

The Treasury

Overseas Investment Act 2005 – Phase One Review Policy Advice (2017/18) Information Release

March 2019

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- [4] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
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Treasury Report: Lodgement of CBC paper - Overseas Investment Act Amendment Regulations

Date:	15 August 2018	Report No:	T2018/2290
		File Number:	IM-5-1-1

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	Note the contents of this report.	N/A
Associate Minister of Finance (Hon David Parker)	<p>Agree to the proposed fees associated with applying for, and varying, the transitional exemption for large apartment complexes.</p> <p>Agree to lodge the attached Cabinet paper and Overseas Investment Amendment Regulations 2018 (the Regulations).</p> <p>Agree to the Statement of Reasons outlining your reasons for recommending the exemption regulations.</p> <p>Agree that the Treasury will provide you with an additional Cabinet paper seeking approval for a gazetted exemption from advertising requirements for farmland subject to a forestry right in December 2018.</p>	By Thursday 16 August , ahead of CBC consideration of the paper and the Regulations on Monday 20 August 2018.

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Ryan Walsh	Senior Analyst, International	[6]	n/a (mob) ✓
Robbie Taylor	Acting Team Leader International	[6]	n/a (mob)

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.

Note any
feedback on
the quality of
the report

Enclosure: Yes

iManage links:

[LEG Paper: Overseas Investment Amendment Regulations 2018 \(Treasury:3989534v5\).](#)
[Overseas Investment Amendment Regulations 2018 Wor-v9.0 \(Treasury:3997980v1\).](#)
[Statement of Reasons - OIA Regulations \(Treasury:3979865\)](#)

Treasury Report: Lodgement of CBC paper - Overseas Investment Act Amendment Bill Regulations

Executive Summary

The Cabinet Business Committee (CBC) is due to consider the Overseas Investment Amendment Regulations 2018 (the Regulations) on Monday 20 August 2018 (that is, next Monday). Prior to this occurring, we require your agreement to a number of matters, including:

- the fees to be imposed on developers to apply for, or vary, exemption certificates issued under the transitional exemption for large apartment complexes agreed to by Cabinet on Monday 13 August;
- an updated Cabinet Paper and Regulations for CBC's consideration, reflecting minor and technical amendments identified by the Parliamentary Counsel Office during its quality assurance process to improve the Regulation's operation and clarity; and
- minor amendments to your Statement of Reasons for recommending that a number of class exemptions be made from the requirements of the Overseas Investment Act 2005 (the Act) to improve their accuracy and better express the rationale behind the proposed exemption for the acquisition of residential (but not otherwise sensitive) land for diplomatic premises.

We also provide you with additional advice on the potential need for a gazetted exemption from certain farmland advertising requirements and seek your agreement to take this issue to Cabinet in December 2018, rather than August 2018 as initially suggested. We judge that this is necessary due to delays in the finalisation of the Overseas Investment Amendment Bill (the Bill), broader resource constraints that are anticipated over the next three months, and the relatively low impact of the delay on the effectiveness of the new regime.

Recommended Action

We recommend that you:

- a **note** that, consistent with discussions with your office and following quality assurance by the Parliamentary Counsel Office (PCO) (as flagged in T2018/1838), we have made minor amendments to the attached CBC paper, draft Overseas Investment Amendment Regulations (the Regulations), and Statement of Reasons to (as appropriate):
 - a. impose application and variation fees (where applicable) on developers seeking to access the transitional exemption for large apartment complexes;
 - b. improvements to drafting following further quality assurance; and
 - c. improve clarity.

Fees associated with the transitional exemption for large apartment developments

- b **note** that, in line with advice provided to you on 10 August 2018 (T2018/2249), that applications to access, or to vary, the transitional exemption for large apartment complexes will have an accompanying fee to recover the Overseas Investment Office's (OIO's) costs.
- c **note** that due to the constrained timeframes under which the transitional exemption was drafted, it was not possible to design a new fee or fully assess the resourcing consequences of the proposed exemption for the OIO. Consequently, there is a risk that the proposed fees will under or over recover the OIO's costs.
- d **agree** that the following fees will be imposed on those seeking to access, or vary, the transitional exemption:
 - a. on application to grant an exemption certificate: \$25,500; and
 - b. on application to vary the exemption certificate: \$13,000

Agree/disagree

Finalisation of the Regulations

- e **note** that CBC (rather than LEG, as originally advised) is due to consider the proposed changes to the Regulations on Monday 20 August 2018.
 - f **agree** to lodge the attached Cabinet paper with the Cabinet Office by 10:00am on Thursday 16 August 2018 for CBC's consideration.
- Agree/disagree.*
- g **note** that Parliamentary Counsel Office will lodge final versions of the regulations with the Cabinet Office, after final quality assurance has been completed.

Statement of Reasons

h **note** that following further quality assurance work on the Regulations, we also recommend some minor changes to the Statement of Reasons to improve their accuracy and better express the rationale behind the proposed exemption for the acquisition of residential (but not otherwise sensitive) land for diplomatic premises

i **agree** to

a. EITHER confirm the minor amendments shown in tracked changes in the enclosed Statement of Reasons;

Agree/disagree.

b. OR invite officials to make amendments to the enclosed Statement of Reasons.

Agree/disagree.

Gazetted exemption from certain advertising requirements

j **note** that while Treasury had indicated (T2018/1838) that it would provide you with a Cabinet Paper in August 2018 seeking policy approval to make a gazetted exemption from certain advertising requirements for farmland covered by a forestry registration right, this is no longer possible due to delays in the finalisation of the Overseas Investment Amendment Bill.

k **agree** that Treasury will provide you with a draft Cabinet Paper and further advice on this matter in late-2018.

Agree/Disagree.

Robbie Taylor
Acting Team Leader International

Hon David Parker
Associate Minister of Finance

Treasury Report: Treasury Report: Lodgement of LEG paper - Overseas Investment Act

Purpose of Report

1. This report seeks your approval to a number of items necessary to finalise the Overseas Investment Amendment Regulations (the Regulations), following the Parliamentary Counsel Office's (PCO) quality assurance process and Cabinet's decision to provide a transitional exemption to the developers of large apartment complexes (implemented through Supplementary Order Paper No 75). This includes:
 - a proposed fees to apply for, or vary, the transitional exemption for large apartment complexes;
 - b an updated Cabinet paper for CBC's consideration on 20 August 2018;
 - c updated Regulations; and
 - d updated Statement of Reasons.
2. It also seeks your approval to provide you with additional advice on the potential need for a gazetted exemption from certain farmland advertising requirements in December 2018, rather than August 2018 as initially suggested. This is recommended due to delays in the finalisation of the Overseas Investment Amendment Bill (the Bill), broader resource constraints that are anticipated over the next three months, and the relatively low impact of the delay on the effectiveness of the new regime.

Analysis

Fees to apply for, or vary, the transitional exemption for large apartment complexes

3. As advised on 10 August 2018 (T2018/2249), a consequence of requiring developers to have to apply to receive an exemption, or to vary them, is that they will be required to pay a fee to recover the Overseas Investment Office's (OIO's) costs.
4. Consistent with earlier advice, we judge that the expected level of effort required to process applications for the transitional exemption will be broadly equivalent to that required for an exemption under existing Regulation 37/new section 61C (that is, a general application to exempt any transaction, person, interest, right, or assets from the requirement for consent or from the definition of overseas person or associate or associated land) for which a \$25,500 fee is charged.
5. While, we had previously provided you with advice on the appropriate fee to be imposed to apply for this exemption, we have not yet provided advice on the appropriate fee to be imposed to vary this exemption. This is because the need to allow for variations did not become apparent until late in the drafting process.
6. The ability to vary the exemption is necessary to ensure that, for example, if the original holder of the exemption is taken-over or merges with another entity, that the exemption can be varied so that the new entity can still sell units in the relevant complex subject to that exemption.

7. In respect of the appropriate fee for a variation of the exemption, we again decided not to attempt to develop a new fee due to the complexities in the calculations and the constrained timeframes. Instead, we judge that the level of effort required to vary an exemption is likely to be similar to the effort required to process other variations of consent or conditions of consent as they relate to sensitive land and significant business assets (either in isolation or together) and fishing quota. This fee is \$13,000.
8. While there are risks associated with these fees (discussed below), we recommend that you agree to the proposed fees ahead of the lodgement of the attached Cabinet Paper and Regulations.

Updated Cabinet Paper and Regulations

9. On Friday 27 July 2018, we provided you with a draft Cabinet Paper and Regulations necessary to support the Bill for your approval prior to lodgement with Cabinet (T2018/1838).
10. As noted in this advice and in subsequent discussions with your office, these Regulations were subject to the PCO's quality assurance process. This process identified a number of minor and technical improvements that were required to be made to the Regulations to improve their operation and clarity. These changes meant that the previously lodged Cabinet Paper and Regulations needed to be withdrawn.
11. We have subsequently updated the Regulations and the accompanying covering Cabinet Paper (both attached) to reflect the outcomes of this process and recommend that you lodge them by Thursday 16 August 2018, ahead of CBC consideration on Monday 20 August 2018.

Confirmation of reasons for exemptions

12. In T2018/2212, we explained the framework in the to-be amended Act for recommending that exemptions be made in regulations and invited you to consider the reasons for recommending each proposed exemption under that framework. You subsequently agreed to the Statement of Reasons attached to that advice.
13. Following PCO's quality assurance process, we have made a few small edits to the previously agreed Statement of Reasons to improve their clarity and accuracy and to better express the reasons for the proposed exemption from consent requirements to acquire residential (but not otherwise sensitive) land for diplomatic premises. For your ease, these changes are marked up in the relevant attachment.
14. We recommend that you agree to the Statement of Reasons enclosed.

[3]

15. [3]

Overview of the Issue

16. [3]

17. [3]

18. [3]

19. [3]

Recommended approach

20. Due to resource constraints and the need to prioritise other work on the phase two review of the Act, however, we propose to provide you with further advice on this issue and a draft Cabinet Paper for your consideration (if an exemption is judged to be warranted) in December 2018 once:

- a implementation of the new screening regime for residential land, forest registration rights and certain regulated profits-a-prendre is materially complete;
- b the next round of annual international engagement is complete (for example, the IMF/World Bank 'Springs' meetings); and
- c we have had additional opportunities to recruit more staff.

21. [3]

22. [3]

Risks

Fees to apply for, or vary, the transitional exemption for large apartment complexes

23. As noted in T2018/2249, a risk associated with basing the proposed fees to access and vary the transitional exemption for large apartment complexes on existing fees, rather than developing new fees, is that the OIO will under or over recover costs. This could have two negative consequences:
- a it would impact on the memorandum account, but this remains a risk for all of the new residential pathways; and
 - b [5]
24. These risks are only somewhat mitigated by the Government's commitment to a complete review of the OIO's fee structure within two years.

Next Steps

Updated Cabinet Paper and Regulations

25. If you agree with the CBC Paper and Regulations attached these will be lodged with CBC ahead of their consideration on Monday 20 August 2018.

Statement of Reasons

26. The final Statement of Reasons will accompany the final Regulations.

Gazetted exemption from certain advertising requirements

27. [3]

28. This would likely allow, if supported, the exemption to be made in early-2019.