

# **Overseas Investment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The purpose of this Bill is to introduce changes to the way that overseas investment is regulated in New Zealand, recognising that it is a privilege for overseas persons to own sensitive assets in New Zealand. The Bill modifies aspects of the existing overseas investment regime established by the Overseas Investment Act 1973 and the Overseas Investment Regulations 1995.

### **Coverage**

The threshold for screening non-land business assets where the proposed acquisition includes a 25% or more shareholding by an overseas person will be increased from \$50 million to \$100 million.

The current requirement for Ministerial permission for all fishing quota purchases by overseas persons will be retained. However, what transactions require consent will be aligned with the rest of the overseas investment regime. The Bill amends the relevant provisions relating to fishing quota that are in the Fisheries Act 1996.

The regime will screen purchases of all foreshore and seabed land, regardless of the size of the land parcel.

The present coverage of the regime will be retained on purchases by overseas persons of all land of the following types:

- land over 0.2 hectares which adjoins the foreshore;
- land over 0.4 hectares that includes or adjoins any lake (the bed of which exceeds 8 hectares);
- land over 0.4 hectares on specified islands;
- any land on other islands;

- land over 0.4 hectares which includes or adjoins land over 0.4 hectares which is held for conservation purposes under the Conservation Act 1987:
- land over 0.4 hectares which is provided as a reserve, a public park, for recreation purposes, or as an open space, or is proposed for any such purpose:
- land over 0.4 hectares adjoining coastal and lake-front reserves and other margins that make up the Queen's Chain, where the reserves are over 0.4 hectares:
- land over 0.4 hectares adjoining scientific, scenic, historic and nature reserves over 0.4 hectares that are classified under the Reserves Act 1977 and that are administered by the Department of Conservation:
- land over 0.4 hectares that is subject to any heritage order, or a requirement for a heritage order, under the Resource Management Act 1993 or by the Historic Places Trust under the Historic Places Act 1993:
- land over 0.4 hectares adjoining land over 0.4 hectares that is subject to any heritage order, or a requirement for a heritage order, under the Resource Management Act 1993 or by the Historic Places Trust under the Historic Places Act 1993:
- land over 0.4 hectares that is a historic place, historic area, wahi tapu, or wahi tapu area registered or for which there is an application for registration under the Historic Places Act 1993:
- land over 0.4 hectares adjoining land over 0.4 hectares that is a historic place, historic area, wahi tapu, or wahi tapu area registered or for which there is an application for registration under the Historic Places Act 1993:
- land over 0.4 hectares adjoining any regional park under the Local Government Act 1974, or over 0.4 hectares adjoining any of the parks or reserves listed by the regulator under the Bill:
- any land over 5 hectares that is not urban land.

Purchase of land by overseas persons with an unimproved value of more than \$10 million will no longer require consent where the land is not screened for other reasons. The removal of this requirement is only expected to affect purchases of land in the main centre CBDs.

Land adjoining some non-sensitive reserves, for example drainage and hospital reserves, will be removed from coverage.

### **Criteria for approval**

The criteria are the factors that may be taken into account in deciding whether to approve an application.

All overseas investment subject to the screening regime will continue to be required to meet the investor test. The investor test requires the applicant to show business acumen, financial commitment, and good character. Further, it requires that they do not contravene section 7(1) of the Immigration Act 1987. Section 7(1) deals with criminal records, deportees, and terrorist activities.

Fishing quota purchasers will be required to meet the same economic development test as at present.

Current legislation focuses on the economic development criterion for land purchasers. Under this Bill, the statutory criteria for land investments are clarified and expanded. The proposed residency of the purchaser will be taken into account in considering applications. Land purchasers who do not intend to reside in New Zealand will be required to submit a management plan taking account of any of economic development, natural heritage, historic heritage features, or walking access, as appropriate. The weighting given to each of these features will be property-specific, and be determined by Ministers. In cases of purchase of non-urban land over 5 hectares, purchasers will be required to show substantial and identifiable benefit, reflecting these criteria.

Whether any parcel of land that is foreshore or seabed, or partly foreshore or seabed, has been offered for sale to the Crown will also be taken into account in the criteria for land investments. The Bill provides for regulations for prescribing what is required to satisfy this criteria, for example, the maximum period for which the offer to the Crown must be open and the terms and conditions on which the land must be offered to the Crown.

The current advertising requirements for farm land will be maintained. That is, if the investment includes farm land, the land must have been offered for sale or acquisition on the open market to persons who are not overseas persons to meet the criteria.

The Bill provides that reasonable compliance with plans submitted by an overseas investor in support of their purchase will be made conditions of consent.

**Changes to Fisheries Act 1996 overseas investment provisions**

The Bill makes no changes to the existing policy that investments in fishing quota by overseas persons are not allowed unless consent is granted.

There are 2 key changes to the provisions in the Fisheries Act 1996 covering foreign investment which arise from efforts to align the provisions of the Fisheries Act 1996 with those of the Bill.

Currently, when an overseas person acquires 25% or more of shares in a quota-owning company, the company already holding the quota is required to obtain consent. Under the Bill, the overseas person would be required to obtain the consent. This change moves the process for acquiring consent for fishing quota on to a similar basis as that for land.

The change in who must obtain consent for investing in fishing quota has resulted in a change to the application of the forfeiture provisions in the Fisheries Act 1996. Companies that own fishing quota without consent will continue to be subject to the forfeiture of quota under that Act. But if an overseas person buys shares in a quota-owning company without consent, the quota already held by the company will not be subject to these forfeiture provisions. Instead, the overseas person will be subject to the other enforcement powers under the Bill, could be required to dispose of their shares, and could be fined.

**Monitoring and enforcement**

The Bill provides that the maximum level of fines be increased from \$30,000 for individuals, or \$100,000 for companies, to \$300,000 for both companies and individuals (except for lesser offences, eg, failure to comply with notices).

The Bill provides for civil penalties of—

- \$300,000; or
- any gain by the person in breach in relation to the property involved in the breach; or
- the cost of remedying the breach of condition; or
- the loss suffered due to the breach of condition.

The existing power of the courts to order the disposal of property where an overseas person is in breach of the Overseas Investment Act 1973 is retained by the Bill with the following changes:

- the 2-year time limit is removed:

- the court is authorised to control the sales process.

The Bill also includes the following new provisions to strengthen the enforcement regime:

- the courts will be able to order that a mortgage be registered against any land of a consent holder for the purpose of securing any amount owed to the Government or any other person under the conditions of a consent, or payment of a fine or penalty including interest on any such amount:
- the regulator, after obtaining a warrant from a Judge, will be able to search premises and seize property for the purpose of obtaining evidence of an offence against the Bill:
- the regulator will no longer be required to prove that there was an “intent to deceive” on the part of an overseas person who has provided false information or made false or misleading statements; rather the regulator will only need to prove that the person knowingly or recklessly provided false information or made false or misleading statements.

### **Administrative arrangements**

The Overseas Investment Commission will be disestablished and its regulatory functions performed by a dedicated unit within Land Information New Zealand.

### **Clause by clause analysis**

*Clause 1* states the Title.

*Clause 2* relates to the commencement of the Bill. The Bill will come into force on a date to be appointed by the Governor-General by Order in Council, in order to allow time for making regulations that are necessary under the Bill.

### **Part 1**

#### **Preliminary provisions**

*Clause 3* contains the purpose of the Bill. The purpose is to acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets by requiring overseas investments in those assets, before being made, to meet criteria for consent, and by imposing conditions on those overseas investments.

*Clause 4* contains an overview of the Bill. The key parts of the Bill are—

- the provisions that determine which transactions require consent and when (*subpart 1 of Part 2*):
- the criteria for consent (*subpart 1 of Part 2*):
- the procedures for obtaining consent and imposing conditions of consent (*subpart 2 of Part 2*):
- the role and monitoring powers of the regulator (*subparts 3 and 4 of Part 2*):
- how breaches of the requirement for consent and of conditions of consent, and other breaches of the Bill and regulations made under it, are enforced (*subpart 5 of Part 2*).

The Bill replaces the Overseas Investment Act 1973 (the **1973 Act**) and the Overseas Investment Regulations 1995 (the **1995 Regulations**).

*Clause 5* states that *sections 56 to 58B* of the Fisheries Act 1996 (which contain the overseas investment regime in relation to fishing quota) are part of the Bill. As a consequence, enforcement provisions and other provisions of the Bill will apply to those sections of the Fisheries Act 1996.

*Clauses 6 to 8* relate to the interpretation of the Bill. Two key definitions are **overseas person** and **associate**.

A transaction requires consent under the Bill only if it involves an investment by an overseas person. Who is an overseas person is stated in *clause 7*. In brief,—

- an individual is an overseas person if he or she is neither a New Zealand citizen nor ordinarily resident in New Zealand. The term **ordinarily resident in New Zealand** is defined in *clause 6(2) and (3)*:
- companies are overseas persons if they are either overseas-based themselves (by being incorporated overseas) or if they are 25% or more owned or controlled by other overseas persons. How this ownership or control is determined is set out in *clause 7(2)(b) and (c)*:
- unincorporated bodies, trusts, and unit trusts are overseas persons if they are 25% or more owned or controlled by other overseas persons (for example, if overseas persons are entitled to 25% of their property or overseas persons make up 25% of their membership or governing body). How this ownership or control is determined (which differs for different types of entities) is set out in *clause 7(2)(d) to (f)*.

An associate of an overseas person is also an overseas person. Who is an associate is set out in *clause 8*. The purpose of this definition is to ensure the Bill applies when an overseas person acts through another person or jointly with another overseas person.

## Part 2

### Consent and conditions regime

Subpart 1—When consent required and criteria for consent  
*Subpart 1* determines which transactions will require consent. It also states the criteria for consent.

The 1995 Regulations previously stated which transactions required consent under those regulations and the 1973 Act contained the criteria. This subpart essentially reenacts those requirements, though with some modifications. The intention is to—

- shift the main requirements as to which transactions require consent from regulations into the Bill (the types of investments will be in the Bill, but certain thresholds, if applicable, will be in regulations); and
- amend those requirements to focus more on assets where overseas ownership or control has particularly sensitivity for New Zealanders; and
- amend the criteria for consent to land investments (for example, to include walking access and whether foreshore or seabed land has been offered to the Crown).

#### *When consent required*

*Clauses 10 and 11* state the following core rules:

- a transaction requires consent under this Bill if it will result in an overseas investment in sensitive land, an overseas investment in significant business assets, or an overseas investment in fishing quota (the Fisheries Act 1996 covers what is an overseas investment in fishing quota and the criteria for consent to those investments):
- consent must be obtained before a transaction takes effect.

*Overseas investments in sensitive land (clause 12)*: investments in land are covered if the overseas person acquires (directly or indirectly through a company or other person) an interest in land if—

- the land is sensitive under *Schedule 1* (for example, is part of the foreshore or seabed or is non-urban land over the area threshold); and
- the interest is a significant type of interest.

Indirect investments in land (that is, investments in another person (A) that owns an interest in land of that kind) require consent if, as a result of the investment,—

- the overseas person will have a 25% or more ownership or control interest in A (as defined in *clause 6(4)*), either alone or together with its associates; or
- the overseas person will have an increase in an existing 25% or more ownership or control interest in A, either alone or together with its associates; or
- A will become an overseas person.

An overseas person will have a 25% or more ownership or control interest under *clause 6(4)* in another person (A) if the overseas person has—

- a beneficial entitlement to or interest in 25% or more of A's securities (**securities** includes shares in a company, units in a unit trust, interests in a partnership or joint venture, rights to property of A, including on liquidation, and rights of control over A's property):
- the power to control the composition of 25% or more of A's board or other governing body:
- the right to exercise, or control the exercise of, 25% or more of the voting power at a meeting of A.

Land is sensitive under *Schedule 1* if the land acquired is within one of the listed types of land or adjoins land that is in one of the listed categories, and is over any area threshold specified in regulations for that category. The types of land that are covered have been changed so that—

- land is no longer covered by virtue of its value alone. Instead, it must come within one of the sensitive land categories listed in *Schedule 1*:
- land adjoining reserves, public parks, recreational land, and open spaces designated under regional or district plans will no longer be covered in all cases. Instead, land will be covered if it adjoins the Queen's Chain, adjoins reserves under the Reserves Act 1977 that are administered by the Department of Conservation and exceed 0.4 hectares, adjoins regional parks,

or adjoins specific reserves or parks on a list kept by the regulator:

- seabed land is now expressly covered;
- terminology has been updated and corrected (for example, the reference to private open spaces has been amended to open spaces).

There are also the following changes to the coverage of land investments:

- the decisions on overseas investments in sensitive land that is Māori freehold land will now be made under the Bill by the relevant Ministers, rather than by the Māori Land Court (*see* the amendment to Te Ture Whenua Maori Act 1993 in *sub-part 7*):
- previously leases and other interests in land (other than freehold estates in land) were exempt from the consent requirement only if they were both for a term of 3 years or less and the consideration involved did not exceed \$10 million. Under the Bill, interests in land (other than freehold interests) require consent only if they are for a term of 3 years or more, regardless of their value.

Although *what* land is sensitive will be stated by the Bill, an investment in that land will be covered only if the land involved is over the area thresholds prescribed by regulations. The only change proposed from the current area thresholds in the 1973 Act and 1995 Regulations is to remove the area threshold for foreshore or seabed land (the area threshold for land adjoining the foreshore will remain at 0.2 hectares).

The kinds of interests in land that are covered are essentially unchanged. Exemptions for interests that do not confer true ownership or control rights are contained in *clause 13*. Exemptions may also be made by regulations.

*Overseas investments in significant business assets (clause 14)*: investments in non-land businesses are covered if the overseas person makes any of the following investments and the investment involved is over the value thresholds prescribed by regulations:

- acquires securities resulting in a 25% or more ownership or control interest (*see* the analysis of this term in relation to *clause 12* above), or an increase in an existing 25% or more ownership or control interest, in a company or other person, either alone or together with its associates; or
- establishes a business in New Zealand; or

- acquires business assets.

It is proposed to increase the value thresholds from \$50 million in the 1995 Regulations to \$100 million. However, when business investments will require consent is otherwise unchanged in substance from the position under the 1995 Regulations.

Exemptions from the consent requirement will be contained in regulations. It is intended that the following types of transactions will continue to be exempted (currently they are exempted under regulations 6 and 9 of the 1995 Regulations): company group reconstructions or reorganisations, certain buybacks or redemptions of shares, amalgamations, changes in trustees, security arrangements, life insurance (where the policy holders are 75% New Zealanders and the funds are ring-fenced in New Zealand), superannuation (where the members are 75% New Zealanders), relationship property, and rights to transmit electricity and other utilities. However, some of the existing exemptions in the 1995 Regulations are so significant that they have been shifted into the Bill and now limit the initial coverage of the Bill (for example, the exemption for urban land).

#### *Criteria for consent*

*Clauses 15 and 16* deal with the approach, and other matters relating, to the criteria for consent. The relevant Minister or Ministers (who differ according to the category of overseas investment)—

- must have regard to only the criteria that they are permitted to consider by the Bill (for a transaction that is in more than 1 category, the Ministers must then consider the criteria for all relevant categories); and
- must grant consent if satisfied that all the criteria in *clause 17* (for land investments) and in *clause 19* (for business investments) are met; and
- must refuse consent if not so satisfied.

The criteria for consent differ according to the category of overseas investment.

The criteria for overseas investments in sensitive land are stated in *clause 17*—

- the criteria in *clause 17(a) to (d)* are investor criteria (for example, the relevant individual overseas person must demonstrate they are of good character). The investor criteria are unchanged in substance from those in the 1973 Act

(although which persons must meet the criteria has been clarified and slightly amended):

- the criteria in *clause 17(e)* are alternatives. Either all the relevant individual overseas persons must intend to reside in New Zealand indefinitely or, if this criterion is not met, any 1 or more of the criteria listed in *clause 18* (as determined by the relevant Ministers) must be met. The *clause 18* criteria focus on assessing the benefit of the investment and replace the previous national interest test. In relation to these criteria for assessing the benefit of the investment,—
  - the relevant Ministers have the discretion as to which of the listed criteria to apply and how to weight them:
  - the listed criteria include the economic development criteria previously in the national interest test, but also new criteria relating to natural and historic heritage, walking access proposals, and whether foreshore or seabed has been offered to the Crown. The requirements for offering foreshore and seabed to the Crown will be stated in regulations:
  - the relevant Ministers may also take other criteria into account at this stage, but only if they are prescribed by regulations:
  - there is no longer a different national interest test for farm land. However, non-urban land over the area threshold must result in substantial and identifiable benefits under these criteria (*clause 17(f)*):
- there is an additional criteria for farm land in *clause 17(g)*. Farm land must still comply with the requirements for offering it on the open market to persons who are not overseas persons in accordance with procedure set out in regulations. The open market offer procedures are currently contained in Part 3A of the 1995 Regulations, and will be continued under new regulations. There are exemptions from this requirement under *clause 21* for interests with terms of less than 21 years and other individual or class exemptions may continue to be made by the relevant Ministers (class exemptions must be by notice in the *Gazette*).

*Clause 19* contains the criteria for business investments, which are the same as the investor criteria for land investments. The criteria are unchanged in substance from those in the 1973 Act, although who must meet the criteria has been clarified and slightly amended.

*Clause 20* clarifies that persons who have been exempted by special direction from the list of persons who are not eligible to obtain a permit or an exemption under the Immigration Act 1987 do not fail to meet the investor criterion relating to section 7(1) of that Act.

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

*Clause 22* says that an application for consent (ie, consent for an overseas investment in a sensitive or significant New Zealand asset) must be made in accordance with the Bill and regulations.

*Clause 23* requires each overseas person who makes the investment to apply for consent, and, in limited cases, each person who is or may be a party to the transaction. Other parties to the investment and associates of an overseas person may also be required to join in the application for consent. This is because some enforcement provisions take effect against consent holders.

*Clause 24* sets out the documentary and other administrative requirements for making an application for consent.

*Clause 25* stipulates that it is the Minister, or the Minister of Fisheries, or the Minister for Land Information, or a combination of them, who makes the decision on an application for consent. Which of them decides the application depends upon the nature of the investment. However, the power to decide an application can be delegated.

*Clause 26* sets out the possible outcomes of an application for consent.

*Clause 27* provides for the revocation of a consent obtained by fraud, but the consent must be revoked before the transaction for which the consent has been obtained has taken effect. After that point, there are other remedies available, such as cancellation (*clause 30*) and disposal of property (*clause 48*).

*Clause 28* states that a consent may be varied by the Minister or Ministers who have granted the consent, but only with the agreement of the consent holder. This allows amendment of the consent because, for example, it contains a mistake or some unforeseen eventuality has arisen. Similarly, conditions of a consent may be added to or varied with the agreement of the consent holder.

*Clause 29* provides for 2 mandatory conditions that are read into every consent. Every consent is conditional upon the correctness of the information provided by the applicant in support of the consent

application, and upon compliance with representations and plans made or submitted in connection with the application.

*Clause 30* provides for the cancellation of a transaction that is given effect in contravention of the requirement of consent under the Bill. The transaction may be cancelled by a party to the transaction who was not required to obtain consent or by the Court, on the application of the regulator. The effect of *clause 30* is to preserve the validity of the transaction itself until cancellation. This is necessary for alignment with certain remedies under the Bill (such as disposal of property and forfeiture of an interest in fishing quota) which presuppose that the transaction is effective.

### Subpart 3—Administration

*Clause 31* makes provision for the regulator, who administers and regulates the regime set up by the Bill for screening overseas investments. The regulator is the chief executive of the regulating department. The regulating department is the department that is designated by a Ministerial notice.

*Clause 32* sets out the functions of the regulator.

*Clause 33* provides for the delegation by Ministers to the regulator or any other person of their powers or functions under the Bill or regulations. Ministers may delegate the power to delegate.

*Clause 34* states the rules that apply to any delegation under the Bill or regulations. The rules are standard rules found in other legislation, for example, sections 28 and 41 of the State Sector Act 1988, and are carried over with some minor modifications from the 1973 Act.

*Clause 35* provides for Ministerial direction to the regulator by way of a Ministerial directive letter. The regulator must comply with the letter, even if it is in respect of a power that has already been delegated to the regulator. The scope of the letter is broad. The letter may direct the regulator, among other things, about any general or specific matter relating to the regulator's functions, powers, or duties.

*Clause 36* requires that each Ministerial directive letter must be published in the *Gazette* and presented to the House of Representatives.

*Clause 37* empowers the regulator to issue guidelines, primarily for the benefit of intending applicants.

*Clause 38* requires the regulator to keep and publish a list of sensitive reserves and public parks (investments in land adjoining the listed reserves and parks require consent).

#### Subpart 4—Monitoring

*Clause 39* gives the regulator the power to require a consent holder to provide information or documents for the purpose of monitoring compliance with a condition of a consent.

*Clause 40* enables the regulator to require any person (which may include a consent holder) to provide the regulator with information for statistical purposes or for purposes of monitoring enforcement of a condition. Unlike *clause 39*, the regulator has no power under this clause to require that documents be provided.

*Clause 41* provides that the regulator may require a consent holder to provide the regulator with a statutory declaration verifying compliance with conditions of the relevant consent, reasons for any breach, and steps to be taken to remedy any breach.

*Clause 42* provides that the regulator may require a person to provide information and documents if the regulator has reason to suspect that an offence has been committed under the Bill.

#### Subpart 5—Enforcement

##### *Offences*

*Clause 43* provides that a person who is required to apply for consent to an overseas transaction commits an offence if that person gives effect to the transaction without the requisite consent.

*Clause 44* provides that a person commits an offence who knowingly or recklessly takes a step for the purpose of, or having the effect of, defeating, evading, or circumventing the operation of the Bill.

*Clause 45* provides that a person commits an offence by resisting, obstructing, or deceiving any person who is exercising or attempting to exercise a power or function under the Bill or regulations.

*Clause 46* provides that a person commits an offence by failing, without lawful excuse, to comply with a notice, requirement, or condition given or imposed under the Bill or regulations.

*Clause 47* provides for 2 separate offences. In each the mental element that must be proven is knowledge or recklessness. The first offence, in *clause 47(1)*, relates to knowingly or recklessly making a

false or misleading statement or a material omission in, broadly, various forms of information, documents, and other communications. The second offence occurs, in *clause 47(2)*, if a person knowingly or recklessly provides the regulator with a document that is false or misleading. In that case, the person charged need not be the author of the document.

*Clause 48* empowers the Court to dispose of property. The triggering event for a disposal order is that a person has, in relation to the acquisition of the property, contravened the Bill, committed an offence under the Bill, failed to comply with a notice under *clause 39* or *clause 40* or *clause 41* or *clause 42*, or failed to comply with a condition of consent or an exemption. The purpose of the provision is not penal, but to force the divestment of property in foreign ownership if a triggering event has occurred.

*Clause 49* provides that the Court may order a person to pay a civil penalty. The conduct that may trigger a civil penalty is that same as for the disposal of property (see *clause 48*). The Court may impose a penalty that is not more than \$300,000 except that the Court may impose a penalty that exceeds that amount in 3 instances. The Court may order a person (A) to pay the amount of any quantifiable gain by A in relation to the property to which the consent relates or for which a consent should have been obtained. In the case of a breach of a condition of consent, the Court may impose a penalty in the amount of the cost of remedying the breach or the loss suffered by a person in relation to the breach of condition. A person cannot be liable under this clause as well as under any of *clauses 43 to 47* (the offence provisions) for the same conduct. The standard of proof for a civil remedy is the balance of probabilities.

*Clause 50* empowers the Court to order the registration of a mortgage over land to which a consent relates. The Court may order registration of a mortgage to secure payment of money as a condition of the consent, or of a fine or civil penalty imposed under this Bill, or interest that has been ordered to be paid under *clause 51*.

*Clause 51* states that the Court may order interest to be paid in certain circumstances.

*Clause 52* states that the Court may make restraint or compliance orders against a consent holder restraining a breach of a consent condition or requiring compliance with a consent condition.

*Administrative penalties*

*Clause 53* empowers the regulator to impose an administrative penalty for late filing of documents. The maximum amount of the penalty is set by regulation.

*Address for service*

*Clause 54* provides that every consent holder must have an address for service in New Zealand that the consent holder must notify to the regulator. Service of a document on a consent holder required by the Bill or for the purpose of a proceeding under the Bill is deemed to have been made if the document has been sent to the consent holder's last notified address.

*Clause 55* provides that the non-appearance of the consent holder is not a ground for the Court refusing to make an order under *clauses 48 to 52* if the Court is satisfied that the proceeding has been sent to the consent holder's address for service.

*Search and seizure*

*Clauses 56 to 60* are standard search and seizure provisions for the issue and execution of a search warrant if there are reasonable grounds for believing that an offence under the Bill has been, or is being, committed at the place or thing to be searched, or there is evidence of an offence under the Bill at that place or thing.

## Subpart 6—Miscellaneous provisions

*Clause 61* contains regulation-making powers.

*Clause 62* provides, in effect, that land acquired by the Crown as a consequence of an offer of foreshore or seabed to the Crown under the criteria for consent is not a subdivision under the Resource Management Act 1991.

Subpart 7—Transitional provisions and amendments to  
other enactments*Dissolution of Commission*

*Clause 63* dissolves the Overseas Investment Commission.

*Clause 64* provides for the vesting of the Commission's rights assets, liabilities, and debts in the Crown.

*Clause 65* excludes payment or other compensation to any person for loss of any office established by or under the 1973 Act.

*Clauses 66 to 69* make provision for the employment consequences of the dissolution of the Commission for its staff, including the right of transfer to LINZ (*clause 66*), preservation of terms and conditions of employment for a staff member transferring to LINZ (*clause 67*), continuity of employment (*clause 68*), and exclusion of compensation for a technical redundancy (*clause 69*).

*Clause 70* makes provision for the Commission's final report of its operations.

*Clause 71* requires references to the Commission in enactments and other documents in force before the commencement of the Bill to be read as if they were references to the regulator.

*Clause 72* in effect substitutes the Crown for the Commission as a party in any proceedings to which the Commission was a party at the time when the Commission is dissolved.

#### *Amendments to Fisheries Act 1996*

*Clause 73* amends the Fisheries Act 1996 which currently requires consent for overseas acquisitions and ownership of fishing quota. *New sections 56 to 58B* are inserted to better align the Fisheries Act requirements with the rest of the overseas investment regime in the Bill.

*New section 56* states the purpose of the overseas investment fishing provisions (which is essentially the same as the purpose of the Bill).

*New section 57* provides an overview of which parts of the regime are in the Fisheries Act 1996 and which are in the Bill. In essence, the Fisheries Act states when consent is required for overseas fishing investments and the criteria for consent, and also contains specific cancellation, forfeiture, and forced disposal remedies for breaches of these requirements. However, the procedure for obtaining consent and the rest of the enforcement and other provisions are contained in the Bill.

*New section 57A* relates to the interpretation of the overseas investment fishing provisions.

*New section 57B* states that consent is required for overseas investments in fishing quota. Exemptions will be contained in regulations made under the Bill (rather than in the Fisheries Act 1996 as at present).

*New section 57C* requires consent to be obtained before the transaction takes effect.

What are overseas investments in fishing quota is stated in *new section 57D*. This section changes when consent is required for fishing investments so that it is consistent with the other categories of overseas investments. At present consent is required for an overseas person to acquire *or own* fishing quota, but consent is only required if the person directly acquires or owns that quota. Broadly speaking, the key effects of aligning these provisions with the Bill are that—

- consent will now be required for an overseas person *acquiring* an interest in a company or other person that owns the fishing quota:
- consent will not be required for a New Zealand company *continuing to own* its existing fishing quota if it becomes an overseas person. For example, if an overseas person acquires a 25% or more ownership or control interest in the company, the company is not required to get consent, but the overseas person must get consent to acquiring the interest in the company:
- consent will now be required if overseas person A sells to overseas person B a sufficient interest in a quota-owning company. Currently this transaction does not require consent.

Accordingly, an overseas investment in fishing quota occurs if an overseas person acquires an interest in fishing quota (which is provisional catch history, quota, or annual catch entitlement) or acquires securities of a company or another person that owns fishing quota. The new consent requirement for acquiring an interest in a quota-owning company is triggered if—

- the overseas person will have, as a result of the transaction, a 25% or more ownership or control interest in the quota-owning company (either alone or together with its associates); or
- the overseas person will increase, as a result of the transaction, an existing 25% or more ownership or control interest in the quota-owning company (either alone or together with its associates); or
- the overseas person acquires only a small interest in the quota-owning company, but there are other overseas owners, so that the company will, as a result of the transaction, become an overseas person.

*New sections 57E and 57F* state the approach to be taken to the criteria for consent (which is the same as the approach to be taken under the Bill).

*New section 57G* contains the criteria for consent for fishing investments. They have been restructured and redrafted for clarity, but are unchanged in substance. In addition to an investor test, the investment must meet a national interest test measured by reference to economic development criteria (*new section 57H*). Ministers may however continue to take other prescribed criteria, or any other criteria they think fit, into account under the national interest test. For consistency with the rest of the overseas investment regime, *subclause (2)* clarifies that persons who have been exempted by special direction from the list of persons who are not eligible to obtain a permit or an exemption under the Immigration Act 1987 do not fail to meet the investor criterion relating to section 7(1) of that Act.

*New section 57I* provides that the regulator administers the overseas investment fishing provisions except for powers relating to cancellation and forfeiture under *new sections 57J to 58B*.

*New section 57J* provides that the chief executive under the Fisheries Act 1996 must cancel allocated provisional catch history if the requisite consent had not been obtained. This requirement was previously contained in section 56(6).

*New sections 58 to 58B* replace section 58. The provisions of existing section 58 are substantially re-enacted with drafting changes in accordance with the modern style of drafting. However the forfeiture and forced disposal remedies will no longer apply when an overseas person acquires securities of a quota-owning company without consent (as under the new provisions the breach in this case is the acquisition of shares, not the continued owning of quota by the company) but only to direct acquisitions of quota without consent.

#### *Amendment to Te Ture Whenua Maori Act 1993*

*Clause 74* amends Te Ture Whenua Maori Act 1993. The effect of the amendment is to shift the consent decision for overseas investments in sensitive land that is Māori freehold land from the Māori Land Court to the relevant Ministers under the Bill.

*Consequential amendments*

*Clause 75* provides for consequential amendments to other Acts and regulations. The amendments are set out in Schedule 2.

*Transitional provisions*

*Clause 76* repeals the 1973 Act and revokes the 1995 Regulations and the Overseas Investment Exemption Notice 2001.

*Clause 77* provides that the 1973 Act, 1995 Regulations, sections 56 to 58 of the Fisheries Act 1996, and section 152(3) of Te Ture Whenua Maori Act 1993 (as in force immediately before the repeals and amendments made by the Bill) continue in force for various purposes. These purposes are investigating any offences or breaches under the previous regime, considering and determining applications made under the previous regime, and completing any proceedings commenced under the previous regime.

*Clause 78* saves existing consents and exemptions granted under the 1995 Regulations, and requires them to be treated as consents and exemptions granted under the Bill for monitoring and enforcement purposes. However, the previous provisions for amending and revoking those consents and exemptions continue to apply.

*Clause 79* saves existing permissions granted under the Fisheries Act 1983 and the Fisheries Act 1996, and requires them to be treated as consents granted under the Bill. However, the previous provisions for amending and revoking those permissions continue to apply.

*Schedule 1* sets out what land is sensitive under the Bill (*see* the analysis of *clause 12*).

*Schedule 2* contains consequential amendments.

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*Hon Dr Michael Cullen*

# Overseas Investment Bill

## Government Bill

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## Overseas Investment

<p>40 Regulator may require any person to provide information for statistical or monitoring purposes</p> <p>41 Regulator may require consent holder to provide statutory declaration as to compliance</p> <p>42 Regulator may require information and documents for purpose of detecting offences</p> <p style="padding-left: 40px;">Subpart 5—Enforcement</p> <p style="padding-left: 80px;"><i>Offences</i></p> <p>43 Offence of giving effect to transaction without consent</p> <p>44 Offence of defeating, evading, or circumventing operation of Act</p> <p>45 Offence of resisting, obstructing, or deceiving</p> <p>46 Offence of failing to comply with notice, requirement, or condition</p> <p>47 Offence of false or misleading statement or omission</p> <p style="padding-left: 40px;"><i>Powers of Court</i></p> <p>48 Court may order disposal of property</p> <p>49 Court may order person in breach to pay civil penalty</p> <p>50 Court may order mortgage to be registered over land</p> <p>51 Court may order interest to be paid</p> <p>52 Court may order consent holder to comply with condition of consent or exemption</p> <p style="padding-left: 40px;"><i>Administrative penalties</i></p> <p>53 Administrative penalties for late filing</p> <p style="padding-left: 40px;"><i>Address for service</i></p> <p>54 Address for service</p> <p>55 Non-appearance not ground for Court to refuse order under Act if consent holder served at address for service</p> <p style="padding-left: 40px;"><i>Search and seizure</i></p> <p>56 Search warrant</p> <p>57 Form and content of search warrant</p> <p>58 Powers conferred by search warrant</p> <p>59 Requirements when executing search warrant</p> <p>60 Disposal of things seized under search warrant</p> <p style="padding-left: 40px;">Subpart 6—Miscellaneous provisions</p> <p>61 Regulations</p>	<p>62 Foreshore or seabed acquired by the Crown under criteria is not subdivision</p> <p style="padding-left: 20px;">Subpart 7—Transitional provisions and amendments to other enactments</p> <p style="padding-left: 40px;"><i>Dissolution of Commission</i></p> <p>63 Commission dissolved</p> <p>64 Assets and liabilities vest in Crown</p> <p>65 No compensation for loss of office</p> <p>66 Transfer to LINZ</p> <p>67 Transferring employee must be employed in equivalent employment</p> <p>68 Continuity of employment</p> <p>69 No compensation for technical redundancy</p> <p>70 Final report</p> <p>71 References to Commission</p> <p>72 Proceedings of Commission</p> <p style="padding-left: 20px;"><i>Amendments to Fisheries Act 1996</i></p> <p>73 New sections 56 to 58B substituted in Fisheries Act 1996</p> <p style="padding-left: 40px;"><i>Overseas investment in and aggregation of quota</i></p> <p>56 Purpose of overseas investment fishing provisions</p> <p>57 Overview of overseas investment fishing provisions</p> <p>57A Interpretation of overseas investment fishing provisions</p> <p>57B Consent required for overseas investments in fishing quota</p> <p>57C When consent is required</p> <p>57D What are overseas investments in fishing quota</p> <p>57E Approach to criteria for consent</p> <p>57F Other matters relating to applying criteria for consent</p> <p>57G Criteria for overseas investments in fishing quota</p> <p>57H Determining whether or not overseas investment in fishing quota is in national interest</p> <p>57I Who administers overseas investment fishing provisions</p> <p>57J No person in breach becomes entitled to provisional catch history</p> <p>58 Interest in fishing quota that is overseas investment in fishing quota to be forfeit</p>
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<p>58A Powers of Court on application for declaration under section 58</p> <p>58B Interest in fishing quota forfeited under section 58 or section 58A must be dealt with in accordance with section 62</p> <p><i>Amendment to Te Ture Whenua Maori Act 1993</i></p> <p>74 Amendment to Te Ture Whenua Maori Act 1993</p> <p><i>Consequential amendments</i></p> <p>75 Consequential amendments</p> <p><i>Transitional provisions</i></p> <p>76 Repeal and revocations</p>	<p>77 Transitional provisions for acts done or begun under previous overseas investment regime</p> <p>78 Transitional provision for existing consents, exemptions, and conditions under 1973 Act and Regulations</p> <p>79 Transitional provision for existing permissions, etc, under Fisheries Act 1996</p>
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**Schedule 1**  
**Sensitive land**

**Schedule 2**  
**Enactments amended**

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Overseas Investment Act **2004**.

**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 these matters are stated in the Fisheries Act 1996 for overseas investments in fishing quota):
  - (ii) **subpart 2** sets out the procedure for obtaining consent and imposing conditions of consent:
  - (iii) **subpart 3** describes the role of the person (the regulator) who administers the regime:
  - (iv) **subpart 4** confers monitoring powers on the regulator:
  - (v) **subpart 5** deals with aspects of enforcement, including offences under this Act, penalties, and the Court's powers to make orders for effective enforcement:
  - (vi) **subpart 6** relates to regulations and other miscellaneous matters:
  - (vii) **subpart 7** contains transitional provisions (mostly relating to the dissolution of the Overseas Investment Commission and the employment consequences for its employees) and amendments to other enactments.
- (2) This Act replaces the Overseas Investment Act 1973 and the Overseas Investment Regulations 1995.
- (3) This section is a guide only to the general scheme and effect of this Act.

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

- (1) This Act incorporates **sections 56 to 58B** of the Fisheries Act 1996 (which in this section are called the **overseas investment fishing provisions**) as if they were part of this Act, so that a reference in this Act to “this Act” includes a reference to the overseas investment fishing provisions.
- (2) *See section 57A* of the Fisheries Act 1996 for further provisions on the interpretation of the overseas investment fishing provisions.

## **6 Interpretation**

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

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

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

**acquisition** includes obtaining ownership or coming into possession by any means

**associate** has the meaning set out in **section 8**

**associated land** has the meaning set out in regulations

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

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

- (a) an overseas investment in sensitive land:
- (b) an overseas investment in significant business assets:
- (c) an overseas investment in fishing quota

**Commission** means the Overseas Investment Commission

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

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

**Court** means the High Court

**document** means any record of information; and includes—

- (a) anything on which there is writing or any image; and
- (b) information recorded by means of any article or device (for example, a disk) from which information is capable of being reproduced with or without the aid of any other article or device; and
- (c) material subsequently derived from information recorded by that means

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

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

**foreshore or seabed**—

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

- (i) on the landward side by the high-water line at mean high-water spring tides; and
- (ii) on the seaward side, by the outer limits of the territorial sea; and
- (b) includes the beds of rivers that are part of the coastal marine area (within the meaning of the Resource Management Act 1991); and
- (c) includes the bed of Te Whaanga Lagoon in the Chatham Islands; and
- (d) includes the air space and the water space above the areas described in **paragraphs (a) to (c)**; and
- (e) includes the subsoil, bedrock, and other matters below the areas described in **paragraphs (a) to (c)**

**governing body** means—

- (a) the board of directors (or other persons or body exercising powers of management, however described) of a body corporate:
- (b) the trustees of a trust:
- (c) the manager and trustee of a unit trust:
- (d) either—
  - (i) the board of directors (or other persons or body exercising powers of management, however described) of a partnership, 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 joint venture or other unincorporated body of persons

**guidelines** means guidelines issued by the regulator under **section 37**

**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 Māori, including wahi tapu; and
  - (iv) surroundings associated with the natural and physical resources

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

**LINZ** means Land Information New Zealand

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

**non-urban land** means—

- (a) farm land; and
- (b) any land other than land that is both—
  - (i) in an urban area; and
  - (ii) used for commercial, industrial, or residential purposes

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

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

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

**overseas investment in significant business assets** has the meaning set out in **section 14**

**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 31**

**relevant individual overseas person** and **relevant overseas person** have the meanings set out in **section 16**

**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

**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 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 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 not convertible into a security within **paragraphs (a) to (d)**)

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

**transaction** includes—

- (a) the sale or transfer of property or securities; and
- (b) the issue or allotment of securities; and
- (c) the entering into, or the giving of effect to a provision in, a contract or arrangement; and
- (d) the arriving at, or the giving of effect to, an understanding

**working day** means a day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
- (b) a day in the period commencing with 25 December in a year and ending with 15 January in the following year.

- (2) In this Act, a person is **ordinarily resident in New Zealand** if the person—
  - (a) holds a residence permit granted under the Immigration Act 1987 (or is exempt under that Act from holding that permit); and
  - (b) is in 1 of the following categories:
    - (i) is domiciled in New Zealand; or
    - (ii) is residing in New Zealand with the intention of residing there indefinitely, and has done for the immediately preceding 12 months (*see* **subsection (3)**).
- (3) Absence from New Zealand for no more than 183 days in aggregate in the last 12 months (counting presence in New Zealand for part of a day as presence for a whole day) does not prevent a person from satisfying the requirement for residing in New Zealand for the last 12 months under **subsection (2)(b)(ii)**.
- (4) In this Act, a person (**A**) has a **25% or more ownership or control interest** in another person (**B**) if A has—
  - (a) a beneficial entitlement to, or a beneficial interest in, 25% or more of B's securities; or
  - (b) the power to control the composition of 25% or more of the governing body of B; or

- (c) the right to exercise or control the exercise of 25% or more of the voting power at a meeting of B.
- (5) In this Act, a company (**B**) is a **25% or more subsidiary** of another company (**A**) if—
- (a) B is a subsidiary of A under section 5 of the Companies Act 1993; or
  - (b) A controls the composition of 25% or more of the board of B; or
  - (c) A is in a position to exercise, or control the exercise of, 25% or more of the maximum number of votes that can be exercised at a meeting of B.

## **7 Who are overseas persons**

- (1) The purpose of this definition is to provide that persons are overseas persons if they themselves are overseas persons (for example, not a New Zealand citizen or resident or, for companies, incorporated overseas) or they are 25% (or more) owned or controlled by an overseas person or persons.
- (2) In this Act, **overseas person** means—
- (a) an individual who is neither a New Zealand citizen nor ordinarily resident in New Zealand; or
  - (b) a body corporate that is incorporated outside New Zealand or is a 25% or more subsidiary of a body corporate incorporated outside New Zealand; or
  - (c) a body corporate (**A**) if an overseas person or persons have—
    - (i) 25% or more of any class of A's securities; or
    - (ii) the power to control the composition of 25% or more of A's governing body; or
    - (iii) the right to exercise or control the exercise of 25% or more of the voting power at a meeting of A; or
  - (d) a partnership, 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; or
  - (g) an associate of an overseas person.
- (3) However, there may be exemptions from any of **paragraphs (a) to (g)** under regulations.

## **8 Meaning of associate**

- (1) In this Act, a person (A) is an **associate** of an overseas person (B) in relation to an overseas investment 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:
  - (c) A is an overseas person and acts jointly or in concert with B in relation to the overseas investment:
  - (d) A is an overseas person and participates in the overseas investment 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 the **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.

*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 sections 12 and 13*):
    - (b) an overseas investment in significant business assets (*see section 14*):
    - (c) an overseas investment in fishing quota (*see sections 57B to 57D* of the Fisheries Act 1996).
  - (2) However, there may be exemptions from these requirements under regulations.
- 11 When consent is required**
- (1) Consent must be obtained for a transaction before that transaction takes effect.
  - (2) The procedure for obtaining consent is set out in **subpart 2**.

*What are overseas investments in sensitive  
New Zealand assets*

**12 What are overseas investments in sensitive land**

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

- (a) an interest in land if—
  - (i) the land is sensitive under **Schedule 1**; and
  - (ii) the interest acquired is a freehold estate or a lease, or any other interest, (whether legal or equitable) for a term of 3 years or more (including rights of renewal); or
- (b) rights or interests in securities of a person (**A**) if **A** owns or controls (directly or indirectly) an interest in land described in **paragraph (a)** and, as a result of the acquisition,—
  - (i) the overseas person (either alone or together with its associates) has a 25% or more ownership or control interest in **A**; or
  - (ii) the overseas person (either alone or together with its associates) has an increase in an existing 25% or more ownership or control interest in **A**; or
  - (iii) **A** becomes an overseas person.

**13 Exemptions for limited interests in land**

An interest in land that is merely 1 or more of the following kinds of interests is not an interest in land under **section 12(a)**:

- (a) an easement:
- (b) a right of way:
- (c) any other right or interest exempted under regulations.

**14 What are overseas investments in significant business assets**

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

- (a) the acquisition by an overseas person of rights or interests in securities of a person (**A**) if—
  - (i) as a result of the acquisition, the overseas person (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 the prescribed threshold; or
  - (b) the overseas person establishing a business in New Zealand (either alone or with any other person) if—
    - (i) the business is established for more than 3 months 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 the prescribed threshold; or
  - (c) the acquisition by the overseas person of property (including goodwill and other intangible assets) in New Zealand used in carrying on business in New Zealand if the total value of consideration provided exceeds the prescribed threshold.
- (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 come 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*

### **15 Approach to criteria for consent**

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

- (a) have regard to only the criteria that apply to the relevant category of overseas investment under this subpart (subject to **section 16**); and
- (b) grant consent if satisfied that all of the criteria in **section 17 or section 19** (as the case may be) are met; and
- (c) decline to grant consent if not satisfied that all of the criteria in **section 17 or section 19** are met.

**16 Other matters relating to applying criteria for consent**

- (1) 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.
- (2) 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).
- (3) For the purposes of the criteria for consent,—  
**relevant individual overseas person** means—
  - (a) the relevant overseas person if that person is an individual (and if there is more than 1 relevant overseas person, each of them that is an individual):
  - (b) if there is a relevant overseas person or persons that is not an individual, then each person in either or both of the following categories, as the relevant Minister or Ministers think fit:
    - (i) each individual who has a 25% or more ownership or control interest in a relevant overseas person:
    - (ii) each individual who is a member of the governing body of a relevant overseas person

**relevant overseas person** means—

- (a) each overseas person making the overseas investment (**A**); or
- (b) if A is an associate of another overseas person (**B**) in relation to the overseas investment, A, B, and any other associate of B, or any of them, as the relevant Minister or Ministers think fit.

**17 Criteria for consent for overseas investments in sensitive land**

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

- (a) all the relevant individual overseas persons have business experience and acumen relevant to that overseas investment:
- (b) the relevant overseas person has demonstrated financial commitment to the overseas investment:
- (c) all the relevant individual overseas persons are of good character:

- (d) none of the relevant individual overseas persons are individuals of the kind referred to in section 7(1) of the Immigration Act 1987 (which lists certain persons not eligible for exemptions or permits under that Act);
- (e) either—
  - (i) all the relevant individual overseas persons intend to reside in New Zealand indefinitely; or
  - (ii) if the criteria in **subparagraph (i)** is not met, any 1 or more of the criteria listed in **section 18** that the relevant Ministers determine must be met:
- (f) if **paragraph (e)(ii)** applies and the relevant land includes non-urban land that, in area (either alone or together with any associated land), exceeds the prescribed area threshold, the overseas investment will result in substantial and identifiable benefits under the criteria that the relevant Ministers determine must be met under that paragraph:
- (g) if the relevant land is or includes farm land, either that farm land or the securities to which the overseas investment relates have been offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations (unless the overseas investment is exempt from this criterion under **section 21**).

### **18 Criteria for assessing benefit of overseas investments in sensitive land**

- (1) The relevant Ministers may—
  - (a) determine which 1 or more of the criteria (or parts of them) in **subsection (2)** must be met under **section 17(e)(ii)**; and
  - (b) determine the relative weight to be given to each criterion (or part) that must be met.
- (2) The criteria are the following:
  - (a) the overseas investment will, or is likely to, result in—
    - (i) the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost; or
    - (ii) the introduction into New Zealand of new technology or business skills; or

- (iii) the development of new export markets or increased export market access for New Zealand exporters; or
  - (iv) added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand; or
  - (v) the introduction into New Zealand of additional investment for development purposes; or
  - (vi) increased processing in New Zealand of New Zealand's primary products:
- (b) there are or will be adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats of indigenous fauna, for example by any 1 or more of the following:
    - (i) conditions as to pest control, fencing, fire control, erosion control, riparian planting:
    - (ii) covenants over the land:
  - (c) there are or will be adequate mechanisms in place for the protection of historic heritage, for example by any 1 or more of the following:
    - (i) conditions for conservation (including maintenance) and access:
    - (ii) agreement to support registration of any historic place, historic area, wahi tapu, or wahi tapu area under the Historic Places Act 1993:
    - (iii) agreement to execute a heritage covenant:
    - (iv) compliance with existing covenants:
  - (d) there are or will be adequate mechanisms in place for walking access over the relevant land or a relevant part of that land by the public or any section of the public:
  - (e) if the relevant land, or part of the relevant land, is foreshore or seabed, that land or part has been offered to the Crown in accordance with regulations:
  - (f) any other prescribed criteria.

## **19 Criteria for overseas investments in significant business assets**

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

- (a) all the relevant individual overseas persons have business experience and acumen relevant to that overseas investment; and
- (b) the relevant overseas person has demonstrated financial commitment to the overseas investment; and
- (c) all the relevant individual overseas persons are of good character; and
- (d) none of the relevant individual overseas persons are individuals of the kind referred to in section 7(1) of the Immigration Act 1987 (which lists certain persons not eligible for exemptions or permits under that Act).

**20 Status of persons subject to special direction under Immigration Act 1987**

For the purposes of **sections 17(d) and 19(d)**, an individual is not an individual of the kind referred to in section 7(1) of the Immigration Act 1987 if a special direction referred to in section 7(3)(a)(ii) of that Act has been made permitting a permit to be granted or an exemption to apply to that individual under that Act.

**21 Exemptions from farm land offer requirements**

- (1) **Section 17(g)** does not apply if the relevant interest in the farm land has a term, or unexpired term, of less than 21 years (including rights of renewal).
- (2) **Section 17(g)** does not apply to an overseas investment if—
  - (a) the relevant Ministers consider that the overseas investment need not meet this criterion by reason of the circumstances relating to the particular overseas investment, interest in land or rights or interests in securities; or
  - (b) the overseas person making the overseas investment belongs to a class of overseas persons, or the overseas investment transaction belongs to a class of transactions, that is exempted from this criterion by the relevant Ministers by notice in the *Gazette*.

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

**22 Application for consent**

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

**23 Who must apply for consent**

- (1) The following persons must apply for consent to an overseas investment transaction:
  - (a) each overseas person making the investment; and
  - (b) if the transaction comes within **section 12(b) or section 14(1)(a)**, and consent has not been obtained by a person under **paragraph (a)**, each person who is or may be a party to the transaction.
- (2) In addition, the regulator may require any other party to the overseas investment transaction or the associate of an overseas person to be a party to the application.

**24 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.

**25 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 33*).

**26 Granting or refusal of consent**

- (1) A consent under this Act may be—
  - (a) granted in respect of a proposed or specified transaction, instrument, or person:
  - (b) granted in respect of classes of transactions, instruments, or persons that the relevant Minister or Ministers determine:
  - (c) unconditional or subject to the conditions that the relevant Minister or Ministers think appropriate:
  - (d) granted in whole or in part:
  - (e) granted retrospectively:
  - (f) refused.
- (2) A transaction may not be cancelled under **section 30(1)(c)** if it has been granted retrospective consent.

**27 Minister may revoke consent in case of fraud**

The Minister may revoke a consent before the transaction for which it is granted has been given effect to if, in the Minister's opinion, the consent has been obtained by fraud.

**28 Consent may be varied by agreement**

- (1) A consent granted under this Act may be varied by the relevant Minister or Ministers with the agreement of the consent holder.
- (2) Any conditions of a consent may be varied or added to by the relevant Minister or Ministers with the agreement of the consent holder.

- (3) A condition of a consent may be revoked by the relevant Minister or Ministers.
- (4) An application for variation of a consent may be made by written notice to the regulator accompanied by the prescribed fee.

### **29 Conditions of consent**

- (1) It is a condition of every consent, whether or not it is stated in the consent, that—
  - (a) the information provided by each applicant to the regulator or the relevant Minister or Ministers in connection with the application was correct at the time it was provided; and
  - (b) each consent holder must comply with all representations and plans made or submitted to the regulator or the relevant Minister or Ministers in connection with the application, unless compliance should reasonably be excused.
- (2) For the purpose of enforcing a condition, the relevant Minister or Ministers may enter into a contract or deed with an applicant.

### **30 Transaction may be cancelled**

- (1) A transaction for which consent is required under this Act and which has been given effect to without that consent—
  - (a) is not an illegal contract for the purposes of the Illegal Contracts Act 1970; and
  - (b) is not void only because it has been given effect to without the requisite consent or because giving effect to the transaction without the requisite consent is an offence; but
  - (c) may be cancelled by—
    - (i) a party to the transaction who was not required to obtain consent to the transaction under this Act, by giving notice in writing to all the other parties; or
    - (ii) the Court, on the application of the regulator.
- (2) On cancellation under this section,—
  - (a) the Court has the same powers as it has under section 9 of the Contractual Remedies Act 1979; and

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

### Subpart 3—Administration

#### **31 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.

#### **32 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) provide general information for the benefit of applicants for consent about New Zealand's rules relating to—
  - (i) the categories of overseas investments:
  - (ii) the preservation of its natural and historic heritage:
  - (iii) walking access:
- (h) do anything else that is necessary for the efficient operation of the rules relating to overseas investment in sensitive New Zealand assets.

#### **33 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).

### **34 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.

### **35 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 in relation to particular assets:
  - (b) the asset types over which the regulator has power to make decisions:
  - (c) the level of monitoring required in relation to conditions of consent:
  - (d) the criteria for including reserves or public parks on the list kept by the regulator under **section 38**:
  - (e) any general or specific matter relating to the regulator's functions, powers, or duties.

**36 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.

- 37 Regulator may issue guidelines**
- (1) The regulator may issue guidelines about the following things:
- (a) the offer of foreshore and seabed 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.
- (2) The regulator must not issue a guideline unless it has first been approved by the Minister.

- 38 Regulator must keep list of sensitive reserves and parks**
- (1) The regulator must—
- (a) compile and keep a list of reserves and public parks that are sensitive for the purposes of **clause 3(g) of Schedule 1**; and

- (b) publish that list on a website maintained by the regulator.
- (2) The regulator may amend that list.

#### Subpart 4—Monitoring

##### **39 Regulator may require consent holder to provide information for monitoring purposes**

- (1) For the purpose of monitoring compliance with the conditions of a consent, the regulator may, by notice in writing, require the consent holder to provide the regulator with the information or documents or both that are specified in the notice.
- (2) The consent holder must—
  - (a) comply with the regulator’s notice within the time specified in it; and
  - (b) certify that the information provided to the regulator, including information contained in any documents provided, is correct.
- (3) The regulator may retain or copy any information or document that is provided under this section.

##### **40 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 enforcement of a condition.
- (2) The person must—
  - (a) comply with the regulator’s notice within the time specified in it; and
  - (b) provide the information in the form specified in the notice.

##### **41 Regulator may require consent holder to provide statutory declaration as to compliance**

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

- (a) the extent to which the consent holder has complied with the conditions of the consent; and
  - (b) if the consent holder is in breach of a condition or conditions, the reasons for the breach and the steps that the consent holder intends to take to remedy the breach.
- (2) The consent holder must provide the declaration—
- (a) within the time specified by the notice; or
  - (b) if the notice specifies that the consent holder must provide the declaration at intervals, at those intervals.
- (3) A declaration that is made under this section is not admissible in evidence in any proceedings under this Act except proceedings under **section 47**.

**42 Regulator may require information and documents for purpose of detecting offences**

- (1) If the regulator has reason to suspect that a person has committed an offence under this Act, the regulator may, by notice in writing, require any person (**A**) to—
- (a) provide the regulator with any information that in the regulator’s opinion may furnish evidence in relation to that offence;
  - (b) produce to the regulator any document that in the regulator’s opinion may furnish evidence in relation to that offence.
- (2) A must comply with the regulator’s notice within the time specified in it.
- (3) A person who is required to provide information or a document under this section has the same privileges in relation to the provision of the information or document as witnesses have in any court.

Subpart 5—Enforcement

*Offences*

**43 Offence of giving effect to transaction 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 investment transaction without the consent required by this Act.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction on indictment—

- (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.

#### **44 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 on indictment—
- (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 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 on indictment—
- (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.

**46 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 summary conviction to a fine not exceeding \$100,000.

**47 Offence of false or misleading statement or omission**

- (1) Every person commits an offence who knowingly or recklessly makes any false or misleading statement or any material omission in—
  - (a) any offer or representation made for the purposes of this Act or regulations; or
  - (b) any information or document provided to the regulator; or
  - (c) any communication with the regulator.
- (2) Every person commits an offence who knowingly or recklessly provides the regulator with a document that is false or misleading.
- (3) A person who commits an offence under **subsection (1)** or **subsection (2)** is liable on summary conviction to a fine not exceeding \$300,000.

*Powers of Court***48 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 39** or **section 40** or **section 41** or **section 42**; or
  - (d) failed to comply with a condition of a consent or 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.

#### **49 Court may order person in breach to pay civil penalty**

- (1) On the application of the regulator, the Court may order a person (**A**) to pay a civil penalty to the Crown or any other person specified by the Court if A has—
  - (a) contravened this Act; or
  - (b) committed an offence under this Act; or
  - (c) failed to comply with a notice under **section 39** or **section 40** or **section 41** or **section 42**; or
  - (d) failed to comply with a condition of a consent or an exemption.
- (2) The Court may order A to pay a civil penalty not exceeding the higher of—
  - (a) \$300,000; or
  - (b) any quantifiable gain (for example, the increase in the value since acquisition) by A in relation to the property to which the consent or exemption relates or for which a consent should have been obtained; or
  - (c) the cost of remedying the breach of condition; or
  - (d) the loss suffered by a person in relation to a breach of condition.
- (3) A person cannot be ordered to pay a penalty under this section and be required to pay a fine under any of **sections 43 to 47** 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.

#### **50 Court may order mortgage to be registered over land**

- (1) The Court may, on the application of the regulator, order that a mortgage be registered over land to which a consent or an exemption relates for the purpose of securing the payment of—

- (a) money that must be paid as a condition of the consent;  
or
  - (b) a fine or civil penalty imposed under this Act; or
  - (c) interest that must be paid under an order made under **section 51**.
- (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)**.

**51 Court may order interest to be paid**

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

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

On the application of the regulator, the Court may—

- (a) restrain a consent holder from acting in breach of a condition of a consent or an exemption;
- (b) order a consent holder in breach of a condition of a consent or an exemption to comply with it.

*Administrative penalties*

**53 Administrative penalties for late filing**

- (1) The regulator may require a person who files a document required by this Act or regulations or a condition of a consent with the regulator after the time when the document must be filed to pay an administrative penalty.
- (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.

*Address for service*

**54 Address for service**

- (1) Every consent holder must—

- (a) have a postal or street address in New Zealand for service of documents; and
  - (b) notify the regulator of that address; and
  - (c) notify the regulator of any change in that address.
- (2) Any document that must be served on a consent holder under this Act or for the purposes of any proceeding under this Act is deemed to have been served on the consent holder if it has been sent to the last address for service for the consent holder that has been notified to the regulator.
- (3) **Subsection (2)** applies despite any other rule or law.

**55 Non-appearance not ground for Court to refuse order under Act if consent holder served at address for service**  
The Court must not refuse to make an order under **sections 48 to 52** on the ground that the consent holder has not appeared or otherwise taken part in the proceeding if the Court is satisfied that the proceeding has been served by delivery to the postal or street address that is the consent holder's address for service in New Zealand.

#### *Search and seizure*

**56 Search warrant**

- (1) The regulator may apply for a search warrant to search a place or thing.
- (2) The application must be made in writing and on oath to the Court.
- (3) The Court 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 anything that is evidence of an offence under this Act.
- (4) The Court 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 member of the police.

**57 Form and content of search warrant**

- (1) A search warrant must not be exercised later than 14 clear days after the day on which it was issued.
- (2) A search warrant must be in the prescribed form and must contain the following information:
  - (a) the place or thing that may be searched;
  - (b) the offence or offences in respect of which the warrant is issued;
  - (c) a description of the kind of property or thing that may be seized;
  - (d) the period during which the warrant may be executed;
  - (e) any special conditions set out in the warrant.

**58 Powers conferred by search warrant**

- (1) A search warrant may be executed by the person to whom it was issued.
- (2) Subject to any special conditions specified in the warrant, a search warrant may authorise the person executing the warrant to—
  - (a) enter and search the place or thing specified in the warrant at any reasonable time; and
  - (b) use the assistance that is reasonable in the circumstances to enter and search the place or thing; and
  - (c) use the force that is reasonable in the circumstances to gain entry and to break open anything in, on, over, or under the place or thing searched; and
  - (d) search any person found in or at the place; and
  - (e) search for and seize any property or thing referred to in **section 57(2)(c)**.
- (3) A person who is called to assist to execute a search warrant may exercise the powers described in **subsection (2)(c) and (e)**.
- (4) The power to enter and search a place or thing under a search warrant may be exercised only once.

**59 Requirements when executing search warrant**

- (1) The person who executes the warrant (**A**) must carry the warrant with him or her, and produce it for inspection, with evidence of **A**'s identity,—
  - (a) when **A** first enters the place specified in the warrant, to the person who appears to be in charge of that place; and

- (b) whenever A is subsequently required to do so at the place specified in the warrant, by any other person who appears to be in charge of that place or any part of it.
- (2) If the owner or occupier of the place is not present at the time A executes the search warrant, A must leave at the place, in a prominent location, a written statement that includes the following information:
  - (a) the time and date of the search; and
  - (b) A's name; and
  - (c) the address of the office or police station (if A is a member of the police) to which inquiries should be made.
- (3) If any thing is seized in the execution of a search warrant, A must leave in a prominent location at the place, or deliver or send by registered mail to the owner or occupier within 10 working days after the search, a written inventory of all things seized.

#### **60 Disposal of things seized under search warrant**

- (1) In any proceeding for an offence relating to any thing seized under a warrant under this Act, a court may order, either at the trial or hearing or on application, that—
  - (a) the thing must be delivered to the person who, in the court's view, appears to be entitled to it; or
  - (b) the thing must otherwise be disposed of as the court thinks appropriate.
- (2) The regulator or a member of the police may, at any time, unless an order has been made under **subsection (1)**, return the thing to the person from whom it was seized, or apply to a District Court Judge for an order for its disposal.
- (3) On an application under **subsection (2)**, the District Court Judge may make any order that a court may make under **subsection (1)**.
- (4) If proceedings for an offence relating to the thing are not brought within a period of 3 months of seizure, any person claiming to be entitled to the thing may then apply to a District Court Judge for an order that it be delivered to that person.
- (5) On an application under **subsection (4)**, the District Court Judge may—
  - (a) adjourn the application, on any terms that he or she thinks are appropriate, for proceedings to be brought; or

- (b) make any order that a court may make under **subsection (1)**.

### Subpart 6—Miscellaneous provisions

#### **61 Regulations**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
  - (a) prescribing the area thresholds that apply to categories of land (or that land and its associated land) under **section 12** and **section 17(f)** (which relate to overseas investments in sensitive land), and determining what is associated land for the purposes of those thresholds:
  - (b) prescribing the value thresholds that apply under **section 14** (which relates to overseas investments in significant business assets), and determining how the value must be measured:
  - (c) prescribing, for the purposes of the criteria in **section 17(g)**, 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:
  - (d) providing what is required to satisfy the criteria in **section 18(2)(e)** for foreshore or seabed to be offered to the Crown, including prescribing—
    - (i) the maximum period for which the offer must be open:
    - (ii) at what price the land must be offered, and a valuation procedure for fixing that price:
    - (iii) on what terms and conditions the land must be offered to the Crown, with the purpose of ensuring it is offered on terms and conditions equivalent to those offered to the overseas person:
    - (iv) power for the relevant Ministers to reject an offer as not satisfying the criteria because it is not on terms and conditions equivalent to those offered to the overseas person:
  - (e) prescribing other criteria that the relevant Ministers may apply under **section 18(2)(f)** of this Act or under **section 57G** of the Fisheries Act 1996:

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- (f) declaring land to be part of the Queen's Chain for the purposes of **clause 3(d) of Schedule 1**:
  - (g) 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—
    - (i) applications for consent and exemptions and their consideration:
    - (ii) monitoring compliance with the conditions of consents:
    - (iii) any other matter under this Act or regulations:
  - (h) prescribing maximum administrative penalties to be charged by the regulator, a means by which maximum administrative penalties may be calculated or ascertained, or a rate at which maximum administrative penalties may be calculated or ascertained, for the purposes of **section 53**:
  - (i) exempting or providing for exemptions from, or waivers, refunds, or discounting of, fees, charges, amounts, or administrative penalties:
  - (j) exempting (on terms and conditions, if appropriate) any transaction, person, interest, right, or assets, or class of transactions, persons, interests, rights, or assets, from the requirement for consent or from the definition of overseas person:
  - (k) providing for the relevant Minister or Ministers to exempt (on terms and conditions, if appropriate), after having regard to the purpose of this Act, any transaction, person, interest, right, or asset from the requirement for consent or from the definition of overseas person (and to amend or revoke those exemptions):
  - (l) providing for applications for exemptions:
  - (m) providing for and regulating the giving or service of notices for the purposes of this Act, and the effect of those notices:
  - (n) providing for transitional provisions:
  - (o) providing for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.
- (2) The area and value thresholds prescribed by regulations may differ for different classes or parts of classes of—
- (a) sensitive land under **Schedule 1**:

- (b) overseas investments in sensitive land:
  - (c) overseas investments in significant business assets.
- (3) The Minister must have regard to the purpose of this Act before recommending any regulations be made under **subsection (1)(j)**.

**62 Foreshore or seabed acquired by the Crown under criteria is not subdivision**

Nothing in section 11 or Part X 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 the criterion in **section 18(2)(e)**; or
- (b) any matter incidental to, or required for the purpose of, any acquisition of that kind.

Subpart 7—Transitional provisions and amendments to other enactments

*Dissolution of Commission*

**63 Commission dissolved**

The Commission is dissolved.

**64 Assets and liabilities vest in Crown**

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

**65 No compensation for loss of office**

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

**66 Transfer to LINZ**

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

entitled on commencement of **section 63** to be transferred to LINZ.

**67 Transferring employee must be employed in equivalent employment**

- (1) An employee who transfers to LINZ under **section 66** must be employed in equivalent employment to his or her employment immediately before the commencement of this Act.
- (2) In **subsection (1), equivalent employment** means employment by LINZ of the employee—
  - (a) in substantially the same position; and
  - (b) in the same general locality; and
  - (c) on terms and conditions that are no less favourable.
- (3) The requirement that the terms and conditions of the employee's employment with LINZ are no less favourable continues to apply until those terms and conditions are varied by agreement between the employee and the chief executive of LINZ.

**68 Continuity of employment**

- (1) Every transferring employee becomes an employee of LINZ on commencement of **section 63**.
- (2) However, for the purposes of every enactment, law, determination, contract, and agreement relating to the employment of the employee,—
  - (a) the employee's contract of employment with LINZ must be treated as a continuation of the employee's contract of employment with the Reserve Bank; and
  - (b) the employee's period of service with the Reserve Bank, and every other period of service of that employee that was recognised by the Reserve Bank as continuous service, must be treated as a period of service with LINZ.

**69 No compensation for technical redundancy**

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

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

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

**70 Final report**

- (1) Before the commencement of **section 63**, the Commission must prepare and submit to the Minister a final report of its operations for the period beginning on **1 July 2004** and ending with the close of the day before the commencement of **section 63**.
- (2) The Minister must present a copy of the report to the House of Representatives not more than 6 sitting days after receiving it.

**71 References to Commission**

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

**72 Proceedings of Commission**

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

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

The Fisheries Act 1996 is amended by repealing sections 56 to 58 and the heading above section 56, and substituting the following heading and sections:

*“Overseas investment in and aggregation of quota***“56 Purpose of overseas investment fishing provisions**

The purpose of the overseas investment fishing provisions is to acknowledge that it is a privilege for overseas persons to own or control interests in fishing quota by—

- “(a) requiring overseas investments in fishing quota, before being made, to meet criteria for consent; and
- “(b) imposing conditions on those overseas investments.

“57 **Overview of overseas investment fishing provisions**

“(1) The general scheme and effect of the provisions governing overseas investments in fishing quota are as follows:

“(a) their interpretation is covered by **section 57A** of this Act and **Part 1** of the Overseas Investment Act **2004**:

“(b) when consent is required and the criteria for consent is stated in **sections 57B to 57H** of this Act:

“(c) the procedure for obtaining consent and imposing conditions of consent is set out in **subpart 2 of Part 2** of the Overseas Investment Act **2004**:

“(d) who administers those provisions is set out in **section 57I** of this Act and the role of the main regulator is set out in **subpart 3 of Part 2** of the Overseas Investment Act **2004**:

“(e) the regulator’s monitoring powers are set out in **subpart 4 of Part 2** of the Overseas Investment Act **2004**:

“(f) enforcement matters, including offences, penalties, and the Court’s powers to make orders for effective enforcement, are set out in **subpart 5 of Part 2** of the Overseas Investment Act **2004** and additional forfeiture and other remedies are set out in **sections 57J to 58B** of this Act:

“(g) regulations may be made under **subpart 6 of Part 2** of the Overseas Investment Act **2004**.

“(2) This section is a guide only to the general scheme and effect of those provisions.

“57A **Interpretation of overseas investment fishing provisions**

“(1) In **sections 56 to 58B**, unless the context otherwise requires,—

“**interest in fishing quota** means—

“(a) provisional catch history, quota, or annual catch entitlement; or

“(b) an interest in that provisional catch history, quota, or annual catch entitlement

“**overseas investment fishing provisions** means **sections 56 to 58B**

“**overseas investment in fishing quota** has the meaning set out in **section 57D**

“**relevant Ministers** means the Minister and the Minister of Finance.

- “(2) In relation to the overseas investment fishing provisions,—
- “(a) the Overseas Investment Act **2004** incorporates those provisions as if they were part of that Act, so that a reference in that Act to “this Act” includes a reference to those provisions; and
  - “(b) the terms **associate, overseas person, securities, transaction, and 25% or more ownership or control interest**, and any other term or expression that is defined in the Overseas Investment Act **2004** and used in those provisions, has the same meaning as in that Act; and
  - “(c) a term or expression that is defined in this Act and that is used in those provisions (and not defined in the Overseas Investment Act **2004**) has the same meaning in those provisions.

“**57B Consent required for overseas investments in fishing quota**

- “(1) A transaction requires consent under the overseas investment fishing provisions if it will result in an overseas investment in fishing quota.
- “(2) However, there may be exemptions from this requirement under regulations made under the Overseas Investment Act **2004**.

“**57C When consent is required**

- “(1) Consent must be obtained for a transaction before that transaction takes effect.
- “(2) The procedure for obtaining consent is set out in **subpart 2 of Part 2** of the Overseas Investment Act **2004**.

“**57D What are overseas investments in fishing quota**

An **overseas investment in fishing quota** is the acquisition by an overseas person of—

- “(a) an interest in fishing quota; or
- “(b) rights or interests in securities of a person (**A**) if **A** owns or controls (directly or indirectly) an interest in fishing quota and, as a result of the acquisition,—
  - “(i) the overseas person (either alone or together with its associates) has a 25% or more ownership or control interest in **A**; or

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

“57E **Approach to criteria for consent**

The relevant Ministers must, in considering whether or not to grant consent to an overseas investment transaction under the overseas investment fishing provisions,—

- “(a) have regard to only the criteria that apply under the overseas investment fishing provisions (subject to **section 57F**); and
- “(b) grant consent if satisfied that all of the criteria in **section 57G** are met; and
- “(c) decline to grant consent if not satisfied that all of the criteria in **section 57G** are met.

“57F **Other matters relating to applying criteria for consent**

“(1) For a transaction that is in more than 1 category of overseas investment under this Act and the Overseas Investment Act **2004**, the relevant Ministers must have regard to the criteria that apply to all of the relevant categories.

“(2) 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).

“(3) For the purposes of the criteria for consent,—

“**relevant individual overseas person** means each person in either or both of the following categories, as the relevant Ministers think fit:

- “(a) each individual who has a 25% or more ownership or control interest in a relevant overseas person;
- “(b) each individual who is a member of the governing body of a relevant overseas person

“**relevant overseas person** means—

- “(a) the overseas person making the overseas investment (**A**); or
- “(b) if A is an associate of another overseas person (**B**) in relation to the overseas investment, A, B, and any other associate of B, or any of them, as the relevant Ministers think fit.

**“57G Criteria for overseas investments in fishing quota**

- “(1) The criteria for an overseas investment in fishing quota are all of the following:
- “(a) the relevant overseas person is a body corporate; and
  - “(b) all relevant individual overseas persons are of good character; and
  - “(c) none of the relevant individual overseas persons are individuals of the kind referred to in section 7(1) of the Immigration Act 1987 (which lists certain persons not eligible for exemptions or permits under that Act); and
  - “(d) the interest in fishing quota is capable of being registered in the Quota Register or the Annual Catch Entitlement Register; and
  - “(e) the granting of consent is in the national interest, after having regard to the criteria that the relevant Ministers think fit under **section 57H**.
- “(2) For the purposes of **subsection (1)(c)**, an individual is not an individual of the kind referred to in section 7(1) of the Immigration Act 1987 if a special direction referred to in section 7(3)(a)(ii) of that Act has been made permitting a permit to be granted or an exemption to apply to that individual under that Act.

**“57H Determining whether or not overseas investment in fishing quota is in national interest**

- “(1) The relevant Ministers may—
- “(a) determine which 1 or more of the criteria (or parts of them) in **subsection (2)** to have regard to under **section 57G(1)(e)**; and
  - “(b) determine the relative weight to be given to each criterion (or part) to which they have regard.
- “(2) The criteria are—
- “(a) whether the overseas investment will, or is likely to, result in—
    - “(i) the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost;
    - “(ii) the introduction into New Zealand of new technology or business skills;

- “(iii) the development of new export markets or increased export market access for New Zealand exporters:
  - “(iv) added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand:
  - “(v) the introduction into New Zealand of additional investment for purposes of significant development:
  - “(vi) increased processing in New Zealand of fish, aquatic life, or seaweed:
- “(b) any other criteria prescribed under the Overseas Investment Act 2004, or any other matters that the relevant Ministers, having regard to the circumstances and the nature of the application, think fit.

“57I **Who administers overseas investment fishing provisions**

The regulator as defined in **section 31** of the Overseas Investment Act 2004 administers the overseas investment fishing provisions (except **sections 57J to 58B**).

“57J **No person in breach becomes entitled to provisional catch history**

An overseas person that does not obtain consent when required under the overseas investment fishing provisions has no entitlement to be allocated provisional catch history, and any provisional catch history allocated must be cancelled by the chief executive.

“58 **Interest in fishing quota that is overseas investment in fishing quota to be forfeit**

- “(1) This section applies if the chief executive believes on reasonable grounds that a person (A) has been registered as the owner of an interest in fishing quota without obtaining consent when required under the overseas investment fishing provisions.
- “(2) The chief executive—
- “(a) may direct that a caveat be registered in the appropriate register under Part VIII of this Act over that interest in fishing quota; and
  - “(b) must give A a written notice of forfeiture that complies with **subsection (3)**.

- “(3) A notice of forfeiture must—
- “(a) state that the interest in fishing quota that has been obtained without consent under the overseas investment fishing provisions will be forfeited to the Crown without compensation unless A applies to the High Court for a declaration as to whether A is an overseas person; and
  - “(b) state the period, which must not be less than 60 clear days after the notice is given, for A to make the application.
- “(4) A caveat that is directed to be registered under **subsection (2)(a)** must remain on the register until removed by direction of the chief executive or order of the Court pursuant to an application by A for a declaration under **subsection (3)(a)**.
- “(5) If A fails to apply for a declaration within the time stipulated in the notice, the relevant interest in fishing quota is forfeit to the Crown without compensation at the end of that period.

“58A **Powers of Court on application for declaration under section 58**

- “(1) This section applies if, on an application for a declaration by a person (A) under **section 58(3)(a)**, the Court declares A to be an overseas person.
- “(2) In that case, the Court may also order—
- “(a) that the relevant interest in fishing quota to be forfeit to the Crown without compensation; or
  - “(b) the disposal by A of the relevant interest in fishing quota within a specified period that—
    - “(i) in the case of provisional catch history or provisional individual transferable quota, is not more than 60 working days after the date on which any individual transferable quota is allocated for that provisional catch history or provisional individual transferable quota:
    - “(ii) in any other case, is not more than 60 working days after the order.

“58B **Interest in fishing quota forfeited under section 58 or section 58A must be dealt with in accordance with section 62**

An interest in fishing quota that is forfeited under **section 58 or section 58A** must be dealt with in accordance with section 62.”

*Amendment to Te Ture Whenua Maori Act 1993***74 Amendment to Te Ture Whenua Maori Act 1993**

Section 152 of Te Ture Whenua Maori Act 1993 is amended by repealing subsection (3), and substituting the following subsection:

- “(3) The Māori Land Court may confirm an alienation to a person of any Māori freehold land that is, or is part of, an overseas investment in sensitive land within the meaning of the Overseas Investment Act **2004** only if consent to that investment has been obtained, or an exemption from consent applies, under that Act.”

*Consequential amendments***75 Consequential amendments**

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

*Transitional provisions***76 Repeal and revocations**

- (1) In this section and in the rest of this subpart—  
**1973 Act** means the Overseas Investment Act 1973  
**Regulations** means the Overseas Investment Regulations 1995.
- (2) The 1973 Act is repealed and the Regulations and the Overseas Investment Exemption Notice 2001 are revoked.

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

- (1) In this section, the 1973 Act, the Regulations, sections 56 to 58 of the Fisheries Act 1996, and section 152(3) of Te Ture Whenua Maori Act 1993, as they were in force immediately before the commencement of **section 76**, are called the **previous regime**.
- (2) The previous regime continues to have effect as if it had not been replaced by this Act (subject to **section 71**) for the purpose of—
- (a) investigating any offence under or breach of the previous regime committed before the commencement of

this section (**commencement**), commencing or completing proceedings for the offence or breach, or imposing a penalty for the offence or breach:

- (b) considering and determining any application for consent or exemption under the Regulations that is made before commencement:
- (c) considering and determining any application for a declaration under section 56(2), or a permission under section 57, of the Fisheries Act 1996 that is made before commencement:
- (d) considering and determining an application for confirmation of an alienation under section 152(3) of Te Ture Whenua Maori Act 1993:
- (e) completing any proceedings commenced under the previous regime before commencement.

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

- (1) This section applies to consents granted under the Regulations, exemptions granted under regulation 16 of the Regulations, and conditions of those consents and exemptions, that are in effect immediately before the commencement of **section 76**.
- (2) Those consents, exemptions, and conditions must be treated as if they were consents and exemptions granted under this Act, or conditions applied under this Act,—
  - (a) for the purposes of **subpart 4** (monitoring):
  - (b) for the purposes of **subpart 5** (enforcement), in relation to any act or omission that occurs after the commencement of **section 76**.
- (3) However, the following provisions, as in force immediately before the commencement of **section 76**, continue to apply:
  - (a) regulation 14(2) of the Regulations, to those consents and conditions of those consents:
  - (b) regulation 16(3) of the Regulations, to those exemptions.

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

- (1) This section applies to permissions granted under section 28Z(9) of the Fisheries Act 1983 or under section 57(3) of the

Fisheries Act 1996, and conditions of those permissions, that are in effect immediately before the commencement of **section 73**.

- (2) Those permissions and conditions must be treated as if they were consents granted and conditions applied under this Act.
  - (3) However, regulation 14(2) of the Regulations, as in force immediately before the commencement of **section 76**, continues to apply to those permissions and conditions of those permissions.
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## Schedule 1 Sensitive land

### 1 What land is sensitive

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

- (a) the land (**land A**)—
  - (i) is of a type listed in **clause 2** (or part of land of a type listed in **clause 2**); or
  - (ii) adjoins land of a type listed in **clause 3**; and
- (b) the area of land A exceeds the prescribed area threshold (if any) either alone or together with any associated land.

### 2 Land is sensitive if it is this type of land (and is over any prescribed area threshold)

The types are—

- (a) non-urban land;
- (b) islands (other than the North Island or South Island, but including the islands adjacent to the North Island and South Island):
- (c) foreshore and seabed;
- (d) lakes, the lakebeds of which exceed 8 hectares;
- (e) land held for conservation purposes under the Conservation Act 1987;
- (f) land that a district plan or proposed district plan under the Resource Management Act 1991 provides is to be used as a reserve, a public park, for recreation purposes, or as open space;
- (g) land that is subject to a heritage order, or a requirement for a heritage order, under the Resource Management Act 1991 or by the Historic Places Trust under the Historic Places Act 1993;
- (h) historic places, historic areas, wahi tapu, or wahi tapu areas that are registered or for which there is an application or proposal for registration under the Historic Places Act 1993.

### 3 Land is sensitive if it adjoins land of this type (and is over any prescribed area threshold)

The types are—

- (a) foreshore;
- (b) lakes, the lakebeds of which exceed 8 hectares;

- 
- (c) land held for conservation purposes under the Conservation Act 1987:
  - (d) land that is within any of the following categories and adjoins any sea or lake (as defined in the Resource Management Act 1991):
    - (i) marginal strips (within the meaning of section 2(1) of the Conservation Act 1987):
    - (ii) esplanade reserves and esplanade strips (within the meaning of section 2(1) of the Resource Management Act 1991):
    - (iii) recreation reserves under the Reserves Act 1977:
    - (iv) other land declared by regulations to be part of the Queen's Chain for the purposes of this clause:
  - (e) scientific, scenic, historic, or nature reserves under the Reserves Act 1977 that are administered by the Department of Conservation and the area of which exceeds 0.4 hectares:
  - (f) regional parks created under the Local Government Act 1974:
  - (g) reserves and public parks that are on the list kept by the regulator under **section 38**:
  - (h) land that is subject to a heritage order, or a requirement for a heritage order, under the Resource Management Act 1991 or by the Historic Places Trust under the Historic Places Act 1993:
  - (i) historic places, historic areas, wahi tapu, or wahi tapu areas that are registered or for which there is an application or proposal for registration under the Historic Places Act 1993.
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## Schedule 2 Enactments amended

### Part 1 Amendments to other Acts

#### **Antarctic Marine Living Resources Act 1981** (1981 No 53)

Omit from paragraph (b) of the definition of **New Zealand national** in section 2(1) the words “section 2(2) and (2A) of the Overseas Investment Act 1973” and substitute the words “section 6(2) of the Overseas Investment Act 2004”.

#### **Citizenship Act 1977** (1977 No 61)

Repeal section 23(2)(c) and substitute:

“(c) entitle an alien to acquire property without any consent required under the Overseas Investment Act 2004”.

#### **Credit Contracts and Consumer Finance Act 2003**

(2003 No 52)

Repeal the definition of **associated person** in section 5.

Insert, after section 8:

##### “8A **Meanings of associated and associated person**

“(1) For the purposes of this Act, 1 person (**A**) is associated with another person (**B**)—

“(a) if A is connected to B by blood relationship, marriage, or adoption or where A is a trustee for B, and for the purposes of this paragraph—

“(i) persons are connected by blood relationship if they are within the fourth degree of relationship:

“(ii) persons are connected by marriage if 1 person is married to the other person or to a person who is connected by blood relationship to the other person, or if 1 person has a relationship in the nature of marriage with the other person or with a person who is connected by blood relationship to the other person (whether or not the parties to the relationship are of the same or different sex):

“(iii) persons are connected by adoption if 1 person has been adopted as the child of the other person or as a child of a person who is within the third degree of relationship to the other person:

“(b) in the case where B is a company, if A is a director or officer of B, or is associated (within the meaning of

Part 1—*continued***Credit Contracts and Consumer Finance Act 2003**(2003 No 52)—*continued*

**paragraph (a)**) with a director or officer of B, or is directly or indirectly able to exercise control over the affairs of B:

“(c) in the case where A is a company, if B is a director or officer of A, or is associated (within the meaning of **paragraph (a)**) with a director or officer of A, or is directly or indirectly able to exercise control over the affairs of A:

“(d) in the case where both A and B are companies,—

“(i) if A is a holding company or subsidiary of B within the meaning of section 5 of the Companies Act 1993; or

“(ii) if A owns or controls shares that in aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of B; or

“(iii) if B owns or controls shares that in aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of A; or

“(iv) if A and B have the same holding company within the meaning of section 5 of the Companies Act 1993; or

“(v) if a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.

“(2) **Associated person** has a corresponding meaning.”

**Fisheries Act 1996** (1996 No 88)

Insert in section 2(1), in their appropriate alphabetical order:

“**interest in fishing quota**, in **sections 56 to 58B**, has the meaning set out in **section 57A(1)**

“**overseas investment fishing provisions** has the meaning set out in **section 57A(1)**

“**overseas investment in fishing quota**, in **sections 56 to 58B**, has the meaning set out in **section 57A(1)**

Part 1—*continued***Fisheries Act 1996** (1996 No 88)—*continued*

“**relevant Ministers**, in **sections 56 to 58B**, has the meaning set out in **section 57A(1)**”

Repeal the definition of **ordinarily resident in New Zealand** in section 2(1) and substitute:

“**ordinarily resident in New Zealand** has the meaning set out in **section 6(2) and (3)** of the Overseas Investment Act **2004**”.

Repeal the definition of **overseas person** in section 2(1) and substitute:

“**overseas person** has the meaning set out in **section 7** of the Overseas Investment Act **2004**”.

Repeal section 32(1)(b) and substitute:

“(b) in any case, is not an overseas person or, if an overseas person, either has obtained consent under the overseas investment fishing provisions to acquire provisional catch history or quota or is exempt from the requirement for that consent,—”.

Repeal section 35(1)(b)(ii)(B) and substitute:

“(B) the person is not an overseas person or, if an overseas person, either has obtained consent under the overseas investment fishing provisions to acquire provisional catch history or quota or is exempt from the requirement for that consent; and”.

Repeal section 45(b) and substitute:

“(b) is not an overseas person or, if an overseas person, either has obtained consent under the overseas investment fishing provisions to acquire provisional catch history or quota or is exempt from the requirement for that consent; and:”.

Omit from the definition of **forfeit property** in section 62(1) the words “under section 58” and substitute the words “under **section 58 or section 58A**”.

Omit from section 62(2) the words “section 58 or” and substitute the words “**section 58 or section 58A** or”.

Omit from section 62(7)(a) the words “purpose of section 56 or section 59 of this Act” and substitute the words “purpose of the overseas investment fishing provisions stated in **section 56** or the purpose of section 59”.

Omit from section 62(14) the words “section 58 or” and substitute the words “**section 58 or section 58A** or”.

Part 1—*continued***Fisheries Act 1996** (1996 No 88)—*continued*

Add to section 62(14) the words “(but *see* **section 43(3)** of the Overseas Investment Act **2004** in relation to penalties imposed under that section)”.

Omit from section 103(4) the words “other than an overseas person exempt under section 56 of this Act or granted permission under section 57 of this Act” and substitute the words “(other than an overseas person who has obtained consent under the overseas investment fishing provisions or is exempt from the requirement for that consent)”.

Omit from section 103(5) the words “overseas person who is exempt under section 56(2) or who is granted permission under section 57” and substitute the words “an overseas person who has obtained consent under the overseas investment fishing provisions or is exempt from the requirement for that consent”.

Add to section 132(1)(b), the word “; and”. Add to section 132(1):

- “(c) the person is not an overseas person or, if an overseas person, either has obtained consent under the overseas investment fishing provisions to acquire quota or is exempt from the requirement for that consent.”

Add to section 133(1)(b) the word “; and”. Add to section 133(1):

- “(c) the person is not an overseas person or, if an overseas person, either has obtained consent under the overseas investment fishing provisions to acquire annual catch entitlement or is exempt from the requirement for that consent.”

Repeal section 297(1)(p).

Omit from section 303(2) the expression “56,”.

Omit from section 308(2)(c) the expression “56, 57,” and substitute the words “**56 to 58B**”.

Repeal section 358.

**Inspector-General of Intelligence and Security Act 1996**

(1996 No 47)

Omit from the definition of **overseas person** in section 2(1) the words “section 2(1) of the Overseas Investment Act 1973” and substitute the words “**section 7** of the Overseas Investment Act **2004**”.

**Official Information Act 1982** (1982 No 156)

Omit from the First Schedule the item “Overseas Investment Commission”.

Part 1—*continued***Public Audit Act 2001** (2001 No 10)

Omit from Schedule 2 the item “Overseas Investment Commission”.

**Reserve Bank of New Zealand Act 1989** (1989 No 157)

Repeal the definition of **specified security** in section 2(1) and substitute:

“**specified security** has the same meaning given to **security** in **section 6** of the Overseas Investment Act **2004**”.

**Summary Proceedings Act 1957** (1957 No 87)

Omit from Part II of the First Schedule the item “The Overseas Investment Act 1973”.

Part 2  
Regulations amended**Fisheries (Transfer of Functions, Duties, and Powers to The New Zealand Seafood Industry Council Limited) Order 2001 (SR 2001/282)**

Omit from clause 7(4)(d) the expression “Overseas Investment Act 1973” and substitute the expression “Overseas Investment Act **2004**”.

**Fisheries (Registers) Regulations 2001** (SR 2001/187)

Revoke regulation 5(2)(g) and (h) and substitute:

- “(g) whether or not the holder was exempted from the requirement for consent under the overseas investment fishing provisions to acquire annual catch entitlement even though the holder is an overseas person:
- “(h) whether or not the holder obtained consent under the overseas investment fishing provisions to acquire annual catch entitlement:
- “(ha) whether or not the holder was granted permission under section 57(3) of the Act or had an exemption by declaration under section 54(2) of the Act (as those sections were in force immediately before the commencement of **section 73** of the Overseas Investment Act **2004**).”