

The Treasury

Reform of the Overseas Investment Act Information Release

July 2020

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- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [29] 9(2)(d) - to avoid prejudice to the substantial economic interests of New Zealand
- [31] 9(2)(f)(ii) - to maintain the current constitutional conventions protecting collective and individual ministerial responsibility
- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [36] 9(2)(h) - to maintain legal professional privilege
- [37] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

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Treasury Report: Phase Two review of the Overseas Investment Act - update on timetable

| | | | |
|--------------|-----------------|---------------------|------------|
| Date: | 6 November 2018 | Report No: | T2018/2923 |
| | | File Number: | IM-5-3-8 |

Action Sought

| | Action Sought | Deadline |
|--|---|--|
| Minister of Finance (Hon Grant Robertson) | Note this report. | N/A |
| Associate Minister of Finance (Hon David Parker) | Agree to meet with officials in December 2018 to discuss options for reform of the Overseas Investment Act 2005. | By Tuesday, 20 November 2018 to allow preparations for a meeting, if desired, to be finalised. |

Contact for Telephone Discussion (if required)

| Name | Position | Telephone | 1st Contact |
|---------------|--|-----------|----------------|
| Ryan Walsh | Senior Analyst, International | [39] | n/a (mob) ✓ |
| Dasha Leonova | Manager, Financial Markets and International | [39] | [23] (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: No

Treasury Report: Phase Two review of the Overseas Investment Act - update on timetable

Executive summary

This report provides an update on the Phase Two review of the Overseas Investment Act 2005 (the Act).

Despite delays in the commencement of Phase Two, we consider it is still possible to enact the review's recommendations by mid-2020. To achieve this, however, we have had to reduce the time available for policy development and legislative drafting. Any further delays throughout the review would place the timetable at risk (absent significant changes to either the review's process, such as reducing the time available for Select Committee, which would have risks). An updated timetable for the review is at [Attachment A](#).

Officials have begun targeted engagement with key users of the Act (including law firms and industry groups, with iwi engagement to follow) to better understand any problems with the Act and opportunities for reform. Engagement has been positive so far, with broad support for the Act's objectives (but mixed feedback on whether the current settings are appropriate for achieving them) and a number of minor technical changes already put forward as simple ways to streamline the Act. This consultation will continue throughout November, including meetings with Ministers Sage and Clark (in their roles as decision makers under the Act). Once early-stage engagement has concluded, we will provide advice to Minister Parker on issues that we recommend be prioritised (alongside already stated priorities).

Following this advice, we propose meeting with Minister Parker to discuss his priorities and objectives for the review, with a particular focus on his views on how the Act should respond to concerns about foreign investment related to water extraction and Māori cultural values and test our initial thinking on a 'national interest test'. This would inform the drafting of the Government's consultation paper, which is due to be released in March 2019. The Treasury intends to provide a draft of this paper to Minister Parker in early-2019.

Recommended action

We recommend that you:

- a note** that despite delays in the formal commencement of the Phase Two review of the Overseas Investment Act 2005 (the Act), officials consider that legislation can still be passed by mid-2020. Further delays, however, would put this at risk
- b note** our intention to meet with Ministers Sage and Clark in November 2018 (in their roles as decision makers under the Act) to hear their views on the Act's operation and opportunities for reform, and
- c agree** to meet with officials to discuss options for reform of the Act in early December 2018.

Agree/disagree.

Dasha Leonova
Manager, Financial Markets and International

Hon David Parker
Associate Minister of Finance

Purpose of Report

1. This report updates Ministers on the Phase Two review of the Overseas Investment Act 2005 (the Act). In particular, it provides:
 - a a revised timetable for the review's completion
 - b an overview of preliminary feedback on the Act's operation, and
 - c detail on immediate next steps – including seeking Minister Parker's approval to meet with officials in December 2018 to better understand his priorities for the Act's reform.

Status of the Phase Two review

Update on timetable for Phase Two

2. In August 2018, Minister Parker agreed to complete a comprehensive review of the Act with:
 - a targeted user engagement on the problem definition to be completed in September/October 2018
 - b public consultation on a discussion document in February/March 2019
 - c options to reform the Act presented to Cabinet for sign-off in June 2019, and
 - d legislation passed by mid-2020.
3. These timelines were premised on Cabinet considering the initial Cabinet paper in early September and the Government publicly announcing the review shortly after. Cabinet approval of the Terms of Reference was delayed until 8 October and the review was announced 16 October.
4. Given this delay and the rapidly approaching Christmas/New Year period, officials have amended the timetable to ensure that legislation can still be passed by mid-2020.
5. While this has reduced the time available for policy development and legislative drafting, officials judge that the Phase Two review can still be delivered on this shorter timetable. However, further delays would put this at risk. While officials are discussing options for mitigating the risk of additional delays with your office, if such delays did occur and the mid-2020 deadline was still to be met, we would need to meet with Minister Parker to discuss additional options to deliver the review. This could include, for example, reducing consultation, running processes concurrently, or reducing the time available for Select Committee consideration of the amendment bill – each of which could present risks to the review's quality.
6. An updated timetable is included at [Attachment A](#).

Update on targeted engagement on the problem definition

7. Immediately following the review's announcement, the Treasury contacted a range of legal professionals, industry bodies (such as the Retirement Villages Association), non-profit organisations, and iwi representatives to seek community views on the Act's operation and opportunities for reform. We have also organised a meeting with Ministers Sage and Clark (in their roles as decision makers under the Act) to hear about their experience with the Act.

8. This work will continue throughout November. However, preliminary feedback is that:
 - a users understand the need for a screening regime as a mechanism for sustaining public support for New Zealand's liberal economic arrangements, but do not necessarily support the Act's current settings
 - b there are a range of technical opportunities for reform that would likely not undermine the Act's intent but improve its clarity, reduce its complexity, and cut regulatory costs. Investigating these types of opportunities remains a priority
 - c many users of the Act have concerns with the way that the Overseas Investment Office (OIO) processes applications and while some of these concerns could be overcome through legislative change, many relate to perceptions of cultural and operational factors within the OIO itself, and
 - d [34]

The Government's broader work on investment attraction and improving access to early-stage funding, also led by Minister Parker, have the potential to address some of these concerns. The Treasury's Phase Two team is regularly engaging with the Ministry of Business, Innovation and Employment on these matters to ensure that both workstreams are aligned.

Next steps

9. In late November/early December 2018, once our initial round of public engagement has concluded, we will provide Minister Parker with a comprehensive update on the outcomes of stakeholder engagement, as well as advice on the issues that we recommend be prioritised in the review (alongside already stated priorities).
10. We would also like to meet with Minister Parker in December 2018 (as lead Minister for the Phase Two review) to better understand his objectives and priorities for reform of the Act. This would include seeking his views on how the Act should respond to concerns about the effect of foreign investment on water extraction, Māori cultural values and testing our initial thinking on a 'national interest test'. This discussion would strongly inform the Government's discussion paper expected to be released in the first quarter of 2019 (with a draft likely to be provided to Minister Parker in early 2019).

Attachment A – Updated timeline for the Phase Two review

| Milestone | Timing |
|---|-------------------------------|
| Targeted engagement | November 2018 |
| Discussions with Minister Parker on priorities and objectives | December 2018 |
| Policy development/Drafting of discussion document | November 2018 – January 2019 |
| Discussion document to Ministers | End January 2019 |
| Release of discussion document (post-DEV consideration) | Mid-March 2019 |
| Consultation closes on discussion document | Late April 2019 (Easter 2019) |
| Treasury report to Minister Parker on proposals for reform | Mid-May 2019 |
| DEV paper: Proposals for reform | Late June 2019 |
| Legislative drafting | July 2019 – November 2019 |
| LEG consideration of bill | Late November 2019 |
| Introduction of bill | Late November 2019 |
| Select Committee consideration of bill | December 2019 – June 2020 |
| Bill passed | July 2020 |