

# Screening of Residential Land: Questions and Answers

## Who does the policy apply to?

### 1. Who does the policy apply to?

The policy applies to all overseas persons, with some exceptions.

Specifically:

- **New Zealand citizens** will continue to be able to purchase homes in New Zealand, regardless of where they reside.
- **New Zealand permanent residents and other residence class visa holders** that are “ordinarily resident in New Zealand” will continue to be able to purchase homes in New Zealand without requiring consent. For residential land purchases we consider someone to be “ordinarily resident” if at the time the person enters an unconditional contract for sale and purchase, they have a residence-class visa, have resided in New Zealand for the last 12 months and were present in New Zealand for at least 183 days in that period, and are tax resident in New Zealand as defined in the Overseas Investment Act.
- **Australian and Singapore citizens and permanent residents** will be treated the same way as New Zealand citizens and permanent residents, respectively. This exemption has been granted to avoid a conflict with the Closer Economic Relations agreement with Australia and our Closer Economic Partnership agreement with Singapore. If the current number of Singapore buyers materially increases the two countries have agreed to meet to discuss the cause of the increase and how to address it, if required.
- **Other persons** will be able to purchase sensitive land that is residential land (but not land that is sensitive for any other reason) following screening by the Overseas Investment Office (OIO) if they can demonstrate (in each case subject to conditions):
  - a commitment to reside in, and become tax resident in, New Zealand; or
  - that they will increase the housing supply through their investment;
  - that they will be purchasing residential land for conversion to a non-residential use, or a residential use incidental to a relevant-business use; or
  - the development will be beneficial to New Zealand.

**2. How will the policy apply in relation to companies, trusts and other corporate structures? Will companies that are registered on the New Zealand Stock Exchange be able to purchase residential land?**

In general terms, any company, trust, body corporate or other legal entity will be subject to the regime for purchases of sensitive residential land if they are 25 per cent or more beneficially owned or controlled by “overseas persons”. These rules will apply regardless of whether an entity is incorporated or established in New Zealand, or listed on the New Zealand Stock Exchange.

Companies registered outside New Zealand will also be treated as “overseas persons” and need consent to purchase residential land.

These rules also apply to family trusts. If overseas persons control 25 per cent or more of the decisions of the trust or 25 per cent or more of the trusts beneficiaries are overseas persons, the trust will also be subject to the screening regime.

**3. What about people in New Zealand on temporary visas or that do not meet the definition of ordinarily resident in New Zealand? Will they be able to purchase homes in New Zealand?**

People that are not New Zealand citizens or residence class visa holders or Australian or Singaporean citizens and permanent residents will only be able to purchase residential land following screening by the OIO.

The Bill allows Permanent Resident and Resident Visa holders that are not “ordinarily resident” (such as those who have not resided in New Zealand for at least 12 months) but are committed to reside in New Zealand to apply for consent to buy a home to live in. People that can demonstrate that they have a commitment to reside in New Zealand will be able to purchase one home for use as their principal place of residence in New Zealand, which they will be required to sell if they leave New Zealand and sever their commitment to reside in New Zealand.

It is not intended that Student Visa and other Temporary Visa holders will be able to use this pathway for consent. People falling into this category will still be able to rent residential properties for fixed terms less than five years or under periodic tenancies. They will also be able to apply for consent to build new homes to on-sell or convert to another use.

#### **4. What if I'm a foreign developer that wants to invest in new housing supply?**

The Bill provides developers who are overseas persons with the opportunity to obtain consent to acquire residential land where this supports overall housing supply. In particular, overseas developers are able to obtain consent to purchase residential land where:

- they will increase the housing supply through their investment and commit to sell the property/properties once construction is complete; or
- they build or expand a retirement village, an aged care facility, student accommodation or similar long-term accommodation facility. In these circumstances the developer can retain, lease or operate the facilities (but not reside in them) once construction is complete.

In addition to these general rules, to provide particular support for large residential developments, the Bill allows:

- developers of large apartment complexes (that is, multi-storey buildings of at least 20 units each), recognising the importance of pre-sales to the viability of such developments:
  - to sell units to overseas persons off-the-plans. The purchaser of the unit will need to apply for consent, but not satisfy the investor test, and comply with a number of conditions including selling the unit shortly after construction is complete; and
  - to apply for an exemption certificate that allows them to sell a portion of those units (up to 60 per cent, with this to be codified in regulations) to overseas persons off-the-plans without the purchaser being required to obtain consent or to on-sell the unit once construction is complete.
- Further, developers of other large residential projects (of at least 20 dwellings) to retain a long-term interest in these developments if they are maintained as rental properties or made available to purchase under a shared-equity or rent-to-buy scheme.

#### **5. What do I need to consider when thinking about applying for an exemption certificate?**

Ministers, or the OIO under delegation, are responsible for assessing applications for an exemption certificate. Certificates are to be granted where:

- the complex is of one or more multi-storey buildings with at least 20 units each; and
- Ministers are satisfied that the proposed development is likely to be completed having regard to factors such as your financial strength and history in delivering similar projects.

Obtaining an exemption certificate will streamline the process for you to make pre-sales to overseas persons by:

- removing the need for overseas persons to apply for consent or when purchasing units off the plans (subject to the regulatory cap on the share of units available to be sold in this way); and
- not requiring the overseas purchaser on-sell the unit after construction is complete.

Importantly, even where you hold an exemption certificate, sales to overseas persons beyond the regulatory cap in place at the time will remain subject to on-sale conditions and the need for the overseas person to obtain consent (although without those overseas persons being subject to the “investor test”).

**6. What conditions will be imposed on me, and overseas persons that purchase units in my qualifying development, if I hold an exemption certificate?**

As an exemption certificate holder, you will be responsible for ensuring that you do not sell more than the percentage of units specified in the regulations available to overseas persons without an on-sell condition. Non-compliance with this requirement will be an offence.

Exemption certificates are made subject to conditions. The Ministers must impose conditions:

- requiring that the exempted unit owners (and certain other people) cannot reside in the units they own; and
- enabling the OIO to identify and monitor the dwellings to which the certificate has applied, and compliance with the non-occupation outcome. The Bill empowers Ministers to impose further conditions on you and the unit owners when necessary to support the integrity of the regime.

## **7. I'm an overseas person, how can I obtain consent to purchase a unit in an apartment complex?**

In all cases, you can buy a planned, new or existing unit in an apartment complex under the commitment to reside in New Zealand consent pathway, discussed elsewhere.

If you are buying a unit off-the-plans, rather than a pre-existing unit, the requirements you face before you can purchase an apartment will differ depending on whether the developer of the complex holds an exemption certificate or not. If the developer does hold an exemption certificate, the requirements you face will differ depending on the share of units in that development that have already been sold to overseas persons. Regardless of the developer's circumstances, you will not be allowed to reside in the unit and may be required to provide your details to the Overseas Investment Office at the time the purchase is completed.

You will be able to purchase and retain an interest in the unit without applying for consent if:

- the complex you are looking to buy into is covered by an exemption certificate; and
- the developer has sold fewer units to overseas persons without on-sell conditions than allowed under that certificate (with the limit initially set at 60 per cent).

If the developer has already sold the maximum number of units available to overseas persons without consent, irrespective of the fact that the developer holds an exemption certificate you will need to get consent to buy a unit off-the-plans. You will also be required to on-sell the unit it shortly after construction is complete.

Finally, under the proposed regime you will also be able to obtain consent to purchase a unit in an apartment complex where the developer does not hold an exemption certificate. However, you will be required to on-sell the dwelling shortly after construction is complete.

In either of these last two scenarios, you will not need to pass the "investor test" as part of the consent process.

**Table 1: Consent requirements for overseas person acquiring an interest in a unit off-the-plans in a large apartment development**

	<b>Scenario 1: Developer holds an exemption certificate</b>		<b>Scenario 2: Developer does not hold an exemption certificate</b>
	Purchase off-the-plans – units 1 to 60	Purchase off-the-plans – units 61 to 100	Purchase off-the-plans – units 1 to 100
Does the overseas person need to obtain OIO consent to purchase a unit?	No.  However, the developer must apply to the OIO for the exemption certificate. The developer must provide the overseas buyer’s details to the OIO. The OIO may also require the buyer to provide their details as well.	Yes	Yes
Does the investor test apply?	No	No	No
Are on-sell conditions imposed?	No	Yes	Yes

**8. What if I’m an overseas person that wants to invest in a hotel development?**

To ensure that the new regime does not unnecessarily impede the development of new hotels, an exemption from the need to obtain consent for overseas persons will apply where:

- the hotel has at least 20 units
- the unit purchaser enters a lease-back arrangement with the hotel’s operator/developer at the point of sale (and to remain in place for the duration of the ownership);
- the unit is generally used as a hotel room; and
- the unit cannot be occupied by the owner for more than 30 days per year.

Importantly, even with this exemption in place, if the hotel developer was an overseas person they would need to obtain consent to acquire the residential land the hotel was to be built on. However, the hotel developer/operator is exempted along with the unit purchaser for its interest in the lease-back arrangement.

Note that the regime does not apply where the land and the units are not classified as 'residential'.

### **9. What if I'm an overseas person who already owns a house?**

The Overseas Investment Amendment Bill will not interfere with the rights of existing home owners to use and enjoy their properties. This is an important principle.

It will, however, restrict who existing homeowners can sell or in some cases lease their properties to. It will also restrict an overseas person's ability to make any subsequent purchases of sensitive land that is residential land where the approval criteria are not met.

### **10. Will overseas persons still be able to rent?**

Yes. Overseas persons will continue to be able to rent in New Zealand. However, if a lease over residential land is for a fixed term of five years or more (including rights of renewal), the overseas person taking the lease will require consent from the Overseas Investment Office.

### **11. What if I inadvertently sell my property to an overseas person without the appropriate consent?**

Compliance with the Overseas Investment Act remains the primary obligation of the acquirer of sensitive land with some obligations imposed on conveyancers, where they are used, to support the regime's integrity.

As such, there would be no consequences for you under the regime if you were to inadvertently sell your property to an overseas person that did not have the appropriate consent.

#### **What types of property are covered?**

### **12. What land is covered by this policy? Does it apply to apartments/lifestyle blocks/bare land/holiday homes?**

The policy will apply to suburban residential sections, apartments in apartment buildings, and also to lifestyle blocks. The policy applies whether or not a house is built on the land. Generally, holiday homes and baches will be caught by the policy as well.

Strictly speaking, the policy applies to all land that is classified as "residential" or "lifestyle" for District Valuation Roll purposes. Assigning a category to a property is something that is done as part of a council's ratings process.

A “lifestyle” property is land that is larger than an ordinary residential section, generally in a rural area, and where its predominate use as a place of residence. Farming the land in the traditional sense is not economic.

### **13. How can I find out if my property is covered by the policy?**

A property’s classification can be obtained from various property-information websites.

### **14. Does the policy apply to newly built houses?**

Yes, the policy applies to newly-built homes.

An overseas person will be able to apply to the OIO for consent to buy “off-the-plans” (where a property is purchased from a developer before a house is constructed on it), provided the overseas person on-sells the property once construction has finished unless the dwelling:

- is a unit in a large apartment complex where the developer holds an exemption certificate; or
- is part of a development of at least 20 dwellings and will be maintained as a rental property or on a shared-equity basis.

In both of these cases a condition of consent to acquire the property is that no overseas person resides in the property, unless they have either:

- obtained consent from the OIO; or
- both:
  - the land is being occupied under a lease (or other contractual arrangement) on arms’ length terms; and
  - the occupant has no beneficial interest or entitlement to the dwelling or any proceeds of the dwelling.

This is to prevent the circumvention of the regime through, for example, a parent acquiring an investment property and then:

- allowing their child to live in it rent free; or
- charging rent but repaying it to the child – making the child, in effect, the property’s beneficial owner.

An overseas person who has committed to reside in New Zealand will also be able to apply to the OIO for consent to buy a newly built house to live in.



## How does the policy work?

### 15. How do I know if I am an overseas person?

Part 1 of the Overseas Investment Act defines overseas persons. This Act can be found here: <http://www.legislation.govt.nz/act/public/2005/0082/27.0/DLM356881.html>

In respect of the acquisition of sensitive residential land, additional exemptions will be made for Australian and Singaporean citizens and permanent residents, as well as certain enterprises.

### 16. Can a foreign company buy houses for its New Zealand-based staff?

The changes in the Bill mean that foreign companies will only be able to buy residential properties for their staff to live in if the use of the land for residential purposes is incidental to a relevant business purpose (for example, accommodating pilots at a remote airport). In determining whether to provide consent for such an arrangement, Ministers (or the OIO under delegation) would consider the following factors:

- proximity of land to the relevant business;
- whether the residential land would be used in support of the relevant business, where the relevant business is not itself the use of land for residential purposes;
- whether acquisition of residential land for the intended purpose was part of the applicant's "ordinary course of business"; and
- whether no reasonable alternative existed to the purchase of the residential land by the applicant.

If consent was granted, conditions would also be imposed on the land to ensure that it was used consistent with the business case outlined in the application.

Foreign companies will also still be able to rent residential properties for their staff- provided residential leases are for less than five years, or leases of other sensitive land are less than three years – without the need to obtain OIO consent.

### 17. If my partner is an overseas person, can we buy residential land as relationship property?

Yes. Consistent with existing exemptions in the Overseas Investment Act, New Zealand citizens and those that meet the definition of 'ordinarily resident in New Zealand' that are in a qualifying relationship with an overseas person (that is, a marriage, civil union partnership or de facto relationship) with an overseas person will be able to purchase residential land without the need for their partner to obtain consent. Qualifying relationships are marriages, civil union partnerships and de facto relationships.

This exemption from the need for one member of a couple to obtain consent when they would be required to do so if they were purchasing land as a single person extends to all couples where at least one member is eligible to purchase residential land in New Zealand (with or without consent).

For example, if a couple was comprised of a New Zealand permanent resident (who was not ordinarily resident in New Zealand) and an overseas person that wanted to acquire a residential dwelling as relationship property, the permanent resident would be able to obtain consent under the Commitment to Reside in New Zealand pathway (and be required to comply with the conditions of that consent). Their partner would not have to obtain consent from the OIO or comply with any ongoing conditions.

### **18. What does this Bill mean for me if I am an overseas person that inherits residential land in New Zealand?**

Inheritance of residential land is exempt from the need for consent, whether inheritance by and/or from an overseas person.

If you inherit residential land from another overseas person that held it subject to conditions, those conditions may transfer to you if you wish to retain an interest in the property.

### **19. Can a foreign company buy residential land for non-residential purposes?**

Yes. The Bill introduces a new streamlined consent pathway for overseas persons to obtain consent to purchase residential land for non-residential purposes, for example operating a business. In granting consent, Ministers need to be satisfied that the residential land will be used for non-residential purposes in the ordinary course of business for the relevant business, and not used or held for any residential purposes.

Under this pathway to receive consent the purchaser would not need to satisfy the existing 'benefit to New Zealand' test. However they would need to satisfy the investor test (requiring them to demonstrate, among other factors, that they are of good character and have sufficient business acumen to support the investment being made).

Certain utilities service providers – specifically, telecommunications providers, electricity and gas distributors and transmission network operators – will be able to obtain residential land for the purpose of their business without the need to obtain consent.

Foreign companies will also retain the ability to acquire sensitive land – of any type including residential land – if they can satisfy the existing 'benefits to New Zealand' test. Additional information on this test can be found here:

<https://www.linz.govt.nz/overseas-investment/applying-for-consent-purchase-new-zealand-assets/preparing-your-application-oio/benefit-new-zealand-test>.

## **20. What happens if I breach my conditions?**

Penalties for breaching conditions can include a fine, a civil penalty, or being required to dispose of property.

## **21. What happens if I need to breach my conditions due to a change in my circumstances?**

Generally, you can apply to the OIO for a variation of certain conditions.

Consents granted under the commitment to reside in New Zealand pathway require consent-holders to be present in New Zealand for a certain portion of each year. If you need to be absent from more than 183 days in a 12-month period after consent has been granted (for example, due to person illness or the illness of a family member), you will be able to apply to the Minister (either in advance of leaving New Zealand or on return) for a “waiver”, allowing this additional time away without creating a trigger event. For this to occur, however, Ministers would need to be satisfied that, despite your absence, that you have not severed your commitment to reside in New Zealand.

Alternatively, this event could be resolved by you being present in New Zealand for more than 183 days in the next 12-month period from the date of your absence.

## **22. What happens if I receive a disposal notice from the OIO for breaching my conditions of consent?**

The Act empowers the OIO to issue a disposal notice to an overseas person that it believes has either: contravened the Act (for example, by acquiring sensitive land without the requisite consent), committed an offence under the Act, or breached the conditions of a consent.

If you receive a disposal notice, you are not required to dispose of the relevant property. However, if you agree to a disposal notice and do dispose of the property you can be deemed to not be liable for any breach of the Act that you may have committed (except in specific circumstances).

Alternatively, if you do not comply with the disposal notice this would not constitute an additional offence, however you would be liable to be prosecuted in respect of any breach of the Act that you may have committed.

## **23. As a conveyancer, what are my responsibilities to ensure that any of my clients operate consistently with the Act?**

Compliance with the Overseas Investment Act remains an obligation primarily on the acquirer of sensitive land. To help ensure, however, that people are aware of their requirements under the Act the Bill does impose requirements on both conveyancers and purchasers of residential land (where a conveyancing service is used). In particular:

- purchasers acquiring certain interests in residential land (where an instrument in respect of the acquisition will be lodged) must provide a statement about whether the transaction requires consent under the Act and, if so, how the requirement will be complied with (with any false or misleading statement constituting an offence); and
- you must obtain such a statement, and must not have reasonable grounds for believing it is not correct in a material particular, before you complete the conveyancing for an overseas person acquiring residential land. You must also retain the statement for seven years.

If you fail to meet your obligations as a conveyancer, you could be fined up to \$20,000.

#### **24. How will the OIO enforce the law?**

The OIO has extensive experience in enforcing the Overseas Investment Act and has a range of information gathering powers to assist it in identifying contraventions of the law.

This Bill empowers the OIO to gather information from individuals necessary to monitor compliance with, investigate conduct that constitutes or may constitute a contravention (or an involvement in a contravention) of the Act, as well as enforcing the Act and the regulations.

#### **25. Will there be any fees payable if I apply for consent under one of the new pathways?**

Yes, consistent with current practice, the Overseas Investment Office will operate on a cost recovery basis and charge fees commensurate to its costs.

The Government and Overseas Investment Office are currently working to update the fee schedule contained in the Overseas Investment Regulations. The Government expects to announce the fees associated with the new regime in August 2018.

#### **When will these changes take effect?**

##### **26. When does this take effect?**

The changes to the screening of purchases of residential land by overseas investors will take effect as soon as the relevant provisions of the Bill come into force. This will be no later than 60 days after Royal assent is received. Timing for this is expected to be confirmed in the third quarter of 2018.

##### **27. I have entered into a sale and purchase agreement prior to the Bill being enacted. How will I be affected?**

The Bill will only apply to transactions entered into on or after commencement of the new legislation.

**28. Has the Bill gone to Select Committee / was there an opportunity for public to submit on this?**

Yes. The Bill has gone through a Select Committee process.

As part of this process, the Select Committee invited written and verbal submissions. The Committee received 213 submissions on the provisions of the Bill relating to the proposed residential screening regime. A number of submitters made supplementary submissions.

Individuals were responsible for 138 submissions. 61 submissions were received from private sector businesses and groupings. Ten submissions were received from non-governmental organisations and four submissions were received from oversight bodies.

Key areas covered in submissions included:

- Who should have to apply for consent to purchase a home to live in (including distinctions between permanent resident visas and resident visas and the treatment of investor migrants).
- The effect of requiring individual overseas persons to sell property purchased “off the plans” on the viability of new developments as well as the impact of requiring developers to sell newly developed property on build-to-rent, rent-to-buy, and shared equity models.
- The effect of the proposed rules on commercial developments and related core businesses, including supermarkets, retailers, hotels, utilities operators, staff accommodation and buffer land.
- Requests for exemptions for: retirement village operators, “luxury homes”, compliance with resource consent conditions and a variety of other purposes.
- Compliance and enforcement issues, including the requirement that conveyancers give certificates, information-gathering powers and third party accessory liability.
- Transitional issues and commencement dates, including concerns about the need for the OIO to be resourced, and to have adequate time to prepare and be able to implement the Bill in a way that minimises disruptions to property transactions.

## **29. If I have additional questions who should I raise these with?**

The Overseas Investment Office will be responsible for the administering the residential screening regime. This is consistent with its responsibilities in administering the Overseas Investment Act.

Once the regime has commenced, questions about its operation can be directed to the Overseas Investment Office. The Office can be contacted at [customersupport@linz.govt.nz](mailto:customersupport@linz.govt.nz) or by phone at +64 4 460 0110. The Land Information New Zealand website also includes a range of information to support individuals in understanding New Zealand's foreign investment regime. This can be found here: <https://www.linz.govt.nz/>.