THE TREASURY
Kaitohutohu Kaupapa Rawa

Treasury Report: Review of the Overseas Investment Commission: Terms of Reference

Date:	5 November 2003	**Treasury Priority:**	**High**
Security Level:	SENSITIVE	**Report No:**	T2003/1863

Action Sought

	Action Sought	Deadline
Minister of Finance	**Read** the attached report and provide comments to officials **Sign** the attached letters to relevant Ministers on their participation in the review **Refer** a copy of this report to your media staff	None
Associate Minister of Finance (Hon Trevor Mallard)	Note	None
Associate Minister of Finance (Hon David Cunliffe)	Note	None

Contact for Telephone Discussion (if required)

<table>
<tr><th>Name</th><th>Position</th><th>Telephone</th><th></th><th>1st Contact</th></tr>
<tr><td>Heather Kirkham</td><td>Senior Analyst, International Economics</td><td>471 5062 (wk)</td><td rowspan="2">Home numbers withheld under s 9(2)(a) – protect the privacy of natural persons</td><td>✓</td></tr>
<tr><td>Rosemary Cook</td><td>Principal Advisor</td><td>471 5942 (wk)</td><td></td></tr>
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Enclosure: **Yes**

5 November 2003 IM-5-3-1

Treasury Report: Review of the Overseas Investment Commission: Terms of Reference

Executive Summary

Cabinet agreed that the Minister of Finance would review the Overseas Investment Commission (OIC) (Cab Min (03) 35/3B refers).

The review spans both the coverage and the organisational design of the OIC. The draft terms of reference for your approval focus on:

- Coverage of the regime, including scope of the assets covered;
- Flexibility of criteria, and comparison with other regimes internationally;
- Organisational design; and
- Other matters.

To deliver on these terms of reference and develop legislation to be in force by late 2004 or early 2005, the policy development will need to be largely completed by January 2004. This allows for one month consultation with Ministers and departments before submitting a paper to POL and Cabinet in March.

A Cabinet decision in March will allow legislation to be drafted for introduction to the House in June 2004. An Information Paper prepared by the Treasury could be used over this period to provide detail for a public announcement, and as a basis for discussions with significant interest groups (environment, Maori, business). Wider public consultation would be limited to the select committee process scheduled for July to December.

There are a number of risks around the proposed process. First, the timetable is very tight. We will manage this with your office to try to reduce bottlenecks around key times. Secondly, the long period between the direction of any changes being known and the new legislation coming into force provides an opportunity for foreign investors to take advantage of areas where rules will be tightened. There are a number of alternative approaches to deal with this, including updating the Ministerial Directive letter to the OIC.

Recommended Action

We recommend that you:

a **agree** the terms of reference of the review of the Overseas Investment Commission;

Agree/disagree.

b **agree** the policy and consultation timetable for the review;

Agree/disagree.

c **note** the risks to the timetable;

d **sign** the attached letters to relevant Ministers on their participation in the review.

e **refer** a copy of this report to your media staff.

Rosemary Cook
Principal Advisor
for Secretary of the Treasury

Media staff

Referred: Yes/No

Hon Dr Michael Cullen
Minister of Finance

Treasury Report: **Review of the Overseas Investment Commission: Terms of Reference**

Purpose of Report

1. Cabinet agreed that the Minister of Finance would review the Overseas Investment Commission (OIC) (Cab Min (03) 35/3B refers). This report seeks your agreement to terms of reference and timetable for the review.

Analysis

1 Terms of Reference

2. Based on the Cabinet minute, we propose the following terms of reference:

Purpose

The purpose of the review is two fold.

First, to ensure that the overseas investment regime focuses on those assets of critical interest, such as certain sensitive land areas, natural resources (eg fish) and assets with historical or cultural significance (eg heritage buildings).

Second, to further reduce compliance costs in areas where this is feasible to ensure the government's global connectedness objectives are achieved.

Coverage

a. Consider what assets are of critical interest and should be subject to scrutiny by the regime, and any assets that are currently subject to scrutiny unnecessarily, while taking account of New Zealand's international treaty obligations.

b. Consider the necessary criteria to ensure appropriate protection for the different asset classes to be covered by the regime.

c. Consider whether any flexibility in the coverage and the criteria is appropriate, in order for changes to reflect any shifting priorities that may occur over time.

c. Consider the appropriate level of monitoring and follow up on approvals

d. Consider the appropriate balance between legislation and regulation.

e. Consider how New Zealand's regime compares with other foreign investment regimes.

f. Consider what, if any, measures should be introduced to mitigate the risks around the transitional period between announcement of the new regime and the legislation being in force.

Organisational design

g. Consider the appropriate organisational design (e.g. stand alone or attached to a department) for the delivery of the developed foreign investment screening regime.

h. Consider the appropriate governance arrangements of the OIC.

General

i. Other matters considered appropriate, with the agreement of the Minister of Finance.

2. Policy and organisational design work stream

3. The timetable (below) assumes the legislation is passed at the end of 2004 with a short period between the Act being passed and coming into force.

4. To meet this timeline the policy work on coverage and organisational design will need to be largely completed by the end of January. This allows one month of consultation with departments and Ministers before a paper is introduced to POL and then Cabinet in March.

5. The timetable is reasonably tight with little allowance for slippage. Time can be freed up by:

   - Moving back the June introduction of the legislation into the House.

   - Reducing the consultation period in February.

   - Reducing the drafting period for the legislation. The time required depends on the complexity of the changes (ie small changes to the existing Act, or a complete redraft).

6. We will consider the extent to which the objectives of the foreign investment regime can be met with small changes to the existing legislation. If this is possible, it may reduce the time required for policy development and drafting.

7. The timetable also only allows for one report to be put up to Cabinet. An early report to Cabinet in February could be added into the timetable to provide an update on the policy development process.

8. Your views on the draft timetable are sought.

3 Timetable

	Nov	*Dec*	*Jan*	*Feb*	*Mar*	*Apr*	*May*	*June*	*July - Dec*	*'05*
Policy and organisational design work stream		Policy development: incl coverage, organisational design, & evaluation of regulation / legislation balance		Pre-Cabinet Consultation	Early: POL End: Cabinet	Mid: Legislation to PCO for drafting (6 weeks)	Late: Bill to LEG	Legislation introduced	Select committee Passed around Dec 04. Regulations drafted Regulations passed	In force early '05
Communication strategy		Public announcement on proposed changes, Nov: Ministers & Departments updated and asked for comments Core group consulted: MED, RB, OIC and SSC.		Reference group consulted: Immigration, Conservation, Land Information, Fisheries, MFAT, Te Puni Kokiri, INZ, MAF, and DPMC.	After Cabinet: Possible release of information document	Engagement with significant groups; eg environment Maori business			Wider public consultation through the select committee process	
Other business		Holiday period		Budget bilaterals Costello visit	POL and Cabinet busy with budget papers + Easter on 11 April			Budget legislation?		

4. Consultation and communication

9. The table above also outlines a suggested consultation and communication timetable. During the policy development stage (November to January) it is proposed that a core group will provide input and comment. This group would include officials from Treasury, the Reserve Bank the Ministry of Economic Development and the Overseas Investment Commission. The State Services Commission will be consulted on the organisational design part of the review.

10. The core group is relatively small reflecting the short time available for policy development and that it falls over the holiday period, which will make wider consultation more difficult.

11. Treasury plans to meet with a wider group of agencies over the coming week to outline the timetable and when we will engage with them next. We will also seek their ideas and experiences regarding foreign investment as an initial input. This reference group will include those listed in the Cabinet Minute; Immigration, Conservation and Land Information, as well as Fisheries, Department of Prime Minister and Cabinet, Te Puni Kokiri, Foreign Affairs and Trade, Agriculture and Forestry, and Investment New Zealand.

12. Throughout this stage we will keep your office informed of progress and will use your scheduled Fiscal Issues meetings with Treasury to update you as appropriate.

13. February will be used to seek the views of that wider group of Ministers and departments based on the developed policy approach.

14. We will also liaise with Parliamentary Council Office at this stage to help minimise future drafting problems. We will submit a paper to LEG requesting a priority in the legislation programme, when invited to do so by Cabinet Office Circular.

15. Following Cabinet approval (timetabled for late March) on any changes to the regime, views of the general public could be sought. To focus comments on the particular proposal it is suggested that Treasury release an Information Paper that summarises the proposed approach and the policy reasons for it.

16. The comments and thoughts of specific interest groups will be sought over April / May as the legislation is being drafted. These interest groups are likely to include cover Maori, environmental and business interests.

17. The select committee process offers another vehicle for wide public consultation.

18. Attached to this report are letters for you to send to relevant Ministers outlining the timetable and your expectations of their involvement and that of their departments.

5. Risks

19. Three risks around the timetable and proposed process are:

    - Policy analysis or decision making processes are slower than required, leading to the timetable not being met.

    - Gaming by investors when the direction of the proposed changes is known, but are not yet in force.

20. The timetable is fairly tight, with little allowance for slippage. The timetable highlights a number of other processes and events that may create pressure points at key times. Early awareness of these will help avoid bottlenecks. We will work with your office to manage this.

21. There is a long period (from March until early 2005) when the direction of the revised regime is known but the legislation is not in force. This provides an opportunity for foreign investors to take advantage of areas where rules will be tightened. **[Sentence deleted under section 9(2)(f)(iv) - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]**

22. We will undertake further work to assess the appropriate method for reducing this risk.

6. Regulations and the timing of the Act coming into force

23. To further reduce the opportunity to exploit differences between the current and the future legislation it is optimal to reduce the time between the Act being passed and it coming into force.

24. New regulations can only be passed after the legislation is passed. If the regulations are drafted then this could be almost immediately. Typically regulations require 28 days to take effect after being passed. However, the 28 day rule can be waived in some situations, and existing regulations may be able to be modified to give similar effect over the transition period.

25. The regulations can be drafted when the Bill is at select committee. The background work on which aspects of the regime should be covered by regulations and which by legislation will need to have been undertaken during the policy development stage. We will continue to work on this.