

# The Treasury

## Reform of the Overseas Investment Act Information Release

July 2020

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- [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

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## Treasury Report: Overseas Investment Amendment Bill: Approval for Introduction

<b>Date:</b>	20 February 2020	<b>Report No:</b>	T2020/95
		<b>File Number:</b>	IM-5-3-8 (Overseas Investment Amendment Bill 2020)

### Action Sought

	Action Sought	Deadline
Associate Minister of Finance (Hon David Parker)	<p><b>Provide feedback</b> on the drafts of the Overseas Investment Amendment Bill (Annex 2) and the paper for the Cabinet Legislation Committee seeking approval to introduce the Bill (Annex 1)</p> <p><b>Note</b> the attached documents for supporting engagement through the parliamentary process</p>	24 February 2020

### Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Chris Nees	Principal Advisor, International	[39]	[23] ✓
[39]	[39]	[39]	N/A

### Actions for the Minister's Office Staff

**Return** the signed report to Treasury by 24 February 2020.

Note any feedback on the quality of the report

**Enclosure:** Yes (attached)

# Treasury Report: Overseas Investment Amendment Bill: Approval for Introduction

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## Purpose of Report

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1. This Report seeks your:
  - feedback on the draft paper (Annex 1) for the Cabinet Legislation Committee to consider (the LEG paper);
  - agreement to proceed with a schedule for passing the Bill this parliamentary period, including requiring the Finance and Expenditure Committee to report back early, and to a staged timeline for the Bill's entry into force;
  - feedback on the draft of the Bill (Annex 2); and
  - agreement to further changes to the national security and public order risk management sections of the Bill, following further consultation with subject matter experts.
2. A draft Departmental Disclosure Statement and updated sections of the regulatory impact statement are attached as Annexes 3 and 4 respectively for your information.

## Cabinet Legislation Committee paper

### Approval to introduce the Bill

3. We are seeking your feedback on the LEG paper, which seeks approval to introduce the Bill implementing the phase two reforms. The LEG paper is consistent with standard practice and notes that the Bill complies with all relevant requirements and guidelines. Notably, the LEG paper details the key policy decisions that were made subsequent to Cabinet's consideration of the reforms.

### Setting a Select Committee report back date will enable passage in this parliamentary term

4. We are seeking your agreement to the schedule in the timetable below, which allows the Bill to be passed within this parliamentary term. This will require the Finance and Expenditure Committee (FEC) to report back to the House of Representatives by 23 June 2020. A debateable motion will have to be put forward at first reading to require the early report back.

<b>Milestone</b>	<b>Dates (2020)</b>
LEG Committee consideration	17 March
Cabinet Consideration	23 March
Introduction to Parliament	24 March
First Reading	2 April
FEC Committee reports back to the House of Representatives	By 23 June
Second reading	2 July
Third reading	By 30 July
Royal Assent	August

5. The timetable above will result in a shortened Select Committee phase of 11 weeks. The exact timing of this part of the process will be determined by the Chair and the Committee, but will mean that each part is significantly compressed. We recommend that you have an early discussion with the Chair of the Committee so that they can begin the design of this process.

We also recommend that you confirm with the Leader of the House that the programme is achievable.

6. LINZ will need to begin implementation planning now to be ready for provisions to come into force in the three stages recommended below (paragraph 9). Your agreement to the timing in the table above will provide sufficient certainty for LINZ to move forward with implementation planning. Beginning implementation now will mean that LINZ starts to incur additional costs and further worsen the memorandum account position. While LINZ will incur these costs before the Bill passes, the alternative is that implementation takes longer.

### **We recommend bringing the Bill into force in three stages**

7. We recommend that most of the Bill should come into force 365 days after the date Royal assent because it gives the Overseas Investment Office (the OIO) and investors time to prepare for the changes. However, changes which do not rely on amendments to the regulations, including changes which reduce the number of transactions screened, can come into force within 6 weeks following the date of Royal assent.
8. A second stage of changes could come into effect once relevant regulations have been promulgated. These changes include the amendments to the special land procedures and exemptions for shareholder creep and fundamentally New Zealand entities. We recommend allowing these changes to be brought into effect earlier by Order in Council if the regulations have been promulgated. To allow time for drafting and consultation on the regulations, we expect that they could be promulgated around six months after the date of Royal assent.
9. We recommend that the third stage, the remainder of the Bill (including the national interest test and call in power), enter into force consistent with the standard timeframe, 365 days after the date of Royal assent.
10. These timeframes are included in the LEG paper, and relevant provisions will be included in the Bill.

### **We are seeking your feedback on the draft of the Bill and your agreement to make changes following further consultation**

11. Annex 2 is the Overseas Investment Act 2005 (as at 22 November 2019) marked up to show all changes proposed to be made by the Bill. The formal amending Bill will be prepared once the drafting of the amendments is largely finalised.
12. Most of the drafting of the amendments has been finalised, subject to your feedback and minor technical and typographical changes before lodgement with LEG. The special land and commencement provisions remain subject to ongoing drafting discussions with LINZ to ensure their workability. In addition we are consulting with subject matter experts on the statutory management section and to the automatic condition for national security and public order (NSPO) risks. These are discussed further below.
13. As a result of feedback from agencies, we also recommend clarification to some of the definitions of Critical National Infrastructure.

### **Statutory management and financial system stability**

14. We are seeking your agreement to amend the statutory management provisions of the Bill to help maintain confidence in the financial system where organisations regulated by the Reserve Bank of New Zealand are placed into statutory management. [29]

[29]

The Bill does not currently make any special provision for these organisations or the maintenance of financial market stability.

15. There are two programmes of work under way that deal with statutory management of banks and 'systemically important financial institutions or market infrastructure' (FMI). The review of the Reserve Bank of New Zealand Act 1989 [33]

Also, a Financial Market Infrastructures Bill is before the Select Committee, which would create a new statutory management power for FMIs.

16. [33]

we recommend including clauses in the Bill to help maintain financial system stability when a statutory manager is appointed for registered banks, licensed insurers, covered bond SPVs and systemically important financial institutions and market infrastructure. We recommend that the Bill should:

- allow statutory managers to act to manage NSPO risks and maintain financial system stability;
- empower the OIO and Reserve Bank of New Zealand to provide joint directions to and receive reports from statutory managers; and
- grant statutory managers the powers in the Reserve Bank of New Zealand Act, which are tailored to statutory management of these types of organisations.

17. We can further amend the clauses through the Departmental report at the Select Committee stage if necessary following consultation. [33]

### **Automatic condition for national security and public order risk management**

18. In December, you decided that enforcement tools (including, injunctive powers, court disposal and statutory management) for NSPO risks will be available where an investor has breached a condition imposed on the investment or breached an undertaking made in their application for consent or notification (T2019/3412 refers). The Parliamentary Counsel Office has advised that an automatic condition will be the most appropriate means for making these powers available when necessary.
19. The automatic condition would apply to all transactions subject to the national interest test or call-in power. This condition prohibits overseas persons from taking certain non-commercial actions which give rise to significant NSPO risks. A draft of the automatic condition is included in the Bill. We are currently consulting on this condition to ensure that it manages NSPO risks without overly restricting overseas investors from taking actions for legitimate commercial purposes.

### **Clarifying the high-level definitions of Critical National Infrastructure**

20. Cabinet agreed the Bill will specify high-level definitions of the types of Critical National Infrastructure (CNI) that can be subject to the call in power. Initial definitions were outlined in Appendix 2 of the Cabinet paper. These definitions will be refined in regulations (which you recently made decisions about - T2019/4139 refers).
21. Through the process of drafting the Bill, we have identified that the high-level definitions of CNI could be more precisely defined to remove doubt about what particular assets are intended to be captured at the margins.

These high-level definitions are set out in section 6 under as part of the definition of strategically important business. The changes are underlined below, and are consistent with the decisions you have recently made on the definitions of CNI:

- A business that generates, distributes, meters, or aggregates electricity of a class set out in regulation. This clarifies that the broader electricity distribution network is captured.
- A business that is involved in the provision of telecommunications infrastructure or services of a class set out in regulations. This provides a more technology neutral definition that has greater flexibility to adapt to future technological and market changes as telecommunications providers have less reliance on physical infrastructure.

### **The Treasury has consulted with other agencies on the Bill**

22. The following agencies and entities have been consulted on the draft Bill and their feedback has been incorporated: The Ministry for Primary Industries, the Ministry of Justice, the Department of Conservation, the Ministry for the Environment, Inland Revenue Department, the Ministry of Foreign Affairs, New Zealand Trade and Enterprise, Land Information New Zealand, Te Puni Kōkiri, the Ministry of Housing and Urban Development, the Ministry of Business, Innovation and Employment, the Ministry of Culture and Heritage, Te Arawhiti, and the Reserve Bank of New Zealand. The Department of the Prime Minister and Cabinet has been informed.

### **Materials to support engagement through the parliamentary process**

#### **The Departmental Disclosure Statement is attached for your information**

23. A draft Department Disclosure Statement is attached as Annex 3 for your information. It sets out the key quality assurance steps taken in developing the Bill and explains significant new and amended powers. Notably, the Department Disclosure Statement covers in detail the changes to strengthen the enforcement powers and the new powers for managing NSPO risks as these have significant effects on rights and obligations under the Act.

#### **The RIS has been updated to reflect decisions made after Cabinet consideration**

24. The updated sections of the RIS have been attached as Annex 4 for your information. These sections cover:
  - Compensating third parties who have their registered interests removed from the title, when the Crown acquires special land, where those interests were registered on the title of the special land prior to it being purchased by the overseas investor.
  - In applying the good character component of the investor test, allowing the decision-maker to consider tax defaults of NZ\$5 million or more, certain tax-related penalties and allegations, settlement agreements made with the OIO and contraventions of the principal Act.
  - Empowering the OIO to gather and share information related to national security and public order risks. The OIO will be able to require a person to provide information when investigating whether an investment in a non-notified call in transaction poses significant NSPO risks.

The OIO will also be able to share information with other agencies (and vice-versa) to aid in assessing national security and public order risks for transactions screened under the national interest test or subject to the call in power.

25. Note that there has been no change to the assessment of the RIS by the Regulatory Quality Team at the Treasury, which is that the RIS partially meets the quality assurance criteria. The key reason for this assessment remains that the proposal regarding moving the rural land directive to primary legislation did not meet the consultation requirements. This proposal was not consulted on publicly, or with key non-Crown stakeholders, including Māori. The proposals regarding special land acquisition also contain some features that have not been subject to public consultation.
26. The RIS, including these updated sections, will be available when the Bill is introduced. Redactions will be made to the RIS consistently with the grounds for withholding information in the Official Information Act 1982.

## Next steps

27. Subject to your agreement with the timelines in this Report and any feedback you provide, the next steps will be:

<b>Milestone</b>	<b>Dates (2020)</b>
LEG paper and Bill provided to your office for Ministerial consultation	27 February
Bill provided to the Ministry of Justice for vetting against the New Zealand Bill of Rights Act	27 February
Treasury Report seeking your agreement to indicative timeframes for process across the Act.	27 February
LEG paper is lodged for consideration by LEG	12 March

## Recommended Action

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We recommend that you:

### Cabinet Legislation Committee Paper

- a **provide feedback** on the draft paper (Annex 1) for the Cabinet Legislation Committee (the LEG paper), seeking approval to introduce the Overseas Investment Amendment Bill (the Bill).

*Feedback provided.*

- b **agree** to the schedule set out in paragraph 4 of this report for introduction and consideration of the Bill, which will allow passage in this parliamentary term.

*Agree/disagree.*

- c **note** that this timetable will enable LINZ to begin planning for implementation of the Bill and will require them to start incurring additional costs for this process.

*Noted.*

- d **agree** that a debateable motion should be put forward at first reading requiring the Finance and Expenditure Committee to report back by 23 June. This will allow for the Bill to be passed in this parliamentary term.

*Agree/disagree.*

- e **agree** that the Bill should enter into force in three stages so that:

1. within 6 weeks following the date of Royal assent, changes which do not require new Regulations, and that reduce the number of transactions screened or fix ineffective provisions will be brought into effect;
2. around six months after the day of Royal assent, changes which reduce the number of transactions screened, but are contingent on new regulatory provisions will be brought into effect; and
3. 365 days after the day of Royal assent, the remaining reforms (including the call in power and national interest test) will be brought into effect, allowing the regulator and investors time to prepare.

*Agree/disagree.*

### Draft Overseas Investment Amendment Bill

- f **note** that the attached Bill incorporates feedback from relevant agencies, and officials continue to make minor drafting changes.

*Noted.*

- g **provide feedback** on the draft of the Bill (Annex 2).

*Feedback provided.*

- h **note** that the Bill contains an automatic condition which would prohibit investors taking actions that would create significant national security and public order risks.

*Noted.*

- i **agree** that, if necessary following further consultation, the Bill should be amended to ensure that this automatic condition enables these risks to be managed effectively without overly restricting actions taken for legitimate commercial purposes.

*Agree/disagree.*

- j **note** that the Bill introduces a power to place corporations under statutory management where other enforcement powers are inadequate for managing significant risks to national security and public order.

*Noted.*

- k **agree** that, to help maintain financial system stability during statutory management, the Overseas Investment Office and the Reserve Bank of New Zealand should provide joint directions to manage financial system stability and national security and public order risks. This will apply when statutory managers are appointed for registered banks, licensed insurers, covered bond SPVs and systemically important financial institutions and market infrastructure. The statutory manager should also have the powers in the Reserve Bank of New Zealand Act, which are tailored to statutory management of these types of organisations.

*Agree/disagree.*

- l **note**, through the drafting process, we have clarified the high-level definitions of electricity and telecommunications businesses for the purposes of the call in power and national interest test, removing doubt about what particular assets are intended to be captured at the margins. These high-level definitions are set out in section 6 under as part of the definition of strategically important business.

*Noted.*

### **Materials to support engagement through the parliamentary process**

- m **note** the attached draft Departmental Disclosure Document and updated sections of the Regulatory Impact Statement which will be used to support engagement throughout the parliamentary process.

*Noted.*

## Next steps

n **note** that copies of the Bill and the LEG paper will be revised to incorporate your feedback and provided to your office on 27 February for consultation with your Ministerial colleagues.

*Noted.*

[39]

Chris Nees  
**Principal Advisor, International**

Hon David Parker  
**Associate Minister of Finance**

## Annex 1: draft Cabinet Legislation Committee paper

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We are seeking your feedback on this paper, which seeks the Cabinet Legislation Committee's approval to introduce the Overseas Investment Amendment Bill.

Chair

Cabinet Legislation Committee

## **Overseas Investment Amendment Bill: Approval for Introduction**

### **Proposal**

1. This paper seeks the Cabinet Legislation Committee's approval for the introduction of the attached Overseas Investment Amendment Bill (the Bill).
2. Consistent with paragraph 2.39 of the Cabinet Manual, I submit this paper with the knowledge and approval of the Minister of Finance.

### **Policy**

3. This Bill will implement the policy decisions made by the Cabinet Economic Development Committee (DEV) on 13 November 2019 to improve the effectiveness and efficiency of the overseas investment screening regime [DEV-19-MIN-0306 refers], having been authorised by Cabinet to have Power to Act on 11 November 2019 [CAB-19-MIN-0562 refers; CAB-19-MIN-0593 confirms].
4. Changes to the overseas investment screening regime require legislative action because screening is governed by the Overseas Investment Act 2005 (the principal Act). [33]

### ***The Bill better balances the advantages and risks in screening overseas investment***

5. New Zealand needs productive overseas investment. Advantages include better access to markets, technology and capital, and, as a result, a more productive economy. However, overseas control or ownership of sensitive and other strategically important assets can result in some risk, and run contrary to this Government's view that there is inherent value in New Zealand ownership of these assets.
6. Our overseas investment regime, as contained in the principal Act, must balance these benefits and risks by ensuring that New Zealand has access to the investment we need, while also ensuring the government has the tools to manage risks associated with that investment.
7. There is good evidence that the regime does not have this balance right. We screen many transactions where there is either little to no risk, or the amount of risk is disproportionate to the time and cost of screening. The regime also has some clear gaps. In particular, there is no ability to consider risks to national security and public order, which makes New Zealand unique among comparable countries.

8. The Bill follows the amendments made in the Overseas Investment Amendment Act 2018 (the amendment Act), which came into effect on 22 October 2018. The amendment Act rationalised the screening regime for forestry assets and certain other profits-à-prendre, and added a general requirement for overseas persons to obtain consent to acquire residential land.
9. Consistent with the principal Act's purpose, "that it is a privilege for overseas persons to own or control sensitive New Zealand assets" and Cabinet's decisions in November 2019, the purpose of the Bill is to:
  - 9.1. enable the Government to effectively manage overseas investment; while
  - 9.2. ensuring that the Act operates efficiently and effectively; and
  - 9.3. supporting overseas investment in productive assets.
10. To achieve these objectives, the Bill will strengthen how the Act manages risk by:
  - 10.1. introducing a national interest test for transactions in strategically important businesses;
  - 10.2. introducing a power to call in transactions that raise national security and public order risks and would not otherwise be subject to screening;
  - 10.3. enabling decision makers to consider both the positive and negative impacts of investments involving water bottling;
  - 10.4. providing better recognition for Māori cultural values, including by taking into account plans to protect or enhance wāhi tūpuna, wāhi tapu areas and Māori reservations;
  - 10.5. taking steps to protect farmland, reflecting its significant economic and cultural importance to New Zealand; and
  - 10.6. strengthening the enforcement provisions.
11. The Bill will also make it easier to make productive investments in New Zealand – simplifying the regime and cutting red tape by:
  - 11.1. simplifying the investor test, allowing investors to get pre-approval and simplifying the process for repeat investors;
  - 11.2. simplifying the benefit to New Zealand test, reducing the 21 narrowly framed factors to 7 less prescriptive factors, and removing the theoretical elements of the test which reduce investor certainty and can slow application processing;
  - 11.3. removing low-risk transactions from screening, including fundamentally New Zealand entities and most investments in land adjacent to sensitive land; and
  - 11.4. introducing timeframes for applications across the Act, consistent with global best practice, to provide more certainty to investors and increase New Zealand's attractiveness as an investment destination.
12. To maintain confidence in the financial system, the provisions for statutory management allow for joint direction of statutory managers when organisations regulated by the Reserve Bank are placed into statutory management, including registered banks, licensed insurers, covered bond SPVs and systemically important financial institutions and market infrastructure.

These provisions will be superseded following the enactment of changes implementing phase 2 of the Reserve Bank of New Zealand review.

13. The Bill is likely to be contentious, with some strong interest groups favouring expanding the scope of the screening regime and others advocating for streamlining it. These strong interests were reflected in the feedback received during public consultation on reform options.

***The Bill implements policy decisions made under delegated authority***

14. The Associate Minister of Finance (Hon David Parker) was authorised by Cabinet to make decisions on any additional policy issues that arose during the drafting of the Act [DEV-19-MIN-0306 refers; CAB-19-MIN-0593 confirms]. The Associate Minister of Finance (Hon David Parker) was also authorised to decide on:
  - 14.1. tax-related matters as part of the screening process in consultation with the Minister of Revenue, the Minister of Finance, the Associate Minister of Finance (Hon Dr Clark), the Minister for Land Information and the Associate Minister of Finance (Hon Jones), and
  - 14.2. which legislation, and agency, should administer riverbed and lakebed and any other design matters which may arise in relation to the special land provisions during the drafting process, in consultation with the Minister for Land Information and the Minister of Conservation.
15. Decisions made under this delegated authority include:
  - 15.1. In applying the good character component of the investor test, allowing the decision-maker to consider tax defaults of NZ\$5 million or more, certain tax-related penalties and allegations, settlement agreements made with the Overseas Investment Office (the OIO) and contraventions of the principal Act.
  - 15.2. Requiring investors to provide certain information about a proposed investment's structure and tax treatment. This information will be used by Inland Revenue for monitoring purposes and will not be considered as part of an application for consent.
  - 15.3. Compensating third parties who have their registered interests removed from the title, when the Crown acquires special land, where those interests were registered on the title of the special land prior to it being purchased by the overseas investor.
  - 15.4. Adjusting the criteria for the Crown to waive its right to acquire special land so that, while the land will only be acquired where there is some amenity or conservation value, the public interest can be balanced against the risks, costs and liability to the Crown arising from maintenance and ensuring public safety can be considered. This will allow the Crown to waive its rights where ownership of the special land will impose significant costs relative to the amenity and environmental values offered.
  - 15.5. Empowering the regulator (the OIO) to gather and share information related to national security and public order risks. The OIO will be able to require a person to provide information if it has reasonable grounds to suspect that an investment is a non-notified voluntary call in transaction which may pose national security or public order risks. The OIO will also be able to share information with other agencies (and vice-versa) to aid in assessing national security and public order risks for transactions screened under the national interest test or subject to the call in power.

16. Under this delegated authority, the Associate Minister of Finance (Hon David Parker) also took a small number of decisions to flesh out Cabinet's earlier policy decisions.

### **Impact analysis**

17. A Regulatory Impact Statement (RIS) was prepared in accordance with the necessary requirements and was submitted at the time approval was sought for the policy relating to the Bill [CAB-19-MIN-0593 refers]. The RIS has been updated to reflect policy decisions made by the Associate Minister of Finance (Hon David Parker) under authorisation from DEV. Updates include the decisions detailed above to:
  - 17.1. allow tax defaults over a threshold and certain tax-related penalties and allegations to be considered in the investor test;
  - 17.2. empower the regulator to gather and share information related to national security and public order risks; and
  - 17.3. compensate third parties who have their registered interests removed from the title when the Crown acquires special land.
18. The Regulatory Quality Team at the Treasury has found that the both the original and updated RIS partially meets the quality assurance criteria. The key reason for the panel's assessment is that the proposal regarding moving the rural land directive to primary legislation do not meet the consultation requirements. This proposal has not been consulted on publicly, or with key non-Crown stakeholders, including Māori. The proposals regarding special land acquisition also contain some features that have not been subject to public consultation.
19. A technical change has been made to make transactions in special land less costly and time-consuming by allowing a memorial to be placed on the title, which the Crown can exercise within 10 years to take ownership of the special land. The technical change is that vendors, not the Crown, will be place memorials on the titles. This change diverges from the Cabinet decision, but it has not been included in the updated RIS because it is technical and will have a minor impact on regulated parties.

### **Compliance**

20. The Bill complies with:
  - 20.1. the principles of the Treaty of Waitangi;
  - 20.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993; [This is provisional on NZBORA vetting]
  - 20.3. the disclosure statement requirements. A disclosure statement has been prepared consistently with the requirements. Notably, the disclosure statement details the changes to strength the enforcement powers and the new powers for managing national security and public order risks because these have significant effects on rights and obligations under the Act;
  - 20.4. the principles and guidelines set out in the Privacy Act 1993. The Bill will empower the regulator to gather and share information relating to national security and public order risks and tax. The Office of the Privacy Commissioner agrees that the Bill and the new information sharing scheme complies with the relevant principles and guidelines set out in the Privacy Act 1993; and

20.5. the *Legislation Guidelines* (2018 edition), maintained by the Legislation Design and Advisory Committee.

21. [1,36]

## **Consultation**

22. Consultation was undertaken from late-2018 to late-2019, before the provision of drafting instructions to Parliamentary Counsel Office in November 2019. Officials held meetings with stakeholders and the public (19 meetings with approximately 175 attendees throughout New Zealand and in Sydney). This included meetings open to the public, hui with representatives from iwi organisations and Māori businesses, and meetings with technical audiences and investors. A consultation document was released in April 2019 and 733 written submissions were received.
23. Due to the timing of policy development work, there was no consultation on some aspects of the policy package, including the proposal regarding moving the rural land directive to primary legislation, and some of the proposals regarding special land acquisition. Officials have since consulted extensively on these topics with relevant government agencies, legal counsel and stakeholders where appropriate.
24. Relevant government departments were consulted before Cabinet decisions were reached in November 2019 and before decisions were made by the Associate Minister of Finance (Hon David Parker) under delegated authority.
25. Officials met with the Legislation Design and Advisory Committee (LDAC) on three occasions to discuss aspects of the proposed reforms.
26. An exposure draft Bill will not be released due to time limitations. However, officials met with stakeholders in December 2019 to provide an update and seek feedback following Cabinet's policy decisions, and the Cabinet paper including the policy decisions was proactively released in December 2019.
27. This Bill will continue to meet the commitment in the Coalition Agreement between the New Zealand Labour Party and New Zealand First to "strengthen the Overseas Investment Act."
28. Consultation with the government caucus and other political parties has been undertaken.

## **Binding on the Crown**

29. The principal Act binds the Crown and the Bill will be binding on the Crown upon commencement.

## Allocation of decision making powers

30. The Bill introduces new decision making powers and procedures, which have been drafted consistently with the criteria relating to the qualifications and responsibilities of decision makers.
31. The new national interest test will be used to screen investments that may be contrary to New Zealand's national interest, and the call-in power will be used to screen investments, not ordinarily screened under the Act, for national security and public order risks. These powers include the ability to order disposal of property, recommend statutory management, prohibit transactions and place conditions on transactions. The decision-making role for these new powers will be separated from the Act's other tests to create a degree of independence and reflect that these are backstop powers to be used rarely. To make this separation clear, a Minister will be authorised by the Prime Minister to be the decision maker for both new powers.
32. The Bill empowers the appointment of a statutory manager by an Order in Council on the recommendation of the Minister authorised by the Prime Minister to make these decisions. This power is to be used on the rare occasions where a statutory manager is necessary to manage national security and public order risks pending disposal of an overseas person's interest. The Minister will be the appropriate decision maker given the significant impact statutory management has on a business and the need to make an assessment and respond within a short timeframe to immediate risks.

## Associated regulations

33. Various new regulations, using existing and amended regulation-making powers, will be required to give full effect to the policy that the Bill is intended to implement. The summary of proposed regulations attached as Annex X will be publicly released alongside the Bill to support engagement through the parliamentary process.
34. The Bill allows the Minister to set timeframes for all decisions to provide greater certainty to investors. These timeframes will not come into effect until they have been set in regulation. Indicative ranges for the timeframes are set out in the summary of proposed regulations.
35. The Bill requires applicants to disclose information about a screened investment's structure and tax treatment as part of an application. New regulations will be required to specify exactly what information will need to be provided. An indicative summary of the tax information required for particular types of applications is set out in the summary of proposed regulations attached as Annex X.
36. New regulations will be needed to give full effect to the special land policies. This includes allowing the special land requirement to be satisfied by placing a memorial on the title of the land, and the changes to the process and considerations for acquiring special land.
37. New regulations will be needed to bring some of the call-in and national interest test powers into effect. The call-in power will apply to investments in strategically important business assets as defined in the legislation and regulations. The national interest test will also apply automatically to those strategically important business assets and certain investments by non-New Zealand governments. Some assets that raise national security and public order risks will be defined in regulations to allow for the appropriate level of detail and flexibility. As such, regulations are required to bring the full scope of these powers into effect.
38. The exemption criteria in the Act will be amended to enable relevant changes to the exemptions from the definition of an overseas person to be set in the regulations.

These new provisions will give the government the power to exempt certain fundamentally New Zealand entities from the need to obtain consent. The exemptions themselves will not be available until regulations are promulgated.

### **Other instruments**

39. The Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

### **Definition of Minister/department**

40. No changes to the current definition of Minister are proposed. The principal Act does not contain a definition of department.

### **Commencement of legislation**

41. The Bill will come into force in the following three stages:
  - 41.1. changes which do not require associated regulations and which reduce the number of transactions screened under the Act will come into force within six weeks following the date of Royal assent;
  - 41.2. changes which reduce the number of transactions screened but that require new regulations will be brought into effect around six months after the day of Royal assent;
  - 41.3. the remainder of the bill will come into force 365 days after the date of Royal Assent; and
  - 41.4. the Bill will provide for any provision to be brought into force by Order in Council if the necessary regulations are ready before 365 days after the date of Royal Assent. Such a package of changes relating to the special land provisions and exemptions for shareholder creep and certain overseas persons.
42. The new measures would apply to transactions entered into after these dates. The existing principal Act rules will continue to apply to all transactions entered into before the commencement date, including 'conditional agreements' for sale and purchase where conditions precedent are not yet met and the contract is not yet enforceable at the commencement date.
43. If necessary, the commencement method or date may be amended during the Bill's passage through the House.

### **Parliamentary stages**

44. The Bill should be introduced and referred to the Finance and Expenditure Committee on March 2020 and passed by 30 July 2020. This will require the Finance and Expenditure Committee to be instructed by the House, upon introduction, that the Bill is to be reported back to the House by 23 June 2020.

### **Proactive Release**

45. I propose to release this paper proactively in whole, subject to redaction as appropriate under the Official Information Act 1982, within 30 business days.

## Recommendations

The Associate Minister of Finance (Hon David Parker) recommends that the Committee:

1. **note** that the Overseas Investment Amendment Bill holds a category 3 priority on the 2020 Legislation Programme (to be passed if possible in the year 2020);
2. **note** that, consistent with the Overseas Investment Act 2005's purpose "that it is a privilege for overseas persons to own or control sensitive New Zealand assets", the aim of the Bill is to:
  - 2.1. enable the Government to effectively manage overseas investment; while
  - 2.2. ensuring that the Overseas Investment Act operates efficiently and effectively; and
  - 2.3. supporting overseas investment in productive assets.
3. **note** the summary of proposed regulations which sets out the key regulatory provisions to support engagement through the parliamentary process;
4. **note** that following the enactment of changes implementing phase 2 of the Reserve Bank of New Zealand review, the statutory management provisions introduced by the Bill, insofar as they relate to certain organisations regulated by the Reserve Bank of New Zealand, will be superseded;
5. **approve** the Overseas Investment Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
6. **agree** that the Bill be introduced on 24 March 2020;
7. **agree** that the Government propose that the Bill be:
  - 7.1. referred to the Finance and Expenditure Committee for consideration, with a report back by 23 June 2020;
  - 7.2. complete its third reading by 30 July and enacted by 28 August 2020.

Authorised for lodgement

Hon David Parker

**Associate Minister of Finance**

## Annex 2: draft Overseas Investment Amendment Bill

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This Annex contains the Overseas Investment Act 2005 (as at 22 November 2019) marked up to show all changes proposed to be made by the Bill. The formal amending Bill will be prepared once the drafting of the amendments is largely finalised.

**Note:**

The draft Overseas Amendment Bill has been superseded by two new Bills following Covid-19 and more information can be found at: <https://treasury.govt.nz/news-and-events/reviews-consultation/overseas-investment-consultation>

## Annex 3: draft Departmental Disclosure Statement

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The draft Departmental Disclosure Statement is included for your information.

**Note:**

An updated version of the Departmental Disclosure Statement can be found at:  
<http://disclosure.legislation.govt.nz/bill/government/2020/233/>

## Annex 4: Updated sections of the Regulatory Impact Statement

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The updated sections of the Regulatory Impact Statement are included for your information. The RIS has been updated subsequent to Cabinet's decisions to identify areas that diverged from the Treasury's recommendation. It also includes analysis on new regulatory proposals that were made by Ministers under delegated authority from Cabinet, including:

- Compensating third parties who have their registered interests removed from the title, when the Crown acquires special land, where those interests were registered on the title of the special land prior to it being purchased by the overseas investor.
- In applying the good character component of the investor test, allowing the decision-maker to consider tax defaults of NZ\$5 million or more, certain tax-related penalties and allegations, settlement agreements made with the OIO and contraventions of the principal Act.
- Empowering the OIO to gather and share information related to national security and public order risks. The OIO will be able to require a person to provide information when investigation whether an investment in a non-notified call in transaction poses a significant risk to national security or public order. The OIO will also be able to share information with other agencies (and vice-versa) to aid in assessing national security and public order risks for transactions screened under the national interest test or subject to the call in power.

These changes are set out below for your information. Note that there has been no change to the assessment of the RIS by the Regulatory Quality Team at the Treasury, which is that the RIS partially meets the quality assurance criteria. The key reason for this assessment remains that the proposal regarding moving the rural land directive to primary legislation did not meet the consultation requirements. This proposal was not consulted on publicly, or with key non-Crown stakeholders, including Māori. [1]

### Note:

An updated version of the Regulatory Impact Statement can be found at:

<https://treasury.govt.nz/publications/risa/regulatory-impact-assessment-reform-overseas-investment-act-2005-phase-2>