



# Cabinet Policy Committee

## Minute of Decision

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POL Min (04) 23/8

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John

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## Review of the Overseas Investment Act: Enforcement Issues and Foreign Investment in Fishing Quota

On 6 October 2004 the Cabinet Policy Committee:

### Background

- 1 **noted** that in August 2004 the Cabinet Policy Committee, during consideration of the review of the Overseas Investment Act 1973, invited the Minister of Finance to report on issues related to monitoring and enforcement of the overseas investment regime, fishing quota issues and any further policy issues that are raised during the legislation drafting process [POL Min (04) 19/5];

### Enforcement provisions in the Overseas Investment Act

- 2 **agreed** that the maximum level of fines in the Overseas Investment Act 1973 (the Act) be increased from \$100,000 for bodies corporate to \$300,000, and that this new level should apply to both individuals and bodies corporate;
- 3 **agreed** that the Court, on application by the regulator, be able to impose civil penalties payable to the government or any other person specified by the Court for a failure by a consent holder to comply with any conditions of the consent;
- 4 **agreed** that the maximum for civil penalties under the Act be set at the highest of:
  - 4.1 \$300,000; or
  - 4.2 any gain by the consent holder in relation to the property to which the consent refers; or
  - 4.3 the cost of remedying the breach of condition; or
  - 4.4 the loss suffered due to the breach of condition;
- 5 **agreed** that the regulator will have the ability to impose administrative penalties for failure to supply any information or declaration reasonably required up to a limit of \$500;
- 6 **agreed** that the existing power of the Court to order the disposal of property where an overseas person is in breach of the Act should be retained with the following changes:

- 6.1 the two year time limit should be removed;
  - 6.2 the Court should be authorised to control the sales process;
  - 6.3 the penalty should apply to failure to comply with the Act as well as the current wording “in contravention” of the Act.
- 7 **agreed** that the Court should be able to order that a mortgage be registered against any land of a consent holder for the purpose of securing any amount owed to the government or any other person under the conditions of a consent, or payment of a fine or penalty including interest on any such amount;
- 8 **agreed** that the regulator, after obtaining a warrant from a judge, should be able to search premises and seize property for the purpose of ascertaining whether a person is contravening the Act;
- 9 **agreed** that, instead of having to prove that there was an “intent to deceive” on the part of an overseas person who has provided false information or made false or misleading statements, the regulator will only have to prove that the overseas person *knowingly or recklessly* provided false information or made false or misleading statements;

#### **Aligning the Fisheries Act and the overseas investment regime;**

- 10 **agreed** that the wording of the Fisheries Act 1996 be changed to align with the requirements to obtain permission in the Act;
- 11 **agreed** that overseas persons who currently legally hold shares in fishing quota-owning companies will not be required to apply for permission to hold the existing level of quota as a result of the change agreed in paragraph 10 above, but any increase in their shareholding in future will require permission;
- 12 **agreed** that the existing split of responsibility between the overseas investment regulator (responsible for enforcing all breaches under the Act except for breaches relating to ownership of fishing quota) and the Chief Executive of Fisheries (responsible for taking action against overseas persons holding fishing quota without permission) should be retained and clarified if necessary in legislation;

#### **Other policy issues arising from drafting**

- 13 **noted** that the Minister of Finance has delegated authority to deal with technical issues that arise during the drafting process, but if there are any substantive issues that require approval during the drafting process officials will report to the Cabinet Policy Committee;

## Consultation

- 14 noted that the Acting Minister of Finance indicates that consultation will be required with the government caucuses and other parties represented in Parliament.



Fleur Gaston  
Secretary

Reference: POL (04) 271

### Present:

Rt Hon Helen Clark (Chair)  
Hon Jim Anderton  
Hon Steve Maharey  
Hon Phil Goff  
Hon Jim Sutton  
Hon Trevor Mallard  
Hon Pete Hodgson  
Hon Margaret Wilson  
Hon Parekura Horomia  
Hon Mark Burton  
Hon Paul Swain  
Hon Marian Hobbs  
Hon David Benson-Pope  
Hon Harry Duynhoven

### Officials present from:

Office of the Prime Minister  
Department of the Prime Minister and Cabinet

### Copies to:

Cabinet Policy Committee  
Chief Executive, DPMC  
  Director PAG, DPMC  
Secretary to the Treasury  
Chief Executive, Ministry of Economic Development  
Secretary for Justice  
  Secretary of Foreign Affairs and Trade  
Director-General, Ministry of Agriculture and Forestry (Agriculture)  
  Director-General, Ministry of Agriculture and Forestry (Forestry)  
  Director-General, Ministry of Agriculture and Forestry (Rural Affairs)  
State Services Commissioner  
Chief Executive, Ministry of Economic Development, (Commerce)  
Chief Executive, Te Puni Kokiri  
Minister of Immigration  
  Secretary of Labour (Immigration)  
Minister for Land Information  
  Chief Executive, Land Information New Zealand (LINZ)  
Minister of Conservation  
  Director-General of Conservation  
  Secretary for Internal Affairs (Local Government)  
Minister of Fisheries  
  Chief Executive, Ministry of Fisheries  
Chief Parliamentary Counsel

