

DO YOU NEED OIO CONSENT TO BUY A HOME? CHANGES TO THE OVERSEAS INVESTMENT ACT 2015

17 August 2018

The Overseas Investment Amendment Bill (**Bill**) was passed by Parliament on 15 August 2018 and will come into force in late October 2018. This note summarises the key changes the Bill makes to the Overseas Investment Act 2005 (**Act**).

BACKGROUND TO THE ACT

The overseas investment regime established by the Act regulates investments by “*overseas persons*” in New Zealand significant business assets, certain types of sensitive land (including farm land), and fishing quota.

The regime is a consenting regime, rather than a prohibition. The regime governs who needs to obtain consent, when consent is required, and the process for obtaining consent.

The regime is liberal by international standards. However the changes made under the Bill tighten the regime, especially the ability for overseas persons to buy residential land.

RESIDENTIAL LAND NOW SENSITIVE LAND

Previously residential land has not been classed as “*sensitive land*” unless it is also “*sensitive*” i.e. land that is also:

- part of the foreshore, seabed or certain islands;
- more than 0.4ha and subject to a heritage order or deemed a historic or wahi tapu area;
- more than 0.2ha and adjoins the foreshore; or
- more than 0.4ha and adjoins a waterway, park, conservation area or other historic, cultural or wahi tapu area.

Under the Bill, residential land is classed as sensitive land regardless of whether it falls into any of the other “*sensitive*” categories. This is the key change under the Bill.

OIO consent now needed to buy residential land

Previously anyone could acquire residential land without consent (including overseas persons) as long as it was not sensitive land. However, as residential land becomes sensitive land under the Bill, only NZ citizens and people who are “*ordinarily resident in NZ*” can now acquire residential land without OIO consent.

“*Ordinarily resident in NZ*” means a person who:

- holds a residency visa (so excludes working, student and visitor visas);
- has been residing in NZ for at least a year;

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- is a tax resident in NZ; and
- has been present in NZ for at least 183 days in the past year.

EXEMPTIONS

The Bill includes a couple of exemptions to the requirement for OIO consent to acquire residential land.

Large developments

Overseas persons will not need OIO consent to acquire residential land that is not otherwise sensitive if one of the following exceptions apply:

- **Off-plan apartments:** The overseas person buys an off-plan apartment in a large apartment development (20+ apartments) before it is complete and the developer has obtained an exemption certificate.
- **Hotel units:** The overseas person acquires an interest in a hotel unit in a large hotel (20+ units) and that unit is leased-back to the hotel company. This exemption only applies as long as:
 - the overseas person does not use their hotel unit from more than 30 days in each year; and
 - the overseas person must sell their hotel unit if the lease-back ends and is not renewed.

Residential leases

OIO consent is not just required when overseas persons purchase sensitive land, it is also required when they enter leases for sensitive land with a fixed term of 3 years or more (including renewals).

As residential land is now “*sensitive land*”, this means overseas persons also need OIO consent to enter into leases of residential land. However the Bill limits this so leases of residential land to overseas persons do not need OIO consent if they:

- are a residential tenancy with a fixed term of less than 5 years (including renewals); or
- are a periodic lease (i.e. they can be terminated at will and have no certainty of term of 3 years or more).

FOR MORE INFORMATION

A copy of the Bill to be enacted can be found [here](#).

For further information or for assistance with OIO applications, please call or email one of the Jackson Russell business lawyers listed below.

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