



Cabinet Economic Growth and Infrastructure Committee

EGI Min (10) 29/5

Copy No:

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Review of the Overseas Investment Act: Report on Final Drafting of Regulatory Changes and Ministerial Directive Letter

Portfolio: Finance

On 24 November 2010, the Cabinet Economic Growth and Infrastructure Committee (EGI):

Background

- 1 **noted** that on 22 September 2010, EGI agreed to conclude the review of the Overseas Investment Act 2005 by:
 - 1.1 introducing two new factors (an “economic interests factor” and a “mitigating factor”) to the benefit test that is used to assess foreign investments in sensitive land;
 - 1.2 outlining the government’s policy on foreign investment more clearly by amending the Directive Letter issued to the Overseas Investment Office;

[EGI Min (10) 23/1]

New factors

- 2 **noted** that:
 - 2.1 EGI has earlier considered indicative drafting of the “economic interests factor” and the “mitigating factor”, and that final drafting for inclusion in the amendment regulations is now complete;
 - 2.2 the final drafting leaves the concepts agreed to by EGI on 22 September 2010 unchanged;
- 3 **noted** the final drafting of the “economic interests factor” as follows:
 - “(i) whether New Zealand’s economic interests will be adequately promoted by the overseas investment, including, for example, all or any of the following:
 - (i) whether New Zealand will become a more reliable supplier of primary products in the future;

- (ii) whether New Zealand's ability to supply to the global economy a product that forms an important part of New Zealand's export earnings will be less likely to be controlled by a single overseas person or its associates;
- (iii) whether New Zealand's strategic and security interests will be enhanced;
- (iv) whether New Zealand's key economic capacity is improved";

4 **noted** the final drafting of the "mitigating factor" as follows:

- "(j) the extent to which persons who are not overseas persons (New Zealanders) will be able to oversee, or participate in, the overseas investment and any relevant overseas person such as, for example, all or any of the following:
- (i) whether there is or will be any requirement that one or more New Zealanders must be part of that person's governing body;
 - (ii) whether that person is or will be incorporated in New Zealand;
 - (iii) whether that person has or will have its head office or principal place of business in New Zealand;
 - (iv) whether that person is or will be a party to a listing agreement with NZX Limited or any other registered exchange that operates a securities market in New Zealand;
 - (v) the extent to which New Zealanders have or will have any partial ownership or controlling stake in the overseas investment or in that person;
 - (vi) the extent to which ownership or control of the overseas investment or of that person is or will be dispersed amongst a number of non-associated overseas persons";

Directive letter

5 **noted** that the final drafting for an amended Ministerial Directive Letter is now complete, and that the Directive Letter outlines the following:

- 5.1 the government's general policy approach to foreign investment;
- 5.2 New Zealand's economic context and specific government concerns about foreign investment in the agricultural sector;
- 5.3 factors the government considers to be of high relative importance for investments in particular types of sensitive land (particularly the "economic interests factor" and the "mitigating factor");

6 **agreed** that the amended Ministerial Directive Letter state that, as an indicative guide, an overseas investment in farm land would be considered "large" if it were to result in the ownership or control of an area of land that is more than ten times the average farm size for the relevant farm type, as defined using Statistics New Zealand data;

Exemption from consent provisions

- 7 **noted** that Schedule 3 to the Overseas Investment Regulations 2005 lists the names of the portfolio investors (companies) who have applied for, and been granted, an exemption from the consent provisions of the Overseas Investment Act;
- 8 **noted** that the following four companies have confirmed they no longer wish to avail themselves of the exemption referred to above:
 - 8.1 Asteron Life Limited;
 - 8.2 Vero Insurance New Zealand Limited;
 - 8.3 Munich Reinsurance Company;
 - 8.4 National Mutual Life Association of Australasia Limited;
- 9 **agreed** to remove the above four companies from Schedule 3 of the Overseas Investment Act;

Legislative implications

- 10 **invited** the Minister of Finance to issue drafting instructions to the Parliamentary Council Office to give effect to the above paragraphs;
- 11 **noted** that the Minister of Finance intends to seek Executive Council approval to the amendment regulations in December 2010 so that the changes can come into effect in early January 2011;
- 12 **noted** that the Minister of Finance will make public announcements once the regulations and the Ministerial Directive Letter are published in the Gazette.