



# Overseas Investment Regulations 2005

Silvia Cartwright, Governor-General

## Order in Council

At Wellington this 1st day of August 2005

Present:

Her Excellency the Governor-General in Council

Pursuant to section 61 of the Overseas Investment Act 2005, Her 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, makes the following regulations.

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## Regulations

- 1 Title**  
These regulations are the Overseas Investment Regulations 2005.
- 2 Commencement**  
These regulations come into force on 25 August 2005.

### 3 Interpretation

(1) In these regulations, unless the context otherwise requires,—  
**Act** means the Overseas Investment Act 2005

**certificate of title** means a certificate of title or computer register issued or created under the Land Transfer Act 1952

**farm land securities** has the meaning given to it by regulation 4

**Minister** means, except in regulations 37 and 39, the Minister of Conservation

**owner**, in relation to relevant land,—

- (a) means the owner of that land; and
- (b) includes any person authorised in writing by the owner to act as the owner's agent

**requirement for consent** means the requirement to obtain consent under all or any of the following provisions:

- (a) section 10(1)(a) of the Act (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in sensitive land);
- (b) section 10(1)(b) of the Act (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in significant business assets);
- (c) section 57B of the Fisheries Act 1996 (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in fishing quota)

**requirement for consent provisions of the Act—**

- (a) means either or both of the following provisions:
  - (i) section 10(1)(a) of the Act (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in sensitive land);
  - (ii) section 10(1)(b) of the Act (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in significant business assets); but
- (b) does not include section 57B of the Fisheries Act 1996 (which sets out the requirement for consent to be obtained to a transaction that will result in an overseas investment in fishing quota)

**special land** has the meaning given to it by regulation 12

**specified persons** means persons—

- (a) who are overseas persons only because of their direct or indirect connection with a person listed in Schedule 3 or Schedule 4; but
  - (b) who would not be overseas persons if 1 or more of the persons listed in Schedule 3 or Schedule 4 were not overseas persons.
- (2) For the purposes of Schedule 2, **specified transaction** means a transaction that has any of the following effects:
- (a) the acquisition by an overseas person of any associated land in addition to land that the overseas person has already been granted consent to acquire where—
    - (i) the associated land to be acquired is,—
      - (A) if the person has already been granted consent to acquire land not exceeding 100 hectares in area, less than 0.4 hectares in area; or
      - (B) if the person has already been granted consent to acquire land exceeding 100 hectares in area, less than 5 hectares in area; and
    - (ii) neither the land that the person has already been granted consent to acquire nor the associated land is land that is on an island (other than the North or South Island) or is or includes foreshore, seabed, or the bed of a lake;
  - (b) the reacquisition by an overseas person of land that was previously owned by that person where—
    - (i) either the person—
      - (A) had initially been granted consent to acquire the land under the Act; or
      - (B) had been the owner of the land at the time of becoming an overseas person; and
    - (ii) the person had complied with all the conditions of any consent granted for that land under the Act; and
    - (iii) the reacquisition of the land occurs, or is to occur, within 2 years of the person selling or transferring the land to another person;
  - (c) the acquisition by an overseas person of securities or rights or interests in securities of any person that owns

or controls, directly or indirectly, any land or any estate or interest in land where—

- (i) the acquisition will result in an increase of less than 5% to the overseas person's beneficial entitlement to, or beneficial interest in, the securities of the other person; and
  - (ii) the overseas person's beneficial entitlement to, or beneficial interest in, the securities of the other person remains,—
    - (A) if the overseas person's beneficial entitlement to, or beneficial interest in, the securities of the other person is less than 50%, at less than 50%; or
    - (B) if the overseas person's beneficial entitlement to, or beneficial interest in, the securities of the other person is between 50% and 75%, at less than 75%.
- (3) Examples used in these regulations have the following status:
- (a) an example is only illustrative of the provision to which it relates and does not limit the provision; and
  - (b) if an example and the provision to which it relates are inconsistent, the provision prevails.

## Part 1 Consent

### *Procedure for offering farm land or farm land securities for acquisition on open market*

#### 4 Purpose of regulations 5 to 10

The purpose of regulations 5 to 10 is to—

- (a) prescribe, for the purposes of the criterion in section 16(1)(f) of the Act, the procedure for offering the farm land or the securities to which the overseas investment relates (**farm land securities**) for acquisition on the open market to persons who are not overseas persons; and
- (b) ensure that persons who are not overseas persons but who wish to acquire the farm land or farm land securities have reasonable notice that they are available for acquisition.

## **5 Procedure for offering farm land or farm land securities for acquisition on open market**

For the purposes of section 16(1)(f) of the Act, the farm land or farm land securities must be—

- (a) offered for acquisition on the open market, to persons who are not overseas persons, in accordance with regulations 6 to 8; and
- (b) available on the open market for the minimum period required by regulation 9; and
- (c) advertised within the period required by regulation 10.

## **6 Obligation of owner to advertise that farm land or farm land securities available for acquisition**

The owner must advertise that the farm land or the farm land securities are available for acquisition.

## **7 Content of advertisement**

The advertisement under regulation 6 must—

- (a) contain a general description of the relevant land; and
- (b) contain a statement that says that—
  - (i) the farm land or the farm land securities are available for acquisition; and
  - (ii) offers are sought from potential purchasers; and
- (c) state the contact details of the owner.

## **8 Form of advertisement**

The advertisement under regulation 6 must be published—

- (a) in any medium that is—
  - (i) in the list set out in Schedule 1 (or another medium that is generally used for advertising land for acquisition on the open market); and
  - (ii) generally available to persons in the district in which the relevant land is located; and
- (b) in accordance with the minimum requirements set out in Schedule 1 for that particular medium (or, if another medium is used, in accordance with the general practice for advertising land for acquisition on the open market in that medium).

**9 Farm land or farm land securities must be on open market for minimum period**

- (1) The farm land or the farm land securities must be available for acquisition on the open market—
- (a) for at least 20 working days after an advertisement is first placed under regulation 6; or
  - (b) for a longer period, if the advertisement under regulation 6 has stated or implied that offers will be accepted for that longer period.
- (2) However, the owner may accept an offer for the farm land or the farm land securities before the end of the period referred to in subclause (1)(a) or (b) from a person who is not an overseas person.

**10 Advertisement must be published within previous 12 months**

The advertisement under regulation 6 must be published within the period of 12 months that precedes the earlier of the following dates:

- (a) the date on which an application for consent to the relevant overseas investment transaction is made; or
- (b) the date on which the relevant overseas investment transaction that requires consent (or will require consent before it is given effect) is given effect to.

**11 Effect of regulations 5 to 10**

To avoid doubt, regulations 5 to 10 do not require any person to—

- (a) unconditionally offer the farm land or the farm land securities under any transaction; or
- (b) enter into any transaction for the farm land or the farm land securities.

*Procedure for offering foreshore, seabed, riverbed, or lakebed to the Crown*

**12 Procedure for offering foreshore, seabed, riverbed, or lakebed to the Crown**

For the purposes of section 17(2)(f) of the Act, the foreshore, seabed, riverbed, or lakebed (**special land**) must be offered to the Crown (acting by and through the Minister) for acquisition in accordance with regulations 13 to 27.

### **13 Obligation of owner to give notice to Minister and regulator**

The owner must give written notice to the Minister and the regulator if—

- (a) the owner intends to give effect to an overseas investment transaction in respect of any relevant land; and
- (b) the relevant land is or includes special land.

### **14 Content of notice**

A notice under regulation 13 must—

- (a) state that the relevant land is or includes special land; and
- (b) contain a legal description of the relevant land, including a copy of its certificate of title (if it has one); and
- (c) provide the postal address of the relevant land or, if the relevant land does not have a postal address, a narrative or diagrammatic description of the relevant land that contains sufficient information for a person who was not previously familiar with the land to locate and inspect—
  - (i) the relevant land;
  - (ii) the special land; and
- (d) state the proposed consideration for the relevant overseas investment transaction; and
- (e) state all the other terms and conditions of the relevant overseas investment transaction; and
- (f) if possible, identify the area of the relevant land that is special land; and
- (g) state—
  - (i) whether the special land needs to be surveyed before its market value can be determined and before it can be acquired by the Crown; or
  - (ii) whether the special land has previously been surveyed; and
- (h) if paragraph (g)(ii) applies, be accompanied by a copy of the plan of survey of the special land (if a copy of the plan is available); and
- (i) state the owner's intention to offer to the Crown the right to acquire the special land; and
- (j) state the contact details of the owner.

**15 The Crown may waive right to acquire special land**

- (1) The Minister may give written notice to the owner at any time that the Crown waives its right to acquire the special land.
- (2) If a notice under subclause (1) is given, the factor set out in section 17(2)(f) of the Act must be taken to have been complied with in respect of the relevant overseas investment.
- (3) To avoid doubt, a notice under subclause (1) may be given—
  - (a) at the outset, after the notice under regulation 13 has been given; or
  - (b) at any other time until an agreement (if any at all) is entered into between the Crown and the owner for the acquisition by the Crown of the special land.

**16 Procedure if the Crown does not waive right to acquire special land at outset**

- (1) This regulation applies if, after the notice under regulation 13 is given, the Minister decides not to give the notice under regulation 15 that the Crown waives its right to acquire the special land.
- (2) The Minister may give written notice to the owner that the Crown wishes to have the market value of the special land determined by a public valuer if—
  - (a) the notice under regulation 13 states that the special land has previously been surveyed and a copy of the plan of survey is available; or
  - (b) subclause (3) applies and the special land has been surveyed in accordance with that subclause.
- (3) If the notice under regulation 13 states that the special land needs to be surveyed, the Minister must arrange for a survey of the special land to be carried out to the standard appropriate for determining—
  - (a) the market value of the special land; and
  - (b) whether the Crown would want to acquire that land.
- (4) The Crown must meet—
  - (a) the costs of the survey of the special land referred to in subclause (3) and of any subsequent surveys of the special land that may be required for the purpose set out in that subclause; and
  - (b) any other incidental costs or expenses relating to those surveys.

## **17 Valuation of special land**

- (1) If a notice under regulation 16(2) is given, the Minister and the owner must, within 20 working days after the date of the notice, appoint a public valuer to determine the market value of the special land.
- (2) If the Minister and the owner cannot agree on the public valuer to be appointed under subclause (1), then each party must, within 30 working days after the date of the notice given under regulation 16(2), appoint a public valuer to determine jointly the market value of the special land.
- (3) The public valuer or valuers, as the case may be, must determine the market value of the special land within 20 working days of being appointed or, if the public valuers were appointed on different dates, within 20 working days of the second public valuer being appointed.
- (4) If 2 public valuers have been appointed and they cannot agree on the market value of the special land within the time specified in subclause (3), they must appoint another public valuer to determine that value.
- (5) If the valuers cannot agree on the public valuer to be appointed under subclause (4), then either the Minister or the owner may request the President of the New Zealand Institute of Valuers to appoint a public valuer to determine the market value of the special land.

## **18 Costs of valuation**

The costs of a public valuer appointed under regulation 17 must be met as follows:

- (a) if the public valuer is appointed jointly by the Minister and the owner, the costs must be met equally by the Crown and the owner:
- (b) if the public valuer is appointed by the Minister or the owner, the costs must be met by the Crown or the owner, as the case may be:
- (c) if the public valuer is appointed under regulation 17(4) or (5), the costs must be met as determined by that public valuer.

**19 Appointment of valuer is not an arbitration**

- (1) The appointment of a public valuer under regulation 17(4) or (5) is not to be regarded as a submission to arbitration or an arbitration agreement.
- (2) A public valuer appointed under regulation 17(4) or (5) is not to be regarded as an arbitrator, and the Arbitration Act 1996 does not apply in respect of the determination of the market value of the special land by that public valuer.

**20 Valuer may determine market value of special land with reference to market value of relevant land**

If only part of the relevant land is special land and that part is of a size, shape, or nature for which there is no general demand or market, the public valuer or public valuers, as the case may be, may—

- (a) determine the market value of the whole of the relevant land; and
- (b) use that value as a basis for determining the market value of the special land.

**21 Valuer must give notice to parties on determining market value of special land**

As soon as practicable after determining the market value of the special land, the public valuer or public valuers, as the case may be, must give written notice of that market value to the Minister and the owner.

**22 Minister and owner must negotiate in good faith**

- (1) As soon as practicable after receiving notice of the market value of the special land under regulation 21, the Minister and the owner must negotiate in good faith to attempt to conclude an agreement in principle to the terms and conditions of the acquisition by the Crown of the special land.
- (2) Despite subclause (1), the agreement in principle must provide that the consideration for the acquisition by the Crown of the special land must be equal to, or less than, the market value of that land specified in the notice under regulation 21.
- (3) If the Minister considers that the market value of the special land is negligible, the Minister may negotiate the agreement in principle to provide that, subject to consent being given to the

relevant overseas investment transaction, the Crown is to acquire the special land for no consideration.

- (4) If the Minister and the owner conclude the agreement in principle, the owner must offer to the Crown the right to acquire the special land for the consideration and on the terms and conditions stated in that agreement.
- (5) The offer under subclause (4)—
  - (a) must be made in writing; and
  - (b) must be given to the Minister.

### **23 Effect of offering special land to the Crown**

If the owner makes the offer under regulation 22, the factor set out in section 17(2)(f) of the Act must be taken to have been complied with in respect of the relevant overseas investment.

### **24 Minister must decide on whether to accept offer to acquire special land**

- (1) The Minister must decide whether to take either of the actions specified in subclause (2) within 30 working days after the date on which the offer under regulation 22 is made.
- (2) The actions are—
  - (a) to accept the offer for the consideration, and on the terms and conditions, stated or referred to in the offer; or
  - (b) to waive the Crown's right to acquire the special land in accordance with regulation 15.

### **25 Agreement for acquisition of special land by the Crown must be conditional on overseas investment receiving consent and being given effect to**

An agreement between the Crown and the owner for the acquisition by the Crown of the special land must be conditional on—

- (a) consent being granted to the relevant overseas investment; and
- (b) the overseas investment transaction being given effect to.

**26 What happens if there is material change to terms and conditions of overseas investment transaction**

- (1) This regulation applies if there is a material change to the terms and conditions of the relevant overseas investment transaction after—
  - (a) the notice under regulation 13 is given; or
  - (b) the offer under regulation 22 is made.
- (2) If this regulation applies, the provisions of regulations 12 to 25 and of this regulation apply (with all necessary modifications) in respect of the special land as if those provisions had not yet been applied or had not been complied with.

**27 Minister may delegate functions and powers to regulator**

- (1) The Minister may delegate to the regulator any of his or her functions or powers under these regulations.
- (2) Any delegation must be done in the manner provided for in section 28 of the State Sector Act 1988.

*Other factors for assessing benefit of overseas investment in sensitive land***28 Other factors for assessing benefit of overseas investment in sensitive land**

The other factors that are referred to in section 17(2)(g) of the Act for assessing whether an overseas investment in sensitive land will, or is likely to, benefit New Zealand are as follows:

- (a) whether the overseas investment will, or is likely to, result in other consequential benefits to New Zealand (whether tangible or intangible benefits (such as, for example, additional investments in New Zealand or sponsorship of community projects));
- (b) whether the relevant overseas person is a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations;
- (c) whether refusing the application for consent will, or is likely to,—
  - (i) adversely affect New Zealand's image overseas or its trade or international relations;
  - (ii) result in New Zealand breaching any of its international obligations;

- (d) whether granting the application for consent will, or is likely to, result in the owner of the relevant land undertaking other significant investment in New Zealand:
- (e) whether the relevant overseas person has previously undertaken investments that have been, or are, of benefit to New Zealand:
- (f) whether the overseas investment will, or is likely to, give effect to or advance a significant Government policy or strategy:
- (g) whether the overseas investment will, or is likely to, enhance the ongoing viability of other overseas investments undertaken by the relevant overseas person.

### *Fees and charges*

#### **29 Fees and charges**

- (1) The fees and charges set out in Schedule 2 are payable to the regulator for the matters to which they relate.
- (2) The fees and charges are inclusive of goods and services tax.

#### **30 When fees and charges are payable**

A fee or charge that is payable under regulation 29 must be paid on the making of an application or a request, as the case may be.

### *Administrative penalties*

#### **31 Administrative penalty for late filing**

For the purposes of section 52 of the Act, the administrative penalty that the regulator may require a person to pay if the person files, provides, or produces a document required by or under the Act, these regulations, or a condition of a consent or of an exemption with the regulator after the time when the document must be filed, provided, or produced is \$500.

#### **32 Administrative penalty for retrospective consent**

- (1) For the purposes of section 53 of the Act, the administrative penalty that the regulator may require an applicant for a retrospective consent to pay is an amount that is not more than \$20,000.
- (2) In determining the amount of the administrative penalty under subclause (1), the regulator must consider whether requiring

the applicant to pay that amount would be unduly harsh or oppressive given—

- (a) the value of the consideration for the asset that was acquired under the relevant overseas investment transaction; or
- (b) the nature of, and the reasons for, the retrospective consent.

## **Part 2**

### **Exemptions**

#### *Exemptions from requirement for consent*

### **33 Certain transactions exempted from requirement for consent**

- (1) The requirement for consent does not apply to the extent that giving effect to a transaction has any of the following effects:
  - (a) the acquisition by an overseas person of the securities or rights or interests in securities or property—
    - (i) from another member of the same group, being a group that comprises an overseas person and persons that are directly or indirectly wholly owned by that overseas person, as part of a reconstruction or reorganisation of that group; or
    - (ii) from an overseas person that directly or indirectly wholly owns that overseas person:
  - (b) the acquisition by a company incorporated under the Companies Act 1993 of its own shares if—
    - (i) the acquisition does not alter the proportions in which shares in the company are held by the shareholders or the relative voting rights of the shareholders; or
    - (ii) the shares are acquired under section 112 or section 118 of that Act:
  - (c) the acquisition by an overseas person of securities or property in an amalgamated company under an amalgamation effected under the Companies Act 1955 or the Companies Act 1993 if the overseas person has the same direct or indirect interest in or rights to the assets of that amalgamated company as that overseas person had in relation to those assets prior to the amalgamation:

- (d) the acquisition by an overseas person of redeemable preference shares that are redeemable only in cash and that do not entitle the holder to exercise voting rights except if the dividend payable is in arrears:
- (e) the transfer of securities or rights or interests in securities or property from a trustee to an overseas person who is a trustee of the same trust on the appointment of a new trustee or the retirement of a trustee or on the resettlement of a trust if that appointment, retirement, or resettlement does not result in the trust becoming an overseas person:
- (f) the transfer by a trustee, executor, or administrator of the will or of the estate of a deceased person to an overseas person who is a beneficiary of securities or rights or interests in securities or property under that will or estate or under a trust established by that will or estate:
- (g) the transfer by a trustee of a trust to an overseas person who is a beneficiary of securities or rights or interests in securities or property under that trust if—
  - (i) the trust is an overseas person; and
  - (ii) the acquisition of those securities or rights or interests in securities or property by the trust has been previously consented to under the Act; and
  - (iii) the transfer is not contrary to any conditions of that consent:
- (h) the acquisition by an overseas person of securities or rights or interests in securities or property under an arrangement (**security arrangement**) that—
  - (i) in substance secures payment or performance of an obligation (regardless of the form of the transaction or the identity of the person who has title to the securities or rights or interests); and
  - (ii) is entered into by the parties in good faith and in the ordinary course of business; and
  - (iii) requires that the securities or rights or interests be retransferred to the original transferor or extinguished on the payment or performance of the obligation:
- (i) the acquisition by an overseas person of securities or rights or interests in securities or property as a result of

the overseas person enforcing a security arrangement in good faith:

- (j) the reacquisition by an overseas person of securities or rights or interests in securities or property as a result of the discharge of a security arrangement:
  - (k) the acquisition of securities or rights or interests in securities or property from the investment of funds by an overseas person carrying on in New Zealand the business of life insurance if—
    - (i) the investment of the funds is made for the benefit of policy holders at least 75 percent of whom are New Zealand citizens or persons ordinarily resident in New Zealand; and
    - (ii) the investment is of funds held in the overseas person's Life Insurance Fund within the meaning of section 15 of the Life Insurance Act 1908 if the overseas person carries on any other business:
  - (l) the acquisition of securities or rights or interests in securities or property by or on behalf of an overseas person that is the trustee of a superannuation scheme registered under the Superannuation Schemes Act 1989 from the investment of all or part of the assets of the scheme for the benefit of members at least 75 percent of whom are New Zealand citizens or persons ordinarily resident in New Zealand:
  - (m) the acquisition by an overseas person of securities or rights or interests in securities or property if—
    - (i) the securities or rights or interests are, or will be as a result of the acquisition, relationship property (as defined in section 8 of the Property (Relationships) Act 1976) of the overseas person and the overseas person's spouse, civil union partner, or de facto partner; and
    - (ii) the overseas person's spouse, civil union partner, or de facto partner is not an overseas person:
  - (n) the acquisition by an overseas person of securities or rights or interests in securities or property as a result of a division of relationship property under the Property (Relationships) Act 1976.
- (2) The exemption under subclause (1)(a) also applies if the overseas person acquires less than 100% of the securities or rights

or interests in securities or property referred to in that subclause, so long as at least 95% of those securities or rights or interests are acquired by that overseas person at any one time.

*Exemptions from requirement for consent provisions of Act*

**34 Exemption for persons connected to portfolio investors or New Zealand controlled persons**

- (1) Every specified person is exempt from the requirement for consent provisions of the Act.
- (2) The exemption under subclause (1) also applies to a specified person if—
  - (a) the exemption does not apply under that subclause only because 1 or more persons (which may include the specified person) are incorporated outside New Zealand; and
  - (b) each of those persons incorporated outside New Zealand is directly or indirectly wholly-owned by a person listed in Schedule 3 or Schedule 4.
- (3) However, the exemption under subclause (1) does not apply to a specified person if 1 person listed in Schedule 3 has 25% control, or 2 or more overseas persons (including persons listed in Schedule 3, but not persons listed in Schedule 4) have cumulatively 75% control, of the specified person by having (directly or indirectly)—
  - (a) a beneficial entitlement to, or a beneficial interest in, 25% or more or 75% or more (as the case may be) of the specified securities of the specified person; or
  - (b) the right to exercise or control the exercise of 25% or more or 75% or more (as the case may be) of the voting power at a meeting of the specified person; or
  - (c) the right to appoint or control the appointment of 25% or more or 75% or more (as the case may be) of the board of directors (or other persons or body exercising powers of management, however described) of the specified person.

**Example 1**

Company A holds 20% and Company B holds 5% of Company X's shares. Both Company A and Company B are overseas persons but Company A is listed in Schedule 3.

So Company X is exempt under regulation 34 (if there is no other reason why Company X is an overseas person).

**Example 2**

Company C buys 25% of Company X's shares. Company C is an overseas person because it is a subsidiary of a company listed in Schedule 4 (and is not an overseas person for any other reason).

So Company X is still exempt under regulation 34 (if there is no other reason why Company X is an overseas person).

**Example 3**

Company D buys 25% of Company X's shares. Company D is an overseas person and is not listed in Schedule 3 or 4.

So Company X no longer qualifies for the exemption under regulation 34.

**Example 4**

Company A increases its shareholding in Company X to 25%. Company A is listed in Schedule 3.

So Company X no longer qualifies for the exemption under regulation 34.

**35 Exemption for New Zealand controlled persons**

Every person listed in Schedule 4 is exempted from the requirement for consent provisions of the Act.

**36 Consequential exemption for other transactions**

- (1) Every person is exempted from the requirement for consent provisions of the Act for a transaction if, for a transaction that will have a result specified in section 12(b) of the Act, every overseas person to which section 12(b) applies will become a

person that is exempted from the requirement for consent provisions of the Act by regulation 34 or regulation 35.

- (2) Every person is exempted from the requirement for consent provisions of the Act for a transaction that will have a result specified in section 13(1) of the Act if every overseas person to which section 13(1) applies is exempted from the requirement for consent provisions of the Act by regulation 34 or regulation 35.

### *Applications for exemptions*

#### **37 Application for exemption**

- (1) The relevant Minister or Ministers may, on application in accordance with regulation 38, exempt any transaction, person, interest, right, or assets, or class of transactions, persons, interests, rights, or assets from the requirement for consent or from the definition of overseas person or associate or associated land.
- (2) The relevant Minister or Ministers may grant an exemption under subclause (1) subject to any terms and conditions that the relevant Minister or Ministers think fit.
- (3) An exemption under subclause (1) may at any time be amended or revoked.

#### **38 Requirements for application for exemption**

- (1) An application for an exemption under regulation 37(1) must—
  - (a) be in writing; and
  - (b) be signed by each applicant; and
  - (c) contain an explanation of why the exemption is required.
- (2) The explanation referred to in subclause (1)(c) may state, for example, that the transaction to which the application for exemption relates is similar to other exemptions that have already been granted.

## **Part 3**

### **Miscellaneous**

#### *Notices*

#### **39 Relevant Minister or Ministers may give notice of exercise of powers**

- (1) The relevant Minister or Ministers may give notice of the exercise of any powers under the Act or these regulations.
- (2) A notice under subclause (1) may be given—
  - (a) in the *Gazette*;
  - (b) to a particular person.
- (3) Every person is bound by a notice given under subclause (1).
- (4) A notice under subclause (1) may at any time be amended or revoked.

#### *Service of notices*

#### **40 Service of notices**

- (1) A notice or other document required to be served on, or given to, any person under the Act or these regulations is sufficiently served if it is—
    - (a) delivered personally to the person; or
    - (b) delivered to the person at the person's usual or last known place of residence or business; or
    - (c) sent by fax or email to the person's fax number or email address; or
    - (d) posted in a letter addressed to the person at the person's usual or last known place of residence or business.
  - (2) If a notice or other document is to be served on a body (whether incorporated or not), service on an officer of the body in accordance with subclause (1) is taken to be service on the body.
  - (3) If a notice or other document is to be served on a partnership, service on any one of the partners in accordance with subclause (1) is taken to be service on the partnership.
  - (4) A notice or other document sent by post to a person in accordance with subclause (1)(d) must be treated as having been received by that person at the time at which the letter would have been delivered in the ordinary course of post.
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## Schedule 1

### Form of advertisement

<b>Medium</b>	<b>Minimum requirements</b>
Internet	Must be of usual prominence on an internet site generally used for advertising acquisition of land on the open market for 20 working days
Newspaper	Must be of usual prominence in the property section of 1 edition
Notice or sign	Must be of usual prominence at the real estate agent's office for 20 working days
Placard	Must be displayed on the relevant land for 20 working days and in a manner that ensures, as far as is reasonably practicable, that it attracts the attention of the persons to whom the advertisement is directed
Real estate sales publication	Must be of usual prominence in 1 edition

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## Schedule 2 Fees and charges

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### Part 1 Applications relating to overseas investments in sensitive land

<b>Application</b>	<b>Determination by the relevant Minis- ters or by the regu- lator under delega- tion</b>	<b>\$</b>
For consent for a transaction (other than a speci- fied transaction):	Relevant Ministers	
for each consent		8,700
maximum amount payable for a transaction		21,800
for every tenth application by same appli- cant		no fee
For consent for a transaction (other than a speci- fied transaction):	Regulator	
for each consent		8,200
maximum amount payable for a transaction		20,500
for every tenth application by same appli- cant		no fee
For consent for a specified transaction:	Relevant Ministers or regulator	
for each consent		2,700
For consent for a series of transactions involving either the same vendor or the same purchaser that follows the grant of a conditional consent for that series of transactions:	Relevant Ministers or regulator	
for initial conditional consent		8,000
for each following consent		6,000
For variation of consent or conditions of consent	Relevant Ministers	7,600
For variation of consent or conditions of consent	Regulator	3,100
For exemption under regulation 37:	Relevant Ministers	
for 1 transaction		2,500
for more than 1 transaction:		
for each transaction		2,500
maximum amount payable for an appli- cation		19,000
For exemption under regulation 37:	Regulator	
for 1 transaction		2,200
for more than 1 transaction:		
for each transaction		2,200
maximum amount payable for an appli- cation		19,000

## Part 2

### Applications relating to overseas investment in significant business assets

<b>Application</b>	<b>\$</b>
For consent for a transaction:	
for each consent	2,100
maximum amount payable for a transaction	5,300
For variation of consent or conditions of consent	1,200
For exemption under regulation 37:	
for 1 transaction	2,500
for more than 1 transaction:	
for each transaction	2,500
maximum amount payable for an application	19,000

## Part 3

### Applications relating to overseas investment in fishing quota

<b>Application</b>	<b>\$</b>
For consent for a transaction:	
for each consent	36,000

## Part 4

### Other applications

<b>Application</b>	<b>\$</b>
For exemption under regulation 37 by addition to Schedule 3 (which relates to portfolio investors):	
application fee	1,000
monitoring compliance with conditions of exemption for each 12-month period following addition to Schedule 3	700
For exemption under regulation 37 by addition to Schedule 4 (which relates to New Zealand controlled persons):	
application fee	6,000
monitoring compliance with conditions of exemption for each 12-month period following addition to Schedule 4	4,100

## Part 5

### Administrative and information services

<b>Service</b>	<b>\$</b>
For a copy of a document containing any consent, or a copy of a decision sheet, previously given to an applicant or the applicant's agent	30
For an annual subscription for monthly decision sheets compiled by the regulator	180
For providing monthly sets of decision sheets compiled by the regulator	30

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**Part 5—continued**

<b>Service</b>	<b>\$</b>
For a set of annual statistics compiled by the regulator	30
For the provision of other information or services	120 per hour

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### **Schedule 3**

#### **Portfolio investors**

Asteron Life Limited  
Asteron Retirement Investment Limited  
Australia Reinsurance Company Limited  
Citicorp New Zealand Limited  
HSBC Nominees (New Zealand) Limited  
J. P. Morgan Securities New Zealand Limited  
Munich Reinsurance Company Limited  
National Mutual Life Association of Australasia Limited  
The Colonial Mutual Life Assurance Society Limited  
The New Zealand Refining Nominees Limited  
Vero Insurance New Zealand Limited

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## Schedule 4

### New Zealand controlled persons

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Fisher & Paykel Appliances Holdings Ltd  
Fulton Hogan Ltd  
Guinness Peat Group PLC  
Infrastructure & Utilities NZ Limited  
Waste Management N.Z. Ltd

Diane Morcom,  
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 25 August 2005, prescribe various matters for the purposes of the Overseas Investment Act 2005 (the **Act**). The Act, which also comes into force on 25 August 2005 (by a separate order), replaces the Overseas Investment Act 1973 and the Overseas Investment Regulations 1995. The Act—

- requires overseas investments in sensitive New Zealand assets to meet certain criteria for consent before those overseas investments are made; and
- provides for conditions to be imposed on those overseas investments.

These regulations provide for the following matters under the Act:

- the procedure for offering farm land or securities to which an overseas investment relates (**farm land securities**) for acquisition on the open market:
- the procedure for offering foreshore, seabed, riverbed, and lakebed to the Crown:
- additional factors for assessing the benefit to New Zealand of overseas investments in sensitive land:
- the fees and charges that are payable for applications for consents and for several other matters:
- the administrative penalties that are payable for late filing of documents and for retrospective consents:

- the exemptions from the requirement to obtain consent that apply in relation to overseas investment transactions that have certain specified effects:
- the procedure for making applications for exemptions:
- the giving and service of notices.

*Regulations 4 to 11* set out, for the purposes of section 16(1)(f) of the Act, the procedure for offering farm land or farm land securities for acquisition on the open market to persons who are not overseas persons. Section 16(1)(f) of the Act sets out, in a case where the relevant land is or includes farm land, one of the criteria for consent to an overseas investment in sensitive land.

The procedure requires an advertisement that advertises that the farm land or the farm land securities are available for acquisition to be placed in a medium that is in the list set out in Schedule 1 of these regulations or that is generally available to persons in the district in which the relevant land is located. The farm land or the farm land securities must be available for acquisition on the open market for at least 20 working days after the advertisement is first placed, or for a longer period if the advertisement has stated or implied that offers will be accepted for that longer period. The advertisement must be published within the period of 12 months that precedes the earlier of the date on which an application for consent to the relevant overseas investment transaction is made or the date on which the relevant overseas investment transaction that requires consent (or will require consent before it is given effect) is given effect.

The procedure has essentially been carried over from the Overseas Investment Regulations 1995. The only difference is in relation to the minimum requirements for placards that are set out in Schedule 1 of these regulations. Those minimum requirements now provide that a placard must be displayed on the relevant land for 20 working days and in a manner that ensures, as far as is reasonably practicable, that it attracts the attention of the persons to whom the advertisement is directed. Under the Overseas Investment Regulations 1995, the minimum requirements for that medium provided that placards must be of usual prominence on the relevant land for 20 working days.

*Regulations 12 to 27* set out, for the purposes of section 17(2)(f) of the Act, the procedure for offering foreshore, seabed, riverbed, or lakebed (**special land**) to the Crown. Section 17(2)(f) of the Act sets out, in a case where the relevant land is or includes special land, one of the factors for assessing the benefit to New Zealand of an overseas

investment in sensitive land. Under section 17(2)(f), the Crown essentially has the right of first refusal over the special land.

The procedure requires the owner of the relevant land to give written notice to the Minister of Conservation (the **Minister**) if the owner intends to give effect to an overseas investment transaction and the relevant land is or includes special land. The notice must state whether the special land needs to be surveyed before its market value can be determined and before it can be acquired by the Crown or whether the special land has previously been surveyed. On receipt of that notice, the Minister may do 1 of 2 things. The Minister may waive the Crown's right to acquire the special land by written notice to the owner. The Minister may waive this right at this stage of the procedure or at any other stage until an agreement is entered into between the Crown and the owner for the acquisition by the Crown of the special land. If the Crown waives its right to acquire the special land, the factor set out in section 17(2)(f) of the Act must be taken to have been complied with in respect of the relevant overseas investment.

Alternatively, the Minister may give written notice that the Crown wishes to have the market value of the special land determined by a public valuer. The Minister may give the notice only if the special land has previously been surveyed or, if it has not, only after the Minister has arranged for a survey to be conducted at the Crown's expense. If the Minister gives the notice, the Minister and the owner must, within 20 working days after the date of that notice, appoint a public valuer to determine the market value of the special land. If the parties cannot agree on the public valuer to be appointed, a mechanism for the appointment of a public valuer or public valuers to determine the market value of the special land is provided.

After the market value of the special land has been determined, the Minister and the owner must negotiate in good faith to attempt to conclude an agreement in principle to the terms and conditions of the acquisition by the Crown of the special land. The agreement in principle must provide that the consideration payable by the Crown for the special land must be equal to, or less than, the assessed market value of that land. If the Minister and the owner conclude the agreement in principle, the owner must offer to the Crown the right to acquire the special land for the consideration and on the terms and conditions stated in that agreement. If the owner makes the offer, the factor set out in section 17(2)(f) of the Act must be taken to have been complied with in respect of the relevant overseas investment.

The Minister must decide, within 30 working days after the date on which the offer is made, whether the Crown should accept the offer or whether it should waive its right to acquire the special land.

*Regulation 28* sets out other factors for assessing whether an overseas investment in sensitive land will, or is likely to, benefit New Zealand, which is one of the criteria that the relevant Ministers must take into account in deciding whether to grant or refuse consent. The relevant Ministers must consider all of these factors, in addition to the factors set out in section 17(2) of the Act, to determine which factor or factors (or parts of them) are relevant to the overseas investment. If the relevant Ministers consider a factor to be relevant, they must consider that factor in assessing the benefit of the overseas investment to New Zealand.

*Regulation 29 and Schedule 2* set out the fees and charges that are payable for various matters under the new Act. *Regulation 30* provides when those fees and charges are payable.

*Regulations 31 and 32* set out the administrative penalties for late filing of documents and for retrospective consents. The administrative penalty for late filing of documents is \$500 and that for a retrospective consent is an amount of up to \$20,000. The regulator may, in determining the amount of the administrative penalty for a retrospective consent, consider whether the amount would be unduly harsh or oppressive given the value of the consideration for the asset that was acquired under the relevant overseas investment transaction or the nature of, and the reasons for, the retrospective consent.

*Regulations 33 to 36* specify exemptions from the requirement to obtain consent for overseas investments in sensitive New Zealand assets. These provisions have substantially been carried over from the Overseas Investment Regulations 1995 and the Overseas Investment Exemption Notice 2001.

*Regulation 33* sets out the exemptions that were previously set out in regulation 6(a) to (m) (in relation to transactions not involving the acquisition of land) of the Overseas Investment Regulations 1995 and the corresponding exemptions that were previously set out in regulation 9(h) to (w) (in relation to transactions involving the acquisition of land) of those regulations. The main changes are as follows:

- the exemption for corporate restructuring in *regulation 33(1)(a)* is now extended to cover a corporate restructuring that does not result in the acquisition by the overseas person

of 100% of the securities or rights or interests in securities or property from another member of the same group (see *regulation 33(2)*):

- the exemption for easements in regulation 9(u) of the Overseas Investment Regulations 1995 is no longer necessary and has not been carried over into these regulations given that the Act does not apply to an **exempted interest**, which is defined under that Act to mean an easement or *profit à prendre*.

*Regulations 34 to 36* set out the exemptions that were previously set out in the Overseas Investment Exemption Notice 2001 for certain classes of persons or transactions.

*Regulations 37 and 38* provide for applications for exemptions from the requirement for consent and other matters, and for the requirements for those applications.

*Regulations 39 and 40* deal with miscellaneous matters such as the giving and service of notices.

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These regulations are administered in the Treasury.

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