BACKGROUND PAPER FOR THE REVIEW OF THE OVERSEAS INVESTMENT ACT

1. SUMMARY OF THE CURRENT REGIME

New Zealand operates a screening regime for overseas investment over certain thresholds. The current rules outlined in the Overseas Investment Act 1973 derive from two historical sources – foreign exchange controls administered by the Reserve Bank, and controls on use and ownership of rural land in the (now repealed) Land Settlement Promotion and Land Acquisition Act that was introduced following World War II.

The Overseas Investment Commission (OIC) is responsible for administering the Overseas Investment Act. It assesses applications to purchase certain land, business and fishing quota investments by overseas persons. Decisions are made by the OIC or by Ministers based on criteria set out in the Act and regulations made under it and policy directives issued by Ministers to the OIC.

Definition of an Overseas Person
An "overseas person" is defined as a:

- person who is not a citizen of nor ordinarily resident in New Zealand;
- company or body corporate incorporated outside of New Zealand;
- company incorporated in New Zealand where 25 percent of any class of shares are owned or controlled by an overseas person; and
- person acting on behalf of or under the control or direction of an overseas person.

Coverage
An overseas person must obtain consent in order to acquire or take control of 25 percent or more of:

- business or property worth more than $50 million
- land over 5 hectares and / or worth more than $10 million
- any land on most off-shore islands
- certain sensitive land over 0.4 hectares (e.g. on specified islands, including or adjoining reserves, Conservation Act land, historic or heritage areas and certain lakes)
- land over 0.2 hectares including or adjoining the foreshore.

For a more detailed description of the land that is subject to the Act see Appendix 1.

Criteria
All investments must satisfy the “investor test”. The investor must show:

- business experience and acumen
- financial commitment
- good character (this is linked to the Immigration Act, i.e. not an individual of the kind barred from visiting or becoming a resident)

All investments in land must also comply with a “national interest test”: Ministers or the Commission must be satisfied a proposal is in the ‘national interest’ after considering whether the investment will result in:

- creation of new job opportunities in New Zealand or the retention of jobs that might be lost; or

- the introduction of new technology or business skills; or
- added market competition, greater efficiency or production or enhanced domestic services in New Zealand; or
- the introduction into New Zealand of additional investment for development purposes; or
- the development of new export markets or increased export market access for New Zealand exporters; or
- whether an individual investor intends to reside permanently in New Zealand; or
- other matters that may be prescribed; or
- other matters that Ministers, having regard to the circumstances of the particular overseas investment, think fit.

As well as the above requirements, for farm land:

- the proposal must demonstrate that the national interest benefits are substantial and identifiable. In this regard, Ministers also have regard to whether experimental research will be carried out on the land; the proposed use of the land; and whether the applicant intends to farm the land for his or her own benefit; and
- the land must be offered for sale on the open market in New Zealand before consent can be granted to the overseas investment. This requirement may be waived at the discretion of the Ministers

Fishing quota

The OIC also administers applications for fishing quota by overseas persons under the Fisheries Act, 1996. An overseas person must be either exempted or approved to hold or acquire quota. A company may be exempted if it is listed on the New Zealand Stock Exchange or control of the company is clearly in New Zealand hands. Approval will be granted if the applicant meets the investor test above and a similar national interest test that takes account of processing in New Zealand of fish, aquatic life and seaweed.

Exemptions

The Act allows for regulations to be made by Order-in-Council to provide for exemptions in respect of any regulation made. The Overseas Investment Exemption Notice 2001 specifies persons who are exempt from obtaining consent to acquire businesses or land. Specified persons include those who have been specifically exempted by name as being judged to be under New Zealand control or foreign controlled portfolio investors who are operating funds for New Zealand beneficiaries.

Further information

A summary of the rules administered by the Overseas Investment Commission are available at www.oic.govt.nz/invest/brief/index.htm. The Government directive letter to the OIC conveys the Government's general policy approach to overseas investment and indicates the delegated authority for the OIC: www.oic.govt.nz/invest/dltr060700.htm.

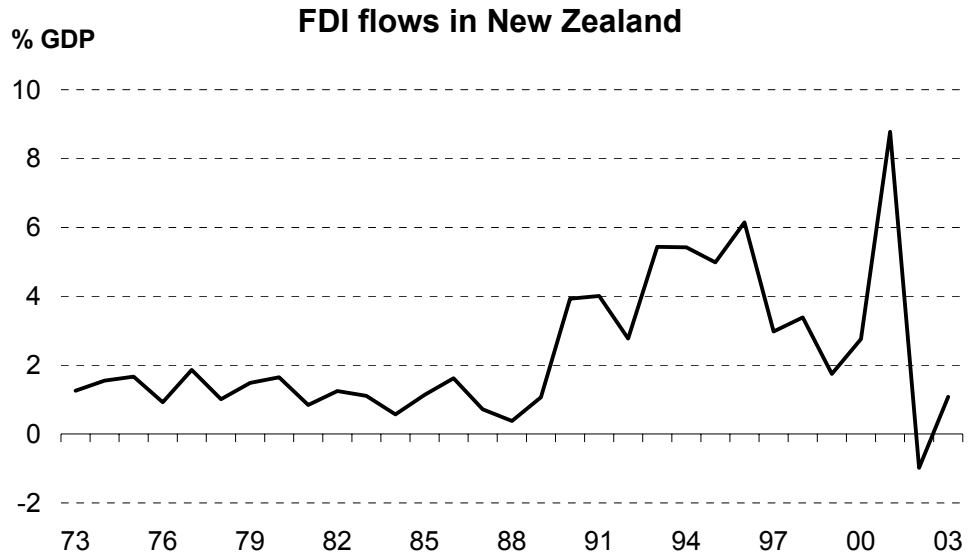
2. LEVELS OF FOREIGN OWNERSHIP

2.1 Total – trends in foreign direct investment

Between 1972 and 1988, inflows of Foreign Direct Investment (FDI) into New Zealand ranged between 0 and 2% of GDP. FDI inflows increased in the late 1980s reaching 6% of GDP in 1996. Inward direct investment has generally fallen from this point falling to just over 1% of GDP in 2003. The exception to this trend was the record 9% of GDP investment inflow in 2001, driven by a small number of very large transactions such as the sale of Fletcher Energy.

Similarly the stock of FDI in New Zealand rose over the 1990s to peak at over 60% of GDP in 1998. Since this point the FDI stock has declined, reaching around 40% of GDP by 2003. The decline in FDI stock in New Zealand is consistent with a fall in offshore ownership of the New Zealand Stock Exchange (by market capitalisation) from 61% in 1997 to 45% in 2003.[1]

Figure 1.



Source: Statistics New Zealand, New Zealand Official Yearbooks.

Statistics New Zealand's Business Activity Statistics show that as at February 2003, of New Zealand's 295,000 economically significant enterprises[2], 98% had no overseas equity. This analysis may understate the level of overseas participation in the New Zealand economy in that it focuses on numbers of enterprises, rather than the value of the investment. Nevertheless, the trend over time is falling with the numbers of enterprises with more than 25% overseas equity decreasing from 2.3% in 1997 to 2.0% in 2003. Sectors with the highest levels of foreign equity are mining, electricity, gas and water supply, and finance and insurance.

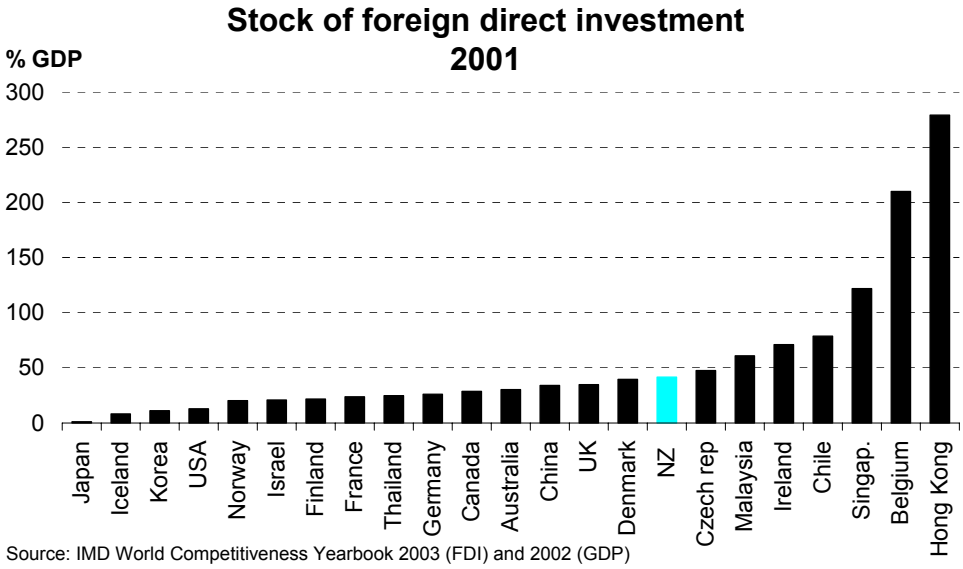
[1] Source: JB Were, New Zealand equity market structure, 24 June 2003.

[2] generally defined as enterprises with greater than $30,000 annual GST expenses or sales, or enterprises in a GST-exempt industry

International Comparisons

The level of FDI in New Zealand is not unusual by international standards as shown in Figure 2 below.

Figure 2.



Source: IMD World Competitiveness Yearbook 2003 (FDI) and 2002 (GDP)

2.2 Approvals under the Overseas Investment Act

Between 1998 and 2003, the OIC processed 2,082 overseas investment applications, with a 98% approval rate of the applications that were finalised.[3] All unsuccessful applications involved land. All business applications have been approved since the first half of 1984.

Total approvals between 1998 and 2003 amounted to a net investment into New Zealand of $18.8 billion. The majority of this net investment occurred over 1998 – 2000, with the average net investment per application falling considerably in subsequent years. Freehold land applications accounted for 79% of finalised applications over this period, with net sales of 292,000 hectares approved. Similar to the trend in average net investment per application, the average hectarage of land approvals was significantly lower over 2001 – 2003 than over the preceding three years.

[3] Not all processed applications resulted in a consent or refusal. For example, applications may not proceed if they are deemed to not require consent or lapse for want of information.

Figure 3.

Approvals / Consents under the Overseas Investment Act 1973

	Year Ending 31 December						
All Consents	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**Total**
Applications Processed	381	416	314	326	347	298	**2,082**
Consents Granted	289	305	233	240	245	200	**1,512**
Applications Refused	6	2	7	2	9	8	**34**
Finalised	295	307	240	242	254	208	**1,546**
Consideration ($M)	12,832	6,790	14,734	6,180	7,334	13,273	**61,143**
Net Investment ($M)	7,109	3,620	5,350	721	393	1,615	**18,809**
Net $s per consent granted($M)	25	12	23	3	2	8	**12**
Freehold Land Consents							
Consents Granted	188	205	196	196	220	176	**1,181**
Net Area (hectares)	59,138	58,419	91,148	37,581	32,300	13,427	**292,013**
Net hectares per consent grante	315	285	465	192	147	76	**247**
Applications Refused							
Number	6	2	7	2	9	8	**34**
% of applications finalised	2.0	0.7	2.9	0.8	3.5	3.8	**2.2**
Consideration ($M)	9.9	1.3	4.2	0.4	15.6	5.3	**36.7**
Land Area (Hectares)	397	11	479	256	779	314	**2,235**

Source:

OIC 2002 stats release http://www.oic.govt.nz/stats/02figs/ar02.pdf

OIC 2003 stats release http://www.oic.govt.nz/stats/annual_stats_release_2003.pdf

Land

There is little information on the total level of overseas ownership in New Zealand land. There is however good information on sales that have been approved by the OIC since 1998.

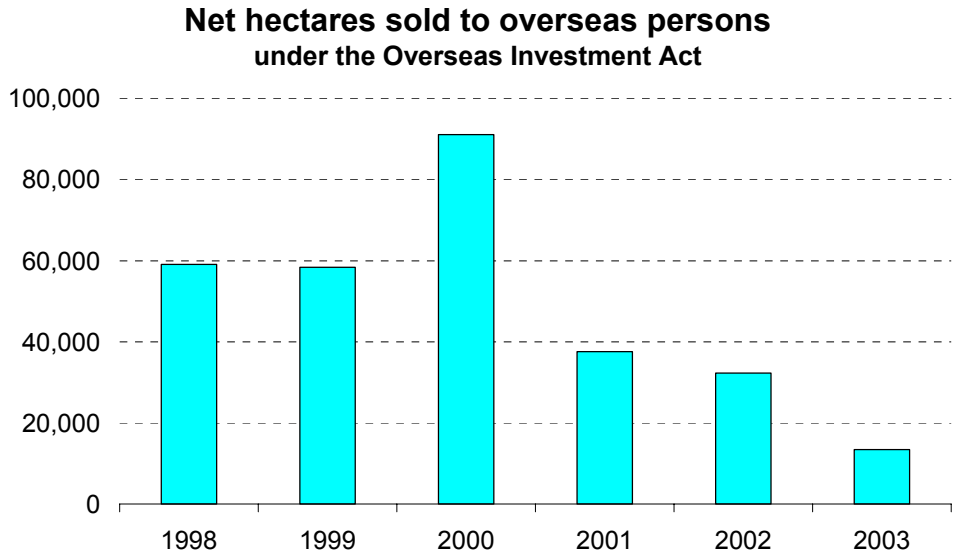
In the six years between 1998 and 2003, net sales[4] of 292,000 hectares were approved by the OIC, or approximately 1% of total New Zealand land. This compares with the more than 33% of New Zealand land held by the Department of Conservation in parks and reserves. Figure 4 shows the decline in sales since 2000. Land sales in 2003 covered by the regime were down 85% on 2000.

In 2000 over 90,000 hectares of land was approved for sale into overseas ownership, reflecting in part two large transactions:

- The purchase of a 27% share of Fletcher Forests by Credit Suisse First Boston via an underwriting agreement. Fletcher Forests owned 15,000 hectares of land.
- The purchase of 39,000 hectares in Otago and Owaka by Rayonier (New Zealand) Ltd, from Te Runanga o Ngai Tahu.

[4] Net sales refer to the land area transferred to overseas persons. If the seller is an overseas person then the sale does not result in an increase in the amount of land in overseas ownership.

Figure 4.



Over half of approved hectares were approved for sale to persons from the United States (158,000 hectares). In comparison the next largest countries were Switzerland (33,000 ha) and the United Kingdom (29,000 ha). In terms of numbers of applications approved, the United States (428), Australia (263) and the United Kingdom (221) were the top three countries.

Sales by geographic region show that the majority of land approved for sale over this period was in Southland (55,000 ha) and Gisborne / Hawkes Bay (52,000 ha). Gisborne / Hawkes Bay also had the highest number of approved sales at 143, followed by Nelson / Marlborough (141) and Otago (132). By size, Wellington had the lowest hectarage of sales, and the West Coast the least number of applications.

Close to 50% of land sales by area relate to forestry, with a further 36% classed as agricultural land (including viticulture).

Crown Pastoral Lease Land in the South Island High Country

The majority of the South Island High Country is owned by the Crown but leased under perpetually renewable pastoral leases. These leases confer pastoral rights only, thus a high degree of control over activity on the land is retained by the Crown. There are 304 Crown pastoral leases.

There are fifteen pastoral leases with greater than 25% overseas ownership. Four of these are completely overseas owned. The land area attributable to the overseas shareholders is approximately 97,400 hectares or 4.5% of the total hectares of Crown pastoral leasehold land.

Coastal land

For much of New Zealand's coastline an esplanade strip or reserve, often called the "Queen's chain", adjoins the foreshore. Foreshore is the area between mean high water spring mark and mean low water spring mark. The OIC keeps records of

applications for land adjoining the foreshore, and for land adjoining reserves, but does not always separately identify land adjoining a foreshore reserve. While it would have been desirable to measure levels of overseas ownership of land adjoining a foreshore reserve, in the time available it was not possible to separate that land out from other land adjoining reserves. Thus, for these purposes, coastal land is land which adjoins the foreshore.

Between 1996 and 2003, there were 78 sales of land adjoining the foreshore that were approved by the OIC. After an analysis of the OIC's data for this period, LINZ estimated that approximately 134 km of coastline, 0.7% of NZ's total coastline (19,883 km) or 2% of the privately owned coastline is in overseas ownership relating to consents from this period. This number will be overstated to the extent that any purchasers became NZ residents or citizens subsequent to their purchase.

Impact of overseas investment on land prices

Information on the impact overseas investment has had on New Zealand land prices are difficult to determine. There is a view that overseas persons may be driving up the price of land but there is no strong evidence that overseas persons are paying more than New Zealanders.

On a nationwide basis, the number of sales to overseas persons is likely to be too low to have a significant effect. There may be an effect in specific regions where there is an increasing presence of overseas investors. Domestic incomes, age structure of the population, interest rates, and migration are likely to be more significant factors at the national level.

3 INTERNATIONAL COMPARISONS

Summary of Key Points

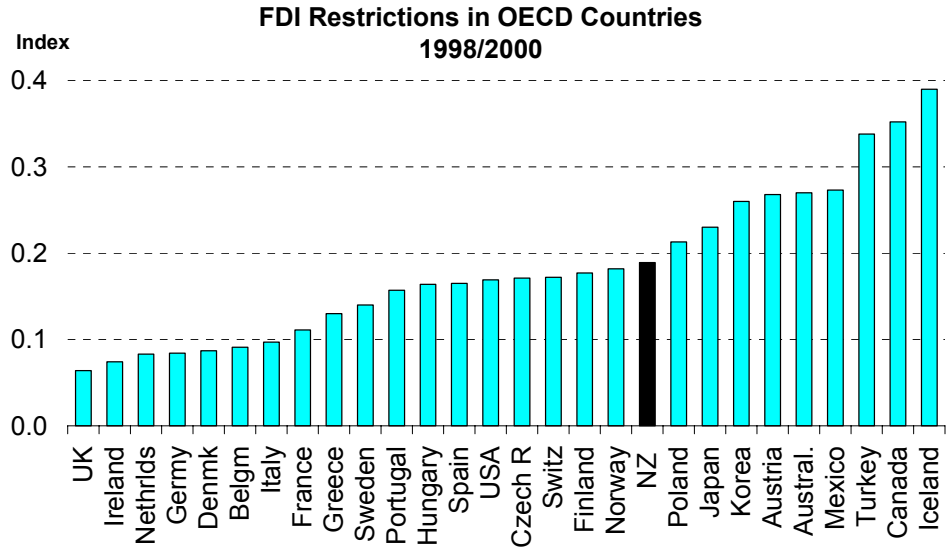
- Among OECD countries New Zealand ranks 19th out of 28 countries in terms of openness to FDI;
- This relatively restrictive ranking is largely due to the screening regime – and is based on the potential for proposals to be declined rather than an assessment of how the regime operates;
- New Zealand is in a minority of countries that screens all sectors;
- A number of OECD countries impose some barriers to overseas investment in land;
- Many countries confine restrictions on land sales to specific types e.g. Australia has restrictions on established residential real estate, and other countries on border regions
- Many countries retain the right to restrict overseas investment in sensitive areas; common examples include the defence, energy and broadcasting sectors.

International Trends in Openness to Overseas Investment

In 2003, the OECD produced a survey of openness to FDI of member countries[5]. Three types of regulation were looked at; "limits on overseas ownership, screening requirements, and restrictions on overseas personnel and operational freedom".

The study ranked New Zealand at 12th out of 23 in 1980, and 18th out of 28 in 2003 in terms of openness. The New Zealand regime has not become more restrictive over this period – the study showed that all members had become less restrictive since 1980.

Figure 5.



[5] Golub Stephen (2003) *Measures of Restrictions on Inward Foreign Direct Investment for OECD countries,* Economics Department Working papers non 357, ECO/WKP(2003)11, OECD.

In 2003, New Zealand was flanked by Norway and Poland, and its rating for restrictiveness was three times larger than that in the top ranked United Kingdom.

The largest driver of New Zealand's ranking is the broad application of the screening regime on all business sectors. If the effects of screening business are removed, New Zealand potentially moves up 11 places to 8th.

Comparisons

International comparisons of regimes can be misleading. The level of foreign investment in New Zealand, when compared with other countries (as in Figure 2) suggests that New Zealand's regime is not as restrictive as indicated by the OECD measure.

Most countries wish to be seen as welcoming overseas investment and a nominally open regime may be restrictive in practice, depending on how discretion under the regime is exercised. Further, many have sub-national (state and local Government) laws and agencies where restrictions are applied. For example, in the US several states limit ownership of agricultural land while there are no restrictions at a federal level. Such sub-national restrictions are not taken into account in the above index.

Sensitive Sectors

A common approach is to impose ownership limits or conditions on overseas investment in specific sectors and to allow free entry of investment into other sectors. New Zealand is in a minority of developed countries which screen all sectors.

A number of developing countries operate screening regimes but there is a tendency to significantly modify or drop screening as countries become more developed and shift from becoming horizontal (i.e. covering all sectors) to covering only some sectors.

Many countries retain the right to restrict overseas investment in sensitive sectors – often for national security reasons. Sectors likely to be affected include defence, energy, broadcasting and transport. In New Zealand the only non-land based sectors that are subject to specific control are aviation and ownership of fishing quota. Aviation is controlled for compliance with international air landing rights agreements, and is common international practice.

Land

A number of OECD countries pose barriers to overseas investment in land.

Several countries require notification of sales to overseas persons with a high rate of approvals in practice.

In New Zealand, farm land has been regarded as sensitive, and thus overseas investment in land requires approval. This extends to land associated with natural resources and scenic reserves (land on specified islands, reserves, historic or heritage areas, the foreshore or lakes).

Many countries with restrictions on land impose them on specific types of land only, such as vineyards, border land and residential property.

Australia restricts land sales to overseas persons but unlike New Zealand this is focused on established residential real estate and not rural land.

In screening overseas investment in land, New Zealand applies explicit criteria. In comparison, Australia applies a national interest test but the manner in which this judgement is made is not outlined in legislation.

Nine out of 28 OECD member countries have no restrictions on real estate under the OECD Code of Liberalisation, Belgium, Germany, Italy, Luxembourg, Netherlands, Portugal and USA - with Finland and UK having reservations only on offshore islands.

Most of the others apply some reservations to either specific types of land (e.g. agricultural land), secondary residences, or on ownership limits. EU countries often apply reservations to non-EU members only.

4 INTERNATIONAL OBLIGATIONS

New Zealand has signed three international treaties containing binding international legal commitments in relation to the "screening" of overseas investments[6]. These treaties therefore need to be considered in the context of any changes to our OIC screening regime. Those treaties, discussed below, are:

- WTO General Agreement on Trade in Services (GATS),
- OECD Code of Liberalisation of Capital Movements (OECD),
- New Zealand Singapore Closer Economic Partnership Agreement (NZ/S).

Under the provisions of these treaties New Zealand has committed itself to provide "national treatment" to investments by overseas persons, subject to specified exceptions, e.g. relating to categories reserved for OIC approval.

This means that expanding the range of assets requiring approval beyond the categories specified in these treaties would place us in breach of our international obligations. Such action could result in formal dispute settlement processes being activated by other parties to such treaties or, where these processes are not provided for, to other forms of pressure.

Narrowing the range of assets covered by the regime would, on the other hand, not involve any breach of New Zealand's international obligations.

Modifications to the criteria applied by the OIC in considering applications for approval of applications relating to the current reserved categories, or any narrower categories arising from the review, could probably be defended as consistent with our existing commitments. However, in the event that changes to the criteria were seen as resulting in a significant reduction in the number of applications approved by the OIC, arguments could be made that New Zealand was, in effect, introducing greater restrictions on investment in a manner inconsistent with its international commitments.

WTO General Agreement on Trade in Services (GATS)

Under the WTO **GATS** agreement New Zealand has reserved the right to screen the purchase of 25% or more of a company or assets worth over NZ$10 million, and the acquisition of rural land, and other sensitive land, such as reserve land and islands. The rural land and sensitive land restrictions were originally implemented through the (now repealed) Land Settlement Promotion and Land Acquisition Act, but since 1995 have been addressed through the Overseas Investment Act.

Broadening the range of assets requiring approval beyond the categories reserved in our GATS reservation could be vulnerable to challenge by other WTO Members. In the event that they were successful in their challenge, New Zealand would be required to rectify its legislation, failing which we could be subject to trade retaliation in accordance with WTO rules.

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[6] New Zealand has also signed or concluded four Investment Protection and Promotion Agreements (IPPAs) with Hong Kong, China, Chile (not in force) and Argentina (not in force). However, none of these Agreements contain binding commitments relating to our OIC screening regime.

The GATS makes provision in Article XXI for countries to modify or withdraw specific commitments subject to an obligation to negotiate compensation with affected Members.

OECD Code of Liberalisation of Capital Movements (OECD)

The **OECD Code** commits OECD member states to a process of progressive abolition of restrictions on capital movements between members and not to introduce greater restrictions than currently reflected in their exemption to the Code relating to non-land investments covered by List A to the Code. In contrast, states are able to change their reservations in respect of operations in real estate (i.e. land) covered in List B. Significantly, however, our non-land exemption includes restrictions on the acquisition of companies with interests in particular protected land so as to prevent the acquisition of companies becoming a vehicle to get around the land acquisition restrictions. The types of land protected in this way mirror those in List B, but are not able to be changed in the same way as List B restrictions can be.

New Zealand has reserved the right to screen purchases of 25% or more of a company or assets worth over NZ$10 million, and any purchase of rural farmland, scenic reserve land and offshore islands.[7] This exemption is broader than the current regime. New Zealand officials have been working with the OECD to update the exemption. While this revised wording has not been formally approved, it would still carry considerable authority given that it was developed to reflect New Zealand's current investment regime, as required by the Code.

If New Zealand were to seek to broaden its non-land exemption, we should expect other OECD members to raise concerns about the inconsistency of such action with our commitments under the Code. This would have implications, both in the investment area but also for our reputation more generally as a country that fulfils its commitments. While there is no formal dispute settlement mechanism in the OECD, compliance with the requirements of the Code is seen as an important component of OECD membership, and there is a peer review mechanism in the Code designed to promote fulfilment of commitments.

One of our obligations under the OECD Code of Liberalisation of Capital Movements is to update, in a timely fashion, the reservations which we have made under that agreement to reflect changes in our investment regime. Our reservation was last updated in 1992 and we have yet to complete a process of updating begun in the mid-nineties to capture changes since, including the increase in the non-land investment threshold to $50 million. It is proposed that we review the timing of this further updating (which will need to be discussed at the appropriate select committee in accordance with the international treaty examination process) following implementation of the changes currently proposed.

New Zealand Singapore Closer Economic Partnership Agreement (NZ/S)

The **NZ/S** agreement is the most recent instrument concluded by New Zealand with implications for our screening regime. Under the Agreement New Zealand has undertaken to provide "national treatment" to Singaporean investors subject to a range of listed exceptions currently provided for in New Zealand law (e.g. the Overseas

[7] There is also a now out-dated reservation relating to the purchase of class A shares in Air New Zealand by New Zealand nationals only.

Investment Act and related regulations). The Agreement also includes a "non-legally binding" description of the criteria applied by the OIC, as at the date the Agreement was concluded, in considering applications for approval. This explicitly states that the criteria "may be adjusted or replaced form time to time by Government legislation, regulation or policy setting". It should be noted that the NZ/S Agreement is the only agreement in which New Zealand has expressly reserved the right to modify the relevant criteria for approval.

NZ/S is being re-negotiated as part of the P3 negotiations between New Zealand, Singapore and Chile.

5 WHY SCREEN?

This section assesses the effectiveness of New Zealand's screening regime to address current issues around overseas investment.

Every country has the sovereign right to regulate foreign trade and commerce and to close its borders. The ultimate test for any law regulating overseas investment is pragmatic: whether it improves the performance of the economy and the well-being of New Zealanders, however measured.

In broad terms, screening overseas investment is useful where there is potential for significantly negative outcomes resulting from the investment. Consequently where screening is used internationally it is typically only applied to sensitive sectors such as defence. On the other side of the coin, investment incentives are appropriate in situations where there is a high potential upside that is not captured by the domestic seller.

This note looks at overseas investment issues from three perspectives:

- overseas ownership specifically
- overseas investor behaviour
- the macro-economic effect of overseas investment

Overseas ownership specific perspectives include those related to national sovereignty and ownership value. While national sovereignty refers to a concern about increasing overseas influences on economic, political and cultural life, ownership value refers to situations where New Zealanders receive a significant welfare benefit from knowing a particular asset is in New Zealand ownership. National sovereignty and ownership value are most directly addressed by limiting ownership of assets considered sufficiently important to remain in New Zealand hands. The costs of putting in place such limits, such as expansion opportunities foregone and reduced property rights for present land and asset owners need to be considered before such limits are imposed.

A screening regime is not designed to limit overseas ownership of assets, but to set out the conditions under which overseas investors can own New Zealand assets. A screening regime can address ownership value to the extent that it requires specific conditions to be met in exchange for approval for overseas ownership. The fulfilment of those conditions acts to offset the lost ownership value.

Using a screening regime to account for ownership value is complex. It is difficult to accurately identify the assets with significant ownership value, and take account of the ability of overseas investors to pass on the costs of meeting any conditions imposed. The extent to which an overseas purchaser can pass on these cost to New Zealanders, such as paying a lower purchase price, reduces the benefits to New Zealand of a screening regime.

Overseas investor behaviour is the second perspective. Overseas investors can create domestic problems if they behave in a manner that is inconsistent with domestic behavioural norms, even if such behaviour is not illegal. Examples of such behaviour may include restricting access across a property where it has been traditionally granted. A screening regime can address issues related to overseas investor behaviour, but the protection provided by the regime is partial, as it does not extend to

domestic investors. If something is considered worth protecting from overseas investors then it is likely to be worth protecting from domestic investors as well. Improving the domestic legislative framework will more directly achieve the desired behavioural response. In cases where overseas investors' behaviour cuts across social norms then targeted education initiatives may be useful. Changing communities, including an increasingly urbanised population, mean that these social norms are under pressure from a wider grouping than just overseas investors.

Macroeconomic effects on overseas investment provide the final perspective. Particular issues are asset prices and the balance of payments. A screening regime will have only a very limited effect on land prices, as overseas investment is only one of a number of factors behind rising land prices and a screening regime does not prevent overseas purchases. To the extent that overseas investment does affect asset prices it helps ensure that New Zealand asset prices reflect underlying value, and in so doing encourage appropriate asset utilisation. Regarding the balance of payments issue, there is no direct causal relationship between FDI and the current account deficit. Countries with a current account deficit or surplus can have high foreign direct investment. In the case of a current account deficit, FDI is one way of financing it

OTHER REGULATORY TOOLS

Land Use

There are a number of regulatory mechanisms governing land use in New Zealand. These include the Resource Management Act, which is the primary piece of legislation controlling the effects of the use of resources, including land; the Conservation Act, Reserves Act, Historic Places Act, QE II National Trust Act and the Crown Pastoral Land Act. The protections offered by these forms of regulation govern all land owners - irrespective of nationality.

Those Acts can protect:

- Landscapes (Crown Pastoral Land Act; QE II National Trust Act; RMA; Conservation Act)
- Sites of historic or heritage importance (Historic Places Act; RMA)
- Native plants and animals (Conservation Act)
- Flora and fauna (Conservation Act)
- Significant sites (Historic Places Act)

Corporate and Business Behaviour

For both domestic and overseas investors there are a number of statutes that govern corporate and other business behaviour. These include the Commerce Act 1986; Companies Act 1993; Corporations (Investigation and Management) Act 1989; Terrorism Suppression Act 2002; Financial Transactions (Reporting) Act 1996; Fair Trading Act 1986; Securities Act 1978; Consumer Guarantees Act 1993; Securities Markets Act 1988 and the Proceeds of Crime Act 1991.

Further information about these Acts in set out in Appendix 2.

APPENDIX 1: LAND COVERED BY THE OVERSEAS INVESTMENT ACT

Land subject to the overseas investment rules (from schedule I to the Overseas Investment Act

Land over 5 hectares

Any land that, together with any associated land, exceeds 5 hectares in area.

Islands

Any land that is, or that forms part of, an island (other than the North Island or the South Island or an island specified in Part 2 of this Schedule).

Any land that, together with any associated land, exceeds 0.4 hectares in area and that forms part of an island specified in Part 2 of this Schedule.

Any land that is, or that forms part of, an island of the Chatham Islands.

Foreshore, lakes, and reserves

Any land that, together with any associated land, exceeds 0.2 hectares in area and that includes or adjoins the foreshore; or

Any land that, together with any associated land, exceeds 0.4 hectares in area and that includes or adjoins—

(a) Any lake the bed of which exceeds 8 hectares in area; or

(b) Any land that exceeds 0.4 hectares in area and—

(i) Is held for conservation purposes under the Conservation Act 1987; or

(ii) Is provided as a reserve, a public park, for recreation purposes, or as a private open space, or is proposed for any such purpose, or is subject to a heritage order, under any operative regional plan or proposed or operative district plan under the Resource Management Act 1991; or

(iii) Is the subject of a notice of requirement for a heritage order by a heritage protection authority under the Resource Management Act 1991 or by the Historic Places Trust under the Historic Places Act 1993; or

(iv) Is an historic place, an historic area, wahi tapu, or a wahi tapu area entered in the register established under the Historic Places Act 1993 or in respect of which an application or proposal for entry in the register has been made under that Act; or

(v) Forms part of an historic place entered in that register or on which is situated any building, object, or chattel that is entered in that register or in respect of which an application or proposal for entry in that register has been made under that Act.

PART 2

Land over 0.4 hectares on certain islands

Arapawa Island
Best Island
Great Barrier Island
Great Mercury Island
Jackett Island
Kawau Island
Matakana Island
Mayor Island
Motiti Island
Motuhoa Island
Rakino Island
Rangiwaea Island
Slipper Island
Stewart Island
Waiheke Island
Whanganui Island.

PART 3

Other land

In this Part,—

``Land'' does not include land specified in Part 1 or Part 2:

``Land value'' means the land value of the land determined in accordance with the Valuation of Land Act 1951 and shown in the district valuation roll for the district in which the land is situated.

Any parcel of land (including any adjacent or contiguous parcel of land) the land value of which exceeds $10,000,000 or such greater amount as may, from time to time, be prescribed.

Any parcel of land (including any adjacent or contiguous parcel of land) that is, or any estate or interest in which is, owned or controlled directly or indirectly by a company or body corporate the land value of which exceeds $10,000,000 or such greater amount as may, from time to time, be prescribed.

APPENDIX 2: DETAILS OF OTHER REGULATORY PROTECTIONS

Corporate governance and other business behaviour

Commerce Act 1986

This Act is to promote competition in markets for the long term benefit of consumers. It outlines what constitutes restrictive trade practices, price fixing and taking advantage of market power. Enforcement and remedies for such behaviour are outlined. It sets up the Commerce Commission to rule on certain situations.

Companies Act 1993

This Act provides for the basic requirements for the incorporation, organisation, and operation of companies, including the responsibility of directors, the relationship with shareholders and creditors and rules for winding up or liquidating a company. In particular, the Companies Act prohibits certain persons from being a director of a company.

Corporations (Investigation and Management) Act 1989

The general objects of this Act are—
(a) To confer powers on the Registrar of Companies to obtain information concerning, and to investigate the affairs of, corporations to which this Act applies:
(b) In the case of a corporation that is, or may be, operating fraudulently or recklessly, to limit or prevent—
(i) The risk of further deterioration of the financial affairs of that corporation; and
(ii) The carrying out, or the effects of, any fraudulent act or activity:
(c) In the case of a corporation referred to in section 4(b) of this Act, to preserve the interests of its members or creditors or beneficiaries or the public interest:
(d) To provide for the affairs of corporations to which this Act applies to be dealt with in a more orderly and expeditious way.

The Act also enables the Registrar of Companies to determine whether corporations are or may be operating fraudulently or recklessly and enables action to be taken in relation to such corporations in appropriate cases.

Terrorism Suppression Act 2002

The Act prohibits New Zealanders from dealing in assets of persons who have been listed by the Government as terrorists and also prohibits the provision of funds or financial services to such persons. It is an offence under the Act to

- directly or indirectly, wilfully and without lawful justification or reasonable excuse, provide or collect funds intending or knowing that they are to be used in order to carry out terrorist acts.
- deal with any property knowing that the property is property owned or controlled by an entity designated under this Act as a terrorist entity

Financial Transactions (Reporting) Act 1996

This Act requires financial institutions to verify who they are dealing with and to report suspicious transaction. In particular, where the institution has reasonable grounds to suspect—
(i) That a transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence; or
(ii) That a transaction is or may be relevant to the enforcement of the Proceeds of Crime Act 1991,—
the institution is required to report the transaction to the Commissioner of Police.

Fair Trading Act 1986

This Act prohibits certain conduct and practices in trade, to provide for the disclosure of consumer information relating to the supply of goods and services and to promote product safety

Securities Act 1978

The Securities Act restricts offers of securities to the public in New Zealand – requires disclosure of certain information on the offer of securities to the public.

Consumer Guarantees Act 1993

This Act provides rights of redress against suppliers and manufacturers in respect of any failure of goods or services to comply with guarantees given by suppliers and manufacturers. Under this Act, manufacturers, suppliers and importers guarantee their products as a matter of law.

Securities Markets Act 1988

This Act requires an investor who acquires 5% or more of a company listed on the New Zealand Stock Exchange to disclose information to the Exchange about the investor, and about some subsequent shareholding changes.

Proceeds of Crime Act 1991

This Act provides for confiscation of the proceeds of serious criminal offending. It only relates to overseas offending where an overseas court requests assistance of New Zealand in confiscating New Zealand property bought with proceeds of crime committed offshore.

Land Use

Historic Places Act

Heritage covenants

The Historic Places Trust may negotiate and agree with the owner of any historic place, historic area, wahi tapu, or wahi tapu area for a heritage covenant to provide for the protection, conservation, and maintenance of that place, area, or wahi tapu. A heritage covenant can have effect in perpetuity or for a specified term. These are voluntary

agreements. The Trust assists the owner in executing the covenant and pays the legal costs. There are less than 100 heritage covenants currently in force.

The register

There is a register of historic places kept under the Historic Places Act. The purposes of the Register are:
(a) To inform members of the public about historic places, historic areas, wahi tapu, and wahi tapu areas:
(b) To notify owners of historic places, historic areas, wahi tapu, and wahi tapu areas where necessary for the purposes of this Act:
(c) To assist historic places, historic areas, wahi tapu, and wahi tapu areas to be protected under the Resource Management Act 1991.

Registration is primarily an indication of heritage value, and does not offer protection in itself. Interim registration offers protection, which ceases on registration becoming final. Offences all relate to properties under the control of or owned by the Historic Places Trust.

Archaeological sites

The Historic Places Act makes it unlawful for any person to destroy, damage or modify the whole or any part of an archaeological site without the prior authority of Trust. The Act's definition of 'archaeological site' includes any place in New Zealand 'that was associated with human activity that occurred before 1900', and 'is or may be able though investigation by archaeological methods to provide evidence relating to the history of New Zealand'.

RMA

The Resource Management Act is the primary piece of legislation controlling the effects of the use of resources, including land, in New Zealand. The purpose of that Act is to promote the sustainable management of natural and physical resources.

Those exercising functions and powers under the Act are required to recognise and provide for the following matters of national importance:

(a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
(f) the protection of historic heritage from inappropriate subdivision, use, and development.

Antiquities Act

The purpose of the Antiquities Act 1975 is to provide for better protection of antiquities; establish and record the ownership of Maori artefacts and to control the sale of artefacts within New Zealand. In summary, the Act:

- presumes Crown ownership of all Mäori artefacts found after 1 April 1976. These may not be bought and sold, and individuals or institutions, (commonly museums, increasingly iwi authorities), may only be granted custody, not ownership;
- provides for actual or traditional ownership, rightful possession or custody of any artefact to be claimed by application to the Maori Land Court;
- requires dealers trading in artefacts found before 1 April 1976 to be licensed. Anyone wishing to buy Maori artefacts must be registered as a collector; and
- gives the Minister power to grant or decline permission to export any antiquity from New Zealand, according to criteria in the Act.

The Antiquities Act 1975 is currently been reviewed. The proposed Antiquities Amendment Bill, if enacted, will improve the regulatory framework and operation of the Act, however, it will not increase significantly the Act's purview, functions or powers.

National Parks Act

This Act has the purpose of preserving in perpetuity as national parks, for their intrinsic worth and for the benefit, use, and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality, ecological systems, or natural features so beautiful, unique, or scientifically important that their preservation is in the national interest.

National parks are administered so that—
(a) They are preserved as far as possible in their natural state:
(b) the native plants and animals of the parks are preserved and introduced plants and animals exterminated:
(c) Sites and objects of archaeological and historical interest are preserved:
(d) Their value as soil, water, and forest conservation areas are maintained:
(e) Subject to the above considerations, the public have free access to the parks, in order to receive "…the inspiration, enjoyment, recreation, and other benefits that may be derived from mountains, forests, sounds, seacoasts, lakes, rivers, and other natural features".

Conservation Act

The Conservation Act is probably the most important piece of legislation, after the RMA, for protecting land in New Zealand. This is because it is under the Conservation Act that the government holds land for conservation purposes. The general purpose of the Act is providing, for the preservation and management for the benefit and enjoyment of the public, areas of New Zealand possessing—

(i) Recreational use or potential, whether active or passive; or
(ii) Wildlife; or
(iii) Indigenous flora or fauna; or
(iv) Environmental and landscape amenity or interest; or

(v) Natural, scenic, historic, cultural, archaeological, biological, geological, scientific, educational, community, or other special features or value:

One of the functions of the Department of Conservation is to advocate the conservation of natural and historic resources generally:

Further, there is scope under the Conservation Act for voluntary agreements to be entered into between the Minister and land owners. These include conservation covenants and Nga Whenua Rahui Kawenata (under either the Conservation Act or the Reserves Act), and protected private land agreements under the Reserves Act.

QE II National Trust Act 1977

Under this Act the QE II National Trust has power to enter into covenants with land owners to protect open space (defined in the Act as "any area of land or body of water that serves to preserve or to facilitate the preservation of any landscape of aesthetic, cultural, recreational, scenic, scientific, or social interest or value".

Crown Pastoral Land Act

Under this Act the Minister of Lands has to consent to the transfer of a crown pastoral lease. Because a pastoral lease only gives pasturing rights, he also has to consent to any change in use of the land.

In decisions about use of Crown pastoral leased land the following is relevant:
The desirability of protecting the inherent values of the land concerned (other than attributes and characteristics of a recreational value only), and in particular the inherent values of indigenous plants and animals, and natural ecosystems and landscapes.