

The Treasury

Reform of the Overseas Investment Act Information Release

July 2020

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- [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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Reference: IM-5-3-8

Date: 12 February 2019

To: Associate Minister of Finance (Hon David Parker)

Deadline: 11:00am, 13 February 2019

Talking points: DEV update on progress of CPC initiatives – Phase 2 Overseas Investment Act reforms

Background – key milestones to date

- 22 August 2018 – Phase 1 reforms enacted.
- 17 October 2018 – Terms of reference for Phase 2 reforms released, which indicated that consultation on options for reform would commence in the first quarter of 2019, with a view to legislating reforms by mid-2020.
- 22 October 2018 – Phase 1 reforms entered into force.

Focus of Phase 2 reforms

- The Phase 2 reforms are intended to:
 - simplify the rules for those making productive investments in our economy, so New Zealand remains an attractive destination for beneficial, long-term foreign direct investment; and
 - ensure the Act adequately protects our most sensitive assets, so that prospective foreign investments are consistent with New Zealand's national interest. A key question is whether Ministers have sufficient discretion to take into account national interest considerations.

November 2018 DEV update noted potential risks to Phase 2 timeframes

- In November, I reported that while the project was on track, an initial delay finalising the terms of reference had reduced the time available for policy development and left little scope for further delays.



Review is well underway, working towards an April 2019 release of the discussion paper

- Treasury has completed initial engagement with targeted stakeholders.
- Feedback indicates that the terms of reference were pitched about right. Stakeholders also identified a range of opportunities for technical improvements.
- Initial analysis has revealed that there are significant and complex issues to consider (eg, interaction of a potential national interest test with the existing benefits test). It will also be necessary to consider how the regime works as a whole and ensure that reforms do not create avenues for avoidance.
- Drafting of a public discussion paper is well advanced.
- There is likely to be significant interest in the discussion paper. The question of whether the screening regime should consider Māori cultural values as they relate to the physical and historical characteristics of land, and water extraction, are likely to generate significant debate.
- I am also considering the extent to which the screening regime should consider the national security implications of overseas investment.

It is still possible to enact this Parliamentary term, but timeframes are ambitious

- Next steps following release of the discussion paper are:
 - A programme of stakeholder and Māori engagement – May 2019;
 - Submissions analysis, identification of preferred options for reform and detailed regulatory design – June to August 2019;
 - Ministerial consultation on proposed reforms – September 2019;
 - Cabinet approval of proposed reforms – October 2019;
 - Legislative drafting – November 2019 to February 2020;
 - Cabinet agreement to introduce an amendment Bill in March 2020, with a view to introduction and first reading in April 2020.
- There is sufficient time to enact reforms this Parliamentary term, but with a shortened legislative timeframe.
- These timeframes are still ambitious. Delays at any stage will put the timeframes or the review's quality at risk.