



Cabinet Legislation Committee

Minute of Decision

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Overseas Investment (Fees) Amendment Regulations 2021

Portfolio Associate Finance (Hon David Parker)

On 5 August 2021, the Cabinet Legislation Committee:

- 1 **noted** that on 9 June 2021, DEV agreed decisions on a new overseas investment fee structure and updated fees [DEV-21-MIN-0120];
- 2 **noted** that Cabinet has delegated authority to the Associate Minister of Finance, to make decisions on any further minor or technical issues required to implement the new overseas investment fee structure and updated fees;
- 3 **noted** that the Overseas Investment (Fees) Amendment Regulations 2021 will give effect to the decisions referred to in paragraphs 1 and 2 above;
- 4 **authorised** the submission to the Executive Council of the Overseas Investment (Fees) Amendment Regulations 2021 [PCO 23810/4.0];
- 5 **noted** that the Overseas Investment (Fees) Amendment Regulations 2021 come into force on 13 September 2021.

Rebecca Davies
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon David Parker
Hon Poto Williams
Hon Kris Faafoi
Hon Jan Tinetti
Hon Michael Wood
Hon Dr Ayesha Verrall

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

In Confidence

Office of the Associate Minister of Finance (Hon David Parker)

Chair, Cabinet Legislation Committee

Draft Overseas Investment (Fees) Amendment Regulations 2021

Proposal

1. I seek authorisation to submit the Overseas Investment (Fees) Amendment Regulations 2021 (the regulations) to the Executive Council. The regulations will amend Schedule 2 of the Overseas Investment Regulations 2005.

Executive summary

2. The administration of the overseas investment regime is largely funded by revenue from application fees. This model of third-party funding reflects the private benefits investors gain from the ability to invest in New Zealand. However, fees have not recovered costs for some years, resulting in an operating deficit for this function of \$3.3 million for the 2019/20 year.
3. On 14 June 2021 Cabinet confirmed decisions on changes to the overseas investment application fee structure and updated fees [CAB-21-MIN-0218]. The proposed regulations amend the existing overseas investment application fee structure and rates. The regulations implement a new differentiated fee structure to better recover costs of the regulator at each stage of the assessment process.
4. The proposed regulations are attached to this paper.

Amendments to regulations that give effect to Cabinet decisions

A new fee structure for the overseas investment regime

5. Toitū Te Whenua – Land Information New Zealand (LINZ) administers the overseas investment regime. This regime is funded by fees charged to applicants, reflecting the significant private benefit overseas investors receive from approval to purchase sensitive New Zealand assets. A set of fees for new application pathways was implemented on 22 October 2018, as part of reforms to the Overseas Investment Act 2005. A new national interest fee was implemented in June 2020 as a result of the Overseas Investment (Urgent Measures) Act 2020.
6. The level of applications and fees have been insufficient to meet the increasing costs of administering the overseas investment regime, despite ongoing efforts to streamline and simplify assessments. LINZ reported an operating deficit for administering the regime of \$3.3 million in the 2019/20 financial year. As at 30 June 2020, the balance of the Overseas Investment memorandum account was a deficit of \$8.5 million.

7. On 14 June 2021 Cabinet confirmed a new fee structure for the overseas investment regime [CAB-21-MIN-0218]. Cabinet has delegated authority to me to make decisions on any further minor or technical issues required to implement the new fee structure and updated fees.
8. The new fee structure will move from the existing, single application fee to three different fees charged at different stages of an application. The new fee structure and updated fees will ensure an adequate level of cost recovery from applicants. The new fee structure and updated fees will not apply to applications from individuals for consent under the 'One Home to Live In' application pathway.
9. To implement this new fee structure, the regulations specify:
 - 9.1 a lodgement fee charged to recover the costs of quality assurance and application completeness checks. This fee is a flat rate of \$13,300 (including GST);
 - 9.2 an application assessment fee based on whether the application requires a not complex or complex assessment (discussed below). Not complex assessment fees will range from \$16,800 to \$56,100 (including GST); complex assessment fees will range from \$35,900 to \$119,600 (including GST); and
 - 9.3 A monitoring compliance fee to assess compliance with consent conditions. Monitoring compliance fees will range from \$2,900 to \$13,300 (including GST).

Criteria to define standard and complex application assessments for fee-setting purposes

10. LINZ developed a cost model to determine the costs of assessments according to the complexity of applications. The cost model is based on a calculation of about 80 per cent of application assessments being 'not complex' (or 'standard'), and 20 per cent being 'complex'. 'Complex' application assessments are calculated to require three to four times as much time as 'not complex' application assessments.
11. To differentiate complex applications, I propose to introduce a set of objective tests based on existing sections of the Overseas Investment Act 2005. These tests are also informed by the criteria set out in the Ministerial Delegation Letter of October 2018. These tests are well-known to investors and will support a transparent and predictable regulatory regime.
12. The objective tests focus on:
 - 12.1 sensitive land transactions with known aspects of assessment complexity;
 - 12.2 residential standing consents; and
 - 12.3 forestry standing consents.
13. The known aspects of assessment complexity are specified in the regulations as:

13.1 five or more Relevant Overseas Persons or 10 or more Individuals with Control; and

13.2 requires a Benefit to New Zealand test.

Minor and technical changes

14. I have approved the following minor and technical changes as part of the regulations, in order to improve the implementation of the new fee structure:

14.1 clarifying how the objective criteria for complex applications are applied;

14.2 only stating complex assessment fees where these fees apply;

14.3 making the fees for residential standing consents payable on notification;

14.4 providing two refund provisions; and

14.5 consolidating the list of fees.

Timing and 28-day rule

15. The following table sets out the timing for the commencement of the regulations.

Confirmation by Cabinet and Executive Council consideration; approval sought from the Governor-General	9 August 2021
Notice in the New Zealand Gazette	12 August 2021
Overseas Investment (Fees) Amendment Regulations 2021 commence	13 September 2021

Compliance

16. The draft regulations comply with each of the following:

16.1 the principles of the Treaty of Waitangi;

16.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;

16.3 the principles and guidelines set out in the Privacy Act 2020;

16.4 relevant international standards and obligations; and

16.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Cost recovery implications

17. Cost-recovery guidelines prescribe that fees should avoid over-recovery and cross-subsidisation.

18. The risk of over-recovery is mitigated by a conservative forecast on the annual volume of applications subject to the new fee structure. LINZ will monitor and report on trends in application volumes and fee revenues.
19. Public consultation in early 2021 on the proposed overseas investment fee structure identified a concern that the higher fees for 'complex' assessments, could result in some risk-averse behaviour in determining fees for assessing applications. This risk will be mitigated through the regulations stating the specific objective tests for classifying applications as 'complex' assessments for fee-setting purposes.

Regulations Review Committee

20. There are no grounds for the Regulations Review Committee to draw the proposed fee structure to the attention of the House under Standing Order 319.

Certification by Parliamentary Counsel

21. The proposed regulations have been certified by Parliamentary Counsel as being suitable for submission to Cabinet.

Impact analysis

22. A Stage 2 Cost Recovery Impact Statement (CRIS2) "A new fee structure for the Overseas Investment regime" was submitted at the time that Cabinet approval was sought of the policy on the new fee structure [DEV-21-MIN-0120]. The review panel considered that the analysis summarised in the CRIS2 meets the quality assurance criteria. The CRIS2 is to be published on the LINZ and Treasury websites as part of a proactive release of the Cabinet decisions of 9 June.

Publicity

23. LINZ is to make a proactive release of the 9 June 2021 Cabinet paper setting out the new fee structure for the overseas investment regime. Guidance on the objective tests and fees will be released at the same time as the regulations are notified in the New Zealand Gazette.
24. Further regulations to give effect to the Overseas Investment Amendment Act 2021 are under development. Communications to the investor community and the public on the legislative changes and the new fee structure will be aligned.

Proactive release

25. I propose to publish this Cabinet paper on the LINZ website, subject to redactions as appropriate under the Official Information Act 1982.

Consultation

26. The Treasury, the Ministry of Business, Innovation and Employment, the Ministry for Primary Industries, the Ministry of Foreign Affairs and Trade, and New Zealand Trade and Enterprise have been consulted in the development of these

regulations. The Department of the Prime Minister and Cabinet has also been informed.

27. There has been no public consultation on the draft regulations. This is because there was a process of consultation over 25 February to 19 March 2021 on the proposed overseas investment fee structure [CAB-21-MIN-0022]. The regulations are drawn from the detailed proposals stated in a public consultation document.

Recommendations

28. I recommend that the Cabinet Legislation Committee:
- 1 **note** that on 14 June Cabinet confirmed decisions on a new overseas investment fee structure and updated fees [CAB-21-MIN-0218];
 - 2 **note** that Cabinet has delegated authority to the Associate Minister of Finance, to make decisions on any further minor or technical issues required to implement the new overseas investment fee structure and updated fees;
 - 3 **note** that the Overseas Investment (Fees) Amendment Regulations 2021 will give effect to the decisions referred to in recommendations 1 and 2 above;
 - 4 **authorise** the submission to the Executive Council of the Overseas Investment (Fees) Amendment Regulations 2021;
 - 5 **note** that the Overseas Investment (Fees) Amendment Regulations 2021 come into force on 13 September 2021.

Hon David Parker

Associate Minister of Finance

Attachment: Overseas Investment (Fees) Amendment Regulations 2021

As provided by the Parliamentary Counsel Office.

Proactive release