

## Fact sheet

# Strengthening New Zealand's Overseas Investment Regime in response to the COVID-19 pandemic

13 May 2020

**The COVID-19 global pandemic and associated economic downturn have created new challenges for New Zealand's foreign investment regime.**

New Zealand's economy has been hit hard by the COVID-19 pandemic, placing businesses under pressure, threatening the viability of some critical sectors, and causing the value of many businesses to fall. This increases the opportunity for overseas persons to invest in, or acquire, distressed New Zealand assets, which in some cases may not be consistent with New Zealand's national interest. The changes announced by the Government on 12 May 2020 ensure that these risks can be managed.

At the same time, our overseas investment rules require a number of low risk, economically valuable, transactions to receive consent. There is a risk that the Overseas Investment Act 2005 (the Act) will limit some New Zealand businesses' access to low risk finance necessary to survive the downturn, thrive and contribute to the recovery. The reforms will mean a number of such transactions can go ahead without an application for consent.

# The Reform of the Overseas Investment Act 2005

The Act is New Zealand's primary tool for managing foreign investment in New Zealand's sensitive assets. The Act sets screening requirements for investments in sensitive land, significant business assets and fishing quota.

The Government introduced legislation to reform the overseas investment regime in March 2020. This legislation contained changes to strengthen our ability to manage foreign investment risks while cutting unnecessary red tape to support businesses and to ensure that New Zealand remains an attractive investment destination.

The COVID-19 pandemic, and related economic downturn, have since created new foreign investment risks and heightened our awareness of existing gaps in New Zealand's foreign investment screening regime.

## **Announcing new legislation to strengthen the Act to manage foreign investment risks, while cutting red tape to streamline the process and boost our investment attractiveness.**

The Government has introduced two Bills to respond to risks posed by the COVID-19 pandemic, and progress the reforms that were already planned:

- 1 The Overseas Investment (Urgent Measures) Amendment Bill
- 2 The Overseas Investment Amendment Bill (No 3)

The Overseas Investment (Urgent Measures) Amendment Bill (**the Urgent Measures Bill**) includes new tools to respond to the heightened security and economic risks created by the COVID-19 pandemic, as well as provisions of the previously introduced Overseas Investment Amendment Bill (No 2) that are critical to the Government's COVID-19 economic response. The Government intends to pass the Response Bill quickly, with a shortened Select Committee process.

The Overseas Investment Amendment Bill (No 3) was also introduced and has been referred to Select Committee to follow a normal legislative process. This Bill contains the remaining provisions of the Phase Two Reform Bill and is intended to be passed within 12 months.

The table below sets out the key features of the **Urgent Measures Bill**:

<b>Strengthening how the Act manages risk</b>	
<p>Temporarily requiring foreign investors to notify the government of transactions so these can be assessed</p>	<p>Overseas persons will need to notify the government of any investment that is not already subject to screening, and:</p> <ul style="list-style-type: none"> <li>• grants them control of more than 25 per cent of an existing business,</li> <li>• increases an existing level of control in a New Zealand business, or</li> <li>• results in the acquisition of more than 25 per cent of a New Zealand's business' assets (by value).</li> </ul> <p>The government can then assess these transactions to determine whether they are contrary to New Zealand's national interest. It is expected that the vast majority of notified transactions will proceed quickly, without any government intervention.</p> <p>The power will be reviewed every 90 days and only remain in place while the COVID-19 pandemic and its associated economic effects continue to have a significant impact in New Zealand.</p>
<p>A national interest test will serve as a 'backstop' tool to manage significant risks</p>	<p>A national interest test will automatically apply to investments that already require consent and which warrant greater scrutiny, such as where a foreign government or its associates will hold a 10 per cent or greater interest in the asset, or investments in certain strategically important businesses (eg, significant ports and airports, water infrastructure, telecommunications). The Minister responsible for the Act can subject other applications to the national interest test.</p> <p>The test is a backstop tool, that will be rarely used, and only where it is necessary to ensure protection of New Zealand's core national interests.</p>
<p>A national security and call-in power will manage risks associated with strategically important businesses</p>	<p>Once the emergency notification regime is removed, it will be replaced with a narrower national security and public order call-in power.</p> <p>The call-in power will allow the government to review certain investments in strategically important businesses (such as critical national infrastructure) that do not require consent under the Act.</p> <p>Unlike the emergency notification power and national interest test, the call-in power can only be used to manage significant risks to New Zealand's national security or public order.</p>
<b>Simplifying the regime and cutting red tape</b>	
<p>Removing screening requirements for transactions that pose little to no risk</p>	<p>In some cases, screening is unnecessary and creates disproportionate compliance costs to the level of risk. Applications will no longer be required for:</p> <ul style="list-style-type: none"> <li>• The acquisition of all land listed in <a href="#">Table 2 of Schedule 1</a>, with the exception of land adjoining the foreshore, lakebed, conservation land and certain reserves, regional parks, national parks, and some land significant to Māori.</li> <li>• Fundamentally New Zealand entities acquiring sensitive New Zealand assets.</li> <li>• Small increases in existing shareholdings, certain corporate restructures, and low risk lending and transactions to support it.</li> </ul>

<p>Imposing timeframes on decision making through the Regulations</p>	<p>Regulations will set out specified timeframes for the different types of applications, to provide certainty to investors. These will be tailored to reflect the complexity, sensitivity and range of pathways available under the Act. However, timeframes will only initially be set for processing notifications under the emergency power.</p> <p>Other timeframes will not come into force until Regulations are enacted, which will be one year after commencement.</p>
<p>Simplifying the investor test so it is less costly and time consuming</p>	<p>When assessing an investors' character generally, only serious proven offences and matters before the court will be considered. New Zealanders will no longer have to satisfy the investor test.</p>