

The Treasury

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

September 2021

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Treasury Report: Cabinet paper to implement the investor test

Date:	18 January 2021	Report No:	T2020/3753
		File Number:	IM-5-3-8-9

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	Note the contents of this briefing.	N/A
Associate Minister of Finance (Hon David Parker)	Provide feedback on the attached draft Cabinet Business Committee paper and Order in Council. Agree to consult with the Minister for Land Information on the draft paper before lodging with Cabinet Business Committee (acting as LEG) on 4 February for consideration by that Committee on 10 February.	4 February 2021

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact	
John-David Chaker	Analyst	[39]	N/A	✓
Thomas Parry	Manager, International		[35]	

Actions for the Minister's Office Staff (if required)

<p>Return the signed report to Treasury.</p> <p>Provide feedback from Ministers on the attached draft Cabinet paper (if any).</p> <p>Forward the draft Cabinet paper and Order in Council to the Minister for Land Information for consultation, before lodging the paper for consideration by Cabinet Business Committee on 10 February.</p>
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Note any feedback on the quality of the report

Enclosure: Yes – [Draft Cabinet Business Committee paper](#); [Order in Council](#)

Treasury Report: Cabinet paper to implement the investor test

Purpose of Report

1. This report includes a draft Cabinet paper and Order in Council to bring into force the new investor test in the Overseas Investment Act on 15 February 2021. The investor test sets out a framework to determine whether an overseas person is suitable to invest in New Zealand, by assessing their character and capability. The new investor test streamlines this framework.
2. This report seeks your (Minister Parker's) approval to lodge these documents with the Cabinet Business Committee (CBC) for its consideration.

Next steps to implement the investor test

3. In December 2020 you agreed, under delegation from Cabinet, to bring into force the new investor test on 15 February 2021 (T2020/2991).
4. Attached is a draft CBC paper and an Order in Council (OIC), to implement this decision. The paper seeks an exemption from the 28-day rule for the entry into force of the OIC given that the new investor test exclusively benefits stakeholders and the regulator.
5. We recommend that you provide feedback on the paper (if any), consult your Ministerial colleagues on the proposal, and lodge the paper (with any amendments) and the OIC with the CBC by 4 February, for consideration by CBC (acting as the Legislation Committee) on 10 February 2021.

Recommended Action

We recommend that you:

- a **Provide feedback** (if any) on the attached draft Cabinet Business Committee (CBC) paper and Order in Council.
Agree/disagree.
- b **Agree**, following consultation with the Minister for Land Information, to lodge the attached CBC paper and Order in Council by 4 February 2021 for consideration on 10 February 2021.
Agree/disagree.

Thomas Parry
Manager, International

Hon Grant Robertson
Minister of Finance

Hon David Parker
Associate Minister of Finance

Overseas Investment (Urgent Measures) Amendment Act 2020: implementation of the new investor test

Proposal

- 1 This paper seeks authorisation to submit the Overseas Investment (Urgent Measures) Amendment Act Commencement Order 2021 (the 'Order in Council') to the Executive Council.

Policy

- 2 The Order in Council supports the implementation of the Overseas Investment (Urgent Measures) Amendment Act 2020 (the Urgent Measures Act), by bringing into force the new, streamlined, investor test. Without an Order in Council, the investor test will not come into effect until one year after the Urgent Measures Act received Royal assent (2 June 2021).

Background

- 3 The investor test sets out a framework to determine whether an overseas person (an 'investor') is suitable to invest in New Zealand, by assessing the investor's character and capability. The investor test applies to almost all transactions that require consent under the Act.
- 4 The Urgent Measures Act made a number of improvements to the investor test to ensure that it only focuses on material risks and to reduce unnecessary compliance costs, including by:
 - 4.1 providing greater certainty to decision-makers about the purpose of the test;
 - 4.2 no longer considering irrelevant matters that have no bearing on an investor's suitability to invest in New Zealand; and
 - 4.3 no longer requiring New Zealanders to go through the test.
- 5 These changes will simplify the process for both the Overseas Investment Office (OIO, the Overseas Investment Act's regulator) and investors. However, the commencement of these changes was delayed by up to one year after the Urgent Measures Act received Royal assent to ensure that the OIO could prioritise implementation of higher priority changes introduced in the Urgent Measures Act (such as new tools to manage risks arising from overseas investment).

- 6 The OIO has now finished implementing these other priority changes and will be able to implement the new investor test from 22 March 2021. I recommend bringing the investor test into force on that date via an Order in Council, given the benefits it will bring to both investors and the OIO at a time where the economy needs access to high quality productive investments to support its recovery from the COVID-19 pandemic.

Timing and 28-day rule

- 7 The Order in Council will take effect on 22 March, consistent with the 28-day rule.

Compliance

- 8 The Order in Council complies with:
- 8.1 the principles of the Treaty of Waitangi;
 - 8.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 8.3 the principles and guidelines set out in the Privacy Act 1993;
 - 8.4 relevant international standards and obligations; and
 - 8.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
- 9 There are no statutory prerequisites that need to be met before bringing into force the new investor test.

Regulations Review Committee

- 10 I do not consider there are any grounds for the Regulations Review Committee to draw the Order in Council to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

- 11 The Order in Council has been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

- 12 A Regulatory Impact Assessment was prepared, in accordance with the necessary requirements, and was submitted at the time that Cabinet approval was sought for the relevant provisions [DEV-19-SUB-0285 refers].

Publicity

- 13 The OIO will arrange suitable communications to ensure investors and other stakeholders are informed of the changes.

Proactive release

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

Consultation

- 15 This paper was developed in consultation with Ministry of Foreign Affairs and Trade, Land Information New Zealand, and the New Zealand Intelligence Community.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that Parliament agreed that the streamlined investor test included in the Overseas Investment (Urgent Measures) Amendment Act 2020 (Urgent Measures Act) would come into force on 2 June 2021, unless introduced earlier by Order in Council.
- 2 note that this delay in commencement was to allow the OIO to prioritise implementation of other features of the Urgent Measures Act – such as the national interest test – and the OIO has advised that it will have capacity to implement the streamlined investor test by 22 March.
- 3 authorise the submission to the Executive Council of the Overseas Investment (Urgent Measures) Amendment Act Commencement Order 2021, with the effect of bringing the new investor test into force on 22 March 2021, the point at which the OIO has capacity to implement it.
- 4 note that the Overseas Investment (Urgent Measures) Amendment Act Commencement Order 2021 comes into force on 22 March 2021, consistent with the 28-day rule.

Authorised for lodgement

Hon David Parker

Associate Minister of Finance