

To: Minister of Finance

**AIDE MEMOIRE: UPDATE ON THE OVERSEAS INVESTMENT ACT REVIEW****Purpose**

You requested an update on the Overseas Investment Act Review. This note provides you with information on the proposals that will be included in Cabinet's next consideration of the Review, and the process and timing for completing the Review.

**The proposals covered by the Review**

The table below summarises the proposals that are planned to be presented to Cabinet:

Sensitive land	Purpose/impact
<i>Scope</i> <ul style="list-style-type: none"> <li>Narrow the scope of sensitive land that is screened by raising the threshold for non-urban land from 5 to 10 hectares.</li> <li>Remove screening for land adjoining local parks and reserves that is under 80 hectares in size.</li> </ul>	<p>These proposals will to exclude land types that are not particularly sensitive from screening, while leaving screening for the most sensitive land unchanged.</p> <p>The expected impact will be to reduce applications by around 11% per year and reduce compliance costs by around \$4.5m.</p>
<i>Benefit test hurdle</i> <ul style="list-style-type: none"> <li>Simplify the current benefit test.</li> </ul>	<p>The simplified test will aggregate and reduce the number of criteria and factors used to assess benefit (a reduction from 26 down to 8).</p> <p>The simplified test largely covers the same criteria and factors as the current test, but the reduction will reduce the time and cost of preparing and assessing applications. The time taken to assess applications will drop by roughly 8% and preparation effort will reduce by 15-20%.</p>
<i>Process of offering special land to the Crown</i> <ul style="list-style-type: none"> <li>Simplify the offer process.</li> </ul>	<p>The changes will resolve many of the current uncertainties with the process of offering special land to the Crown before purchase by an overseas investor. The changes do not alter the current policy intent of the offer back requirement.</p> <p>We expect process improvements will reduce assessment effort by 40% and reduce application preparation effort by around 5%.</p>
<i>Policy change by regulation</i> <ul style="list-style-type: none"> <li>Remove the ability to make substantive policy change by regulation.</li> </ul>	<p>This proposal will mean that substantive policy change will need to be done through legislation.</p> <p>There is no direct impact on compliance costs but the change will improve predictability for investors by ensuring that the basis on which their investment is assessed will not change without a reasonable lead time.</p>
Strategic assets	Purpose/impact
<i>Defined strategic assets test</i> Either: <ul style="list-style-type: none"> <li>Replace the current strategic assets factor with a substantial harm test to allow Ministers, in exceptional circumstances, to decline an investment if it is likely to cause substantial harm;</li> </ul>	<p>The substantial harm test adds an additional criterion to the test used to assess investments in significant business assets and sensitive land. The criterion allows the Minister of Finance to decline an investment where the investment is likely to cause substantial harm to public order, public health and safety, and essential security interests.</p>

Or: Keep the current strategic assets factor and define what is meant by 'strategically important infrastructure asset'.	Including a definition of strategic assets will limit the scope and provide a clearer boundary for the interpretation of the factor. [Note that due to the difficulties of establishing a definition this option is not recommended by Treasury] Both proposals have no direct impact on compliance costs but the change will improve predictability for investors.
<b>Other changes<sup>1</sup></b>	<b>Purpose/impact</b>
<i>Exemptions</i> <ul style="list-style-type: none"> <li>Exempt New Zealand-linked repeat investors.</li> <li>Exempt Portfolio Investment Entity transactions where New Zealanders are the underlying beneficial owners.</li> </ul>	The exemptions will allow a relatively small number of repeat investors to be exempt from screening. These investors will have proven links to New Zealand, provide significant economic benefits to NZ and who have previously met the criteria under the Act. We expect the impact will be around 5% fewer applications per year with compliance cost savings of between \$200,000 and \$1.7m p.a.
<i>Truncated process for repeat investors</i> <ul style="list-style-type: none"> <li>Introduce a truncated process for investors who have successfully been through the screening process before.</li> </ul>	This proposal introduces a shortened application process for investors who have a proven track record of undertaking investments of benefit to NZ. The proposal provides an additional option for investors to using the NZ-linked repeat investor exemption described in the previous section.

The proposals above differ from the proposals presented in the August Cabinet paper in the following ways:

<b>Proposals no longer included in the Review</b>	<ul style="list-style-type: none"> <li>Removing the requirement to advertise farmland on the open market.</li> <li>Changes to the purpose of the Act.</li> <li>Changes to the scope of business assets by increasing the significant business asset threshold.</li> <li>Removing land adjoining wahi tapu or historic heritage from screening, and narrowing the definition of non-urban land.</li> </ul>
<b>New proposals added</b>	<ul style="list-style-type: none"> <li>Exemptions for New Zealand-linked investors and some trustee company and portfolio entity investments where the underlying beneficiaries are New Zealanders.</li> <li>An option to retain the current strategic assets clause and define what is meant by 'strategic important asset'.</li> <li>A truncated process for repeat investors.</li> <li>Drafting improvements to the Act, including a definition of what is meant by 'land'.</li> </ul>
<b>Proposals altered</b>	<ul style="list-style-type: none"> <li>The Act will still require the offer back of special land to the Crown but the offer process is being simplified and other amendments are being made to facilitate the vesting of land in the Crown.</li> </ul>
<b>Proposals worked up in more detail</b>	<ul style="list-style-type: none"> <li>The substantial harm test (previously called the 'national interest reserve power').</li> <li>A simplified benefit test for the sensitive land hurdle.</li> </ul>

The proposed changes are largely independent and could be adopted separately. However, we propose that they are adopted as one package. In aggregate we expect:

- application numbers to be reduced by around 15%, with total compliance cost savings for applicants of between \$3.8 million and \$5.1 million per annum;
- the effort to prepare applications to be reduced by around 15-20% and OIO effort to assess applications reduced by around 10-15%;

<sup>1</sup> There are also a number of drafting and administrative improvements that could be made which will ease interpretation of the Act. These do not change the underlying policy intent of the Act so we will propose that Cabinet delegate authority to yourself and the Minister for Land Information to agree the changes.

- a small improvement in investor certainty due to the removal of the ability to make policy change by regulation (however, the addition of the substantial harm test will create some additional uncertainty).
- a low impact on existing protections as the changes to the land scope are minimal and the simplified benefit test for sensitive land is close to the status quo.

Overall we consider the proposals low risk. There is a small risk that the public may have concerns about the reduction in land scope and the truncated process. There is also a risk that investors will see the substantial harm test as a de-liberalising measure.

### **Process and timing for completing the Review**

The table below outlines a possible process from here:

Timing	Process
31 May	Draft Cabinet paper circulated to agencies for consultation
14 June	Draft Cabinet paper considered by OEGI
18 June	Draft Cabinet paper sent to the Minister of Finance for consideration
24 June	EGL paper submitted to Cabinet Office
30 June	EGL consideration of the paper
5 July	Cabinet confirms EGL decisions and instructs PCO to draft the required legislative changes
6 Sept	LEG paper submitted to Cabinet Office
9 Sept	LEG consideration of the paper
13 Sept	Cabinet confirms LEG decisions
14 Sept	Discussion at Caucus and Bill introduced
21 Sept	1 <sup>st</sup> reading
22 Sept	FEC advertise for submissions
5 Nov	Submissions due
21 Feb 2011	Bill reported back to the House

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