Regulations 2013 (SR 2013/4).

**36A Exemptions in Schedule 5 apply**

The exemptions in Schedule 5 apply to certain overseas investment transactions entered into on or after 1 March 2013.

Regulation 36A: inserted, on 1 March 2013, by regulation 4 of the Overseas Investment (Australia) Amendment Regulations 2013 (SR 2013/4).

*Applications for exemptions*

**37 Application for exemption**

- (1) The relevant Minister or Ministers may, on application in accordance with regulation 38, 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) The relevant Minister or Ministers may grant an exemption under subclause (1) subject to any terms and conditions that the relevant Minister or Ministers think fit.

- (3) An exemption under subclause (1) may at any time be amended or revoked.  
Regulation 37(1): amended, on 4 July 2016, by regulation 9 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

### **38 Requirements for application for exemption**

- (1) An application for an exemption under regulation 37(1) must—
- (a) be in writing; and
  - (b) be signed by each applicant; and
  - (c) contain an explanation of why the exemption is required.
- (2) The explanation referred to in subclause (1)(c) may state, for example, that the transaction to which the application for exemption relates is similar to other exemptions that have already been granted.

## **Part 3 Miscellaneous**

### *Notices*

#### **39 Relevant Minister or Ministers may give notice of exercise of powers**

- (1) The relevant Minister or Ministers may give notice of the exercise of any powers under the Act or these regulations.
- (2) A notice under subclause (1) may be given—
- (a) in the *Gazette*;
  - (b) to a particular person.
- (3) Every person is bound by a notice given under subclause (1).
- (4) A notice under subclause (1) may at any time be amended or revoked.

### *Service of notices*

#### **40 Service of notices**

- (1) A notice or other document required to be served on, or given to, any person under the Act or these regulations is sufficiently served if it is—
- (a) delivered personally to the person; or
  - (b) delivered to the person at the person's usual or last known place of residence or business; or
  - (c) sent by fax or email to the person's fax number or email address; or
  - (d) posted in a letter addressed to the person at the person's usual or last known place of residence or business.

- (2) If a notice or other document is to be served on a body (whether incorporated or not), service on an officer of the body in accordance with subclause (1) is taken to be service on the body.
- (3) If a notice or other document is to be served on a partnership, service on any one of the partners in accordance with subclause (1) is taken to be service on the partnership.
- (4) A notice or other document sent by post to a person in accordance with subclause (1)(d) must be treated as having been received by that person at the time at which the letter would have been delivered in the ordinary course of post.

## Schedule 1AA

### Transitional, savings, and related provisions

r 3A

Schedule 1AA: inserted, on 4 July 2016, by regulation 10 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

### Part 1

#### Provisions relating to Overseas Investment Amendment Regulations 2016

##### 1 Transitional provision for certain applications and requests

- (1) The old fees and charges continue to apply to applications and requests made before 4 July 2016.
- (2) However, despite the date on which an application for exemption under regulation 37 by addition to Schedule 3 or Schedule 4 was or is made, the new fees and charges apply to the monitoring of compliance with the conditions of that exemption that is performed on or after 4 July 2016.
- (3) To avoid doubt, if an application is sent to the regulator in the period starting on the date that these regulations are made and ending on 3 July 2016, and that application is returned by the regulator on the basis that it cannot be decided (for example, because it does not meet the requirements for the application set out in the Act or these regulations), the new fees and charges will apply to any new application made in respect of the same matter (unless that application is made before 4 July 2016, and again subject to this subclause).
- (4) In this clause,—  
**new fees and charges** means the fees and charges set out in Schedule 2 as replaced by the Overseas Investment Amendment Regulations 2016  
**old fees and charges** means the fees and charges set out in Schedule 2 as in force immediately before 4 July 2016.

## Schedule 1

### Form of advertisement

r 8

<b>Medium</b>	<b>Minimum requirements</b>
Internet	Must be of usual prominence on an Internet site generally used for advertising acquisition of land on the open market for 20 working days
Newspaper	Must be of usual prominence in the property section of 1 edition
Notice or sign	Must be of usual prominence at the real estate agent's office for 20 working days
Placard	Must be displayed on the relevant land for 20 working days and in a manner that ensures, as far as is reasonably practicable, that it attracts the attention of the persons to whom the advertisement is directed
Real estate sales publication	Must be of usual prominence in 1 edition

## Schedule 2

### Fees and charges

r 29

Schedule 2: replaced, on 4 July 2016, by regulation 11 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

### Part 1

#### Applications relating to transaction in category of overseas investment in sensitive land only

<b>Application</b>	<b>Determination by relevant Ministers or by regulator under delegation</b>	<b>(\$)</b>
For consent for a transaction involving a land decision only, on the basis of section 16(1)(e)(i) of the Act,—		
(a) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is less than \$1 million	Relevant Ministers or regulator	22,500
(b) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is \$1 million or more or is not stated in the application	Relevant Ministers or regulator	29,500
For consent for a transaction involving a land decision only, on the basis of section 16(1)(e)(ii) of the Act (where section 16(1)(e)(iii) is not applicable),—		
(a) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is less than \$1 million	Relevant Ministers Regulator	37,500 35,500
(b) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is \$1 million or more or is not stated in the application	Relevant Ministers Regulator	43,500 41,500
For consent for a transaction involving a land decision only, on the basis of section 16(1)(e)(ii) of the Act and where section 16(1)(e)(iii) is applicable,—		
(a) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is less than \$1 million	Relevant Ministers Regulator	42,500 40,500
(b) where the value of the consideration to be provided for the overseas investment in sensitive land is stated in the application and is \$1 million or more or is not stated in the application	Relevant Ministers Regulator	49,000 47,000
For variation of consent or conditions of consent (including addition to and revocation of conditions of consent)	Relevant Ministers or regulator	13,000

<b>Application</b>	<b>Determination by relevant Ministers or by regulator under delegation</b>	<b>(\$)</b>
For each exemption under regulation 37	Relevant Ministers or regulator	25,500

## **Part 2**

### **Applications relating to transaction in category of overseas investment in significant business assets only**

<b>Application</b>	<b>(\$)</b>
For consent for a transaction involving a business decision only	32,000
For variation of consent or conditions of consent (including addition to and revocation of conditions of consent)	13,000
For each exemption under regulation 37	25,500

## **Part 3**

### **Applications relating to transaction in categories of overseas investment in sensitive land and significant business assets**

<b>Application</b>	<b>Determination by relevant Ministers or by regulator under delegation</b>	<b>(\$)</b>
For consent for a transaction involving a land decision and a business decision	Relevant Ministers	54,000
	Regulator	52,000
For variation of consent or conditions of consent (including addition to and revocation of conditions of consent)	Relevant Ministers or regulator	13,000
For each exemption under regulation 37	Relevant Ministers or regulator	25,500

## **Part 4**

### **Applications relating to overseas investment in fishing quota**

<b>Application</b>	<b>(\$)</b>
For consent for a transaction	40,000
For variation of consent or conditions of consent (including addition to and revocation of conditions of consent)	13,000
For each exemption under regulation 37	40,000

## Part 5 Other applications

<b>Application</b>	(\$)
For each exemption under regulation 37 by addition to Schedule 3 (which relates to portfolio investors) or Schedule 4 (which relates to New Zealand controlled persons),—	
(a) application for exemption	\$560 per hour
(b) monitoring compliance with conditions of exemption	\$560 per hour

## Part 6 Information and services

<b>Request</b>	(\$)
For provision of information or services	\$168 per hour

## Schedule 3

### Portfolio investors

r 34

Schedule 3: amended, on 13 January 2011, by regulation 6 of the Overseas Investment Amendment Regulations 2010 (SR 2010/455).

Schedule 3 Asteron Retirement Investment Limited: revoked, on 1 September 2006, by regulation 15(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Schedule 3 Australia Reinsurance Company Limited: revoked, on 1 September 2006, by regulation 15(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Schedule 3 Citicorp New Zealand Limited: revoked, on 1 September 2006, by regulation 15(2) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Schedule 3 Citicorp Services Limited: revoked, on 4 July 2016, by regulation 12 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

Schedule 3 HSBC Nominees (New Zealand) Limited: revoked, on 19 June 2008, by regulation 4 of the Overseas Investment Amendment Regulations (No 2) 2008 (SR 2008/120).

Schedule 3 J. P. Morgan Securities New Zealand Limited: revoked, on 1 September 2006, by regulation 15(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Schedule 3 The Colonial Mutual Life Assurance Society Limited: revoked, on 1 September 2006, by regulation 15(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

Schedule 3 The New Zealand Refining Nominees Limited: revoked, on 1 September 2006, by regulation 15(1) of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

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## Schedule 4

### New Zealand controlled persons

rr 34, 35

Fulton Hogan Ltd

Infratil Limited

TrustPower Limited

Schedule 4 Fisher & Paykel Appliances Holdings Ltd: revoked, on 19 June 2008, by regulation 5(1) of the Overseas Investment Amendment Regulations (No 2) 2008 (SR 2008/120).

Schedule 4 Guinness Peat Group PLC: revoked, on 4 July 2016, by regulation 13 of the Overseas Investment Amendment Regulations 2016 (LI 2016/101).

Schedule 4 Infrastructure & Utilities NZ Limited: revoked, on 19 June 2008, by regulation 5(2) of the Overseas Investment Amendment Regulations (No 2) 2008 (SR 2008/120).

Schedule 4 Infratil Limited: inserted, on 19 June 2008, by regulation 5(2) of the Overseas Investment Amendment Regulations (No 2) 2008 (SR 2008/120).

Schedule 4 TrustPower Limited: added, on 19 June 2008, by regulation 5(3) of the Overseas Investment Amendment Regulations (No 2) 2008 (SR 2008/120).

Schedule 4 Waste Management N.Z. Limited: revoked, on 1 September 2006, by regulation 16 of the Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231).

## Schedule 5

### Exemptions for Australian investors from requirement for consent in respect of certain overseas investments in significant business assets

r 36A

Schedule 5: inserted, on 1 March 2013, by regulation 5 of the Overseas Investment (Australia) Amendment Regulations 2013 (SR 2013/4).

#### 1 Overview of schedule

- (1) This schedule implements certain obligations in the Protocol on Investment to the New Zealand–Australia Closer Economic Relations Trade Agreement signed at Wellington on 16 February 2011 in respect of certain investments in New Zealand significant business assets by Australian investors.
- (2) This clause is intended only as a guide to the general scheme and effect of this schedule.

#### 2 Interpretation of schedule

In this schedule, unless the context otherwise requires,—

**Australia** does not include its external territories

**Australian entity** means an enterprise located in Australia that is constituted or organised under Australian law

**Australian Government** includes—

- (a) the Crown in right of Australia; and
- (b) an Australian State or territory; and
- (c) Australian regional or local government

**Australian Government investor** has the meaning set out in clause 8

**Australian individual** means an individual who is, under Australian law,—

- (a) an Australian citizen; or
- (b) a permanent resident of Australia

**Australian investor** means an Australian non-Government investor or an Australian Government investor

**Australian non-Government investor** has the meaning set out in clause 5

**branch** means an enterprise located in Australia that is constituted or organised under the law of any country other than Australia

**enterprise** means any of the following, whether acting for profit or not:

- (a) a body corporate;
- (b) a trust (including a unit trust);
- (c) a partnership;

- (d) a sole proprietorship;
- (e) a joint venture;
- (f) any other unincorporated body of persons

**foreign Government investor** means 1 or more of the following:

- (a) the Government, or any part of the Government (including regional or local government), of a country, or a part of a country, other than Australia or New Zealand;
- (b) an enterprise in relation to which an investor referred to in paragraph (a) has a 25% or more ownership or control interest

**GDP implicit price deflator index value** has the meaning set out in clause 9

**March 2012 value** has the meaning set out in clause 10

**specified investor** has the meaning set out in clause 5(2)

**threshold for Australian Government investments** has the meaning set out in clause 7

**threshold for Australian non-Government investments** has the meaning set out in clause 4.

*Australian non-Government investments in significant business assets*

**3 Consent not required for certain Australian non-Government investments**

- (1) An overseas investment in significant business assets by an Australian non-Government investor is exempt from the requirement in section 10(1)(b) of the Act for consent if the following conditions are met:
  - (a) the transaction would not be an overseas investment in significant business assets under the Act if the references in section 13(1) of the Act to \$100 million were references to the threshold for Australian non-Government investments; and
  - (b) as a result of the transaction, no overseas person or associate of an overseas person (either alone or together with its associates) acquires rights or interests in securities, or establishes a business, or acquires property, as referred to in section 13(1)(a) to (c) of the Act, other than an Australian non-Government investor.
- (2) For the purposes of subclause (1)(b), a person (**P**) does not acquire rights or interests in securities, or establish a business, or acquire property, as referred to in section 13(1)(a) to (c) of the Act, only because the Australian non-Government investor (**S**) is a subsidiary of P.
- (3) However, subclause (2) does not apply if P is an Australian Government investor, or a foreign Government investor, with a 25% or more ownership or control interest in S.

#### 4 Threshold for Australian non-Government investments

- (1) The threshold for Australian non-Government investments is—
  - (a) \$477 million until the close of 31 December 2013;
  - (b) in each subsequent year beginning on 1 January, the greater of—
    - (i) a new threshold calculated in accordance with subclause (2); and
    - (ii) the previous year's threshold.
- (2) The new threshold for the purposes of subclause (1)(b)(i) must be calculated using the following formula (and rounded to the nearest \$1 million):

$$\frac{\$477 \text{ million} \times \text{GDP implicit price deflator index value}}{\text{March 2012 value}}$$

#### 5 Meaning of Australian non-Government investor

- (1) In this schedule, **Australian non-Government investor** means an investor that acquires rights or interests in securities, or establishes a business, or acquires property, as referred to in section 13(1)(a) to (c) of the Act, as a result of an overseas investment and that—
  - (a) is—
    - (i) an Australian individual; or
    - (ii) an Australian entity or branch—
      - (A) that carries on substantive business operations in Australia; or
      - (B) in relation to which 1 or more specified investors, directly or indirectly, have a more than 75% ownership or control interest; and
  - (b) is not an Australian Government investor or a foreign Government investor.
- (2) In this clause, **specified investor** means 1 or more of the following:
  - (a) 1 or more Australian individuals;
  - (b) 1 or more individuals who are New Zealand citizens or who are ordinarily resident in New Zealand.
- (3) In this clause, a person (A) has a more than 75% ownership or control interest in another person (B) if A has—
  - (a) a beneficial entitlement to, or a beneficial interest in, more than 75% of B's securities; or
  - (b) the power to control the composition of more than 75% of the governing body of B; or
  - (c) the right to exercise or control the exercise of more than 75% of the voting power at a meeting of B.

- (4) Despite subclause (1), a person (**C**) is not an Australian non-Government investor if C, in relation to the overseas investment,—
- (a) is an agent, trustee, or representative of an overseas person that is not an Australian non-Government investor (**D**); or
  - (b) acts in any way on behalf of D; or
  - (c) is subject to D's direction, control, or influence.

*Australian Government investments in significant business assets*

**6 Consent not required for certain Australian Government investments**

- (1) An overseas investment in significant business assets by an Australian Government investor is exempt from the requirement in section 10(1)(b) of the Act for consent if the following conditions are met:
- (a) the transaction would not be an overseas investment in significant business assets under the Act if the references in section 13(1) of the Act to \$100 million were references to the threshold for Australian Government investments; and
  - (b) as a result of the transaction, no overseas person or associate of an overseas person (either alone or together with its associates) acquires rights or interests in securities, or establishes a business, or acquires property, as referred to in section 13(1)(a) to (c) of the Act, other than an Australian investor.
- (2) For the purposes of subclause (1)(b), a person (**P**) does not acquire rights or interests in securities, or establish a business, or acquire property, as referred to in section 13(1)(a) to (c) of the Act, only because the Australian Government investor (**S**) is a subsidiary of P.
- (3) However, subclause (2) does not apply if P is a foreign Government investor with a 25% or more ownership or control interest in S.

**7 Threshold for Australian Government investments**

- (1) The threshold for Australian Government investments is—
- (a) \$100 million until the close of 31 December 2013;
  - (b) in each subsequent year beginning on 1 January, the greater of—
    - (i) a new threshold calculated in accordance with subclause (2); and
    - (ii) the previous year's threshold.
- (2) The new amount for the purposes of subclause (1)(b)(i) must be calculated using the following formula (and rounded to the nearest \$1 million):

$$\frac{\$100 \text{ million} \times \text{GDP implicit price deflator index value}}{\text{March 2012 value}}$$

## **8 Meaning of Australian Government investor**

- (1) In this schedule, **Australian Government investor** means an investor that acquires rights or interests in securities, or establishes a business, or acquires property, as referred to in section 13(1)(a) to (c) of the Act, as a result of an overseas investment and that—
- (a) is—
    - (i) the Australian Government; or
    - (ii) an Australian entity or branch in relation to which the Australian Government has a 25% or more ownership or control interest; and
  - (b) is not a foreign Government investor.
- (2) Despite subclause (1), a person (**C**) is not an Australian Government investor if **C**, in relation to the overseas investment,—
- (a) is an agent, trustee, or representative of an overseas person that is not an Australian Government investor (**D**); or
  - (b) acts in any way on behalf of **D**; or
  - (c) is subject to **D**'s direction, control, or influence.

### *Miscellaneous provisions about indexing*

## **9 Meaning of GDP implicit price deflator index value**

The GDP implicit price deflator index value to be used in the calculations in clauses 4 and 7 is the first value published by Statistics New Zealand in the implicit price deflator table in the quarterly gross domestic product release for the most recent year ended on 31 March.

## **10 Meaning of March 2012 value**

For the purposes of clauses 4(2) and 7(2), **March 2012 value** means the latest version of the GDP implicit price deflator index value for the year ended on 31 March 2012 as published by Statistics New Zealand.

## **11 Publication of thresholds**

The regulator must, each year,—

- (a) publish the threshold for Australian non-Government investments and the threshold for Australian Government investments for that year on an Internet site maintained by or on behalf of the regulator; and
- (b) notify those thresholds in the *Gazette*.

Diane Morcom,  
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 4 August 2005.

**Overseas Investment Amendment Regulations (No 2)  
2006**  
(SR 2006/231)

Anand Satyanand, Governor-General

**Order in Council**

At Wellington this 28th day of August 2006

Present:

His Excellency the Governor-General in Council

Pursuant to section 61 of the Overseas Investment Act 2005, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Finance, makes the following regulations.

**Regulations**

- 1 Title**  
These regulations are the Overseas Investment Amendment Regulations (No 2) 2006.
- 2 Commencement**  
These regulations come into force on the day after the date of their notification in the *Gazette*.
- 3 Principal regulations amended**  
These regulations amend the Overseas Investment Regulations 2005.
- 17 Transitional provision for offers in relation to special land that have not yet been decided**  
Every notice or offer relating to special land given in accordance with regulations 13 to 26 in respect of which there has not been a Crown decision before the commencement of these regulations must be decided by the relevant Ministers as if the notice or offer had been given after the commencement of these regulations.

Diane Morcom,  
Clerk of the Executive Council.

Date of notification in *Gazette*: 31 August 2006.

## **Overseas Investment Amendment Regulations 2008** (SR 2008/48)

Anand Satyanand, Governor-General

### **Order in Council**

At Wellington this 3rd day of March 2008

Present:

His Excellency the Governor-General in Council

Pursuant to section 61(1)(d) of the Overseas Investment Act 2005, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Finance, makes the following regulations.

### **Regulations**

**1 Title**

These regulations are the Overseas Investment Amendment Regulations 2008.

**2 Commencement**

These regulations come into force on 4 March 2008.

**3 Principal regulations amended**

These regulations amend the Overseas Investment Regulations 2005.

**4 Application**

These regulations apply to all applications under the Overseas Investment Act 2005 that have not been decided as at the date on which these regulations come into force, irrespective of whether the application was made before, or is made after, that date.

Rebecca Kitteridge,  
for Clerk of the Executive Council.

Date of notification in *Gazette*: 4 March 2008.

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**Overseas Investment Amendment Regulations (No 2)  
2009**  
(SR 2009/210)

Anand Satyanand, Governor-General

**Order in Council**

At Wellington this 3rd day of August 2009

Present:

His Excellency the Governor-General in Council

Pursuant to section 61 of the Overseas Investment Act 2005, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Finance, makes the following regulations.

**Regulations**

- 1 Title**  
These regulations are the Overseas Investment Amendment Regulations (No 2) 2009.
- 2 Commencement**  
These regulations come into force on the 28th day after the date of their notification in the *Gazette*.
- 3 Principal regulations amended**  
These regulations amend the Overseas Investment Regulations 2005.
- 6 Transitional provision**  
Schedule 2 of the principal regulations (as in force immediately before the commencement of these regulations) continues to apply to applications and requests made before the commencement of these regulations.

Rebecca Kitteridge,  
Clerk of the Executive Council.

Date of notification in *Gazette*: 3 August 2009.

# Overseas Investment Amendment Regulations 2010

(SR 2010/455)

Anand Satyanand, Governor-General

## Order in Council

At Wellington this 13th day of December 2010

Present:

His Excellency the Governor-General in Council

Pursuant to section 61(1)(d) of the Overseas Investment Act 2005, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Finance, makes the following regulations.

## Regulations

**1 Title**

These regulations are the Overseas Investment Amendment Regulations 2010.

**2 Commencement**

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

**3 Principal regulations amended**

These regulations amend the Overseas Investment Regulations 2005.

**4 Application**

These regulations apply to all applications for consent under the Overseas Investment Act 2005 that are received by the regulator after the date on which these regulations come into force.

Rebecca Kitteridge,  
Clerk of the Executive Council.

Date of notification in *Gazette*: 16 December 2010.

## Reprints notes

### 1 *General*

This is a reprint of the Overseas Investment Regulations 2005 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Overseas Investment Amendment Regulations 2016 (LI 2016/101)  
Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150  
Overseas Investment (Australia) Amendment Regulations 2013 (SR 2013/4)  
Insurance (Prudential Supervision) Act 2010 (2010 No 111): section 241(2)  
Overseas Investment Amendment Regulations 2010 (SR 2010/455)  
Overseas Investment Amendment Regulations (No 2) 2009 (SR 2009/210)  
Overseas Investment Amendment Regulations 2009 (SR 2009/162)  
Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69): section 13(2)  
Overseas Investment Amendment Regulations (No 2) 2008 (SR 2008/120)  
Overseas Investment Amendment Regulations 2008 (SR 2008/48)  
Overseas Investment Amendment Regulations (No 2) 2006 (SR 2006/231)  
Overseas Investment Amendment Regulations 2006 (SR 2006/67)