

# The Treasury

## Phase two Overseas Investment Act reform (April - September) Information Release

November 2021

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## Treasury Report: Overseas Investment Act: Updated delegation to Associate Minister of Finance Hon Parker

<b>Date:</b>	26 May 2021	<b>Report No:</b>	T2021/1113
		<b>File Number:</b>	IM-5-3-8-12

### Action sought

	Action sought	Deadline
Hon Grant Robertson <b>Minister of Finance</b>	<b>Approve</b> the updated delegation letter to Associate Minister of Finance Hon Parker and refer to the Prime Minister for approval. <b>Sign and issue</b> the letter.	7 June 2021
Hon David Parker <b>Associate Minister of Finance</b>	<b>Note</b> this report.	N/A

### Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Ryan Walsh	Senior Analyst, International	[39]	[35] ✓
Thomas Parry	Manager, International		

### Minister's Office actions (if required)

**Return** the signed report to Treasury.

**Send** the updated delegation letter, once signed, to Associate Minister of Finance Hon Parker.

Note any feedback on the quality of the report

**Enclosure:** Yes – draft delegation letter (clean) and draft delegation letter (track-change)

# Treasury Report: Overseas Investment Act: Updated delegation to Associate Minister of Finance Hon Parker

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## Advice

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On 28 April 2021, joint Ministers (you, Minister of Finance; Associate Minister of Finance Hon Parker and the Minister of Foreign Affairs) agreed to repeal the Overseas Investment Act's (the Act's) temporary Emergency Notification Regime (ENR) and replace it with the Act's enduring national security and public order call-in power (the call-in power).<sup>[36]</sup>

At the same time, you and Hon Parker also agreed to delegate certain powers related to the operation of the call-in power to the Overseas Investment Office (OIO; the regulator). This included granting the OIO the power to allow transactions that it did not consider could pose a significant risk to New Zealand's national security or public order to proceed, as well as a number of powers to extend statutory timeframes.

These decisions, and subsequent amendments to the Act to operationalise the call-in power, require your delegations to Hon Parker as Associate Minister of Finance to be refreshed. The key changes are:

- The removal of Minister Parker's power to issue direction orders for call-in transactions where no further conditions are imposed, in line with your delegation to allow the OIO to do this.<sup>1</sup>
- The removal of two key responsibilities from the letter (power to review the ENR after 45 days and at subsequent 90 day intervals), to reflect that these reviews are not a feature of the permanent call-in power.
- Updates to section references in the Act.

A draft delegation letter is at Attachment A, with a marked-up version to provide additional transparency at Attachment B. If you approve of this letter, you are required to seek the Prime Minister's approval before signing and issuing the letter to Minister Parker.

These delegations should be given effect to on or around 7 June 2021, when the call-in power commences.

These delegations will need to be updated again ahead of the commencement of the Overseas Investment Amendment Act (No 3) on 5 July 2021 to reflect changes in section references and the operation of different tests.

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<sup>1</sup> The exception to this is in respect of transactions entered into under the ENR but where screening has not concluded by 7 June when the call-in power commences. Minister Parker will retain his previous powers in respect of these transactions.

## Recommended Action

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We recommend that you:

- a **Note** that your delegations to Associate Minister of Finance Hon Parker must be updated as a result of:
  - a. joint Ministers' decision to replace the Overseas Investment Act's Emergency Notification Regime with the national security and public order call-in power (due to this changing the numbering of relevant sections in that Act), and
  - b. your and Minister Parker's decision to delegate additional powers associated with the call-in power's operation to the Overseas Investment Office [T2021/576 refers for both].

- b **Approve** the updated delegation letter at Attachment A to give effect to these necessary changes.

*Approved/Not approved.*

- c **Refer** the updated delegation letter at Attachment A to the Prime Minister for her approval.

*Referred/Not referred.*

- d **Sign** the updated delegation letter at Attachment A, following the Prime Minister's approval, and issue to Associate Minister of Finance Hon Parker.

*Signed/Not signed.*

Thomas Parry  
**Manager International**

Hon Grant Robertson  
**Minister of Finance**

Hon David Parker  
**Associate Minister of Finance**

[date]

Hon David Parker  
Associate Minister of Finance

Dear David

This letter updates your delegations as Associate Minister of Finance and replaces my previous letter of 30 November 2020.<sup>1</sup>

***Role and responsibilities***

- 1 After consultation with the Prime Minister, in your capacity as Associate Minister of Finance, I delegate to you the following functions and responsibilities of the Finance portfolio:
  - 1.1 assistance with policy work relating to monetary policy and the review of the Reserve Bank Act 1989;
  - 1.2 assistance on tax policy;
  - 1.3 policy work on the Venture Capital Fund;
  - 1.4 some of the responsibilities, functions and powers of the Minister of Finance under the Overseas Investment Act 2005 – this delegation is described more fully below;
  - 1.5 day-to-day responsibilities, functions and powers as a shareholder in certain Crown-owned companies – this delegation is described more fully below;
  - 1.6 replying to Ministerial correspondence and Parliamentary Questions on issues relating to the above;
  - 1.7 other initiatives as agreed from time to time by us.
- 2 The above delegations are subject to the conditions set out in this letter. Please also refer to paragraphs 2.35 to 2.40 of the Cabinet Manual, which deal with the relationship between Ministers and Associate Ministers.

***Overseas Investment Act 2005***

- 3 I delegate to you responsibility for overseas investment policy.

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<sup>1</sup> The changes to your role and responsibilities are at paragraphs 4 to 7 of this letter; updating your delegations relating to the Overseas Investment Act 2005, as a result of the transition from the emergency notification regime to the permanent call-in regime under that Act on 7 June 2021.

- 4 I delegate to you the functions and powers of the Minister of Finance under the following sections of the Overseas Investment Act 2005:
  - 4.1 section 20(b), which relates to making class exemptions from the farm land offer criterion;
  - 4.2 section 30, which relates to designating the regulator;
  - 4.3 section 32, to allow the delegation of powers and functions set out in this letter to the regulator, where you consider it appropriate to do so;
  - 4.4 section 34, which relates to directing the regulator by a Ministerial directive letter;
  - 4.5 section 36, which relates to approving the regulator issuing guidelines;
  - 4.6 sections 61, 61A, and 61C, which relate to recommending that regulations be made;
  - 4.7 section 87, which relates to the requirements for notification of a call-in transaction;
  - 4.8 section 126(5), which relates to recommending regulations for the power to use and disclose information relating to national security and public order risks;
  - 4.9 section 127, which relates to recommending regulations for the national interest test and call-in regime; and
  - 4.10 clause 26 of Schedule 1AA, which relates to recommending regulations for transitional matters.
- 5 Except as set out above, I will retain the functions and powers under Part 3 of the Act, relating to the call-in regime, and sections 20A to 20G relating to the national interest test.
- 6 The delegations in my previous letter of 30 November 2020 will continue to apply to transactions under the emergency notification regime, until the end of the transitional period.
- 7 I have delegated to Hon Dr Megan Woods, the functions and powers of the Minister of Finance under the Act to:
  - 7.1 grant, decline, and impose conditions on, applications for consent (including making decisions regarding offers that the Crown buy “special land”);
  - 7.2 revoke consents and vary conditions of consent; and
  - 7.3 grant, decline, and impose conditions on, individual exemptions under the Act (including individual exemptions under section 20(a) and section 61D).
- 8 I also delegate to you all functions and powers of the Minister of Finance under the Act that are not delegated to Hon Dr Megan Woods, and with the exception of the functions and powers I will retain under Part 3 of the Act and sections 20A to 20G. However, you may both delegate the powers and functions you hold pursuant to section 32, and give notices under regulation 68 of the Overseas Investment Regulations 2005 of the exercise of your powers.

**Responsibilities as shareholding Minister in certain Crown-owned companies**

9 I delegate to you my day-to-day responsibilities, functions and powers as a shareholder in the following Crown-owned companies:

State-owned Enterprises (SOEs)	Electricity Corporation of New Zealand Limited Landcorp Farming Limited New Zealand Post Limited Transpower New Zealand Limited
Companies listed in Schedule 4A of the Public Finance Act 1989	Crown Asset Management Limited Research and Education Advanced Network New Zealand Limited The Network for Learning Limited
Crown entity companies	New Zealand Growth Capital Partners Limited
Crown Research Institutes	AgResearch Limited Institute of Environmental Science and Research Limited Institute of Geological and Nuclear Science Limited Landcare Research New Zealand Limited National Institute of Water and Atmospheric Research Limited New Zealand Forest Research Institute Limited (Scion) The New Zealand Institute for Plant and Food Research Limited

10 The day-to-day shareholder responsibilities, functions and powers in relation to a company are the following matters:

- 10.1 sending a letter of expectations to the company, and considering the company's strategic issues letter and business plan;
- 10.2 providing comments to the company on its draft statement of corporate intent (SCI), statement of intent (SOI), or statement of performance expectations (SPE), as applicable;
- 10.3 requesting the company to amend its SCI, SOI or SPE, or to produce a new SOI, as applicable;
- 10.4 accepting an SOI, SCI or SPE;
- 10.5 presenting the company's planning and reporting documents to the House, as required by the relevant legislation;
- 10.6 requesting information from the company;

- 10.7 attending an annual meeting of shareholders, or appointing a proxy or representative to attend the meeting on behalf of the Minister of Finance;
  - 10.8 permitting interested directors to vote on a matter;
  - 10.9 approving a change to the company's name;
  - 10.10 receiving notices of intention from the company under sections 96 and 100 of the Crown Entities Act or under section 13 of the Crown Institutes Act 1992 (which relate to the company acquiring subsidiaries or other interests), where applicable; and
  - 10.11 other day-to-day matters, such as receiving briefings from the company, consultation on significant transactions, and replying to Ministerial correspondence about the company.
- 11 On those matters I expect you to work with the other shareholding Minister of the company.
- 12 I will retain other responsibilities, functions and powers in relation to those companies, including: appointing directors; setting directors' remuneration; directing amendments to an SOI, SCI or SPE; approving major transactions; agreeing amendments to a company's constitution; requiring a company to pay a dividend or net surplus to the Crown; approving a company issuing new shares; and, where applicable, giving a financial approval under section 160(1)(b) of the Crown Entities Act. I welcome your assistance on any of those matters.
- 13 If there is any doubt as to whether something is a day-to-day matter that has been delegated to you, then please discuss it with me.

### ***Policy***

- 14 Although you will have responsibility for policy regarding the Venture Capital Fund and overseas investment, any significant policy decisions should be discussed with me.

### ***Public statements***

- 15 I expect you to take responsibility for all communications regarding your areas of responsibility, including Ministerial correspondence, press statements and public announcements.
- 16 Ministerial correspondence concerning significant policy issues should be prepared by the Treasury for my signature, where appropriate. Any significant public announcements should be discussed with me prior to release and, in some cases, may be made either by me or the Prime Minister.

### ***Relations with the Treasury and other departments***

- 17 You may contact the Treasury (or, in relation to a company, another relevant department) on all matters for which you have delegated responsibility.
- 18 I expect to be kept fully informed of all significant issues and the Secretary to the Treasury (or, in relation to a company, the relevant chief executive of another relevant department) is, of course, free to raise any matter concerning your delegated functions with me.



- 19 You may arrange to have your own regular briefing sessions or ad hoc meetings with departmental officials to discuss matters relating to your areas of responsibility. A designated member of my office may attend any such meeting.

### ***Communications between us***

- 20 You should ensure that I am fully briefed on the actions that you think are necessary to undertake in relation to your delegated responsibilities. All significant papers, letters and directions to the Treasury or another relevant department should be copied to me for my information. In particular, you need to ensure I receive the earliest warning of any issues that have the potential to become controversial. In turn, I will keep you informed of my actions in relation to your areas of responsibility.
- 21 I will also consult with you on policy issues, and on matters related to the implementation of policy initiatives within the Finance portfolio more generally.

### ***Cabinet and Cabinet committee papers***

- 22 The rules on the submission of papers to Cabinet and Cabinet committees are set out in Chapter 5 of the Cabinet Manual. In particular, in terms of paragraph 5.42, you may submit papers to Cabinet and Cabinet committees within your designated areas of responsibility, provided that the submission clearly indicates that I have been consulted and have agreed that the paper may be lodged.
- 23 You will have access (for example, via CabNet) to all submissions and minutes, of those Cabinet committees of which you are a member. You will also have access to those submissions relating to your delegated responsibilities that are dealt with at any other Cabinet committee.

### ***Information held by you as Associate Minister***

- 24 Under the Official Information Act 1982, all papers held by you in relation to your Associate Minister of Finance responsibilities are deemed to be held on behalf of the Minister of Finance. Similarly, you will be treated as my agent, where necessary, for the purposes of the Privacy Act 1993.
- 25 You will be responsible for all Official Information Act requests in the areas of your delegated responsibility.

### ***Parliamentary responsibilities***

- 26 Parliamentary questions relating to your delegated areas of responsibility will be addressed to you. In my absence, you may also be required to answer oral Parliamentary questions on my behalf.

### ***Next steps***

- 27 A summary of the above delegations will be published on the Department of the Prime Minister and Cabinet's website, and included in a *Schedule of Responsibilities Delegated to Associate Ministers and Parliamentary Under-Secretaries*. The Schedule will be presented to the House of Representatives to clarify Ministerial accountability (so that, for example, Parliamentary questions can be directed to the appropriate Ministers for answer).
- 28 I look forward to working with you in the Finance portfolio. Please do not hesitate to discuss these delegations with me at any time.

Yours sincerely

Hon Grant Robertson  
Minister of Finance

cc Secretary of the Cabinet  
Secretary to the Treasury  
Commissioner of Inland Revenue  
Chief Executive of Land Information New Zealand  
Chief Executive of Ministry for Business, Innovation and Employment