



Summary of our report

How the Overseas Investment Office uses information



Overseas investment in New Zealand's sensitive land, significant business assets, and fishing quota is regulated under the Overseas Investment Act 2005 (the Act). Potential overseas investors who are not ordinarily resident in New Zealand or citizens (overseas investors) need to apply for consent and demonstrate that they are suitable applicants. Each year, there are typically between 100 and 150 applications for overseas investments, worth several billions of dollars.

The Overseas Investment Office (the OIO) manages the process. The OIO reviews applications from potential overseas investors and advises the Ministers (or, in certain cases, senior staff in the OIO) on whether consent for the investment should be granted. If consent is granted, the OIO is responsible for monitoring the investment and

enforcing compliance with any conditions attached to the consent.

However, it is not the OIO's role to set the criteria for whether overseas investment should be allowed, encouraged, or promoted. These criteria are in the governing legislation set by Parliament and policy expectations set by the elected government. Recent policy announcements have been made, for example, about ownership by non-New Zealanders of farm and forest land. Once the policy has been set, the OIO's role is to consider an overseas investment application against the criteria in the governing legislation and policy.

We carried out a review that focused on the OIO's use of information within the context of the governing legislation and ministerial direction. We wanted to know whether the OIO was collecting and using the right information at the right time to support good decisions.

We found that the OIO does provide the decision-maker with the right information to recommend whether consent for an investment should be granted. In the applications we reviewed, the OIO collected, considered, and used information carefully in preparing recommendations and provided the decision-maker with a comprehensive file of information to support its recommendations. It consistently addressed all the required criteria and supported the views it had taken.

Processing applications is not a simple or mechanical exercise. Judgement is required about whether the information available to the OIO meets the statutory test for consenting to overseas investment. Although the files we reviewed showed that the OIO demonstrated effective judgement, it could sometimes benefit from more ready access to specialist advice.

Vital statistics:

- 41 pages
- Presented to Parliament on 12 April 2018
- Download from www.oag.govt.nz
- Contact: reports@oag.govt.nz

It was evident that the OIO relied heavily on statutory declarations and internet searches when considering the good character of an investor. In our view, this is a reasonable approach. A review by a Queen's Counsel in 2016 also found that the OIO's systems for checking good character were appropriate, and, in particular, that it was reasonable for the OIO to use and rely on statutory declarations. The OIO sought further information about an applicant's character where it considered that was required. We did not find any instances of the OIO failing to inform the decision-maker of the results of internet searches where they were relevant to an application.

The OIO makes recommendations about conditions that could be placed on a consent for an overseas investment. Conditions can include reporting requirements and requirements to take certain actions or follow certain processes in relation to the investment.

The OIO told us that, in the past, some conditions were unclear or too general or no time frame was specified. This sometimes limited the OIO's ability to enforce those conditions. Improving the nature of conditions of consent is a priority for the OIO and we agree that this is important. Conditions are more likely to be effective if they are relevant to the investment and able to be measured and enforced.

The OIO has previously placed less emphasis on its role in monitoring and enforcing compliance with conditions placed on consents. As we were carrying out our review, the OIO was improving the way it performs this role. These changes included more focus on monitoring and enforcement – including establishing a dedicated enforcement team, publishing information about enforcement action, and adopting new performance measures about enforcement. In our view, these changes were essential. Monitoring and managing of non-compliance are vital components of any effective regulatory regime.

Although it was too early for us to assess the effect of the wider changes the OIO has made to its process, they should improve the effectiveness and efficiency of the OIO. It is important that the OIO follows through with the changes it has begun to make.