

# The Treasury

## Overseas Investment Act 2005 – Phase One Review Policy Advice (2017/18) Information Release

March 2019

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Where this is the case, the relevant sections of the Act that would apply have been identified.

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Key to sections of the Act under which information has been withheld:

- [1] 6(a) - to avoid prejudice to the security or defence of New Zealand or the international relations of the government
- [2] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [3] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [4] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [5] 9(2)(h) - to maintain legal professional privilege
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## Treasury Report: Treasury Report: Overseas Investment Amendment Bill - Non-occupation of apartments

<b>Date:</b>	7 May 2018	<b>Report No:</b>	T2018/1263
		<b>File Number:</b>	IM-5-1-1

### Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	For information.	
Associate Minister of Finance (Hon David Parker)	<b>Agree</b> that the non-occupation for apartments extends to “associates” but does not generally apply to “related persons”.	<b>By Thursday 10 May</b>

### Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
Robbie Taylor	Senior Analyst	[6]	N/A (mob)	✓
Thomas Parry	Team Leader, Overseas Investment	[6]	[6]	

### Actions for the Minister's Office Staff (if required)

**Return** the signed report to Treasury.

Note any feedback on the quality of the report

**Enclosure:** No

## **Treasury Report: Treasury Report: Overseas Investment Amendment Bill - Non-occupation of apartments**

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### **Advice**

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We seek further advice from you on how to implement Cabinet's decision to prevent overseas persons and "associates" of overseas persons from occupying units in large apartment developments purchased from developers that hold an exemption certificate.

### ***Background***

Cabinet decided that developers could apply to the OIO for an exemption certificate allowing them to sell a percentage of units in a large apartment development to overseas persons, without the overseas person having to on-sell the unit. Cabinet further decided that sales to overseas persons by developers that hold such certificates should be subject to the condition that the unit is not occupied by the overseas person or their "associates".

The Overseas Investment Act (OIA) extends requirements to obtain consent to "associates" of overseas persons to limit opportunities for avoidance (for example, where a New Zealand person purchases sensitive land on behalf of an overseas person to avoid the requirement to obtain consent). "Associates" covers relationships of control, direction, influence, people acting jointly or in concert and people acting together pursuant to an arrangement or understanding. The full definition is set out in an Annex to this report.

This definition does not *always* cover family members, friends or employees ("related persons"). It would only capture these people - and in the case of the non-occupation requirement, prevent them from occupying a relevant unit - where there was something in particular about the relationship that indicated that the purchase was made by another person to avoid the non-occupation requirement (for example, where a unit is purchased by a person "ordinarily resident in New Zealand" on behalf of their brother that is a non-citizen and not "ordinarily resident in New Zealand").

## Options analysis

We seek your guidance on whether the non-occupation requirement in the Bill should prevent “associates” as well as other “related persons” from occupying units purchased in large apartments. There are broadly two options:

1. *Preferred option:*

Prevent the following persons from occupying units in large apartment developments purchased from a developer with an exemption certificate:

- the overseas person that buys the unit (A);
- any person (B) that has a 25% or more ownership or control interest in A;
- or any associate of A or B; or

2. *Alternative option:*

Prevent the persons covered in option 1 from occupying units in large apartment developments purchased from a developer with an exemption certificate and:

- any person that would otherwise be granted the right to occupy the unit as a result of an existing relationship with A or B (e.g. family members, friends and employees).

Option 1 would prevent people from occupying a unit where the unit was purchased by another person *in order to* avoid the non-occupation requirement. The benefit of this approach is that it focuses on the problem - behaviour intended to avoid the policy intention of the non-occupation requirement. It does this by using an established mechanism in the OIA (the “associates” regime), which gives us confidence in the way the mechanism will operate.

Option 2 would be more definitive in preventing persons related to an overseas owner of a unit in a large apartment from occupying that unit. It would also be broadly consistent with the policy objectives of the non-occupation. That is, to prevent the overseas person from continuing to enjoy occupancy of their unit via people they are related to. However, this would involve introducing a new concept into the OIA regime. <sup>[5]</sup>

It would also reduce policy coherence within the OIA regime.

Further, we do not consider that there is a strong policy rationale for extending the non-occupation requirement to capture “related persons” as per Option 2. These people will be in the New Zealand rental market in any event and therefore their occupation of the apartment will have no net effect on the supply of housing. If they are not allowed to rent from people they have a relationship with, they will find an alternative option.

## Recommended Action

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We recommend that you:

- a **note** that the OIA defines “associates” for anti-avoidance purposes to cover people acting together or jointly to avoid the requirements of the Act but would not always cover family members, friends, employees or other persons with established relationships with a purchaser of property;
- b **note** that preventing persons related to the overseas owner of unit in a large apartment from occupying that unit would artificially segment the rental market for people legitimately entitled to be in New Zealand and who are not seeking to avoid the intention of the non-occupation requirement;
- c **agree** that the non-occupation requirement prevents the following persons from occupying units in large apartment developments purchased from a developer with an exemption certificate:
  - i. overseas persons that purchase the unit (A);
  - ii. any person (B) that has a 25% or more ownership or control interest in A; and
  - iii. any of A or B’s associates;

but not

  - iv. persons otherwise related to A or B.

*Agree/Disagree*

Thomas Parry  
**Team Leader, Overseas Investment**

Hon Grant Robertson  
**Minister of Finance**

Hon David Parker  
**Associate Minister of Finance**

## **Annex: Existing definition of “associate” in Overseas Investment Act**

- (1) In this Act, a person (**A**) is an **associate** of another person (**B**) in relation to an overseas investment or any other matter if—
  - (a) A is controlled by B or is subject to B’s direction:
  - (b) A is B’s agent, trustee, or representative, or acts in any way on behalf of B, or is subject to B’s direction, control, or influence, in relation to the overseas investment or the other matter:
  - (c) A acts jointly or in concert with B in relation to the overseas investment or the other matter:
  - (d) A participates in the overseas investment or the other matter as a consequence of any arrangement or understanding with B:
  - (e) A would come within any of paragraphs (a) to (d) if the reference to B in any of those paragraphs were instead a reference to another associate of B.
- (2) If A is an **associate** of B, B is also an **associate** of A.
- (3) For the purposes of subsection (1), it does not matter whether the control, direction, power, influence, arrangement, or other relationship between A and B is—
  - (a) direct or indirect:
  - (b) general or specific:
  - (c) legally enforceable or not.