

# Hon Grant Robertson

MP for Wellington Central

Deputy Prime Minister

Minister of Finance

Minister for Infrastructure

Minister for Sport and Recreation

Minister for Racing



7 May 2021

Gaye Searancke  
Chief Executive  
Land Information  
New Zealand  
Private Box 5501  
WELLINGTON 6145

Dear Ms Searancke

## Supplementary Ministerial Directive and Delegation Letter

1. This Ministerial Directive Letter is made pursuant to sections 32 and 34 of the Overseas Investment Act 2005 and directs you, as regulator, on the Government's policy approach to the national security and public order call-in power (the call-in power) and delegates the relevant powers to you to give effect to these policies, including:
  - a. the approach for assessing notifications,
  - b. timeframes for assessing notifications and exemptions for those timeframes, and
  - c. monitoring and scanning for non-notified transactions.
2. This letter supplements the Ministerial Directive Letter of 28 November 2017 and the Supplementary Ministerial Directive Letter of 8 June 2020, which remain in force. For the avoidance of doubt, this letter does not amend any of the powers delegated to you in the Delegations Letter of 8 June 2020.
3. References to the Act and the Regulations in this letter refer to the Overseas Investment Act 2005 and Overseas Investment Regulations 2005, including all amendments as at 7 June 2021.

## The national security and public order call-in power

4. The call-in power allows the government to screen certain foreign investments in strategically important businesses (SIBs) and impose conditions on them (or as a last resort, block or unwind) when they give rise to significant national security or public order risks. The Government intends for the call-in power to be a backstop power and that any interventions will be rare and only where necessary.
5. To ensure the call-in power's requirements are proportionate to risk, it is:
  - a. mandatory for investors to notify the regulator before giving effect to investments in SIBs more likely to pose material risks, and
  - b. voluntary for investors to notify the regulator of investments in SIBs and media businesses less likely to pose risks (either before or after the transaction is given effect to).

6. Investors that notify and do not pose significant risks obtain 'safe harbour' from later government intervention (unless, for example, the investor relied upon false or misleading information or breached a condition of their direction order). Those that do not notify can have their transaction scrutinised at any time.

**Initial assessments should be carried out quickly to identify significant risks**

7. In recognition of the potential impact of the call-in power regime on businesses and investors, low-risk transaction should be identified quickly and allowed to proceed promptly. To facilitate this, I expect you to assess a notification in two steps within the 55-day<sup>7</sup> statutory timeframe:
  - a. an initial risk assessment within 15 days, where you consider if a transaction could pose a significant risk to New Zealand's national security or public order. Those that could not pose a significant risk will be issued with a direction order allowing them to proceed; and
  - b. a risk and benefit assessment is undertaken for those transactions that could pose a significant risk and this assessment is referred to the Minister. The assessment should be provided promptly so the Minister can make a final decision on what action to take (if any) within the remainder of the 55-day statutory timeframe.
8. When assessing and providing advice on the risks and benefits of a transaction, the regulator must:
  - a. have regard to the *Guidance Note: Foreign Investment Policy and National Interest Guidance* published on The Treasury website, which may be updated from time-to-time; and
  - b. reflect consultation and input from relevant partner agencies.
9. The Regulations allow extensions to be granted to the 55-day timeframe. Extensions should only be granted if a transaction has significant complexity, the applicant operating in good faith is unable to meet the regulator's requests in a timely manner, or there are other exceptional circumstances (for example, the discovery of significant new information late in the assessment process).

**Delegations to give effect to the decision-making timeframe policies**

10. To give effect to these policies, I delegate to you, as the regulator, the powers and functions of the Minister, including all ancillary powers and functions necessary for, or incidental to, making those decisions, in accordance with section 32 of the Act:
  - a. under section 88, the power to give a direction order to a relevant acquirer, following a review of a call-in transaction, where the direction order is not subject to other conditions under section 88(3).
  - b. under section 84(3), the power to review any other call-in transaction (in addition to transactions which have been notified).
  - c. under regulation 64C(4) of the Regulations, the power to extend the period that an interim direction order is in force and to give notice of the extension to a relevant acquirer.
  - d. under section 32, the power to further delegate the above powers and functions delegated by this letter.

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<sup>7</sup> All periods cited in this letter refer to working days.

## Scanning for non-notified transactions that could pose significant risks

11. The Government can investigate any non-notified call-in transactions and impose conditions on, or order disposal of them, where necessary to manage significant national security or public order risks.
12. I recognise the call-in power is a new regulatory function for you to administer and monitor. I expect that over time you will adjust your approach to scanning for non-notified transactions that may pose significant national security or public order risks. You should report back to me within twelve months on your approach for identifying non-notified transactions that could pose significant national security or public order risks.

### Date letter takes effect

13. This letter is to take effect from 7 June 2021.

Yours sincerely



Hon Grant Robertson  
**Minister of Finance**



Hon David Parker  
**Associate Minister of Finance**