
Overseas Investment in New Zealand

Replacement of Temporary Emergency Notification Regime with new National Security and Public Order Regime

On 25 May 2021 the Government announced the emergency notification regime (*ENR*) would end, at least until further notice. The ENR was part of the Government's response to the Covid-19 pandemic and came into force in June 2020 under the Overseas Investment (Urgent Measures) Amendment Act 2020. The ENR was required to be reviewed every 90 days thereafter with Ministers required to assess whether the effects of the pandemic justified the ENR remaining in place.

Associate Finance Minister David Parker said in a statement on 25 May 2021, that "our successful management of the health impacts of the pandemic and the recovery of the economy, with lower unemployment and stronger growth than forecast last year, mean we can remove the temporary protection."

Transactions entered into from **7 June 2021** will not be subject to the ENR, although transactions entered into prior to this date will still be subject to the notification requirement. Further changes coming into force shortly under the Overseas Investment Amendment Act 2021 mean that the ENR may be reinstated where there is an emergency justifying such reinstatement.

National Security and Public Order Notification regime

The ENR will be replaced by a call-in power – known as the national security and public order notification regime (*NSPO*). This regime will apply to transactions entered into **on or after 7 June 2021**.

The NSPO regime will apply to investments in strategically important businesses (*SIB*) that would not ordinarily require consent under the Overseas Investment Act 2005 (*Act*). The NSPO regime will allow the Government to "call-in" certain transactions and consider whether such investments pose a risk to national security and public order, and gives the Government power to impose conditions on these investments (or if required, to block or unwind the transactions) when it is considered they give rise to significant national security or public order risks. It is intended that the call-in power will be used as a backstop power only and interventions will be rare and only used where necessary.

Strategically Important Business

A SIB includes a business:

- that researches, develops, produces or maintains military or dual-use technology;
- that is a critical direct supplier to New Zealand's intelligence and security

agencies (refer to LINZ's website for the list of published critical direct suppliers, but please note that some suppliers will be unpublished);

- involved in electricity generation (with a total capacity exceeding 250 MW), distribution, metering or aggregation;
- involved in drinking water, wastewater or stormwater infrastructure;
- involved in telecommunications infrastructure or services;
- that is a financial institution or involved with financial market infrastructure;
- that is a media business with significant impact; or
- that develops, produces, maintains or otherwise has access to sensitive information (being genetic, biometric, health or financial information) of certain agencies or relating to 30,000 or more individuals.

In most cases the threshold is \$0 and 0% ownership for an investment in a SIB, however there are exceptions to this, being investments in media businesses with significant impact, where the threshold is more than a 25% ownership or control interest, and investments in a listed issuer, where the threshold is 10% or more.

Notification to the Overseas Investment Office

Mandatory Notification:

Where there is an overseas investment in a SIB involved in the research, development, production or maintenance military or dual-use technology, or is a critical direct supplier, notification of the transaction is mandatory and notification must be made to the Overseas Investment Office (*Office*) before a transaction is given effect to.

Voluntary Notification:

For all other transactions not subject to mandatory notification, notification to the Office can be made on a voluntary basis, and this can be done either before or after the transaction is given effect to. Provided there are no national security and public order concerns, prior notification means investors have the benefit of knowing the transaction would not be called-in at a later date for review. Transactions that are not notified can be called-in for review at any time.

Review by the Overseas Investment Office:

The Office has indicated that it will complete an initial assessment within 15 working days of notification, and where it determines there may be a national security or public order risk, the transaction will be considered by the Minister of Finance, which may take up to 40 working days, (together with a further period of 30 working days, if required).

There is therefore clear benefit in a prior notification, even if voluntarily, though plainly there will be circumstances where a judgment call can be made as to whether the business really is of any strategic importance. We would tend to err on the side of caution here.

Following the initial assessment, and provided the transaction does not pose a risk to New Zealand's national security or public order, a direction order will be issued. Each direction order will be issued with an automatic condition that the investor must not, in relation to the SIB, act or omit to act with a purpose or an intention of adversely affecting national security or public order. Further conditions may also be imposed by the Office.

If you would like further advice on these or changes, please contact any lawyer in our [real estate](#) or [commercial teams](#).

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