The Treasury

Overseas Investment Act Submissions Information Release

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Reform of the Overseas Investment Act 2005: Facilitating productive investment that supports New Zealanders' wellbeing

Submission Form

Details of submitter

For individuals

Name:	
Contact number:	
Contact email:	
Region/country:	

For organisations

Name of organisation:	New Zealand Winegrowers Inc
Contact person:	Jeffrey Clarke
Contact person's position in organisation:	General Manager Advocacy
Contact number:	[23] [26]
Contact email:	[23] [26]
Region/country:	Wellington

Confidentiality request

If you want all or part of your submission to be kept confidential and not uploaded onto the Treasury's website, please mark the applicable box below:

Entire submission confidential	
Part of submission confidential[1]	X
Name only confidential	

[1] The text that you do not want published must be clearly marked in the submission.

Responses to consultation questions

1. Sensitive adjoining land (p. 20)

NZW has no comment to make on this question.

NOTE: For all subsequent questions in this template response form, NZW has removed questions for which it does not wish to make a comment.

2. Leases of sensitive land that require screening (p. 25)

Introduction

New Zealand Winegrowers (**NZW**) provides strategic leadership for the wine industry and is the body that represents the interests of all of New Zealand's grape growers and wine makers. Established in 2002, NZW has approximately 1,500 members. New Zealand is the only major wine producing country to have a single, unified body that represents all grape growers and winemakers.

The wine industry is continuing to experience growth, both in plantings and production and in export revenue. The wine industry has total sales of approximately $2.3 billion per annum and employs over 7,000 permanent employees.

The wine industry is predominantly regionally based, with grape growing, wine production and sales taking place in our wine regions, the majority of which are outside of the major metropolitan areas. The ability of our members to attract domestic and overseas investment capital for expansion has historically underpinned our industry's success and is a continuing characteristic today. Over the past few decades the industry has grown from being almost entirely domestic, to now exporting around 80% of its production (and growing). The access to international distribution channels provided by overseas investment partners has been central to that growth.

Overseas Investment is a vital part of the wine industry's success

NZW strongly believes that diverse business models create industry-wide benefits. Very significant investments of capital have been required to transform the New Zealand wine industry from being a small, domestically focussed production industry to being an industry with both a vigorous domestic production and tourism sector, plus a successful international export focus in which wine is now ranked as the 5th most valuable New Zealand export good[2].

This industry investment has predominantly come from New Zealand sources, but a significant amount has also come from overseas investors. NZW does not consider either domestic or overseas investment sources to be inherently better or worse than the other. We note that to achieve their success, many New Zealand wine businesses have made and continue to make very significant investments offshore. NZW therefore considers it important that all countries have effective, efficient and fair overseas investment regimes.

The New Zealand industry's largest players - those producing over four million litres of wine a year - have helped build New Zealand wine's international presence and reputation, bring scale and expertise to the industry, and helped build industry resilience. Some of these larger players are foreign owned.

[2] Overseas Merchandise Statistics, April 2019, Statistics NZ.

NZW does not hold precise data on the overseas ownership of vineyards and wineries. However based on analysis prepared for a recent industry strategic review by PricewaterhoseCoopers, we estimate that overseas owned entities represent around 1/3 of the industry[3]. In addition to the access to capital, expertise, IP, distribution and markets that overseas investors can provide to New Zealand businesses, a recent NZW analysis of grape sales data revealed that on average foreign owned wineries were paying 8% more per tonne for the grapes they bought than NZ owned wineries, boosting growers' returns.

Foreign owned entitles bring investment into New Zealand through increasing planted vine area and by creating new employment. Overseas investors also provide technology transfer into New Zealand and the exchange of global knowledge.

Overseas investors have particularly assisted in developing new routes to market and by leveraging their own access to in-market distribution. By doing this, they effectively forge a path into a market and its consumers that can then be followed by other New Zealand exporters, benefitting the entire industry. For example, although the effect is difficult to quantify with any precision, we can confidently say that the doubling in New Zealand exports to USA since 2012[4] would not have happened without the access into the complex three-tier US alcohol beverage import-distribution-retail system that has been enabled by US investment in the NZ wine industry.

Sauvignon Blanc grown in Marlborough has been hugely successful for the New Zealand wine industry. New Zealand has established a premium position in this wine variety that is popular with consumers world-wide. The distinctive profile of Marlborough Sauvignon Blanc means it is widely recognised and is a strong favourite in our key markets of the US, UK and Australia. This popularity is turn attracts interest from overseas wine businesses keen to add a New Zealand Sauvignon Blanc to their portfolio. Investors are also attracted to other distinctive and diverse wine styles with a strong following, such as Central Otago Pinot Noir.

Understanding the New Zealand market

Key statistics are:

- The total producing area of vineyards is 38,680 ha. This is growing at around 1-2% per year
- The total producing area by variety is:
  - White wine – 30,921 ha
  - Red wine – 7,758 ha
- There are 2019 vineyards in NZ, with an average area of 19 ha
- Marlborough remains the largest producing region at 26,850 ha - 69% of total producing area
- Sauvignon Blanc remains the most significant variety at 24,037 ha - 62% of total producing area
- Pinot Noir remains the most significant red variety at 5,625 ha - 15% of total producing area
- 55% of total production area is Marlborough Sauvignon Blanc at 21,415 ha

The grape growing industry is dominated by small growers who grow grapes under contract for sale to wineries who produce the wine. Industry plantings started increasing rapidly in the 1990's. As a result there is now an aging population of grape growers who own vineyards looking to either exit, or retain their land under a different commercial model (such as offering it for lease, or by *profit a prendre*).

[3] PricewaterhouseCoopers Strategic Review of New Zealand Wine Industry, 2018
[4] FOB value of exports to USA grew 108% between June 2012 and March 2019.

The challenge for OIA regime is to enable a broad range of viable options for New Zealand land owners to sell, lease or otherwise deal with their land without unnecessary expense or uncertainty, while balancing the ability of wine producers to have certainty of returns and investment.

Leasing Sensitive Land - exemption from screening

We expect that a number of winegrowers will make individual submissions on the proposals. We expect those submissions will emphasise the importance of certainty in the OIA process – particularly the need for a clear timeframe for investment and decision making.

With respect to the threshold for exemption from screening, the current three year threshold would not normally cover the time period required to bring a new vineyard into production. Vines typically need to be ordered from nurseries at least 18 months prior to planting. A vineyard planted on bare land requires at least three years to come into full production; starting with around 30% of expected yield in season two, with 100% of expected yield not expected until years 3 or 4. This typical estimation also doesn't allow for seasonal variations or extreme weather events which can slow maturity, or for delays between acquisition and planting.

Currently applicants to lease sensitive land (for three years or more) go through the same process as they would to buy the land outright. NZW agrees with the comment in the paper that the current system for sensitive leases can lead to perverse incentives to purchase land, given the time and costs involved.

We support extending the screening threshold to 10 years or beyond (see further response, below). As mentioned above, three years is a very short timeframe in the life of a vineyard. Increasing the screening threshold could facilitate the granting of leases (as opposed to sales). This could increase the options for owners who wish to retain ownership of their land (for example in retirement), and could soften the impact of the recent removal of the ability to grant *profit a prendre* arrangements.

We also note that longer-term arrangements provide more commercial certainty for all parties. This certainty is important for ongoing decision-making around continued investment in the vineyards – for example, decisions to replant to meet changing market demands. Exempting longer-term leases from the screening regime would be a signal that New Zealand welcomes longer term investment in New Zealand business, which is likely to creating more employment and support for the regional communities in which they are based.

Do you consider that raising the threshold for exemption from screening to leases with terms of 10 years or more is appropriate, and:

- if so, why do you consider this the appropriate threshold?
- if not, what alternative threshold would you support, and why?

Although we support raising the threshold for exemption from screening to 10 years in preference to a threshold of 3 years, we consider that 10 years is too short, and believe consideration should be given to a screening threshold of 30 years for vineyard land. The mismatch between an OIA exemption from screening threshold and the period of investment return on a vineyard is likely to skew potential investors towards purchasing land, rather than leasing.

Establishing a vineyard is capital intensive, and involves the planting of an asset that will have a core productive life, once planted, in the order of 20-30 years. An investor deciding invest in a vineyard, or a block of land to be developed into vineyard, is primarily interested in security of grape supply on the back of which to build markets for the resulting wine.

A three year lease provides virtually no certainty of supply, so the investor would almost certainly be pushed to purchase the land. A 10 year lease, while providing greater certainty, still remains a relatively short period in relation to the return on the capital investment required to develop the vineyard – so again would be factored into any decision whether to buy or lease. A 20-30 year lease, because it matches the likely productive life of the vineyard, would be less likely to skew the decision-making process.

8. Assessing investors' character and capacity (p. 51)

Do you agree that there is a problem, and

- if so, has this paper described it accurately? Can you tell us about your experience, including when it happened?
- if not, do you support the existing arrangements. If so, why?

Some NZW winegrower members with complex international holding structures have highlighted challenges in the character and capacity assessment process that arise for them. Those members will highlight those concerns in their own submissions, which we commend to your attention.

9. Screening the impacts of investment (p. 60)

Do you agree that there is a problem, and

- if so, has this paper described it accurately? Can you tell us about your experience, including when it happened?
- if not, do you support the existing arrangements. If so, why?

NZW recognises the important role that Ministerial decision making plays in the OIA regime. However, any discretion needs to be balanced against benefit to New Zealand of having an investment regime that provides applicants with certainty around preparing an application in good faith and at considerable cost, and around what they will be required to establish in order to have their application granted.

NZW would be concerned at any increase in discretion that is not tightly and precisely defined, and therefore relatively certain. For example, the proposal to include a formulation of a national interest discretion – if introduced – should be framed in the narrowest possible way so as to give certainty to investors. We have had the benefit of reading the submission of Business New Zealand, and support their submission on this point at paragraphs 3.43-3.52. In particular, we would be worried if it was effectively open to Ministerial discretion to define "national interest" to be whatever the Minister of the day considered it to be.

10. Water extraction and the Act (p. 82)

Do you agree that there is a problem, and

- if so, has this paper described it accurately? Can you tell us about your experience, including when it happened?
- if not, do you support the existing arrangements. If so, why?

NZW Does not consider that the OIA is the appropriate place to address specific environmental or resource "issues of the day" – in this case, water export. Water use (or all kinds) will only grow in importance as an issue for the New Zealand primary sector. It should be addressed within legislation as a resource management issue considering the rights and interests of all resource users, not as an investment issue targeted at one particular category of investors.

15. Timeframes for decisions (p. 98)

Do you agree that there is a problem, and

- if so, has this paper described it accurately? Can you tell us about your experience, including when it happened?
- if not, do you support the existing arrangements. If so, why?

NZW is attracted to the proposal for set timeframes for the processing and decision on applications. This framework drives a culture of accountability and responsiveness. In conjunction with such timeframes, it is important that the Overseas Investment Office is appropriately resourced to be able to consistently meet those timeframes.

Experience with the Overseas Investment Office

If you have any feedback on your operational experience with the Overseas Investment Office, please share it with us below so they can use it in their continuous improvement programme:

NZW has recently had a useful meeting with the OIO to explore opportunities to provide educational opportunities to OIO staff to increase their knowledge of the wine industry. We have also identified opportunities to share financial reporting and forecasting. NZW's preference is to work in partnership with Government and on a no surprises basis and so welcomes this approach from OIO, as we believe that an informed OIO will lead to better decision making.

Other comments on the regime?

If you have any other comments on New Zealand's overseas investment regime, please share them with us below:

NZW has no comments to make on this question.