

# Overseas Investment Amendment Bill

## *Cabinet decisions on Commitment to Reside in New Zealand*

8 February 2018

### **Purpose of this document**

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On 14 December 2017, the Government introduced the Overseas Investment Amendment Bill (Bill). The Bill passed its first reading and was referred to the Finance and Expenditure Select Committee. The Bill introduces requirements for residence class visa holders seeking to acquire a residential property as their main home or residence in New Zealand (the Commitment to Reside in New Zealand pathway). It also provided for further details of the pathway to be set in regulations.

On 23 January 2018, Cabinet made decisions on that further policy detail for the Commitment to Reside in New Zealand pathway. Cabinet also decided that detail should be set out in the Bill rather than in regulations. However, the Finance and Expenditure Select Committee can recommend its own suggested changes to the Bill and is not required to follow Cabinet decisions.

The purpose of this document is to outline Cabinet decisions to support the Committee's consideration of the Commitment to Reside in New Zealand pathway.

### **Overseas Investment Amendment Bill (as introduced)**

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The Bill is designed to ensure that overseas persons who are not resident in New Zealand will generally not be able to buy existing houses or other pieces of residential land. Under the Bill, there are no restrictions on property investment for New Zealand citizens, or permanent residents who meet the definition of being 'ordinarily resident in New Zealand'. For an overseas person to acquire residential land, they will need to meet tests set out in the Bill and gain consent from the Overseas Investment Office (OIO).

Clause 11 of the Bill inserts new sections 16A and 16B, which establish a new Commitment to Reside in New Zealand pathway. Under this pathway, a residence class visa holder can acquire residential land if they meet the requirements for showing Commitment to Reside in New Zealand. All consents under this pathway include a mandatory condition that the person occupies the property as their main home or residence in New Zealand.

The Bill also includes provision for regulations defining 'trigger events'. If a 'trigger event' occurs, a person would be required to dispose of their interest in the land within 12 months, unless the 'trigger event' is resolved by meeting requirements set out in the Bill.

The Commitment to Reside in New Zealand pathway would not apply to temporary visa holders, including international students, essential skills work visa holders, and work to residence visa holders. They would continue to be able to rent houses under a residential tenancy agreement.

## **Cabinet decisions on Commitment to Reside in New Zealand**

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The Bill provides for regulations setting out requirements under the Commitment to Reside in New Zealand pathway. Cabinet has decided that, instead of regulations, requirements for the Commitment to Reside in New Zealand pathway should be set out in the Bill. The Legislation Advisory Committee Guidelines state that matters of significant policy, and procedural matters that go to the essence of the legislative scheme, should ideally be addressed in primary legislation. However, the Select Committee can recommend its own suggested changes to the Bill and is not required to follow Cabinet decisions.

The core policy elements agreed by Cabinet are outlined below.

### **Eligibility for Commitment to Reside in New Zealand Pathway**

Cabinet has decided that any person who holds a residence class visa will be eligible for the Commitment to Reside in New Zealand pathway. Residence class visas include:

- Permanent resident visas. (Note the Commitment to Reside in New Zealand pathway would only apply to permanent resident visa holders who do not meet the definition of 'ordinarily resident in New Zealand' under the Bill. Under the Bill, there are no restrictions on acquisition of residential land for permanent residents who meet the definition of 'ordinarily resident in New Zealand'.)
- Resident visas under the New Zealand Residence Programme, which include the following streams:
  - The Skilled/Business stream (e.g. Skilled Migrant, Residence from Work)
  - The Family stream (e.g. Partnership, Parent)
  - The International/Humanitarian stream (e.g. Pacific Access, Refugees)

### **Test to be granted consent**

Cabinet has decided that in order to be granted consent, the visa holder will need to provide a declaration that (until they become ordinarily resident in New Zealand or a New Zealand citizen) they:

- intend to be present in New Zealand for at least 183 days in each 12-month period from the date of consent; and
- they intend to be a tax resident in New Zealand within 12 months from the date of consent and continue to be a tax resident while they own the relevant land.

The Bill provides that to grant consent, Ministers would also need to be satisfied that, if consent were granted, the mandatory conditions that would attach to the consent would be, or would likely be, met.

Cabinet also decided that applicants under the Commitment to Reside in New Zealand pathway should not be subject to the ‘investor test’ criteria under section 16(1)(a)-(d) of the Overseas Investment Act, if the residential land does not fall under any of the other categories of sensitive land in Schedule 1 of the Overseas Investment Act. The investor test criteria include demonstrating business experience and financial commitment. If the residential land also falls within one of the other categories sensitive land (e.g. land on an island), the applicant will still be subject to the ‘investor test’ criteria. Implementing that decision would require a change to the Bill (it would not be done in regulations).

### **Mandatory conditions**

The Bill sets out that mandatory conditions will apply to any consent granted under the Commitment to Reside in New Zealand pathway. These conditions are (in clause 11 (new section 16B(2)):

- Occupation requirement – The purpose of the investment must be to acquire residential land for occupation as the relevant person’s main home or residence in New Zealand.
- On-selling requirement – If a ‘trigger event’ occurs, a person must dispose of the interest in the land within 12 months of the ‘trigger event’, unless the trigger event is resolved.

### **‘Trigger events’ for disposal of property, and resolution**

*Trigger event: expiry of cancellation of visa*

Cabinet has decided that a trigger event will occur if a person’s visa expires or is cancelled. That trigger event can be resolved if a person regains a residence class visa.

*Trigger event: absence from New Zealand*

Cabinet has also decided that a trigger event will occur if a person was absent from New Zealand for more than 183 days in a 12-month period. There will be two alternative ways in which an absence from New Zealand trigger event could be resolved:

- if, in a 12-month period commencing from the trigger event, the person is present in New Zealand for 183 days or more; or
- if the person applies to the OIO and satisfies the OIO (or relevant Ministers) that, despite the person’s absence, the person has not severed their commitment to reside in New Zealand. The assessment of relevant Ministers would be guided by factors set out in regulations.

## Summary of Commitment to Reside in New Zealand Pathway

