

The Treasury

Overseas Investment Office Fee Increases and Targeted Exemptions Information Release

Release Document

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- [25] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information;
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions;
- [36] 9(2)(h) - to maintain legal professional privilege.

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In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

**Chair
CABINET ECONOMIC GROWTH AND INFRASTRUCTURE COMMITTEE**

PROPOSED CHANGES TO THE OVERSEAS INVESTMENT FEES AND OVERSEAS INVESTMENT REGULATIONS 2005

Proposal

1. This paper seeks agreement on:
 - changes to the Overseas Investment fees structure and fees increases to fund improved Overseas Investment Office (OIO) functions;
 - the creation of targeted exemptions under the Overseas Investment Regulations 2005 (the Regulations) from the overseas investment screening regime for investments that are regarded as less sensitive; and
 - three administrative changes to other parts of the Overseas Investment Regulations 2005.

Executive Summary

2. We propose a combined package of policy and operational changes to New Zealand's foreign investment screening regime that will:
 - increase most of the overseas investment fees to fund improvements for faster application screening by the OIO and more responsive monitoring and enforcement with site inspections of some high risk sensitive land investments;
 - create new targets for faster application screening by the OIO;
 - change the fees structure to simplify the application types and better match fees for different application types with their screening and monitoring costs; and
 - provide targeted exemptions to the investment screening regime (that do not require legislative change).
3. This new package of changes will ensure adequate safeguards of New Zealand's economic interests while reducing the compliance costs associated with overseas investment applications. Potential overseas investors wishing to invest in New Zealand will therefore benefit from a reduction in administrative delays and costs (professional service fees, renewal costs and time delay costs etc.) and from simplified investment rules that will speed up processing of their applications.
4. In addition, the proposed changes have the capacity to improve the relative attractiveness of New Zealand as a place to invest for certain investor groups, thereby facilitating the potential introduction of capital into New Zealand, supporting value-adding sectors of the economy and business in reaching markets that they may not reach by themselves.

5. The proposed changes will also help to ensure the ongoing financial sustainability of the OIO, provide investors with greater certainty about the screening process, and reduce compliance costs. They will also reinforce the general public and investors' confidence in the overall integrity of the overseas investment regime. Full details on the key features of the proposed option can be found in Appendix C.
6. The 2014/15 review of overseas investment applicant fees identified and/or considered several problems:
 - Concerns with application screening speed
 - Increased requirement for monitoring and enforcement
 - OIO operational efficiency and applicant certainty
 - Poorly aligned fees structure
 - Unsustainable fees amounts
7. There have been 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.
8. Since September 2015, the OIO has commenced work to improve internal operations and to streamline the overall application process.
9. Following feedback on the consultation document approved by Cabinet in September 2015 [CAB-15-MIN-0095] and a subsequent submitters' forum, we are now seeking Cabinet agreement to build on and support those initial OIO improvements by introducing:
 - (a) an updated overseas investment fees structure and fees
 - (b) targeted exemptions to the screening regime (that do not require legislative change)
 - (c) administrative changes
10. Some of the revised fee increases are significant – significant business asset (SBA) application fees will increase by 143% and sensitive land applications fees by between 69% and 126%. However, an additional week long consultation indicated that investors were unlikely to be deterred from paying higher fees for SBA consent applications if the OIO can improve processing times and provide greater certainty that applications will be assessed within set targets.
11. The revised package of changes also introduces more application categories to better differentiate fees and reduce the fees for lower value overseas investments. The proposed fees are anticipated to take effect from 1 July 2016.
12. The impact of the exemptions is small. However, in addition to the improved application processing targets, they will send a positive signal about the government's desire to make targeted improvements to the operation of the investment screening regime.
13. We will also pursue administrative policy initiatives that will support the proposals outlined above.

Background

14. To improve the relative attractiveness of New Zealand as a place to invest, it is important to reduce barriers such as compliance costs (professional service fees, renewal costs and time delay costs etc.) to overseas investors while also ensuring adequate safeguards of New Zealand's economic interests.
15. Since 2009, due to the introduction of new requirements that complicate the application process, the OIO has been unable to recover the cost of delivery of its regulatory functions under the Overseas Investment Act 2005 (the Act). The subsequent financial impact has resulted in:
 - a lack of operational resource leading to delays in the time to process applications and difficulties in providing applicants with certainty on the status of their applications;
 - an inability to address increasing demands for improved monitoring and enforcement of compliance with the Act and consent conditions; and
 - an increasing memorandum account deficit (\$1.107 million on 31 December 2015).
16. In 2012 a High Court judgment imposed a new counterfactual test and additional factors being required to be considered in the assessment of the "benefit to New Zealand" test. This has resulted in increased screening times and has contributed to pressures on cost recovery.
17. The persistent deficit in the OIO memorandum account and the expectation of a fees review after three years led to a 2013 Cabinet decision to a review of Overseas Investment Fees.
18. In late 2014 the scope of the review was expanded to include consideration of faster application screening in response to feedback from investors that they wanted faster turnaround of decisions and greater certainty around the status of their applications
19. In August 2015 the scope was extended to include cost recovery of increased monitoring.
20. From September 2015 – November 2015 consultation took place on the "Proposal for Overseas Investment Fees to Support Faster Screening Process" and this included a forum with submitters.
21. Investment Managers requested further consultation on the proposed additional increase in fees for the Significant Business Assets and this took place in February 2016.
22. In parallel with the consultation on the fees review the OIO has commenced work to improve internal operations and to streamline the overall application process. Additional detail on the above (and proposed) timeline can be found at Appendix D.

A Review of the Overseas Investment Applicant Fees

23. The 2014/15 review of overseas investment applicant fees identified and/or considered several problems:
- How fees could be used to support greater resourcing for the OIO so that applications could be processed more quickly and investors provided with greater certainty on their applications.
 - The increasing requirement for monitoring, enforcement, and ancillary activities that the OIO has, at times, had insufficient resources to adequately respond to. This is exacerbated in years when there is a high number and greater complexity of applications.
 - The poor alignment between the current fees structure and the costs of the OIO. This results in fees not fairly recovering costs from where they fall.
 - Fee amounts have become unsustainable as some applications have become more complex since the fees were last set. This is due to a 2012 High Court judgment imposing a new counterfactual test and additional factors being required to be considered in the assessment of the “benefit to New Zealand” test. This has resulted in increased screening times and has contributed to pressures on cost recovery.

Outcome of the Applicant Fees Review

24. In September 2015, Cabinet approved [CAB-15-MIN-0095] the release of a consultation document that sought comment from targeted stakeholders on an amended overseas investment fee structure, new targets for faster application screening and increased fees. These would fund improvements for faster application screening and more responsive monitoring and enforcement.
25. The stakeholder submissions (15 in total) focussed on the level of proposed fee increases for lower value applications, differentiation of fees categories, and the uncertainty around consent decision times. Submissions suggested reducing the fees for some less complex application types and splitting the application categories even further to reduce cross-subsidisation (by better distinguishing between the different complexities of application types).
26. Following the first round of consultation, refinements were made to our original proposal to implement a common-sense, risk-based approach to the screening process that allowed faster screening of low-risk applications. Fees for sensitive land and fishing quota applications have been split on the basis of investment value and Ministerial/Delegated sign-off.
27. Fees for SBA applications have been increased to provide greater consistency across application categories. A second targeted consultation with applicants for SBA consent indicated that investors were unlikely to be deterred from investment by the proposed increase.

Improvements to the OIO’s Operational Processes

28. Since September 2015, and following consultation, the OIO has initiated a number of improvements to its internal operations to streamline the overall overseas investment process and expand its monitoring and enforcement functions. This includes

improvements to the application process. Increased fees will allow further improvements to be implemented.

Faster Application Screening Targets

29. The OIO has initiated the recruitment of additional staff to help address pressures arising from the increasing complexity of applications and allow the OIO to provide a 20% improvement on actual (2014/15) application screening times (See Appendix B)

OIO Operational Efficiency and a Customer-centric Approach

30. Since September 2015, the OIO has initiated a greater focus on a more customer-centric process. The OIO will work to keep applicants better informed through the assessment process and to provide greater certainty of when a decision can be expected. The OIO will also tighten its initial quality assurance review of applications. This includes processes to educate lawyers (who act for applicants) on how to improve application quality. This will incentivise applicants to provide complete information on lodgement and provide greater certainty that the correct information is available for a decision to be made within the targeted processing times. Once an application is accepted, the OIO will be taking steps to better communicate the application status to applicants and their advisors.
31. These improvements have already seen a reduction in average OIO assessment times of 25% between late 2015 and early 2016. We anticipate that this improvement will continue to grow as new practices are embedded and new staff come up to speed. Further detail on these improvements can be found in Appendix E.
32. The OIO has been discussing with New Zealand Trade and Enterprise (NZTE) how to involve investors in the improvement processes. The OIO will be working with Treasury and NZTE to improve investor understanding of the application process and requirements. Further detail on this work can be found in paragraph 69.

Improved Monitoring of Compliance with Consent Conditions and Enforcement

33. With additional funding, the OIO's current monitoring work will be expanded to include risk based sensitive land (land with high value or prominent investments where there is a high risk that conditions have not or may not be complied with) site inspections. Additional resources will allow current investigations to be completed and the backlog to be cleared. Enforcement actions will be increased as new staff become fully trained and competent.
34. The site inspection regime will introduce a change to the current policy to that outlined in the current Ministerial Directive letter (where conditions are to be imposed in the "least onerous way including, where possible, at the least cost to the investor" and the OIO is directed to take a moderate approach to compliance with conditions of consent). The Minister of Finance will update the current Ministerial Directive Letter to support the proposed change in approach to monitoring and enforcement.

Amendments to the Overseas Investment Application Fee Structure and Fees

Proposed New, Fairer Fees Structure and Increased Fees

35. The proposed fees allow a common-sense, risk-based approach to the screening process that will enable faster screening of low-risk applications and a range of fees

that reflects the investment value of the application and the Ministerial/Delegated sign-off process. The proposed fees will also support greater monitoring and enforcement.

36. This common-sense, risk-based approach introduces a change to the current policy. This may require amendments to the current Ministerial Delegation Letter.
37. The key characteristics of the proposed fee structure and fees are as follows:
- For the financial year 2016/17, the fees are expected to recover costs of \$5.3 million per annum (on anticipated OIO costs of \$4.6 million).
 - Sensitive land consent fees range from between \$20,000 to \$51,000 (increases of between 69% and 126%). They provide a greater range of fees based on land value and other factors:
 - for lower value sensitive land investments within each application category, the lower fees reflect the (generally) lower than average application screening and monitoring costs, and the lower associated costs for other OIO functions (e.g. enforcement, OIAs, media enquires)¹ associated with these application types;
 - for higher value sensitive land investments within each application category, the fees reflect the average to above average screening times, monitoring costs and other associated OIO costs for these kind of applications;
 - the current fee split for Ministerial/Delegated consent decisions for sensitive land continues but it is reduced to a more rounded figure of \$2000; and
 - the fees for the most sensitive land consent applications (excluding section 16(1)(e)(i) applications where the “benefit to New Zealand” criterion does not apply) include a loading to fund monitoring site inspections.
 - Fees for fishing quota investors remain close to the current fee of \$36,800 to avoid deterring the small number of fishing quota investors (two per year expected). The proposed fee is \$40,000 for consent and exemption applications (a 9% increase).
 - SBA fees increase to \$32,000 (a 143% increase). This is considered reasonable relative to the value of the investment. For an SBA investment of \$100 million (the minimum value to which the Act applies), this fee is 0.032% of the investment value. Submitters have also indicated that an SBA fee of \$32,000 is unlikely to deter investors.

To ensure overall OIO cost-recovery, \$13,000 of the \$32,000 SBA consent fee cross-subsidises the consent fees for fishing quota investments and lower value section 16(1)(e)(i) sensitive land investments. This level of cross-subsidy is considered to be consistent with the equitability and fairness principles of the Treasury guidelines.
 - A return to a single fee of \$13,000 for ‘applications to vary consent’. While this does overcharge for the OIO cost of processing time extensions to consent conditions, it will encourage investors to comply with original consent conditions

¹ Officials note that where an application does not disclose the value of the investment, the higher value fee for the category will apply, along with the relevant Ministerial/Delegated differential.

in the required time. This aligns with the costs for strengthening OIO monitoring and enforcement.

- For the other more complex applications to vary consent, the proposed \$13,000 fee allows costs to be recovered. Variation applications are delegated decisions, so the Ministerial/Delegation differential does not apply.
38. The proposed fees increases are significant, but are required to support the increased resourcing of the OIO. Submissions indicated that this increase would not significantly deter investment in New Zealand and that investors put a greater emphasis on certainty in receiving decisions on applications. The improved OIO service and reduced administrative delays resulting from the fee changes are, expected to benefit overseas investors through reduced compliance and associated costs (e.g. professional service fees, time delay costs etc.).
39. Appendix A sets out the complete detail of the proposed fees structure and fee amounts.
40. The proposed fees are anticipated to take effect from 4 July 2016.
41. Based on Ministerial consultation, the Minister of Finance and the Minister for Land Information will consider under delegated authority, whether any changes to the fees proposals are required to better address improvements to the overseas investment application process, prior to consideration by the Cabinet Legislation Committee.

Fees Transition Provisions

42. Following the previous fees review (2009), a significant influx of poor-quality applications was received by the OIO immediately prior to the new – higher – fees coming into effect. Given the significant operational and fiscal impact of such an influx on the screening and assessment of applications, we propose a transitional provision that would make the date of ‘OIO acceptance’ of the application for assessment as the relevant date for calculation of fees (rather than the ‘date of receipt’ of the application).
43. This transitional provision will also incentivise applicants to submit applications of acceptable quality before the fees change comes into effect. The OIO will provide advance notice to all applicants of the impacts of the transitional provision as part of the publication process proposed in paragraph 64.

Targeted exemptions to the investment screening regime

44. During the consultation process, submitters indicated their concern that some types of investment which are currently screened under the Act could be considered less sensitive. Submitters were of the view that screening these investments imposes compliance costs on investors (in terms of time delays, applications fees, and legal and professional fees) and reduces the OIO’s ability to focus on screening the most sensitive applications. We propose targeted exemptions to the screening regime (which do not require amendment of the Act) for the following types of application:
- exempt acquisitions of leasehold farmland, where the cumulative duration of the lease is for a term of not more than twenty years, from the requirement to first advertise land on the open market;
 - exempt leasehold land from screening where a previously consented lease is being renewed or re-granted on the same terms and conditions, and the substantive ownership and size of the property in question, is unchanged;

- exempt transactions from one overseas person to another for specified land that is of a small scale, incidental to a larger global transaction and that has previously been screened;
 - exempt certain transactions where consent is required as a result of certain Public Works Act 1981 actions and consent has previously have been obtained to acquire the adjoining land; and
 - exempt overseas owned custodians who hold shares on behalf of New Zealand investors from the requirement for consent for those shareholdings only.
45. We considered progressing an exemption for certain residential property developers who purchase non-urban land for residential development. We have decided not to progress this exemption.
46. In combination with the other operational and policy initiatives, these changes will help to provide investors with greater certainty, reduce compliance costs for investors (e.g. professional service fees, time delay costs etc.) and contribute to financial sustainability of the OIO by allowing it to focus its administrative efforts on assessing the most sensitive applications.
47. The following table provides further detail on these exemptions, the concern they are seeking to address, and the impact of the proposal. The impact on application volumes is uncertain, but we estimate that the combined package of proposals could result in up to a 5% reduction in applications. While this is small, it will provide a positive signal, in combination with fees and administrative changes, about the government's intention to improve the efficiency of the screening process. More significant impacts on application volumes are unlikely to be achievable without considering change to the substantive policy of the Act.

Proposed exemption	Issue/concern	Comment/Impact
<p>Proposal one: Exempt leasehold land from the requirement to first advertise land on the open market.</p> <p>Limited to leases of duration up to twenty years in length including rights of renewal, whether of the grantor or grantee.</p> <p>This would be implemented via a Gazette notice under section 20(b).</p>	<p>Advertising farmland. Submitters expressed concern that the requirement to publicly advertise <u>leasehold</u> farmland can impose additional requirements on investors where both parties are willing to proceed with a lease. This is perceived as burdensome where the ownership of the land remains in NZ.</p> <p>Example: A particular concern was raised about the cost this creates when applied to renewal of existing leases where both the lease and lessor want to proceed.</p>	<ul style="list-style-type: none"> • Reduces compliance burden for some investors by removing advertising requirement. • Reduces transparency for the lease of some land in cases where it would not otherwise be advertised. • The transaction still requires consent before the investment can proceed.
<p>Proposal two: 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.</p> <p>Limited to leases of cumulative duration up to maximum twenty years including rights of renewal, whether of the grantor or grantee.</p>	<p>Renewal of leases. Some leases are structured in such a way that renewals need to repeat the consent process for the same area of land involving the same investor. This imposes particular compliance burdens in some sectors where leases are commonly used without rights of renewal included in the original consent application.</p> <p>Example: [25] have noted that the current policy means acquiring leases is no longer commercially viable and they are forced to own land instead. [25] had a range of short term leases [25] [Seeking consent each time a lease is renewed adds time and cost where there is no change in the ownership or use of the land. In some cases this has resulted in whole planting cycles being missed, and [25] are considering redirecting investment out of New Zealand.</p>	<ul style="list-style-type: none"> • Consent must have been previously granted, so application likely to be low risk. • Safeguards on changes of ownership or land in question protect against using leases to avoid the screening regime. • One repeat investor estimates applications in this category of approximately 8 per year.
<p>Proposal three: Exempt transactions between overseas persons where New Zealand land may be less sensitive, is incidental to a larger global transaction, and the land has previously been screened. The exemption would be limited to 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.</p>	<p>International mergers and acquisitions can be delayed while waiting for New Zealand approval despite any New Zealand assets being incidental and a small part of a global transaction.</p> <p>Example: submitters noted cases of New Zealand being the last to provide regulatory clearance to global mergers, slower than China and Saudi Arabia. In some cases approval is for a small commercial or industrial property that is sensitive because it adjoins a small stream or reserve...</p>	<ul style="list-style-type: none"> • Five hectare limitation means the exemption targets commercial, industrial or residential developments rather than farmland. • Consent for overseas investment previously granted to vendor, so no substantive change in New Zealand ownership. The new investor would not be screened. • Impact uncertain, but likely to be small.

Proposed exemption	Issue/concern	Comment/Impact
<p>Proposal four: 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.</p> <p>Exemption 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.</p>	<p>Transactions due to the Public Works Act: land transfers under the Act can require approval, for instance where land is transferred as to an overseas person due to a road realignment. These actions are the result of government action but impose a compliance cost where the investor has limited discretion, and generally involve small parcels of land.</p> <p>Example: The [25] project required land from [25] to complete the project. Some land titles are now being transferred back to [25] [25] but this requires consent as [25] s an overseas person. The cost of this consent process is expected to exceed \$30,000.</p>	<ul style="list-style-type: none"> • Low risk as consent only required as result of action under the Public Works Act and the investor has previously sought consent to own land. • Small number of cases likely to be impacted..
<p>Proposal five: Exempt overseas owned custodians who hold shares on behalf of investors from the requirement for consent, on the following conditions:</p> <ul style="list-style-type: none"> • the exemption would not apply to custodians who invest in their personal capacities; and • overseas persons who invest through custodians will still require consent in their own right if they acquire more than 25% of the company being invested in, or increase an existing 25% or more investment in that company. 	<p>Custodians hold shares on trust for individual investors. Custodians are normally owned by banks, investment advisors and trustee companies, and are often overseas owned. Many investments by overseas owned custodians will be made on behalf of New Zealanders. Custodians are only holding shares on trust on behalf of their clients. They have no rights of ownership or voting rights over the shares.</p> <p>When a custodian is 25% or more overseas owned, its investment in a company is counted as an overseas investment. If the total overseas investment by the custodian (either alone or together with other overseas investors) exceeds 25%, then the company being invested in will become an overseas person itself and will need consent to acquire sensitive land.</p>	<ul style="list-style-type: none"> • The use of custodians has increased via the trend to portfolio investing, and because ownership of some custodians has moved overseas. The beneficial ownership of the shares should determine whether a company is overseas owned rather than any custodian arrangement. • Any shares held by the custodian on behalf of overseas persons will be still be counted in calculating whether the company is an overseas person. • It is more consistent with the purpose of the Act to “look through” the custodian’s ownership and focus on the underlying beneficial ownership by the overseas investor.

Proposed exemption	Issue/concern	Comment/Impact
<p>Proposal six: Exempt residential property developers from screening as long as land is developed for residential use within three years of acquisition. The exemption would be conditional on:</p> <ul style="list-style-type: none"> notification within specified timeframe to the OIO that the transaction has been given effect and falls within the scope of the exemption; resource and building consents been granted within the three year period from the date the transaction is given effect; notification to the OIO that that resource and building consents have been granted within the required timeframe; retrospective consent must be sought within a specified timeframe if the above conditions have not been met. 	<p>Residential Property development: approval to invest for residential property developments can add additional compliance costs on developers and slow progress on developing new housing. This concern was raised by the Productivity Commission in their inquiry into urban land use in Auckland. The screening process is an additional burden when increased housing supply is required to address housing affordability issues.</p> <p>Example: some developers [25] need approval to purchase non-urban land to redevelop into residential property. They have indicated that they avoid purchasing land which requires consent due to uncertainty and cost of the screening process.</p>	<ul style="list-style-type: none"> Aligns with supporting the increase of housing supply by removing one hurdle in the development process. Residential developments would still be subject to all resource and building consent requirements, but the additional hurdle of OIO consent would be removed. Risks balanced with safeguards on time for action and notification to the OIO. Safeguards may limit the effectiveness of the exemption. The conditions associated with this exemption may add complexity to its drafting and implementation. <p>[34]</p>

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International obligations

59. New Zealand's free trade agreements protect the continued operation of the investment screening regime. However, in some instances, our free trade agreements include commitments that the regime will not become more restrictive in the future. [

[36]

Administrative changes

60. In addition to the exemptions discussed above, we will also pursue other administrative policy changes that will support the changes outlined above. These options include:

- Refocusing the classes of land captured for the purposes of section 37 of the Act. This list is maintained by and is the responsibility of the OIO.
- Clarifying existing guidelines for exemptions to the investment screening regime for New Zealand controlled persons with regard to limited partnerships.

- Reconsidering the threshold for which consent applications require a Ministerial decision (as opposed to being determined by the OIO).
 - Focusing the administrative effort of the OIO on the most significant applications.
 - Providing greater administrative guidance on when individual exemptions from the requirements for consent can be expected to be granted.
 - Providing additional guidance for investors to support preparing high quality applications for consent.
61. We also propose three additional administrative changes to the Overseas Investment Regulations 2005, when the Schedule 2 Fees and Charges are amended. These are:
- Removal of Citicorp Services Limited from the Overseas Investment Regulations 2005 Schedule 3, as that company no longer wishes to be listed on Schedule 3. The removal will not disadvantage it.
 - Removal of Guinness Peat Group (GPG) from the Overseas Investment Regulations 2005 Schedule 4. GPG has advised that it has concluded its business activities in New Zealand and has determined that it is no longer necessary for it to be listed on Schedule 4. Companies listed on Schedule 4 are exempt from the provisions of the Overseas Investment Act 2005 as they have demonstrated that control at both shareholder and board levels is clearly in “New Zealand hands”.
 - Amendment to Regulation 37 to correct a drafting error – Granting an exemption under Regulation 37(1) for a “class of transactions, persons, interests, rights or assets” is not enabled by the empowering provision in section 61(1)(j) of the Overseas Investment Act 2005, which means Regulation 37 is ultra vires the Act. To remedy this, an amendment to Regulation 37(1) to remove this phrase “class of transactions, persons, interests, rights or assets” is recommended.

Consultation

62. LINZ and Treasury have collaborated on this paper. LINZ consulted on the proposed fee changes with legal firms and overseas investment applicants as well as with a number of other relevant organisations such as: The New Zealand Law Society - Property Law Section, Business New Zealand, Federated Farmers, Constellation Brands, Turners and Growers, Fletcher Building Limited, Sealord Group Limited, Aotearoa Fisheries Limited, Te Ohu Kaimoana, The NZ Federation of Commercial Fishermen of New Zealand.
63. The Minister for Land Information held a forum with submitters to enable them to provide further insights on their submission comments
64. Following analysis of feedback, and development of the final proposal, additional one-week, targeted consultation was carried out on the revised SBA fee in the new proposal.
65. The Ministry for Foreign Affairs and Trade, the Ministry for Business, Innovation and Enterprise and the Ministry for Primary Industries have been consulted with throughout

the fees review and the development of subsequent papers. The Department of the Prime Minister and Cabinet have also been informed.

Financial Implications

66. The proposed option will be fiscally neutral to the Crown. The change will result in an increase in appropriation offset by an increase in revenue other (fees charged to overseas investors). This change will be incorporated in the next appropriate baseline update. The proposed option will mean that OIO memorandum account is expected to trend back to balance over the medium term (the account is in deficit of \$1.107 million as of 31 December 2015).

Human Rights

67. There are no human rights, disability or gender implications arising from the proposals in this paper.

Legislative Implications

68. These proposals will require amendments to the Overseas Investment Regulations 2005.
69. To ensure that the proposed regulatory exemptions address the concerns originally raised by submitters, we propose that the Minister of Finance release an exposure draft of the regulations ahead of seeking approval of those regulations.

Regulatory Impact Analysis

70. The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.
71. The RIS "Regulatory Impact Statement: Review of the Overseas Investment Fees Structure and Fees" on the proposed changes to the Overseas Investment fees structure and fees has been prepared by LINZ. LINZ has reviewed the RIS and associated supporting material and considers the RIS meets the quality assurance criteria.
72. The RIS "Overseas Investment Regulation Targeted Exemptions" dated 24 March 2016 was prepared by the Treasury. Two Treasury advisors not associated with the preparation of Treasury advice on this subject have reviewed the RIS in light of the decisions being sought in the associated Cabinet paper, and consider that the information and analysis summarised in the RIS meets the quality assurance criteria.
73. The anticipated benefits and risks of each targeted exemption considered in the RIS are relatively minor, and the nature of the key trade-off is made reasonably clear. The RIS is, however, less clear about how Treasury has determined where the balance lies between those benefits and risks to support their preferred option for some individual proposals. Overall, however, the RIS explains the judgements of officials about feasible options based on practical knowledge of the screening process.
74. The limited consultation to date on the proposed exemptions also increases the importance of the proposed exposure draft process to ensure the proposals are robust, which is desirable given the acknowledgement that New Zealand will be unable to reverse exemptions made in relation to investors from certain countries.

Publicity

75. The proposals contained in this paper provide an opportunity to reset engagement with investors on the overseas investment screening process and it will be important to proactively engage with them about how we are addressing their range of concerns. Treasury will work with the OIO and New Zealand Trade and Enterprise to hold workshops for investors in Auckland, Wellington, and Christchurch before the fee changes take effect in July. The objectives of the engagement will be to:
- explain the changes being made to improve the investor experience with the screening process, including how the OIO has already increased staffing levels and improved screening times;
 - outline how investors improve their own applications to get faster decisions and reduce the likelihood of being rejected for providing incomplete or poor quality applications; and
 - present a 'joined up government' that can outline the wider goals of our investment attraction strategy, and gather ongoing feedback and intelligence about the operation of the screening regime.
76. The Ministry of Foreign Affairs and Trade will send a formal message to New Zealand's offshore network explaining the changes to support offshore engagement with international investors, emphasising the importance of improving the quality of applications.
77. We will make a public statement announcing decisions following the Cabinet consideration of this paper. We intend to release a copy of this Cabinet paper with any appropriate redactions.

Recommendations

78. It is recommended that the Cabinet Economic Growth and Infrastructure Committee:
1. **note** that, since 2009 the OIO has been unable to recover the cost of delivery of its regulatory functions under the Overseas Investment Act 2005 (the Act) resulting in:
 - 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;
 - an inability to address increasing demands for improved monitoring and enforcement of compliance with the Act and consent conditions; and
 - an increasing memorandum account deficit (\$1.107 million on 31 December 2015).
 2. **note** 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
 3. **note** that we carried out a targeted consultation with stakeholders following a 2014/2015 review of overseas investment applicant fees;

4. **note** 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. **note** that we propose to resolve the funding problems identified/considered in the 2014/2015 review of overseas investment applicant fees and respond to concerns raised by overseas investment applicants through a three-pronged approach that includes:
 - improvements to the OIO's operational processes;
 - amendments to the overseas investment application fee structure and fees; and
 - a number of targeted exemptions to the screening regime;
6. **note** that initial improvements to streamline the OIO's operational processes have commenced;
7. **approve** the final overseas investment application fee structure and increased fees as outlined in Appendix A;
8. **note** that the final proposal, combined with OIO operational efficiencies will introduce:
 - a new, fairer fees structure and increased fees which will support the OIO in meeting faster application screening targets;
 - improved operational efficiencies of the OIO (a 20% improvement on actual [2014/15] application screening times) and an improved customer-centric approach; and
 - improved monitoring and enforcement of compliance with the Act and consent conditions;
9. **agree** to a transitional provision for the new fees in Schedule 2 of the Overseas Investment Regulations 2005 to set the date of the 'OIO acceptance of an application' as the relevant date for calculation of application fees;
10. **note** that the fiscally neutral changes to the baseline will be incorporated in the next appropriate baseline update;
11. **agree** to the following targeted exemptions from the investment screening regime:
 - exempt leasehold land from the requirement to first advertise land on the open market. Limited to leases of cumulative duration up to twenty years in length including rights of renewal, whether of the grantor or grantee;
 - 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 maximum twenty years including rights of renewal, whether of the grantor or grantee;
 - 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;

- 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;
 - exempt overseas owned custodians who hold shares on behalf of investors from the requirement for consent, on the following conditions:
 - the exemption would not apply to custodians who invest in their personal capacities; and
 - overseas persons who invest through custodians will still require consent in their own right if they acquire more than 25% of the company being invested in, or increase an existing 25% or more investment in that company;
12. **note** that the Minister of Finance and the Minister for Land Information recommend to not progress the exemption relating to certain transactions for residential property developers;
13. **agree** to three additional changes to other parts of the Overseas Investment Regulations 2005 are proposed as follows:
- removal of Citicorp Services Limited from the Overseas Investment Regulations 2005 Schedule 3;
 - removal of Guinness Peat Group (GPG) from the Overseas Investment Regulations 2005 Schedule 4;
 - amend Regulation 37 to correct a drafting error by removing the phrase “class of transactions, persons, interests, rights or assets”;
14. **invite** the Minister for Land Information to instruct the Parliamentary Counsel Office to draft the amendment to the Regulations necessary to give effect to the decision in recommendation 7, 9 and 13;
15. **invite** the Minister of Finance to instruct the Parliamentary Counsel Office to draft amendments to the Regulations to give effect to the decision in recommendation 11;
16. **delegate** authority to the Minister of Finance and the Minister for Land Information, to make changes to fee levels and issue drafting instructions to PCO accordingly, prior to Cabinet Legislation Committee consideration;
17. **delegate** authority to the Minister for Land Information to make any minor policy decisions required to give effect to the decision in recommendation 7, 9 and 13 during the drafting process;
18. **delegate** authority to the Minister of Finance to make any minor policy decisions required to give to the decision in recommendation 11 during the drafting process;

19. **agree** that the Minister of Finance release an exposure draft of regulations implementing recommendation 11 for targeted consultation ahead of seeking final approval of those proposals;
20. **direct** the OIO to report quarterly to the relevant Business Growth Agenda Investment Ministers on the improvements to the overseas investment application process;
21. **invite** the Minister for Land information to report back to the Cabinet Economic Growth and Expenditure Committee on the improvements to the overseas investment application process, by July 2017 (12 months after the changes come into force).

Hon Louise Upston

Minister for Land Information

_____/ ____/ 2016

Hon Bill English

Minister of Finance

_____/ ____/ 2016

APPENDIX A: Fees Structures and Fees Amounts (GST inclusive) – Current, Proposed

Fees Structure (Application Type)	Current (2009) Fees	Proposed Fees
Applications for Consent		
Significant Business Assets (SBA) only	\$13,187	\$32,000
Sensitive land only – section 16(1)(e)(i) applies	\$19,524	<\$1m value, fee @ \$20,000 >\$1m value, fee @ \$27,000
Sensitive land only – section 16(1)(e)(ii) applies	\$19,524 Delegated \$22,489 Ministerial	<\$1m value, Delegated, fee @ \$33,000 <\$1m value, Ministerial, fee @ \$35,000 >\$1m value, Delegated, fee @ \$39,000 >\$1m value, Ministerial, fee @ \$41,000
Sensitive land only – section 16(1)(e)(ii) and section 16(1)(e)(iii) applies	\$19,524 Delegated \$22,489 Ministerial	<\$1m value, Delegated, fee @ \$37,000 <\$1m value, Ministerial, fee @ \$39,000 >\$1m value, Delegated, fee @ \$43,000 >\$1m value, Ministerial, fee @ \$45,000
Sensitive land and Significant Business Assets	\$19,524 Delegated 22,489 Ministerial	Delegated, fee @ \$49,000 Ministerial, fee @ \$51,000
Fishing Quota	\$36,800	\$40,000
Applications for Exemption		
Application under regulation 37 - Sensitive Land and/or Significant Business Assets	\$11,960 to 13,391	\$25,500
Application under regulation 37 - Fishing Quota	\$168 (hourly rate)	\$40,000
Schedule 3 and 4 - Application for inclusion on the schedule, Annual monitoring fee.	\$9,711 to 14,822	\$560 (hourly rate)
Applications to Vary Consent		
Application to vary a condition by extending the time for compliance	\$11,142 to 12,573	\$13,000
All other applications to vary a consent or exemption, or a condition of a consent or exemption	\$11,142 to 12,573	\$13,000
Other Services		
Request for provision of information or services	\$168 (hourly rate)	\$168 (hourly rate)

APPENDIX B: Application Screening Targets for the Proposal

The proposed proposes application screening targets that represent a 20% improvement on actual (2014/15) application screening times. This will be achieved through the engagement of extra staff to screen applications faster.

Proposed application screening targets to match the number of staff are outlined in Table 3. These are based on a high demand year (high application numbers and a high proportion of complex applications – calculated at 180 applications).

Table 2. Screening Targets for the Proposed Option

Target and Year	25% of applications screened within X working days	50% of applications screened within C working days	75% of applications screened within X working days	90% of applications screened within X working days	Estimated Total applications per annum
Target takes effect 18 months after new staff start	18	32	45	60	180
Target takes effect 18 months after new staff start	10	20	35	42	140

The performance figures also recognise constraints on the OIO's application processing functions that are outside their direct control (e.g. the complexity of applications and the requirement to wait for additional information from stakeholders). The targets exclude the time an application is with third parties for consultation, awaiting further information from applicants and with Ministers for decisions.

APPENDIX C. How Key Features of the Proposed Option address the Identified Issues

Identified Issues	Features of the proposed fees changes: Fees with value-based differentiation provide for medium improvement in OIO functions and risk-based site inspections for monitoring some sensitive land investments (10 inspections per annum).
Poorly aligned fees structure	<ul style="list-style-type: none"> • This option includes a more complex fees structure (in response to submissions). • It applies value-based differentiation for all categories of sensitive land consent fees. Within each category (where possible) fees for higher value investments (≥\$1m) correlate with their average to above average application screening and monitoring costs and fees for the few lower value investments correlate with their below average costs. • It applies a fee of \$40,000 for fishing quota consent and exemption fees. Whilst this fee does not recover OIO application screening and monitoring costs for fishing quota, it is considered sufficiently low not to deter these few investments. • To ensure overall OIO cost recovery, \$13,000 of the \$32,000 SBA consent fee cross-subsidises reduced fees for fishing quota consent and exemption fees and lower value (<\$1m) sensitive land s 16(1)(e)(i) consent fees. • The fixed fees for sensitive land consents (excluding s 16(1)(e)(i)) include a loading to fund monitoring site inspections.
Unsustainable Fees amounts	<ul style="list-style-type: none"> • Fees for overseas investment applications for consent range between \$20,000 and \$51,000, an increase of between 2% (Land 16(1)(e)(i) and 151% (Land + SBA). • The fees for 'variations of consent conditions by time extension' increase by up to 17%, to \$13,000. Whilst this significantly over-recovers the OIO cost of processing a time extension, this incentivises investors to comply with their consent conditions in the required time and aligns with costs for strengthening OIO monitoring and enforcement. • Over 2016/17, fees are expected to recover costs of \$5.3 million per annum (on anticipated OIO costs of \$4.6 million).
Increased requirement for monitoring and enforcement	<ul style="list-style-type: none"> • This option allows moderate improvement in OIO capacity for desk-based monitoring and enforcement. • Desk-based monitoring will be complemented by risk-assessment based site inspections of 10 sensitive land investments (excluding s 16(1)(e)(i) consents) each year as a part of monitoring. • Monitoring site inspections are a policy shift from conditions of consent be imposed in the "least onerous way including, where possible, at the least cost to the investor" as specified in the Directive Letter.
Concerns with application screening speed	<ul style="list-style-type: none"> • Application screening times would ultimately improve by approximately 20% for most applications (from 75 to 60 working days for 90% of applications).
OIO operational efficiency and applicant certainty	<ul style="list-style-type: none"> • The moderate level of additional OIO resources for application screening enables OIO operational efficiencies and a customer-based approach. • As part of this, to improve the quality of applications it screens, the OIO has tightened its initial quality assurance (QA) review of applications to improve application quality and enable faster and streamlined screening. The OIO is returning more low quality applications and is providing advice as to the matters that have to be remedied before the application can be accepted for processing. The OIO is actively educating lawyers and applicants about this change in process. When the application is accepted for processing, the expected screening completion date, based on complexity, will be communicated to the applicant. Should this date or complexity

level change throughout the screening process, the applicant will be updated on the status of the application and the reasons for the change.

- This will also require the OIO to provide applicants with status updates when applications are with third parties for consultation and with Ministers for decision. The OIO does not currently provide updates to applicants when the applications are with Ministers for decision or with third parties for consultation.

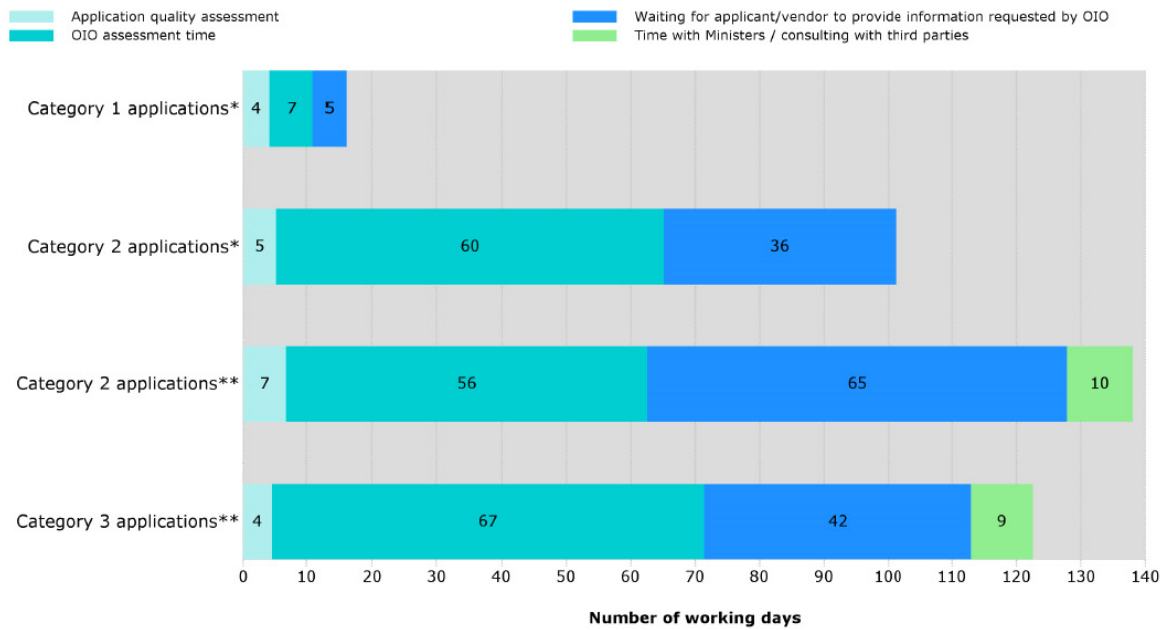
APPENDIX D. Timeline for development of the Proposed Overseas Investment Fee Structure and Fees

The Overseas Investment Fees were last updated on 3 September 2009.

Dec 2013	Ministers agree to a review of Overseas Investment Fees
Late 2014	Scope of the review expanded to include consideration of faster application screening
Aug 2015	Scope of the review included for investment fees to include costs recovery for monitoring that included “risk-based site inspections of 10 sensitive land investments per annum, with the costs of this met by sensitive land consent applicants”
Sep 2015	Cabinet approve release of the consultation document “ <i>Proposal for Overseas Investment Fees to Support Faster Screening Process</i> ”
23 Sep -21 Oct 2015	Consultation period
Nov 2015	Forum with submitters on the ‘Consultation Document: Proposal for Overseas Investment Fees to support a faster screening process’.
December 2015	BGA Investment Ministers meeting requested further consultation on SBA fees.
Feb 2016	Additional targeted consultation to test an increase in the fees for Significant Business Assets applications
Early March 2016	Cabinet paper drafted (combining Fees & Policy work into one paper)
Mid March 2016	Inter-agency consultation
14 March 2016	Draft Cabinet paper to Ministers
13 April 2016	EGI Cabinet Committee
18 April 2016	Considered by Cabinet
April/May 2016	Initial Fees Regulations Drafted by PCO
April/May 2016	Inter-agency & PCO review of Regulations
25 May 2016	LEG Cabinet Committee & Cabinet
30 May 2016	Fees Regulations to Executive Council (28 day rule applies following Exec Council)
4 July 2016	Fees regulations enter into force

APPENDIX E. History of OIO Applications Assessment and Processing

Average OIO Assessment times July 2015 - December 2015

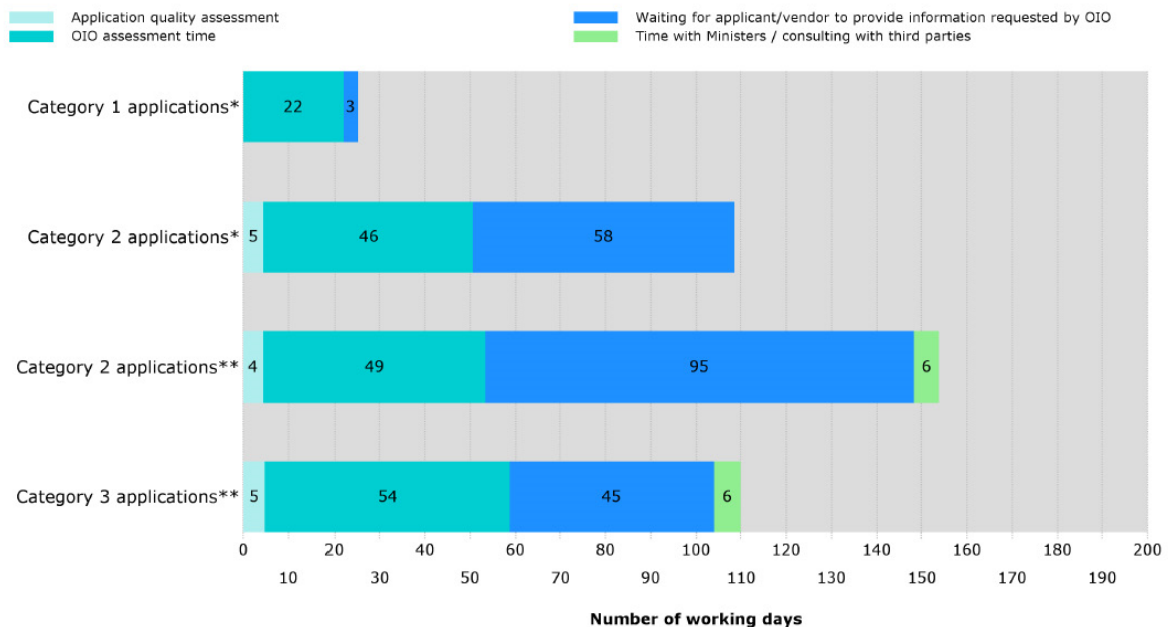


* Decisions made by OIO, under delegation from Ministers

** Decisions made by Ministers

Note: Category 1 applications are generally decided by the OIO. Category 3 applications are generally decided by Ministers.

Average OIO Assessment times January 2016 - March 2016



* Decisions made by OIO, under delegation from Ministers

** Decisions made by Ministers

Note: Category 1 applications are generally decided by the OIO. Category 3 applications are generally decided by Ministers.