

16 June 2009

Hon Maurice Williamson  
Minister for Land Information  
Parliament Buildings  
WELLINGTON


Dear Minister


**Contact Energy Limited – Submission re review of the Overseas Investment Act 2005**

1. We applaud the Government for undertaking a review of the overseas investment screening regime in order to improve its design and implementation.
2. We are aware that any recommendations resulting from the review are expected to be presented to Cabinet by July 2009, and that changes to the Overseas Investment Act will be open to public submissions through the Select Committee process. Contact plans to make submissions at that time, but would also like to provide some input for consideration early in the review process.
3. Because Contact is committed to increasing its investment in renewable forms of energy, and because generation of electricity from renewable sources is land intensive, Contact regularly needs to acquire plots of non-urban land exceeding 5 hectares.
4. The time and cost of both preparing and processing OIO applications for such land acquisitions is substantial. For example, in the last year and a half, Contact has made six applications for OIO consent. Each of those applications was approximately 15 pages with another 200 pages of supporting documentation in the attached appendices. The time required for Contact and its solicitors to prepare and finalise these applications averaged at least six weeks, and the time required for the OIO to process the applications ranged from 8 to 22 weeks. This means that the total average lead time required for seeking OIO consent is 14 to 28 weeks.
5. Under the current regime, the OIO has been required to consider each application anew, even though Contact's investments have all been very similar – i.e. purchases of farmland exceeding 5 hectares required to support Contact's renewable energy generation projects.
6. The time and cost required not only for Contact to repeatedly prepare the applications, but also for the OIO to repeatedly process the applications, is unwarranted. If the OIO's time and resources were not wasted repeatedly processing low risk applications by established New Zealand companies such as Contact, it would free up valuable time and resources to allow the OIO to more efficiently process applications requiring closer consideration (e.g. first time applications by foreign investors).

**Contact Energy Limited**

PO Box 10742, Wellington 6143  
New Zealand

 Level 1 Harbour City Tower  
29 Brandon St, Wellington

 Phone: 64-4 499 4001  
Fax: 64-4 499 4003

 [www.contactenergy.co.nz](http://www.contactenergy.co.nz)

### *Exemptions*

7. Under the Terms of Reference for the Overseas Investment Act Review, you are seeking to deliver a feasible set of options for reform that are "simple" and "the minimum necessary" to achieve your objectives. A simple and practical means for streamlining the processing of investment applications under the current regime is to make increased use of the provisions in the regulations for granting exemptions.
8. In the past, Contact was hesitant to apply for an exemption because it appeared that there was not an established procedure in place for processing exemption applications, and Contact had heard of an exemption application made by another company that went years without any decision being made.
9. Encouraged by the new Government's commitment to improve the efficiency of regulatory processes, Contact intends to submit an application for exemption from the definition of "overseas person".
10. Although regulation 37(1) explicitly anticipates and provides for exemptions from the definition of overseas person, it seems (from the lack of information on the OIO's website and the absence of a relevant application fee in Schedule 2 of the regulations) that there is not yet an established procedure in place for processing this type of exemption application.
11. Publicly-traded New Zealand companies, such as Contact, that have a shareholding over 25 percent by an overseas entity but whose operations, assets and staff are almost entirely based in New Zealand, are good candidates for an exemption from the definition of overseas person.
12. Ensuring that there is an established internal procedure for the OIO to efficiently progress such exemption applications is a simple solution requiring minimal reform. The only legislative amendment required is to include a relevant application fee in part 4 of Schedule 2 of the regulations.
13. Increased use of the existing mechanisms in regulation 37 for granting exemptions also provides an effective means of minimising compliance costs associated with applications for subsequent investments by eliminating the time and cost required for making repeated applications.

### *Streamlined consent process for repeat investments by the same company*

14. Where there is no exemption or purchasing programme in place, there should be an available means of streamlining applications for subsequent investments by offering some type of certification scheme for companies which make repeated New Zealand investments. For example, after making an initial application (which provides the OIO with background information on the Applicant and evidence of the Applicant's business experience, citizenship, and good character), the OIO could keep a file of such standard information. The company could then simply update the information as needed and provide a very brief application for subsequent investments. The time and fees required for the OIO to process subsequent investment applications could then be reduced accordingly.

### *Current consent requirements to increase an existing interest*

15. Currently the Act requires consent not only for acquisition of a 25% or more control interest by an overseas person, but also for an increase in an existing 25% or more control interest (refer to sections 10(1), 12(b)(ii) and 13(1)(a)(i)). Even though Origin Energy Limited was previously granted consent in 2005 to acquire up to a 100% interest in the ordinary shares of Contact, Origin

was recently required to obtain consent to increase its existing 51% shareholding in order to participate in a profit distribution plan that was anticipated to increase Origin's shareholding by less than 5% (refer to the OIO's decision dated 11 March 2009 and the supporting application).

16. Contact submits that the time and expense of needing to consider issues under the Act and apply for consent for such minor shareholding changes is inappropriate and unduly burdensome on New Zealand businesses. Contact takes issue with the need for Origin to prepare a consent application, including providing land data, maps and certificates in relation to well over 200 Contact properties, when the initial distribution under the profit distribution plan resulted in Origin's shareholding increasing by only 0.06%.
17. Contact submits that it is inappropriate to require an overseas person to repeatedly submit a full consent application to increase its interest in a business if that overseas person has already been granted consent to acquire a 25% or more interest in the business. Accordingly, Contact recommends that:
  - (a) the Act be amended so that a shareholder that has already been granted consent is not required to seek consent to increase its shareholding; or
  - (b) the regulations be amended to:
    - (i) provide an automatic exemption for transactions which do not result in a change in ultimate beneficial ownership; and/or
    - (ii) provide a "creep" allowance similar to the exception contained in rule 7(e) of the Takeovers Code where small increases in shareholding below a certain threshold (i.e. 5%) within a 12 month period are exempted from consent requirements.
18. We are pleased to see the Government's efforts to improve the efficiency of regulatory processes. Please let me know if we can provide anything further on the above suggestions to assist you or the Review Committee with its task.

Yours sincerely



David Baldwin  
**Managing Director**

**Copies to:**

Review of Overseas Investment (The Treasury)  
Hon Bill English, Minister of Finance  
Hon Rodney Hide, Minister of Regulatory Reform