



# Regulation of lifestyle block type acquisitions in New Zealand by overseas persons

## INTRODUCTION

The acquisition of lifestyle type blocks by overseas persons in New Zealand is governed by the Overseas Investment Act 2005 (*Act*) and the Overseas Investment Regulations 2005 (*Regulations*). The main purpose of the Act is to acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets. Overseas persons wishing to acquire such assets must meet the criteria for consent and comply with any conditions imposed by the Overseas Investment Office (*OIO*), which administers the Act and Regulations. The Act also regulates investment in business assets in New Zealand. For further, more detailed information refer to the OIO's website (<http://www.linz.govt.nz/overseas-investment/>).

## OVERSEAS PERSONS

### *Who is an "overseas person"?*

The full definition of an overseas person is set out in the OIO's website, but briefly, an overseas person is defined as:

- (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 25% or more of any class of A's securities, or the power to control the composition of 25% or more of A's governing body or the right to exercise or control the exercise of 25% or more of the voting power at a meeting of A.

Similar constraints apply to partnerships, trusts and unit trusts, and the same constraints apply to any associate of an overseas person (with the term "associate" being very widely defined to catch direct or indirect relationships, and whether those relationships are general or specific, or legally enforceable or not).

## SENSITIVE LAND TRANSACTION

### *Interests in land that require consent*

Consent is required for an "overseas person" or their associate to acquire an interest in land if the land is "sensitive" as defined in the Act, and the interest to be acquired is a freehold estate or a lease, or any other interest, for a term of 3 years or more (including rights of renewal). What will be "sensitive land" under the Act has been somewhat expanded from the previous legislation. The definition is detailed and convoluted, and as such, does require careful checking and analysis from qualified advisors.

### *What is sensitive land?*

Briefly, land will be sensitive if it is, or **includes**:

- (a) non-urban land this is over 5 hectares in area;
- (b) the foreshore or seabed;



- (c) any land over 0.4 hectares that is on a listed island; is the bed of a lake; is held for conservation purposes under the Conservation Act 1987; a district or proposed district plan provides is to be used as a reserve, a public park, for recreation purposes or as open space; is subject to a heritage order or a requirement under the Resource Management Act 1993 or the Historic Places Act 1993; is an historic place or area or wahi tapu this is registered or the subject of an application to register under the Historic Places Act 1993; or
- (d) if not sensitive itself, will be deemed to be sensitive under the Act if it **adjoins** certain other land that is sensitive the Act; and
- (e) may also be sensitive land because it is “associated” with other land already owned or controlled by the overseas person.

### *Special land*

One further category of land that overseas investors in New Zealand must be aware of is “special land”. Special land is defined in the Regulations as the foreshore, seabed, riverbed or lakebed. If an investor wishes to acquire any land that is sensitive land under the Act, and that sensitive land **includes** any special land, that special land must be offered to the Crown by the overseas person. The Crown will assess the special land and elect either to decline the offer or proceed with the acquisition of the special land following the guidelines in the Regulations. Investors should note that the Crown can acquire only that part of the sensitive land that is special land, and that acquisition by the Crown cannot proceed unless the overseas person actually completes the acquisition of the sensitive land.

### *Farm land must be advertised on open market*

Lastly, where a proposed acquisition involves farm land (being land that is used exclusively or principally for agricultural, horticultural or pastoral purposes, or for the keeping of bees, poultry or livestock), that farm land must first have been offered by the vendor on the open market to persons who are not overseas persons in accordance with the procedures set out in the Regulations. Exemptions from this requirement can be obtained, but only in special circumstances and at the discretion of the relevant Minister.

### *Exemptions*

There are some exemptions available for land acquisitions, but they are not generally applicable to ordinary overseas persons transactions. If one of the acquiring parties is New Zealand citizen there is a useful exemption in Regulations 33 (m) and (n), dealing with disposition of property between spouses.

### *Consent criteria*

If consent is required the applicant must satisfy certain criteria for land acquisitions. These include business experience and acumen relevant to the acquisition, and financial commitment to the acquisition. In addition, the applicant, or if the applicant is not an individual, all the individuals who control the applicant, must be of good character.

If the investment is in sensitive land, either subparagraph (i) must be met, or subparagraph (ii) and (if applicable) subparagraph (iii) must be met:

- (i) the applicant, or if the applicant is not an individual, all the individuals who control the applicant, are New Zealand citizens, ordinarily resident in New Zealand, or intending to reside in New Zealand indefinitely; or
- (ii) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or a group of New Zealanders), as determined by the relevant Ministers; and
- (ii) if the relevant land includes non-urban land that, in area (either alone or together with any associated land) exceeds 5 hectares, the relevant Ministers determine that that benefit will be, or is likely to be, substantial and identifiable.



*Matters considered in land transactions*

For the purposes of determining if an application in relation to sensitive land is in the national interest, the following matters are considered:

- (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; or
  - (ii) the introduction into New Zealand of new technology or business skills; or
  - (iii) increased export receipts 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) whether 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;
- (c) whether there are or will be adequate mechanisms in place for protecting or enhancing existing areas of significant habitats of trout, salmon, wildlife and game and providing, protecting, or improving walking access to those habitats by the public or any section of the public;
- (d) whether there are or will be adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land, including conditions for conservation (including maintenance and restoration) and access, agreement to support registration of any historic place, historic area, wahi tapu, or wahi tapu area under the Historic Places Act 1993; agreement to execute a heritage covenant and compliance with existing covenants;
- (e) whether there are or will be adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land or a relevant part of that land by the public or any section of the public;
- (f) whether the overseas investment will, or is likely to, result in other consequential benefits to New Zealand (whether tangible or intangible benefits (such as, for example, additional investments in New Zealand or sponsorship of community projects));
- (g) whether the relevant overseas person is a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations;
- (h) whether refusing the application for consent will, or is likely to:
  - (i) adversely affect New Zealand's image overseas or its trade or international relations;
  - (ii) result in New Zealand breaching any of its international obligations.



- (i) whether granting the application for consent will, or is likely to, result in the owner of the relevant land undertaking other significant investment in New Zealand;
- (j) whether the relevant overseas person has previously undertaken investments that have been, or are, of benefit to New Zealand;
- (k) whether the overseas investment will, or is likely to, give effect to or advance a significant Government policy or strategy;
- (l) whether the overseas investment will, or is likely to, enhance the ongoing viability of other overseas investments undertaken by the relevant overseas person.

#### *Lifestyle block acquisitions in particular*

The OIO has previously noted that it will generally be difficult for applicants wishing to acquire lifestyle blocks to meet the economic factors noted in the immediately above heading. However, in our experience, if the applicant is willing to undertake the heritage, flora and fauna protective measures and the public access measures noted in paragraph (b)-(e) above, and if any activity the applicant intends for the property (such as land development, building or the appointment of a full or part-time caretaker) which will ensure some short or long term full or part-time employment (see paragraph (a) (i) above), then the OIO will generally look more favourably on the application.

#### **PENALTIES**

Penalties apply in case of a breach of these provisions. An investor who fails to apply for consent where consent is required is liable on conviction on indictment, in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$300,000 and in the case of a body corporate, to a fine not exceeding \$300,000. The same penalties apply for attempting to defeat, evade or circumvent the Act, or of resisting, obstructing or deceiving the OIO from exercising its functions and powers under the Act. The High Court has the power, on application from the OIO, to order disposal of any property (which includes a right or interest in any security, an interest in land, an interest in fishing quota or any other property or any rights or interests in any other property.

#### **ONGOING MONITORING**

If consent is granted to an acquisition, that consent is usually granted subject to various conditions that the applicant must comply with. The OIO will monitor compliance with those conditions of consent, and has powers to require further information from the consent holder, and to require the consent holder to provide a statutory declaration of compliance with consent conditions. Any contravention of consent conditions can result in a fine of up to \$100,000.



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