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The Treasury

CAB-25-SUB-0013 Detailed Policy Decisions for the Overseas Investment Act Reform Information Release

February 2025

Cabinet Document Details

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[33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials

[36] 9(2)(h) - to maintain legal professional privilege

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Office of the Associate Minister of Finance

Cabinet

Detailed Policy Decisions for the Overseas Investment Act Reform

Proposal

1 This paper seeks Cabinet's agreement to detailed policy decisions to amend the Overseas Investment Act 2005.

2 Following discussion at the Economic Policy Cabinet Committee and Cabinet [ECO-24-MIN-0298, CAB-24-MIN-0512 & ECO-24-0319] and joint decisions taken by myself, the Minister of Finance and the Deputy Prime Minister to make further changes to the paper I have revised the Cabinet paper. This draft retains the current screening requirements for farmland and fishing quota and includes additional information on how the regime would operate in practice. I have also updated the paper to provide that the secondary instrument continues to be a Ministerial Directive Letter (MDL), instead of the previously proposed Government Policy Statement (GPS).

3 The proposal primarily relate to the core overseas investment screening regime for sensitive land (excluding farmland), and business assets. However, the paper does recommend two minor changes to provide flexibility with respect to strategically important businesses (SIBs) screened under the National Security and Public Order (NSPO) regime.

4 The proposals do not affect the screening of residential land, unless specified, given the commitment to retain the foreign buyers ban.

Relation to Government priorities

5 This reform has been designed to support the Coalition Government's priorities, commitments and decision-making principles, including our commitments to:

5.1 support an active foreign policy and trade policy agenda, including to amend the Overseas Investment Act 2005 to limit Ministerial decision making to national security concerns and make such decision making more timely, and

5.2 retain the general prohibition on foreign investors acquiring or speculating in residential property.

Executive Summary

6 In September 2024, Cabinet agreed to reform the overseas investment screening regime to focus on a broad range of risks to New Zealand's national interests [CAB-24-MIN-0340]. This paper contains proposals on the detailed design of the new

regime to give effect to this decision. It proposes a fast-track consent process under a modified national interest test. In recognition of their sensitivity and importance to New Zealand, this proposal will not apply to fishing quota or farmland[1] and the current consenting frameworks for these asset classes will be retained.

7 To ensure the reformed regime significantly reduces the regulatory burden imposed on investors as intended, the assessment process for identifying risk factors and assessing what investments should receive detailed scrutiny will need to be rapid and simple for investors. At the same time, this fast-track assessment process will need to provide sufficient information for effective decision-making. To this effect I propose:

7.1 a mandatory national interest assessment for specific classes of transactions and a discretionary pathway for consents to be called up to a national interest assessment on a case-by-case basis,

7.2 a new assessment process to enable the regulator to quickly grant consents to either consent the transactions quickly or escalate transactions for a national interest assessment, and

7.3 amendments to the MDL provisions in the Act to provide direction and guidance on matters relating to the new modified national interest test. This instrument will guide the regulator on how to give effect to the policy intent of the Act.

Background

8 In September 2024, Cabinet agreed to immediate steps to refine the overseas investment screening regime by focusing on managing a broad range of risks to New Zealand's national interest while retaining, but fast-tracking, general screening over sensitive land, significant business assets, and fishing quota, with the following core policy parameters [CAB-24-MIN-0340]:

8.1 retaining the scope of what we currently screen (including farmland),

8.2 amending the Act to fast-track the assessment process with the starting assumption that investment can proceed unless there are risk factors identified, by consolidating the Act's core tests (investor test, benefit test, and national interest test),

8.3 providing the Government flexibility to call-in these investments for detailed scrutiny on a case-by-case basis, and impose conditions or block the investment where there are risks to New Zealand's national interest (or NSPO),

8.4 requiring the issuance of a Government Policy Statement on foreign investment (or other secondary instrument) that identifies areas where investment is encouraged and welcome, and areas where the government is likely to subject investment to detailed scrutiny and consider intervention.

[1] The Overseas Investment Act 2005 defines farmland with respect to its use. This includes land exclusively or principally used for agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry, or livestock.

9 Following discussion at the Economic Policy Cabinet Committee and Cabinet [ECO-24-MIN-0298, CAB-24-MIN-0512 & ECO-24-0319] and joint decisions taken by myself, the Minister of Finance and the Deputy Prime Minister, the proposals in this paper to fast-track the consent process will not apply to farmland or fishing quota. The benefit test for farmland and the current consent requirements for fishing quota (the consent criteria outlined in the Fisheries Act 1996, including the investor test) will be retained under the new regime.

Focusing on material risks

10 It is not possible to eliminate all risk, nor should we seek to. While it is true that overseas investment can, in rare cases, present risks; there is also an opportunity cost to being excessively cautious – and that is a risk in itself.

11 International investment can support economic growth by financing the gap between national savings and our investment needs, enhancing productivity, and supporting high paying jobs. Global capital flows are competitive and New Zealand misses out because we have one of the most restrictive screening regimes in the OECD.

12 I note there are a number of other policy settings, such as tax settings and resource management consent requirements, that also impact investment flows. The small size of our domestic market and our geographic position also have an impact. However, changing our overseas investment regulatory settings is both a necessary step and one of the most expedient courses of action to make New Zealand a more attractive destination for investment.

13 The proposals agreed by Cabinet in September and developed further in this Cabinet paper move us towards a more risk-based investment screening regime, which balances the need to compete for global capital flows, while focusing the regulator's efforts on managing the unique (but rare) risks overseas investment can pose. This means recognising that some risks do not meet the threshold for deep scrutiny and intervention. It also means accepting that, on rare occasions, risks may go undetected.

14 We agreed at Cabinet that we will not amend the scope of what the Act screens (sensitive land, fishing quotas and significant business assets) to retain our ability to manage the rare, but potential, risks to New Zealand's national interest. [36]

15 Since we have agreed to retain a broad scope of 'what we screen', it is especially important that we focus on material risks that are unique to overseas investors and cannot be managed through other regulatory regimes. These are risks to our national interests, including NSPO.

16 The design decisions I am seeking below will recalibrate the level of screening away from a regime requiring comprehensive assessment of benefits for all sensitive land and a broad range of risks, to one where the depth of scrutiny will be more proportionate to the risks posed. It is especially critical to ensure that initial risk assessments are calibrated appropriately to enable the vast majority of applications to be granted quickly, while still identifying material risks that warrant greater scrutiny.

17 I also note that the directions and signals we set out in the MDL will also play a role in how the regime manages the trade-offs between reaping the benefits of overseas investment and reducing potential risks.

18 The proposed modified MDL will direct the regulator and guide decision-making for the national interest and benefit tests. The MDL may identify sector specific risks or benefits that should be taken into account by decision makers.

19 The MDL will enable Ministers to influence the operation of the regime in line with the Government's policy objectives without amending legislation. It therefore supports a more durable and responsive regulatory regime.

Policy decisions sought

The Act's purpose statement

20 The Act's current purpose statement states that it is a privilege to control or own sensitive New Zealand assets, which creates a presumption against investment irrespective of whether an investment poses risks.

21 Consistent with Cabinet's agreement that the regime's starting assumption should change, such that investment can proceed unless there are risk factors identified [CAB-24-MIN-0340], I recommend amending the Act's purpose statement to provide a more balanced framework that:

21.1 recognises that investment generally provides benefits to New Zealand but farmland, fishing quota and residential housing hold special status, and

21.2 also acknowledges that overseas investment can pose risks to New Zealand's interests, and the regime's role is to manage these risks when they arise.

22 This will support the regulator to implement the regime in a manner consistent with the reform's objectives and will also signal to international investors that there has been a shift in how New Zealand screens foreign investment.

Consolidating the Act's tests

23 To meet our commitment to retain the foreign buyers ban (the FBB), I have not proposed changes to the consent requirements or pathways for investments in residential and lifestyle land. Schedule 2 consent pathways, as well as the benefit test's applicability to residential land, will be retained under the new regime.

24 Cabinet agreed to consolidate the Act's core tests (investor test, benefit to New Zealand test and the national interest test) to allow investment to proceed unless a risk is identified. I recommend that:

24.1 the benefit test is retained only for farmland, fishing quota and residential housing consents,

24.2 the investor test is only retained for farmland, fishing quota and applicable residential consent pathways, and

24.3 targeted modifications are made to consolidate these tests within the national interest test for use as the primary test for consent applications (excluding farmland, fishing quota, and residential housing consents).

25 The national interest test is already negatively framed and therefore best reflects Cabinet's agreement that investment should proceed unless a risk is identified. While negatively framed, the amended national interest test will still allow for benefits to be considered when deciding whether an investment is contrary to the national interest. This will allow a balanced approach to assessing whether investments that carry risks, but have substantial benefits (such as transformative investments in new technology, or emerging industries), are, on balance, in the national interest. Unlike under the current benefit test, enabling the assessment of benefits for this purpose will not be overly burdensome, as benefits would only be assessed where:

25.1 a national interest risk has been identified but, and

25.2 potential benefits may be substantial enough to offset identified risks to the national interest.

26 The investor test determines whether investors are unsuitable to own or control any sensitive New Zealand assets based on factors relating to their character and capability, for example criminality or unpaid tax. While useful for investments in farmland, fishing quota, or residential property it is poorly targeted and does not capture characteristics that may be relevant to a national interest assessment. For example, while the test screens for criminal convictions, investors may have relationships with foreign governments or individuals that give rise to national security risks, which are not captured by the current test.

27 I recommend the investor test only be retained for investments in farmland and fishing quota and applicable residential consent pathways. However, investor characteristics should still be considered as part of the consolidated national interest test applied to other forms of investment (for example, where an individual investing in a significant business asset poses national security risks). The MDL can identify such investor risk factors, and guidance on the investor characteristics that will be considered will be issued by the regulator, consistent with government policy.

The modified national interest test

28 The national interest test is currently a 'backstop' tool to manage significant risks associated with transactions requiring consent under the Act. Shifting the Act's core tests to the national interest test could create uncertainty given that the national interest, and what is contrary to it, is not defined in the Act. The Act grants the relevant minister broad discretion to decide on a case-by-case basis whether a prospective investment would be contrary to the national interest. Without guidance, this could create:

28.1 increased investor uncertainty as to when and how a national interest assessment will apply; and

28.2 uncertainty for the regulator as to the Government's tolerance for risk and how to apply the national interest test.

29 To manage this uncertainty, and ensure the majority of consent applications will be approved within short timeframes, I propose:

29.1 a mandatory national interest assessment for specific classes of transactions and a discretionary pathway for consents to be escalated to a national interest assessment on a case-by-case basis;

29.2 a rapid triage and assessment process (refer to Figure One below) to enable the regulator to quickly grant consents to transactions at the first stage and escalate transactions that could pose a risk to the national interest to a second stage, where a national interest assessment will take place (discretionary pathway); and

29.3 the Act and MDL guide this process, including on the grounds for discretionary escalation to a national interest assessment and intervention under the national interest test.

Transactions that must undergo a mandatory national interest assessment

30 The Act currently requires that the following categories of applications, which require consent, are automatically called up for a national interest test:

30.1 overseas investment in strategically important businesses (SIBs). Classes of SIBs are defined across both the Act and Regulations; and

30.2 overseas investment where a foreign government (or an associate) acquires more than 25% control or ownership of the investment.

31 I recommend that these classes of transactions continue to require a national interest assessment. This is in recognition that transactions within this class may present unacceptable risks to New Zealand's national interests, including national security.

32 To ensure the durability of the regime over time, I recommend creating a regulation-making power that could require additional high-risk classes of investment undergo a mandatory national interest assessment.

The assessment process (for consents other than those in farmland, fishing quota and residential housing)

33 For all other transactions (non-mandatory classes), it is important to ensure that the regulator has the appropriate powers, guidance and processes in place to enable a rapid assessment of consent applications. This will enable the regulator to approve the majority of consents swiftly, while identifying transactions which might pose national interest risks and require greater scrutiny. [36]

34 Further work is required to design operational processes, but I propose the national interest test will broadly follow the below steps:

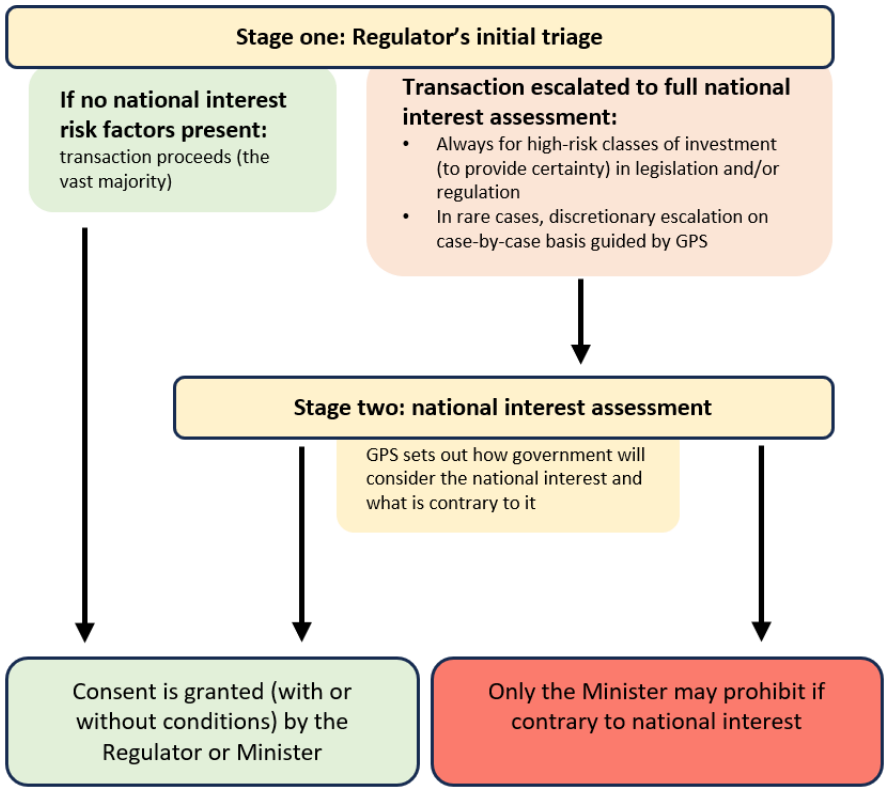
[36]

34.1 Initial risk assessment: a rapid triage and assessment to allow the regulator to grant consent to low-risk applications before a full national interest assessment is undertaken. The regulator will rapidly assess whether a risk exists and whether a national assessment is required. Transactions cannot be declined at this stage.

34.2 National interest assessment: if a risk is identified, this assessment will require additional information and analysis before a consent can be granted or declined.

35 It will be unnecessary to subject farmland, fishing quota and residential housing to the triage phase of the national interest assessment, as national interest risks can be identified through their consent processes. These investment classes will continue to be subject to the national interest test as a backstop if a relevant risk is identified.

Figure one: The assessment process



Initial risk assessment and triage for investments not subject to the benefit test

Power to grant consent and impose conditions

36 Currently, the power to escalate transactions to a national interest assessment is vested with the Minister of Finance and is delegated to Land Information New Zealand - Toitū Te Whenua (LINZ). The Minister of Finance may still 'call in' a decision for a national interest assessment. The power to grant, decline, or impose conditions on

national interest grounds is currently held by the Minister of Finance and is not able to be delegated under the Act.

37 Consistent with the coalition government's commitment to amend the Act to delegate decision-making to the regulator and reduce delays associated with ministerial decision-making, I recommend that the regulator have the power to escalate transactions, grant consents, and impose automatic conditions under stage one of the national interest test.

Threshold for escalation

38 I recommend that the Act defines the threshold for escalation from Stage One to a national interest assessment at Stage Two. I recommend that the Act provides that the regulator should approve an application unless there are reasonable grounds to consider the transaction may be contrary to the national interest. In making this decision the regulator will be guided by the decision-making considerations in the Act and content in the MDL (discussed later).

Timeframes

39 I anticipate that only a small number of applications will be declined under the new regime. Under the current regime, an average of six applications per year (around 2% of total applications) have been declined over the previous thirty years.

40 Given, the purpose of stage one assessment is to enable rapid consenting of low-risk applications, I recommend that the Regulations provide a maximum timeframe for assessing applications for Stage One, and that this timeframe is no longer than 15 working days.

41 This will support our objectives around attracting investment through a reduced regulatory burden for investors (as well as minimising delay costs for New Zealand businesses). It also recognises that New Zealand screens a large number of applications that present limited risk to our national interests. Requiring the regulator to assess and triage this large number of applications quickly will enable the regulator to prioritise its resources towards the small number of transactions that are determined to be high-risk and warrant a national interest assessment.

National interest assessment

Power to grant consents, impose conditions and block transactions

42 In a second or subsequent stage, the regulator would undertake a national interest assessment. In considering whether to consent the application, I recommend that the regulator is empowered at this stage to consent lower risk applications and impose conditions to manage risks to New Zealand's national interest, and that any conditions imposed must be no broader than necessary to manage national interest risks.

43 I recommend the Act continue to require that only the Minister responsible for the Act (the Minister of Finance) can decline a consent under the national interest test. Additionally, the determination of what is contrary to the national interest (including

relating to security) is a political judgement.[4] I also recommend that the Minister has the power to impose conditions and grant consents on transactions which have been escalated to them or that they have called in. This suggests that if there are reasonable grounds that the transaction may be contrary to the national interest, the regulator must escalate the transaction to the Minister.

44 I recommend timeframes for the national interest assessment should be set out in regulations (as is the status quo).

High-level considerations for what is contrary to the national interest

45 The Act currently does not define the national interest or what might be contrary to it.[5] While there are some enduring national interests that could be reflected in legislation, as mentioned above, determining what is contrary to the national interest is a political judgement for Ministers. Discretion on how to interpret the national interest also provides several advantages, it:

45.1 provides a backstop to manage new or previously unidentified risks;

45.2 allows for consideration of the unique circumstances of the specific transaction, including how risks might be offset by benefits; and

45.3 avoids repeated amendments to the primary Act as priorities, risks and investment needs change.

46 However, moving to an undefined test could create uncertainty, which could impact investor confidence and timeframes. For this reason, I recommend that the Act defines broad factors that the responsible Minister "must have regard to" and illustrates the factors the Minister "may have regard to" in considering what is contrary to the national interest.

47 Specifically, I recommend that the Minister must have regard to:

47.1 the Act's purpose;

47.2 the risks of the investment, notably any risks relating to, or impacting on, national security and/or public order;

47.3 any other national interest risks or other relevant matters outlined in the MDL; and

47.4 whether the identified risk can be managed by another regulatory regime.

48 The sensitivity of investments and factors that contribute to risk will vary. For this reason, I recommend the following factors that the Minister may have regard to, but are not required to consider, in determining if a transaction is contrary to the national interest:

[4] This is consistent with the design of such powers globally: the Australian Federal Treasurer, the Canadian Finance Minister and the President of the United States are responsible for exercising similar powers.
[5] Currently, Treasury publishes non-legislative guidance that has no formal statutory recognition in the Act. However, a Ministerial Directive Letter issued under the Act requires national interest assessments to be informed by this guidance.

48.1 investor risk factors, including character and capability;

48.2 whether a national interest risk may be adequately managed by a condition imposed on the investment; and

48.3 whether a risk that is contrary to the national interest may be offset by the benefits of the transaction.

Ministerial Directive Letter (MDL)

49 We previously discussed that a Government Policy Statement would replace the MDL in the Act [ECO-24-MIN-0298, CAB-24-MIN-0512 & ECO-24-0319]. However, given decisions to retain the benefit test for farmland and the current consent criteria for fishing quota, the need for a GPS has reduced significantly as the Act will define screening requirements for these asset classes. I therefore recommend that amended provisions for an MDL are retained in the Act, instead of developing provisions for a GPS. As a result, I have removed the previously attached illustrative GPS, which Cabinet invited me to report back on in September [CAB-24-MIN-0340].

50 I recommend that the MDL be amended to help guide Ministerial decision-making on assessing national interest risks, in addition to directing the regulator. Specially, I recommend that the MDL's operating provisions are amended to provide that one of its functions is to identify any risks or factors that decision-makers should consider when granting consents, imposing conditions or declining transactions under national interest grounds.

51 It may be appropriate to have additional information and factors required in the MDL. For example, requiring that investor risk factors are outlined in the MDL. I consider that this is a matter best addressed during the drafting of the Bill.

The MDL should remain in force

52 The MDL will be key for the smooth functioning of the new regime, given its important role in guiding the regulator and Minister's decision-making and providing certainty to the regulator regarding the likelihood a transaction will be rapidly granted consent or escalated to a national interest assessment. I recommend that the MDL must remain in force until replaced.

A new MDL will need to be issued

53 The MDL will need to be updated and issued before this bill enters into force to provide guidance for the new consolidated national interest test. I also intend to update the MDL to further improve operational process, including anti-avoidance measures. While LINZ already manages this risk, I propose to direct the regulator to appropriately consider historic land use to manage cases where vendors convert farm land for another use not captured under the farm land definition prior to selling, to avoid the consent process.

Funding provisions in the new regime

54 The current regime is funded from a mixture of Crown funding (for the NSPO regime and intelligence and enforcement) and fees charged to investors for consent

applications in sensitive land, significant businesses, and fishing quota on a cost recovery basis. The authority to charge fees is provided by the current Act, with the fees themselves specified in the Regulations. I propose that the existing cost recovery provisions be updated to ensure they are fit for purpose for the new regime and is aligned with best practice.

Greater flexibility for the NSPO regime to manage new risks

55 The external security environment is increasingly dynamic and uncertain. As a result, I recommend adding regulation-making powers to:

55.1 Define in Regulations new types of SIBs that do not fit into the existing SIB categories; and

55.2 Determine that certain call-in transactions must be notified. This would apply to an identified subset of SIBs, where notifications of transactions were previously voluntary.

56 Without safeguards in the Act, there would be some risk that the power in paragraph 55.1 is used inappropriately. To ensure that is not the case, I recommend that the requirements that apply to the existing NSPO regulation making powers also apply to this power. That is, when recommending a regulation be made in relation to a new SIB class, the Minister must:

56.1 have regard to New Zealand's international obligations[36] and

56.2 be satisfied that the regulation is no broader than is reasonably necessary to manage risks to NSPO.

57 There are also a number of areas where modified drafting could improve the consideration and treatment of risk under the NSPO regime. This includes, for example, definitions regarding the threshold for intervention. I consider that these minor and technical changes would be best addressed during the drafting stage of the Bill.

Commencement and transitional provisions

58 Commencement and transitional provisions will be designed through the drafting process.

59 The intent is that existing consents and conditions will continue to apply and will not be amended by the bill retrospectively. Some conditions formalised via easements or caveats placed on the title could endure for subsequent transactions (for example walking access).

Implementation (for relevant papers)

60 I will provide a more detailed timeframe for the Bill with the LEG paper. The intention is for the Bill to be enacted by the end of 2025.

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[36]

Cost-of-living Implications

61 The proposals contained in this paper do not have any specific cost-of-living implications.

Financial Implications

62 The cost of the policy work for this reform is being progressed within the existing baselines of Treasury and the other agencies who are supporting their work, particularly the regulator, LINZ.

63 The screening regime is primarily funded by application fees from investors. It is also funded by time-limited Crown funding for the NSPO regime and intelligence and enforcement functions. There will be financial implications associated with the reformed regime's funding model. Following Cabinet's approval of the detailed policy design, the regulator will assess what its costs will be to administer the new regime. [33]

64 LINZ has also advised that it will face one-off costs of up to [33] in order to implement the new regime, including the development of new guidance and business processes, assessment tools, external communications, and internal and external IT systems for managing workflow and applications. [33]

Legislative Implications

65 I propose that the priority category for this bill be changed to a category 3 (a priority to be passed by the end of the year) on the 2025 Legislation Programme.

Impact Analysis

Regulatory Impact Statement

66 A quality assurance panel of members from the Treasury reviewed the Regulatory Impact Statement (RIS): *International investment screening*, produced by the Treasury, dated 27 November 2024. The panel considers that it "meets" the Quality Assurance criteria, but with two notable limitations.

67 **Scope:** The RIS acknowledges that the scope of the options considered is limited by commitments in the Coalition agreement. In particular, the intent to implement changes within this term of Government places constraints on the scope and depth of the options and analysis. Considering a wider set of first order changes would likely identify options that would be more effective at addressing the defined problem.

68 **Consultation:** users and key stakeholders have not been consulted in the development of these proposals. While policy and implementation risks are somewhat mitigated by consultation undertaken as part of previous reforms, a high-quality process would involve consultation with affected parties and implementing agencies, to ensure that any changes are informed by stakeholder input, are deliverable and that the expected benefits will materialise.

Climate Implications of Policy Assessment

69 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the threshold for significance is not met.

Population Implications

70 There are no direct population implications arising from the proposals in this paper.

Human Rights

71 The Bill will not be inconsistent with rights and freedoms as set out in the New Zealand Bill of Rights Act 1990.

Consultation

72 The following agencies were consulted: the Ministry for Foreign Affairs and Trade; LINZ; the Department of Prime Minister and Cabinet's National Security Group; the New Zealand Security Intelligence Service; the Government Communications Security Bureau; The Office for Māori Crown Relations - Te Arawhiti; the Ministry for Business, Innovation and Employment; Te Puni Kōkiri; and the Ministry for Primary Industries. The Standing Committee on Investment was also consulted on this Cabinet paper. The Department of Prime Minister and Cabinet's Policy Advisory Group was informed.

73 The Legislation Design Advisory Committee was consulted on some of the policy proposals contained in this paper.

Proactive Release

74 I intend to proactively release this paper within 30 business days of final decisions taken by Cabinet, subject to consideration of any redactions that would be justified if the information has been requested under the Official Information Act 1982.

Recommendations

The Associate Minister of Finance recommends that the Committee:

1 **note** that in September 2024, Cabinet agreed to reform the overseas investment screening regime to focus on a broad range of risks to New Zealand's national interests [CAB-24-MIN-0340];

Changes to the purpose statement

2 **agree** to amend the Act's purpose statement (currently structured around privilege) to reflect the benefit international investment can provide to New Zealand's economy, and to provide the appropriate regulatory tools to proportionately manage risks to New Zealand's national interest;

Consolidating the Act's test

3 **agree** to replace the benefit to New Zealand tests, and investor test with a modified national interest test (outlined below), except for consents in farmland and fishing quota and residential housing;

4 **note** that benefits and investor risks will be considered as part of the modified national interest test;

5 **note** the current consent requirements for farmland and fishing quota, which include the benefit test and investor test, will be retained under the new regime;

The assessment process

Initial risk assessment and triage

6 **note** Cabinet has agreed to introduce fast-track consenting with escalation of applications for national interest assessment on a case-by-case basis;

7 **agree** that the regulator should, within fifteen days, assess applications and if the regulator has grounds to consider a transaction may create a risk to the national interest it must escalate it for a national interest assessment, otherwise the regulator must grant consent;

National interest assessment

8 **agree** to amend the Act to provide a new regulation-making power that enables regulations to specify new classes of screened transactions that must undergo a national interest assessment;

9 **agree** that the power to impose conditions and grant consent at Stage Two is vested with the regulator in the Act except when the transaction has been escalated to or called in by the responsible Minister, whereby these powers are vested with the responsible Minister;

10 **agree** that the Act should continue to provide that only the responsible Minister has the power to decline an investment under the national interest test and that this power cannot be delegated;

Considerations for determining what is contrary to the national interest

11 **agree** that the Act provides that, in determining whether a transaction is contrary to the national interest, the responsible Minister *must* have regard to:

11.1 the Act's purpose,

11.2 the risk of the investment, notably risks related to, or impacting on national security and/ or public order,

11.3 any other national interest risks or other relevant matters contained in the MDL, and

11.4 whether the identified national interest risk can be managed by another regulatory regime;

12 **agree** that the Act provides that in determining whether a transaction is contrary to the national interest, the responsible Minister *may* have regard to:

12.1 investor risk factors, including investor character and capability,

12.2 whether a national interest risk may be adequately managed by a condition imposed on the investment, and

12.3 whether a national interest risk may be offset by the benefits of the transaction;

The Ministerial Directive Letter (MDL)

13 **agree** to amend the Act to provide that one of the MDL's functions is to identify any risks or factors that decision-makers need to or should consider when granting consents, imposing conditions or declining transactions on national interest grounds;

14 **note** that when exercising powers and functions under the Act, the regulator must give effect to the MDL;

15 **note** that the current MDL will need to be reissued before this bill enters into force and updated to provide guidance for the national interest test and anti-avoidance measures (notably for farmland under the benefit test in situations where land use may have recently changed);

Residential housing

16 **agree** to retain the Schedule 2 consent pathways;

National Security and Public Order (NSPO) regime

17 **agree** that the Act provides a regulation-making power to add new categories of strategically important businesses (SIBs);

18 **agree** that the Act provides regulation making powers to determine that certain call-in transactions (that is, a transaction involving an identified subset of SIBs) must be notified under the NSPO regime (i.e. rather than voluntary notified);

Funding

19 **agree** to amend the existing cost recovery provisions in the Act to ensure they are fit-for-purpose with the new regime and is aligned with best practice;

20 **note** current overseas investment regime fees will not generate sufficient annual revenue to cover the current annual operating expenses and the [33] one-off implementation costs faced by the regulator to implement the reformed regime;

21 [33]

22

23

24

Commencement and transitional provisions

25 **agree** that, due to the proposed amendments, there will need to be transitional and consequential provisions in the Bill;

Process

26 **agree** that decisions in this paper be implemented through the Overseas Investment Amendment Bill;

27 **agree** that this Bill should hold a category three priority on the 2025 Legislation Programme (to be passed before the end of 2025);

28 **invite** the Associate Minister of Finance to issue drafting instructions to the Parliamentary Counsel Office to give effect to the proposals in this paper;

29 **authorise** the Associate Minister of Finance to approve any additional policy and technical matters that may rise during the drafting of bill and the regulations, including any consequential amendments to other legislation that may be required.

Authorised for lodgement

Hon David Seymour

Associate Minister of Finance

The Treasury

CAB-25-MIN-0013 Detailed Policy Decisions for the Overseas Investment Act Reform Information Release

February 2025

Cabinet Document Details

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Information Withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act).

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Key to sections of the Act under which information has been withheld:

[33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials

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CAB-25-MIN-0013

Cabinet

Minute of Decision

Detailed Policy Decisions for the Overseas Investment Act Reform

Portfolio **Associate Finance (Hon David Seymour)**

On 28 January 2025, Cabinet:

1 **noted** that in September 2024, Cabinet agreed to reform the overseas investment screening regime to focus on a broad range of risks to New Zealand's national interests [CAB-24-MIN-0340];

Changes to the purpose statement

2 **agreed** to amend the purpose statement of the Overseas Investment Act 2005 (the Act) (currently structured around privilege) to reflect the benefit international investment can provide to New Zealand's economy, and to provide the appropriate regulatory tools to proportionately manage risks to New Zealand's national interest;

Consolidating the Act's test

3 **agreed** to replace the benefit to New Zealand tests, and investor test, with a modified national interest test (outlined below), except for consents in farmland, fishing quota, and residential housing;

4 **noted** that benefits and investor risks will be considered as part of the modified national interest test;

5 **noted** that the current consent requirements for farmland and fishing quota, which include the benefit test and investor test, will be retained under the new regime;

The assessment process

Initial risk assessment and triage

6 **noted** that in September 2024, Cabinet also agreed to introduce fast-track consenting with escalation of applications for national interest assessment on a case-by-case basis;

7 **agreed** that the regulator should, within fifteen days, assess applications and if the regulator has grounds to consider a transaction may create a risk to the national interest it must escalate it for a national interest assessment, otherwise the regulator must grant consent;

National interest assessment

8 **agreed** to amend the Act to provide a new regulation-making power that enables regulations to specify new classes of screened transactions that must undergo a national interest assessment;

9 **agreed** that the power to impose conditions and grant consent at stage two is vested with the regulator in the Act except when the transaction has been escalated to or called in by the responsible Minister, whereby these powers are vested with the responsible Minister;

10 **agreed** that the Act should continue to provide that only the responsible Minister has the power to decline an investment under the national interest test and that this power cannot be delegated;

Considerations for determining what is contrary to the national interest

11 **agreed** that the Act provide that, in determining whether a transaction is contrary to the national interest, the responsible Minister must have regard to:

11.1 the Act's purpose;

11.2 the risk of the investment, notably risks related to, or impacting on national security and/or public order;

11.3 any other national interest risks or other relevant matters contained in the Ministerial Directive Letter (MDL);

11.4 whether the identified national interest risk can be managed by another regulatory regime;

12 **agreed** that the Act provide that, in determining whether a transaction is contrary to the national interest, the responsible Minister may have regard to:

12.1 investor risk factors, including investor character and capability;

12.2 whether a national interest risk may be adequately managed by a condition imposed on the investment;

12.3 whether a national interest risk may be offset by the benefits of the transaction;

The MDL

13 **agreed** to amend the Act to provide that one of the MDL's functions is to identify any risks or factors that decision-makers need to, or should, consider when granting consents, imposing conditions or declining transactions on national interest grounds;

14 **noted** that when exercising powers and functions under the Act, the regulator must give effect to the MDL;

15 **noted** that the current MDL will need to be reissued before the Bill enters into force and updated to provide guidance for the national interest test and anti-avoidance measures (notably for farmland under the benefit test in situations where land use may have recently changed);

Residential housing

16 **agreed** to retain the Act's Schedule 2 consent pathways;

National Security and Public Order (NSPO) regime

17 **agreed** that the Act provide a regulation-making power to add new categories of strategically important businesses (SIBs);

18 **agreed** that the Act provide regulation making powers to determine that certain call-in transactions (that is, a transaction involving an identified subset of SIBs) must be notified under the NSPO regime (rather than voluntarily notified);

Funding

19 **agreed** to amend the existing cost recovery provisions in the Act to ensure they are fit-for-purpose with the new regime and aligned with best practice;

20 **noted** that current overseas investment regime fees will not generate sufficient annual revenue to cover the current annual operating expenses and the [33] one-off implementation costs faced by the regulator to implement the reformed regime;

21 [33]

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Commencement and transitional provisions

25 **agreed** that, due to the proposed amendments, there will need to be transitional and consequential provisions in the Bill;

Process

26 **agreed** that the above paragraphs be implemented through the Overseas Investment Amendment Bill (the Bill);

27 **noted** that a bid for the Bill to hold a category 3 priority on the 2025 Legislation Programme (to be passed before the end of 2025) will be submitted;

28 **invited** the Associate Minister of Finance (Hon David Seymour) to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;

29 **authorised** the Associate Minister of Finance (Hon David Seymour) to approve any additional policy and technical matters that may arise during the drafting of the Bill and the regulations, including any consequential amendments to other legislation in consultation with the relevant portfolio Minister(s), as required.

Rachel Hayward
Secretary of the Cabinet