

The Treasury

Phase 2 Reform of Overseas Investment Act Information Release

March 2021

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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
- [25] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information
- [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
- [35] 9(2)(g)(ii) - to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment
- [36] 9(2)(h) - to maintain legal professional privilege
- [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 (Urgent Measures) Amendment Act 2020: Proposed clarification of treatment of new business entities

Date:	6 July 2020	Report No:	T2020/2254
		File Number:	IM-5-3-8-9 (COVID Response Reforms)

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	Note the contents of this report.	N/A
Associate Minister of Finance (Hon David Parker)	Agree to recommend regulations to exempt the establishment of any new business entities in New Zealand by an overseas person from the emergency notification regime, consistent with previous Cabinet decisions.	7 July 2020

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
[35]	Analyst, International	[39]	N/A (mob) ✓
Thomas Parry	Manager, International	[35]	

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: No

Treasury Report: Overseas Investment (Urgent Measures) Amendment Act 2020: Proposed clarification of treatment of new business entities

Purpose

1. This report seeks your agreement to propose new regulations to clarify an aspect of the new emergency notification regime in the Overseas Investment (Urgent Measures) Amendment Act 2020 (the Act). The regulations would clarify that the establishment of a new business entity by an overseas person is exempt from the new regime. This change would align the regime with Cabinet's original intent and address some confusion within the legal profession.
2. This decision falls within your delegations from Cabinet (CAB-20-MIN-0212 refers). Note that we have copied this briefing to Minister Robertson for his information.

The emergency notification regime intends to manage risks from the sale of existing businesses and business assets

3. The emergency notification regime addresses foreign investment risks arising from the economic effects of COVID-19. That is, a risk that some overseas investment may undermine New Zealand's national security, or result in the transfer of ownership and control of economic activity for prices that do not reflect their true value to New Zealand.
4. To manage these risks, Cabinet agreed (CAB-20-MIN-0212 refers) to introduce an emergency notification regime that would require overseas persons to notify the Overseas Investment Office (OIO) of:
 - a. controlling investments of any value in **existing** businesses, and
 - b. investments in business assets of any value that effectively amount to a **change in control** of the underlying business.
5. Those transactions deemed contrary to the national interest could have conditions imposed or be blocked.

[36]

6. It was not intended that the primary legislation enacting the emergency notification regime require overseas persons establishing new businesses (including the incorporation of a company and the creation of a limited partnership) to make a notification. Such activity does not trigger the risks identified above, and therefore the regulatory burden of imposing notification requirements on these activities would be disproportionate to any additional risk coverage.

[36]

[34]

We recommend exempting the establishment of new business entities from the emergency notification regime

10. We therefore propose to use regulations to remove the establishment of new business entities from the scope of the emergency notification regime, to avoid the unintended over-capture of overseas investments. Subject to your agreement, this exemption will be included in the draft regulations going to the Cabinet Legislation Committee (LEG) on 21 July.
11. Practically, a solution could be achieved either through a class exemption or an amendment to the primary legislation using a transitional regulation making power. The Treasury and the Parliamentary Counsel Office are working through these options and the LEG paper will provide our recommended approach.

Recommended Action

We recommend that you:

- a **note** that Cabinet agreed to exempt the establishment of any new business entities from the emergency notification regime (including the incorporation of a company and the creation of a limited partnership with an overseas person) that was introduced in the Overseas Investment (Urgent Measures) Amendment Act 2020.

Noted.

[36]

Noted.

- c **agree** to amend this issue by including the above exemption in the draft regulations going to LEG on 21 July.

Agree/disagree.

Thomas Parry
Manager International

Hon David Parker
Associate Minister of Finance

[36]