

A photograph of a wind farm at sunset. The sky is a mix of orange, yellow, and purple. The sun is low on the horizon, creating a strong glow. Several wind turbines are visible, their blades silhouetted against the bright sky. The foreground is a dark, grassy field. The overall mood is serene and hopeful, representing renewable energy.

Investing in New Zealand

2021

Investing in New Zealand



4 professionals
4 partners

Specialists in:

Acquisition of business assets
and sensitive land for forestry,
dairying, pastoral, lifestyle and
residential development purposes

Pre-investment planning

OIO applications and notifications

Variations to existing consents
or consent conditions

Ranked with:



*"Full-service firm with significant
expertise in advising international
clients on investments in New Zealand,
especially those involving Chinese and
Japanese entities."*

Chambers and Partners Asia Pacific



Key points on investing in New Zealand



New Zealand welcomes overseas investment that is beneficial to our country.



The Overseas Investment Office ('OIO') assesses applications from overseas investors to ensure they meet the criteria set out in the Overseas Investment Act 2005 (the 'OIA').



Overseas people wanting to invest in sensitive land, significant business assets and fishing quota in New Zealand must get consent under the OIA ('OIA Consent') before they do so.



Certain transactions that do not require consent under the OIA may still need to be notified to the OIO if the overseas investment is an investment into a strategically important business.



An overseas person includes an associate of an overseas person and an overseas organisation (e.g. entities that are incorporated outside New Zealand or more than 25% foreign-owned).



The detail

When consent by the OIO is required

You may need to apply to the OIO for consent if you are an overseas person wishing to acquire:

- sensitive land or an interest in sensitive land (for example, buying shares in a company that owns sensitive land); or
- significant business assets worth more than NZ\$100 million; or
- fishing quota or an interest in fishing quota.

General guide to investing in New Zealand under the OIA.

Investing in New Zealand	New Zealanders and residents who live in New Zealand, and New Zealander-owned companies or trusts	New Zealand residents who live overseas, and businesses that are more than 25% overseas owners or controlled	Australian and Singaporean citizens and permanent residents who live in New Zealand	Other overseas people (including international entities)
Buying a home to live in	✓ Okay to buy	! Consent required	✓ Okay to buy	✗ Won't get consent
Developing residential land	✓ Okay to buy	! Consent required	✓ Okay to buy	! Consent required
Buying forestry	✓ Okay to buy	! Consent required	! Consent required	! Consent required
Investing in significant business assets over \$100 million	✓ Okay to buy	! Consent required	! Consent required	! Consent required
Investing in other sensitive land	✓ Okay to buy	! Consent required	! Consent required	! Consent required
Investing in strategically important business involved with military or dual-use technology	✓ Okay to buy	🔔 Must notify	🔔 Must notify	🔔 Must notify
Investing in another type of strategically important business	✓ Okay to buy	🔔 Must notify	🔔 Must notify	🔔 Must notify

Acquisition of significant business assets

An investment by an overseas person into a significant business asset exceeding NZ\$100 million (unless an alternative monetary threshold applies) will require OIA Consent, regardless of whether there is one transaction or a collection of related transactions.

Examples of investments in significant business assets include:

- the acquisition of more than 25% ownership or control interest (such as shares and securities) in a New Zealand business;
- the acquisition of property (including goodwill and other intangible assets) in a New Zealand business;
- the establishment of a business in New Zealand; or
- an increase in the overseas person's existing more than 25% ownership or control interest in significant business assets to more than 50%, 75%, or 100%.

ALTERNATIVE MONETARY THRESHOLDS

Certain non-government investors from countries with overseas investment treaties with New Zealand have the benefit of higher monetary thresholds before consent is required for an investment in significant business assets. Those thresholds, for the 2021 calendar year, are as follows:

- Australia: NZ\$552 million
- Brunei, Canada, Chile, Japan, Mexico, Singapore, Vietnam, the Republic of Korea, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Hong Kong and China: NZ\$200 million

Acquisition of sensitive land or an interest in sensitive land

You may be required to obtain OIA Consent for an acquisition of 'sensitive land', which includes:

- the purchase of freehold land;
- the lease of residential land for a term of three years or more (including any rights of renewal); or
- the lease of non-residential 'sensitive land' for a term of 10 years or more (including any rights of renewal).

The following table details what is considered sensitive land under the OIA:

Land is sensitive if it is or includes this type of land	...and exceeds an area threshold of
Residential land (but excluding residential tenancies of less than five years)	Any
Non-urban land	5 hectares
Land on islands specified in Part 2 of Schedule 1 of the OIA	0.4 hectares
Land on other islands (other than the North or South Island)	Any
Foreshore or seabed/marine and coastal area	Any
Adjoining the foreshore or seabed/marine and coastal area	0.2 hectares
Bed of a lake (or adjoining)	0.4 hectares
Land held for conservation purposes (or adjoining)	0.4 hectares
A reserve, a public park, land for recreation purposes, or an open space	0.4 hectares
Land subject to a heritage order (or adjoining)	0.4 hectares
A historic place, historic area, wahi tapu, or wahi tapu area that is entered on the New Zealand Heritage List/Rārangī Kōrero (or adjoining)	0.4 hectares
Land that is set apart as Māori reservation (or adjoining)	0.4 hectares
Land adjoining areas owned by iwi or a hapū and managed in accordance with the Conservation Act 1987	0.4 hectares
Land adjoining Te Urewa land, the Whanganui River, or the Maungatautari Mountain Scenic Reserve	0.4 hectares

The significant business assets and sensitive land consent requirements are separate. That is, if an overseas investment transaction is below the 'significant business assets' threshold, but involves sensitive land, then consent is still required.

National interest test

Certain transactions that are already screened under the OIA will be subject to a 'national interest test'. Such transactions may include:

- an investment in 'strategically important businesses' – such as businesses in military or dual-use technology, ports or airports, electricity, water, telecommunications, media businesses with significant impact and financial market infrastructure, businesses involved in an irrigation scheme, and critical direct suppliers to intelligence or security agencies;
- certain levels of investment by an overseas investor that are made by, or associated with, a foreign government; or
- other investments which have been identified by the relevant Minister as posing material risks to New Zealand's national interest.

Under the national interest test, the relevant Minister will be able to decline consent to an overseas investment transaction that it regards as contrary to New Zealand's national interest.

Criteria for investment in significant business assets

To obtain consent for an investment in significant business assets, the relevant overseas persons and all individuals with control of those relevant overseas persons (excluding those individuals who are New Zealanders) must satisfy two groups of 'character and capability' factors (collectively referred to as the '**Investor Test**'). These factors include disclosing:

CHARACTER FACTORS

- convictions resulting in imprisonment or significant fines
- corporate fines both in New Zealand and overseas
- being ineligible to come to New Zealand

CAPABILITY FACTORS

- prohibitions on being a director, promotor, or manager of a company
- penalties for tax avoidance or evasion
- unpaid tax of \$5 million or more

If an overseas investor has previously satisfied the investor test and its circumstances have not changed, then the investor test component of its consent application will not need to be reassessed.



Criteria for investment in sensitive land

To obtain consent for an overseas investment in sensitive land (other than residential land), the same Investor Test must be satisfied.

In most cases, the applicant must also demonstrate that the investment will, or is likely to, benefit New Zealand (the '**Benefit Test**'). If the relevant land includes non-urban land over five hectares, then the benefit must be 'substantial and identifiable' (i.e. more than just likely to benefit New Zealand). There are more streamlined and targeted pathways available (e.g. the 'special forestry test') for obtaining consent to an overseas investment in residential land or forestry land.

The Benefit Test involves assessing the proposed investment against various specified factors. These factors include economic benefits (such as the creation of job opportunities, increased export receipts and added market competition), environmental benefits and other miscellaneous benefits.

Benefits will be weighted using various considerations such as the size of the benefit that is likely to occur. For example, the creation of 100 jobs in New Zealand is likely to be given a greater weight than the creation of one job. To obtain consent, an investment from an overseas investor must deliver benefits over and above those that a likely New Zealand investor would otherwise be able to deliver.

The Overseas Investment Amendment Act 2021 has introduced a new, more streamlined, Benefit Test. The new test is expected to come into force late 2021 or early 2022. Notably, the new Benefit Test will replace 18 of the current 21 rigid benefit categories with three new broader benefit categories, allowing regulators to take a more flexible approach to assessing benefits.

Special land

Some sensitive land may also contain 'special land', such as qualifying foreshore, seabed, riverbed or lakebed. Special land must first be offered back to the Crown before OIA Consent can be granted.

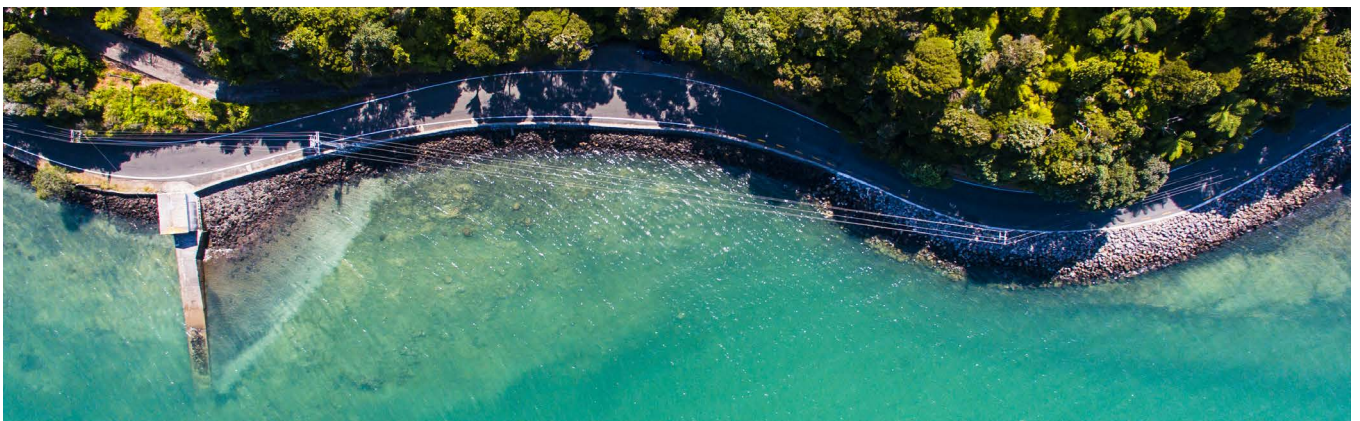
The Crown will accept the offer if it considers that Crown ownership of the land is in the interests of the public. If the Crown accepts this offer, it is only entitled to the part of the land which is "special".

Farm land

If the relevant sensitive land is or includes 'farm land', it would first need to be advertised for acquisition on the open market in New Zealand, in accordance with the procedure set out in Overseas Investment Regulations. 'Farm land' includes land used for agricultural, horticultural or pastoral purposes, or for the keeping of bees, poultry, or livestock.

Standing consent

Overseas persons who are large developers of residential land or forestry investors or operators may apply for a standing consent. A standing consent covers a predetermined number of transactions and may have a use-by date. The advantage of having a standing consent is that it will allow an overseas investor to acquire property without having to obtain consent in relation to each specific investment, if that investment falls within the parameters of the standing consent. This in turn gives the standing consent holder a competitive advantage when tendering for a property, as they would be able to submit an offer that is not conditional on OIA Consent and thus putting them on the same playing field as domestic investors.



Fishing quota or an interest in fishing quota

Fishing quotas are issued under the Fisheries Act 1996 ('the Fisheries Act') and are the total quantity you are allowed to commercially catch of certain fish species.

Except where approval has been obtained, no commercial fishing may be undertaken within the territorial waters of New Zealand by any person who does not own a fishing quota.

OIA Consent will be needed for an overseas person to gain an interest in a fishing quota, or rights or interests in a foreign-controlled business that owns or controls an interest in a New Zealand fishing quota. In determining whether to grant permission to an overseas person to acquire an interest in any fishing quota, the OIO must have regard to those factors set out in section 57H of the Fisheries Act.

The national security and public order ('NSPO') notification regime

The NSPO regime applies to overseas investments in strategically important businesses that do not otherwise require OIA Consent. Notification to the OIO is mandatory for investment in some industries, and voluntary for others.

Notification of a transaction is mandatory if the target business involves dual-use technology or is a critical direct supplier to New Zealand intelligence or security agencies. Transactions subject to the mandatory notification regime must receive Ministerial clearance before they can be given effect to.

Notification of other types of overseas investments in strategically important businesses is voluntary and can be done either before or up to 6 months after the transaction is given effect to.

Making an application for consent

All applications to the OIO must be made in writing via the OIO's online application forms.

The OIO will consider the application initially to verify that all the correct information has been provided and ask for the relevant application fee to be paid. If the application is accepted, it will be registered with OIO and they will begin their assessment.

The timeframe is highly variable. As a general indication, an application in relation to significant business assets could take 3 months or more, and in relation to sensitive land (other than residential or forestry land) could take 6 months or more. In the case of urgency (for example a takeover), the OIO does make every effort to make a decision within the applicant's timing requirements.

Investment planning

The OIO will require an investment plan for particular investments, particularly those in sensitive land. These investment plans must detail the benefits to New Zealand that are expected to come out of the investment or acquisition.

Careful planning in advance of making an investment in New Zealand is crucial. An overseas investor is required to provide a large amount of information about their proposed investment and the persons who will control the investment. Compared to consent applications, notifications demand less information but the OIO would still expect to see, at a minimum, basic information about the investment (e.g. the acquisition structure) and details of the people who will control the investment in the notification. Early preparation and engagement of legal advice will help you to mitigate the risk of delays, and provide more comfort regarding the viability of your proposed transaction.



How we can help you

For more information contact



Chris Parke

Partner

D +64 9 375 1157

M +64 21 382 596

E chris.parke@dentons.com



Acquire or invest in significant business assets and sensitive land for forestry, dairying, pastoral, lifestyle and residential development purposes.



Pre-investment planning and structuring your investment.



Prepare OIO applications and notifications, and liaise with the OIO throughout the application or notification process.



Apply for variations to an existing consent or consent conditions.



Respond to enforcement matters where significant business assets or sensitive land has been acquired without consent, or if there has been a breach of an existing consent.

dentons.co.nz

© 2021 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see [dentons.com](https://www.dentons.com) for Legal Notices.