

Overseas investment in New Zealand

Phase Two reform of the Overseas Investment Act

New Zealand needs productive investment

To grow our economy, and lift productivity we need investment – both by New Zealanders and by overseas investors. Overseas investment is welcome where it supports New Zealanders' wellbeing.

However, overseas investment can both bring benefits and pose risks to New Zealand. Decisions about who can invest in New Zealand, and in what assets, need to balance the benefits of overseas investment and potential productivity gains against whether it is in New Zealand's long-term interests to allow foreign ownership or control of sensitive assets.

What are the benefits and risks of overseas investment for New Zealand?

Benefits can include:



Job creation



Access to international markets



Introduction of new technologies to lift productivity

But overseas investment can also carry risk

Many New Zealanders have a strongly held view that pastoral, horticultural and residential land should be sold on a New Zealand, rather than international, market.

Overseas investment can also generate broader concerns, for example:

- about the potential for management or innovative parts of a business to be moved offshore, and
- that overseas ownership or control of certain large assets can pose risks to our national interests (for example, critical infrastructure such as electricity distribution networks).

We already have rules on overseas investment in New Zealand

Deciding who can invest in what

The Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 set the rules around overseas investment.

The rules do not govern all overseas investment in New Zealand. Instead they focus on New Zealand's most **sensitive assets**. The rules recognise that it is a privilege for overseas people to invest in **those sensitive assets** and seek to ensure that investment will benefit New Zealand.

Under the rules, if an overseas investor wants to buy or invest in sensitive assets, they must generally apply for consent to do so. The Overseas Investment Office considers and provides advice on these applications, with Ministers often making the final decisions on consent.

These rules are not working as they should

Some of the current rules do not seem to allow sufficient discretion for the government of the day to intervene in the national interest, as can occur in Australia. Conversely, other rules are overly specific creating undue administrative complexities, time and delay. We want to achieve the right balance between the need to restrict investments that do not benefit New Zealand and the need to facilitate high-quality investment that can boost our productivity.

To enable the benefits that overseas investment can bring to New Zealand, it is important that the rules allow New Zealand to attract good investment and are not so burdensome that they discourage potential investors. Equally importantly, we need to ensure that the ownership of, and rights over, assets that are important to New Zealanders are not compromised or harmed.

What are sensitive assets?

Overseas persons need consent in order to own or control:



Sensitive land (including residential property and non-urban land over five hectares)



Significant business assets (generally worth more than \$100 million)



Fishing quota

Reform of the overseas investment rules – what's involved

In 2018, in the first phase of changes, the Government streamlined the consent process for certain investments in forestry, but tightened the rules for investments in residential property. These changes are not being revisited.

The Government is now considering a second phase of changes. The scope of the changes in this phase is set out in the Terms of Reference. As noted in the Terms of Reference, this is not a 'first principles' reform and New Zealand continues to welcome high quality foreign investment.

This second phase looks at – and seeks your feedback on – issues relating to the types of assets that are screened, who is screened, and how the screening process is conducted. The next page provides a summary of those issues and some possible options for improvement.

A summary document and a discussion document which comprehensively sets out the different options for possible improvements are available at treasury.govt.nz/overseas-investment-consultation

Timeline

- Oct 2018** Phase 1 changes, including screening of residential property come into force. Phase 2 Terms of Reference released
- Apr 2019** Release of discussion document
- Mid – Late 2019** Detailed policy design work
- Mid 2020** Phase 2 changes passed into law

We want your views



We're holding public meetings and hui. Meeting dates and times are at treasury.govt.nz/overseas-investment-consultation



Written submissions can be emailed to OverseasInvestment@treasury.govt.nz or posted to: Overseas Investment Act Reform, The Treasury, PO Box 3724, Wellington 6140. The closing date for submissions is 24 May 2019.



The reform is considering issues across three topics, more detail on each topic can be found overleaf.

There are three areas the Overseas Investment Act reform is looking at changing – some of the options for changing how we screen could have a large impact on the screening regime, and we anticipate these will be of public interest.



What we screen

This section looks at what assets overseas persons need consent for in order to own or control.

Currently some less sensitive types of land, and interests in land, are subject to the same rules as our largest farms and foreshore. This can come at significant cost.

As a result the Government is considering the extent to which the rules should require overseas investors to:

- get consent to buy land that is considered ‘sensitive’ only because it is next to particular types of land with sensitive characteristics (such as land next to a reserve), and
- go through the same process to lease (for three years or more) sensitive land as they would to buy the land outright.

Our international obligations constrain New Zealand from requiring additional types of assets to be covered by the rules.



Who we screen

This section looks at how the rules define who needs to seek consent to acquire sensitive New Zealand assets.

There are currently some problems with:

- how the rules determine whether a company is an ‘overseas person’ when it has a mix of overseas and New Zealand shareholders, and
- where we best draw the line when deciding which low-risk transactions (for example, purchases of a very small share of a company) should be screened.

Alongside a range of technical issues the reform is also considering:

- what constitutes a New Zealand owned or controlled company, and
- whether funds, such as Kiwisaver, should be exempt from the rules.



How we screen

A big part of the rules is the process for deciding whether an overseas person can buy a sensitive asset.

These tests help us ensure that sensitive assets are protected, but can also be difficult and expensive for investors to meet.

The reform is also seeking views on how we can best:

- assess the character and capability of overseas persons wanting to invest in New Zealand
- only allow investment that is in our national interest, and
- block investments not currently covered by the rules (such as a transaction involving producing dual-use technology) where this presents risks to our national security and/or public order.

We are also seeking your views on the extent to which decision-makers should be able to explicitly consider water extraction, Māori cultural values, and tax residency when assessing applications.

From these options we are trying to better balance the benefits and risks of overseas investment

To make sure we keep the ‘big picture’ in mind, the consultation document assesses each option for change against three criteria. These criteria are consistent with Treasury’s Living Standards Framework, which looks across the four things that affect New Zealanders’ wellbeing: our financial and physical assets, the natural environment, people’s skills, knowledge and health, and social norms (these are referred to as the ‘four capitals’). At times there may be tensions between the different criteria, as the rules seek to balance the benefits of overseas investment against potential risks.

In addition to this, any changes to the rules must be consistent with the principles of the Treaty of Waitangi and comply with our international obligations.

Each option will be assessed by how well it:



Manages the risk of overseas investment to New Zealanders’ wellbeing



Supports overseas investment in productive assets



Encourages more predictable, transparent and timely outcomes

What’s your perspective?

This is an important issue and we encourage you to have your say.

For each of the topics we look at (what we screen, who we screen, and how we screen) we would like you to let us know:

- your views on, and experiences of, the problems identified.
- what you think about the potential solutions we have identified. Do you have some different ideas for solutions?
- if there are any other issues (within the Terms of Reference’s scope) we should consider.

While this reform is focused on options for legislative change and consultation is led by the Treasury, you are welcome to also provide feedback on your operational experience with Overseas Investment Office, which they will be able to use as part of their continuous improvement programme.

How to provide feedback



At a public meeting or hui. Meeting dates and times are at treasury.govt.nz/overseas-investment-consultation



You can make a written submission and either email it to OverseasInvestment@treasury.govt.nz or post it to: Overseas Investment Act Reform, The Treasury, PO Box 3724, Wellington 6140. The closing date for submissions is 24 May 2019.