

The Treasury

Reform of the Overseas Investment Act Information Release

July 2020

This document has been proactively released by the Treasury on the Treasury website at <https://treasury.govt.nz/publications/information-release/phase-2-overseas-investment-act-reform>

Information Withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act).

Where this is the case, the relevant sections of the Act that would apply have been identified.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to sections of the Act under which information has been withheld:

- [1] 6(a) - to avoid prejudice to the security or defence of New Zealand or the international relations of the government
- [2] 6(b)(i) - to avoid prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of any other country or any agency of such a Government
- [4] 6(c) - to avoid prejudice to the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [29] 9(2)(d) - to avoid prejudice to the substantial economic interests of New Zealand
- [31] 9(2)(f)(ii) - to maintain the current constitutional conventions protecting collective and individual ministerial responsibility
- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [36] 9(2)(h) - to maintain legal professional privilege
- [37] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

Where information has been withheld, a numbered reference to the applicable section of the Act has been made, as listed above. For example, a [23] appearing where information has been withheld in a release document refers to section 9(2)(a).

Copyright and Licensing

Cabinet material and advice to Ministers from the Treasury and other public service departments are © **Crown copyright** but are licensed for re-use under **Creative Commons Attribution 4.0 International (CC BY 4.0)** [<https://creativecommons.org/licenses/by/4.0/>].

For material created by other parties, copyright is held by them and they must be consulted on the licensing terms that they apply to their material.

Accessibility

The Treasury can provide an alternate HTML version of this material if requested. Please cite this document's title or PDF file name when you email a request to information@treasury.govt.nz.

Reference: T2019/2665 IM-5-3-8-2

Date: 30 August 2019

To: Associate Minister of Finance (Hon David Parker)

Deadline: None

Aide Memoire: Financial Implications Associated with Proposed Reform of the Overseas Investment Act

The purpose of this aide memoire is to:

- inform you of timing of advice on financial implications associated with proposed changes to the Overseas Investment Act (the Act);
- discuss the process to seek funding for these financial implications; and
- recommend you meet with the Minister of Finance in the week commencing 9 September to discuss the process for seeking that funding.

Background

Treasury is currently leading a second phase of reforms to the Act. These reforms include:

- improving the consent framework to simplify the process for most transactions;
- introducing a national interest test and call in power to manage possible foreign interference risks;
- minor changes to strengthen and clarify the criteria for consent; and
- removing lower risk transactions from screening.

You are scheduled to take a paper to Cabinet seeking agreement to the reforms in mid-October 2019. The Terms of Reference for the reform note the Government's intention to enact by mid-2020. This requires legislation to be introduced by April 2020.

Advice on financial implications to be provided in mid-September

Treasury is working with affected agencies to cost the implementation and ongoing operating costs associated with the reform. Agencies affected by the reform include:

- The Overseas Investment Office, which administers New Zealand's overseas investment laws.
- The security agencies (NZSIS and GCSB), who will be required to input security/intelligence assessments as part of the national interest test and call in power.
- Possibly, the Ministry of Business, Innovation and Employment/Ministry of Defence/or another 'specialist' agency that may need to provide advice on a

- specific transaction under the national interest test or call in power (for example, Ministry of Culture and Heritage on a proposed media transaction), or
- Inland Revenue if a new tax component is introduced to the screening process.

You are also due to receive advice on the host agency for the call in power in early September. There would also be financial implications for the host agency, and these will be included in the costings.

The costings will be included in the Cabinet paper, however the figures will be indicative and require further refinement. This is due to the limited time between you taking decisions on policy matters that affect costings (for example, the host agency for the call in power), and the date you need the draft Cabinet paper in order to undertake consultation with coalition partners.

We will provide you advice on the quantum of the costs, uncertainty around the estimates, and outline other related issues (like fees) that require further consideration in the Treasury Report containing the draft Cabinet paper. You are scheduled to receive this report on 19 September).

Following the Cabinet paper further advice will be provided on the components of the reform package (including the call in) which could be cost recovered from fees, and which components could be Crown funded.

Process to seeking funding for the financial implications

We recommend you meet with the Minister of Finance in the week of 9 September to discuss a process for funding the reform and test the Minister of Finance's appetite for establishing, via the October 2019 Cabinet paper, a tagged contingency for the estimated fiscal costs of the reform via an out-of-cycle funding request (either through drawing down on the between-Budget contingency and/or a pre-commitment against Budget 2020).

Alternatively, the other option is to seek in-principle policy decisions, subject to funding being agreed through the Budget 2020 initiatives process.

At this stage, we see the out-of-cycle funding request as having most merit as:

- (1) An out-of-cycle funding request would allow you to progress the reform in accordance with your desire to introduce legislation in April 2020, and would provide agencies with certainty of funding when policy decisions are taken. However, this would not provide an opportunity for the Minister of Finance to weigh the relative priority of this reform package against other Government priorities as part of Budget 2020.
- (2) Seeking Cabinet agreement to in-principle policy decisions, subject to Budget 2020 funding, may constrain the Government's ability to make public announcements about the reform after Cabinet decisions are made in October. In-principle policy decisions may also compromise your ability to enact this

parliamentary term because introducing legislation in April will publicly commit the Government to the proposed reform before funding is confirmed.

We note that the Treasury has two distinct roles with respect to this reform: i) policy advice (led by the International team) and ii) advice in our standard Vote advisory role. Should this meeting go ahead, Treasury (in both capacities) would provide advice on indicative costings and funding options to you and the Minister of Finance to support the meeting.

Danni Thian, Senior Analyst, International, [39]

Thomas Parry, Manager, International, [39]