The Treasury

Overseas Investment Act Submissions Information Release

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Submission on
Reform of the Overseas Investment Act

24 May 2019

Introduction

1 We appreciate the opportunity to comment on the Consultation Document *Reform of the Overseas Investment Act 2005* (**Document**) released April 2019.

2 Our submission focusses on the areas we consider could have the greatest benefit to New Zealand's capital markets by reducing the regulatory burden associated with the OIA regime. We also support the options proposed for addressing the issues with the screening of leases of sensitive land.

New Zealand Listed Entities

3 The Document recognises the current Act captures listed companies which are not under overseas control, subjecting them to unnecessary and growth inhibiting restrictions and costs.

4 The Document proposes four options, three of which raise the threshold for consent. The fourth, keeps the current definition but allows locally incorporated entities to apply for exemption.

5 In our view these options will not resolve the current issues:

- Raising the threshold will continue to capture companies with overseas shareholders who do not have control (e.g. 25 x 2% holders).
- They do not recognise the practical realities that shareholders change daily, making it impossible for listed issuers to confirm their ownership, or which proportion is held overseas, in real time.
- None of the options are simple or easy to apply for listed issuers or current and prospective investors.

6 We also note standalone ownership restrictions limiting foreign control often apply in respect of listed issuers holding critical infrastructure (e.g. Chorus and NZX Limited).

7 Our preferred approach is for NZX listed entities to be captured where:

- an overseas person (alone or together with associates) holds 25% or more of the issuer's voting rights, and
- the overseas person has obtained consent to hold 25% or more.

8 This approach:

- excludes listed entities not controlled by overseas persons from the regulatory burden and cost of the OIA regime, and
- provides listed issuers and prospective investors with regulatory certainty as to whether or not the regime applies.

9 If that option is not acceptable, our preference is to combine options 1 and 2 so a listed company is only an overseas person if both limbs are satisfied. However, even when combined, we do not think these options address the issues acknowledged in the Document:

- A number of listed companies (particularly larger ones with significant indexed fund shareholders) are likely to have more than 49% overseas ownership.
- Given the relatively concentrated nature of shareholdings on the NZX, having an interest of 5% or more is not uncommon.
- Notwithstanding that listed issuers will know who their 5%+ shareholders are via SPH notices, they will not know the exact holding of those shareholders on a daily basis (given less than 1% changes do not require disclosure). There is also a delay between a change in holding and disclosure. This means an issuer could be an overseas person one day but not the next (imposing unnecessary investment risk premiums).

10 In our view option 3 is likely to be unworkable because the concept of "economic returns flow" will be too difficult to assess in practice as it requires a detailed understanding of underlying beneficial ownership.

Tipping Point for Consent

11 The Document notes the tipping point regime can impose consent requirements on overseas persons making small investments that give them no control. Tipping point consent can also arise where new shares are issued by an entity holding sensitive assets (requiring OIO consent).

12 This issue falls away under our suggested approach above.