

The Treasury

Overseas Investment Office Fee Increases and Targeted Exemptions Information Release

Release Document

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Key to sections of the Official Information Act 1982 under which information has been withheld.

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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.

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, a [25] appearing where information has been withheld in a release document refers to section 9(2)(b)(ii).

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

Regulatory Impact Statement: Overseas Investment Regulations Targeted Exemptions

Agency Disclosure Statement

This regulatory impact statement has been prepared by the Treasury. It provides analysis of targeted exemptions to New Zealand's overseas investment screening regime.

The work contained in this regulatory impact statement has arisen from consultation that the Government undertook on proposed changes to the fees charged for applications for consent to invest in sensitive New Zealand assets under the Overseas Investment Act 2005 (the Act). During consultation, submitters raised a number of small policy issues that, if addressed, could reduce compliance costs for some types of investment.

The options considered have been limited to addressing the issues raised by submitters during the consultation process. There are broader policy changes that could be considered to address the issues raised by submitters which would require amendment of the Act. However, the Government has indicated that it does not wish to consider changes to the range of assets screened under the Act or other options that would require amendment to the Act. The analysis undertaken was limited to issues and options that could be implemented via change to the Overseas Investment Regulations 2005. As the assets screened by the Act are contained within the regulatory regime, administrative options would not address the substantive concerns of submitters.

The impact analysis is based on information provided by stakeholders on the impacts imposed by the screening regime and by the Overseas Investment Office. Impacts of the proposals on application volumes are uncertain, but estimates have been provided based on either previous volumes and/or experience from the Overseas Investment Office or specific submissions provided by stakeholders.

The options outlined should be considered alongside changes proposed by the Government to Office's fees to improve the resourcing available to the Office. Land Information New Zealand has prepared a regulatory impact statement¹ addressing those proposals. The Government also intends to make administrative changes to support more efficient decision making in the screening process (highlighted in the implementation section of this document). Combined these proposals should be considered as a package intended to support the Office in addressing concerns relating to the time taken to process applications for consent and the screening of less substantive applications.

Further consultation to seek additional issues that could be considered within the parameters set by the Government has not been undertaken. However, we recommend the Government undertake further consultation with submitters on an exposure draft of regulations to implement these options to test whether the final proposals address the original concerns raised.

Chris Nees,
Team Leader International
The Treasury

24 March 2016

¹ *Regulatory Impact Statement: Review of the Overseas Investment Fees Structure and Fees*, Land Information New Zealand

Executive summary

Foreign investment in New Zealand is regulated by the Overseas Investment Act 2005 (the Act). Consent must be obtained through the Overseas Investment Office (the Office) for foreign investment in sensitive New Zealand assets as defined by the Act. The application process for gaining consent imposes compliance costs for investors through applications fees and associated professional services costs, and delay in proceeding with an investment.

Stakeholders and Ministers are concerned about

- the time taken to assess applications for consent to invest;
- poor application quality; and
- the range of investment screened by the Act (which is perceived as capturing too many investments that are not likely to be sensitive).

Land Information New Zealand has been reviewing application fees for the Office to address the first two issues. This regulatory impact statement addresses the third concern.

As a part of consultation on the Government's proposed fees changes submitters raised a number of issues with the scope of land screened under the Act that could be addressed to improve the operation of the Act. Potential targeted exemptions to the investment screening regime have been identified to address six specific concerns raised in this process:

- exempting acquisitions of leasehold farmland, where the lease is for a term of not more than twenty years, from the requirement to first advertise land on the open market (proposal one);
- exempting leasehold land from screening where a previously consented lease is being re-granted on the same terms and conditions, and the ownership and size of the leasehold land in question, is unchanged (proposal two);
- exempting transactions from one overseas person to another for specified land that is of a small scale, incidental to a larger global transaction and that have previously been screened (proposal three);
- exempting certain transactions where consent is required as a result of certain Public Works Act 1981 actions and consent has previously been obtained to acquire the adjoining land (proposal four);
- exempting overseas owned custodians who hold shares on behalf of New Zealand investors from the requirement for consent for those shareholdings only (proposal five); and
- exempting certain transactions for residential property developers who purchase non-urban land for the purposes of residential development (proposal six).

While there are risks and implementation difficulties associated with progressing these exemptions, these risks can be balanced and mitigated by the narrow scope of the exemptions proposed. [36]

Noting these risks, we consider they could all be progressed to support efforts to reduce the compliance costs of the investment screening regime.

Status quo and problem definition

Status quo

Foreign investment in New Zealand is regulated by the Overseas Investment Act 2005 (the Act). The foreign investors that require consent to invest in these assets are defined in the Act. The Act requires prior approval for foreign investment in:

- significant business assets valued over \$100 million (except for Australian non-government investors where the threshold is \$498 million)²;
- sensitive land (as defined by the Act, including non-urban land over 5 hectares, certain offshore islands, foreshore and seabed, reserves, and historic areas); and
- fishing quota.

In order to be granted consent to invest in these assets applicants must meet different tests for each category of investment. In the case of significant business assets, investors are required to demonstrate business experience or acumen, a financial commitment to the investment, and that they are of good character (the investor test). For sensitive land, investors must meet the investor test, as well as demonstrating that the investment will provide substantial and identifiable benefit for New Zealand. Fishing quota investors must meet the investor test and a 'national interest' test which is similar to the benefit test for sensitive land.

The Act captures a broad range of investments in New Zealand for screening (as outlined above). The Act also provides broad exemption making powers to both the assets and persons that have to be screened under the Act – regulations may be made *“exempting (on terms and conditions, if appropriate) any transaction, person, interest, right, or assets, or class of transactions, persons, interests, rights, or assets, from the requirement for consent or from the definition of overseas person or associate or associated land”*.

Applications are determined by the Minister of Finance for significant business applications; the Minister of Finance and the Minister for Land Information in the case of sensitive land applications; and the Minister of Finance and the Minister for Primary Industries in the case of fishing quota applications. The Minister of Finance's decision-making responsibilities under the Act are currently delegated to the Associate Minister of Finance. Certain decisions are also delegated to the Office for determination.

Application volumes vary from year to year. Between 2005 and 2015 there were on average 142 applications determined per year. Most applications involve sensitive land (on average 110 applications per annum). On average there were 19 significant business asset applications per annum and 13 combined sensitive land and significant business asset applications per annum. Fishing quota applications are very low – only 4 applications were received over the 2005 – 2015 period.

² Under the Trans Pacific Partnership (TPP) Agreement the investment screening thresholds for non-government investors from TPP countries will increase from \$100 million to \$200 million. The entry into force date of the TPP agreement is still to be determined. This threshold will also be extended to some previous FTA partners as a result of most favoured nation obligations that New Zealand has previously agreed.

The application screening process imposes a range of compliance costs on investors (direct application fees, associated professional services fees, and time delay costs). Each is outlined in turn below.

Application fees

Applicants must pay fees charged by the Office for their application to be considered. Table 1 below illustrates the range of the Office's existing and proposed application fees (to be considered by Cabinet at the same time as the exemptions discussed in this analysis).

Table 1: Overseas Investment Office application fees

	Sensitive land applications	Significant business asset applications
Application fees (existing fees), including GST	~ \$19,500 – \$22,500	~ \$13,000
Applications fees (proposed), including GST	\$33,000 - \$51,000	\$32,000

Professional services fees

In addition to the application fees outlined above, in most instances applicants will also face professional services fees in the preparation of an application. This will generally be legal fees to prepare an application but can also potentially involve services such as property surveying or economic analysis. These costs will vary significantly but can be substantively more than the application fees. For the most common additional cost, legal fees, one estimate provided to us indicated potential costs of \$10,000 to \$15,000 to prepare an application. Another indicated an average cost of \$50,000, with complex cases increasing up to approximately \$100,000.

Time delay costs

The processing of applications also imposes a time cost on applicants as their investments are delayed as they prepare and await for approval. The processing time for assessing and determining applications varies according to the complexity of application (in terms of its category and the structure of the investment), the quality of the information provided by the applicant, and who the decision maker is (i.e. the Minister or the Office). Table 2 illustrates that targets for processing times have not recently been met for more complicated cases (categories 2 and 3). The problem definition below outlines some of the reasons for this.

Table 2: Recent Overseas Investment Office performance

Category of application	Target	Percentage of applications that met target (July 2015 - December 2015)
Category 1 (applications to vary an existing consent)	90% of applications assessed within 30 working days of active consideration by the Office	100%
Category 2 (most significant business asset and sensitive land applications)	90% of applications assessed within 50 working days of active consideration by the Office	40%
Category 3 (fishing quota and applications where third party submissions or additional consultation is involved)	90% of applications assessed within 70 working days of active consideration by the Office	67%

Problem definition

Stakeholders and Ministers are concerned about a range of problems with the screening regime:

1. **The time taken to assess applications for investments has increased, which is putting pressure on Office resources.** Application processing times have increased recently due to the application assessment process becoming more complex (partially due to a 2012 court judgment imposing a new test and additional factors being considered in the assessment of the benefits test) as well as increasing pressure on Office resources to manage monitoring, enforcement, and ancillary activities (reducing resources available for screening). Table 2 above illustrates recent performance in assessing applications.
2. **Poor application quality:** the Office is rejecting a larger proportion of applications (25%) at the initial screening phase as they lack sufficient information to be assessed or the quality of the analysis is poor.
3. **The Act screens a range of investments that are not likely to be sensitive and are captured for incidental or technical reasons.** The specific nature of these problems is outlined in Table 3. In summary stakeholders raised a number of cases where investments are being screened despite there being no clear 'sensitivity' or where the benefits of the investment to New Zealand have already been considered and proven.

In response to one and two, Land Information New Zealand has been reviewing fees for the Office. The Government is proposing fees increases to increase the resourcing available to the Office in order to allow the Office to improve processing times and provide investors with greater certainty about these times. The Office is also improving information and communication with applicants in order to improve application quality.

This regulatory impact statement focuses on third concern identified above.

Objectives

This work seeks to make targeted improvements to New Zealand's overseas investment screening regime. It seeks to achieve the following objectives:

- Improve the efficiency or targeting of the investment screening process, which reduces compliance costs for foreign investors.

Compliance costs of investment screening are generally not a direct cost to New Zealand because they are borne by foreign investors. However, by increasing the cost of foreign investment into New Zealand, it reduces the relative attractiveness of New Zealand as a place to invest. Maintaining attractiveness is important as foreign investment brings additional capital into New Zealand, supporting the value-adding sectors of our economy and businesses in reaching markets that they may not reach by themselves.

- Maintain the substantive integrity and protections of the current policy settings of the screening regime.

The screening regime seeks to protect against potential adverse outcomes from foreign investment in sensitive assets such as reduced access to land or poor business practices by the foreign investor. In general, additional exemptions pose a

risk that the benefit of protecting against these potential adverse outcomes is lost. The potential exemptions should therefore not substantively alter these protections.

In seeking to achieve these objectives, the Government has indicated that it only wishes to consider options that do not require amendment to the Overseas Investment Act 2005. This work has only looked at options that can be implemented via changes to the Overseas Investment Regulations 2005

Option and impact analysis

In September 2015, Land Information New Zealand undertook consultation on proposals to increase the Office’s fees for applications for approval to invest in sensitive New Zealand assets. As a part of this process, submitters identified a number of discrete policy issues that they thought could be addressed to improve the operation of the investment screening regime by reducing the number of sensitive land applications screened that are unlikely to be sensitive and are captured for incidental or technical reasons.

The potential actions identified in this analysis are focussed on those that would address the specific concerns raised during the consultation process and do not require an amendment to the Act. The specific nature of the issues raised by submitters (i.e. whether or not a screening requirement of the Act should apply) mean that there is generally not a meaningful range of options for how they could be addressed. In all cases, a regulatory change is the only possibility, and the only room for choice comes in adjusting the threshold or limits on the scope of the exemption. Even here, choice is limited by the need to target exemptions to investments that are unlikely to be sensitive, have already had some engagement with the screening process, or strongly align with government priorities. Consequently we have only identified and analysed one potential response to each concern raised, with exemption limits or thresholds being those we thought most likely to fulfil the objectives identified above.

Table 3 below identifies the range of issues raised by submitters, the existing screening requirement relating to the concern, and a possible response.

Table 3: Addressing investor concerns

Current screening requirement	Investor concern	Potential Response
Applications for investment to acquire a leasehold interest in farmland must demonstrate that the land was offered for acquisition on the open market.	This requirement can impose additional requirements on investors where a freehold interest is not being acquired. This is perceived as burdensome where the substantive control of the land is not to be transferred. Particular concern was raised with regard to cases where existing leases were being renewed.	Exempt some leasehold land from the requirement to first advertise land on the open market. Limited to leases of duration up to twenty years in length (including rights of renewal, whether of the grantor or grantee). This would be implemented via a Gazette notice under section 20(b).

Current screening requirement	Investor concern	Potential Response
<p>Applications for investment for renewal of a leasehold interest in sensitive land may require approval despite no substantive change in the ownership or size of the property.</p>	<p>Some lease renewals may be structured in such a way that the renewal/re-granting of lease needs to repeat the consent process when that lease is renewed/re-granted. This imposes particular compliance burdens in some sectors where leases are commonly used without rights of renewal included in the lease in the original consent application.</p> <p>Note: this is only an issue for some leases depending on the terms of the original lease.</p>	<p>Exempt some leasehold land from screening where a previously consented lease is being renewed/re-granted on the same terms and conditions, and the ownership and size of the property in question is unchanged.</p> <p>Limited to leases of cumulative duration up to a maximum of twenty years in length including rights of renewal, whether of the grantor or grantee.</p>
<p>Transactions between overseas persons, where the New Zealand asset is incidental to a larger global transaction, require approval for investment.</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>Anecdotal examples of New Zealand being the last jurisdiction to approve a global transaction and the reason for a delay in a multinational deal.</p>	<p>Exempt transactions between overseas persons where New Zealand land may be less sensitive and is incidental to a wider transaction. 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 incidental transaction does not exceed \$100 million.</p>
<p>All forms of transactions that include sensitive land require approval, including minor boundary changes for Public Works reasons.</p>	<p>Some Public Works Act actions may result in transactions to implement acquisitions or transfers of land, for instance where land may be transferred as a result of road realignment. These actions are the result of government action but are imposing a compliance cost where the investor has limited or no discretion, and generally involve changes to small parcels of land.</p>	<p>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 gained does not exceed an area thresholds of 5 hectares.</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> <p>This can result in investment by custodians on behalf of New Zealand investors being considered an investment by an overseas person despite the ultimate ownership being in New Zealand control.</p>	<p>Custodians (normally owned by banks, investment advisors and trustee companies) are only holding shares on trust on behalf of their clients. They have no rights of ownership or voting rights over the shares. The beneficial ownership of the shares should determine whether a company is overseas owned rather than any custodian arrangement (which may be overseas owned).</p>	<p>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.

Current screening requirement	Investor concern	Potential Response
<p>While the screening regime is focussed on non-urban land, residential property developments can require consent in some circumstances.</p> <p>For example where the development is adjacent to sensitive land, or is a greenfield development outside urban limits.</p> <p>The same kind of development within urban limits would not be screened.</p>	<p>Seeking approval to invest for residential property developments can add additional compliance costs on developers and slow progress on developing new housing. This is an additional burden when increased housing supply is required to address housing affordability issues.</p> <p>This concern was raised by the Productivity Commission in their inquiry into urban land use in Auckland.</p> <p>Some property developers have indicated that they avoid purchasing land which requires consent due to uncertainty in the screening process.</p>	<p>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.

In Table 4 below, we assess the potential response to each concern against our identified objectives.

Table 4: Assessment against objectives and impact description

Potential Response	Reduces compliance costs	Maintains integrity and protections	Comment
<p>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>Modest reduction in compliance costs (time and cost of advertising process) for investors.</p> <p>No direct impact on application volumes or Office assessment work</p>	<p>Small or no impact on the protections of the screening regime.</p>	<p><i>Significance for transaction</i></p> <p>Applications impacted could have a reduction of at least 20 working days (being the minimum advertisement period) where exemption is utilised. Take up rates are unclear, the exemption is more likely to be utilised where parties are entering into a new lease following a previously terminated lease or parties have an existing relationship.</p> <p><i>Exemption safeguards</i></p> <p>Reduces transparency for some farmland transactions as advertising not required. However, in shorter-term leasehold transactions there will be no substantive change in the control of land. Land will either remain in New Zealand ownership and control or, if already overseas owned or controlled, should previously have received consent.</p> <p>Twenty year limit safeguards against long-term avoidance issues.</p> <p>Does not impact on the substantive screening requirements of the Act – consent would still be required (except in the case of the leasehold exemption below).</p> <p><i>Impact on application volumes and administrative effort</i></p> <p>No direct impact on application volumes or the Office’s administrative efforts but will reduce the regulatory burden on applicants.</p> <p>Recommendation: the proposed exemption reduces compliance costs and does not substantively alter the protections of the Act. The exemption should be progressed.</p>

Potential Response	Reduces compliance costs	Maintains integrity and protections	Comment
<p>Exempt leasehold land from screening where a previously consented lease is being renewed/re-granted on the same terms and conditions and the beneficial ownership and size of the property in question is unchanged.</p> <p>Limited to leases of cumulative duration up to a maximum of twenty years including rights of renewal, whether of the grantor or grantee.</p>	<p>All compliance costs removed for exempt applications.</p> <p>Moderate reduction in the amount of administrative work required by the Office in administering the screening regime.</p>	<p>Small or no impact on the protections of the screening regime.</p>	<p><i>Significance for transaction</i></p> <p>This exemption would apply where the original lease transaction has been consented, the original lease has terminated, and a new lease on the same terms and conditions, is entered into for the same areas of land, and where the beneficial ownership and control of the land (direct or indirect) has not changed. We understand that this type of exemption is more likely to benefit the agriculture sector due to existing preferences for lease structures.</p> <p><i>Exemption safeguards</i></p> <p>Lease must previously have received consent so the benefits of the transaction have already been considered. Safeguards protect against avoidance issues by limiting exemption to renewals on the same terms and conditions and where the beneficial ownership and size of the lease in question is unchanged from the original consent. Lease period also limited to protect against avoidance through repeat lease extensions.</p> <p><i>Impact on application volumes and administrative effort</i></p> <p>The Office cannot identify recent applications of this nature, but one repeat investor estimates ongoing lease renewal/re-granting applications of up to approximately 8 applications per annum.</p> <p>Reduction in the Office's administrative effort due to fewer applications screened.</p> <p>Recommendation: The proposed exemption only applies to leases that would already have received consent, and would be entitled to consent in the original application if structured differently. The protections of the Act are thus not substantively altered, combined with the reduction in compliance costs, the exemption should be progressed.</p>

Potential Response	Reduces compliance costs	Maintains integrity and protections	Comment
<p>Exempt transactions between overseas persons that involve small portions of New Zealand land and are part of a global transaction. 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 New Zealand asset does not exceed \$100 million.</p> <p>For example a commercial warehouse complex located in Auckland that adjoins a small creek.</p>	<p>All compliance costs removed for exempt applications.</p> <p>Small reduction in the amount of administrative work required by the Office in administering the screening regime.</p>	<p>Moderate reduction in the existing protections of the screening regime.</p>	<p><i>Significance for transaction</i></p> <p>Consent for overseas investment has already previously been granted to vendor, so benefits of initial sale have been considered and there is no substantive change in New Zealand ownership. Ability to screen for good character is lost.</p> <p><i>Exemption safeguards</i></p> <p>Exemption targeted to deals involving small portions of land that is considered sensitive only because it adjoins sensitive land. The limit on land size and value protect against significant or highly sensitive land avoiding screening.</p> <p>Due to urban land limitation, the exemption is more likely to target commercial, industrial, or residential developments caught by the screening regime.</p> <p><i>Impact on application volumes and administrative effort</i></p> <p>Impact on application volumes uncertain, but likely to be small. Reduction in the Office’s administrative effort due to fewer applications screened.</p> <p>Recommendation: The proposed exemption only applies to urban land that is likely to be tangentially caught by the screening requirements and has been screened on a prior occasion. While there is some reduction in the ability to screen for good character, the risks are low when balanced against the compliance savings. The exemption should be progressed.</p>
<p>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>All compliance costs removed for exempt applications.</p> <p>Small reduction in the amount of administrative work required by the Office in administering the screening regime.</p>	<p>Small or no impact on the protections of the screening regime.</p>	<p><i>Significance for transaction</i></p> <p>Exempts specific applications where consent is required as a result of action under the Public Works Act 1981. Exemption would apply to land being vested as an exchange (sections 105-107), due to a stopped road (section 117), or a severance as a result of a road (section 119).</p> <p><i>Exemption safeguards</i></p> <p>Consent will have previously been granted for existing title to which the land is being vested. The land being vested would not materially change the size or character of the land.</p> <p>Exemption is limited to land that is sensitive as a result of adjoining sensitive land and up to the specified area threshold.</p> <p><i>Impact on application volumes and administrative effort</i></p> <p>Impact on application volumes uncertain, but likely to be small. Reduction in the Office’s administrative effort due to fewer applications screened.</p> <p>Recommendation: The proposed exemption applies to land that would have already received consent, and screening is only required as a result of Government action. Size limitations protect against substantive adjustments. The exemption should be progressed.</p>

Potential Response	Reduces compliance costs	Maintains integrity and protections	Comment
<p>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>All compliance costs removed for exempt applications.</p> <p>Small reduction in the amount of administrative work required by the Office in administering the screening regime.</p>	<p>Small or no impact on the protections of the screening regime.</p>	<p><i>Significance for transaction</i></p> <p>Exempts companies who are overseas persons from the requirement for consent, if the only reason the company is an overseas person is because an overseas person holds shares in the company in its capacity as a custodian (and not in its personal capacity).</p> <p>The need for this exemption has grown as the use of custodians has increased via the trend to portfolio investing, the creation of a class of regulated “custodians” under the Financial Markets Conduct Act 2013, and because ownership of some custodians has moved overseas (such as the recent acquisition of 49.9% of formerly New Zealand owned Craig’s Investment Partners by Deutsche Bank).</p> <p><i>Exemption safeguards</i></p> <p>The exemption will only apply to shares held by New Zealanders. In calculating whether the company is an overseas person, any shares held by the custodian on behalf of overseas persons will be counted.</p> <p>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.</p> <p><i>Impact on application volumes and administrative effort</i></p> <p>The Office estimates 15 – 20 future applications could not be required.</p> <p>Reduction in the Office’s potential future administrative effort as the applications would not be screened.</p> <p>Recommendation: This a technical exemption to ensure that the regime does not inadvertently capture investment where the beneficial ownership remains in New Zealand control and would not be expected to be screened by the Act. The exemption should be progressed.</p>

Potential Response	Reduces compliance costs	Maintains integrity and protections	Comment
<p>Exempt residential property developers from screening as long as land is developed for residential use within three years of the date of settlement. The exemption would be conditional on:</p> <ul style="list-style-type: none"> notification within specified timeframe to the Office that the transaction has been given effect and falls within the scope of the exemption; resource and/or building consents been granted within the three year period from the date the transaction is given effect; notification to the Office 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>All compliance costs removed for exempt applications.</p> <p>Small reduction in the amount of administrative work required by the Office in administering the screening regime.</p>	<p>Moderate reduction in the existing protections of the screening regime.</p>	<p><i>Significance for transaction</i></p> <p>Exempts certain types of residential property development that is tangentially caught by the Act (most residential property development is not screened or intended to be screened). This aligns with the Government's priority of supporting the increase of housing supply by removing one hurdle in the development process.</p> <p><i>Exemption safeguards</i></p> <p>An exemption would be consistent with existing factors for assessing benefit of an investment in sensitive land – “whether the overseas investment will, or is likely to, give effect to or advance a significant Government policy or strategy” (Overseas Investment Regulations regulation 28(f))</p> <p>[34] Residential developments would though still be subject to all resource and building consent requirements, but the additional hurdle of gaining consent would be removed.</p> <p>Breach of conditions would mean the exemption would not apply, so the land purchase without consent would contravene the Act. This could result in the land purchase being unwound. Given that risk, developers may elect to apply for consent at the outset and not rely on the exemption.</p> <p>Safeguards to protect the substantive requirements of the Act (i.e. time limits for development) likely to limit effectiveness of exemption. Aimed at reducing compliance burden for developments that are likely to be ‘development ready’ in short timeframe.</p> <p>Difficult to balance incentivising development to align with Government priorities against providing an exemption for development unlikely to immediately contribute to housing supply (and thus justification for exemption weaker).</p> <p><i>Impact on application volumes and administrative effort</i></p> <p>Impact on application volumes uncertain, but likely to be small. Reduction in the Office's administrative effort due to fewer applications screened.</p> <p>Recommendation: This option aligns strongly with Government priorities, but contains risks in clearly defining the scope and may be difficult to implement. However, the Act does not generally intend to screen residential property and the same development in urban limits would not be screened. The exemption could still be progressed.</p>

The combined impact of the options is uncertain, but based on past applications volumes, and information provided by investors we estimate that these options could reduce existing application volumes by up to 5% per annum (approximately 7-8 applications per annum of limited difficulty to assess).

Compliance levels

There is a general risk that an increased number of exemptions to the screening requirements of the Act (as outlined above) may reduce overall compliance levels with the Act. This could be a result of investors either considering they are entitled to an exemption where they may not be, or increased complexity for the Office in administering the screening regime. The targeted nature of these exemptions reduces this risk. The Office's general monitoring and enforcement activities will support monitoring compliance with the Act.

International agreement considerations

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

[36]

Legal risks *[subject to legal privilege]*

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[34] [36]

[36]

Consultation

In September 2015 Land Information New Zealand undertook consultation on proposals to increase the Office's fees for applications for approval to invest in sensitive New Zealand assets. As a part of this process, submitters identified a number of policy issues that could be addressed to improve the operation of the investment screening regime by reducing the number of 'less serious' or transactional applications screened. The options considered in this regulatory impact statement address these issues.

The Minister for Land Information subsequently also held a forum with submitters on the fees review which involved discussion on policy changes that could address the concerns raised without change to the Act.

Further consultation has not been undertaken as the initial consultation elicited feedback on stakeholders key areas of concern that could be addressed within the current statutory limitations. However, we consider that further consultation should be undertaken on an exposure draft of the regulations implementing these changes if Ministers agree to take these proposals forward. This would provide an opportunity to test workability and whether the proposed exemptions adequately address the concerns of submitters.

Land Information New Zealand, the Ministry of Business, Innovation and Employment, the Ministry of Foreign Affairs and Trade, and the Overseas Investment Office were consulted on the proposals contained in this paper. This included testing whether the options are administratively feasible to implement. [34]

Conclusions and recommendations

The options discussed in this regulatory impact statement would provide targeted exemptions to New Zealand's overseas investment screening regime. They are designed to address specific concerns of investors relating the range of investments screened under the Act. The options discussed would exempt investments that are less likely to be sensitive in order to reduce compliance costs for such investments. They would also support broader government work to improve the efficiency of the investment screening regime.

[34] However, we consider that these risks can be balanced and mitigated by the narrow scope of the exemptions proposed. [34]

[34] we consider that five of the exemptions identified should be progressed:

- exempting acquisitions of leasehold farmland, for leases with a term of up to twenty years, from the requirement to first advertise land on the open market;
- exempting 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;
- exempting transactions between overseas persons for specified land that may be considered less sensitive;
- exempting 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
- exempting overseas owned custodians who hold shares on behalf of New Zealand investors from the requirement for consent for those shareholdings only.

We consider these exemptions strike a balance between maintaining the fundamental protections of the Act to ensure the benefit of foreign investment in New Zealand and reducing compliance costs for targeted cases that are likely to be of lower risk. Except for the advertising exemption, and the overseas owned custodians exemption, all of these options involve applications that would have already received consent for the investment in question.

The final exemption considered, relating to certain transactions for residential property developers, is more finely balanced. It provides a slightly higher risk than the other options as it involves investments that would not have previously received consent. However, the option aligns with the Government's priority of supporting increased housing supply and the proposed safeguards seek to limit the scope of where the exemption will be applicable. This option may prove more difficult than the others to implement due to greater complexity in defining the scope of the exemption. Noting these concerns, we still consider it could be progressed.

Implementation plan

The options discussed in this regulatory impact statement all require amendment of the Overseas Investment Regulations 2005 or a Gazette notice under section 20(b) of the Overseas Investment Act 2005. The technical drafting of the exemptions will require careful drafting of the safeguards. but we consider this to be feasible. [34]

[34]

To test that the regulations will also address the original concerns raised by submitters, we propose that the Government release an exposure draft of the regulations once drafted.

In addition to the regulatory change options discussed in this regulatory impact statement, and the fees changes, the Government also intends to consider additional policy changes that do not require regulatory change. 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 Office.
- 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 Office).
- Focusing the administrative effort of the Office on the most significant applications.
- Providing greater administrative guidance on when individual exemptions can expect to be granted.

The options above can all be implemented administratively or via changes to the Ministerial directive (section 34) or delegation letters (section 32) issued pursuant to the Act.

These changes, combined with changes to application fees charged by the Office, are intended to provide a targeted plan to reduce compliance costs for investors and allow the Office to focus screening efforts on substantive applications while maintaining the substantive protections of the Act.

Monitoring, evaluation and review

The Treasury maintains policy oversight of the investment screening regime. In conjunction with the Office, Treasury will monitor the impact of the proposed exemptions on application volumes. The Office also monitors compliance with the Overseas Investment Act to identify avoidance issues.