

REGULATORY IMPACT STATEMENT FOR THE REVIEW OF THE OVERSEAS INVESTMENT REGIME

Problem

- 1 The current overseas investment regime raises the following problems:
 - overseas business investors are subject to some unnecessary compliance costs;
 - the legislation focuses on economic development stemming from the land purchase, and other important factors, such as its heritage value and public access are not explicitly mentioned;
 - the monitoring and enforcement provisions do not require proposed land management plans of the Applicant on which consent is given by the Overseas Investment Commission to be undertaken and completed to a reasonable standard,
 - the Courts lack the ability to impose penalties commensurate with any breach by the applicant;
 - Ill defined accountability and governance structures.
- 2 Overall, the overseas investment regime may provide a small disincentive for foreign investment into small and growing companies, may promote non-optimal foreign investment outcomes and lacks transparency in governance.

Objectives

- 3 The public policy objectives behind the changes to the Overseas Investment Act are to:
 - a. encourage foreign investment into New Zealand recognising the growth benefits that foreign investment brings.
 - b. ensure that the value of sensitive New Zealand property is recognised and enhanced by any overseas owners.
 - c. Ensure appropriate governance arrangements around the overseas investment regime.

Options

	Status Quo	Proposed change
Coverage	<i>Business:</i> 25% of more ownership of assets over \$50 million.	<i>Business:</i> 25% of more ownership of assets over \$50 million.
	<i>Fish:</i> any fishing quota	<i>Fish:</i> any fishing quota
	<i>Land:</i> Land over 5 hectares and/or worth more than \$10 million;	<i>Land:</i> Land over 5 hectares

	<p>Any land on most off-shore islands;</p> <p>Certain sensitive land over 0.4 hectares (e.g. on specified islands, including reserves, Conservation Act land, historic or heritage areas, or lakes and adjoining these types of land);</p>	<p>Any land on most off-shore islands;</p> <p>Certain sensitive land over 0.4 hectares (on specified islands, including reserves, lakes, Conservation Act land, historic or heritage areas);</p> <p>Land over 0.2 hectares adjoining the foreshore;</p> <p>Land over 0.4 hectares <u>adjoining</u> coastal and lake front reserves and other margins that make up the Queen's Chain, where the reserves are over 0.4 hectares</p> <p>Land over 0.4 hectares <u>adjoining</u> scientific, scenic, historic and nature reserves over 0.4 hectares that are classified under the Reserves Act 1977 and that are administered by the Department of Conservation;</p> <p>land over 0.4 hectares <u>adjoining</u> heritage sites;</p>
	<p>Land over 0.2 hectares including or adjoining the foreshore.</p>	<p>All foreshore and seabed land</p>
Criteria:	<p>All applications: investor test</p> <p>Land: Economic development and other matters</p> <p>Fish: Economic development and other matters</p>	<p>All applications: investor test</p> <p>Land: Economic development, natural and historic heritage, walking access and other matters</p> <p>Fish: Economic development and other matters</p>
Monitoring and enforcement:	<p>Very wide powers under legislation for monitoring and enforcement, including:</p> <ul style="list-style-type: none"> -Ministers have the power to add conditions or revoke consent for any reason. - Court can order the sale of a property within two years of any breach occurring. 	<p>Clarification of powers under legislation.</p> <p>Expectation that land management plans submitted by applicants will become conditions of consent.</p> <p>Overseas investor required to provide a statutory declaration to the regulator certifying compliance with the conditions of consent.</p> <p>Court power to control the sale process, flexibility around the timing</p>

of when orders can be sought and around fines.

The regulator to have power to impose administrative penalties for failure to supply information reasonably requested.

Governance structures:	Situated in the Reserve Bank with a four person Board including 2 ex-officio members from the Reserve Bank and MED.	Separate unit within LINZ. Delegation from the Minister to the Chief Executive.
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- 4 In addition, it is proposed that the Crown would have the right of first refusal over the purchase of foreshore and seabed land that would otherwise be sold to an overseas person. The method of implementation of this right is yet to be finalised.
- 5 There is no proposal to limit the ownership of certain parcels of land to New Zealand nationals. This is for two reasons: first, the parcels of land in respect of which there is an ownership value are difficult to identify specifically; and secondly this would impose a significant restriction on the private property rights of New Zealanders, which would (reasonably) require compensation from government.

Impact assessment (net benefit)

- 6 The proposed changes recognise that for some land in New Zealand there is an 'ownership value'. That is, New Zealanders derive a welfare benefit from knowing that particular pieces of land are owned by New Zealanders. Thus, where the land is owned by an overseas investor, this lack of ownership value is compensated by the imposition of conditions.

	Costs	Benefits
Govt	<p>As the regime is self funded there are no fiscal benefits or costs from the changes.</p> <p>To the extent that any additional monitoring and enforcement costs are not able to be charged back to the applicants by way of fees, increased costs will fall on government.</p> <p>There may also be costs for other agencies required to contribute to the approval and monitoring process.</p>	<p><i>Organisational design:</i> The benefits of performing the functions within an existing government department are:</p> <ul style="list-style-type: none"> - A well understood set of governance arrangements and accountabilities; - Clear accountability to Parliament; - The support of a larger organisation in terms of corporate overheads, career structure for staff, and access to other resources; - Efficiency by avoiding the need to establish a new organisation. <p><u>Right of first purchase provides an opportunity for the Crown to purchase foreshore and seabed land.</u></p>

Right of first purchase likely to be some fiscal costs associated.

Overseas investors

Expanded criteria may increase costs if the purchaser needs to spend additional time to develop an appropriate land management plan that they would not have otherwise prepared.

Coverage: lower compliance costs related to a potentially smaller number of properties being subject to the regime.

Expanded criteria provides a wider choice of actions, while also ensuring land management plans are appropriate for the particular property.

Monitoring and enforcement will increase the costs on the applicants to the extent that land management plans were not previously complied with, and may increase the level of application fees.

Right of first purchase may prolong the application process.

Society

Right of first purchase may prolong the application process if a vendor of foreshore and seabed land.

Coverage: The higher business threshold may encourage more foreign investment in New Zealand companies.

Expanded criteria improve the protection provided to land in overseas ownership, particularly with regard to natural heritage and historic heritage.

Increased monitoring & enforcement will provide surety that applicants will undertake the land management plans that they put forward. This will reduce the incentive for applicants to submit plans with little intention of carrying them out.

Right of first purchase is likely to result in more foreshore and seabed land vested in the Crown

- 7 The average number of applications expected under the proposed changes in contained in the table below.

Approvals by category

	1998 - 2003	% of total (land) transactions	Average / year	Avg under proposed changes ^b
Non - land applications	82 ^a		20	7
Fishing quota	2		<1	<1
Land	1341		220	unknown
<i>Caught by one category only</i>				
> \$10 m	14	1	2	-
> 5ha	578	43	96	96
Lakes (adj)	2	-	<1	<1
Conservation Land (incl / adj)	2	-	<1	<1
Reserve, Public park etc (incl)	4	-	<1	<1
Reserve, Public park etc (adj)	55	4	9	<9
Heritage Order/Historic Place (incl)	14	1	2	2
Heritage Order/Historic Place (adj)	5	-	<1	<1
Foreshore	12	1	2	unknown
Islands	8	1	1	1
Associated Land	122	9	20	20
<i>Caught by more than one category</i>				
> 5 ha + other	466	35	78	78
Other combination	59	4	10	10
Total			240	

Note:

(a) Historical numbers are 2000 - 2003 only, the period over which the \$50 million threshold applied. Prior to this the threshold for business applications was \$10 million.

(b) The expected approval numbers are based only on the changes in coverage. No effect on application numbers or approval rates from the changes in criteria, monitoring and enforcement are factored in.

Consultation undertaken

- 8 Prior to the proposal being developed submissions were received from or discussions were held with a number of interest groups on issues and concerns related to foreign investment. This included; Forest and Bird, American Chamber of Commerce in NZ, EMA Northern, Bayleys, Wrightson, Wellington Chamber of Commerce, Council of Trade Unions, Canterbury Employers Chamber of Commerce, Federation of Maori Authorities, Business New Zealand, Federated Mountain Clubs of New Zealand, NZ Historic Places Trust, New Zealand Archaeological Association, Local Government New Zealand, High Country Accord and Trustees, Public Access New Zealand, CAFCA - Coalition Against Foreign Control of Aotearoa, International Council on Monuments and Sites (NZ Committee), Federated Farmers, Fish and Game New Zealand, New Zealand Business Roundtable, Environmental Defence Society, Seafood Industry Council, Talleys, Sanford, Maruha, Chapman Tripp, Russell McVeagh and Bell Gully. Relevant aspects of the proposals have also been discussed with the Historic Places Trust.
- 9 Since the proposal has been developed, discussions have been held with the following government departments: Land Information New Zealand, Ministry of Fisheries, Ministry for Culture and Heritage, Te Puni Kokiri, Ministry of Agriculture and Forestry, Department of Prime Minister and Cabinet, Department of Labour

(New Zealand Immigration Service), Department of Conservation, Ministry for the Environment, State Services Commission, Ministry of Justice, Ministry of Foreign Affairs and Trade, Reserve Bank, Ministry of Economic Development and the Overseas Investment Commission.