

Treasury Report: Overseas Investment Act review: Revised package of options for Cabinet

Date:	16 October 2009	Report No:	T2009/2324
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Action Sought

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Minister of Finance (Hon Bill English)	Agree to the revised proposals to be developed into a Cabinet paper.	20 October 2009 (and for discussion with Treasury on 20 October).
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)

Forward a copy of this report to the Minister for Land Information.

Enclosure: Yes ([Overseas investment review options \(A3 sheet\):1331111](#))

Treasury Report: Overseas Investment Act review: Revised package of options for Cabinet

Purpose of Report

1. This report seeks your agreement to a revised package of changes to the Overseas Investment Act to be developed into a new Cabinet paper for consultation with departments and the Technical Reference Group.
2. We are reporting to you separately with more details on the proposed 'substantial harm test' and increased use of exemptions from screening (T2009/2323 and T2009/2335 respectively refer).

Analysis

3. *[Withheld - maintain the current constitutional conventions protecting collective and individual ministerial responsibility]*

Main outstanding issues

4. As a result of the feedback above, there are four main issues that we are seeking your decision on what to propose in the draft Cabinet paper:
- **Screening of land adjoining local parks and reserves.** We recommend that the Cabinet paper propose removing land adjoining local parks and reserves from screening. DoC will argue that large local parks will be relatively less protected, but we consider that the inclusion of National and Regional parks is sufficient. We will look further into whether an area threshold could be used to avoid screening land adjoining smaller parks and reserves as a possible alternative option.
 - **Land hurdle.** We recommend that the paper proposes that the investments in sensitive land be subject to the targeted benefit test, which does not include the assessment of economic benefit. We consider that the incentive to provide economic benefits already exists given that the transaction is conducted on a commercial basis, and that general business law already exists with the aim of achieving a business environment that will benefit New Zealand. However, we expect some agencies to disagree with this proposal on the grounds that each investment should be tested for economic benefit.
 - **Offer back of riverbed.** We propose that the paper continue to recommend that the requirement to offer riverbed to the Crown is removed, but that the option of retaining it is also included. We consider that Crown ownership of the land is not required to ensure public access and usage *[Withheld - maintain the current constitutional conventions protecting collective and individual ministerial responsibility]*
 - **Business screening threshold.** We think there is a good case for lifting our threshold from \$100 million to \$150 million and recommend this is included in the Cabinet paper. Apart from the direct compliance cost savings from screening fewer investments, we see three additional arguments:
 - it would help mitigate the risk that the introduction of the substantial harm test is seen to make New Zealand less open to overseas investment;
 - Australia has recently lifted their screening threshold for all countries, so leaving New Zealand's threshold at its current level would mean New Zealand has become relatively less open to investment; and
 - *[Withheld - disclose prematurely decisions to change or continue policies relating to the entering into of overseas trade agreements].*

Overall revised package

5. Taking into account the recommendations above, the red boxes in the attached A3 sheet summarise the options that we propose are developed into a new Cabinet paper. The proposals could change as a result of feedback from departments and we will seek your final agreement to the package once a paper is ready for Cabinet.
6. The main change from the last version of this A3 sheet you saw is that the **substantial harm test** is proposed to explicitly consider economic interests rather than only narrow national security interests (discussed in further detail in T2009/2323).

Treasury comment on revised package

7. At the beginning of this review, we advised you that the biggest gains were likely to come from improving the sensitive land part of the screening regime, and in particular

the hurdle that these investments must pass. As the A3 sheet illustrates, most of the revised proposals are relatively close to the status quo. The overall impact of the improvements is likely to be considerably smaller than envisaged in the July Cabinet paper. The changes likely to have the biggest impact are now probably the proposals to reduce the scope of land that is subject to screening. We will attempt to qualitatively measure the expected impacts of the proposals through the consultation process.

8. In short, we still see the revised proposals as making some useful improvements to the screening regime, but the overall economic impact is likely to be relatively marginal.

Timing

9. Based on the timeline below we are aiming to develop a paper and consult with departments to allow Cabinet to consider the revised proposals before the end of the year. The advantage of this approach would be to allow PCO to begin drafting any legislation while the House is in recess over the New Year. However, the timeline is relatively tight and there is some risk that this target may not be met.

Week of	Tasks
19-Oct	Cabinet paper drafting
26-Oct	Cabinet paper drafting
2-Nov	Departmental/Technical Reference Group consultation
9-Nov	Departmental/Technical Reference Group consultation
16-Nov	Redrafting for comments Submission to Officials EGI Committee, re-circulate to departments
23-Nov	Officials EGI Committee consideration (20 th) Redrafting
30-Nov	Submission to Minister of Finance Submission to Cabinet Office
7-Dec	EGI Committee consideration
14-Dec	Cabinet consideration

Regulatory impact statement

10. The last version of the policy document and regulatory impact statement did not meet the adequacy criteria as assessed by the Regulatory Impact Assessment Team. We expect to be able to address a number of their concerns in the revised version. However it is likely that our 'problem definition' will not be considered adequate, because the terms of reference for the review have focused only on using the screening regime to address concerns about overseas investment, rather than considering other options (such as, for example, using the Walking Access Act to address concerns about public access).
11. The regulatory impact regime is about to undergo some changes (T2009/2311 refers) and there is a choice about whether this review should be considered under the old or new regime. *[withheld - maintain the effective conduct of public affairs through the free and frank expression of opinions]*

Recommended Action

We recommend that you:

- a **indicate** your comfort or otherwise with the revised set of review options at your meeting with Treasury on 20 October;
- b **direct** Treasury to draft a new Cabinet paper and regulatory impact statement, with the aim of Cabinet consideration before Christmas;

Agree/disagree.

- c **agree** that the new Cabinet paper make the following recommendations: (circle one, recommended option underlined)

- a. Screening for local parks and reserves

remove screening / *retain screening* / *include both options*

- b. Sensitive land hurdle

simplified benefit test / *targeted benefit test* / *include both options*

- c. Requirement to offer riverbed to the Crown

remove / *retain* / *include both options*

- d. Business screening threshold

raise to \$150 million / *retain at \$100 million* / *include both options*

- d **agree** that the review be considered under the new regulatory impact regime; and

Agree/disagree.

- e **refer** a copy of this report to the Minister for Land Information.

Agree/disagree.

Nic Blakeley
**Acting Manager, International
for Secretary to the Treasury**

Hon Bill English
Minister of Finance