

The Treasury

Reform of the Overseas Investment Act Information Release

July 2020

This document has been proactively released by the Treasury on the Treasury website at <https://treasury.govt.nz/publications/information-release/phase-2-overseas-investment-act-reform>

Information Withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act).

Where this is the case, the relevant sections of the Act that would apply have been identified.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to sections of the Act under which information has been withheld:

- [1] 6(a) - to avoid prejudice to the security or defence of New Zealand or the international relations of the government
- [2] 6(b)(i) - to avoid prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of any other country or any agency of such a Government
- [4] 6(c) - to avoid prejudice to the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
- [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

Where information has been withheld, a numbered reference to the applicable section of the Act has been made, as listed above. For example, a [23] appearing where information has been withheld in a release document refers to section 9(2)(a).

Copyright and Licensing

Cabinet material and advice to Ministers from the Treasury and other public service departments are © **Crown copyright** but are licensed for re-use under **Creative Commons Attribution 4.0 International (CC BY 4.0)** [<https://creativecommons.org/licenses/by/4.0/>].

For material created by other parties, copyright is held by them and they must be consulted on the licensing terms that they apply to their material.

Accessibility

The Treasury can provide an alternate HTML version of this material if requested. Please cite this document's title or PDF file name when you email a request to information@treasury.govt.nz.

Reference: T2019/2803 IM-5-3-8 (Overseas Investment Act Phase Two)

Date: 9 September 2019

To: Associate Minister of Finance (Hon Dr David Parker)

Deadline: 10 September
(if any)

Aide Memoire: Phase Two Overseas Investment Act 2005 reform – meeting with Hon Eugenie Sage

- You are meeting with the Hon Eugenie Sage, the Minister for Land Information, on 10 September. Issues relating to the Phase Two reform of the Overseas Investment Act (the 'Act') are on the agenda.
- This aide memoire provides background and talking points on special land, sensitive adjoining land, the Overseas Investment Office's ('OIO') enforcement powers and administration of the call in power/national interest test.

Special land

Background information

- Offering special land (foreshore, seabed, riverbed or lakebed) to the Crown is a factor in the Act's benefits test. However, due mostly to the cost and complexity of surveying, the Crown has not acquired legal ownership of any special land it has been offered since the provision was introduced in 2005.
- On 28 August 2019, you requested that Land Information New Zealand ('LINZ') provide information on whether it would be possible to relax the survey requirements for special land. [1]

You have received this advice.

Talking points

- I understand that surveying is the main barrier to the Crown acquiring special land. What is LINZ's preferred option for relaxing surveying standards for special land?
- I would like access strips to be included with any transfer of special land. What are the implications of doing so?

Sensitive adjoining land

Background information

- On 22 August 2019, you and the Minister for Land Information requested further data and advice on the treatment of sensitive adjoining land under the Overseas Investment Act.
- Subsequently you agreed [T2019/2622 refers] that the Act should continue to screen all land adjoining:
 - land held for conservation purposes under the Conservation Act 1977;
 - reserves managed by the Department of Conservation; and
 - national parks.
- You may wish to check that Minister Sage is comfortable with this outcome.

Talking points

- Following our meeting on 22 August 2019, I have agreed that the Act should continue to screen land that adjoins public land of high conservation value.

The OIO's enforcement powers (if raised by Minister Sage)

Background information

- On 9 September 2019, you agreed that the OIO should be granted new enforcement powers to better enable it to respond to 'mid-level' breaches of the Act and manage more significant risks, such as national security risks, effectively [T2019/2287 refers].

Talking points

- I appreciate that additional enforcement powers are necessary to enable the OIO to better respond to 'mid-level' breaches of the Act and to support the proposed national interest test and call in power.
- In response to Treasury advice, I have agreed that:
 - the OIO be given the power to enter into enforceable undertakings,
 - pecuniary penalties across the Act be increased to \$500,000 for individuals, with a higher penalty of up to \$10 million to apply to corporate investors,
 - it be made clear that the OIO can seek injunctive relief, and
 - powers contained in the Corporations (Investigation and Management) Act may be used to unwind investments to manage national security risks.

Administration of the call in power/national interest test (if raised by Minister Sage)

Background information

- Treasury has recommended that the OIO administer the proposed new national interest test, and national security and public order call in power. This will require significant operational changes, as they are new and relatively complex tests.
- Treasury is reasonably confident that the OIO understands the challenges it will face in implementing these powers and will be able to build the capacity and

culture necessary. Our assessment is supported by the OIO's use of a Board of senior executive advisors to support it in implementing the broader Phase Two reforms to the Act.

- You have agreed that the OIO would be responsible for administering the proposed national interest test and call in power on 9 September 2019.

Talking points

- I recognise that there are benefits for investors and the government in having responsibility for overseas investment screening located within a single agency. For this reason, I consider that the OIO should be responsible for administering the national interest test and call in power.
- However, these are complex reforms, and successful implementation is critical. I am interested in how LINZ is intending to approach this.

Funding to support the administration of the call in power/national interest test (if raised by Minister Sage)

Background

- On 30 August 2019, Treasury provided you with an aide memoire regarding potential financial implications associated with the reform of the Act, including for the OIO (particularly if they were to administer the national interest test and call in power).
- You have indicated that before speaking to the Minister of Finance about any potential funding, you would like a better understanding of LINZ's baseline and Phase 1 funding.
- You met with Treasury (International and Vote team) to discuss these matters on Monday evening.

Talking points

- I am aware that agencies believe that additional funding is necessary to support the Phase Two reforms and the introduction of the national interest test and call in power.
- Before I discuss any potential funding with the Minister of Finance, I want to build a better understanding of affected agencies' baseline arrangements.

Harry Nicholls, Senior Analyst, International, ^[39]

Megan Noyce, Principal Advisor, International, ^[39]