

# **Overseas Investment Amendment Bill Commitment to Reside in New Zealand**

## **Release Document**

**May 2018**

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- [1] 9(2)(a) – to protect the privacy of natural persons, including deceased people
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**Treasury Report:** Draft Cabinet Paper: Overseas Investment Amendment Bill - Commitment to Reside in New Zealand Requirements

<b>Date:</b>	12 January 2018	<b>Report No:</b>	T2018/18
		<b>File Number:</b>	IM-5-1-1

**Action Sought**

	<b>Action Sought</b>	<b>Deadline</b>
Minister of Finance (Hon Grant Robertson)	<b>Note</b> the contents of this report	No deadline
Associate Minister of Finance (Hon David Parker)	<b>Provide feedback</b> on the draft Cabinet paper <b>Discuss</b> draft Cabinet paper proposals with other Ministers <b>Refer</b> a copy of the report and draft Cabinet Paper to the Minister of Immigration and Minister for Land Information	15 January 2018

**Contact for Telephone Discussion (if required)**

<b>Name</b>	<b>Position</b>	<b>Telephone</b>		<b>1st Contact</b>
Daniel Lawrey	Senior Analyst	[2]	N/A	✓
Thomas Parry	Team Leader, Overseas Investment	[2]	[1]	

**Actions for the Minister's Office Staff (if required)**

**Return** the signed report to Treasury.

**Refer** a copy of the report and draft Cabinet paper to the Minister of Immigration and Minister for Land Information.

Note any feedback on the quality of the report

**Enclosure:** Yes

(attached)

## Treasury Report: Draft Cabinet Paper: Overseas Buyers Ban - Commitment to New Zealand Regulations

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### Executive Summary

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This report provides a draft Cabinet paper with proposed requirements that residence class visa holders must meet to purchase residential property. The Overseas Investment Amendment Bill (Bill) establishes a pathway for residence class visa holders to purchase a residential property as their main home in New Zealand if they satisfy *Commitment to Reside in New Zealand* requirements to be set out in regulations. The *Commitment to Reside in New Zealand* pathway is not available to temporary visa holders.

Regulations would be required to come into force alongside the Bill to enable residence class visa holders to purchase residential property. We would provide you with draft regulations to seek Cabinet agreement for regulations to come into force alongside the Bill. If Cabinet agrees to the proposals in the attached draft Cabinet paper, the departmental report for the Bill would recommend minor changes to the *Commitment to Reside in New Zealand* provisions to give effect to policy. This would occur after taking into account submissions on the Bill.

The draft regulatory impact statement provides alternative options and an assessment of options to accompany the Cabinet paper.

We recommend an approach where commitment to reside in New Zealand would be based on a declaration from each relevant person that they intend to spend 183 days in New Zealand of each 12-month period from the date of consent to purchase a property. This approach balances efficacy and administrative efficiency. This report provides further information on the rationale for this approach.

If monitoring of the regime indicated there were issues associated with property investment from people that did not intend to reside in New Zealand, it would be possible to amend *Commitment to Reside in New Zealand* criteria requirements at a later stage through new regulations. If a more-intensive upfront test was desired from the commencement of the regime, the draft Cabinet paper provides detail on how this could be designed.

We recommend that you discuss the proposals with relevant Ministers, including the Minister for Land Information and Minister of Immigration.

We have discussed the proposals with the Overseas Investment Office and Ministry of Business, Innovation and Employment. However, agencies are still considering the draft Cabinet paper. On 16 January, we will provide you with a final version of the Cabinet paper, incorporating agencies' feedback.

## Recommended Action

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We recommend that you:

- a **note** the Overseas Investment Amendment Bill provides for a pathway for a person who holds a residence class visa to purchase a residential property if they meet *Commitment to Reside in New Zealand* requirements to be set out in regulations
- b **note** regulations would be required to come into force alongside the Bill to enable residence class visa holders to purchase a property as their main home or residence in New Zealand
- c **discuss** proposals in the draft Cabinet paper with the Minister for Land Information and Minister of Immigration
- d **note** officials will provide you with a final Cabinet paper on 16 January 2018

Thomas Parry  
**Team Leader, Overseas Investment**

Hon David Parker  
**Associate Minister of Finance**

## Treasury Report: Draft Cabinet Paper: Overseas Buyers Ban - Commitment to New Zealand Regulations

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### Purpose of Report

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1. This report provides a draft Cabinet paper with proposed requirements that residence class visa holders must meet to purchase residential property. Regulations setting out Commitment to Reside in New Zealand would be required to come into force alongside the Bill to enable residence class visa holders to purchase residential property.
2. We have discussed the proposals with the Overseas Investment Office and Ministry of Business, Innovation and Employment. However, agencies are still considering the draft Cabinet paper. On 16 January, we will provide you with a final version of the Cabinet paper, incorporating agencies' feedback.
3. The intended timeframe includes lodging the Cabinet paper on 18 January for Cabinet consideration on 23 January.

### Approach to Commitment to Reside in New Zealand Requirements

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4. The *Commitment to Reside in New Zealand* pathway is available to holders of residence class visas, which include permanent resident visas and resident visas. Temporary visa holders are not eligible for the *Commitment to Reside in New Zealand* pathway.
5. Across the Immigration Act 2009 and Overseas Investment Amendment Bill, there are effectively three mechanisms, which work towards preventing a person from investing in residential property if they are not committed to residing in New Zealand:
  - a *A person is required to meet tests to obtain a residence class visa.* These tests generally demonstrate a person is committed to New Zealand. All residence class visa holders are entitled to reside in New Zealand indefinitely, provided they comply with visa conditions. Approximately 80 per cent of resident visa holders obtain permanent resident visas within five years. Table One in the draft Cabinet paper provides further information about resident visas.
  - b *A person must meet a Commitment to Reside in New Zealand test to be granted consent to purchase a residential property.* Approaches for this test are outlined below.
  - c *Requirement to dispose of property if a person is absent from New Zealand.* If a person is absent from New Zealand for a significant period, the on-selling condition set out in the Bill would require them to sell the property within 12 months unless certain requirements are met. This requirement is expected to deter investors who do not intend to meet ongoing residence requirements. In the event a person does purchase a property but subsequently does not meet ongoing residence requirements, the extent of this investment behaviour would be constrained by strict requirements to sell a property within a prescribed 12-month period.

#### *Preferred approach: declaration of intention to reside in New Zealand*

6. We have considered the policy effectiveness and administrative efficiency of different options for the *Commitment to Reside in New Zealand* test. We recommend the requirement for showing commitment to reside in New Zealand should comprise a declaration from each relevant person that they intend to spend 183 days in New Zealand of each 12-month period from the date of consent to purchase a property.

7. With a declaration requirement, we consider that the cumulative effect of the three mechanisms above would be appropriate to manage risks from a person investing in residential property if they are not committed to residing in New Zealand. This approach is preferable to a more-intensive upfront test.
8. The draft Cabinet paper and regulatory impact statement set out an alternative option for the *Commitment to Reside in New Zealand* test. A more-intensive test would include discretion for the Minister to be satisfied the person intends to reside in New Zealand, based on certain information such as period of time spent in New Zealand or establishment of a business. If a decision-maker had access to greater information about an applicant and greater discretion, they would have an improved ability to identify those who are not committed to residing in New Zealand. However, because commitment to reside in New Zealand relates to a person's intentions for the future, it is difficult to assess this matter accurately. This would also reduce certainty for a large group of visa holders. Furthermore, it would increase costs, due to requirements for more information and greater discretion.

#### *Potential to introduce more-intensive upfront test in future*

9. If monitoring of the regime indicated there were issues associated with property investment from people that did not intend to reside in New Zealand, it would be possible to amend *Commitment to Reside in New Zealand* criteria requirements at a later stage through new regulations.

#### *Alternative option provided in Cabinet paper*

10. If a more-intensive upfront test was desired from the commencement of the regime, the draft Cabinet paper provides detail on how this could be designed.

### Views from government agencies

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11. We have discussed the proposals with the Overseas Investment Office and Ministry of Business, Innovation and Employment. However, agencies are still considering the draft Cabinet paper. On 16 January, we will provide you with a final version of the Cabinet paper, incorporating agencies' feedback.
12. The Ministry of Business Innovation and Employment (MBIE) notes that proposed requirements for commitment to reside in New Zealand create some inconsistency between entitlements to reside in New Zealand indefinitely and entitlements to purchase a residential property. This would mean some resident class visa holders would be entitled to reside in New Zealand indefinitely, but would not be able to purchase a residential property. This issue is briefly outlined in the draft Cabinet paper.

### Next Steps

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13. Potential next steps include:

Date	Action
15 January	Feedback on draft Cabinet paper.
16 January	We will provide a final Cabinet paper.
18 January	Lodgement of Cabinet paper.
23 January	Cabinet considers proposals.
8 February	Departmental report on Overseas Investment Amendment Bill. This could recommend minor changes to <i>Commitment to Reside in New Zealand</i> provisions after considering submissions.
20 February	Select Committee reports back.
March	Cabinet considers draft regulations for <i>Commitment to Reside in New Zealand</i> .
March onwards	Regulations come into force alongside the Bill.