

# THE OVERSEAS INVESTMENT ACT IS CHANGING

WHAT DO YOU NEED TO KNOW?





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There are significant changes proposed to the Overseas Investment Act 2005 which will have far-reaching effects. We look at how the proposed changes may affect you.

#### WHAT IS THE OVERSEAS INVESTMENT ACT (THE ACT)?

Foreign investment forms a significant part of our economy and brings benefits to New Zealand. The Act aims to balance the privilege of owning sensitive assets in New Zealand against facilitating the flow of overseas investment to the country. It does this by requiring overseas investments in sensitive assets, before being made, to meet criteria for consent and imposing conditions on those overseas investments.

#### WHAT ARE SENSITIVE ASSETS AND WHO REQUIRES CONSENT?

The Act applies to the acquisition by 'overseas persons' of sensitive assets, which is essentially, Sensitive Land, Significant Business Assets, and Fishing Quota. An individual will be an overseas person if they are neither a New Zealand citizen nor ordinarily resident in New Zealand. A company will be an overseas person if it is incorporated outside New Zealand or is 25 per cent or more owned or controlled by an overseas person.

Late last year, the Overseas Investment Amendment Bill (the Bill) was introduced, proposing a raft of changes to the Act. The Bill proposes to make all residential land sensitive for the purpose of the Act, effectively banning anyone who is not a New Zealand citizen or resident from purchasing residential land.

Under the proposed changes, an overseas investor will be required to apply for consent to acquire residential land, and in general terms, they will only be able to acquire residential land, if:

- they hold an appropriate visa and can show they have committed to reside in New Zealand (provided, among other requirements, they sell the land upon ceasing to occupy the land);
- they develop the land and add to New Zealand's housing supply (provided, among other requirements, the land is sold once the development of the land has been undertaken); or
- they demonstrate 'benefit' to New Zealand (provided again the land is sold once the development of the land has been undertaken).

These requirements would make it very difficult for overseas persons acquire residential land going forward.

The Bill also proposes to bring forestry rights and other profits-à-prendre (which enable a person to take something from land owned by another) within the definition of sensitive land. However, in relation to forestry transactions, the changes are intended to make the process easier for overseas investors in the forestry sector.

#### WHY IS THE ACT CHANGING?

The Government says the changes relating to residential land are designed to stop foreign speculators buying houses which would otherwise be available for New Zealanders. It is an attempt to make housing more affordable (on the assumption that foreign buyers are driving up prices).

#### WHO IS AFFECTED BY THE CHANGES?

The changes will affect you if, for example, you are, or are 'associated' with, or represent, an overseas person looking to acquire residential land. The Bill proposes conveyancing practitioners acting on residential transactions providing a certificate that the transaction will not breach the Act.

There is likely to be a greater emphasis on enforcement than at present, with broad sanctions for those facilitating or assisting with transactions in breach of the Act and significant penalties imposed for non-compliance.

#### WHEN WILL THE CHANGES TAKE EFFECT?

The Bill is currently working its way through Parliament. The date for the Select Committee to report to Parliament on the Bill has recently been extended to 21 June 2018, with the changes proposed expected to be enforced later this year. Any residential land acquired by overseas persons prior to the enactment of the Bill will not be affected.

*If you have any questions regarding the impact of the proposed changes to the Overseas Investment Act, please feel free to contact Tracy Hickman on [tracy.hickman@staplesrodway.co.nz](mailto:tracy.hickman@staplesrodway.co.nz), or your usual advisor.*