

PRESENTERS



Nelson Curry, Overseas Investment Office, Wellington

Nelson is a lawyer with the Overseas Investment Office. He has more than six years' experience as in-house counsel specialising in legislative development and regulatory advice, and has worked in the Office's applications and enforcement teams on a wide array of matters.



Pedro Morgan, Overseas Investment Office, Wellington

Pedro is a lawyer with over 15 years' experience working within New Zealand's overseas investment regime. He is a key part of the team which supports The Treasury on the development of changes to the Overseas Investment Act. Most recently Pedro has been involved with the changes in the Overseas Investment (Urgent Measures) Act 2020.



Vanessa Horne, Overseas Investment Office, Wellington

Vanessa joined Land Information New Zealand, and has been leading the Overseas Investment Office, since August 2018. She has overseen two significant regulatory changes in the overseas investment regime and supported the Office's ongoing journey as a modern 21st century regulator. Vanessa has held many regulatory and legal roles within the Ministry of Business, Innovation and Employment and its predecessor the Ministry of Economic Development. Her private practice experience was with the public law team at Simpson Grierson, Wellington.

The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

Cover and text stocks used in this publication are from Forestry Stewardship Council certified mills, manufactured under the environmentally responsible paper manufactured environmental management system ISO 14001, using pulp from well managed forests and other controlled sources.

CONTENTS

1. INTRODUCTION	3
WHY NEW ZEALAND NEEDS OVERSEAS INVESTMENT	3
THE OVERSEAS INVESTMENT OFFICE	4
THE ROLE OF THE OVERSEAS INVESTMENT OFFICE	4
2. WHY HAS THE LAW CHANGED?	5
THE ORIGIN OF THESE CHANGES	5
3. SUMMARY OF THE CHANGES	7
TEMPORARY EMERGENCY NOTIFICATION REQUIREMENT	7
NATIONAL INTEREST ASSESSMENT	7
SIMPLIFYING THE REGIME FOR LOW-RISK TRANSACTIONS	7
STRONGER ENFORCEMENT POWERS	7
4. TEMPORARY NOTIFICATION REGIME	9
WHEN SHOULD SOMEONE NOTIFY A TRANSACTION?	9
<i>Buying shares or other securities</i>	9
<i>Buying property</i>	10
<i>Transitional provisions</i>	11
SHOULD SALE AND PURCHASE AGREEMENTS PROVIDE FOR THE NOTIFICATION PROCESS?	11
HOW DOES SOMEONE NOTIFY A TRANSACTION?	12
WHAT HAPPENS TO A NOTIFICATION?	12
ARE THERE ANY EXEMPTIONS FROM THE NOTIFICATION REQUIREMENT?	13
WHAT WILL HAPPEN WHEN THE TEMPORARY NOTIFICATION REGIME ENDS?	13
5. TRANSACTIONS OF NATIONAL INTEREST	15
“MANDATORY” TRANSACTIONS OF NATIONAL INTEREST	15
<i>Non-New Zealand government investors</i>	15
<i>Strategically important businesses</i>	16
“DISCRETIONARY” TRANSACTIONS OF NATIONAL INTEREST	16
6. NATIONAL INTEREST ASSESSMENT	19
WHEN IS A NATIONAL INTEREST ASSESSMENT UNDERTAKEN?	19
WHAT COULD HAPPEN TO A TRANSACTION?	19
<i>Notified transactions</i>	19
<i>Transactions that require consent (transactions of national interest)</i>	19
HOW THE NATIONAL INTEREST ASSESSMENT IS UNDERTAKEN	20
ASSESSING OVERSEAS GOVERNMENT INVESTORS	22
7. SIMPLIFIED SCREENING REGIME	23
AUTOMATIC STANDING CONSENTS	23
<i>Clause 31: Automatic standing consent for listed companies and managed investment schemes</i>	23
<i>Clause 32: Automatic standing consent for certain adjoining sensitive land</i>	24
<i>Clause 33: Automatic standing consent for transferring debt securities</i>	25
CLARIFYING THAT NEW LOANS DON’T REQUIRE CONSENT	25
PROPOSED CHANGE TO SHAREHOLDER CREEP EXEMPTIONS	26
CLARIFYING THE DISCRETIONARY EXEMPTION MAKING POWER IN S 61B	26
8. STRONGER ENFORCEMENT POWERS	27
MONITORING AND ENFORCEMENT	27
WHY THE OVERSEAS INVESTMENT OFFICE TAKES ENFORCEMENT ACTION	27
STRONGER ENFORCEMENT POWERS	28
WHAT DOES THIS MEAN FOR ME?	28
<i>Avoid breaching the Act</i>	28
<i>Know whether a transaction needs consent</i>	28
<i>Don’t look for ways to get around the rules</i>	28
<i>Specifically, don’t buy through an “associate”</i>	29
<i>Comply with conditions of consent</i>	29

<i>Report to us on time, every time</i>	29
WHAT TO DO IF SOMETHING GOES WRONG	30
<i>Make full and early disclosure</i>	30
<i>Retrospective consent</i>	30
<i>Disposal of assets</i>	30
9. GET MORE HELP OR CONTACT THE OVERSEAS INVESTMENT OFFICE	31