

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 Financial Market Infrastructures as 'Strategically Important Businesses'

Date:	24 May 2021	Report No:	T2021/1320
		File Number:	IM-5-3-8-12

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Note the contents of this briefing.	None
Hon David Parker Associate Minister of Finance	Agree to make regulations specifying regulated financial market infrastructures as 'Strategically Important Businesses' for the purposes of the Overseas Investment Act.	28 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)

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.

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 Financial Market Infrastructures as 'Strategically Important Businesses'

Advice

This report seeks your (Minister Parker's) agreement to make regulations designating regulated financial market infrastructures (FMIs) as 'Strategically Important Businesses' (SIBs)¹ for the purposes of the Overseas Investment Act 2005 (the Act). You have delegated authority from Cabinet to make this decision (DEV-20-MIN-0066).

We are seeking this decision now so that amended regulations can be included as part of a suite of regulatory amendments due for LEG's consideration in June (see T2020/3665). This advice builds on T2021/1157 regarding listing systemically important banks as SIBs.

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:

- always subject to the national interest test (if consent is required), allowing conditions to be imposed or transactions to be declined to manage national interest risks, or
- for transactions that do not ordinarily require consent but are in scope of the 'call in' power, subject to review to manage significant national security or public order risks.²

While the Act specifies high-level SIB categories, it allows regulations to be made to refine their definition. Regulations have refined the definition of each SIB category, except FMIs.

Advice

FMIs are fundamental to the operation of the financial system and real economy. There are a range of different types of FMIs that operate in New Zealand. Examples include the main interbank payment system (the Exchange Settlement Account System, or ESAS), the main retail payments system (Settlement Before Interchange, or SBI), and central counterparties to interest rate and other derivative transactions (like LCH).

The delay in designating specific FMIs reflected that the Financial Markets Infrastructure Bill, which provides a framework for designating and regulating systemically important FMIs, had not yet passed. However, you had decided in principle that systemically important FMIs should be treated as SIBs under the Act (T2019/4139 refers).

On 10 May 2021, the Financial Markets Infrastructure Act (FMI Act) received Royal assent. As such, and consistent with your in-principle decision, we are seeking your agreement to treat systemically important FMIs regulated under the FMI Act as SIBs.

Next steps

The Reserve Bank of New Zealand and the Financial Markets Authority, the regulators under the FMI Act, are currently developing a framework for determining which FMIs should be designated as systemically important. If you agree to this paper's recommendations, it means, once the regulators have completed their work and listed which FMIs are systemically important, that;

¹ 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, and electricity generation and distribution.

² Once that takes effect on June 7.

- any investments in these entities that have not yet been entered into (for example, the transaction has not yet been settled) and do not require consent would be subject to the call-in power, and
- any investments in these entities that required consent, but an application had not yet been made, would be automatically subject to the national interest test.

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 31 May. Following consultation with Cabinet colleagues, LEG would be expected to consider these matters on 24 June.

Recommended Action

We recommend that you:

- Note** that the Overseas Investment Act (the Act) includes the power to make regulations designating financial market infrastructures (FMIs) as 'Strategically Important Businesses' (SIBs), which will make overseas investments in these entities:
 - automatically subject to the national interest test (if consent is required), or
 - within scope of the 'call in' power, allowing the Government to review such transactions to manage prospective risks to national security or public order.
 - Note** that you had previously given in-principle agreement to using regulations to specify any systemically important FMIs designated under the Financial Markets Infrastructure Act (FMI Act) as a SIB (T2019/4139 refers), once that legislation had passed, and that the FMI Act received Royal assent on 10 May 2021.
 - Note** that Cabinet has delegated authority for you to make policy decisions to amend the Overseas Investment Regulations 2005 (DEV-20-MIN-0066 refers).
 - Agree** to make regulations specifying that systemically important FMIs regulated under the FMI Act are SIBs.
- Agree/disagree.*
- 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