

The Treasury

Overseas Investment Office Fee Increases and Targeted Exemptions Information Release

Release Document

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Cabinet Economic Growth and Infrastructure Committee

Minute of Decision

Overseas Investment Fees and Overseas Investment Regulations 2005: Proposed Changes

Portfolios Finance / Land Information

On 13 April 2016, the Cabinet Economic Growth and Infrastructure Committee (EGI):

Background

- 1 **noted** that since 2009, the Overseas Investment Office (OIO) has been unable to recover the cost of delivery of its regulatory functions under the Overseas Investment Act 2005 (the Act), resulting in:
 - 1.1 a lack of operational resource and delays in the time to process applications, and difficulties in providing applicants with certainty on the status of their applications;
 - 1.2 an inability to address increasing demands for improved monitoring and enforcement of compliance with the Act and consent conditions;
 - 1.3 an increasing memorandum account deficit (\$1.107 million on 31 December 2015);
- 2 **noted** that this, in turn, has led to increased concerns amongst investors around the time taken to process applications and the OIO's operational ability to provide investors with greater certainty around the status of their applications;

Outcome of targeted consultation

- 3 **noted** that targeted consultation with stakeholders has been undertaken following a 2014/15 review of overseas investment applicant fees (the review);
- 4 **noted** that, overall, feedback on the proposed changes was supportive, but that a number of additional concerns were raised that required amendment to the original proposal;
- 5 **noted** that it is proposed to resolve the funding problems identified/considered in the review and to respond to the concerns raised by overseas investment applicants through a three-pronged approach that includes:
 - 5.1 improvements to the OIO's operational processes;
 - 5.2 amendments to the overseas investment application fee structure and fees;
 - 5.3 a number of targeted exemptions to the screening regime;

6 **noted** that initial improvements to streamline the OIO’s operational processes have commenced;

Proposed changes to fees

7 **approved** the final overseas investment application fee structure and increased fees, as outlined in Appendix A to the paper under EGI-16-SUB-0079;

8 **noted** that the final proposal, combined with OIO operational efficiencies, will introduce:

- 8.1 a new fairer fees structure and increased fees, which will support the OIO in meeting faster application screening targets;
- 8.2 improved operational efficiencies of the OIO (a 20 percent improvement on actual [2014/15] application screening times) and an improved customer-centric approach;
- 8.3 improved monitoring and enforcement of compliance with the Act and consent conditions;

9 **agreed** to a transitional provision for the new fees in Schedule 2 of the Overseas Investment Regulations 2005 (the Regulations) to set the date of the “OIO acceptance of an application” as the relevant date for calculation of application fees;

10 **noted** that the fiscally neutral changes to the baseline will be incorporated in the next appropriate baseline update;

Proposed exemptions from investment screening regime

11 **agreed** to the following targeted exemptions from the investment screening regime:

- 11.1 exempt leasehold land from the requirement to first advertise land on the open market (this will be limited to leases of cumulative duration up to twenty years in length, including rights of renewal, whether of the grantor or grantee);
- 11.2 exempt leasehold land from screening where a previously consented lease is being renewed/re-granted on the same terms and conditions, and the substantive ownership and size of the property in question is unchanged (limited to leases of duration up to a maximum of twenty years, including rights of renewal, whether of the grantor or grantee);
- 11.3 exempt transactions between overseas persons, where consent has previously been granted, involving exempt transactions involving urban land of less than five hectares that is only classified as “sensitive land” because it adjoins land of a type listed in table 2 of Schedule 1 of the Act, and where the value of the transaction does not exceed \$100 million;
- 11.4 exempt transactions where approval is required as a result of land being vested pursuant to sections 105-107, 117, or 119 of the Public Works Act 1981 (limited to land that is classified as “sensitive land” because it adjoins land of a type listed in table 2 of Schedule 1 of the Act, and where the land does not exceed an area threshold of 5 hectares);

- 11.5 exempt overseas owned custodians who hold shares on behalf of investors from the requirement for consent, on the following conditions:
 - 11.5.1 the exemption would not apply to custodians who invest in their personal capacities;
 - 11.5.2 overseas persons who invest through custodians will still require consent in their own right if they acquire more than 25 percent of the company being invested in, or increase an existing 25 percent or more investment in that company;
- 12 **noted** that the Minister of Finance and the Minister for Land Information recommend not progressing an exemption relating to certain transactions for residential property developers;

Other changes to the Regulations

- 13 **agreed** to the following three additional changes to other parts of the Regulations:
 - 13.1 the removal of Citicorp Services Limited from Schedule 3;
 - 13.2 the removal of Guinness Peat Group from Schedule 4;
 - 13.3 amendment to regulation 37 to correct a drafting error by removing the phrase “class of transactions, persons, interests, rights or assets”;

Legislative implications

- 14 **invited** the Minister for Land Information to issue drafting instructions to the Parliamentary Counsel Office to draft the necessary amendments to the Regulations to give effect to paragraphs 7, 9 and 13 above;
- 15 **invited** the Minister of Finance to issue drafting instructions to the Parliamentary Counsel Office to draft the necessary amendments to the Regulations to give effect to paragraph 11 above;
- 16 **authorised** the Minister of Finance and the Minister for Land Information to make changes to fee levels and to issue drafting instructions to the Parliamentary Counsel Office accordingly, prior to Cabinet Legislation Committee consideration;
- 17 **authorised** the Minister for Land Information to make any minor policy decisions that may be required to give effect to paragraphs 7, 9 and 13 above;
- 18 **authorised** the Minister of Finance to make any minor policy decisions that may be required to give effect to paragraph 11 above;
- 19 **authorised** the Minister of Finance to release an exposure draft of the regulations relating to the implementation of paragraph 11 above for targeted consultation ahead of seeking final approval of these proposals;

Further reports

- 20 **directed** the OIO to report quarterly to the relevant Business Growth Agenda Investment Ministers on the improvements to the overseas investment application process;

- 21 **invited** the Minister for Land Information to report back to EGI on the improvements to the overseas investment application process, by July 2017 (12 months after the changes come into force).

Janine Harvey
Committee Secretary
