17 June 2009

[Withheld under s9(2)(a)]

The Treasury
1 The Terrace
Wellington

Dear *[Withheld under s9(2)(a)]*

Review of the Overseas Investment Act and Regulations

Thank you for the opportunity to provide input into the current review process. This letter provides a high level summary of our views and we would welcome further involvement, in particular to explain the impact of the current regime and to test the practicality of suggestions for reform or improvement.

While we believe the present review is timely, AMP Capital ("AMP") recognises the political sensitivities of overseas investment in New Zealand, and indeed also recognises the merit of ensuring that significant overseas investment delivers benefits to New Zealand. Nevertheless, we also believe that a regime which imposes high levels of regulatory costs and delay on an organisation such as AMP without delivering any demonstrable benefit to New Zealand is one which requires reform.

Our general position is that while there are clearly some technical amendments to the Overseas Investment Act which would result in useful benefits, our preferred outcome would be the development of a generic exemption regime through the regulations which would apply to organisations such as our own, which, while overseas owned, have deeply entrenched New Zealand connections. In the context of further integration of the New Zealand and Australian investment markets and as an Australian based company, AMP is also interested in the development of an overseas investment framework that treats Australian based companies as New Zealand based and considers overseas investment as that which is sourced from outside either country.

Background to AMP

AMP is, of course, a well-known name in New Zealand business and households, having been carrying on business in New Zealand for more than 150 years. Our business is essentially that of asset development, wealth management and protection, offering a wide range of investment, savings and life insurance products. We are the largest provider of work place retirement savings schemes in New Zealand and a default provider of KiwiSaver products. Total funds under management in New Zealand amount to approximately $11 billion.

AMP has more than 400,000 New Zealand clients, and 73,000 New Zealanders are shareholders in the listed Australian parent company.

While we invest worldwide, an integral part of managing our clients' funds involves investment in New Zealand companies and properties. New Zealand suffers from a lack of domestic savings and consequently does not have a deep pool of investment funds available for development opportunities. As a country, New Zealand depends on accessing offshore investment to fund the sorts of developments on which our future prosperity depends. This is AMP's experience, particularly in the current economic environment.

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AMP Capital Investors (New Zealand) Limited

The following information will give you a sense of the scale of our investment in New Zealand and also a sense of the complexity of our various interests and structures:

Name of Fund	Current Gross Value of Fund
AMP New Zealand Office Trust (a NZ listed unit trust managed by AMP – commonly known as ANZO)	$1.4bn
AMP Capital Property Portfolio (a non-listed unit trust managed by AMP for a small number of significant funds including the New Zealand Superannuation Fund and Accident Compensation)	$1.8bn
Property for Industry Limited (a listed company managed by AMP, and commonly known as PFI)	$375m
AMP Wholesale Office Fund (an Australian based unit trust investing in high quality New Zealand property assets, and commonly know as AWOF)	A$2.7bn
Summerset Holdings Limited (a manager and developer of retirement villages throughout the North Island majority owned by AMP and an Australian private equity fund).	$489m
AMP Private Equity Real Estate Fund (a wholesale fund through which other fund managers can access property development opportunities)	$164m

Each of these entities is an 'overseas person' for the purposes of the Overseas Investment Act. This occurs either by reason of AMP as manager of the funds being an overseas person, overseas clients or investors owning more than 25% of the securities issued by the funds, or by reason of the trustee being an overseas person.

When does the OIO regime apply to AMP?

Because of AMP's and the various funds' status as an 'overseas person' almost all investment transactions require an OIO due diligence of some form or another.

All direct land based transactions require a careful consideration of whether the relevant land is 'sensitive land' under the Act. This is because of the wide scope of the relevant definition, and the sometimes unusual circumstances in which it is triggered. This will generally involve (in all but the most obvious cases where the Act does not apply) obtaining a certificate as to the land's status from a suitably recognised agent or legal advisor.

We often undertake transactions which do not directly involve the acquisition of land but rather securities of entities which may themselves own 'sensitive land'. Again, we conduct suitable due diligence enquiries to ascertain whether the Act applies.

Additionally, the size of investments we undertake also requires regular consideration of the 'significant business assets' test.

Two examples of transactions within the last 12 months which have required OIO approval are reflected in the attached decision sheet summaries of the OIO. One provides an example of an

acquisition by AMP Capital Property Portfolio ("APP") of 'sensitive land', being the half share in retail property at Botany Downs in Auckland (50% of which was already owned by APP); the other an example of a 'business' acquisition involving the introduction of new funding from the Middle East in connection with the development of an inner city Auckland site in Newmarket.

Both these acquisitions were approved, as have all other applications we have made over the years.

These transactions are useful to draw attention to instances of the more subtle application of the OIO regime:

- **Increases in control interests:** The regime extends to transactions which involve any increase in our level of investment in a project if it is already 25% owned, or alternatively if the increase will result in our interest being more than 25%;
- **Transfers within the AMP 'group':** From time to time it is useful to transfer assets within the AMP 'group' of funds for asset re-allocation processes
- **Increases by our investors in projects:** If an overseas person other than AMP increases their ownership or control interest in one of our funds the Act can apply. This can obviously occur by reason of a direct injection of new capital, but can also occur indirectly by reason of an existing investor decreasing their investment through the redemption or re-purchase of their investments.

Perceived Problems with the current regime

The requirements of compliance with the current regime raise the following problems:

- **Potential commercial prejudice:** The most significant risks of commercial prejudice for AMP arise where:
  - a target investment is being offered in a competitive environment. In this case an offer conditional upon OIO consent (which is mandatory) is at a significant disadvantage to an unconditional offer from a non-overseas person. Anecdotally, this is so, even where the price offered is at a premium to the competing bid. In this sense a New Zealand vendor may also be denied the opportunity to access the best price. In the current climate of an anticipated higher level of mortgagee sales this may be a real issue;
  - there is a need for new investment capital for one of our funds and a willing offshore investor but the time frame for compliance with the OIO regime means there is a long period of risk associated with a subscription commitment, thereby indirectly increasing the cost of capital and making the task of raising new capital more challenging;
  - fund withdrawals trigger increases in residual overseas ownership thresholds, thereby complicating the withdrawal process.

    In general terms, because it seems that we will almost certainly receive consent, it is the delay, and the uncertainty of the extent of that delay, associated with gaining an approval which delivers the disadvantage.

    The other relevant issue, is that the regime mitigates against our offering New Zealand and overseas investors the opportunity to invest in New Zealand's rural economy. While this remains a possibility, an issue which needs to be considered is the extent to which investments could be made successfully under the current OIO regime.

- **Direct and indirect compliance costs:** The regime is very complex. As we have pointed out, the regime applies not just in obvious cases of an acquisition of a significant parcel of iconic rural land, but also to a range of commercial, retail and industrial properties.

  In addition it can apply to a wide variety of securities transactions which have no direct relationship with the underlying investment.

The result is that AMP spends a considerable amount of money on lawyers and land consultants confirming the applicability or otherwise of the regime and any consequential application.

Preferred position

AMP believes that there are a range of improvements which could be made to the current regime. These include:

- Revising the current definition of 'sensitive land' so as to exclude land which has no element of sensitivity;
- Revising the regime for increases in levels of investment where the original investment has been approved;
- Revising the exemptions for 'intra-group' transactions.

AMP's preferred position, however, is a form of generic exemption which would recognise the situation of portfolio based funds and in particular ones such as AMP which have a long history of beng committed to New Zealand and with extensive, often majority New Zealand investors and stakeholders. Treating Australian resident investors as if they were New Zealand based should also be considered in the context of further integration of the New Zealand and Australian investment markets.

This could be coupled with a reporting regime which would enable ongoing monitoring by the OIO of the extent to which the exemption is utilised.

This change could be achieved by revisiting the current provisions of regulation 34 and extending its scope.

We trust the above provides you with a useful insight into the issues we face and look forward to an opportunity to discuss the issues with you further.

Yours sincerely
[Withheld under s9(2)(a)]

Jonathan Falloon
Head of Public Affairs
AMP Capital Investors (NZ) Limited

cc. *Anthony Beverley, Head of NZ Property*
Simon Urquhart-Hay, COO NZ Property