

New Zealand Government to Introduce National Interest Test on Overseas Investment

November 2019

The New Zealand Government has announced it will introduce legislation next year to update the Overseas Investment Act 2005.

The Government says the suite of changes are intended to better manage risks posed by overseas investment while cutting unnecessary red tape and encouraging productive overseas investment in New Zealand. The changes follow last year's reform that generally banned foreign buyers from purchasing residential homes.

All three governing parties campaigned on stricter controls on overseas investment but Ministers and MPs have been keen to point out that these new powers will be used only rarely and New Zealand remains open to high-quality overseas investment.

The Government says these reforms will apply to all overseas investors, irrespective of where they are from. A Bill implementing the changes will be introduced in early 2020. There is no pre-legislative consultation, meaning the first formal opportunity to engage with the proposals will be at select committee stage.

National Interest Test

The highlight of these changes will be the introduction of a national interest test to be applied to applications from overseas investors to buy assets of strategic importance such as ports and airports, telecommunications infrastructure, electricity and other critical infrastructure. In "rare cases" the test could be applied to other investments that pose "material risk".

The Government says the national interest test will be consistent with world best practice and "will be used rarely and only where necessary to protect New Zealand's core national interests".

Associate Finance Minister David Parker says that, under the current rules, so long as an overseas buyer was not corrupt and had the financial capability to manage the investment there was no way the government could turn down a sale.

Minister Parker says the Government ought to have the power to block the sale of important monopoly assets and other strategic assets to overseas interests. The more detail on the definition of 'national interest' will be released when the Cabinet papers are made public in December, but Minister Parker says it is intended to be a broad power. This could effectively leave it to Ministers to make the call.

The Government says the introduction of this test will not make the process more burdensome for overseas applicants, as investors looking to buy these assets would have had to apply for approval under current rules. However, critics believe it will add to uncertainty for investors looking at such assets.

Call in Power for Strategic Assets

A "call in" power will apply to the sale of New Zealand's most strategically important assets, such as firms developing military technology and direct suppliers to defence and security agencies, that would otherwise not be screened under the Act (e.g. if their value is below the threshold where approval is needed).

There has been discussion over whether this "call in" power could be applied to the sale of media companies. Two of New Zealand's three large private media companies are seeking buyers, at a time where countries around the world are becoming increasingly concerned about foreign interference in their internal politics.

Minister Parker says the power would only be used to control those investments that pose a significant risk to New Zealand's national security or public order. He notes these tests could also be used to control investments in significant media entities where these are likely to damage our security or democracy but says these powers will be used rarely and only where necessary for protecting New Zealand.



Water Exports

Responding to concerns about overseas investment in water bottling, the Government will also require consideration of the impact on water quality and sustainability of a water bottling enterprise, when assessing an investment in sensitive land.

Other Changes

As well as the restrictive changes above, there are a suite of adjustments intended to simplify and update the overseas investment process:

- Leases of under ten year in sensitive land other than residential land will no longer need approval.
- Transactions where the ownership or control of sensitive assets is not materially affected will also be made exempt from the overseas investment approval process.
- Companies that are majority New Zealand owned and controlled by New Zealanders will also be made exempt in some circumstances.
- The “good character test” will be replaced with a more specific list of tests, including:
 - major overseas criminal offences;
 - civil offences resulting in financial penalties; and
 - ongoing court proceedings.
- The investor test will be simplified:
 - Overseas investors will only have to meet the investor test once, unless there is a material change in circumstances.
 - New Zealanders investors in purchase subject to the OIO won’t have to meet the investor test.
- The benefits test will be simplified with the current 21 factors replaced with fewer, broader factors.
- Overseas investors’ plans to protect areas of significance to Maori will also be able to be recognised.
- The benefits that must be shown for approval to be given for purchase of an interest in land will be altered so that they must be proportional to the land’s sensitivity and the type of interest being acquired in it, rather than the blanket rule currently applied to rural land over 5 hectares.
- Statutory timeframes for the Overseas Investment Office (OIO) to decide will be introduced. This will vary depending on the type of application.
- The maximum fine for non-compliance will increase to \$10 million for corporates and \$500,000 for individuals.

Next steps

A Bill implementing the changes will be introduced in early 2020. There will be a Select Committee process where interested parties will be invited to make written and oral submissions on the Bill.

Further Information

For more detailed analysis, contact Hawker Britton’s New Zealand Associate Director Neale Jones on +64 27 5291079.

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