

Treasury Report: Update on overseas investment review

Date:	28 May 2009	Report No:	T2009/1334
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Action Sought

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Minister of Finance (Hon Bill English)	Note that initial improvements are close to completion and the legislative review is underway	4 June 2009
Associate Minister of Finance (Hon Simon Power)	Note that initial improvements are close to completion and the legislative review is underway	None
Minister for Land Information (Hon Dr Richard Worth)	Note that initial improvements are close to completion and the legislative review is underway	4 June 2009

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact	
[withheld – privacy]	Analyst, International	[withheld – privacy]	[withheld – privacy]	✓
Nic Blakeley	Senior Analyst, International	[withheld – privacy]	[withheld – privacy]	

Minister of Finance's Office Actions (if required)

Forward this report to the Minister for Land Information after signing.

Enclosure: No

Treasury Report: Update on overseas investment review

1. This report updates you on progress with the overseas investment review in lieu of the Minister for Land Information's meeting with officials on 26 May.

Most initial improvements are close to completion.

Issue	Progress
Directive letter	The directive letter is with Crown Law for final approval. The final letter will be ready for our next meeting with Hon Dr Worth on Tuesday 9 June and will be sent to the Minister of Finance for signature afterwards.
Minor regulatory amendments	These amendments have been sent to you for submission to the Cabinet Legislative Committee on Thursday 4 June.
Overseas investment fees	The Cabinet paper that proposes fee changes will be submitted to you and the Officials Economic Growth and Infrastructure Committee on Friday 29 May.
Calculation of land area	The OIO is in discussion with Crown Law regarding the basis on which they calculate land area. This issue is complex and likely to take some time to resolve.
Exemptions for property developers	The OIO advises that proposals that would exempt property developers from the requirement to offer farmland on the open market require significantly more work and cannot be resolved in the short term. As a result we recommend combining this issue into the legislative review where we will consider whether this requirement should be in place at all.

The legislative review is well underway...

2. Phase one of the Policy Document has now been circulated to other government agencies and the Technical Reference Group for comment by 4 June. This document was provided to you with an earlier report and covers the problem definition for the review and possible changes to the purpose of the Act, the definition of an overseas person and policy changes by regulation (T2009/1147 refers).
3. The second phase of the document is under development. At our next meeting with Hon Dr Worth we propose to discuss the thresholds and tests applied to investments in significant business assets and test possible approaches to strategic assets.
4. We are drafting a separate report on the issue of strategic assets. This will be with you by Friday 5 June for discussion at our next meeting with Hon Dr Worth on Tuesday 9 June. The report will seek your views on how you wish to consider the issue of strategic assets and seek early feedback on possible options to protect these assets.

...and is likely to recommend a range of improvements.

5. The table below provides an early indication of possible recommendations from the legislative review. The recommendations are indicative only and subject to change based on feedback from you, government agencies, and the technical reference group. However we thought it was useful at this stage to give you a sense of where the review may get to overall. The two areas that are likely to attract the most attention are (i) the hurdle for sensitive land, and (ii) strategic assets.

Area	Issue	Possible recommendation?
Purpose of the Act	Does the current purpose adequately recognise the importance of overseas investment for economic growth?	A more balanced purpose that reflects both economic growth and protection for sensitive assets.
Definition of overseas person	Is the current definition capturing people and businesses that shouldn't be treated as overseas persons?	A slightly narrower scope, excluding businesses with minority widely-held foreign ownership, and excluding New Zealand residents.
Policy change by regulation	Should the current ability to add factors for consideration by regulation be retained?	Either removal of this ability, or a more restricted ability (e.g. not applicable to applications already lodged).
Business assets: scope	Is the scope of business assets screened correctly targeting significant business assets?	A higher screening threshold from the current \$100 million, and possibly some more minor changes.
Business assets: hurdle	Are the current criteria for assessing business applications adequate?	No changes.
Sensitive land: scope	Is the scope of land screened correctly targeting land New Zealanders consider sensitive?	Some relatively small changes under consideration. A significant increase in area thresholds is required to make a large impact.
Sensitive land: hurdle	Is the net benefit test necessary to address New Zealanders' concerns?	Either a lower hurdle under a net benefit test, or a more objective-based test.
Increases in ownership or control once approved	Should investors require consent to increase their level of ownership or control once they have approval to a lower level?	Either a lower hurdle or exempting such transactions from the requirement to seek consent.
Foreigner to foreigner transactions	Should assets that are already in foreign ownership require approval to be sold to another foreign investor?	Possibly a lower hurdle that does not require net benefits to be shown.
Strategic Assets	Should explicit protection be provided for strategic assets, and if so, how?	Not yet certain.
Sovereign Wealth Funds	Should sovereign wealth funds be subject to any differential treatment?	Not yet certain.

Timeline

6. At our last meeting with you we agreed to provide an indicative timeline for the next phases of the review. A high level timeline is outlined in the table below.

Month	Action
June	Policy finalisation.
July	Cabinet policy decisions on review recommendations.
August	Legislative drafting.
September	First reading and select committee process.
October	
November	
December	Second and third readings.

7. This is an ambitious timeline that we consider is the most rapid timeframe possible to progress the legislation. As such there are a number of risks with this timeline including; the priority given to any legislation by Cabinet; the time taken to draft legislation; the time taken by the Select Committee to consider the bill and any delays associated with the second and third readings.

Recommended Action

We recommend that you:

- a **note** that initial improvements are close to completion and the legislative review is underway; and
- b **note** that at the next meeting with the Minister for Land Information, scheduled for Tuesday 9 June, we propose discussing business screening and strategic assets.

Nic Blakeley

Senior Analyst - International
for Secretary to the Treasury

Hon Bill English
Minister of Finance

Hon Dr Richard Worth
Minister for Land Information