The Treasury

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[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

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TE TAI ŌHANGA
THE TREASURY

Treasury Report: Third 90-day review of the overseas investment emergency notification regime

Date:	18 February	**Report No:**	T2021/78
		File Number:	IM-5-3-8-9-2

Action sought

	Action sought	Deadline
Hon Grant Robertson **Minister of Finance** Hon Nanaia Mahuta **Minister of Foreign Affairs** Hon David Parker **Associate Minister of Finance**	**Note** that the evidence for retaining the Emergency Notification Regime (ENR) is finely balanced and the risks it was put in place to manage are diminishing. **Agree** to retain the ENR for a further 90 days. **Agree** to begin preparations now to replace the ENR with the national security and public order call-in power as part of the next 90-day review, which will need to be completed by 25 May at the latest.	24 February 2021

Contact for telephone discussion (if required)

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

Minister's Office actions (if required)

Return the signed report to Treasury.

Refer this report to the Minister responsible for the New Zealand Government Communications Security Bureau and the New Zealand Security Intelligence Service, Minister for Economic Development, and the Minister for Land Information.

Note any feedback on the quality of the report	

Enclosure: Yes, a draft press release and 90-day review assessment framework is attached

Treasury Report: Third 90-day review of the overseas investment emergency notification regime

Executive Summary

We are seeking your agreement to retain the emergency notification regime and to begin preparations now to replace it as part of the next 90-day review

This report provides you with an assessment of the grounds for retaining the emergency notification regime (the ENR), and on the basis of that assessment, seeks your agreement to retain the ENR for now. It also seeks your agreement to start the process now to replace the ENR with the permanent national security and public order call-in power (the call-in power) as part of the next 90 day review (by 25 May).

The ENR must be reviewed at 90-day intervals

In June 2020, as a response to the heightened foreign investment risks arising during the COVID-19 pandemic and the related economic downturn, Parliament introduced the temporary ENR into the Overseas Investment Act 2005 (the 'OI Act'). The ENR significantly broadened the scope of overseas investment transactions screened by the OI Act.

[1], [36]

The OI Act requires you to review the ENR every 90-days to determine whether the effects of the pandemic in New Zealand justify retaining the ENR. Your decision on whether the effects of the emergency justify retaining the ENR must have regard to:[1]

a the economic, social, and other effects of the emergency in New Zealand;

b any risks to New Zealand's national interest posed by foreign investment; and

c New Zealand's international relations and obligations.

When the ENR is removed, it will be replaced by the narrower call-in power, which can screen investments in strategically important businesses (such as critical national infrastructure) for significant national security and public order risks. Removing the ENR will have no impact on the application of other tests under the Act. For example, the broader national interest test will still apply to applications for consent.

The evidence for retaining the ENR is finely balanced but the risks it was put in place to manage are diminishing

The conditions for New Zealand businesses have improved faster than was forecast, and if current trends continue, the national interest and security risks identified when the ENR was established will continue to diminish. There is ongoing uncertainty due to the risks of outbreaks and new variants, as demonstrated this week in Auckland.

Recent success in managing outbreaks demonstrates that investment in public health capacity and border controls over the last 12 months have made it less likely that New Zealand will face the kind of protracted and nationwide lockdowns that precipitated the ENR's introduction. The rollout of vaccinations domestically and globally will further reduce this risk.

1 Clause 27, Schedule 1AA, the OI Act.

[1]

Notably, Australia has replaced their temporary emergency screening regime with a permanent power, which is like the call-in power. Also, NZTE have reported the ENR is not seen positively by some investors and New Zealand businesses due to the additional burden it imposes on previously unregulated foreign investment.

The ENR could be removed soon if these positive trends continue. In addition to these positive trends, some of the remaining risks to the downside (such as further outbreaks) may be mitigated over the next few months. An effective vaccine roll out would reduce both the scale and likelihood of an outbreak, and quarantine-free travel with Australia would help fill some of the gap in tourism revenue that resulted from the border closure.

While, more narrowly, some sectors such as tourism will continue to feel the effects of the pandemic, they also reflect more structural changes, such as lower global travel demand and airline capacity, rather than the near term emergency the regime is designed to address – that is, the risks are due to the shifting nature of the tourism sector following the COVID-19 pandemic rather than national security risks. For these reasons, we would not recommend retaining the ENR for a specific non-security related sector, such as tourism.

[36]

Starting preparations now to replace the ENR will support a smooth transition

We recommend that preparations begin now to replace the ENR with the call-in power, as this will:

a avoid a condensed process after another 90-day review, when there may be pressure from foreign governments and investors to remove the ENR,

b allow officials to begin drafting regulations and associated materials (for example, guidance), operational planning and stakeholder engagement to help effectively stand up the call-in power when the ENR is removed, under a normal timeframe and without international and resourcing pressures, and

c have no impact on the ability to manage risks because the process can be stopped at any time.

The final part of the process to replace the ENR requires an Order in Council, and Ministers will be able to halt preparations if there are any significant negative changes to business conditions.

Recommended Action

We recommend that you:

a **note** that you are required to assess whether the effects of the COVID-19 pandemic justify retaining the emergency notification regime (the 'ENR') in the Overseas Investment Act 2005 (the 'OI Act') every 90 days, with the third 90-day review due by 24 February.

b [36]

c **agree** to retain the ENR for a further 90 days.

Agree/disagree.

d **note** that officials consider that economic conditions are improving such that the ENR should be removed at the next 90-day review (absent any significant negative change to conditions).

e **note** that, while there is ongoing uncertainty due to the risks of outbreaks and new variants, investment in public health capacity and border controls have made it less likely that New Zealand will face the kind of protracted and nationwide lockdowns that precipitated the ENR's introduction.

f **agree** to begin preparations to replace the ENR with the national security and public order call-in power as part of the next 90-day review, which will need to be completed by 25 May at the latest.

Agree/disagree.

g **note** that if you agree to recommendation f, you can halt preparations for replacing the ENR at any time (for example, due to sustained community transmission) up until final Cabinet endorsement of the enabling regulations.

h **agree** to issue drafting instructions to PCO to prepare an Order in Council and any regulations necessary to replace the ENR with the call-in power.

Agree/disagree.

i **provide feedback** on the attached draft Treasury press release (Annex Three) to communicate your decision on this 90-day review of the ENR.

j **refer** this report to the Minister responsible for the GCSB and NZSIS, Minister of Economic Development, and the Minister for Land Information, for their information.

Thomas Parry
Manager, International

Hon Grant Robertson
Minister of Finance

Hon Nanaia Mahuta
Minister of Foreign Affairs

Hon David Parker
Associate Minister of Finance

Treasury Report: Third 90-day review of the overseas investment emergency notification regime

Purpose of Report

1. This report provides you with an updated assessment of the grounds for retaining the ENR, and on the basis of that assessment, seeks your agreement to begin preparations now to replace the ENR with the national security and public order call-in power in May. The process can be stopped at any time if conditions for New Zealand businesses worsen significantly.

2. Land Information New Zealand ('LINZ'), the Ministry of Foreign Affairs and Trade ('MFAT'), the New Zealand Government Communications Security Bureau ('GCSB') and the New Zealand Security Intelligence Service ('NZSIS'), the Ministry of Business, Innovation and Employment ('MBIE), and New Zealand Trade and Enterprise ('NZTE') contributed to and support this report's recommendation.

Background to the ENR and 90-day review

3. The COVID-19 global pandemic and related economic downturn created new foreign investment risks and amplified existing gaps in the foreign investment screening regime, which justified a temporary expansion in the Act's scope. In particular, Cabinet noted that nationwide lockdowns and continued uncertainty about the virus' progression in New Zealand increased the following risks:

   a strategically important assets (such as key airports or other critical national infrastructure) being opportunistically acquired for the purpose of undermining our economic or national security;

   b ordinarily productive businesses that offer significant positive externalities to New Zealanders being acquired at prices that do not reflect their value; and

   c significant portions of key sectors (such as tourism) being foreign owned.

The ENR broadened the scope of overseas investment transactions screened by the OI Act

4. The ENR requires overseas persons to notify the government of any new controlling investment in an existing New Zealand business or certain business assets that would not ordinarily require consent. In effect, the ENR temporarily reduced the screening threshold for controlling investments in New Zealand businesses from $100 million to $0.

[36]

5. [1], [36]

The ENR must be reviewed at 90-day intervals

6. Recognising that the ENR is imposing a regulatory burden, and that it has the potential to impose broader economic costs, the OI Act requires joint Ministers to review whether the effects of the emergency justify retaining the ENR, at 90-day intervals, against the three statutory criteria underpinning the ENR.

7. Once the ENR is repealed, it will be replaced by a narrower and permanent national security and public order call-in power (the call-in power), which will apply to a narrower subset of businesses defined as "strategically important businesses" and only allows intervention to manage significant national security and public order risks (not the broader national interest grounds). The call-in power was the tool first endorsed by Cabinet to manage risks associated with transactions that do not ordinarily require consent, until COVID-19 changed the risk environment more broadly.

Analysis of the grounds for retaining the ENR

8. Your decision on whether the effects of the emergency justify retaining the ENR must have regard to:[2]

   a the economic, social, and other effects of the emergency in New Zealand;

   b any risks to New Zealand's national interest posed by foreign investment; and

   c New Zealand's international relations and obligations.

9. We developed a framework for how we will assess each of the criteria above (see Annex One). The following analysis relies on the best data available. However, as with all economic forecasts, there is a degree of uncertainty in the assessment of current and future conditions.

Economic, social and other effects of COVID-19

10. The successful management of COVID-19 to date, including the most recent community transmission in Auckland, has meant the economy is in stronger shape than expected at the previous 90-day review. There is ongoing uncertainty due to the risks of outbreaks and new variants, but investment in public health capacity and border controls have made it less likely that New Zealand will face the kind of protracted and nationwide lockdowns that led to the ENR's introduction. Notable indications of the recovery are that:

    a business activity data reflects a rebound in activity – this is seen in the "high-frequency" indicators, such as traffic and freight movements and retail spending,

    b unemployment has fallen to 4.9%, even though the wage subsidy scheme has ended,

    c capital markets continue to function for larger business, with banks continuing to lend to existing customers,

    d uptake in the government's small business cash flow loan scheme has slowed significantly, and

    e these matters support domestic and global forecasts of GDP recovering at a faster rate.

[2] Clause 27, Schedule 1AA, the OI Act.

11. However, there are specific areas where conditions still need to be monitored. The business activity rebound is inconsistent across sectors (tourism being the notable outlier) and remains vulnerable to any further increases in alert levels in response to an outbreak. Raising the alert levels for a prolonged period or across multiple regions would likely have an outsize impact on business confidence (however this is less likely than a year ago). Also, border restrictions remain a headwind for those businesses relying on international tourism or seeking to expand export markets and create pressure on supply chains and labour supply.

12. Notably, the government can and has been taking steps to manage these risks, for example, a $400 million package was established to support the tourism sector in 2020. This included a combination of grants and loans through the Strategic Tourism Assets Protection Programme as well as a range of sectoral initiatives aimed at generating domestic demand and help businesses pivot to the domestic market, digitise and innovate. Despite this funding, there is likely to be a crunch point in April/May for many tourism businesses who still face cash flow issues due to reliance on international demand. This impact will be felt disproportionately across regions, for example Fiordland is particularly struggling with the loss of international revenue.

13. The ENR could be removed soon if general positive trends continue. In addition to these positive trends, some of the remaining risks to the downside (such as further outbreaks) may be mitigated over the next few months. An effective vaccine roll out would reduce both the scale and likelihood of an outbreak. For businesses that rely on international tourism, establishing quarantine-free travel with Australia would help fill the gap in revenue from the border closure. As acknowledged by the Tourism Minister, however, ultimately the constraints on this sector reflect a structural change in the tourism market and are unlikely to be completely remediated in the short-to-medium term with borders largely remaining closed.

14. Globally, the momentum of the economic recovery is expected to build, supported by increased fiscal support and good progress on the vaccination rollout. Notably, the US and Japan are projected to regain pre-COVID-19 activity levels in the second half of 2021, although the Euro area and the United Kingdom activity is expected to remain below end-2019 levels into 2022. This forecast is conditional upon the efficacy of vaccines in treating variations in the virus, such as the South African variant, and successful vaccine distribution processes by state and multilateral actors.

15. These conditions generally bode well for New Zealand businesses. The heightened risk associated with investments in most sectors during the development of the ENR has declined because most markets have resumed normal function. While there are specific sectors to watch out for, a clear picture of how stable the conditions are will become apparent in the next few months.

National security risks posed by foreign investment

The broader national security risks will diminish if conditions continue to improve

16. [1]

a [1]

b [1]

c [1]

d [1]

17. [1]

18. [1]

19. [1]

The call-in power that will replace the ENR has been designed to manage any significant ongoing risks, once the broader COVID-19 related risks have diminished. As such, if positive trends continue, the call-in power will soon be able to manage the remaining significant risks to national security and public order (consistent with what it was designed for).

New Zealand’s international relations and investment attractiveness

20. New Zealand has agreed investment obligations with a number of international partners to support a transparent and certain environment for foreign investment. Maintaining these obligations is important for New Zealand’s international relations and contributes to New Zealand’s attractiveness as an investment destination.

21. Consistent with the previous 90-day reviews, MFAT has received no significant adverse feedback to date on the ENR from either foreign governments or investors. However, New Zealand’s continued success in handling COVID-19 (including the recent cases in Auckland) and improved economic conditions are diminishing the risks that the ENR was designed to address. This makes it increasingly likely that a foreign government or investor may complain about the ENR in the short term, although we are yet to see any significant complaints raised relating to the ENR.

22. Notably, Australia has moved away from their temporary emergency screening regime, that was similar to the ENR, and have put in place their permanent screening regime, which is similar to our call-in power but wider in scope. If more countries move away from emergency regimes, the ENR could become an outlier.

23. Additionally, the ENR has created material regulatory costs where screening was previously not required. NZTE have reported the ENR is not seen positively by some investors and New Zealand businesses due to the additional burden it imposes on previously unregulated foreign investment.

24. The costs of the ENR are largely fixed and include collecting information, in many cases paying legal fees, and other costs caused by delays in completing a transaction. These costs are proportionally larger for investments in small businesses and may deter investment in such firms, even where there are unlikely to be any significant risks. The ENR adds to the challenges COVID-19 has created for businesses seeking foreign investment, for example, MIQ requirements and visa restrictions for potential investors are making it difficult to carry out due diligence. Considering the overall investment environment, NZTE is unsurprisingly finding it more challenging to attract investment than before COVID-19.

New Zealand's international obligations

25. [1], [36]

26. [1], [36]

27. [1], [36]

28. [1], [36]

Overall assessment of the grounds for retaining the ENR

The risks that the ENR was put in place to manage are diminishing

29. The national security risks that the ENR was put in place to address are expected to diminish as economic conditions in New Zealand improve. Economic forecasts have improved for New Zealand and our international partners since the previous review of the ENR. In particular, the conditions for New Zealand businesses have improved faster than was forecast, and if this trend continues, it will be harder to justify retaining the ENR. The heightened risks that the ENR was designed to manage have declined because most markets have resumed normal function and investment in public health capacity and border controls have reduced the likelihood of protracted and nationwide lockdowns.

30. There are indications that the remaining risks may be further mitigated over the next few months. The roll out of vaccines will reduce both the scale and likelihood of an outbreak.

31. While, more narrowly, some sectors such as tourism will continue to feel the effects of the pandemic, they also reflect more structural changes, such as lower global travel demand and airline capacity, rather than the near term emergency the regime is designed to address. That is, the risks are due to the shifting nature of the tourism sector following the COVID-19 pandemic rather than national security risks. For these reasons, we would not recommend retaining the ENR for a specific non-security related sector, such as tourism.

32. In addition to policy considerations, [36]

Starting preparations now to replace the ENR with the call-in power will support a smooth transition

33. On the basis of these improving conditions, we recommend beginning preparations to replace the ENR with the call-in power so that the change can be made at the next 90-day review (25 May at the latest). This May target has a number of advantages. It maximises the amount of time available to the Government to both:

    a Prepare for the introduction of the call-in power in a considered and less resource intensive way (this work will not be wasted even if the ENR ends up being retained for a longer period). This includes beginning operational work, drafting regulations (drafting cannot begin without your agreement) and directive letters, and

    b Retain the ENR if conditions materially deteriorate, with Ministers able to stop the transition to the call-in power up until the promulgation of an Order in Council. The Treasury will provide advice on the underlying conditions at each stage in the process.

34. Even if conditions significantly worsen after the ENR is replaced (for example, there is a widespread outbreak), there is a backstop power in the Act which allows the ENR to be reinstated through regulation in an emergency. While we expect that there will be enough certainty that conditions are stable by May, this backstop power can be used after the ENR is removed.

35. In contrast, if conditions improve as forecast and officials do not begin preparing for the transition until the next 90-day review, the constrained timeframes would:

    a make it more difficult for officials to effectively stand up the call-in power, as there will be less time to draft regulations, set up operational processes and engage with stakeholders, and a more concentrated demand on agency resources, and

    b delay the transition relative to our recommended option, [1]

Next Steps

36. If you agree in principle to replace the ENR with the call-in power at the next 90-day Review, officials will begin preparations to replace the ENR with the call-in power. The preparations will involve:

    a preparing advice on the final design of the call-in power, including delegations and directive letters for the Regulator. Agencies will then need to put in place processes to give effect to these decisions.

    b Engaging with stakeholders to provide guidance on the different scope and processes of the call-in power, to help ensure they are aware of their obligations.

37. Once the ENR is repealed, we consider that the changes should be brought into effect 10 working days after the Order in Council is Gazetted. This will provide investors with time to adapt to the new processes, and will mean that the ENR is not in place for too long after Ministers consider that there are no longer grounds for retaining it.

38. Consequently, subject to your agreement to an in principle to replace the ENR at the next 90 day review, the next steps will be:

Milestone	**Dates**
PCO begins drafting regulations	25 February
Treasury Report on final call-in power design details and delegations provided to Minister Parker	By 1 March
Treasury Report with draft LEG paper and Regulations provided for Joint-Minister	19 April
Ministerial consultation on LEG paper and Regulations	27 April to 11 May
LEG considers paper	20 May
Cabinet confirmation of LEG decision and Executive Council Gazettal	24 May
The deadline for deciding to retain the ENR **If circumstances worsen Ministers could decide the ENR should remain in place for a further 90 days**	25 May
The call-in power replaces the ENR	7 June

Publicity

39. We are seeking your feedback on a draft press release (Annex 3) that explains why the ENR will be retained for now. A separate press release on the repeal of the ENR, if this looks set to occur, will be provided to you in late-April.

Annex One: 90-day review assessment framework

The Emergency Notification Regime (ENR) was introduced into the Overseas Investment Act (OI Act) in response to concerns that the COVID-19 pandemic and related economic downturn increased the risk of:

- falling firm values and revenues of ordinarily productive firms to a level below the OI Act's screening thresholds,
- opportunities to acquire distressed assets at fire sale prices,
- increasing numbers of firms requiring urgent access to foreign capital (debt or equity) to remain viable,
- as a result of the above, increased likelihood that foreign investment poses a risk to New Zealand's national security where it is occurring for the strategic advantage of other states, and
- [1]

The OI Act requires you to make a decision, at 90-day intervals, about whether to continue or withdraw the ENR.[3] The legislative test is: do the effects of the emergency (the COVID-19 pandemic) continue to justify the ENR remaining in place, with regard to three statutory criteria. An assessment against each of these criteria will guide this decision, with this framework supporting your overall judgment of the costs and benefits of retaining the ENR.

We have developed the framework below to ensure the assessment against the criteria is robust, consistent and transparent. This framework sets out the metrics by which we will generally assess each element of the statutory test and provides qualitative thresholds to guide judgment on whether the conditions support the ENR remaining in force, or whether it should be repealed. This assessment will focus on how the conditions relate to the specific policy concerns underpinning the ENR and not broader or unrelated features of the economic environment. Where significant new information becomes available, we may consider it for inclusion in the framework.

In making the overall recommendation as to whether the ENR should continue or be withdrawn, our advice will weight each component equally and take into account the interrelationship between components. Ministers may elect to weigh factors differently when determining whether the ENR should be continued or withdrawn.

3 Clause 27, Schedule 1AA, Overseas Investment Act 2005.

Elements of the emergency (statutory criteria)	Relevant metrics or indicators	Threshold at which effects support continuation/withdrawal of the ENR
The economic, social, and other effects of the emergency in New Zealand.	The economic effects of the emergency should be assessed against, among other factors, the following metrics: *Macroeconomic indicators* • International (and state-level) and domestic economic forecasts, to the extent these indicate projected levels of economic and firm distress. • New Zealand activity index (NZAC): this provides a timely and granular assessment of economic conditions, relative to prior years. As such, we assume the economic effects of the emergency will be subsiding when current activity begins to approach pre-COVID levels as measured by the NZAC. *Firm health indicators* • Presence, absence, and expected timeframes for withdrawal of fiscal support schemes: this provides an indication of the degree of reliance of firms on external stimulus, which is relevant to their value and risk to opportunistic acquisition. • Equity market valuations: these signal the value of listed firms according to the stock market, and whether those are falling below the OI Act's permanent screening thresholds. • Corporate bond and equity activity: these activity levels indicate how well the market is functioning, and therefore whether firms are likely to be undervalued. • Credit conditions: the supply of domestic credit is indicative of how effectively New Zealand's capital markets are functioning. To the extent that markets are performing and there are few constraints on business' access to capital, the risk that businesses are being 'undervalued' by the	Whether the economic effects support the *continuation* or *withdrawal* of the ENR will depend on whether there is an ongoing or anticipated risk of: • firm values falling below the threshold at which screening requirements would be triggered under the OI Act's enduring screening frameworks, • opportunities to acquire distressed assets at fire sale prices, and/or • increasing numbers of firms requiring urgent access to foreign capital (debt or equity) to remain viable. To assess this risk, the metrics cited will best reveal the state of firm health, while taking into account the broader landscape (e.g. the extent to which the presence or absence of other schemes may be deferring or masking expected changes in firm health and viability). No bright-line threshold can be set to show when these risks have subsided. As such, we will consider the collective weight and overall trend shown by the metrics to assess whether the market is correctly pricing firms and/or has equilibrated to a 'new post-COVID' normal. We will also consider the extent to which the costs associated with the regime are discouraging investment flows into New Zealand, and the regulatory burden on the OIO associated with the processing of notifications.

	market is lessened. • Bank health, including profitability, non-performing loans, and loan loss provisioning: these are indicators of banks' ability to support lending, which affect businesses' access to capital. Loan loss provisioning can also be an early warning indicator of stressed assets, as banks may report non-performing loans before they reach the point of insolvency. • Household and business balance sheets, cashflow pressures, interest cover: these convey the room firms have in their balance sheets to recapitalise, and by extension the extent to which business cashflows are sustainable and resilient or at risk of credit distress. Consideration must be given to whether fiscal support schemes such as payment deferral schemes, which reflect cash flow, are contributing to the creation of 'zombie firms', which are dependent on those schemes for their viability. This can prevent the efficient reallocation of resources within the market. • Insolvency activity: a spike in business insolvencies may indicate that firms are experiencing financial distress and at risk of being undervalued or acquired at fire sale prices. Insolvency activity must be considered in the context of the government fiscal support scheme landscape, and the extent to which insolvency data does or does not account for firms that will cease to be viable once those schemes are withdrawn. Further, higher insolvency activity is not of itself a reason to retain the ENR as it supports the efficient reallocation of resources in the market. The assessment may also take into account any other relevant economic indicator.	
Any risks to New Zealand's national interest associated with transactions by overseas person.	The emergency's effects on the risks to the national interest should be assessed against, among other factors, the following metrics: • Intelligence and Security Agency assessment of foreign investment as a risk to New Zealand's national security and public order, including intelligence on planned or anticipated transactions, • the risk profile of transactions (both those notified and those required to notify but which did not), and the extent to which they pose risks to the	Whether the conditions support the *continuation* or the *withdrawal* of the ENR will depend upon: • the nature of the present or anticipated foreign investment risks relative to the pre-COVID environment, and • the sufficiency of the call-in power or other permanent consent frameworks at managing foreign investment risks, to be determined by reference to the

	national interest, For example: o the transfer of knowledge and jobs, o the loss of entry points into global value chains, o control of cornerstone businesses in sectors displaced by the COVID-19 pandemic, and o acquisition of strategic assets unable to be screened by the permanent call in power (e.g. logistics, health, certain science system research, and digital solutions), • OIO advice on the nature and extent of any transactions that did not comply with notification requirements.	risk profile of transactions notified under the ENR.
New Zealand's international relations	The emergency's effects on New Zealand's international relations should be assessed against the following metrics: • MFAT and NZTE reporting on the reaction of foreign governments, including as informed by foreign investors, and • status of equivalent policy changes to foreign investment screening regimes in other jurisdictions.	Whether New Zealand's international relations support the continuation or withdrawal of the ENR will depend upon: • the nature (positive or negative) and significance of reactions from foreign governments, including as informed by foreign investors, to the ENR, and • whether other jurisdictions are adopting or retaining similar foreign investment screening policy changes.
[1], [36]		

Annex Two: Foreign investment risks related to COVID-19

The COVID-19 global pandemic and related economic downturn created new foreign investment risks and amplified existing gaps in the foreign investment screening regime, which justified a temporary expansion in the Act's scope. In particular, Cabinet noted increases in the following risks:

a Strategically important assets being opportunistically acquired for the purpose of undermining our economic or national security. [1]

b Ordinarily productive businesses that offer significant positive externalities to New Zealanders being acquired at prices that do not reflect their value to New Zealand and/or result in the loss of those broader societal benefits (e.g. employment, the generation or diffusion of intellectual property, or strong international connections). That is, some of New Zealand's wealth would be transferred to the investor's jurisdiction.

c Significant portions of sectors of New Zealand's economy being foreign owned [1] which in some cases could pose risks.

Cabinet considered that these risks were relevant both in respect of:

d entities that would have been subject to screening prior to the economic downturn (for example, entities worth $150 million at the start of the year now worth less than $100 million), given their economic significance; and

e entities that would not ordinarily be reviewed under the Act, given:

  i. that some sectors that are not ordinarily strategically important, would be for a period of time (e.g. producers of personal protective equipment, logistics companies and providers of certain digital platforms),

  ii. the potential loss of positive externalities generated by these businesses could compound other effects of the COVID-19 pandemic (particularly in regional areas of New Zealand where fewer alternative employers, for example, may exist), and

  iii. that smaller businesses do, in some sectors of the economy, hold significant market share (for example, advanced technology). This increases risks of greater foreign control of certain sectors without action.

The Government will retain the Emergency Notification Regime in the Overseas Investment Act 2005 to ensure that New Zealand's national interest remains protected.

In June 2020, the Emergency Notification Regime was introduced to ensure that heightened foreign investment risks caused and exacerbated by the COVID-19 pandemic could be managed effectively. The regime allows the Government to screen transactions that do not ordinarily require consent under the Overseas Investment Act, and to impose conditions or block transactions found contrary to New Zealand's national interest.

Ministers are required to review the notification regime at intervals no more than 90-days apart, to assess whether the effects of the COVID-19 pandemic justify it remaining in force. A second review was completed on 28 November 2020, with Ministers deciding to retain the notification regime until 24 February 2021.

Finance Minister Grant Robertson, Associate Minister of Finance David Parker and Foreign Affairs Minister Nanaia Mahuta have completed the third 90-day review of the regime and concluded that the COVID-19 pandemic justifies it continuing. In making this decision, Ministers were required to consider:

- the economic, social, and other effects of the emergency in New Zealand,
- any risks to New Zealand's national interest associated with transactions by overseas persons, and
- New Zealand's international relations and international obligations.

Retaining the regime will ensure that the government can manage any foreign investment risks that may emerge as the economy recovers from the shock caused by COVID-19. The government continues to monitor foreign investment risks closely and as conditions improve.

Ministers' next statutory decision on whether the emergency notification regime should be retained is due by 25 May 2021. When Ministers are satisfied that the emergency notification regime should no longer remain in force, it will be replaced by the permanent narrower national security and public order call in power. This power will only apply to investments in strategically important businesses that do not normally require consent under the Overseas Investment Act, such as those involved in military technology or critical national infrastructure.