European Union investment in New Zealand

Following the conclusion of extensive negotiations beginning in June 2018, New Zealand entered into a Free Trade Agreement with the European Union (the **EU**), signed in Brussels on 9 July 2023. As a result, a higher threshold of NZD200 million (increased from the default NZD100 million) will apply from 1 May 2024 to investments in significant business assets in New Zealand by qualifying investors from the EU.

Who is a qualifying EU investor?

In general terms, and under the strongest exemption category, this includes EU nationals and "EU enterprises", being EU constituted (incorporated or unincorporated) enterprises or the EU branch of a non-NZ enterprise each of which have a substantial business in the EU or are more than 75% owned and controlled by NZ citizens / ordinary residents or an EU national. Any enterprises which have more than 25% non-NZ government involvement are excluded, as are an enterprise's NZ branches.

We set out below a summary of New Zealand's foreign investment regime. This summary does not cover other processes that may be relevant to a proposed transaction (including New Zealand's anti-trust regime or New Zealand's takeovers regime). If you have any questions in relation to the regime, please contact one of our experts.

When do I need consent?

New Zealand's foreign investment regime is set out in the Overseas Investment Act 2005 (**OIA**) and the Overseas Investment Regulations 2005 (**OIR**) and is administered by the Overseas Investment Office (**OIO**), with certain key national interest investment classes requiring ultimate approval by a Government Minister.

The OIA requires 'overseas persons' and their 'associates' to obtain OIO consent for certain investments in New Zealand (see overleaf for investment categories).

Am I an overseas person?

An overseas person is broadly defined, but in general terms it includes any natural persons that are not New Zealand citizens or ordinarily resident in New Zealand, and bodies corporate that are incorporated outside of New Zealand or in which overseas persons have a more than 25% interest. The definition also captures unincorporated entities such as trusts, partnerships, and managed investment schemes, if there is more than 25% overseas influence or ownership in those entities.

Do I have associates?

An associate is very broadly defined and includes any person that participates in the overseas investment or any other matter as a consequence of any arrangement or understanding with the overseas person.

Which investments are caught?

If you are an overseas person, your investment (together with any associates) in New Zealand will require consent if it falls into one or more of four categories detailed overleaf:

- Significant business assets transactions;
- Sensitive land transactions;
- Fishing quota transactions; and
- Call-in transactions.

The first three of these may be escalated to include a "national interest" assessment where foreign Governments and strategically important businesses are involved (see overleaf for further details).

Transactions involving the acquisition of an offshore entity which owns, either itself or through its group, significant business assets, sensitive land, fishing quota or certain strategically important businesses in New Zealand (described as 'international transactions' by the OIO) may require consent under the OIA despite the transaction taking place outside of New Zealand. This means that international transactions may require OIO approval in New Zealand.

Except for voluntary call-in transactions (see overleaf), overseas persons are required to obtain the consent of the OIO before it gives effect to any transaction set out above, and the transaction must be conditional on OIO consent. Failure to do so is an offence, and can attract civil and criminal penalties, including forced divestment of the assets.

Application process

The assessment criteria varies depending on which of the four categories of transactions applies, with the criteria being more onerous for sensitive land transactions, which require a benefit to New Zealand to be shown, as well as applications requiring a "national interest" assessment.

The OIR prescribes timeframes for the assessment of all overseas investment applications. Each total timeframe includes a 15 working day initial assessment and varies for each application pathway, ranging from:

- 35 working days for significant business assets (increased to 55 working days for national interest assessments);
- 55 to 100 working days for sensitive land (excluding residential land); and
- 200 working days for fishing quota.

The OIR prescribes instances where the timeframe may be paused or extended by 30 working days. A longer time frame can also be applied if that is agreed with the applicant.

For a call-in transaction, an initial assessment takes 15 working days, at which point it is either cleared or a full assessment will take place. The full assessment takes 40 working days, and may be extended for up to 30 working days.

If consent is granted, it will be subject to various conditions with which the investor has to comply and breach of which can result in enforcement action. This may include divestment of the asset for which consent was obtained, amongst other enforcement actions.

Transactions that require consent

Significant business assets transactions

In summary, an overseas investment in significant business assets, whether alone or on an associated basis, is:

- an acquisition of rights or interests in securities of a person (A) exceeding 25% (or an increase in an existing more than 25% interest that is an "incremental increase" (see next column))* where the value of the securities or consideration provided, or the value of the assets of A (including subsidiaries it has a more than 25% interest in), exceeds: (i) NZD100m; (ii) NZD200 for qualifying EU investors; or (iii) an alternative monetary threshold for certain non-EU countries;
- the establishment of a business in New Zealand where the total expenditure incurred exceeds: (i) NZD100 million; (ii) NZD200m for qualifying EU investors; or (iii) an alternative monetary threshold for certain non-EU countries; or
- an acquisition of assets in New Zealand used in carrying on business in New Zealand, where the consideration provided exceeds: (i) NZD100m; (ii) NZD200m for qualifying EU investors; or (iii) an alternative monetary threshold for certain non-EU countries.

Sensitive land transactions

In summary, an overseas investment in sensitive land, whether alone or on an associated basis, is:

- the direct acquisition of an estate or interest in sensitive land; or
- an acquisition of rights or interests in securities of a person (**B**), if B owns or controls (directly or indirectly) an estate or interest in sensitive land: (i) exceeding 25% (or an increase in an existing more than 25% interest that is an "incremental increase" (see next column)),* or (ii) B would become an overseas person in qualifying circumstances.

Land is "sensitive" if it is of a certain size and/or has certain features such as location, use (e.g. residential land) or historical significance. The definition is broad (covering leasehold and freehold interests) and can apply in unexpected circumstances.

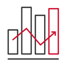
Fishing quota transactions

In summary, an overseas investment in fishing quota, whether alone or on an associated basis, is:

- the acquisition of an interest in fishing quota; or
- an acquisition of rights or interests in securities of a person (**C**), if C owns or controls (directly or indirectly) an interest in fishing quota: (i) exceeding 25% (or an increase in an existing more than 25% interest that is an "incremental increase" (see next column)),* or (ii) C would become an overseas person in qualifying circumstances.

Fishing quota is, in general terms, a right for commercial parties to catch a certain amount of fish annually.

*Acquisitions of lesser interests can be caught if they result in the overseas person / associates controlling the composition of more than 25% of the target's governing body.



Incremental increase investments

Consent is required for incremental increases if 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 person (**D**) that:

- results in an ownership or control interest in D that equals or exceeds the relevant ownership or control interest limit (i.e. 50%, 75%, or 100% depending on the existing ownership or control interest);
- is in securities of D of a different class to the class in which their existing interest is held; or
- gives the overseas person or the associate (either alone or together with its associates) any or more disproportionate access to or control of a SIB (see below). Disproportionate access generally means being more than a passive shareholder.

National interest transactions

If consent is required for a significant business asset**,** sensitive land or fishing quota transaction, then consent may also be required as a national interest transaction. This may occur if a non-NZ government investor or investors are involved in the transaction above certain thresholds (whether directly or as upstream investors) or in most cases where a "strategically important business" is involved. Additionally, the assessment can be imposed if it is considered that the transaction could be contrary to New Zealand's national interest.

Strategically important businesses (**SIB**) are ones that have been deemed to be of national significance such that they require additional vetting by the OIO and Ministerial approval. These include certain critical direct suppliers, military or dual-use technology businesses, ports or airports, certain electricity, water and telecommunications businesses, significant media businesses, certain financial institutions and financial market infrastructure businesses, certain irrigation schemes and, for call-in transactions, holders of certain sensitive information.

Call-in transactions

A 'call-in' transaction is an acquisition, whether alone or on an associated basis, of securities in, or assets, of a SIB (defined above), that is not a transaction of a kind in the lefthand column. In this way, SIB transactions not otherwise caught under the OIA are screened for national security and public order concerns (as opposed to the more fulsome national interests test under a national interest assessment).

The regime applies if any securities are acquired in a SIB (or there is an "incremental increase", which here includes a 25% control limit), with relaxed thresholds for: (i) listed entities (≥10%), unless disproportionate access or control is acquired, and (ii) media businesses (>25%). Further, acquisitions of New Zealand assets used in carrying on a SIB are also caught, but the exact triggers are more complex.

If the regime applies, it is mandatory for certain critical direct suppliers and military or dual-use technology businesses, and is voluntary for all other SIBs. The benefit of a voluntary filing is that the transaction cannot be called in later (i.e. after settlement) and is generally recommended.