

The Dentons logo is a white arrow pointing to the right, containing the word "DENTONS" in a bold, sans-serif font. The background of the entire page is a close-up photograph of a yellow flower, with a large purple shape in the upper left corner.

**DENTONS**

# **Investing in New Zealand**

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**December 2023**



# Investing in New Zealand



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and sensitive land for forestry,  
dairying, pastoral, lifestyle and  
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Variations to existing consents  
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— Investment Funds,  
Legal 500 Asia Pacific, 2023

# 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 quotas 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 quotas or an interest in fishing quotas.

## 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 Zealand-owned companies or trusts	New Zealand residents who live overseas, and businesses that are more than 25% overseas owned 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	X 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 (but see higher thresholds below that may apply)	! 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 significant business assets 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 2023 calendar year, are as follows:

- Australia: NZ\$586 million
- Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, Vietnam, the Republic of Korea, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Hong Kong, China and the United Kingdom of Great Britain and Northern Ireland: 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 <a href="#">Part 2</a> of Schedule 1 of the OIA	0.4 hectares
Land on other islands (other than the North or South Island)	Any
Marine and coastal area	Any
Adjoining the 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 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 involved with 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 or is to be converted from farm land to forestry, 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 existing forestry land.

The Benefit Test involves assessing the proposed investment against seven broad factors. These factors include benefits to the economy (such as the creation of job opportunities, increased export receipts and introduction of technology), natural

environmental public access, protection of historic heritage, advancing a significant government policy, New Zealander participation in the investment, and other consequential benefits to New Zealand.

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.

## Fresh or seawater areas

Some sensitive land may also contain ‘fresh or seawater interests’ (previously known as ‘special land’), such as qualifying foreshore, seabed, riverbed or lakebed. Fresh or seawater interests must first be notified and offered back to the Crown before OIA Consent can be granted.

The Crown may accept the offer but may decide not to if the amenity and conservation value outweighed or the Minister is not satisfied with the amount of compensation to be paid to the owner of the fresh or seawater interest. If the Crown accepts this offer, it is only entitled to the part of the land which is “fresh or seawater interests” and compensation may be claimed.

## 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. The Benefit Test applies when seeking to apply to acquire a fishing quota.

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 the benefits that may arise under each factor 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.

## **Make 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 2 months or more, and in relation to sensitive land (other than residential or forestry land) could take 5 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

- 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.

## Contact



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