

Counting down - assessment time frames and new benefit test for New Zealand's overseas investment regime

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We are inching closer to the final changes to New Zealand's foreign investment regime (which we have previously highlighted [here](#) and [here](#)) being implemented, with new assessment time frames announced and the next batch of key amendments confirmed as coming into force on 24 November 2021. We set out a high-level overview of these changes in our article.

New assessment time frames

Lack of certainty over decision time frames has been a source of frustration for investors, and the proposal to introduce statutory time frames was very much welcomed.

The new time frames take effect on 24 November and are designed to give applicants greater certainty about how long overseas investment applications will take to be assessed. However, there are still instances where the time frames can be paused or extended. The Overseas Investment Office (OIO) will also have a 15 working day period (which is part of the new time frames) to ensure that it has sufficient information to start assessing an application.

The table below compares the OIO's new time frames that will come into effect on 24 November against the average assessment times for the OIO's decisions in the period from July 2020 to June 2021. Many of the statutory time frames are shorter than the average time frames, which will certainly focus the assessment and decision-making process for the OIO (and Ministers). That said, applicants have a significant part to play in ensuring that the decision-makers can make a robust and timely decision - there will be even more pressure on applicants to ensure that they submit high quality applications so that the OIO is prepared to take the application forward for assessment at the expiry of the 15 working day period.

Pathway	Number of working days	
	Current average	Statutory time frame for applications made from 24 November 2021
Significant business assets only	61	35
Benefit to New Zealand	135 to 182	70 (general and forestry) 100 (farm land)
Residential land development	49	55
Special forestry test	80	55 (one-off consent) 100 (standing consent)
Exemption certificates	69	55
Exemptions	69	55 30 (farm land advertising exemption)
Variations	69	70 30 (to extend due date of a condition or expiry date of the consent)
One home to live in	11	10 (only residential land) 30 (residential and otherwise sensitive)

		land)
Fishing quota	Not stated	200

There are also time frames for new pathways/tests that have been introduced by recent changes to the overseas investment regime.

Pathway/test	Number of working days
National interest test	55
Standalone investor test	30
Intention to reside	55

How will they work?

When an application includes two or more pathways/tests, the longest time frame will apply.

Time frames only start once the OIO has received both the application and the applicable application fee.

Time frames could become much longer as a result of "pauses" in assessments, extensions, and exceptions. The OIO's fact sheet, which can be found [here](#), sets out some detail about how it expects those to work. In particular, time frames may increase as a result of:

- **Pauses** - for example, in the initial assessment, because an application is incomplete, or during the substantive assessment period if the applicant does not provide requested information within the time frame specified by the OIO
- **Extensions** - the OIO will have the ability to extend time frames by 30 working days in specific circumstances, such as to consider significant new information provided after the initial assessment, to consider an application of significant complexity, or enable Ministers to consider whether to call in a delegated decision for assessment under the national interest test
- **Exceptions** - which may apply where the OIO is undertaking specific investigations or enforcement actions in connection with the applicant, or by mutual agreement between the OIO and the applicant.

First impressions

The OIO itself has acknowledged that the time frames are challenging, but we think they are achievable.

That said, with the ability to pause, extend, and make exceptions, it remains to be seen the extent to which decision-making time frames will trend downwards.

Other changes

The other changes coming into force on 24 November have been mentioned in [our previous update](#). To summarise:

- **Changing the benefit to New Zealand test from a 'with and without' counterfactual analysis to a 'before and after' analysis.** The current test requires an assessment of the benefit that the proposed investment will bring against the benefits that would arise if the investment was made by an adequately funded alternative New Zealand purchaser. This will be replaced from 24 November with a 'before and after' analysis, which will provide a clearer and more straightforward analysis by comparing the investment with the status quo.
- **New, strengthened requirements for farm land advertising.** Currently the farm land advertising requirement (under which farm land must be advertised on the open market for a period of time before an overseas person can acquire it) can occur after a sale and purchase agreement has been entered into with an overseas person, although the vendor must have the ability to exit without penalty to accept an alternative offer from a New Zealander. From 24 November, the farm land advertising requirement will need to be conducted before a sale and purchase agreement with an overseas person is entered into (ie, before it is signed). The OIO has released a fact sheet about the new changes, which can be found [here](#).

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