



Cabinet Economic Growth and Infrastructure Committee

EGI Min (09) 15/1

Copy No:

Minute of Decision

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Improving the Overseas Investment Act

Portfolio: Finance

On 29 July 2009, the Cabinet Economic Growth and Infrastructure Committee (EGI) **agreed to recommend** that Cabinet:

Background

- 1 note that in February 2009, Cabinet agreed to review the Overseas Investment Act (the Act) and Regulations as part of the government's regulatory review programme for 2009 [CAB Min (09) 6/5A];
- 2 note that:
 - 2.1 in July 2009, Cabinet agreed that one of the six pillars of the government's medium-term economic agenda is improving the regulatory environment for business [CAB Min (09) 24/7];
 - 2.2 reviewing the Act is one component of that pillar;

Proposed changes

- 3 agree that the Act be amended with the aim of ensuring the screening regime is simple, predictable, and well-targeted at the underlying concerns that New Zealanders hold about overseas investment;

Purpose of the Act

- 4 agree that the purpose of the Act be restated to reflect the importance of overseas investment to New Zealand's economic growth, as well as the importance of ensuring sensitive New Zealand assets are protected;

Definition of an overseas person

- 5 agree that there be no change to the definition of an overseas person for the purposes of the screening regime under the Act;

Policy change by regulation

- 6 agree that substantive policy changes to the overseas investment regime can only be made by primary legislation with parliamentary scrutiny, by removing the ability to make regulations which add to the factors used to assess sensitive land applications;

Business assets: scope

- 7 agree that the screening threshold for significant business investments remain at \$100 million;
- 8 *[Withheld - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]*
- 9 note that any unilateral increase in the screening threshold would be bound-in due to the ratchet provision in some of New Zealand's Free Trade Agreements (FTAs), *[Withheld - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]*

Business assets: hurdle

- 10 agree to retain the existing 'investor test' for investments in significant business assets;
- 11 11.1 agree to add an additional criterion to the significant business asset test that allows the Minister of Finance to decline an investment in significant business assets where:
 - 11.1.1 the investment will harm the national interest by threatening vital economic interests, national security, or public order;
 - 11.1.2 the Minister has credible evidence to show that the national interest is threatened;
 - 11.1.3 the concerns cannot be addressed through other legislation;
- 11.2 agree that the Minister must table any decision made using this criterion, and the evidence used to make the decision, in Parliament within one month of the decision;

Sensitive land: scope

- 12 agree that the definition of non-urban land be narrowed to include farm land and forestry only;
- 13 agree that the area threshold for non-urban land be increased from five to ten hectares;
- 14 agree that the regulator no longer be required to keep a list of reserves, parks and other areas, the land adjoining which is sensitive;
- 15 agree that land adjoining National Parks that exceeds 0.4 hectares be added to the types of land which are screened;
- 16 agree that land that adjoins land subject to a heritage order, or a requirement for a heritage order, no longer be screened;
- 17 agree that land that adjoins land that includes an historic place, historic area, wahi tapu, or wahi tapu area, no longer be screened;
- 18 note that changes to the scope of sensitive land that is screened will be bound-in due to the ratchet provision in some of New Zealand's FTAs, and that New Zealand will be unable to reverse these changes in the case of investments from those countries;
- 19 note that the majority of categories of sensitive land will be unchanged;

Sensitive land: hurdle

- 20 agree that the criteria for investments in sensitive land should continue to include the ‘investor test’ that is also applied to investments in significant business assets;
- 21 21.1 agree to add an additional criterion to the sensitive land test that allows the Minister of Finance to decline an investment in sensitive land where:
 - 21.1.1 the investment will harm the national interest by threatening vital economic interests, national security, or public order;
 - 21.1.2 the Minister has credible evidence to show that the national interest is threatened;
 - 21.1.3 the concerns cannot be addressed through other legislation;
- 21.2 agree that the Minister must table any decision made using this criterion, and the evidence used to make the decision, in Parliament within one month of the decision;
- 22 agree that the requirement that an overseas investment in sensitive land must benefit New Zealand be removed and replaced with a new test that:
 - 22.1 improves overseas investors’ awareness of sensitive features on the relevant land and their obligations under other legislation in relation to historic heritage, indigenous vegetation, wildlife protected under the Wildlife Act 1953, and walking access;
 - 22.2 for walking access, imposes requirements on overseas investors over and above domestic investors in relation to continuing existing informal access and enhancing access, where appropriate and practicable;
 - 22.3 for all other sensitive features, relies on other relevant legislation to provide protection;
- 23 note that an indicative wording for the new test would require overseas investors in sensitive land to:
 - 23.1 detail sensitive features on the relevant land that relate to historic heritage, indigenous vegetation, salmon and trout habitat and other protected wildlife, and walking access;
 - 23.2 sign a certificate stating they are aware that the relevant land contains sensitive features and that New Zealand legislation has provisions to protect these features;
 - 23.3 demonstrate that there are, or will be, in the judgement of the Minister of Finance and Minister for Land Information, adequate mechanisms in place for providing, protecting, or enhancing walking access, where appropriate and practicable;

Offer back of special land to the Crown

- 24 agree to remove the requirement that ‘special land’ (foreshore, seabed, lakebed and riverbed) be offered to the Crown before sale to an overseas person;
- 25 agree that the Act be amended to allow lakebed and riverbed to be vested in Crown ownership under the Land Act 1948, where the Crown has previously accepted offers of special land;

Requirement to advertise farm land on open market

- 26 agree to remove the requirement for farm land to be advertised on the open market prior to sale to an overseas person;

Increases in ownership/control once approved

- 27 agree that investors who increase their existing level of ownership or control in a significant business asset or in a particular piece of sensitive land no longer be screened;

Strategic assets

- 28 agree that there be no additional screening or criteria for strategic assets, and that the existing provisions be removed;

Sovereign Wealth Funds

- 29 agree that there continue to be no additional screening requirements for investments by Sovereign Wealth Funds;

Fishing quota

- 30 note that screening of fishing quota is outside the scope of the current review of the Act;

Legislative process

- 31 note that a Bill is required to amend the Act;
- 32 agree to add the Overseas Investment Bill to the 2009 Legislation Programme with a category 2 priority (must be passed in 2009);
- 33 invite the Minister of Finance to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 34 authorise the Minister of Finance to take decisions on minor policy issues that arise as the Bill is drafted;

Publicity

- 35 agree that the paper under EGI (09) 118 and the policy document entitled *Review of the Overseas Investment Screening Regime*, which is also attached under EGI (09) 118, be publicly released, subject to any appropriate withholdings that may be required under the Official Information Act 1981;
- 36 authorise the Minister of Finance to make any drafting changes to the policy document referred to above prior to its public release;

Next steps

- 37 invite the Minister of Finance and the Minister for Land Information to report back to EGI by 31 August 2010 with:
- 37.1 an assessment of whether the fees charged to overseas investors are correctly set to fund the Overseas Investment Office to assess applications in a reasonable timeframe;

- 37.2 an evaluation of how the changes to the screening regime have affected application numbers, assessment times, the operation of the new sensitive land test, and feedback from law firms on the changes from an investor's perspective.