The Treasury

Overseas Investment Act - Phase Two: Policy Advice December 2020 - April 2021 Information Release

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TE TAI ŌHANGA
THE TREASURY

Treasury Report: Overseas Investment Amendment Bill (No 3) Departmental Report

Date:	20 January 2021	**Report No:**	T2020/3523
		File Number:	IM-5-3-8-12

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 our recommended changes to the Overseas Investment Bill (No 3). **Agree** to lodge a paper on 28 January seeking Cabinet's approval to the changes (following Cabinet consultation).	27 January 2021

Contact for telephone discussion

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

Minister's Office actions

Return the signed report to the Treasury.

Seek approval from the Prime Minister's Office to take the matters covered in this report directly to Cabinet.

Refer this paper to the Minister of Foreign Affairs, the Minister responsible for the Government Communications Security Bureau and New Zealand and the Security Intelligence Service, and the Minister for Land Information.

Consult Cabinet colleagues on the Cabinet Paper and Departmental Report.

Note any feedback on the quality of the report

Enclosure: Yes (draft Departmental Report and draft Cabinet Paper attached)

Executive Summary

1. The Overseas Investment Amendment Bill (No 3) (the No 3 Bill) proposes a range of changes to the Overseas Investment Act (OI Act) and is currently being considered by the Finance and Expenditure Select Committee.

2. Based on the 46 submissions received and officials' experience with the regime following its urgent amendment in 2020, we recommend that you (Minister Parker) seek Cabinet's agreement to some targeted changes to the Bill, predominantly to bring it in line with Cabinet's original intent and address areas where it is resulting in unintended overreach. These can be grouped into three themes:

    a ensuring that screening is proportionate to an investment's risk;

    b confirming the benefits that overseas investors must show to in order to get consent; and

    c other matters to support the clarity, consistency and coherency of the Bill.

3. We also recommend some minor and technical improvements to the Bill in Annex 1, which you have delegated authority from Cabinet to approve.

4. This report attaches a draft Cabinet paper and Departmental Report to seek authority for these changes.

<u>Theme one: Screening that is proportionate to the risk of an investment</u>

Issue one: Allowing investors to make additional incremental investments without consent

5. Throughout the phase two reform, stakeholders have raised concerns about the requirement to get consent to increase an already consented holding (for example, moving from a 30 per cent to a 41 per cent interest), particularly where their proposed investment does not increase the degree of control that they have over sensitive New Zealand assets. This is because the costs of screening such small investments can outweigh the potential returns on such investments and the limited exemptions available are complex and still have issues that result in similar transactions being treated very differently.

6. We previously recommended amending the OI Act to allow investors greater flexibility to make incremental investments as long as their control did not increase. As an alternative, you agreed to expand the existing exemptions (which occurred in August 2020).

7. In light of our experience in implementing this decision, however, we consider it appropriate to revisit this feature of the Act. This is because: despite concerted effort, the regulatory exemptions are extremely complex and further technical fixes have a high chance of introducing avoidance opportunities; and the Emergency Notification Regime (ENR) has shown that a model which only screens transactions that grant an investor greater control can effectively protect New Zealand's interests.

8. We consequently recommend that the OI Act be amended to better align it with the Takeovers Code and the ENR, by only requiring consent for incremental investments if:

    a they breach a control limit (thresholds from companies law that grant an investor additional power to control sensitive assets), or

b the investment is in a strategically important business (like an electricity generator), if the investment granted the investor disproportionate access or control (such as a board seat).

9. We consider that adopting this proposal would remove all of the complexity associated with the current approach and support economic growth and the nascent recovery, while not materially changing the regimes ability to manage risk or review significant changes in ownership.

10. [36]

Issue two: Addressing the over-application of the national interest test

11. Cabinet intended that the national interest test would always apply to investments where a foreign government obtains control over sensitive New Zealand assets. This is because they may be investing for strategic reasons (for example, to conduct espionage or sabotage). Experience with these changes has revealed, that the test applies even where the foreign government would not obtain the ability to pursue objectives contrary to New Zealand's interests. For example, the test automatically applies when:

    a foreign governments from different countries cumulatively hold a more than 25 per cent interest in an asset, even though no single foreign government has effective control (for example, the 25 per cent threshold is met where an Australian pension fund and a Japanese government enterprise each own 15% of the investor), and

    b when a government enterprise's constitution prohibits the foreign government from influencing the investor (similar to the NZ Superfund).

12. This unintended overreach is creating additional costs and complexity for investors and the government (including the Minister of Finance, who is having to consider a significant number of very low risk transactions).

13. We recommend amending the Act so that foreign government investors who do not have sufficient control to pursue strategic objectives are not automatically subject to the national interest test. Critically, to ensure that these changes do not pose risks, they would not limit the Minister's discretion to apply the test on a case-by-case basis or reduce the application of the test for investments in Strategically Important Businesses (SIBs). For example, investments in a large New Zealand airport would always be subject to the national interest test, irrespective of the investor.

Issue three: Scope of transactions subject to the call-in power

14. To manage national security and public order risks, the Act includes a call-in power which allows investment in SIBs (e.g. shares in Vodafone) and SIB's property (e.g. sensitive military technology) that are not ordinarily screened under the OI Act to be screened. This is an important reform, however officials and submitters have identified that the definition of 'SIB property' is unintentionally broad and would currently capture transactions that cannot possibly pose risks (for example, the purchase of publicly available software from Microsoft).[1]

[1] Microsoft is a Critical Direct Supplier to the New Zealand Defence Force.

15. We recommend amending the call-in power so that, consistent with Cabinet's intent, it only applies to asset purchases that could pose national security or public order risks. This can be achieved by only screening the acquisition of SIB property if it would mean, in general terms, that the acquisition would result in the investor becoming a SIB (for example, the acquisition of intellectual property on dual-use technology would always be subject to screening, but the acquisition of consumer goods from the same company would not).

16. Slightly different thresholds would apply to the acquisition of property from media entities and critical direct suppliers to the security and intelligence agencies, reflecting the different types of risks associated with these investments. This recommendation would not change the treatment of equity investments in SIBs.

Issue four: Stronger constraints on the power to reinstate an emergency notification regime

17. The ENR will be repealed when the economic conditions and the risks of foreign investment stabilise. However, to ensure that the government can act quickly to manage potential future risks, the No 3 Bill includes a power to reintroduce the ENR for future crises. One submitter and the Regulations Review Committee raised concerns that this power did not have sufficient safeguards.

18. We recommend additional constraints and safeguards to reflect the significance of reintroducing the ENR, including Ministerial consultation requirements, a 90 day review, and further clarification as to what the ENR can be used for.

<u>Theme two: Confirming the benefits that overseas investors must show in order to get consent</u>

Issue five: More stringent requirements for purchasing farm land

19. The Bill makes the requirement for investment in farm land to pass more stringent tests permanent.

20. Many submitters wanted this requirement removed, however we do not support this. We do recommend, however, considering some changes to recognise that the brightline definition of farm land can result in some land being subject to more stringent tests for technical rather than substantive reasons and therefore not deliver on the Government's policy intent (for example, land with a few animals for site management purposes before development). Submitters were concerned that this would unintentionally serve as a barrier to development on less economically productive land.

21. We recommend amending the Bill so that Ministers have discretion to not apply the more stringent requirements when they are satisfied that the 'farm land' is likely to be used for residential, commercial or industrial development, having regard to the land's current use and productive capacity. This approach would provide discretion while ensuring that purchase of genuinely productive farm land – such as land that is highly suitable to cropping or grazing - would be required to meet stringent tests.

Issue six: Confirming your position on farm land advertising

22. The Bill requires farm land to be advertised genuinely and transparently. Submitters were concerned that advertising requirements would be a barrier to development. Similar to concerns about the threshold for acquiring farm land, some submitters were also concerned that the provisions could unintentionally apply to the sale of farm land defined as such for technical, rather than substantive, reasons.

23. Given the number and strength of submissions, we want to confirm that you wish to retain the strengthened advertising requirements. If you do, we recommend clarifying that the Minister can, when considering an exemption, take into account the land's nature (for example, its productive capacity), to respond to concerns about unintentional over capture.

Issue seven: Limit on ability to negatively weight factors under the benefits test

24. Submitters considered that the benefit to New Zealand test should require a 'net benefit assessment' (for example, a full cost-benefit analysis), rather than generally allowing consideration of an investment's benefits. For example, submitters supported balancing potential environmental harms against any economic benefits. We do not support this because:

    a other regulatory systems manage many of these risks already. For example, environmental impacts are best managed under the Resource Management Act,

    b conducting a full net benefit assessment in all cases would undermine the objective of streamlining the consent process and increases the risk of judicial review, by making the test more subjective,

    c the national interest test provides a tool for consideration of very significant risks, such as risks to national security, and

    d it would alter the Act's consent architecture and would require consideration of the Act's broader policy settings to ensure that the regime is workable and balanced.

25. Bearing in mind the number of submissions and degree of Select Committee engagement, we seek confirmation of your continued support for this approach.

<u>Theme three: Other matters to support the clarity, consistency and coherency of the Bill</u>

Issue eight: offsetting surpluses and deficits through fees

26. The Overseas Investment Office's (OIO) funding is intended to be recovered from applicants through fees, however the OIO has a significant deficit, with fees not keeping pace with costs as the OIO's regulatory functions have expanded. This is partly attributable to the Act's fee provisions, which do not require regular fee reviews and do not clearly allow surpluses and deficits to be offset through future fees.

27. To address these issues, we recommend amending the Act to clarify – consistent with the Government's Cost Recovery Guidelines – that fees can be set at a level which recovers the true cost of assessing an application by:

    a clarifying that the government can set fees to ensure that under- or over-collections can be distributed among fee payers on a rolling four year basis, and

    b requiring the Minister to commence a fees review at least once every four years.

28. This approach may be inconsistent with the Legislative Design and Advisory Committee's (LDAC) guidance that fees should not be used to offset prior under-recovery. However, we consider this justified because users should pay for services they obtain, there is no way to ensure fees perfectly match costs and, without a change, the Crown will have to pay for services provided to overseas investors on an ongoing basis.

29. Implementing this approach will have some complexity. It will also prevent the government from recovering any of the OIO's deficit that was incurred more than four financial years ago (up to approximately $1.3000 million). This is appropriate and consistent with the government's cost recovery policy because this amount cannot be fairly attributed to prospective applicants. To ensure this amount is as small as possible, we recommend the completion of a fees review that includes consideration of the OIO's accumulated deficit by the 2022/23 financial year.

30. The report also includes options to allow unconstrained deficit recovery during the first fee review after Royal assent (which would have no financial implications) and to not amend the provisions (which would be consistent with LDAC guidance but have material financial implications). These options are inconsistent with the Cost Recovery Guidelines and not supported.

Issue nine: Information sharing for national security and public order purposes

31. The Urgent Measures Act established an information sharing regime to manage national security and public order (NSPO) risks. [36]

    a [36]

    b [36]

32. The regime also currently prevents the intelligence community from using shared information to support other mandated functions, such as protecting national security. This is inconsistent with equivalent provisions in other regulatory regimes and may place New Zealanders at risk.

33. We recommend amending the Bill (with the support of the Office of the Privacy Commissioner) to resolve each of these issues.

Issue ten: Disclosure of information for tax purposes

34. The Bill requires investors to disclose certain tax information to Inland Revenue as part of their application. Many submitters opposed this requirement because, in their view, it would increase the OI Act's regulatory burden. Submitters were also concerned that there was insufficient detail about the requirements in the Bill.

35. In light of Cabinet's previous decisions on these matters, we do not recommend removing these provisions. However, there is a case for moving some detail intended for regulations into the Act. In particular, we recommend: specifying that the tax information disclosure requirement only applies to investments in significant business assets, and clarifying that regulations will prescribe the types of information required to be disclosed for all applications.

Next steps

36. The timeframe for progressing changes to the Bill have been condensed by the Business Committee. In light of this, and subject to your agreement, the next steps to finalise the Departmental Report for lodgement with the Committee will be to:

    a provide any comments on the attached Cabinet paper and Departmental Report to Treasury as soon as possible (by January 27 at the latest),

b by 27 January, consult your Cabinet colleagues on these documents and seek approval from the Prime Minister's Office to go directly to Cabinet (as agreed to by your office), and

c lodge these documents for Cabinet's consideration on 28 January, ahead of Cabinet on 2 February (subject to any changes).

Recommended Action

We recommend that you:

a **note** that recommend amendments to the Overseas Investment Amendment Bill (No 3) (the No 3 Bill) can be grouped into three key themes:

i. Screening that is proportionate to the risk of an investment: Submitters and officials have identified a range of areas where the Bill is applying requirements disproportionate to the level of risk posed by some transactions.

ii. The benefits that overseas investors must show to get consent: Submitters have raised concerns about potential unintended consequences from changes to the benefit to New Zealand test and requirements for the acquisition of farm land.

iii. Other matters to support the Bill's clarity, consistency and coherency: Submitters and officials have identified a number of minor changes that would ensure the Bill better delivers on the Government's policy intent.

Theme one: Screening that is proportionate to the risk of an investment

Issue one: Allowing additional incremental investments without consent

EITHER:

b **agree** *(Treasury preferred)* to require overseas persons to obtain consent for/notify the government of additional investments in sensitive assets where:

i. the investment results in an overseas person's interest in any class of shares being equal to or in excess of a 'control limit' (with control limits defined as: more than 25%; 50% or more; 75% or more; and 100%), except

ii. in respect of investments in strategically important businesses where notification/consent will also be required whenever an investment grants an investor disproportionate access or control.

Agree/disagree.

c [36]

[36]

d **agree** to the 'control limit' approach in Recommendation b, but also retain the current exemption for consent holders to make incremental investments that cross control thresholds without consent in limited circumstances.

Agree/disagree.

e [36]

Issue two: Addressing the over-application of the national interest test

f **agree** to amend the No 3 Bill so that the national interest test only applies automatically to transactions that warrant greater scrutiny, by:

i. only defining an investment vehicle as a foreign government investor for the purposes of the national interest test where the government(s) of one country hold a more than 25 per cent ownership or control interest in the investment vehicle,

ii. raising the threshold for automatic application of the national interest test for indirect investments in sensitive New Zealand assets involving foreign government investors from 10 per cent to "more than 25 per cent" (aligning it with the Act's general thresholds for control), and

iii. empowering the Minister responsible for the OI Act (the Minister) to exempt passive foreign government investors (investors structured in a way that prevents a government from pursuing strategic objectives) from automatic application of the national interest test on a case-by-case basis, in accordance with criteria to be set in regulations.

Agree/disagree.

g **note** that, to ensure that these changes do not increase risks, they would not limit the Minister's discretion to apply the test on a case-by-case basis or change the fact that investments in Strategically Important Businesses (SIBs) are always subject to the test (for example, these changes will stop the test always applying to critical national infrastructure).

Issue three: Scope of transactions subject to the call-in power

h **agree** to focus the provisions of the call-in power relating to property acquisitions on those most likely to give rise to national security or public order risks, by only capturing:

i. investments in property, whether through one or a series of related transactions, that would result in an investor qualifying as a strategically important business (with this assessment done as if the asset being acquired was the only asset held by the investor), except for:

ii. investments in critical direct suppliers' to defence and security agencies (CDS) property, where the threshold is when the CDS considers the proposed investment may impact its ability to provide contracted services to the New Zealand Defence Force (NZDF), New Zealand Security Intelligence Service (NZSIS), or the Government Communications Security Bureau (GCSB) (with the CDS required to advise the investor of its obligation to notify the regulator before the transaction is entered into), and

iii. investments in media business property, where the threshold is when the acquisition equals 25 per cent or more of the value of all property owned by the media business immediately before the acquisition.

Agree/disagree.

Issue four: Stronger constraints on the power to reinstate an emergency notification regime

i **agree** to include additional safeguards and constraints on the power to introduce an emergency notification regime (ENR) via regulation for future crises, by:

i. requiring the Minister to consult with the Minister of Foreign Affairs before introducing a new ENR, requiring the regulations to be no wider than necessary to manage risks to New Zealand's national interest and accompanied with a statement of reasons, and review any regulations made under the empowering provision every 90 working days, and

ii. providing greater clarity around the limits of a new ENR, by clarifying that the power to introduce an ENR can only be used to make regulations for the purposes of:

iii. requiring overseas persons to notify the government of any new controlling investment in an existing business or business assets that would not ordinarily require consent under the Act, and

iv. empowering the Minister to impose conditions on, or as a last resort, decline or unwind transactions reviewable under the ENR, but only where the investment would otherwise be contrary to New Zealand's national interest.

Agree/disagree.

<u>Theme two: Confirming the benefits that overseas investors must show to get consent</u>

Issue five: More stringent requirements for purchasing farm land

j **note** that submitters raised some concerns that the more stringent farm land requirements will unnecessarily restrict productive development of land that is unsuitable for farming.

k **agree** to retain the No 3 Bill's more stringent tests for investment in farm land, but ensure they are not a barrier to productive development by expanding the Minister's discretion to not apply the more stringent benefit test to land that:

i. is not productive for farming (taking into account the land's current use and its productive capacity),

ii. is likely to be used for residential, commercial or industrial development, and

iii. allowing the Minister to take into account the nature of the land when considering an exemption from the farm land advertising requirements.

Agree/disagree.

Issue six: Confirming your position on farm land advertising

EITHER

l **agree** to retain the enhanced farmland advertising provisions as drafted in the Bill, Cabinet paper and Departmental Report, but modify the exemption criteria to ensure that the Minister can take into account the nature of the land when considering granting an exemption.

Agree/disagree

OR

m **agree** to remove the requirement to advertise farmland from the Overseas Investment Act 2005 (the OI Act).

Agree/disagree

n **note** that, consistent with advice provided in T2019/1649, we have not presented an alternative option to retain the Act's current farm land advertising requirements because they:

i. increase compliance costs, but

ii. do not ensure genuine advertisement that could result in more New Zealanders having the opportunity to acquire farmland.

Issue seven: Limit on ability to negatively weight factors under the benefits test

o **note** that submitters raised significant concerns about the government's inability to consider the negative effects of an investment under the benefits test, but that the Departmental Report and Cabinet Paper are drafted on the basis of previous Cabinet decisions that the negative effects of an investment are best managed through other legislative regimes.

<u>Theme three: Other matters to support the clarity, consistency and coherency of the Bill</u>

Issue eight: Offsetting surpluses and deficits through fees

p [36]

EITHER

q **agree** *(Treasury preferred)* to amend the Act to:

i. allow fees reviews to permit cost recovery from the total deficit incurred in the preceding four financial years, and allowance to be made for any under or over-recovery of costs in those years over a period of up to the next four financial years (that is, move to a surplus and deficit recovery fee model), and

ii. require the relevant Minister to commence a fees review at least once every four financial years.

Agree/disagree.

r **note** that a consequence of agreeing to Recommendation q is that:

i. the portion of the current deficit incurred prior to the last four financial years (likely a maximum of $1.300 million) will need to be met by the Crown, and

ii. the legislation would be inconsistent with Legislation Design and Advisory Committee (LDAC) guidance, but that this is justified given the need to ensure that foreign investors bear the full cost of processing applications for consent to acquire sensitive New Zealand assets.

s **agree**, in order to minimise the amount referenced in Recommendation r(i) above, that the relevant Minister should complete a fees review accounting for the OIO's deficit and have the new fee structure in place by the 2022/23 financial year.

Agree/disagree.

OR

t **agree** (consistent with LDAC guidelines) to not amend the fee provisions, noting that the consequence of this would be that the Crown will have to fund the OIO's entire accumulated deficit (approximately $10.000 million as at 31 December 2020).

Agree/disagree.

u **note** that Cabinet's approval will be sought before any new fees are introduced

Issue nine: Disclosure of information for tax purposes

v **agree** to provide greater certainty by amending the tax information disclosure requirement:

i. so that it only applies to investments in significant business assets, and

ii. to explicitly clarify that regulations will prescribe the types of tax information applicants are required to disclose and that the information to be provided will be the same for all applications subject to the requirements.

Agree/disagree.

Issue ten: Information sharing for national security and public order purposes

w **agree** to align the OI Act's information sharing rules so they are consistent with other regulatory regimes, by clarifying that:

i. they do not impose any restrictions on agencies relying on other lawful means for sharing personal and non-personal information,

ii. agencies receiving information can use that information for purposes in connection with national security and public order, and

iii. the New Zealand Security Intelligence Service and the Government Communications Security Bureau may use information they receive in support of their other statutory functions.

Agree/disagree.

Minor and Technical Changes

x **indicate** whether you agree to our recommended minor and technical amendments in the table at Annex 1, which you have delegated authority from Cabinet to make and which give effect to, or are consistent with, Cabinet's previous policy decisions.

Agree/disagree.

Next Steps

y **agree** to seek Cabinet's approval to these changes and lodge the Cabinet paper (Annex 2) on 28 January, along with the draft Departmental Report (Annex 3) (subject to minor editorial changes, changes to reflect consultation with your Ministerial Colleagues and approval from the Prime Minister to submit the Cabinet paper directly to Cabinet).

Agree/disagree.

z **refer** this paper to the Minister of Foreign Affairs, the Minister responsible for the Government Communications Security Bureau and New Zealand and the Security Intelligence Service, and the Minister for Land Information.

Refer/not referred.

Thomas Parry
Manager International

Hon Grant Robertson
Minister of Finance

Hon David Parker
Associate Minister of Finance

Treasury Report: Overseas Investment Amendment Bill (No 3) Departmental Report

Purpose of Report

1. This report updates you (Minister Parker) on submissions on the Overseas Investment Amendment Bill (No 3) (the Bill) and seeks your agreement to:

    a a set of targeted changes to the Bill, and

    b lodge a paper seeking Cabinet's approval to the changes on 28 January.

Background

2. The Government's 'Phase Two' review of the Overseas Investment Act 2005 ('the OI Act') sought to strengthen how the OI Act manages foreign investment risks, and simplify the screening process for sustainable and productive investment.

3. The review resulted in the introduction of the:

    a Urgent Measures Act, which comprised reforms most critical to the Government's COVID-19 response and received Royal assent on 2 June 2020, and

    b the Bill, which contains the remaining provisions of the Phase Two Bill which did not need to be put in place urgently to manage the fallout from COVID-19.

4. The rapid timeline for the Urgent Measures Act ensured that necessary improvements to the Act, to support the pandemic response (in particular, the emergency notification regime), came into effect quickly. However, recognising that the timeframe limited the depth and breadth of submissions received, you asked the Committee to consider changes to the Urgent Measures Act at the same time as this Bill. Consistent with this, the attached Cabinet paper and Departmental Report recommend changes to both pieces of legislation.

Recommended amendments to the Bill

5. The Committee received 46 submissions – 12 from individuals and 34 from organisations (a list of submitters is at Annex One of the Departmental Report). Overall, most submitters supported the changes to streamline and simplify the OI Act (although some thought the changes could go further).

6. In response to these submissions, and our own consultation with technical experts and Agencies, we recommend a number of changes to the Bill. These can be grouped into three major themes, which are covered in detail below:

    a screening that is proportionate to the risk of an investment.

    b confirming the benefits that overseas investors must show to get consent.

    c other matters to support the clarity, consistency and coherency of the Bill.

7. We also recommend some minor and technical improvements to the Bill which you have delegated authority from Cabinet to approve (DEV-20-MIN-0066) as set out in Annex 1. A clause-by-clause analysis of the other issues raised by submitters is set out in Part four of the Departmental Report (attached as Annex 3).

8. Additional technical detail on the submissions received can be found in Part four of the Departmental Report.

Theme one: Screening that is proportionate to the risk of an investment

9. We recommend better targeting some of the Act's tools for managing investment risks to reduce red tape and better use limited government resources.

Issue one: Allowing investors to make additional incremental investments

10. Throughout the phase two reform, stakeholders have raised concerns about the requirement for them to get consent to increase an already consented holding (for example, moving from a 30 per cent to a 41 per cent interest), particularly where their proposed investment does not increase the degree of control that they have over sensitive New Zealand assets. This is because the costs of screening such small investments can outweigh the potential returns on such investments, reducing New Zealand's attractiveness to investment by quality investors that have already met the requirements of the OI Act.

11. While there are narrow exemptions from these consent requirements to manage these concerns (with these expanded in August 2020), stakeholders and submitters on the No 3 Bill consider that these exemptions are overly complex and that this is limiting investors' ability to make use of them. Submitters have also noted that the exemptions still treat some similar transactions very differently (for example, an investor that has an indirect interest in an asset can access the exemptions, but an investor with a direct interest cannot).

Your previous decisions

12. In 2019, to address these problems, we recommended that you remove the requirement for consent where an incremental investment did not increase an investors degree of control over New Zealand assets. You disagreed with this recommendation and instead agreed to expand the existing regulatory exemptions (T2019/1649 refers).

13. Since you last considered this matter, however, a considerable amount of additional evidence on the limits of the current approach have emerged that we believe justify revisiting the OI Act's requirements. In particular:

    a Despite concerted effort, including engagement with technical legal experts, the 2020 amendments to the Regulations have significantly increased the regime's complexity. This reflects the difficulty defining the different types of ownership interests, which means that there is a material chance that amendments to the exemptions will fail to deliver on the policy intent and/or create avoidance loopholes.

    b Individual exemptions do not offer a solution, because these have many of the same costs for investors and the regulator as applying for consent (for example, application fees and significant delays).

    c When Cabinet established the emergency notification regime (ENR), investors were only required to notify an increase in an existing holding if it increased their level of control [CAB-20-MIN-0212 refers]. This has drastically reduced the regulatory burden of that regime, while ensuring that New Zealand's interests are protected.

Recommended option

14. We recommend that the OI Act be amended to treat incremental investments more like transactions subject to the Takeovers Code and transactions subject to the ENR, by focussing more on whether a transaction changes an investor's level of control. In particular, and consistent with the United Kingdom's regime, we recommend that incremental investments should only require consent if they result in the investor breaching a control limit of: more than 25%, 50% or more, 75% or more, or 100%.[2]

15. To further safeguard the regime, and recognising the particular importance of monitoring foreign investments in strategically important assets (SIBs; such as electricity generators), investments in these assets would still be subject to review if the investment granted disproportionate access or control (such as a board seat) even if a control limit was not breached.

16. This would remove all of the complexity associated with the current approach and thereby support economic growth and the nascent recovery. It would also allow for better targeting of limited regulatory resources, while not materially changing the regime's ability to manage risk because:

    a investors moving within control limits will generally have already gone through the consent process and been deemed eligible to invest in New Zealand,[3]

    b increases within control limits will not substantially increase an investor's control over sensitive New Zealand assets, and

    c SIBs will be subject to additional protections.

17. [36]

    a [36]

    b [36]

[2] These thresholds align with the Companies Act and reflect the point at which an investor can, at a general meeting, block a special resolution, pass a simple resolution, pass a special resolution, or obtain total control of the company (respectively).

[3] Although for investments that have already received consent, the regulator would not have explicitly considered their suitability to move within control bands as part of its assessment

[36]

18. [36]

    a [36}

    b [36]

[36]

19. [1], [36]

Alternative option 2: Do not amend the Act's consent requirements

20. Both the recommended option and alternative option 1 would reduce the government's ability to screen some changes in ownership, however significant changes in ownership would remain subject to review. If you place significant weight on continuing to screen small investments, we recommend retaining the Act's current consent requirements. However, this would not resolve the issues identified.

Issue two: Addressing the over-application of the national interest test

21. The Urgent Measures Act introduced a national interest test that allows transactions contrary to the national interest to be blocked. The test is applied automatically to transactions that warrant greater scrutiny, including investments from foreign governments recognising that they may be investing for strategic rather than commercial reasons (for example, to undertake espionage or sabotage).

22. Contrary to the policy intent, these provisions are routinely capturing investments that do not pose risks to New Zealand's national security or national interest because no single foreign government investor is gaining sufficient control of sensitive assets to pursue strategic objectives. In particular, there are three issues:

    a Issue One: This issue relates to who constitutes a foreign government investor. The issue is that when determining who is a foreign government investor, the Act requires foreign governments' interests to be aggregated even where they are unrelated (i.e., governments from multiple countries). This results in entities being defined as foreign government investors and the national interest test being automatically applied where the government(s) of a single country cannot exercise control. For example, the test would currently automatically apply to an investment by an entity where an Australian pension fund and a Japanese government enterprise each own 15% of the investor.

b Issue Two: This issue relates to the thresholds for investments by foreign government investors becoming subject to the national interest test.

To address risks that a foreign government would artificially dilute its interest while retaining control, Cabinet decided (on Treasury's advice) that the national interest test should apply where a foreign government investor acquires a 10 per cent or more indirect interest in a sensitive New Zealand asset (as opposed to the more than 25 per cent threshold that the Act normally sets as the point where an investor would gain control).

However, experience has shown that this risk is better managed by the definition of non-New Zealand government investor, which looks through companies upstream of the investor to determine who has ultimate control and this requirement increases complexity for no benefit.

c Issue Three: The Act does not distinguish between transactions involving active and passive foreign government investors where the risk of strategic investments does not exist (such as many pension funds, where the investment vehicle is genuinely free from being controlled, directed, or influenced by any foreign government).

23. These issues impose disproportionate costs, complexity, and delays on productive investments, redirect limited resources away from transactions that are more likely to pose risks, and increase the burden on the Minister of Finance. We recommend three amendments to the Bill to address these issues:

a only treating investment vehicles (for example, a body corporate or trust) as a 'government investor' for the purpose of the national interest test if the government(s) of a single country hold a more than 25 per cent control or ownership interest in the investment vehicle,

b only automatically apply the national interest test to foreign government investors acquiring a more than 25 per cent control or ownership interest in a sensitive asset, and

c empower the Minister to exempt foreign government investors from automatic application the national interest test, on a case-by case basis or in advance of a consent application, where the following criteria are, and continue to be, met:

i a foreign government does not control more than 25 per cent of the voting rights of the investor, or otherwise has no the ability to influence, control or direct members of the governing body of the investor (but in the absence of these factors, the ability to appoint members of the Board is permitted),

ii any strategic directives from a foreign government to the investor (for example, to pursue environmental objectives) are not contrary to the national interest and are not subject to change, and

iii the investor agrees to comply with any relevant conditions the Minister imposes as a requirement of the exemption (such as an obligation to inform the regulator of any relevant changes in the control of the investor).[5]

[5] This recommendation is consistent with changes in Australia's regime that came into force on 1 January 2021.

24. Critically, these recommendations do not change the general requirement for such transactions to obtain consent or the automatic application of the national interest test to transactions involving SIBs. They also would not limit the Minister's discretion to apply the national interest test to the above transactions on a case-by-case basis when circumstances justify. These factors ensure that this recommendation can be adopted without increasing risks to New Zealand (noting that efforts by the regulator and NZSIS to detect attempts to evade the regime will remain critical).

Potential international relations consequences

25. The application of the national interest test to government investors has been of particular interest to some foreign governments, [1] The existing general application of the national interest test to government investors has been important for emphasising that the requirements are country neutral and not targeted at any one country.

26. In implementing the changes above, clearly defined and country neutral criteria will be important for ensuring that this approach is maintained. [1]

Issue three: Scope of transactions subject to the call-in power

27. The call-in power will come into effect when the ENR is repealed. The call in power allows direct and indirect overseas investments in SIBs that are not ordinarily screened under the Act to be reviewed. Investments that pose significant national security or public order risks may have conditions imposed, or as a last resort, be blocked.

28. Some submitters were concerned that the definition of SIB property is broader than necessary (and intended), because:

    a it will inadvertently capture many routine retail purchases by overseas persons from SIBs. For example, purchases of publicly available software for private use would be captured despite posing no risks, and

    b the more than 25 per cent investment threshold that Cabinet intended to apply to investments in media businesses, applies to equity but not property acquisitions.

29. We recommend amending the call-in power so that it only applies to the purchase of assets from a SIB that are inherent to that SIB's importance to New Zealand. This is to ensure that the purchase of:

    a intellectual property that allowed the development of dual-use technology would always be subject to screening, but

    b the purchase of publicly available software from the same entity would not.

30. To achieve this, the screening threshold would be acquisitions of property (whether in one or a series of related transactions) that would result in the investor qualifying as a SIB, with that assessment completed as if the asset being acquired were the only asset held by the investor. (With this latter requirement important to ensure that if the investor is already defined as a SIB, their purchase would continue to be subject to screening (for example, an electricity distributor acquiring additional capacity)). The only exceptions to this would be for:

    a the purchase of property from critical direct suppliers (CDS), the threshold for notification should be where the CDS considers that the proposed acquisition may impact its ability to provide contracted services (with the CDS then required to advise the investor of its obligation to notify the Overseas Investment Office (OIO) of the transaction before it is entered into, or face penalties), and

    b the purchase of the property of a media business, where the threshold should be 25 per cent of the value of all property owned by the media business immediately before the acquisition (consistent with earlier Cabinet decisions and the threshold for indirect investments).

Issue four: Stronger constraints on the power to reinstate the ENR

31. The ENR requires overseas investors to notify the government of controlling investments in businesses or assets. The ENR is temporary and will be repealed when the economic conditions and the risks of foreign investment stabilise.

32. However, in case of future crises, the Bill empowers the Minister to reinstate the ENR via regulation. Two submitters, including the Regulations Review Committee, were concerned that this power would enable a substantive policy change (temporarily expanding what investment is screened under the Act) without Parliamentary scrutiny, and that there were insufficient safeguards on the power.

33. In response to these concerns, we consider that:

    a the power to reinstate the ENR is necessary: because relying on primary legislation, instead of regulation, risks undue delays arising from the parliamentary process, and

    b the Bill largely strikes the right balance between primary legislation and regulation: because the substantive policy issue is contained in the Bill itself (that is, whether the government should have the power to screen additional types of investment in future emergencies) and therefore subject to full Parliamentary scrutiny.

34. We recommend, however, that the power to reinstate the ENR be subject to stronger safeguards by requiring that the Minister must:

    a consult with the Minister of Foreign Affairs before recommending regulations to the Governor-General that the ENR be reinstated,

    b make the regulations no wider than necessary to manage risks to the national interest and accompany them with a statement of reasons, and

    review any regulations made under the empowering provision every 90 working days to consider whether the effects of the emergency continue to justify the regulations continuing in place.

35. We consider the Bill could also provide greater clarity about a future ENR's potential scope and the powers that can be exercised under it.[6] We recommend building on the Bill's existing constraints by specifying that regulations can be made for the purposes of:

    a requiring overseas persons to notify the government of any controlling investment in an existing business or business assets that would not ordinarily require consent, and

    b empowering the Minister to impose conditions on or, as a last resort, decline or unwind transactions reviewable under the ENR, but only where the investment would otherwise be contrary to New Zealand's national interest.

Theme two: Confirming the benefits required to get consent

Issue five: Embedding a higher benefit threshold for farmland acquisitions

36. The Bill embeds a higher threshold for the acquisition of farm land by requiring the Minister, before granting consent to a transaction to acquire farmland, to:

    a give economic benefits and New Zealand participation or oversight high importance relative to other factors in the benefit to New Zealand test, and

    b ensure that the application offers substantial benefits against these factors.

37. To avoid unintended consequences, the Bill also gives the Minister flexibility to not apply this higher threshold to transactions involving farm land that are minor or technical (such as boundary adjustments) or where the transaction does not materially change a person's ownership or control (for example, movements of land within a group).

Submitters were concerned this requirement could limit productive development

38. Submissions on the proposed farm land threshold were divided. Some considered that the requirements would constrain capital flows and harm New Zealand's investment attractiveness and recommended that the higher threshold be removed. Others raised narrower concerns about potential unintended consequences.

39. In particular, some submitters were concerned that the Act's brightline definition of farm land[7] captures a range of land for technical rather than substantive reasons (for example, where it is only defined as farmland because sheep or cattle are used to graze for site management purposes) and that:

    a applying an elevated threshold to the acquisition of such land is inconsistent with the rationale for that elevated threshold. That is, it is not land where New Zealand's world leading primary sector productivity is relevant, and

    b it can be very difficult for developments – such as new housing – to deliver sufficient benefits against the factors to be given high relative importance, which may stymie them. This reflects that these factors, such as increased export receipts, are most relevant to primary sector investments.

[6] The No 3 Bill currently defines these by reference to the ENR that was established in the Urgent Measures Act.

[7] The Act defines farm land as land (other than residential (but not otherwise sensitive) land) used exclusively or principally for agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry, or livestock. It does not include forestry land.

Recommended approach

40. Officials agree that the higher threshold required to acquire farm land could have the unintended consequence of operating as a barrier to other types of productive investment on land that is not suitable for highly productive farming.

41. We recommend amending the Bill to allow the Minister to not apply the higher farm land threshold if satisfied that:

    a the 'farm land' is not highly productive farm land (taking into account the land's current use and its productive capacity),[8] and

    b the land, on the basis of the application, is likely to be used for residential, commercial or industrial development.

42. This would ensure that highly productive land would be subject to the more stringent test for farm land, irrespective of its current or proposed use or any changes in zoning. It would also complement the Minister's ability to not apply the more stringent test to transactions involving farm land in other limited circumstances (such as boundary adjustments).

Issue six: Confirming your position on farm land advertising

43. The Bill would strengthen the farm land advertising requirements by updating the minimum advertising requirements (for example, a local notice will no longer be sufficient) and requiring advertising before a contract to sell the land is entered into.

44. A number of submitters expressed concerns with the proposed changes. They are concerned that requiring advertising before any agreements are entered into will slow down transactions and impose costs when the land is highly unlikely to be purchased by New Zealanders. Some submitters also noted that the current definition of farm land would result in the requirements being applied to the sale of land defined as 'farm land' for technical rather than substantive reasons.

45. We consider that these issues are finely balanced. Vendors have an interest in securing the best price for their asset. A vendor not wishing to test the market is likely to have good reasons for this choice, which means they will also have little interest in competing offers that may result from advertising.[9] However, given farm land's value, there are legitimate policy objectives for retaining and clarifying these provisions.

46. We have drafted the departmental report and the Cabinet paper on the basis of your earlier decisions. However, in light of the number of submissions on this issue, we are asking you to reconfirm your position and either agree to:

    a retain the requirements as drafted in the Bill, or

    b remove the requirement to advertise farmland from the Act.

47. If you choose to retain the advertising requirement, we recommend amending the exemption criteria to clarify that the Minister can also take into account the nature of the land when considering granting an exemption from the requirement to advertise farm land. Similar to our recommendation on an expanded exemption from the higher threshold for acquiring farm land, this would make exemptions from advertising requirements available for the sale of less productive land defined as farm land for technical reasons.

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[8] Land's productive capacity could be assessed with reference to the Land Use Capability classification system and government policy statements on highly productive land.

[9] This is consistent with our advice in T2019/1649 and the Phase 2 Regulatory Impact Assessment.

48. We have not presented an alternative option to retain the Act's current farm land advertising requirements because these increase compliance costs but do not ensure genuine advertisement that could result in more New Zealanders having the opportunity to acquire farmland.

Issue seven: limit on ability to negatively weight factors under the benefits test

49. Submitters considered that the benefit to New Zealand test should require a net benefit assessment. This contrasts to the Bill, which clarifies that when assessing applications under the test, the regulator will only generally be able to consider an investment's prospective net benefits within rather than between factors (consistent with the status quo, with the exception of the new factor that relates to investments in water bottling).[10]

50. We recommend this approach be maintained for three reasons:

    a other legislation already exists to manage negative effects, and this approach ensures that the regulator is not required to consider matters that are the subject of other regulatory regimes (for example, the Resource Management Act),

    b where necessary, the national interest test enables the government to undertake a broader risk assessment and deny consent where material risks to the national interest are present, and

    c conducting a holistic assessment for all investments subject to the benefits test would undermine the objective of streamlining the consent process and make the test more subjective.

51. Ultimately, if an investment does not benefit New Zealand, then it would not receive consent.

Theme three: Other matters to support the clarity, consistency and coherency of the Bill

Issue eight: offsetting surpluses and deficits through fees

52. The OIO's operational funding is intended to be recovered from applicants through fees. However, the OIO has accumulated a significant deficit, with fees not keeping pace with costs. The OIO's deficit was $9.8 million as at 31 October 2020, due to historic under-collection, costs incurred in operationalising recent rounds of reforms, and COVID-19, which has reduced application volumes.[11]

53. This issue is at least partly attributable to the Act's fee provisions, which do not:

    a require regular fee reviews, and

    b [36]

[10] This approach is consistent with the High Court decision, Coromandel Watchdog of Hauraki v Minister of Finance & Others [2020] NZHC 2345.

[11] In December 2020, following advice from the OIO, you agreed to seek Cabinet's approval in February 2021 to commence public consultation on a new fees structure to better ensure that fees reflect the true costs of assessing applications (BRF 21-219 refers).

Recommended solution

54. To address these issues, we recommend:

    a clarifying that the government can set fees to ensure that under- or over-collections from the prior four financial years can be distributed among future fee payers, and

    b requiring the Minister to commence a fees review at least once every four years.[12]

55. This approach will also prevent the government from recovering any of the deficit incurred more than four financial years prior (up to approximately $1.300 million). Given this amount cannot be fairly attributed to prospective applicants, this is appropriate and consistent with the government's cost recovery policy. To ensure that this amount is minimised in light of the OIO's increasing deficit, we recommend that the Minister responsible for setting the OIO's fees must complete a fees review that includes consideration of the OIO's accumulated deficit by the 2022/23 financial year. This is because the amount unable to be recovered will increase the longer it takes to complete such a review.

56. Relatedly, the Legislative Design and Advisory Committee (LDAC) has advised that recovery of any deficit amount may be inconsistent with its guidelines. However, we consider that this departure is justified because:

    a the Treasury and Audit guidance on fee setting indicates that the beneficiaries of government services should pay for them,

    b some of the OIO's deficit is driven by costs incurred in operationalising recent reforms for the benefit of new investors,

    c third-party revenue is not likely to equal expenses in any year and it is appropriate that under and over recovery be used to balance this out, and

    d if the provisions do not change, the Crown would have to meet the full costs of any deficit, shifting costs of administering the OI Act from investors to taxpayers.

57. In light of these factors, we have developed a supplementary and alternative option for your consideration.

Supplementary option: Option to recover the full deficit in the first fees review

58. If you wanted to preserve the ability to recover the entire deficit from future fee payers when it considers future OIO fees, the legislation could not include any restrictions on the deficit that can be recovered in the first fees review after Royal assent. However, the Treasury does not support this option because:

    a the additional amount this would enable the government to recover is small,

    b it would be inconsistent with LDAC guidance and the Government's Cost Recovery Policy,

    c it would change the nature of the OIO's fees to a tax, with any revenue subsequently treated as tax rather than non-tax revenue (highlighting the precise amount of over recovery), and, consequently

[12] This is consistent with other regimes, such as the Food Act 2014. It will also generally ensure that a review occurs every Parliamentary term without the risk of a review having to coincide with a caretaker period or start of a new government.

d it would highly likely receive significant opposition from Finance and Expenditure Committee members and investors, contrary to the Government's aims to improve investment attractiveness.

59. If, however, you adopted this option and subsequently decided to recover that portion of the deficit from future fee payers, officials would work with LDAC to ensure that any over-recovery was as transparent as possible and subject to appropriate safeguards. Recommendations on these matters would be reflected in any advice to Cabinet on the OIO's future fee settings.

Alternative option: Do not amend the Act's fees provisions

60. If you wish to be completely consistent with LDAC guidelines, you could retain the current fees provisions. This would have the effect of shifting the burden of any under-recovery in the overseas investment regime from investors, to taxpayers on an enduring basis and would make the Crown liable to fund the OIO's entire accumulated deficit (approximately $10.000 million as of 31 December 2020). As such, we do not support this option.

Issue nine: Disclosure of information for tax purposes

61. To support tax system integrity, the Bill requires investors to disclose certain tax information on their investment to Inland Revenue as part of their consent application.

62. Many submitters opposed this requirement because it would increase the cost of complying with the Act and were concerned that the Bill did not give sufficient detail on the requirement. Submitters therefore supported (in addition to removing the requirements):

    a specifying the type of tax information to be disclosed and the types of application that the requirement applies in primary legislation (to improve certainty for investors), and

    b limiting the obligation to new investors (as opposed to investors with existing operations) on the basis that Inland Revenue would possess most or all relevant tax information for existing investors.

Recommendation

63. In light of Cabinet's previous decisions, we do not recommend the requirement to provide tax information be removed. While the provision of tax information will impose some additional costs on investors this will not be disproportionate because:

    a the requirement will only apply to transactions involving significant business assets (generally investments in assets worth $100 million or more), and

    b the type of information to be provided is information that we would expect that any affected investor would be in a position to provide relatively easily.

64. We also do not recommend limiting the requirement to new investors. New investments from existing investors may have a very different tax structure and pose different tax risks. In these instances, existing operations will have little or no bearing on the information about the new investment.

65. However, to support investor certainty we consider that some detail currently proposed to be included in regulations should be moved into the primary legislation. In particular:

    a that the requirement to provide tax information only applies to investments in significant business assets, and

b that the information required will be the same for all affected applications and the specific nature of that information will be specified in regulations.

Issue ten: Information sharing for national security and public order purposes

66. The Urgent Measures Act established a regime for agencies to exchange information on transactions that may give rise to national security or public order (NSPO) risks. [36]

    a [36]

    b [36]

67. In addition, the information sharing regime prevents the New Zealand intelligence community from using information to support other mandated functions (for example, protecting national security). This is inconsistent with equivalent provisions in other regulatory regimes and the intelligence community consider that it has the potential to place New Zealand at risk.[13]

68. We consequently recommend:

    a clarifying that the No 3 Bill does not impose any restrictions on agencies relying on other lawful means for sharing personal and non-personal information, and that information received under the Act can be used for related purposes, and

    b allowing the intelligence community to use information provided under the OI Act in support of their other mandated functions (noting the range of safeguards already in place to ensure such information is used lawfully and protected).[14]

69. The Office of the Privacy Commissioner endorses these recommendations.

Next Steps

70. The timeframe for progressing changes to the Bill are condensed because the Business Committee set an early report back date. To manage these time pressures, we agreed with your Office in December that you would seek approval to take the attached Cabinet paper directly to Cabinet.

71. Therefore, and subject to your agreement, the next steps to finalise the Departmental Report for lodgement with the Finance and Expenditure Committee are:

[13] The Privacy Act 2020, Telecommunications (Interception Capability and Security) Act 2013 and Outer Space and High-altitude Activities Act 2017 all allow the intelligence community to use information shared under them in support of their other mandated functions.

[14] For example, the agencies have a general duty to act in accordance with New Zealand law and all human rights obligations recognised by New Zealand law and are supervised by the independent Inspector General of Intelligence and Security to oversee compliance.

Milestone	Dates
Ministerial consultation on Cabinet paper	21-27 January
Provide feedback on the proposed changes to the Bill and the Cabinet Paper	By 27 January
Seek approval from the Prime Minister's Office to go directly to Cabinet	By 27 January
Lodge Cabinet paper	28 January
Cabinet considers the paper	2 February
Departmental Report lodged with Finance and Expenditure Committee secretariat for circulation	5 February
Finance and Expenditure Committee reports back to Parliament	4 March
The Bill is passed by Parliament	Mid-2021

Annex 1: Minor and Technical Changes

We recommend that you agree to the following minor and technical changes which give effect to or are consistent with policy previously agreed by Cabinet. A clause-by-clause analysis of the relevant submissions and issues is contained in Part Four of the draft Departmental Report.

Number	Recommendation	Minister's decision
National interest test, emergency notification regime and call-in power		
1.	Amend the Bill to prevent investors from using a standing consent to acquire land or assets relating to strategically important businesses (SIBs) without scrutiny.	Agree / Disagree
2.	Amend the Bill to clarify that any acquisition of property that is used in carrying on a SIB triggers the automatic application of the national interest test.	Agree / Disagree
3.	Amend the Bill to enable the Minister making a national interest assessment to impose conditions on a transaction.	Agree / Disagree
4.	Amend the Bill so the 10 per cent threshold for notification in listed entities subject to the call-in power should apply to all listed issuers regardless of the country they are listed in.	Agree / Disagree
Investor test		
5.	Amend the Bill to clarify that pre-applications for the investor test only requires the payment of one fee, regardless of the number of people ultimately approved (consistent with how the investor test fee is applied currently).	Agree / Disagree
Definition of overseas person		
6.	Amend the Bill (to avoid any doubt) by inserting a new sub-provision that specifically defines when a limited partnership (LP) will be an overseas person. An LP will be an overseas person if: • The LP is an overseas limited partnership within the meaning set out in section 4 of the Limited Partnerships Act 2008 (including one registered under Part 3 of that Act); or • Any other LP registered under that Act (A) where: o A general partner of A is an overseas person, o More than 25% of the persons having the right to control the composition of the governing body of A are overseas persons, o More than 25% of the partnership interest is held by overseas persons, or o An overseas person or persons can control more than 25% of the voting at a meeting of the partners of the limited partnership.	Agree / Disagree
7.	Amend the Bill by incorporating the standing consent for Managed Investment Schemes included in the Urgent Measures Act into the Act permanently through inserting a new definition of overseas person for listed Manged Investment Schemes.	Agree / Disagree
Leases		
8.	Amend the Bill so that consented freehold interests will not be relevant to the calculation of the total term of interest in land in Schedule 1A.	Agree / Disagree
Fresh and sea water areas		

9.	Amend the Bill to make it clear that there are two separate processes for dealing with *usque ad medium filum aquaea* rights (AMF rights) and with other types of fresh and seawater areas.	Agree / Disagree
10.	Amend the Bill to clarify that once vested in the Crown under the Land Act 1948 the fresh and seawater land (excluding AMF rights) becomes Crown Land under the Land Act 1948.	Agree / Disagree
11.	Amend the Bill to explicitly direct the Minister for Land Information to lodge the water areas acquisition notice with the Registrar-General of Lands in the manner prescribed by the Regulations.	Agree / Disagree
12.	Amend the Bill so to align the process for seeking compensation after an interest is extinguished through vesting (or relinquished through rebuttal of an AMF right) is the same for both owners and third parties and will be set in Regulations.	Agree / Disagree
13.	Amend the Bill to clarify that a mortgagee's consent to a change in the terms of acquisition of a fresh and seawater area cannot be withdrawn once given.	Agree / Disagree
14.	Amend the Bill to explicitly allow for the Registrar-General of Land to require the deposit of any survey plan necessary for the issue of title.	Agree / Disagree
Farm land advertising		
15.	Amend the Bill so that if the Minister wishes to withhold the details of the farm land advertising exemption (temporarily or on an enduring basis), then the grounds for withholding, under the Official Information Act, must also be published (as per section 19 of the Official Information Act).	Agree / Disagree
Benefit to New Zealand test		
16.	Amend the Bill to clarify how the rationalised benefits test will operate, by including examples of the types of matters that can be assessed under test, and how that assessment will occur (for example, confirming the approach to negative benefits).	Agree / Disagree
Sensitive adjoining land		
17.	Amend the Bill to remove obsolete reference to Section 67(4) of the Heritage New Zealand Pouhere Taonga Act.	Agree / Disagree
18.	Amend the Bill to replace "sea" with "marine and coastal area."	Agree / Disagree
Transitional provisions		
19.	Amend the Bill so that entities subject to conditions of consent – whether bespoke or mandatory – can seek a variation of those conditions if they are no longer deemed an overseas person.	Agree / Disagree
20.	Amend the Bill so that the existing rules apply to applications received before commencement (whether entered into, given effect, or not), and the No 3 Bill's rules apply to all other transactions, including transactions entered into but not given effect.	Agree / Disagree
21.	Amend the Bill so that only interests in land obtained after the No 3 Bill takes effect should be counted when determining the total term of interest in land.	Agree / Disagree
Miscellaneous		
22.	Amend the Bill to empower the Governor-General by Order in Council on the recommendation of the Minister to exempt estates or interests in land on either an individual or class	Agree / Disagree

	basis, including covenants, from the need to obtain consent.	
23.	Amend the Bill so an investor in an unpublished critical direct supplier must make a notification as soon as reasonably practicable after receiving a notice of their obligations from an unpublished critical direct supplier (instead of having this period set in regulations).	Agree / Disagree
24.	If you do not agree to Recommendation b, amend the Bill to allow regulations to be made to exempt the associates of a consent holder from consent requirements where the relevant transaction only results in a minor increase in ultimate ownership and control.	Agree / Disagree
25.	Amend the Bill to clarify that Orders in Council relating to statutory management are not secondary legislation.	Agree / Disagree
26.	Amend the Bill to align the relevant provisions of the Act with the changes proposed in the Secondary Legislation Bill.	Agree / Disagree
27.	Agree to clarify that Ministerial Directive Letters are secondary legislation, with this change to be progressed through the Secondary Legislation Bill.	Agree / Disagree

Annex 2: draft Cabinet Paper

Attached as a separate document.

Annex 3: Draft Departmental Report

Attached as a separate document.