

**2009/162**



## **Overseas Investment Amendment Regulations 2009**

Anand Satyanand, Governor-General

### **Order in Council**

At Wellington this 8th day of June 2009

Present:  
His Excellency the Governor-General in Council

Pursuant to section 61 of the Overseas Investment Act 2005, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Finance given after having regard to the purpose of that Act, makes the following regulations.

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## Regulations

**1 Title**

These regulations are the Overseas Investment Amendment Regulations 2009.

**2 Commencement**

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

**3 Principal regulations amended**

These regulations amend the Overseas Investment Regulations 2005.

**4 Certain transactions exempted from requirement for consent**

- (1) Regulation 33(1)(a)(i) is amended by omitting “wholly” and substituting “at least 95%”.
- (2) Regulation 33(1)(a)(ii) is amended by omitting “wholly owns” and substituting “owns at least 95% of”.
- (3) Regulation 33(1) is amended by inserting the following paragraph after paragraph (j):
  - “(ja) the acquisition by an overseas person of 2 or more security arrangements to which paragraph (h) applies—
    - “(i) that are acquired together as a portfolio or bundle; and
    - “(ii) if the total value of consideration provided for that portfolio or bundle is \$100 million or less.”.
- (4) Regulation 33(1) is amended by adding the following paragraphs:
  - “(o) the underwriting by an overseas person of an issue of securities if that person—
    - “(i) is a person whose ordinary business includes entering into bona fide underwriting or subunderwriting contracts with respect to offers of securities; and
    - “(ii) acquires the securities as a result of entering into a bona fide underwriting or subunderwriting con-

- tract in the course of that person's ordinary business; and
- “(iii) holds the securities for less than 6 months; and
- “(iv) does not exercise any voting rights attached to those securities;
- “(p) the acquisition by an overseas person of securities or rights or interests in securities (**the further securities**) if—
- “(i) consent for the acquisition of securities or rights or interests in securities (**the initial securities**) has previously been granted to the overseas person by the relevant Minister or Ministers; and
- “(ii) the rights, privileges, limitations, and conditions attached to the further securities are identical to those attached to the initial securities; and
- “(iii) the further securities are acquired by the overseas person in 1 or more transactions, all of which are completed within 5 years of the date on which consent for the acquisition of the initial securities was granted to that person by the relevant Minister or Ministers; and
- “(iv) the total number of further securities acquired by the overseas person is less than 5% of the total number of initial securities acquired by that person.”
- (5) Regulation 33(2) is revoked.

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Rebecca Kitteridge,  
Clerk of the Executive Council.

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### **Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on the 28th day after the date of their notification in the *Gazette*, amend regulation 33 of the

Overseas Investment Regulations 2005. Regulation 33 provides that certain specified transactions are exempt from the requirements in the Overseas Investment Act 2005 to obtain consent to a transaction that will result in an overseas investment in sensitive land, significant business assets, or fishing quota. The amendments made by these regulations change one of the existing exemptions in regulation 33 and create 3 new exemptions.

The exemption in regulation 33(1)(a) is amended in order to increase its application. It currently only applies to intra-group transactions where the companies concerned are wholly owned by the overseas person. As a result of the amendment, it will apply to intra-group transactions where the companies are at least 95% owned by the overseas person. Regulation 33(2) is consequentially revoked.

The 3 new exemptions are—

- the insertion of a *new regulation 33(1)(ja)*, which permits an overseas person to acquire 2 or more security arrangements if they are acquired together as a portfolio or bundle and the total value of consideration provided for that portfolio or bundle does not exceed \$100 million;
- the addition of a *new regulation 33(1)(o)*, which permits the temporary acquisition of securities for underwriting or subunderwriting purposes;
- the addition of a *new regulation 33(1)(p)*, which permits an overseas person who has previously been granted consent to acquire securities to acquire more of those securities provided that the subsequent acquisitions increase the overall holding by less than 5% and occur within 5 years of the date on which the overseas person was granted consent for the initial acquisition of the securities.

Each of the 3 new exemptions is subject to specified conditions.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 11 June 2009.

These regulations are administered by the Treasury.

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