

Overseas Investment Amendment Bill

The new Government has introduced the Overseas Investment Amendment Bill (the Bill) as part of its 100 day commitment to ban overseas speculators from buying existing houses.

The intent of the Bill is to ensure that overseas persons who are not resident in New Zealand will generally not be able to buy existing houses or other residential land.

The Bill adds "residential land" to the classes of land that are "sensitive land" under the Act. "Residential land" is defined in the Bill as all land categorised as "residential" or "lifestyle" for rating valuation purposes on the relevant territorial authority's rating district valuation roll (**Residential Land**).

Note, we understand the Government intends that the new Bill will not apply to Australian citizens (and possibly to Singaporean citizens).

This article summarises some of the key changes in the Bill in relation to Residential Land.

New tests – overseas person buying "residential land"

The Bill provides that an overseas person would be able to buy Residential Land where one or more of the below tests is met (and that person still satisfies the existing good character and financial commitment type tests in the Act).

The "commitment to NZ test" (new section 16A): The overseas person shows a commitment to New Zealand by either:

- being a New Zealand citizen; or
- being ordinarily resident in New Zealand; or

- holding an appropriate residence class visa or a person with a specified nationality, and shows a commitment to living in New Zealand. Mandatory conditions will be imposed under this test requiring the overseas person to use the Residential Land for their main home or residence in New Zealand and being required to on-sell the land if a "triggering event" occurs (new section 16B). The triggering events will be listed in new regulations.

The "increased housing on residential land test" (new section 16C): The overseas person will be developing the land and adding to New Zealand's housing supply. This test will be met if the relevant Ministers are satisfied that the new mandatory conditions are satisfied (new section 16D(2)), being either or both of the below:

- An increase in residential use of the land and on sale of the land within a specified period. This requires:
 - The purchase of the Residential Land to result in an increase in the number of residential dwellings, a long-term accommodation facility being constructed (being a retirement village, rest home, student hostel type accommodation or some other facility operated for long term residential accommodation for residential purposes with some assistance for people who live there), the number of dwellings in a long-term accommodation facility being increased, or development works are carried out which support those outcomes.
 - The overseas person to sell its interest in the Residential Land within a specified time period.
 - The overseas person to not occupy the Residential Land for residential purposes.
- The construction or extension, and operation of a long-term accommodation facility. This requires:
 - The purchase of the Residential Land to

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result in the construction of a long-term accommodation facility or the increase of the number of dwellings in a long-term accommodation facility.

- The whole of the Residential Land to be operated by the overseas person or a lessee as a long-term accommodation facility within a specified time period.
- The overseas person to not occupy the Residential Land for residential purposes.

The "benefit to New Zealand test" (new section 16F):
The investment in the Residential Land will benefit New Zealand and the consent will be granted subject to one or more of the following conditions:

- The conditions that attach to the required outcomes for the "increased housing on residential land test".
- That the overseas person sells its interest in the Residential Land within a specified period.
- For so long as the overseas person has an interest in the Residential Land, the land will not be used for residential dwellings or long-term accommodation facilities.

Enforcement

The Bill also seeks to strengthen the information gathering and enforcement powers of the Overseas Investment Office.

For example, where the regulator has reasonable grounds to believe that a person has contravened the Act or committed an offence under it, the regulator can issue a notice specifying that the property be disposed of (new section 41E).

Conveyancer's certificate

The Bill also imposes new obligations on conveyancers acting for a purchaser (new section 51A). A conveyancer must certify that to the best of their knowledge, a person acquiring an interest in land will not contravene or commit

an offence under the Act by giving effect to the transaction. This certificate must be kept for at least 7 years and any person who, without reasonable excuse, fails to comply with the section is liable to a fine not exceeding \$20,000.

Transitional provisions

The transitional provisions (Schedule 1AA) provide the Amendment Act will not apply to:

- Any transaction entered into before the Amendment Act commences (even if the transaction is subject to a condition precedent).
- Any application for consent made before the Amendment Act commences.
- Any application for consent that is made after the Amendment Act commences and that relates to a transaction entered into before commencement.

However, the new information gathering powers and service provisions will apply from the date the Amendment Act commences.

Select Committee process

The Bill had its first reading in Parliament on Tuesday 19 December 2017 and has now been referred to the Finance and Expenditure Committee. Submissions on the Bill are due by 23 January 2018 and the Select Committee will report back by 20 February 2018. We anticipate that the Bill will come into force in March 2018.

Want to know more?

A copy of the Bill can be found here:

[Overseas Investment Amendment Bill](#)

If you have any questions about this Bill, please contact our specialist [Overseas Investment team](#)