

# The Treasury

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

November 2021

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**Treasury Report:** Overseas Investment Regulations: Designating Systemically Important Banks as 'Strategically Important Businesses'

<b>Date:</b>	13 May 2021	<b>Report No:</b>	T2021/1157
		<b>File Number:</b>	IM-5-3-8-2

**Action sought**

	<b>Action sought</b>	<b>Deadline</b>
<b>Minister of Finance</b> (Hon Grant Robertson)	<b>Note</b> the contents of this briefing.	None
<b>Associate Minister of Finance</b> (Hon David Parker)	<b>Agree</b> to make regulations specifying systemically important banks as 'Strategically Important Businesses' for the purposes of the Overseas Investment Act.	17 May 2021, so that regulations can be included as part of a broader package for LEG's consideration in June.

**Contact for telephone discussion (if required)**

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

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

**Return** the signed report to Treasury.  
**Refer** this report to the Minister for Land Information.

Note any feedback on the quality of the report

**Enclosure:** No

# Treasury Report: Overseas Investment Regulations: Designating systemically important banks as 'Strategically Important Businesses'

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## Advice

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This report seeks Minister Parker's agreement to make regulations designating systemically important banks as 'Strategically Important Businesses' (SIBs)<sup>1</sup> for the purposes of the Overseas Investment Act 2005 (the Act). Minister Parker has delegated authority from Cabinet to make this decision (DEV-20-MIN-0066 refers).

We are seeking this decision now, so that amended regulations can be included as part of a broader suite of regulatory amendments due for LEG's consideration in June 2020 (see T2020/3665), and to boost the Act's transparency to help ensure that risks can be managed.

### *Background*

As of June 2020, the Act, has required overseas investments in SIBs to undergo more rigorous screening, reflecting these assets' importance to the wellbeing and day-to-day lives of New Zealanders. In particular, investments in SIBs are:

- automatically subject to the national interest test (if consent is required), allowing risks to the national interest to be managed, or
- for transactions that do not ordinarily require consent but are within scope of the 'call in' power, subject to review to manage significant risks to national security or public order.<sup>2</sup>

While the Act specifies high-level SIB categories, it allows regulations to be made to further refine their definition. This has occurred in respect of most SIB categories, however Ministers delayed designating any 'financial institutions' as SIBs ahead of the Reserve Bank of New Zealand (RBNZ) finalising its new capital framework, which was to designate some banks as systemically important. Minister Parker decided in-principle that the SIB definitions should align with the outcomes of this process (T2019/4139 refers).

### *Update on decisions taken by the RBNZ*

The RBNZ has announced that the four major banks (Bank of New Zealand, Westpac New Zealand, ANZ Bank New Zealand, and ASB Bank) would be 'domestic systemically important banks' (D-SIBs) under their proposed updated capital adequacy framework. Separately, they have also designated the four major banks and KiwiBank as systemically important for the purposes of their local incorporation policy (in general terms, they are important enough to our financial system that they must have a domestic legal presence).

Consistent with earlier decisions, we support systemically important banks being treated as SIBs. Given the RBNZ's competing frameworks, there are two ways that you could give effect to this recommendation:

- **Option 1:** Adopt the 'local incorporation policy' framework, designating registered banks with New Zealand liabilities, net of amounts due to related parties, that exceed \$15 billion as SIBs. This would capture the four major banks and KiwiBank.

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<sup>1</sup> That is: dual-use and military technology; critical direct suppliers to defence and the intelligence community; media entities with an impact on plurality; entities that hold sensitive information; and a range of critical national infrastructure, including telecommunications, financial institutions, electricity generation and distribution, and ports and airports.

<sup>2</sup> Once that takes effect on June 7, subject to confirmatory decisions from Cabinet.

- **Option 2:** Align the regulations with the RBNZ's proposed 'D-SIB' designation by classifying banks with total assets of \$80 billion or more as SIBs. Total assets is an effective way of measuring a bank's size, one of many proxies for systemic importance in the RBNZ's capital adequacy framework.<sup>3</sup>

Treasury does not have strong preference on which model you adopt, though on balance recommends Option 2 due to advantages that total assets has as a metric. In particular:

- data on total assets is more accessible than data on New Zealand liabilities, making Option 2 more transparent and easier for the OIO to operationalise (though if Option 1 was adopted, this could be overcome in part with reference to the RBNZ's local incorporation policy), and
- due to its lower threshold, Option 1 is more likely to result in additional banks being designated as SIBs in the medium term than Option 2.

In general, however, our lack of preference stems from the fact that the benefits of making this designation are largely about increasing the transparency on who is captured, rather than bringing new entities within scope. This is because:

- the Minister has the discretion to apply the national interest test to any transaction subject to the consent application, whether or not it is an investment in a SIB, and
- any other investment not subject to the consent process<sup>4</sup> that could pose significant risks could be reviewed under the call-in power (once it takes effect) because these banks are already within scope as holders of 'sensitive information' (in particular, non-anonymised financial information).

#### *Next steps*

If you agree with these recommendations, regulations will be included alongside a broader package of technical changes and a draft LEG paper for your approval in the week commencing 24 May. Following consultation with Cabinet colleagues (and any required changes), LEG would be expected to consider these matters in early-June.

Once the regulations have taken effect, any investments in these entities that had not been given effect to (for example, the transaction has not yet been settled) would be automatically subject to the national interest test if the transaction required consent, or otherwise it could be reviewed under the call in power to manage prospective national security or public order risks.

Recognising this benefit, we recommend seeking an exemption to the 28-day rule for bringing these regulations into force, to ensure that the intention of the regulations cannot be defeated and any qualifying transactions are subject to the appropriate level of scrutiny.

## **Recommended Action**

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We recommend that you:

- a **Note** that the Overseas Investment Act (the Act) includes the power to make regulations designating financial institutions as 'Strategically Important Businesses' (SIBs), with the effect of qualifying overseas investments in such entities being:

<sup>3</sup> Other proxies include metrics that measure substitutability, interconnectedness and business complexity, however these were not looked at in detail for this purpose because they are complicated and often difficult to measure.

<sup>4</sup> That is, the acquisition of an interest of 10% or more in a listed entity, or any interest in an unlisted entity.  
T2021/1157 Overseas Investment Regulations: Designating 'Systemically Important Banks' as 'Strategically Important Businesses'

- a. automatically subject to the national interest test (if consent is required), or
  - b. within scope of the 'call in' power, allowing the Government to review such transactions to manage prospective risks to national security or public order.
- b. **Note** that you had previously given in-principle agreement to using regulations to specify that any systemically important banks identified by the Reserve Bank of New Zealand (RBNZ) are SIBs.
- c. **Note** that Cabinet has delegated authority for you to make policy decisions to amend the Overseas Investment Regulations 2005 (DEV-20-MIN-0066 refers).
- d. **Note** that the RBNZ has concluded that:
- a. the Bank of New Zealand, Westpac New Zealand, ANZ Bank New Zealand, and ASB Bank (collectively the four major banks) are systemically important banks for the purposes of the capital adequacy framework, and
  - b. the four major banks and KiwiBank are systemically important for the purposes of the RBNZ's local incorporation requirements.

**EITHER:**

- e. **Agree** to define New Zealand registered banks with New Zealand liabilities, net of amounts due to related parties, that exceed \$15 billion as SIBs. This would capture the four major banks and KiwiBank.

*Agree/disagree.*

**OR:**

- f. **Agree** (*Treasury preferred*) to define banks registered in New Zealand with total assets of \$80 billion or greater as SIBs. This would capture the four major banks.

*Agree/disagree.*

- g. **Agree** to seek an exemption from the 28-day rule in respect of these regulations, to ensure that the intention of the regulations cannot be defeated.

*Agree/disagree.*

- h. **Refer** this report to the Minister for Land Information, as the Minister responsible for the Overseas Investment Office (the Act's regulator).

*Refer/not referred.*

Thomas Parry  
**Manager, International**

Hon Grant Robertson  
**Minister of Finance**

Hon David Parker  
**Associate Minister of Finance**