

1 August 2005

Chief Executive
Land Information New Zealand
Private Box 5501
WELLINGTON

MINISTERIAL DIRECTIVE LETTER

1. This Ministerial directive letter is made pursuant to section 34 of the Overseas Investment Act 2005 and directs the regulator about the Government's general policy approach to overseas investment in sensitive New Zealand assets, the asset types and thresholds, and monitoring conditions of consent.

GENERAL POLICY APPROACH

2. Section 34(1) of the Act requires the regulator to comply with a Ministerial Directive letter. We wish to convey the following general policy of the Government in relation to the exercise of the Regulator's functions, powers, and duties.
 - a. The public policy objectives of the Act are:
 - to encourage foreign investment into New Zealand through reducing compliance costs on businesses and recognising the growth benefits that foreign investment brings;
 - to provide rules that recognise the importance of attracting foreign direct investment;
 - to recognise the benefits foreign investors bring in terms of access to markets and technology and ideas;
 - to assess the benefits received from overseas investment applications on the basis of benefit to the whole of New Zealand;
 - to ensure the value of sensitive New Zealand assets are recognised and enhanced by an overseas owner and that overseas owners are subjected to a screening and monitoring process; and
 - to ensure appropriate governance arrangements around the overseas investment regime.

- b. Operating procedures should be consistent with the Government's intention to facilitate positive investment. Accordingly, the regulator (and as applicable, the regulating Department) should:
 - perform its functions and administer the legislation it has responsibility for in a timely, consistent and efficient manner;
 - seek sufficient information from applicants for it to be assured of the accuracy of the information supplied;
 - seek sufficient evidence from applicants for it to be able to judge whether the criteria and factors that apply to the relevant category of overseas investment are likely to eventuate (or any other matter the regulator considers relevant);
 - when it considers it necessary to verify that information or that evidence, seek input from government agencies or others it considers have particular competence in relation to that application;
 - seek to recover its operating costs, through fees that must be approved by Cabinet, from persons who use its services;
 - advise Ministers on proposals with the presumption that the investment will be compatible with the foreign direct investment policy of the Government; and
 - monitor compliance with any conditions of approval, consent, permission, or exemption granted under the legislation with an approach that seeks a balance between the objectives of ensuring compliance with any conditions and providing the regulator (and the public) with more accurate statistics on investment, and the desire to maintain a welcoming approach to investment.
3. The regulator's functions are to compile and keep records relating to applications, compile and make available statistics relating to applications, and provide general information for the benefit of applicants about New Zealand's overseas investment rules. To the extent that existing resources permit, the regulator, (and as applicable, the regulating Department), in conjunction with other relevant agencies, should:
 - a. disseminate information on investment in New Zealand;
 - b. publicise and explain the nature of our regulatory regime to potential overseas investors and domestically; and
 - c. compile and make available statistics about overseas investment applications.

ASSET TYPES AND THRESHOLDS

4. The Act requires an overseas person to seek consent for the following categories of investment:
 - sensitive land;
 - significant business assets; and
 - fishing quota (refer to the Fisheries Act 1996).

5. Sensitive land (and its thresholds) fall into the categories outlined in Schedule 1 of the Act.
6. Significant business assets are investments that:
 - acquire securities resulting in a 25% or more ownership (or control interest) or an increase in 25 % or more ownership;
 - establish a business in New Zealand; and
 - acquire business assets.

The threshold value for significance is NZ \$100 million.

7. Fishing quota is an investment that is an interest in fishing quota or involves rights or interests in securities of a person who owns (or controls) an interest in fishing quota.

CRITERIA FOR CONSENT UNDER THE OVERSEAS INVESTMENT ACT

8. The regulator, in considering any applications under the Overseas Investment Act 2005 pursuant to delegated authority, must take into account the matters provided for under section 17(2)(g) (other relevant factors set out in the Regulations). The relative balance between the criteria will depend upon the nature of each property.

CRITERIA FOR LIST OF PARKS, RESERVES AND OTHER SENSITIVE LAND UNDER SECTION 37 OF THE ACT

9. The criteria required for the list of parks, reserves and other sensitive land under section 37 of the Act is any land in an operative regional plan, a district or proposed district plan that is to be used as a reserve, a public park, or for recreation purposes, or as open space for the purposes of:
 - protecting natural and physical resources or historic heritage; and
 - providing public access to natural and physical resources or historic heritage.
10. Any reserve designated under the Resource Management Act for purposes other than those noted above (e.g. a drainage reserve) will be excluded from the list.

MONITORING CONDITIONS OF CONSENT

11. Overseas people wanting to buy sensitive New Zealand assets will all be subject to the screening regime. Monitoring powers under the Act give the regulator the ability to require a person to provide a statutory declaration verifying compliance with conditions of consent (and if the consent holder is in breach of a condition or conditions, a statutory declaration verifying the reason for the breach and the steps to be undertaken to remedy any breach of consent). It is estimated that the regulator will spend up to half a day per consent every year for the first 5 years after the consent has been granted. It is

likely that monitoring will continue until the conditions are met. This may be earlier than 5 years. The key point is that the level of monitoring is designed to ensure compliance with the conditions of the consent in as effective and efficient way as possible.

DATE LETTER TAKES EFFECT

12. This Ministerial directive letter shall come into effect on and from 25 August 2005.

Yours sincerely

Hon Dr Michael Cullen
Minister of Finance