THE TREASURY
Kaitohutohu Kaupapa Rawa

Treasury Report: Response *[withheld – privacy]* regarding the Overseas Investment Act and seabed mining

Date:	5 October 2009	**Report No:**	T2009/2250

Action Sought

	Action Sought	**Deadline**
Minister of Finance (Hon Bill English)	**Agree** that it is not necessary to bring the acquisition of mining permits by overseas investors into the scope of the Overseas Investment Act 2005. **Sign** the attached letter [withheld – privacy]	12 October 2009.
Associate Minister of Finance (Hon Simon Power)	**Note** the contents of this report.	None.

Contact for Telephone Discussion (if required)

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

Minister of Finance's Office Actions (if required)

Refer a copy of this report to the Minister of Energy and Resources, the Minister of Trade and the Minister for Land Information.

Enclosure: Yes ([withheld –privacy])

Treasury Report: Response [withheld –privacy] regarding the Overseas Investment Act and seabed mining

Purpose of Report

1. This report sets out our advice on whether the acquisition of permits to prospect or mine mineral resources should be screened under the Overseas Investment Act and includes a proposed response [withheld –privacy]about this issue.

Analysis

2. You have received a letter [withheld –privacy] suggesting that overseas persons should have to seek approval under the Overseas Investment Act to acquire a permit to prospect or mine mineral resources in New Zealand, in particular to undertake seabed mining.

3. [withheld –privacy] suggests this approval is necessary to ensure that there is sufficient oversight and control placed on overseas mining companies. He also considers that it is inconsistent to screen purchases of sensitive land, but not the acquisition of permits to explore or mine on this land.

4. [withheld –privacy]

Is the acquisition of mineral permits subject to the Overseas Investment Act?

5. No, the Act explicitly exempts the acquisition of easements and *profits à prendre* from the definition of an investment in sensitive land. Prospecting and mining permits are *profits à prendre* as they give the holder the right to take natural resources such as minerals, from land owned by another person.

6. The investment would be subject to screening however, if the overseas person was purchasing a 25% or more share of a business with assets greater than $100 million, or a business which owns sensitive land.

Taharoa Iron Sands

7. A recent example of an iron sands operation that was subject to screening was the proposed acquisition of the Taharoa Iron Sands operation (a subsidiary of BlueScope Steel) by Cheung Kong Infrastructure Holdings Ltd. This transaction was subject to screening because it included the sale of sensitive land to an overseas person. The investment was declined in December 2008 because it was not expected to provide 'substantial and identifiable benefits' to New Zealand.

What do the current permit procedures require?

8. Anyone wanting to prospect, explore or mine Crown owned minerals in New Zealand must obtain a permit under the Crown Minerals Act 1991. The Crown Minerals Group of the Ministry of Economic Development manages the allocation of permits. The government's key policy objectives for minerals are to allow continuing investment in prospecting, exploration or mining in a way that:
   - promotes good exploration and mining practice;

- provides for the efficient allocation of permits;
- provides for the Crown to obtain a fair financial return from its minerals;
- has regard to the principles of the Treaty of Waitangi; and
- has regard to any relevant international obligations.

9. The permit allocation regime allows Crown Minerals to ensure that permits are granted to persons who are most likely to effectively and efficiently prospect, explore or mine, and that investors do not acquire permits purely for speculative purposes.

10. A permit issued under the Crown Minerals Act only confers an interest to a mineral and *not* to land or any other asset. Furthermore, the grant of a permit does not confer a right of access to land, which has to be negotiated separately with each landowner and occupier. The Act explicitly states that a permit is neither real nor personal property.

11. In addition, the permit holder is also likely to need resource consent under the Resource Management Act to undertake any mining activities.

What does Australia do?

12. [withheld –privacy] notes that the Australian screening regime requires approval from the Australian Treasurer before an overseas person may take up a mining licence or lease. This is correct if the investor is acquiring a licence from another firm or investor. However approval is *not* required if the licence is directly acquired from a government body.

Should the acquisition of mining permits be subject to screening?

13. We consider that overseas investments should only be screened if there are concerns about how the overseas investor may act compared to a domestic investor, and where those concerns cannot be addressed under other legislation. In this case we do not consider that there are good reasons to subject the acquisition of mining permits to screening under the Overseas Investment Act for the following reasons:

    - **There are sufficient controls under existing legislation.** Crown Minerals is satisfied that the permit regime under the Crown Minerals Act provides sufficient ability to scrutinise international investors' acquisition of exploration and mining permits. The permit allocation regime is able to consider the technical and financial resources of the applicant, whether the applicant will effectively and efficiently use the mineral resource, and whether their proposed operations are consistent with good exploration and mining practice. In addition, the requirement to obtain approval under the Resource Management Act to undertake mining activities means that environmental and other community concerns can be taken into account. It is not clear that there are other concerns about overseas participation in the mining sector that need to be addressed through the use of the screening regime.

    - **Large business investments will be screened under the Overseas Investment Act.** Where the investment is made into a business with total assets of greater than $100 million, the investment will need to be approved under the Overseas Investment Act. This provides oversight for overseas investments into large mining firms. Furthermore, if the investor wishes to purchase the relevant land, for example to allow mining to go ahead, then they will also need consent under the Overseas Investment Act if it is sensitive land.

14. The attached letter responds [withheld –privacy] by informing him that you are satisfied with the current controls relating to the issuance of mineral permits to overseas investors and do not intend to screen the acquisition under the Overseas Investment Act.

Consultation

15. Crown Minerals and the Overseas Investment Office have been consulted in the preparation of this report and agree with the recommendations below.

Recommended Action

We recommend that you:

a **agree** that it is not necessary to further investigate bringing the acquisition of mining permits by overseas investors into the scope of the Overseas Investment Act 2005.

Agree/disagree.

b **sign** the attached letter [withheld –privacy];

c **refer** a copy of this report to the Minister of Energy and Resources, the Minister of Trade, and the Minister for Land Information for their information.

Agree/disagree.

Nic Blakeley
Acting Manager, International
for Secretary to the Treasury

Hon Bill English
Minister of Finance

[withheld –privacy]

Thank you for your email regarding the acquisition of permits to explore or mine minerals by overseas investors. As you will be aware, overseas investment and minerals are both issues of considerable interest to the Government and your letter raises some interesting questions.

However, I am satisfied that the current regulatory regime set out in the Crown Minerals Act 1991 and Regulations provides the Government with sufficient ability to scrutinise international investors' acquisition of mineral permits. The permit allocation regime enables the Minister of Energy and Resources (or his delegate) to consider a range of factors when determining whether or not to grant a permit, such as the technical and financial resources of the applicant, whether the applicant will make effective and efficient use of the resource, and whether the proposed operations are consistent with good exploration and mining practice.

In addition, starting a new mining business worth more than $100 million or the acquisition of 25% or more of a mining business with assets of greater than $100 million would be subject to screening under the Overseas Investment Act 2005. The acquisition of any sensitive land required to undertake a mining operation would also be subject to screening under the Overseas Investment Act.

As a result I do not consider that there is a need to make the acquisition of mining permits by overseas investors subject to approval under the Overseas Investment Act.

Thank you again for your email.

Yours sincerely

Hon Bill English
Minister of Finance

cc: Minister of Energy and Resources
Associate Minister of Finance
Minister of Trade
Minister for Land Information