

The Treasury

Overseas Investment Act Reform Information Release

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Reference: T2020/1606 IM-5-3-8-9 (COVID Response Reforms)

Date: 25 May 2020

To: Minister of Finance (Hon Grant Robertson), Associate Minister of Finance (Hon David Parker)

Deadline: 26 May 2020 (for LEG)

Aide Memoire: Economic Response: Overseas Investment Amendment Regulations 2020 – talking points for LEG

Purpose

On 26 May 2020, Cabinet's Legislation Committee (LEG) is scheduled to consider the draft Overseas Investment Amendment Regulations 2020 (the Essential Regulations). The Essential Regulations will partially implement the Overseas Investment (Urgent Measures) Amendment Bill (Urgent Measures Bill), which contains a suite of reforms to the Overseas Investment Act 2005 (the Act). This Aide Memoire provides key messages to support discussions at LEG.

Suggested talking points

- On 11 May 2020, Cabinet agreed to a package of reforms to the Act, which give effect to the changes agreed to in the Phase Two reform of that Act as well as introduce three new foreign investment screening tools. The package of reforms are part of the Government's economic response to the COVID-19 pandemic.
- The Urgent Measures Bill was reported back to the House yesterday, and is expected to complete its second and third readings and receive Royal assent by the end of next week. Changes to the Overseas Investment Regulations 2005 (the Regulations) are required to operationalise the Urgent Measures Bill.
- I have proposed making these changes through two tranches of regulations. This reflects the capacity constraints on agencies working to deliver the Government's ongoing economic response. Under this approach:
 - if LEG agrees to submit the Essential Regulations (which are being considered today) to the Executive Council, these will come into force on 18 June 2020, at the same time as the Urgent Measures Bill, and
 - I will seek authority from LEG to submit a second tranche of regulations around the end of June.

- The Essential Regulations (which are being considered by LEG today) include provisions that:
 - define the assets covered by the new emergency notification regime,
 - define the classes of strategically important businesses covered by the new national interest test and call in power,
 - exempt from notification requirements a range of transactions that are already exempted or that do not require consent, including transactions that would be exempted if they were above the Act's monetary threshold and transactions that relate to exempted interests,
 - sets timeframes for the Minister to take risk management actions in relation to notified transactions,
 - enable the restructuring of a corporate group which results in the transfer of an interest in a sensitive asset to an overseas person member of the group, where there is no change in the ultimate control or ownership of the sensitive assets held, and
 - specify the reserves and land managed by governance entities of collective group of Māori, which are included in the definition of sensitive land.
- The second stage of regulations will include changes to:
 - extend the existing shareholder creep regulation including to permit shareholders who have previously received consent to make incremental increases in their shareholding,
 - remove non-New Zealand listed issuers, managed investment schemes and retirement schemes from the definition of overseas person,
 - exempt the new debt security established by the Reserve Bank (Residential Mortgage Obligations) from consent requirements, and
 - refine the definition of sensitive information.
- It is important that the changes in the Urgent Measures Bill are able to be operationalised by the Essential Regulations immediately. I have recommended that LEG agree to waive the 28-day rule, to ensure the Essential Regulations can take effect at the same time as the Urgent Measures Bill. The Standing Order rules permit a waiver where regulations have been made in response to an emergency, as is the case here.
- I have included a recommendation in the LEG paper that PCO is authorised to make minor and technical amendments to the Essential Regulations to resolve drafting issues, and to make consequential substantive amendments in accordance with the outcomes of the Select Committee's review of the Urgent Measures Bill. This proposal reflects the timeframes under which these Essential Regulations have been prepared, which mean that the PCO is still completing its internal review processes, and also that officials have been finalising the approach to some of the issues as these papers have been lodged. This authorisation will allow those final decisions to be incorporated into the Essential Regulations.

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