Key questions and answers

COVID-19 Economic Response: Reform of the Overseas Investment Act

13 May 2020

These questions and answers provide general information about changes to the Overseas Investment Act, focusing on the changes being made in response to the economic effects of COVID-19.

1. Why is the Government amending the Overseas Investment Act?

The Government welcomes high quality, productive foreign investment, but also recognises that some foreign investments can pose risks that need to be managed.

The Government had already introduced legislation to reform the Act to better balance these two objectives. The COVID-19 pandemic has since created new, and amplified existing, risks that require further changes. In particular, that falling business values mean important New Zealand assets could be sold to overseas investors without government review, and in some cases, this could be contrary to New Zealand's national interest.

2. What changes are being made?

The Government is combining changes announced in November 2019 and already introduced to Parliament with new amendments that respond to the risks created by the global COVID-19 pandemic.

The changes strengthen the government's powers to manage risks by:

- Introducing a temporary notification power, which in general terms:
    - will require overseas investors to notify the government before they proceed with an investment in a New Zealand business, if that results in more than a 25 per cent ownership interest, or increases an existing interest in that business to or beyond 50, 75 or 100 per cent. This requirement exists regardless of the dollar value of the investment, and
    - would allow the Government, to consider whether these investments are contrary to the national interest, and in rare cases impose conditions on, or block the investment.

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- Introducing permanent powers to:
    - assess investments that are already subject to screening, to consider whether they are contrary to New Zealand's national interest, and
    - once the temporary notification power is removed, allow the government to review certain investments in defined strategically important businesses (such as developers of military technology), and assess if they create a significant risk to national security or public order.
- Strengthening the Regulator's enforcement tools, to ensure that the government can proportionately respond to breaches of the Act, ensuring the integrity of New Zealand's foreign investment screening regime.

The Government is also making it simpler to invest by:

- no longer treating certain fundamentally New Zealand companies as overseas persons, such as certain domestically incorporated companies listed on the NZX
- no longer screening investments in certain types of less sensitive land, for example land adjoining local parks and reserves
- making it clearer and simpler for investors to understand what they need to do to meet the 'good character' assessment
- setting timeframes for how quickly the government must make decisions on investment applications, and
- removing screening requirements for transactions that pose little to no risk (for example, small changes in an existing shareholding).

3. How do investors notify the government under the new notification power?

Investors entering into transactions within scope of the temporary power must notify the Overseas Investment Office, the Act's regulator, of their transaction. This notification will be a short 2–5 page document asking for basic information about the transaction such as:

- identity of the investor
- ownership and control of the investor
- any links to foreign governments, and
- the nature and size of the business being purchased and the commercial rationale for that purchase.

This form will be available on the Overseas Investment Office's (OIO) website.

4. What happens if I do not notify the Overseas Investment Office of my transaction?

If an overseas person fails to notify the Overseas Investment Office of their proposed transaction under the temporary notification power, and proceeds with this transaction, there are significnt enforcement powers available in the Act that could result in the investor being forced to sell the asset.

Failure to notify also means that the government could later unwind the transaction if it fails the national interest test.

5. How long will it take for my notified transaction to be reviewed?

Within 10 working days, investors will either hear that their investment can proceed or that it is subject to a detailed review that considers whether the investment is contrary to New Zealand's national interest.

If a detailed review is required, the Government has a further 30 working days to make this assessment, with the potential to extend this timeline by another 30 days. The Government is committed to processing these quicker where it is practical.

6. How much will it cost?

There will no be fee for lodging a notification under the temporary regime. Other fees for consents are unchanged at this stage.

7. How will the government assess my notified transaction?

The Overseas Investment Office will recieve and make an initial risk assessment of the investment. Most investments are expected to recieve a quick 'no action' notice allowing them to proceed.

Transactions that need further review will be assessed to see whether the are contrary to New Zealand's national interest. The Minister responsible for the Act – currently the Minister of Finance – makes a final determination on whether the transaction can proceed (with or without conditions), or whether it should be prohibited.

Guidance on the national interest and how this will be applied will be published on the Treasury website.

8. What are my obligations as a firm receiving investment from an overseas person?

None. The obligation to notify the Overseas Investment Office lies with the investor.

9. Where can I get more information about the changes to the Overseas Investment Act?

The Treasury website features a fact sheet which summarises the key changes to the Overseas Investment Act. It also features a detailed guide on the national interest test.

The New Zealand legislation website shows the Overseas Investment (Emergency Measures) Amendment Bill and the Overseas Investment (Other Measures) Amendment Bill.

The Overseas Investment Office will also provide information and guidance on the new requirements in the Overseas Investment Act.