

The Treasury

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

September 2021

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Reference: T2021/111 IM-5-3-8-12

Date: 26 January 2021

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

Deadline: 2 February (for Cabinet)

Aide Memoire: Talking Points for Cabinet: Overseas Investment Amendment Bill (No 3) Departmental Report

Purpose

On 2 February, Cabinet is due to consider a number of proposed amendments to the Overseas Investment Amendment Bill (No 3). This Aide Memoire provides talking points to support your discussion of these proposals.

Suggested talking points for Cabinet

- I am seeking Cabinet's direct agreement to a set of changes to the Overseas Investment Amendment Bill (No 3), which is currently before the Finance and Expenditure Committee. This is necessary to ensure that the Bill can be reported back to the House by 4 March.
- The No 3 Bill is the final piece of legislation in our Phase Two reform of the Overseas Investment Act. It builds on the reforms we passed last year through the Overseas Investment (Urgent Measures) Amendment Act.
- This is the final opportunity for Cabinet to consider substantive policy changes before the Bill is reported back to Parliament – to make sure that the Bill delivers on our objectives of attracting high-quality foreign investment while better managing risks.

Key feedback from submitters

- The Committee received nearly 50 submissions from community organisations, businesses and individuals. Overall, submitters supported the Bill, especially changes to streamline the Act.
- However, submitters and officials have identified some targeted changes that will help better align the Bill with Cabinet's intent. These changes can be grouped into three key themes.

Key amendments proposed in the Departmental Report

- Firstly, I am recommending changes to ensure that **screening requirements are proportionate to risk**. This is important for ensuring that our resources can focus on transactions that warrant greater scrutiny, and so that powers like the national interest test are not used more than necessary.
- The most significant proposal is to no longer screen relatively small investments by already approved investors where their level of control over New Zealand assets does not change, with the exception of investments in Strategically Important Businesses where we would retain additional protections. Existing exemptions for some such investments are not working, creating unnecessary complexity and costs.
- [1], [36]

- I also propose refining the operation of the Act's most powerful tests – the national interest test and call in power – to ensure they only target higher risk investments. For example, without change the call in power would technically apply to the purchase of software from Microsoft. We are also already seeing lots of transactions automatically subject to the national interest test because they are linked to a foreign government, even though that government would have no control over New Zealand assets.
- Secondly, I propose **minor changes to the requirements for investments in farm land**. Reflecting the high economic and cultural value of farm land to New Zealanders, Cabinet has agreed to require farmland to be publicly advertised, and the benefits to be greater, before an overseas investor can buy it.
- Submitters have raised concerns about these provisions. Some recommended removing them because they create a barrier to productive investments in farm land, while others noted that they may capture more transactions than intended.
- I do not support removing the more stringent rules. However, I have proposed some technical changes to avoid capturing investments in land that is not suitable for farming and slated for intensive development. This will remove unnecessary barriers to some investments, including large housing developments.
- Lastly, I propose some **changes to improve the Bill's clarity and consistency**, to:
 - ensure that investors can be charged the full cost of an application, rather than risk New Zealanders bearing these costs,
 - bringing some of the detail on the tax information that investors must provide from the regulations into the Bill, and
 - ensuring that the information sharing provisions do not accidentally override other lawful means for exchanging information.

Submitter proposals not agreed to

- I have not agreed with many changes that submitters have proposed.
- The key one is a proposal to require a full cost-benefit assessment of all land transactions before they receive consent. Consistent with Cabinet's earlier decision on this matter, I have disagreed with this because it would duplicate assessments made under other regulatory regimes and significantly increase the regime's cost.
- I have also not progressed recommendations that relate to leases, residential land and forestry.

Back pocket questions and answers

What did submitters propose for leases, residential land and forestry?

- Some submitters proposed to further extend the **threshold for screening leases** over sensitive land, to between 15 and 35 years. I disagree, as the Bill already extends this threshold from 3 years to 10 years. Leases beyond this timeframe are more like a freehold interest and should be treated the same.
- With respect to **residential land**, some submitters argued that the changes made in 2018 are slowing down housing development. I have not proposed any changes to the Bill because I consider that Cabinet's earlier decisions, on how to balance the need for increased housing against the need to ensure our housing market is set by New Zealanders, remain appropriate.
- I have also not proposed any changes relating to **forestry**, including the conversion of farmland to forestry, as this is outside the terms of reference Cabinet set for the Phase Two reform and there are other channels to deal with these concerns, such as the Resource Management Act and upcoming statutory review of the forestry provisions Overseas Investment Act.

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