

Treasury Report: Update on overseas investment review

Date:	1 May 2009	Report No:	T2009/1095
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Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Bill English)	Note the contents of this report.	None
Associate Minister of Finance (Hon Simon Power)	Note the contents of this report.	None
Minister for Land Information (Hon Richard Worth)	Agree to the recommendations in this report at your meeting with officials on 5 May.	5 May 2009

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
[withheld – privacy]	Analyst, International	[withheld – privacy]	[withheld – privacy]	✓
Nic Blakeley	Senior Analyst, International	[withheld – privacy]	[withheld – privacy]	

Minister of Finance's Office Actions (if required)

None.

Enclosure: Yes (redrafted directive letter, and draft policy document – part one)

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Executive Summary

You are meeting with Treasury and Land Information New Zealand at 1pm on Tuesday 5 May to discuss progress on the Overseas Investment Act review.

On immediate improvements, we recommend deferring two issues to the legislative review. We provide an update on progress of the remaining five issues, and final decisions will be sought in the next few weeks.

On the legislative review, the first draft of the first stage of the policy document is attached. While still in its early stages it should give you a sense of the issues being covered and where our thinking is getting to. The document is still to be updated to fully reflect internal and Overseas Investment Office comments. Once that has occurred we expect to circulate it to other departments by 8 May.

We also propose that reporting to Cabinet with policy recommendations for the legislative review be extended by one month to allow enough time to fully consider all the issues in the review and consult with other government agencies. If you agree, we will ask the offices of Minister of Finance and the Minister for Regulatory Reform if they have any objections.

Recommended Action

We recommend that **at your meeting with officials at 1pm on Tuesday 5 May** you:

Immediate improvements

Directive letter

1. **indicate** if you are comfortable with the tone and contents of the revised letter;

yes/no

[withheld - maintain professional legal privilege]

2. *[withheld - maintain professional legal privilege]*

Exemptions for property developers

3. **note** that we will report to you in the next week on the best option for exempting property developers from the requirement to offer farmland on the open market;

Minor regulatory amendments

4. **note** that comments on the draft regulations have been provided to Parliamentary Counsel Office and that the next step is to seek agreement from Cabinet Legislative Committee;

Simplifying the procedure for offering special land to the Crown

5. **agree** that Cabinet consideration of options to simplify the process for offering special land back to the Crown be sought at the same time as decisions on the legislative review;

agree/disagree

Overseas investment fees

6. **agree** that the paper on overseas investment fees be submitted for consideration by the Economic Growth and Infrastructure Committee on 3 June with the following amendments:

- additional information on finances;
- discussion on the impact of not authorising the use of the capital injection;
- more information on the merits of raising fees to offset fewer applications;
- adjusting the balance of the paper to provide more discussion on the alternative options;

agree/disagree

Revoking the strategically important infrastructure regulation

7. **agree** that revoking the 'strategically important infrastructure' regulation be considered at the same time as the legislative review;

agree/disagree

Legislative review

8. **indicate** any comments you have on part one of the draft policy document; and

Proposed change to timelines

9. **agree** to aim to seek Cabinet decisions on the legislative review by the end of July, rather than the end of June, to allow enough time to fully consider all the issues in the review and consult with other government agencies.

agree/disagree

Nic Blakeley
Senior Analyst
for Secretary to the Treasury

Hon Dr Richard Worth
Minister for Land Information

Treasury Report: Update on overseas investment review

Purpose of Report

1. This report provides you with an agenda and advice for your overseas investment review meeting with Treasury, Land Information New Zealand (LINZ), and the Overseas Investment Office (OIO) at 1pm on Tuesday 5 May 2009.

Analysis

Immediate improvements

Administrative changes

Directive letter

3. *[withheld - maintain professional legal privilege]*
4. *[withheld - maintain professional legal privilege]*
5. *[withheld - maintain professional legal privilege]*
6. *[withheld - maintain professional legal privilege]*

Exemptions for property developers

7. Treasury and the OIO are exploring an option to exempt investments made in land where there is a clear intention to sub-divide or develop the land involved, and to impose a condition of consent for the application ensuring that sub-division is carried out. This will mean that for those investments which qualify, they will be exempted from the necessity to advertise the rural land on the open market prior to concluding a sale with an overseas investor.

8. We are still investigating how this option could be implemented and whether a fee would apply. We expect to report separately to you on this next week to seek agreement to the preferred approach.

Regulatory changes

Minor regulatory amendments

9. Treasury and the OIO have provided comments to the Parliamentary Counsel office on the draft regulations. Feedback from the Technical Reference Group on the amendments has been positive. The Group has provided additional suggestions of where exemptions could go further. The next step is to seek agreement from Cabinet Legislative Committee.

Simplifying the procedure for offering special land to the Crown

10. The OIO is completing a description of the main problems with the existing offer back process and some possible solutions. While we originally thought this issue could be progressed quickly, it is proving to be more complex than first thought.
11. We do not expect that we will be able to seek Cabinet agreement to any simplified regulations before the wider review recommendations are considered. As a result we recommend that this issue is made part of the legislative review. This will allow Ministers to consider firstly whether they want to retain the offer back requirement, before considering detailed proposals to simplify the process.

Overseas investment fees

12. The fees paper was deferred by the Economic Growth and Infrastructure (EGI) Cabinet Committee until after Budget Day because of the moratorium on Cabinet papers with financial implications.
13. We recommend that the paper be resubmitted to EGI for its meeting on 3 June, the first meeting after Budget Day. There would be some merit in taking fee decisions at the same time as policy decisions that may affect the number and complexity of applications. However, LINZ requires Cabinet authority to use funds from an earlier capital injection to cover the deficit that will be incurred until the current fees are raised.
[Withheld - maintain the effective conduct of public affairs through the free and frank expression of opinions].
14. Based on feedback from the officials EGI committee and from the Minister of Finance, we propose to make some amendments to the paper:
 - **Additional information on finances.** The paper needs more information on the cost increases that the fees are supporting, including the breakdown between higher staffing costs and overheads.
 - **The impact of not authorising the use of the capital injection.** The paper needs to describe how any deficit would be managed if Cabinet did not agree to allow funds from the capital injection to be used to fund the deficit.
 - **More information on the merits of raising fees to offset fewer applications.**
[withheld - maintain the effective conduct of public affairs through the free and frank expression of opinions].
The paper needs to note that raising the fees for this reason is consistent with the guidance, and that there is a trade-off between impact of fee increase on business, and the feasibility/impact of reducing costs.

- **Adjusting the balance of the paper.** *[maintain the current constitutional conventions protecting collective and individual ministerial responsibility]* We think the paper needs to include more discussion on these alternative options as it currently has a large focus on the full fee increase.

Revoking the strategically important infrastructure regulation

15. *[withheld - maintain the current constitutional conventions protecting collective and individual ministerial responsibility]*. We recommend that this is done within the Cabinet paper that seeks agreement to policy recommendations arising from the wider review. Doing so will avoid the need for a separate Cabinet paper and process.

Legislative review

Draft policy document (part one)

16. Attached is part one of the draft policy document that is being developed to address the issues to be raised in the legislative review of the screening regime. This document covers the problem definition, options for a new purpose of the Act, the definition of an overseas person and whether the current regulation making powers in the Act should be removed.
17. The document is still an early draft and does not yet fully incorporate internal and OIO comments.
18. While there will be other opportunities to comment on the document, we would be interested in your initial reactions. In particular we would be interested in your views on:
 - a. How well does it reflect the Government's motivation for the review?
 - b. Do you consider the problem is adequately defined?
 - c. Do you agree with the three key areas identified for improvement: well-targeted, simplicity and predictability?
 - d. Do you have a preference for an alternative purpose statement?
19. Subject to your comments and those of the OIO, the document will be circulated to other government departments and the Technical Reference Group for their comment.
20. Part two of the policy document will be provided to you in the next few weeks. This document will cover the remaining issues in the review, which include thresholds for sensitive land and business assets, what types of land should be considered sensitive, options to simplify the process for screening land and whether exemptions or different screening thresholds should be provided for certain transactions (such as transactions only involving offshore investors).

Proposed change to timelines

21. The original timeline for the review planned on seeking Cabinet decisions to policy recommendations by the end of June. We now think this timeline is too ambitious, in light of the work that is yet to be completed on the review. The second part of the policy document contains a number of complex issues that will require detailed consideration by Treasury and the OIO and subsequently the Technical Reference Group and other agencies.
22. As a result, we propose that we now aim to seek Cabinet decisions by the end of July rather than the end of June.