

Overseas Investment Amendment Bill (No 3)

Government Bill

Explanatory note

General policy statement

This Bill amends the Overseas Investment Act 2005 (the **Act**). This Bill is 1 of 2 Bills that are being introduced as a package to replace the Overseas Investment Amendment Bill (No 2), which was introduced on 19 March 2020. This Bill contains measures which the Government considers do not need to be put in place urgently to mitigate the economic effects of COVID-19.

The Bill's purpose is to ensure that risks posed by foreign investment can be managed effectively while better supporting productive overseas investment by reducing the regulatory burden of the screening process. These changes are consistent with the Act's purpose that it is a privilege for overseas persons to own or control sensitive New Zealand assets. The Bill is an omnibus Bill, introduced under Standing Order 263(a), which amends a number of Acts to achieve the Bill's single broad purpose.

The Bill strengthens how the Act manages risk by—

- embedding a higher threshold for acquiring farm land, reflecting its significant economic and cultural importance, as well as ensuring that farm land is advertised in a way that best ensures New Zealanders have a chance to acquire it (once regulations are made):
- enabling decision makers to consider the impacts of investments involving water bottling or bulk water extraction for human consumption on water quality and sustainability:
- providing better recognition for Māori cultural values, including by taking into account plans to protect or enhance wāhi tūpuna, wāhi tapu areas, and Māori reservations:
- requiring investors to disclose information relating to their proposed investment structure and tax treatment to Inland Revenue, to support the integrity of New Zealand's tax system (once regulations are made):

- introducing a regulation making power, giving the government scope to reintroduce an emergency notification regime similar to that included in the *Overseas Investment (Urgent Measures) Amendment Bill 2020*, if necessary to respond to a future emergency.

This Bill makes it simpler to make productive investments in New Zealand by no longer requiring lower-risk transactions to be screened, such as—

- investments in less sensitive land that are only screened because the land adjoins land that is sensitive in its own right (sensitive adjoining land):
- transactions involving fundamentally New Zealand entities:
- leases or other interests of less than 10 years (whether this threshold is reached in a single interest or cumulative interests) other than residential leases.

This Bill also makes it simpler to make productive investments in New Zealand by simplifying the screening process for the remaining transactions by—

- streamlining the process for determining whether an investment in sensitive land will benefit New Zealand, including by simplifying and clarifying the counterfactual assessment:
- no longer requiring investors to carry out a full screening process for subsequent investment applications if they have been screened and approved in a prior investment.

Departmental disclosure statement

The Treasury is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2020&no=265>

Regulatory impact assessment

The Treasury produced a regulatory impact assessment on 12 March 2020 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement. Most of the Act comes into force 42 days after the Act receives Royal assent. However,—

- some amendments (mainly related to farm land advertising requirements and fresh and sea water areas) come into force no later than 6 months after Royal assent:
- some amendments (mainly related to the benefit to New Zealand test come into force no later than 1 year after Royal assent.

The main reason for deferred commencement is that regulations need to be made to give effect to some amendments. The amendments can come into force earlier by Order in Council commencement. This is to ensure that, if the regulator and other affected agencies are in a position to implement them earlier, they can, with the goal of increasing New Zealand's investment attractiveness and ability to manage significant risks as soon as possible.

Part 1 amends the Overseas Investment Act 2005 (the **principal Act**).

Part 2 amends other Acts, notably the Fisheries Act 1996 (the **overseas investment fishing provisions**).

Part 1 of Bill

Amendments to Overseas Investment Act 2005

Part 1 of the Bill contains amendments to the principal Act. The main amendments are set out below, under the relevant Act headings.

Part 1 of principal Act

Preliminary provisions

Section 7 contains the definition of who are overseas persons. Currently, a body corporate (**A**) is an overseas person 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.

The changes reduce the number of bodies corporate that will be overseas persons. Bodies corporate that are both New Zealand-incorporated and New Zealand-listed will be less likely to be classed as overseas persons if they are widely held. The circumstances in which they will tip into being overseas persons are either of the following:

- an overseas person has, or more than 1 overseas persons cumulatively have, a beneficial entitlement to, or a beneficial interest in, more than 50% of A's securities:
- overseas persons who own 10% or more of A's securities control the composition of 50% or more of A's governing body or exercise or control the exercise of more than 25% of the voting power at a meeting of A. Shareholders who own less than 10% are not counted for this test (unless they are associates).

The changes also ensure that managed investment schemes will be overseas persons if their manager or trustee is an overseas person or if more than 25% of the value of the investment products in the investment scheme are invested on behalf of overseas persons.

Part 2 of principal Act

Consent and conditions regime

Subpart 1—When consent required and criteria for consent

Section 12 sets out what are overseas investments in sensitive land. Currently, section 12 covers 2 types, direct investments in interests in land (*section 12(a)*) and indirect investments (for example, buying shares in an entity that owns or controls interests in land) (*section 12(b)*).

Under *new section 12(1)(a)*, unless a lease or an interest relates to residential land, leases or other interests for a term of less than 10 years do not need consent under the principal Act. Leases or other interests in land that relate to land that is residential will continue to have a 3-year-term threshold. There have also been changes to how the term of the interest is calculated. In particular, the term of any previous interest in land held by the overseas person will count towards the total term of the lease (*see new Schedule 1A*).

The main change for indirect investments is reducing the number of small overseas investors that are subject to screening on the ground that the entity becomes an overseas person as a result of their acquisition. The Bill does this by changing the “tipping point” for New Zealand-incorporated and New Zealand-listed issuers. Currently, an overseas investor is subject to screening if, as a result of their investment, the entity becomes an overseas person (for example, if the new investment tips the entity over the current 25% overseas ownership threshold). The changes mean that the indirect investment will require screening on this ground only if the new tipping point described in *new section 12(2)* is reached. This point is never reached if the entity is widely held (ie, if no overseas person (alone or together with its associates) has a beneficial entitlement to, or a beneficial interest in, 10% or more of any class of the entity’s securities that confer control rights). Investors acquiring more than 25% will still be subject to screening on the other grounds in *new section 12(1)(b)*.

Section 16 sets out the criteria for consent for overseas investments in sensitive land. The main changes are in respect of farm land advertising. There is otherwise no substantive change in respect of residential land or forestry land.

The current rule in the Act on farm land advertising requirements is that, if the relevant land is or includes farm land, either that farm land or the securities to which the overseas investment relates must have been offered for acquisition on the open market to persons who are not overseas persons. The procedure for this is already set out in regulations. The main changes to the Act are as follows:

- allowing regulations to set the requirements about when and how section 12 interests must be advertised (*see new section 61(1)(b)*):
- allowing relevant Ministers to exempt from the requirement to advertise on the open market and from other requirements about how section 12 interests must be advertised (*see new section 20(2)*). This will allow for alternative forms of advertising, and supplement the current exemptions in section 20 from the need to advertise. Standard provisions about exemptions will apply (for example, applications can be made at any time, fees may be charged, and conditions may be imposed):
- requiring the advertising to happen before a transaction is entered into with the overseas person:
- clarifying what must be advertised (for example, if a 50 year lease may be sold to an overseas person, the farm land advertising requirements can be met by advertising a 50 year lease. Advertising the freehold interest in that property is not required).

Section 16A sets out the benefit to New Zealand test, which is 1 of the main criteria for consent for overseas investments in sensitive land. The main changes are as follows:

- changing the counterfactual to a simpler test (ie, Ministers must compare “before and after” the investment, rather than using the “with and without” the investment test used after the Court decision in the *Crafar Farms* case:
- requiring a proportionate approach (ie, taking into account whether the benefit is proportionate to the sensitivity of the land and the nature of the overseas investment transaction). This means that if, for example, a large area of very sensitive land is being acquired, the benefits are expected to be greater than if only a very small area of not very sensitive land is being acquired:
- removing current section 16A(1)(b), which requires that, if the relevant land is or includes non-urban land that, in area (either alone or together with any associated land) exceeds 5 hectares, the relevant Ministers have to determine that the benefit to New Zealand will be, or is likely to be, substantial and identifiable:
- enacting a modified benefits test for rural land with an elevated benefits threshold, by moving the current Government’s rural land directive up into the Act. That was given under section 34, which provides that the Minister can direct the regulator by a Ministerial directive letter. If the acquisition is or includes more than 5 hectares of farm land (ignoring associated land), Ministers must give certain factors high relative importance and ensure that the applicant has demonstrated, in relation to 1 or more of those factors, that the benefits of the investment are of a size or nature that represent a substantial benefit to New Zealand.

There are no changes proposed to the 2 forestry pathways within the benefit test set out in *section 16A*. Also, there are no substantive changes proposed to section 34,

which enables a Ministerial directive letter to direct the regulator about things like the relative importance of different criteria or factors in relation to particular assets.

Section 17 currently sets out some of the factors for assessing the benefit of overseas investments in sensitive land and regulation 28 of the regulations currently sets out more factors. The intention is that the new factors will be those set out in *new section 17(1)*, and that no factors will be able to be set by regulations.

Other changes in *new section 17(2) and (3)* are—

- if an overseas investment involves extraction of water for bottling, or other extraction of water in bulk for human consumption, introducing an additional factor, namely, whether the overseas investment will, or is likely to, result in a negative impact on water quality or sustainability. Any negative impact must be deducted from any benefit to New Zealand that has been determined:
- for other types of overseas investments, clarifying how the benefit test factors must be taken into account.

The following examples are only illustrative of the provisions listed, do not limit those provisions, and, if inconsistent, the provision prevails:

- *section 17(2)(b)(i)*: example: An overseas investment will result in 50 people being employed. The existing state of affairs is that 30 people are already employed. 30 jobs must be deducted from 50 jobs, and the net benefit of the overseas investment in respect of part of the factor at *new section 17(1)(a)* is 20 jobs:
- *section 17(2)(b)(ii)*: example: An overseas investment will introduce technology into New Zealand but the number of people employed will decrease from 20 (in the existing state of affairs) to 10 (with the overseas investment). This provision prevents netting-off the existing state of affairs on jobs against new technology, because jobs and new technology are not directly comparable matters:
- *section 17(2)(b)(iv)*: example: An overseas investment will result in 50 people being employed. The existing state of affairs is 60 people are employed. There is therefore no net benefit of jobs being created as a result of the overseas investment and this provision prevents any importance being given to jobs as part of the factor at *new section 17(1)(a)*:
- *section 17(3)*: example: An overseas investment involves extraction of water for water bottling. There is a net benefit of 20 jobs and \$10 million in export receipts. This investment would also result in a negative impact on water quality. This provision requires the importance of the negative detriment to be weighed and deducted from the overall net benefit of the overseas investment:
- *section 17(2)(b)(iv)*: to clarify, this rule is the opposite of the new rule that will apply if the investment involves extraction of water for water bottling. So, in the example above, if the overseas investment involves something other than water bottling, and if there is a net benefit of 20 jobs and \$10 million in export receipts, but if the investment would also result in a negative impact on water

quality, *section 17(2)(b)(iv)* prevents any importance being given to the negative impact on water quality. Similarly, if the overseas investment involves something other than water bottling, and if there is a net benefit of 20 jobs and \$10 million in export receipts, but if the investment would also result in a negative impact on something else, such as public access or historic heritage, *section 17(2)(b)(iv)* also prevents any importance being given to the negative impact.

New section 20 relates to the exemptions from the criterion in current *section 16(1)(f)* that requires farm land to be offered for acquisition on the open market to persons who are not overseas persons.

Subpart 2—Procedure for making an application for consent and for granting consent

New section 25D imposes an automatic condition on any consent involving a fresh or seawater area, requiring compliance with the provisions of *new Schedule 5* (which provides for the Crown acquisition of fresh or seawater areas, and which replaces the special land provisions in the principal Act).

New section 29A provides increased flexibility in relation to the investor test, for example for repeat investors. Currently, the investor test is a transaction-based test, and is required to be satisfied afresh for each transaction. People will be able to apply at any time for an assessment of whether they meet the test (not just when they apply for consent for a particular investment). Also, the new provisions will mean that investors who have already passed the investor test will not need to re-satisfy the test in full each subsequent time that they propose to make another investment. They would only need to declare any changes relevant to the investor test that have occurred since they last passed the test. Passing the test will count for later investments if either there has been no change in the extent to which the investor test factors are established or any change in the extent to which an investor test factor is established does not make the person unsuitable to own or control any sensitive New Zealand assets. However, if the national interest test was failed for the most recent investment where the investor met the investor test, for reasons connected to the investor, then the investor must apply again for a new assessment of whether they meet the test for their next investment.

Subpart 4—Information-gathering powers

New section 38A provides for overseas persons who make, or apply to make, an overseas investment in sensitive New Zealand assets to be required to provide information that the Commissioner of Inland Revenue considers necessary or relevant for tax purposes. The intention is that regulations will set out things like what information or other evidence or documents must be provided.

Subpart 6—Miscellaneous provisions

Section 61 sets out regulation-making powers. The main change is to widen the power to make regulations prescribing when and how section 12 interests in farm land must be advertised for acquisition on the open market.

The regulation making powers relating to the offer of foreshore, seabed, riverbed, or lakebed have been moved to *new Schedule 5* (which provides for the acquisition of fresh or seawater areas by the Crown).

Amendments to Schedule 1AA of principal Act: Transitional, savings, and related provisions

See *Schedule 1AA* for new transitional, savings, and related provisions.

Amendments to Schedule 1 of principal Act: Sensitive land

Table 2 of Schedule 1, which provides for land to be sensitive if it adjoins the types of land listed in that table, is amended. The amendments generally reduce the scope of sensitive adjoining land (for example, see *row 5 of new Table 2* which amends the types of regional parks that will be sensitive adjoining land), or refocus a type of sensitive adjoining land onto land that is significant to Māori (for example, see *row 10 of new Table 2*). There will no longer be a list of reserves, public parks, and other sensitive areas under section 37 of the Act.

There is otherwise no substantive change to *Schedule 1*.

Amendments to Schedule 3 of principal Act: Exemptions from requirement for consent

Clause 5 of Schedule 3 is replaced with no change in substance. *New clause 5* is an exemption that applies to premises used, or intended to be used, in the course of business principally for providing temporary lodging to the public. To try to help readers, the current clause 5 uses the term “hotel” for these premises (defined as above) and the term “hotel company” for people operating and developing these premises. It is thought that the use of these terms risks creating an implication that the narrower ordinary meaning of “hotel” is intended. The new clause therefore instead uses the terms TLtP premises and TLtP participant, to cover all premises used, or intended to be used, in the course of business principally for providing temporary lodging to the public.

New Schedule 5 of principal Act: Fresh and seawater areas

The principal Act requires an overseas person to offer special land to the Crown, and the provisions of that offer are dealt with in regulations. The main changes here are that—

- the special land (renamed fresh or seawater areas) must be acquired by the Crown unless the Crown declines to acquire the areas in accordance with the provisions set out in the schedule (see *clauses 4 and 5 of new Schedule 5*):

- the Crown's right to acquire only applies if the overseas person is acquiring a freehold interest or a leasehold interest in the land. The Crown's right to acquire does not apply in the case of acquisition of other estates or interests in land, or of rights or interests in securities:
- the Crown's right to acquire only applies if the criteria satisfied in a consent application included the benefit to New Zealand test:
- unless the Crown declines, the acquisition must be completed during the term of the water areas acquisition notice that will be registered against the relevant record of title relating to the fresh or seawater area.

Regulations will still set out the details of the acquisition, including standard terms of acquisition that will apply unless the Crown and overseas person agree otherwise. The provisions of *new Schedule 5* will bind the overseas person and any of their associates. If a water areas acquisition notice is registered on the record of title relating to the fresh or seawater areas, the provisions of *new Schedule 5* will also bind any subsequent owners of the fresh or seawater areas. For land held off-register, a water areas covenant will apply.

Part 2 of Bill

Amendments to other Acts

Fisheries Act 1996: the amendments to this Act are to align the overseas investment fishing provisions with the changes made to the Overseas Investment Act 2005.

Hon David Parker

Overseas Investment Amendment Bill (No 3)

Government Bill

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Part 2

Amendments to other Acts

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Schedule 1

New Part 5 inserted into Schedule 1AA of Overseas Investment Act 2005

Schedule 2

New Schedule 1A inserted in Overseas Investment Act 2005

Schedule 3

New Schedule 5 inserted in Overseas Investment Act 2005

The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Overseas Investment Amendment Act (No 3) **2020**.

2 Commencement

- (1) This Act comes into force on the 42nd day after the date on which it receives the Royal assent. 5
- (2) **Subsection (1)** applies with the following exceptions:
- (a) the following provisions come into force on a date appointed by the Governor-General by Order in Council or, if not earlier brought into force, 6 months after the date on which this Act receives the Royal assent: 10
- (i) **section 7** (which relates to farm land advertising):
- (ii) **sections 8(3) and (4), 20, and 26** (which relate to special land/fresh or seawater areas):
- (iii) **section 10** (which relates to farm land advertising): 15
- (iv) **section 12** (which relates to automatic conditions for fresh or seawater areas):
- (b) **sections 8(1) and (2) and 9** (replacement of sections 16A(1) and 17 (which relate to the benefit test) come into force on a date appointed by the Governor-General by Order in Council or, if not earlier brought into force, 1 year after the date on which this Act receives the Royal assent. 20
- (3) In **subsection (2)(a) and (b)**, 1 or more orders may be made appointing different dates for different provisions and for different purposes.
- (4) In this section, **provision** includes any item, or any part of an item, in any of the schedules. 25

Part 1**Amendments to Overseas Investment Act 2005****3 Principal Act**

This Part amends the Overseas Investment Act 2005 (the **principal Act**).

4 Section 6 amended (Interpretation) 30

- (1) In section 6(1), insert their appropriate alphabetical order:

fresh or seawater area has the meaning set out in **clause 2 of Schedule 5**
fresh or seawater interest has the meaning set out in **clause 2 of Schedule 5**

- kaitiakitanga** has the meaning set out in section 2(1) of the Resource Management Act 1991
- natural environment** includes land, water, air, soil, all forms of plants and animals (whether native to New Zealand or introduced), and ecosystems and their constituent parts 5
- (2) In section 6(1), definition of **excluded accommodation facility**, replace paragraph (b) with:
- (b) any TLtP premises as defined in **clause 5** of Schedule 3 (which relates to premises used, or intended to be used, in the course of business principally for providing temporary lodging to the public); or 10
- (3) In section 6(1), definition of **farm land**, after “livestock”, insert “(which, to avoid doubt, do not include forestry activities within the meaning of section 16A(9))”.
- (4) In section 6(1), replace the definition of **historic heritage** with:
- historic heritage** has the meaning set out in section 2(1) of the Resource Management Act 1991 15
- (5) In section 6(2)(a)(iii), after “New Zealand”, insert “(see subsection (2A))”.
- 5 Section 7 amended (Who are overseas persons)**
- (1) Repeal section 7(1).
- (2) Replace section 7(2) with: 20
- (2) In this Act, **overseas person** means—
- (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 more than 25% subsidiary of a body corporate incorporated outside New Zealand; or 25
- (c) a body corporate—
- (i) that is a New Zealand listed issuer; and
- (ii) that meets the ownership test in **subsection (3)(a)**, or the control test in **subsection (3)(b)**, or both; or 30
- (d) a body corporate (A) (other than a New Zealand listed issuer) if an overseas person or persons have—
- (i) more than 25% of any class of A’s securities; or
- (ii) the power to control the composition of more than 25% of A’s governing body; or 35
- (iii) the right to exercise or control the exercise of more than 25% of the voting power at a meeting of A; or

- (e) a partnership, unincorporated joint venture, or other unincorporated body of persons (other than a trust or unit trust or managed investment scheme) (**A**) if—
- (i) more than 25% of **A**'s partners or members are overseas persons; or 5
 - (ii) an overseas person or persons have a beneficial interest in or entitlement to more than 25% of **A**'s profits or assets (including on **A**'s winding up); or
 - (iii) an overseas person or persons have the right to exercise or control the exercise of more than 25% of the voting power at a meeting of **A**; or 10
- (f) a trust (**A**) (other than a managed investment scheme) if—
- (i) more than 25% of **A**'s governing body are overseas persons; or
 - (ii) an overseas person or persons have a beneficial interest in or entitlement to more than 25% of **A**'s trust property; or 15
 - (iii) more than 25% of the persons having the right to amend or control the amendment of **A**'s trust deed are overseas persons; or
 - (iv) more than 25% of the persons having the right to control the composition of **A**'s governing body are overseas persons; or
- (g) a unit trust (**A**) (other than a managed investment scheme) if— 20
- (i) the manager or trustee, or both, are overseas persons; or
 - (ii) an overseas person or persons have a beneficial interest in or entitlement to more than 25% of **A**'s trust property; or
- (h) a managed investment scheme if—
- (i) the manager or the trustee (as the case may be) is an overseas person; or 25
 - (ii) more than 25% of the value of the investment products in the managed investment scheme is invested on behalf of overseas persons,—
- where terms in this paragraph have the same meanings as in the Financial Markets Conduct Act 2013. 30
- (3) For the purpose of applying **subsection (2)(c)(ii)** to a New Zealand listed issuer (**A**),—
- (a) the **ownership test** is that an overseas person has, or 2 or more overseas persons cumulatively have, a beneficial entitlement to, or a beneficial interest in, more than 50% of **A**'s securities: 35
 - (b) the **control test** is that—

- (i) at least 1 overseas person (alone or together with its associates) has a beneficial entitlement to, or a beneficial interest in, 10% or more of any class of A's securities that confer control rights; and
- (ii) when the interests of each overseas person to which **subparagraph (i)** applies are added together, those overseas persons cumulatively have the right to—
 - (A) control the composition of 50% or more of A's governing body; or
 - (B) exercise or control the exercise of more than 25% of the voting power at a meeting of A.

6 Section 12 replaced (What are overseas investments in sensitive land)

Replace section 12 with:

12 What are overseas investments in sensitive land

- (1) An **overseas investment in sensitive land** is the acquisition by an overseas person, or an associate of an overseas person, of all or any of the following (a **section 12 interest**):
- (a) an estate or interest in land if—
 - (i) the land that the estate or interest relates to is sensitive land under Part 1 of Schedule 1; and
 - (ii) the estate or interest acquired is—
 - (A) a freehold estate; or
 - (B) if the land that the interest relates to is residential land, any interest in land (other than an exempted interest) for a total term (as calculated in accordance with **Schedule 1A**) of 3 years or more; or
 - (C) if the land that the interest relates to is sensitive (but not residential) land, any interest in land (other than an exempted interest) for a total term (as calculated in accordance with **Schedule 1A**) of 10 years or more:
 - (b) rights or interests in securities of a person (A) if A owns or controls (directly or indirectly) an estate or interest in land described in **paragraph (a)** and, as a result of the acquisition,—
 - (i) the overseas person or the associate (either alone or together with its associates) has a more than 25% ownership or control interest in A; or
 - (ii) the overseas person or the associate (either alone or together with its associates) has an increase in an existing more than 25% ownership or control interest in A; or

- (iii) A becomes an overseas person in either of the following circumstances:
- (A) A is a New Zealand listed issuer and the tipping point for New Zealand listed issuers is met; or
- (B) A is not a New Zealand listed issuer. 5
- (2) In this Act, the **tipping point for New Zealand listed issuers**, for the purposes of **subsection (1)(b)(iii)(A)**, is met in respect of a New Zealand listed issuer if—
- (a) at least 1 overseas person (alone or together with its associates) has a beneficial entitlement to, or a beneficial interest in, 10% or more of any class of A's securities that confers control rights; and 10
- (b) when the interests of each overseas person to which **paragraph (a)** applies are added together, those overseas persons cumulatively have—
- (i) the power to control the composition of 50% or more of A's governing body; or 15
- (ii) the right to exercise or control the exercise of more than 25% of the voting power at a meeting of A.

7 Section 16 amended (Criteria for consent for overseas investments in sensitive land)

Replace section 16(1)(f) with: 20

Additional criteria if land includes farm land

- (f) if the relevant land is or includes farm land, before a transaction is entered into with the relevant overseas person, the farm land or section 12 interest has been offered for acquisition on the open market to persons who are not overseas persons as required by the regulations (but *see section 20*): 25

8 Section 16A amended (Benefit to New Zealand test)

- (1) Replace section 16A(1) with:

Outline

- (1AA) This subsection shows the ways in which the benefit to New Zealand test can be met, but it is a guide only to the general scheme and effect of this section. 30

Pathway	Which subsections apply	Which counterfactual applies
General test	Subsections (1), (1A)	Subsection (1A)(a)
Modified benefit test if relevant land is or includes farm land described in subsection (1C)	Subsections (1), (1A), (1C), (1D)	Subsection (1A)(a)
Modified benefit test for things described in	Subsections (1) , (3), (7), (9)	Subsection (3)

Pathway	Which subsections apply	Which counterfactual applies
subsection (2) (forestry activities)		
Special benefit test relating to forestry activities	Subsections (4) to (9)	N/a
<i>General test</i>		
(1)	The benefit to New Zealand test is met if both of the following are met:	
(a)	the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders) to the extent required by this section, as determined by the relevant Ministers under section 17 ; and	5
(b)	if the relevant land is or includes residential land, the relevant Ministers are satisfied that the conditions that the relevant Ministers will impose on the consent in accordance with section 16B will be, or are likely to be, met.	
(1A)	For the purposes of subsection (1)(a) , the relevant Ministers—	10
(a)	must assess the benefit to New Zealand (or any part of it or group of New Zealanders) by comparing the likely result of the overseas investment against the existing state of affairs as at the time the overseas investment transaction is entered into or the time the application is made, whichever occurs first (counterfactual); and	15
(b)	must take a proportionate approach to whether the benefit test is met, by taking into account whether that benefit is proportionate to the following:	
(i)	the sensitivity of the land (for example, the importance to New Zealand of the purpose for which the land is used, the size and value of the land, any sensitive features associated with the land, and the level of interest that the public have in the land); and	20
(ii)	the nature of the overseas investment transaction (for example, the estate or interest being acquired, whether the estate or interest is temporary or permanent, and the degree of overseas ownership or control of the land or of the estate or interest in land).	25
(1B)	However, subsection (1A) does not apply if subsection (3) or (4) applies.	
<i>Modified benefit test if relevant land is or includes farm land</i>		
(1C)	If the relevant land is or includes farm land that in area exceeds 5 hectares, the relevant Ministers must—	30
(a)	give the following factors high relative importance:	
(i)	the economic benefits factor in section 17(1)(a) and, in particular, the creation or retention of jobs, introduction of technology or business skills, increased export receipts, and increased processing of primary products; and	35

	(ii) the oversight or participation factor in section 17(1)(f) ; and	
	(b) ensure that the applicant has demonstrated, in relation to 1 or more of those factors, that the benefits of the investment are of a size or nature that represent a substantial benefit to New Zealand.	
(1D)	However, the relevant Ministers may determine not to apply subsection (1C) if they are satisfied that—	5
	(a) the transaction is minor or technical; or	
	(b) the transaction does not materially change the level of ownership or control that the relevant overseas person has over the asset.	
(1E)	Subsection (1C) does not preclude the relevant Ministers also giving other factors high relative importance.	10
	<i>Modified benefit test for things described in subsection (2) (forestry activities)</i>	
(2)	In section 16A(3), replace “subsection (1)(a) and (b)” with “ subsection (1)(a) ”.	
(3)	Repeal section 16A(4)(f).	15
(4)	In section 16A(9), repeal the definition of special land .	
9	Section 17 replaced (Factors for assessing benefit of overseas investments in sensitive land)	
	Replace section 17 with:	
17	Factors for assessing benefit of overseas investments in sensitive land	20
	<i>What are the factors</i>	
(1)	The factors for assessing the benefit of overseas investments in sensitive land are whether the overseas investment will, or is likely to,—	
	(a) result in economic benefits for New Zealand (for example, the creation or retention of jobs, the introduction of technology or business skills, increases in productivity or export receipts, or a reduced risk of illiquid assets):	25
	(b) result in benefits to the natural environment (for example, protection of indigenous flora and fauna or erosion control):	
	(c) result in continued or enhanced access by the public, or any section of the public, within or over the sensitive land or the features giving rise to the sensitivity (for example, access for recreational purposes or for the purposes of undertaking stewardship of, or exercising kaitiakitanga in relation to, historic heritage or the natural environment):	30
	(d) result in continued or enhanced protection of historic heritage in or on the relevant land (for example, agreement to execute a heritage covenant (or comply with existing covenants), agreement to support entry to wāhi tūpuna, wāhi tapu, or wāhi tapu areas on the New Zealand Heritage List/	35

- Rārangi Kōrero, taking other actions under the Heritage New Zealand Pouhere Taonga Act 2014 to recognise or protect heritage values, or agreement to land being set apart as a Māori reservation):
- (e) give effect to or advance a significant Government policy:
 - (f) involve oversight of, or participation in, the overseas investment or any relevant overseas person by persons who are not overseas persons: 5
 - (g) result in other consequential benefits to New Zealand.
- How factors must be considered*
- (2) For the purposes of **section 16A(1)(a) and (b)** (including where **section 16A(3)** is being applied), the relevant Ministers— 10
- (a) must consider all the factors in **subsection (1)** to determine which factor or factors (or parts of them) are relevant to the overseas investment; and
 - (b) must determine whether the criteria in **section 16A(1)(a) and (b)** (including where **section 16A(3)** is being applied) are met after having regard to those relevant factors and in doing so,— 15
 - (i) must deduct from any benefit arising under a factor (or part of a factor) any directly comparable aspect of the counterfactual:
 - (ii) must not deduct from any benefit arising under a factor (or part of a factor) any non-directly comparable aspect of the counterfactual: 20
 - (iii) must determine the relative importance to be given to each relevant factor (or part of a factor), subject to **section 16A(1C)**:
 - (iv) must not give any relevant factor (or part of that factor) any relative importance, if the overseas investment will not or is not likely to result in a net benefit in relation to that relevant factor (or part of that factor), unless **subsection (3)** applies. 25
- (3) If the overseas investment involves the extraction of water for bottling, or other extraction of water in bulk for human consumption,—
- (a) an additional factor is whether the overseas investment will, or is likely to, result in a negative impact on water quality or sustainability; and 30
 - (b) the relevant Ministers must determine the relative importance to be given to this factor and deduct that from any overall benefit to New Zealand that has been determined under **section 16A(1)(a)**.
- (4) **Subsection (2)(b)(ii) and (iv)** is subject to **subsection (3)**.
- (5) **Subsection (2)(b)(iii)** applies unless **subsection (2)(b)(iv)** applies. 35
- 10 Section 20 replaced (Exemptions from farm land offer criterion)**
Replace section 20 with:

- 20 Exemptions from farm land offer criterion**
- (1) **Section 16(1)(f)** does not apply to an overseas investment if—
- (a) the relevant Ministers consider that the overseas investment need not meet this criterion by reason of the circumstances relating to the particular overseas investment or section 12 interest; or 5
 - (b) the overseas person making the overseas investment belongs to a class of overseas persons, or the overseas investment transaction belongs to a class of transactions, that is exempted from this criterion by the relevant Ministers.
- (2) The relevant Ministers may also exempt a person or transaction from— 10
- (a) the requirement that offers for acquisition must be on the open market;
 - (b) any other requirement in regulations about how farm land or section 12 interests must be advertised.
- (3) The relevant Ministers may grant an exemption under this section only if those Ministers consider that— 15
- (a) there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption; and
 - (b) the extent of the exemption is not broader than is reasonably necessary to address those circumstances.
- (4) In so considering, the relevant Ministers— 20
- (a) must have regard to the purpose of this Act; and
 - (b) may have regard to any other factors that seem to those Ministers to be relevant to the circumstances.
- (5) An application for an exemption under this section may be made at any time by written notice to the regulator accompanied by the fee required by regulations. 25
- (6) An exemption under this section may be made subject to any conditions.
- (7) An exemption under this section must be published on an Internet site maintained by, or on behalf of, the regulator, together with the reasons of the relevant Ministers for granting the exemption.
- (8) However, the publication of an exemption under this section, or of the reasons for granting an exemption, may be deferred or dispensed with (in whole or in part) if the relevant Ministers are satisfied on reasonable grounds that good reason for withholding the exemption or the reasons (as the case may be) would exist under the Official Information Act 1982. 30
- (9) If the exemption is for a class of overseas persons, or a class of transactions, it must also be published in the *Gazette* and **subsection (8)** does not apply. 35
- (10) An exemption under this section may at any time be amended or revoked.
- (11) An exemption under this section may continue in force for not more than 5 years (and at the close of the date that is 5 years after the exemption first comes

into force, the exemption must be treated as having been revoked unless it is sooner revoked or expires).

11 Section 25A amended (Conditions of consent)

In section 25A(1), replace “sections 25B and **25C**” with “sections 25B, **25C, and 25D**”.

5

12 New section 25D inserted (Automatic condition: transactions involving fresh or seawater areas)

After section 25C, insert:

25D Automatic condition: transactions involving fresh or seawater areas

(1) **Schedule 5** applies if—

10

- (a) an overseas person or their associate obtains consent for an overseas investment in sensitive land; and
- (b) the section 12 interest to be acquired is or includes a fresh or seawater interest; and
- (c) the criteria that were satisfied as part of the application for consent included the benefit to New Zealand test.

15

(2) If **Schedule 5** applies, it is a condition of every consent, whether or not it is stated in the consent, that each consent holder must comply with the provisions of that schedule.

13 Section 27A amended (Consent holder may apply for new consent)

20

In section 27A(5)(a), replace “expected” with “likely”.

14 New section 29A inserted (Investor test applications where no change since investor test last met)

After section 29, insert:

29A Investor test applications where no change since investor test last met

25

(1) A person (**A**) may apply at any time for an assessment of whether the person meets the investor test, in which case the Minister must determine the matter in accordance with **section 18A(3) to (5)**.

(2) **Subsections (3) and (4)** apply if the investor test has to be met in respect of a particular overseas investment (a **new investment**) and a person (**A**) is a person who previously met the investor test.

30

(3) In that case, the investor test is met, to the extent that it applies to **A**, if the relevant Ministers are satisfied, in respect of **A**, that—

- (a) there has been no change in the extent to which the investor test factors are established; or

35

- (b) any change in the extent to which the investor test factors are established does not make A unsuitable to own or control any sensitive New Zealand assets.
- (4) The statutory declaration required to accompany the application must include verification as to whether there has been any change in the extent to which the investor test factors are established since the information previously provided to the regulator about those factors. 5
- (5) However, if A has ever been the investor (or one of the investors) referred to in **section 18A(2)** in respect of a transaction of national interest for which consent was declined for reasons connected to A under **section 20C**, then— 10
- (a) **subsection (1)** does not apply; and
- (b) **subsection (3)** does not apply unless A has met the investor test since that consent was declined.
- (6) Section 23 applies with necessary modifications to an application for an assessment of whether a person meets the investor test. 15

15 Section 37 repealed (Regulator must keep list of reserves, parks, and other sensitive areas)

- (1) Repeal section 37.
Consequential amendment
- (2) Repeal section 34(3)(d). 20

16 New section 38A inserted (Information for tax purposes)

After section 38, insert:

38A Information for tax purposes

- (1) The purpose of this section is to enable the making of regulations to impose requirements under which overseas persons who make, or apply to make, an overseas investment in sensitive New Zealand assets must provide information that the Commissioner of Inland Revenue considers necessary or relevant for any purpose relating to— 25
- (a) the administration or enforcement of an Inland Revenue Act (within the meaning of the Income Tax Act 2007): 30
- (b) the administration or enforcement of any matter arising from, or connected with, a function lawfully conferred on the Commissioner.
- (2) For the purpose of this section, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that impose requirements on all or any persons who make, or apply to make, an overseas investment in sensitive assets, including prescribing all or any of the following: 35

- (a) overseas investments to which all or any requirements apply (for example, by reference to a type of investment, a pathway, or a type of land):
- (b) what information or other evidence or documents must be provided:
- (c) by whom, when, where, and how the information must be provided: 5
- (d) to whom the information must be provided:
- (e) the form that must be used:
- (f) requirements with which information, evidence, or documents that are provided must comply.
- (3) The Commissioner may treat information obtained under this section as information obtained for the purposes of administering the Inland Revenue Acts. 10
- 17 Section 46 amended (Offence of false or misleading statement or omission)**
After section 46(1)(c), insert:
- (d) any information provided to the regulator or the Commissioner of Inland Revenue under **section 38A**. 15
- 18 New section 59A inserted (Reinstatement of emergency notification regime)**
Before subpart 2 of Part 3, insert:
- 59A Reinstatement of emergency notification regime**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister make regulations that have the broad effect of reinstating, in respect of an emergency, all or part of the emergency notification regime that was inserted by **subpart 1 of Part 3 of the Overseas Investment (Urgent Measures) Amendment Act 2020**. 20
- (2) The Minister may make a recommendation only if the Minister is satisfied that the effects of the emergency justify the emergency notification regime being reinstated, having had regard to the following: 25
- (a) the economic, social, and other effects of the emergency in New Zealand:
- (b) any risks to New Zealand's national interest associated with transactions by overseas persons: 30
- (c) New Zealand's international relations and international obligations.
- 19 Section 61 amended (Regulations)**
- (1) Replace section 61(1)(b) with:
- (b) prescribing, for the purposes of the criteria in **section 16(1)(f)**, when and how farm land or section 12 interests must be advertised for acquisi- 35

tion to persons who are not overseas persons (including what is required for open market advertising):

(2) In section 61(1)(ba), delete “(see also paragraphs (c) and (ca) of this subsection)”.

(3) Repeal section 61(1)(c), (ca), (d), **(la), and (lc)**. 5

20 Section 62 repealed (Foreshore, seabed, riverbed, or lakebed acquired by the Crown under consent process is not subdivision)

Repeal section 62.

21 Schedule 1AA amended

In Schedule 1AA, insert the headings and clauses set out in **Schedule 1** of this Act as the last provisions in Schedule 1AA and make all necessary consequential amendments. 10

22 Schedule 1 amended

(1) In Schedule 1, Part 1, table 1, first column, replace “foreshore or seabed” with “marine and coastal area”. 15

(2) In Schedule 1, Part 1, table 1, number the existing rows 1 to 11, in the style of table 2 (see subsection (3)).

(3) In Schedule 1, Part 1, replace table 2 with:

Row	Land A is sensitive if it adjoins land of this type	... and land A exceeds this area threshold (if any)
1	marine and coastal area	0.2 hectares
2	bed of a lake	0.4 hectares
3	land held for conservation purposes under the Conservation Act 1987 (if that conservation land exceeds 0.4 hectares in area)	0.4 hectares
4	any reserve under the Reserves Act 1977 that is administered by the Department of Conservation (if that reserve land exceeds 0.4 hectares in area)	0.4 hectares
5	any regional park or part of a regional park that is subject to a declaration under section 139 of the Local Government Act 2002 (if that park or part of the park exceeds 80 hectares)	0.4 hectares
6	any national park held under the National Parks Act 1980	0.4 hectares
7	land that adjoins the sea or a lake and is a Māori reservation to which section 340 of Te Ture Whenua Maori Act 1993 applies (if that land/reservation exceeds 0.4 hectares in area)	0.4 hectares
8	land over 0.4 hectares that includes a wahi tapu or wahi tapu area that is entered on the New Zealand Heritage List/Rārangi Kōrero or for which there is an application that is notified under section 67(4) or 68(4) of the Heritage New Zealand Pouhere Taonga Act 2014	0.4 hectares

Row	Land A is sensitive if it adjoins land of this type	... and land A exceeds this area threshold (if any)
9	land over 0.4 hectares that is set apart as Māori reservation and that is wahi tapu under section 338 of Te Ture Whenua Maori Act 1993	0.4 hectares
10	land (if that land exceeds 0.4 hectares in area) that, pursuant to an enactment specified in Schedule 3 of the Treaty of Waitangi Act 1975 or in regulations,— (a) is owned by the governance entity of a collective group of Māori such as an iwi or a hapū; and (b) is managed in accordance with the Conservation Act 1987 or an enactment referred to in Schedule 1 of that Act	0.4 hectares
11	any reserve under the Reserves Act 1977 (if that reserve exceeds 0.4 hectares in area) that, pursuant to an enactment specified in Schedule 3 of the Treaty of Waitangi Act 1975 or in regulations, is managed wholly or jointly by the governance entity of a collective group of Māori such as an iwi or a hapū	0.4 hectares
12	Te Urewera land (as defined in section 7 of the Te Urewera Act 2014)	0.4 hectares
13	Whanganui River (as defined in section 7 of the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017)	0.4 hectares
14	Maungatautari Mountain Scenic Reserve (as defined in section 71(1) of the Ngāti Koroki Kahukura Claims Settlement Act 2014)	0.4 hectares

23 New Schedule 1A inserted

After Schedule 1, insert the **Schedule 1A** set out in **Schedule 2** of this Act.

24 Schedule 2 amended

(1) In Schedule 2, after clause 12(2)(b), insert:

(c) a business of a person (C) if C owns or controls the relevant interest in the residential land and A has rights or interests in securities of C. 5

(2) In Schedule 2, clause 17(3), after “the land”, insert “for residential purposes”.

25 Schedule 3 amended

(1) In Schedule 3, clause 2(2)(b), replace “3 years” with “4 months”.

(2) In Schedule 3, replace clause 5 with: 10

5 Certain units acquired and leased back

(1) In this clause,—

TLtP participant means—

(a) the person (A) that operates the TLtP premises or that will operate the TLtP premises after the TLtP premises are completed; or 15

(b) any person involved in the development of the TLtP premises (the **developer**), provided that the developer has assigned its estate or interest

in the land to A, or will assign it to A immediately after the TLtP premises are completed to the extent that it relates to the relevant unit

TLtP premises means premises used, or intended to be used, in the course of business principally for providing temporary lodging to the public.

- (2) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land if—
- (a) the relevant land is residential (but not otherwise sensitive) land; and
 - (b) the relevant land is being used, or is intended to be used,—
 - (i) in the construction of TLtP premises that have 20 or more units, or to increase by 20 or more the number of units in TLtP premises; or
 - (ii) for the operation of TLtP premises that have 20 or more units; and
 - (c) the estate or interest in land described in **section 12(1)(a)** is—
 - (i) an estate or interest in 1 (or more) of those units that is acquired by a person (a **purchaser**) and that is immediately subject to a lease-back to the TLtP participant; or
 - (ii) a lease of 1 (or more) of those units by the purchaser to the TLtP participant (a **lease-back**).
- (3) The exemption is subject to the following conditions:
- (a) the lease-back must meet the following requirements at all times on and after the acquisition of the purchaser's estate or interest:
 - (i) the purchaser cannot occupy, reserve, or use the unit for more than 30 days in each year; and
 - (ii) for the rest of the year, the unit must be managed and used for the general purposes of operating the TLtP premises; and
 - (b) when the lease-back period ends, the purchaser must either, within 12 months of that period ending,—
 - (i) grant to the TLtP participant a new lease-back of the unit that complies with the matters in **paragraph (a)**; or
 - (ii) dispose of its estate or interest in the unit; and
 - (c) the purchaser must not occupy, reserve, or use the unit while it is not leased back to a TLtP participant.
- (3) In Schedule 3, replace clause 6(4)(b)(ii) with:
- (ii) that are for a total term (as calculated in accordance with **Schedule 1A**) of 10 years or more.

26 New Schedule 5 inserted

After Schedule 4, insert the **Schedule 5** set out in **Schedule 3** of this Act.

Part 2 Amendments to other Acts

Subpart 1—Amendment to Fisheries Act 1996

27	Amendment to Fisheries Act 1996	5
	This subpart amends the Fisheries Act 1996.	
28	Sections 57G to 57I replaced	
	Replace sections 57G to 57I with:	
57G	Criteria for overseas investments in fishing quota	10
	The criteria for an overseas investment in fishing quota are all of the following:	
	(a) the investor test is met:	
	(b) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders) to the extent required by section 16A(1A) of the Overseas Investment Act 2005, as determined by the relevant Ministers under section 57H :	
	(c) if the overseas investment in fishing quota is a transaction of national interest, the Minister has not declined consent to the transaction (<i>see section 20C</i> of the Overseas Investment Act 2005):	15
	(d) the interest in fishing quota is capable of being registered in the Quota Register or the Annual Catch Entitlement Register.	
57H	Factors for determining whether or not overseas investment in fishing quota will, or is likely to, benefit New Zealand	20
	(1) The relevant Ministers—	
	(a) must consider all the factors in subsection (2) to determine which factor or factors (or parts of them) are relevant to the overseas investment; and	25
	(b) must determine whether the criterion in section 57G(b) is met after having regard to those relevant factors; and	
	(c) in doing so, may determine the relative importance to be given to each relevant factor (or part).	
	(2) The factors are whether the overseas investment will, or is likely to,—	30
	(a) result in economic benefits for New Zealand (for example, the creation and retention of jobs, introduction of technology or business skills, increased export receipts, increased processing in New Zealand of fish, aquatic life, or seaweed, or a reduced risk of illiquid assets):	

- (b) result in benefits to the natural environment (for example, protection of indigenous fish or mitigation of environmental impacts by innovations in fishing technologies):
- (c) give effect to or advance a significant Government policy:
- (d) involve oversight of, or participation in, the overseas investment and any relevant overseas person by persons who are not overseas persons: 5
- (e) result in other consequential benefits to New Zealand.

Subpart 2—Amendment to Tax Administration Act 1994

29 Amendment to Tax Administration Act 1994

This subpart amends the Tax Administration Act 1994. 10

30 Section 3 amended (Interpretation)

In section 3(1), definition of **offshore person**, paragraph (b), replace “section 7(2)(b) to (f) of the Overseas Investment Act 2005” with “**section 7(2)(b) to (h)** of the Overseas Investment Act 2005”.

Schedule 1
New Part 5 inserted into Schedule 1AA of Overseas Investment Act
2005

s 21

Part 5	5
Provisions relating to Overseas Investment Amendment Act (No 3) 2020	
35 Interpretation in this Part	
(1) In this Part,—	
2020 (No 3) Act means the Overseas Investment Amendment Act (No 3) 2020 commencement , in relation to a provision that is being inserted or amended by the 2020 (No 3) Act, means the commencement of the insertion or amendment	10
new , in relation to a provision of this Act, means the provision as it reads immediately after commencement	
new Act means this Act as it reads immediately after the relevant provision of the 2020 (No 3) Act commenced	15
old , in relation to a provision of this Act, means the provision as it read immediately before commencement	
old Act means this Act as it read immediately before the relevant provision of the 2020 (No 3) Act commenced.	20
(2) Part 1 of this schedule applies when determining whether a transaction is entered into before commencement or on or after commencement (<i>see</i> clause 1(4) and (5)).	
36 Existing transactions and applications, etc	
(1) This clause applies for the purposes of applying a provision of this Act that relates to—	25
(a) determining who are overseas persons, what are overseas investments in sensitive assets, and other matters in Part 1 of this Act; and	
(b) determining when consent is required and the criteria for consent under subpart 1 of Part 2 of this Act; and	30
(c) the making an applications for consent and for granting consent under subpart 2 of Part 2 of this Act.	
(2) Except as provided in this Part, the new Act applies to—	
(a) transactions entered into on or after commencement:	

(b)	applications received by the regulator on or after commencement, regardless of when the transaction is or was entered into or, in the case of farm land, when it is or was advertised:	
(c)	transactions entered into before commencement in respect of which this Act requires an application to be made on or after commencement (for example, for retrospective consent):	5
(d)	any other matters that relate to events or circumstances on or after commencement.	
(3)	In other cases, the old Act continues to apply.	
37	Persons who are no longer overseas persons	10
(1)	A person who ceases to be an overseas person on commencement of section 5 (section 7 amended (who are overseas persons)) may apply to the regulator under section 27 for a variation of a consent granted to them while they were an overseas person.	
(2)	To avoid doubt, this clause does not require a variation to be granted.	15
38	Benefit test	
	When applying section 16A after commencement, section 16A(1A)(a) applies in the same way regardless of whether the counterfactual relates to the existing state of affairs before, on, or after commencement.	
39	Investor test	20
	New section 29A(3) and (4) (investor test applications where no change since investor test last met) does not apply to a person until the person has met the investor test under new section 18A (which, to avoid doubt, may be after an application made under new section 29A(1)).	
40	Existing regulations saved	25
	Regulations that are made under an old provision, and in force immediately before commencement, continue in force until revoked as if made under the new Act.	
41	Existing exemptions saved	
	Exemptions that are granted under an old provision, and in force immediately before commencement, continue in force until revoked as if made under the new Act.	30
42	Overseas investment fishing provisions	
	This Part applies to matters under sections 56 to 58B of the Fisheries Act 1996 in the same way as it applies to similar matters under the rest of this Act.	35

Schedule 2
New Schedule 1A inserted in Overseas Investment Act 2005

s 23

Schedule 1A
Total term of interest in land

5

s 12

1 Calculation of total term of interest in land(1) The **total term** of an interest in land is the duration of—

- (a) either—
 - (i) the term of the interest acquired; or
 - (ii) in the case of an interest that is part-way through its current term, the remainder of any current term of the interest as at the time the overseas investment transaction is entered into; and
- (b) any rights of renewal of that interest (whether of the grantor or grantee); and
- (c) any previous interest that relates to the same or substantially the same land; and
- (d) if a previous interest was separated in time by a periodic interest, that periodic interest.

10

15

Example

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An overseas person was a tenant of a lease of sensitive land for a term of 9 years with no rights of renewal. At the end of that lease, the parties enter into a 2-year extension.

The total term of the interest is 11 years: 2 years' extension plus 9 years under the previous lease. The acquisition of the extension is an overseas investment in sensitive land, and consent is required.

25

(2) A **previous interest**, in relation to an interest in land, is an estate or interest in land that—

- (a) was held by—
 - (i) the overseas person or an associate of the overseas person; or
 - (ii) a person in which the overseas person or their associate (either alone or together with its associates) had a more than 25% ownership or control interest; and
- (b) was consecutive in time to the relevant interest or to another previous interest of the relevant interest.

30

35

- (3) The duration of a previous interest before the overseas person or their associate had a more than 25% ownership or control interest in the person who held that previous interest must be disregarded from the calculation of the total term.

Example

A tenant has a lease of land for a term of 10 years. In year 6 of the lease, an overseas person increases its ownership interest in the tenant from 15% interest to 30%. At the end of the lease, the tenant enters into a new lease of the same land for a 5-year term.

The total term of the interest is 9 years: 5 years in the new lease plus 4 years of the previous lease from the point that the overseas person invested in the tenant. The acquisition of the new lease is not an overseas investment in sensitive land.

- (4) In this clause,—

consecutive includes separated by—

- (a) any periodic interest; or
- (b) a period of less than 4 months

periodic interest means any interest in land that—

- (a) is terminable at will, whether by the grantor or the grantee; and
- (b) offers no certainty of term of 4 months or more (including rights of renewal, whether of the grantor or the grantee).

Example

An overseas person was a tenant under a lease of sensitive land for 5 years. The tenant held over after the lease expired. No consent is required for that periodic lease (see clause 2 of Schedule 3).

After a year of holding over, the tenant enters into a new lease with the landlord for another 5 years.

The new lease is the acquisition of an interest in land. The total term of the interest is 11 years: 5 years in the new lease, 1 year of holding over, and 5 years under the previous lease. The acquisition of the new lease is an overseas investment in sensitive land, and consent is required.

Schedule 3
New Schedule 5 inserted in Overseas Investment Act 2005

s 26

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Part 1

Application and interpretation

1 Which owners of land this schedule applies to

- (1) This schedule gives the Crown the right to acquire fresh or seawater areas from the owners of the fresh or seawater interests that relate to those areas. 5
- (2) In this schedule, an **owner**, in relation to a fresh or seawater interest, means—
- Overseas person and their associate*
- (a) the relevant overseas person that acquires the fresh or seawater interest as a result of an overseas investment in sensitive land; and
- (b) any owner (as defined in section 5(1) of the Land Transfer Act 2017) of the fresh or seawater interest that is an associate of the relevant overseas person; and 10
- Other owners, but only if a notice is registered or covenant is entered into*
- (c) if a water areas acquisition notice has been registered under **clause 12 or 18** in relation to the fresh or seawater interest, any other owner (as defined in section 5(1) of the Land Transfer Act 2017) of that fresh or seawater interest; and 15
- (d) any owner (as defined in section 5(1) of the Land Transfer Act 2017) that enters into a water areas covenant in accordance with **clause 19**. 20

2 Interpretation

In this schedule,—

fresh or seawater area means any part of the relevant land that is marine or coastal area, the bed of a lake, or the bed of a river, and a reference to a **fresh or seawater area** is a reference to the whole or any part of that area 25

fresh or seawater interest means the freehold estate or pastoral lease interest that relates to the fresh or seawater area

owner has the meaning set out in **clause 1(2)**

pastoral lease has the meaning set out in section 2 of the Crown Pastoral Land Act 1998 30

prescribed manner means the manner prescribed in regulations under **clause 21**

record of title has the meaning set out in section 5(1) of the Land Transfer Act 2017

Registrar means the Registrar-General of Land

water areas acquisition notice means the notice under **clause 12**

water areas covenant means a covenant between an owner and the Crown under **clause 19** on the terms and in the form prescribed by regulations. 5

Part 2

Crown acquisition of fresh or seawater area

3 Crown must acquire fresh or seawater area

- (1) The Crown must acquire, and the owner must allow the Crown to acquire, the fresh or seawater area in accordance with this schedule. 10
- (2) The Crown must acquire the fresh or seawater area before the water areas acquisition notice expires (*see clause 14*).
- (3) However, the Crown need not acquire the fresh or seawater area if the owner is notified of a decision not to acquire in accordance with **clause 4 or 5**. 15

4 Acquisition not required if amenity and conservation value outweighed

- (1) The Crown may decide not to acquire a fresh or seawater area (in whole or in part) if the Minister for Land Information is not satisfied that the amenity and conservation value of the fresh or seawater area outweighs the potential risks, liability, and costs of acquisition and ownership of the area. 20
- (2) A decision not to acquire a fresh or seawater area must be notified in writing to the owner of the fresh or seawater interest.
- (3) The notice must be given no later than the date prescribed in regulations.

5 Acquisition not required if Minister not satisfied with amount of compensation to be paid 25

- (1) The Crown may decide not to acquire a fresh or seawater area (in whole or in part) if the Minister for Land Information is not satisfied with—
 - (a) the amount of compensation to be paid under **clauses 9 and 10**; or
 - (b) if the compensation payable under **clause 10** has not yet been assessed, the amount of compensation to be paid under **clause 9** and likely to be paid under **clause 10**. 30
- (2) A decision not to acquire a fresh or seawater area must be notified in writing to the owner of the fresh or seawater interest.
- (3) The notice must be given no later than the date prescribed in regulations.

- 6 Terms of acquisition**
- (1) Unless the Crown and the owner of a fresh or seawater interest agree otherwise, the terms of the acquisition are those prescribed in regulations.
- (2) The Crown and the owner may agree amendments, additions, and deletions to the terms of the acquisition. 5
- (3) An agreement under **subclause (2)**, when recorded in an instrument registered under **clause 13**, runs with and binds the land that is subject to the water areas acquisition notice.
- 7 Manner of acquisition**
- (1) The Minister for Land Information may, by notice in the *Gazette*, vest a fresh or seawater area in the Crown. 10
- (2) Before making a notice under **subclause (1)**, the Minister for Land Information must—
- (a) ensure that any requirements or steps prescribed in regulations are met or taken; and 15
- (b) agree or determine the amount of compensation to be paid to the owner in accordance with **clause 9**.
- (3) If a notice is made under **subclause (1)**,—
- (a) any part of the fresh or seawater area that is the bed of a lake or a river vests in the Crown under the Land Act 1948; and 20
- (b) any part of the fresh or seawater area that is marine and coastal area vests in the Crown (and, to avoid doubt, becomes part of the common marine and coastal area under the Marine and Coastal Area (Takutai Moana) Act 2011).
- (4) The Minister for Land Information must give the notice to the Registrar. 25
- (5) On receipt of a notice, the Registrar must—
- (a) register the notice;
- (b) cancel any relevant water areas acquisition notice;
- (c) comply with **clause 16** (if applicable).
- 8 Effect of acquisition on estates or interests in land** 30
- (1) A fresh or seawater area is vested in the Crown free from all estates or interests in land including any encumbrances (without the necessity of any instrument of release or discharge or otherwise), except any estate or interest in land prescribed in regulations or specified in the notice under **clause 7** as an interest to which the vesting does not apply. 35
- (2) However, if the owner's fresh or seawater interest is not recorded in a record of title immediately prior to the vesting, **subsection (1)** only applies to the

extent that there is no better claim to the fresh or seawater area than the claim that the owner had immediately prior to the vesting.

9 Compensation payable to owner of fresh or seawater interest

- (1) An owner of a fresh or seawater interest is entitled to claim compensation from the Crown. 5
- (2) The compensation may be claimed and must be determined in the manner prescribed by regulations.
- (3) However, the Crown and the owner may agree a different amount or procedure for determining an amount of compensation.
- (4) An agreement under **subclause (3)**, when recorded in an instrument registered under **clause 13**, runs with and binds the land that is subject to the water areas acquisition notice. 10

10 Compensation payable for other registered interests in land

- (1) Any other registered owner of an estate or interest in land that is extinguished because of the operation of **clause 8** is entitled to claim compensation from the Crown. 15
- (2) The compensation may be claimed and must be determined in the manner provided by the Public Works Act 1981 (with any necessary modifications) as if the person's estate or interest was land taken for a public work.
- (3) However, a person is not entitled to compensation if either or both of the following apply: 20
- (a) the water areas acquisition notice has priority over the instrument relating to the person's estate or interest (*see* section 35 of the Land Transfer Act 2017):
- (b) the person consented to the registration of the water areas acquisition notice. 25

Part 3

Water areas acquisition notice

11 Crown's right is interest in land

The Crown's right to acquire a fresh or seawater area under this schedule is an interest in land within the meaning of section 51 of the Land Transfer Act 2017. 30

12 Registration of water areas acquisition notice

- (1) The Crown's right must be registered by lodging a water areas acquisition notice for registration with the Registrar in the prescribed manner. 35

- (2) The Registrar must register a water areas acquisition notice on receipt of a notice.
- (3) Every water areas acquisition notice, when registered, runs with and binds the land that is subject to the water areas acquisition notice.
- (4) **Subclause (3)** applies despite anything to the contrary in section 103 of the Land Transfer Act 2017. 5
- 13 Variation of water areas acquisition notice**
- (1) The following may be registered by lodging an instrument varying the water areas acquisition notice with the Registrar in the prescribed manner:
- (a) an agreement under **clause 6** (relating to the terms of the acquisition): 10
- (b) an agreement under **clause 9** (relating to the compensation payable to the owner of the fresh or seawater interest):
- (c) an extension under **clause 14** (relating to the term of the water areas acquisition notice).
- (2) The Registrar must register a variation instrument on receipt of an instrument. 15
- (3) The consent of a registered mortgagee of an estate or interest in the fresh or seawater area must be obtained before registration of the instrument.
- 14 Expiration of water areas acquisition notice**
- (1) A water areas acquisition notice expires at the end of the term prescribed in regulations. 20
- (2) However, the Crown and the owner may agree an extension (but not a reduction) of the term of a water areas acquisition notice.
- (3) An extension under **subclause (2)**, when recorded in an instrument registered under **clause 13**, runs with and binds the land that is subject to the water areas acquisition notice. 25
- (4) If an extension is recorded in an instrument registered under **clause 13**, the relevant water areas acquisition notice expires at the end of that extended term.
- 15 Cancellation of water areas acquisition notice**
- (1) A water areas acquisition notice may be cancelled if— 30
- (a) the Crown gives a notice under **clause 4 or 5**:
- (b) the water areas acquisition notice has expired (*see clause 14*):
- (c) the Minister for Land Information is satisfied that a record of title does not contain any fresh or seawater areas:
- (d) any other event specified in regulations occurs.
- (2) The cancellation of a water areas acquisition notice may be registered by lodging an instrument cancelling the notice with the Registrar in the prescribed manner. 35

- (3) The Registrar must cancel a water areas acquisition notice on receipt of an instrument.

Part 4

Miscellaneous provisions

- 16 Cancellation and issue of records of title** 5
- If any record of title comprises any fresh or seawater area that is vested under **clause 7** and any adjacent land (the **adjacent land**), the Registrar must, despite anything in the Land Transfer Act 2017,—
- (a) cancel the record of title that comprises the fresh or seawater area and the adjacent land; and 10
- (b) issue a record of title in the name of the owner of the adjacent land for the adjacent land; and
- (c) note any current registered interest or current registered notification that relates to the adjacent land against that record of title in the order in which it appears on the record of title cancelled under **paragraph (a)**; 15
and
- (d) issue a record of title for any current registered notification, or registered estate or interest not extinguished because of the operation of **clause 8**, that relates to the fresh or seawater area that was part of the record of title cancelled under **paragraph (a)**. 20
- 17 Acquisition relating to Māori freehold land**
- If the owner's acquisition of the relevant fresh or seawater interest is confirmed by the Maori Land Court under Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993), that confirmation includes a confirmation of the Crown's right to acquire the fresh or seawater area (and, for the avoidance of doubt, the notice under **clause 7** and the water areas acquisition notice (including any variations to that notice) need not be separately confirmed by the court). 25
- 18 Acquisition relating to fresh or seawater interest held off-register: notice on adjacent title**
- (1) This clause applies if a water areas acquisition notice cannot be registered against a record of title relating to a fresh or seawater area (for example, because there is no record of title for the fresh or seawater interest). 30
- (2) If the owner of the fresh or seawater interest is also the registered owner of a record of title relating to land adjoining the fresh or seawater area (an **adjacent title**), a water areas acquisition notice may instead be registered against the adjacent title. 35

19	Acquisition relating to fresh or seawater interest held off-register: water areas covenant	
(1)	This clause applies if a water areas acquisition notice cannot be registered under clause 12 or 18 (for example, because there is no record of title for the fresh or seawater interest and no adjacent title).	5
(2)	The obligation to register a water areas acquisition notice in clause 12 is an obligation to enter into a water areas covenant in the prescribed manner.	
(3)	References in clauses 3(2) and 14(1) and (2) to the water areas acquisition notice must be read as if they were a reference to the covenant.	
(4)	An agreement under clause 6 or 9 or an extension under clause 14 may be recorded in a variation to the water areas covenant.	10
(5)	If an extension of the term of a water areas covenant is recorded in a variation to the covenant, the relevant covenant expires at the end of that extended term.	
(6)	A water areas covenant may be varied or cancelled in the prescribed manner.	
20	Acquisition is not subdivision	15
	Nothing in section 11 or Part 10 of the Resource Management Act 1991 applies to—	
(a)	any acquisition by the Crown of land as a direct or indirect consequence of the operation of this schedule; or	
(b)	any matter incidental to, or required for the purpose of, any acquisition of that kind.	20
21	Regulations regarding acquisition of fresh or seawater areas	
	For the purposes of this schedule, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the purposes of this schedule that prescribe any or all of the following:	25
(a)	the terms and form of a water areas covenant (for example, a term imposing an obligation on the covenantor to obtain a covenant in the same form from any subsequent owner of the fresh or seawater interest):	
(b)	the date before which a notice under clause 4 or 5 must be given:	
(c)	the terms of the acquisition for the purposes of clause 6 :	30
(d)	processes or steps for the purposes of clause 7 (for example, requirements to survey the fresh or seawater area or the adjacent land (as defined in clause 16)):	
(e)	interests in land for the purposes of clause 8 :	
(f)	the process for claiming and determining compensation payable to an owner of a fresh or seawater interest for the purposes of clause 9 , including—	35

- (i) the manner in which compensation may be claimed and the consequences of failure to claim compensation:
- (ii) a procedure for determining compensation:
- (g) an event for the purposes of **clause 15**:
- (h) for the purposes of any provision of this schedule that requires a thing to be done in a prescribed manner, the manner in which the thing must be done, including—
 - (i) by whom, when, where, and how the thing must be done:
 - (ii) any form that must be used in connection with doing the thing:
 - (iii) any information or other evidence or documents that must be provided in connection with the thing.

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