

## **Sensitive**

CAB Min (04) 22/6

Review of the Overseas Investment Act

On 5 July 2004, following reference from the Cabinet Policy Committee (POL), Cabinet:

### **Purpose of the Act**

- 1 agreed that the purpose of the Overseas Investment Act 1973 (the Act) is to acknowledge that it is a privilege for overseas persons to own sensitive New Zealand assets, and to impose conditions on them in respect of those assets;

### **Coverage**

- 2 agreed that:
  - 2.1 the threshold for business assets be increased from \$50 million to \$100 million;
  - 2.2 the present coverage be retained on fishing quota;
  - 2.3 the regime encompass all foreshore and seabed land irrespective of the size of the parcel;
  - 2.4 the present coverage be retained on the following land:
    - 2.4.1 land over 0.2 hectares which includes or adjoins the foreshore or seabed;
    - 2.4.2 land over 0.4 hectares that includes or adjoins any lake (the bed of which exceeds 8 hectares);
    - 2.4.3 land over 0.4 hectares on specified islands;
    - 2.4.4 any land on other islands;
    - 2.4.5 land over 0.4 hectares which includes or adjoins land over 0.4 hectares which is held for conservation purposes under the Conservation Act 1987;
    - 2.4.6 land over 0.4 hectares which is provided as a reserve, a public park, for recreation purposes, or as a private open space, or is proposed for any such purpose;
    - 2.4.7 land over 0.4 hectares adjoining coastal and lake front reserves and other margins that make up the Queen's Chain, where the reserves are over 0.4 hectares;
    - 2.4.8 land over 0.4 hectares adjoining scientific, scenic, historic and nature reserves over 0.4 hectares that are classified under the Reserves Act 1977 and that are administered by the Department of Conservation;

- 2.4.9 land over 0.4 hectares adjoining any regional park under the Local Government Act 1974, or over 0.4 hectares adjoining any of the parks or reserves listed in a schedule to the Overseas Investment Act (see also paragraphs 3 and 4 below);
- 2.4.10 land over 0.4 hectares that is subject to any heritage order, or with Historic Places Act registration, or in respect of which a proposal for registration has been made; and
- 2.4.11 land over 0.4 hectares adjoining land over 0.4 hectares that is subject to any heritage order, or with Historic Places Act registration, or in respect of which a proposal for registration has been made; and
- 2.4.12 any rural land over 5 hectares;
- 2.5 coverage over land adjoining the following land be removed:
  - 2.5.1 land over 0.4 hectares which is provided as a reserve, a public park, for recreation purposes, or as a private open space, or is proposed for any such purpose; other than the categories referred to in paragraphs 2.4.7, 2.4.8 and 2.4.9;
- 2.6 the Act not apply to land that is covered only because its unimproved land value is over \$10 million;
- 2.7 the legislation confirm that 'land' refers to land the transfer of which would be governed by the Land Transfer Act 1952 or Te Ture Whenua Maori Act 1993 or any preceding or subsequent legislation;
- 3 noted that currently only the Wellington and Auckland regional councils have regional parks;
- 4 directed officials from Treasury, in consultation with relevant regional and territorial authorities, Local Government New Zealand, the Department of Internal Affairs and the Department of Conservation, to develop options for identifying those parks and reserves to be listed in a schedule to the Overseas Investment Act (see paragraph 2.4.9 above), as well as options for revising that list in the future;
- 5 directed officials from Treasury and Te Puni Kokiri (TPK) to discuss with the Maori Land Court the options for dealing with Maori land, and the implications of those options for the Court;
- 6 invited the Minister of Finance to report to POL by 28 July 2004 on the issues in paragraphs 4 and 5;
- 7 directed officials from Treasury, TPK and the Ministry of Fisheries to develop details of how aquaculture can be covered in the regime, and report to POL at the conclusion of current consultation with the aquaculture industry on the Crown's proposals;

## **Criteria**

- 8 agreed that the criteria for non-land business assets and fishing quota remain the same;
- 9 agreed that other matters as may be prescribed in regulation be able to be taken into account;
- 10 agreed that the criteria for land be expanded to take account of:
  - 10.1 natural heritage; or
  - 10.2 historic heritage; or
  - 10.3 walking access; or
  - 10.4 economic development; and
  - 10.5 proposed residency of the applicant;
- 11 agreed that the relevant Minister(s) be able to decide which of the criteria in paragraph 10 are appropriate for the land in question;
- 12 agreed that, in cases of purchase of rural land over 5 hectares, purchasers be required to show substantial and identifiable benefit, reflecting the criteria referred to in paragraph 10;
- 13 agreed that applications for consent contain statements supporting compliance with relevant criteria and be signed by the applicant or, in the case of a corporate entity, by an officer of the entity;

#### **Crown purchase of foreshore and seabed**

- 14 agreed that the Act provide for a right of first refusal in favour of the Crown in respect of any foreshore or seabed land subject to the Act;
- 15 directed officials to report to the Minister of Finance by the end of July 2004 on proposals for a right of first refusal in respect of foreshore and seabed land, and the possibility of compulsory acquisition of foreshore strips;

#### **Monitoring and enforcement**

- 16 agreed that for all assets, reasonable compliance with representations made and plans submitted in support of an application be made conditions of consent;
- 17 agreed that in the event of non-compliance for reasons beyond the control of the applicant, Ministers and the regulator should have the ability to vary the conditions of consent, as well as some discretion in their approach to enforcement;
- 18 agreed that investors be required to confirm their compliance with conditions of consent on a regular basis at the discretion of Ministers and the regulator;
- 19 agreed that the regulator have power to impose administrative penalties for

failure to supply the required confirmation referred to in paragraph 18;

- 20 agreed that the courts be given power to impose fines commensurate with any gain made in relation to the land by the person in breach or with the cost of remedying any breach, as appropriate;
- 21 agreed that other enforcement mechanisms, including civil penalties, charging orders, power for the court to order that certain action be taken, and requiring consent holders to maintain an address for service in New Zealand, be implemented by legislation where appropriate;
- 22 agreed that the monitoring and enforcement provisions in respect of fishing quota contained in the Fisheries Act 1996 be aligned with the revised provisions of the Overseas Investment Act;

### **Organisational design**

- 23 agreed that Ministers, being the Minister of Finance in respect of business applications, the Ministers of Finance and Land Information in respect of land applications, and the Ministers of Finance and Fisheries in respect of fishing quota applications, retain all decision-making rights in relation to applications under the Act, but that Ministers have the power to delegate the power to make decisions to the regulator;
- 24 agreed that the Overseas Investment Commission (OTC) be disestablished and the functions of the regulator required by the Act be performed by a government department;
- 25 agreed that the functions be performed within Land Information New Zealand (LINZ);
- 26 agreed that the Minister of Finance be the Minister responsible for the Act, and the Treasury be responsible for policy advice relating to the Act;
- 27 agreed that the regulator be expected to consult the Department of Conservation, the Historic Places Trust, the Ministry of Agriculture and Forestry, the Ministry of Fisheries and any land access agency, as appropriate, in making its recommendations;
- 28 agreed that the regulator will have the function of providing information to overseas persons about overseas investment, natural and historic heritage and access laws, and to the public about the operation of the regime;

### **Financial implications**

- 29 noted that there are likely to be transitional costs of approximately \$1 million for the 2004/05 fiscal year and that these will be appropriated through Vote: Land Information, as will ongoing costs of the regime;
- 30 directed officials to work on an appropriate cost recovery framework for the revised regime;

### **Legislation, regulations and guidelines**

- 31 noted that the Overseas Investment Amendment Bill currently holds priority 4 (to be referred to select committee in 2004) on the 2004 legislation programme;
- 32 invited the Minister of Finance to issue drafting instructions to Parliamentary Counsel on the basis for drafting of a new Overseas Investment Act, but with provisions of the 1973 and amending Acts, unless specifically amended by these proposals, being carried over into the new Act;
- 33 agreed that the Act provide power for regulations to be made by Order in Council exempting certain transactions or classes of transaction, or persons or classes of persons from the application of the Act;
- 34 agreed that the regulator be required, in consultation with relevant Ministers, to issue guidelines describing for example, operational policy on the advertising requirements for farmland, monitoring, consultation, and levels of information to be provided;
- 35 authorised the Minister of Finance to take decisions on technical issues that might arise in the course of drafting;
- 36 noted that if issues of substance arise in the course of drafting, including on organisational design, these will be referred back to POL by the Minister of Finance, following consultation with other relevant Ministers;

#### **International obligations**

- 37 noted that the changes proposed are considered defensible under New Zealand's international treaty obligations;
- 38 invited the Minister of Foreign Affairs and Trade to consider reviewing New Zealand's reservations to the OECD Code of Liberalisation of Capital Movements, and to report to the Cabinet External Relations and Defence Committee once the legislation resulting from this review has been passed;

#### **Transitional issues**

- 39 agreed that at the time the proposed changes are announced, the Overseas Investment Regulations 1995 be amended, and a new directive letter be issued, that conform to the proposals set out in the Bill;
- 40 agreed that the current OIC staff will be offered employment by LINZ and that technical redundancy provisions be included in the legislation;
- 41 directed LINZ to work with Treasury and the Reserve Bank on an implementation plan for the transitional period;
- 42 directed officials to report to the Ministers of Finance and Land Information by the end of July 2004 on transitional issues including on organisational design and personnel issues;

#### **Consultation**

43 noted that the Minister of Finance indicates that the paper will be the subject of consultation with government caucuses and other parliamentary parties.

Secretary

Reference: CAB (04) 319; POL Min (04) 15/3; Additional recommendations tabled by the Minister of Finance

**Secretary's Note:** *This minute has been amended to include a new paragraph 2.4.11, to clarify a technical aspect of Cabinet's decisions.*