

Treasury Report: Overseas Investment Review - Next Steps for 2010

Date:	26 January 2010	Report No:	T2010/67
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Action Sought

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Minister of Finance (Hon Bill English)	Discuss how you wish to take the review forward with officials at your usual meeting with Treasury on 3 February.	3 February 2010.
Associate Minister of Finance (Hon Simon Power)	None.	None.

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
[withheld - privacy]	Analyst, International	[withheld - privacy]	[withheld - privacy]	✓
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Minister of Finance's Office Actions (if required)

None.

Enclosure: **Yes** [\(Overseas Investment Act review: summary of options A3 sheet\)](#)

Treasury Report: Overseas Investment Review - Next Steps for 2010

1. This report provides you with some possible options for how to take the overseas investment review forward.

Process considerations

Expectations

2. The review was first announced in March 2009 as part of the Government's regulatory review programme. Public expectations that reforms will be made to the Overseas Investment Act have been raised over 2009. Your speech to the Trans-Tasman Business Circle in July 2009 detailed a number of issues under consideration, such as replacing the strategic assets test with a national interest test and reducing the ability to extract extra concessions from overseas investors.

Timing

3. There are two important milestones over the year which may affect how you may wish to progress the review. The first is your speech to the New Zealand-Australia Investment Forum to be held in Auckland on 10 March. You will probably need to make some reference to the review in this speech, such as progress made and an update on timing.
4. The second milestone is the aim of completing any necessary legislative change by the end of 2010. Given that the review began in March 2009, passage of the Bill by December 2010 should probably be targeted.
5. To meet both these milestones, Cabinet agreement on policy changes would be needed by around the end of February (followed by around two months for legislative drafting, Cabinet agreement and introduction, and then a five-month Select Committee process). This timing would allow you to make announcements at the Investment Forum in March. It would also allow you to complete, or nearly complete, any legislative change by the end of 2010, although this would still be an ambitious target.

Broad policy options

6. Attached is an A3 sheet summarising the options considered in the review. This A3 is similar to the A3 sheet you have seen before, but has been updated to be in line with the latest set of options and proposals that were included in the draft Cabinet paper we prepared in December (T2009/2644 refers).
7. We see three broad options to take the review forward:
 - continue to aim for more substantial policy change;
 - scale the review back to focus narrowly on simplifications; or
 - stop or pause the review.
8. *[Withheld - maintain the effective conduct of public affairs through the free and frank expression of opinions]*

Continue to aim for substantial change

9. A package of options similar to the 'more change' package in the December draft Cabinet paper (T2009/2644 refers) would achieve a relatively high impact in terms of improving investor certainty and reducing compliance costs. The **blue and red bordered boxes** in the attached A3 sheet outline what would be included in the 'more change' package.
10. Based on consultation with some of your colleagues and other departments, the areas likely to attract the most debate and concern are:
 - *[Withheld - disclose prematurely decisions to change or continue policies relating to the entering into of overseas trade agreements];*
 - removing the requirement to offer riverbed to the Crown, on the grounds that Crown ownership in itself is important;
 - narrowing the scope of the sensitive land test, including removing an assessment of economic benefits; and
 - replacing the strategic assets test with a 'substantial harm test' (formerly the national interest test) which has a high hurdle for use.

Focus on simplifications only

11. Given the objections that are likely to be raised to parts of the 'more change' package, you could instead refocus the review on simplifying changes only. Such a package would focus on largely process improvements (to the sensitive land test and to special land process), exemptions, and some changes in scope (e.g. the threshold for non-urban land). It would largely avoid substantive policy changes. The **blue bordered boxes** in the attached A3 outline a basic set of simplifying changes that you could take forward to Cabinet. Such a package could be narrowed further if desired.
12. This simplification approach would have a small impact in terms of reducing compliance costs for investors, *[Withheld - maintain the effective conduct of public affairs through the free and frank expression of opinions]*. If you prefer this approach we would also look at what further process improvements can be achieved at the OIO, although this is not likely to be significant.
13. What to do about 'strategic assets' remains more difficult. Retaining the current strategic assets factor would be difficult given announcements about its repeal and replacement. At the same time designing a replacement test that avoids creating large uncertainty for investors while still providing a 'backstop' for unforeseen circumstances is a difficult balance. On this issue we recommend you continue with the proposed 'substantial harm test', but note that there may be concerns that the hurdle for its use is too high. It may be possible to alter some of the design parameters to reduce the hurdle if desired, recognising that in practice ultimately Ministers will have a degree of discretion with how the test is used.

Recommended Action

We recommend that you **discuss** how you wish to take the review forward with officials at your usual meeting with Treasury on 3 February.

Agree/disagree.

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

Hon Bill English
Minister of Finance