

# 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
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Reference: T2018/3337 IM-5-3-8

Date: 26 November 2018

To: Minister of Land Information (Hon Eugenie Sage)  
Associate Minister of Finance (Hon Dr David Clark)

Deadline: 11:15 am, Thursday 29 November

## **Meeting with Ministers Clark and Sage to discuss Phase Two of the Overseas Investment Act reforms**

### **Purpose**

On 29 November 2018 you will meet with officials from the Treasury and Land Information New Zealand to discuss Phase Two of the Overseas Investment Act 2005 reforms (Phase Two). The 30 minute meeting is scheduled to take place from 11.15am in the offices of the Hon Dr David Clark.

### **Meeting objectives**

Officials are seeking Ministers' views on the operation of the Overseas Investment Act, and ideas for potential improvements, from their perspective as decision-makers. Options for reform are being developed for inclusion in a public discussion document to be released in mid-March 2019. Ministers will receive a draft of this document early next year.

Areas of focus for the discussion are:

- the administration of the Act (including the Act's limitations from Ministers' perspective as decision-makers)
- potential improvements to the 'investor test'
- potential improvements to the 'benefits to New Zealand test' (including the appropriateness of the counterfactual test)
- potential amendments to the definition of overseas persons as it applies to bodies corporate, and
- the potential introduction of a 'national interest test'.

A set of questions to assist the discussion is attached to this aide memoire.

### **Phase Two aim and scope**

On 9 October 2018, Cabinet agreed to a review (Phase Two) of the Overseas Investment Act (CAB-18-MIN-0481 refers). Phase Two builds on the Overseas Investment Amendment Act 2018 (Phase One), which came into effect on

22 October 2018. Phase One rationalised the screening regime for land-based forestry assets and certain other profits à prendre, and generally requires overseas persons to obtain consent to acquire residential land.

The aim of Phase Two, having regard to the Overseas Investment Act's purpose "that it is a privilege for overseas persons to own or control sensitive assets", is to:

- enable the Government to effectively manage overseas investment, while
- ensuring that the Overseas Investment Act operates efficiently and effectively, and
- supporting overseas investment in productive assets.

The scope of Phase Two includes consideration of:

- the definition of overseas persons as it relates to bodies corporate
- the factors in the "benefits to New Zealand" test (including whether factors relating to water extraction, Maori cultural values and tax residency should be added to the test)
- the extent to which negative benefits can be considered under the "benefits to New Zealand" test (and whether there needs to be additional guidance around considering how to balance benefits and negative benefits)
- whether the investor test requirements provide sufficient certainty to applicants
- existing levels of Ministerial discretion (having regard to the balance between creating certainty for applicants and allowing a more holistic consideration of the implications of foreign direct investment on New Zealand's national interest)
- the treatment of land adjoining other types of sensitive land, and
- minor technical amendments required to resolve unintended consequences associated with the Phase One reforms to the Overseas Investment Act.

Legislation implementing the policy decisions made following Phase Two is intended to be passed by mid-2020.

### **Targeted early engagement**

The Treasury has been carrying out targeted early engagement to inform initial policy development. The early engagement has included legal professionals, industry bodies (such as the Retirement Villages Association), non-profit organisations (such as Citizens Against Foreign Control of Aotearoa), and iwi representatives. Discussions focused on the experiences of these groups with the Overseas Investment Act, and identifying opportunities for reform.

## Phase Two timeline

Officials have agreed the following timeline with Minister Parker (as the Minister leading the review), in order for legislation to be passed by mid-2020:

<b>Milestone</b>	<b>Timing</b>
Targeted engagement	November 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

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[39]

**Jenna Reid**, Manager Policy (Land Information New Zealand) <sup>[39]</sup>

## Meeting with Ministers Clark and Sage to discuss Phase Two of the Overseas Investment Act reforms

### ATTACHMENT: Questions to assist with discussions

#### Administration of the Act

1. What limitations have Ministers faced when making decisions under the Act?

#### Definition of an overseas person

2. Do the Act's screening requirements apply to the right group of overseas persons (e.g. some companies that would generally be considered to be New Zealand companies by the general public are screened as result of having over 25% foreign ownership)?

#### Investor test

3. How do you think the 'investor test' could be improved? Does it focus on the right characteristics (e.g. business experience and acumen, good character)?

#### Benefits test

4. How do you think the benefits test could be improved? Is there scope for a more streamlined benefits tests for certain applications?
5. Are there applications that Ministers would have declined, but were unable to?

#### National interest test

6. What might a national interest test achieve beyond a benefits test?
7. Would there still be a role for a benefits test, if a national interest test is introduced?