The Treasury

Overseas Investment Act Submissions Information Release

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[23] 9(2)(a) - to protect the privacy of natural persons, including deceased people

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Kia ora,

I am a regular citizen and to be honest I had great difficult understanding much of the discussion document. It was complex and technical and, frankly, overwhelming - which I guess is not surprising. However, I did want to express my views as I think these reforms are very important. So rather than answer your specific queries (as I don't have the technical background), I've just written what I think and trust that you can get the gist of it. Here goes…

Water should have the status of 'sensitive assets' or 'strategic asset' or similar. Water rights should not be going into foreign ownership for bottling or similar export. I appreciate that water rights are tied to a farming operation or other business that foreigner interests may purchase, but that would not take water out of the country and would be subject to other regulations. Options 2 seems to the better choice as it applies to water extraction, not just water bottling of bulk export. My concerns about water bottling extend to environmental effects beyond NZ such as plastic bottle waste and greenhouse gas emissions associated with transport - we should not be contributing to these problems.

Decision makers should definitely be able to consider risks to national security and to distinguish between non-government investors and government investors (which undoubtedly present a whole other set of risks) and to consider these risks below the monetary threshold. They should be able to deny foreign investment that creates a risks of substantial economic harms, e.g. critical infrastructure. So I would support adding additional tests of risk of harm or contrary to national interest.

We need to be able to consider both the nature of the investor and the investment.

Maori cultural values and Te Tiriti in general needs to be a very large factor in these considerations. Therefore, I favour either Option 2 or 3. As regards Option 3, I'm thinking of the walking track that was cut into Te Mata without permission - would a foreign investor be able to do that when a Kiwi could not? That surely has affected 'Maori cultural values relating to physical characteristics of sensitive land".

Where the current system causes problems for Kiwisaver funds (or similar entities that are technically foreign but have substantial Kiwi interest) or foreign investors who have previously been approved and they are making small changes that don't really affect control, it makes sense to eliminate these technical issues that were not the intension of the Act and instead focus on high-risk transactions.

With regards to the screening tests, I feel 'substantial harm' (identified by the security services) is way too high a bar and would prefer 'significant harm' or 'more than insignificant'. It's sounds like that standard would only apply to something like the current 5G/Huawei controversy. I would keep the 'substantial and identifiable' benefit test on sensitive land and include the power to assess 'higher risk' applications for sensitive land and significant business assets. I support a 'national interest test' applied to all transactions and the additional 'call in' power for any transaction where necessary to protect NZ's security of public order and require mandatory notification. In other words, I would dramatically strengthen the ability of decision makers to refuse investment that may harm NZ even if it offers benefits.

For the counterfactual test, I prefer Option C as this require the genuine marketing testing showing there is no NZ interest.

Regarding the tax questions, I like Options 1 and 2 as tax compliance history is something decision makers should include in their judgment of whether the investor (individual or entity) will behave with good character and in a way that benefits NZ. I'm shocked that the benefit to NZ test only applies to sensitive land transactions and not significant business assets. This seems another way to unfairly advantage foreign ownership of NZ businesses.

For “Special land provisions” it seems that Options 3 & 4 are best as they simplify transfer of and access to Crown land.

Regarding farmland advertising, Option 2 seems odd to me. The vendor may have reasons for not wanting to advertise, but I would think the preference for keeping farmland in NZ control should prevail. Therefore, Option 1 requiring advertising is preferable.

For time-line deadline, I do not like Option 1 and much prefer Option 2 with the ability to extend. The ability to process applications within a time limit will depend on adequate staffing (which under some governments may not be the situation). Option 2 matched deadlines to likely risk of the different types of transactions and allowing the extension gives more time to make sure a good decision is ultimately made. As for when the timeframes commence, Sub-Option C seems more beneficial to both the applicant and the OIO.

It doesn’t seem to be in here, but I would require periodic reviews (say every 5 years) of granted foreign purchases to ensure compliance with any requirements (such as natural restoration projects) have actually been done and penalties (forced sale or even forfeiture to the Crown) for non-compliance.

Also missing is any mention of the word “climate” and so there is no consideration of Climate Change. The criteria should incorporated in all legislation from now on. Given our obligations under the Paris Accord and the Government’s goal of to be carbon neutral by 2050, foreign investment should be weighed by the criteria of whether the investment will help or hinder our achieving these goals. Keep in mind that international shipping will one day be added to the GHG calculations.

Foreign investment should be about creating new assets/companies/productivity. Instead it is often about buying pre-existing assets - often in temporary distress such as Westland Dairy currently. Instead, I would prefer the Government help good companies like Westland Dairy through their temporary problems, rather than see more good Kiwi assets go into foreign control (and often vertical integration).

In conclusion, it is not a level playing field and foreign investors have advantages over domestic investors. This fact can adversely affect our economy and society. Our leaders need to have to power to protect Aotearoa in those circumstances. We need to be able to approve foreign investment that truly benefits us and deny that which doesn’t.

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