Hon David Seymour

MP for Epsom
Deputy Prime Minister (from 31 May 2025)
Minister for Regulation
Associate Minister of Education (Partnership Schools)
Associate Minister of Finance
Associate Minister of Health (Pharmac)

6 June 2024

Dr Richard Hawke
A/Chief Executive
Land Information New Zealand
Private Box 5501
WELLINGTON 6145

Dear Dr Hawke

Ministerial Directive Letter

1 This Ministerial Directive Letter is made pursuant to section 34 of the Overseas Investment Act 2005 (the Act). It directs you, as the regulator on:

1.1 the Government's general policy approach to overseas investment,

1.2 the threshold over which you have power to make decisions,

1.3 the terms of conditions of consent,

1.4 monitoring conditions of consent, and

1.5 general and specific matters relating to your functions, powers, and duties.

2 Annex One to this letter also provides direction on minor and technical matters to guide your decisions in certain circumstances. Annex Two to this letter provides directions to the regulator for the treatment of applications relating to the build-to-rent sector.

3 The Minister responsible for the administration of the Act (the Minister of Finance) has delegated all their functions, powers, and duties under the Act (except those that are non-delegable) to me as Associate Minister of Finance.

4 Decision-making ministers under the Act intend from time to time to delegate powers and functions to the regulator by separate instrument.

5 The terms used in this letter have the meaning given to them in the Act, unless otherwise specified. For avoidance of doubt, nothing in this letter overrides the Act or its Regulations.

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Government policy towards overseas investment

6 The Coalition Government has committed to:

6.1 Lifting New Zealand's productivity and economic growth to increase opportunities and prosperity for New Zealanders,

6.2 Improving the efficiency and effectiveness of the public service, and

6.3 Implementing an active foreign, defence and trade policy agenda which enhances New Zealand's security; signals that New Zealand is open for business and is outwardly engaged; makes New Zealand a participant in major global and regional developments (not a spectator); and grows trade and prosperity.

7 These objectives underpin the Government's policy approach to overseas investment. Specifically, the Government believes attracting overseas investment is necessary to realising our goal of growing prosperity for all New Zealanders – particularly given the size of New Zealand's investment needs relative to the scarcity of domestic capital.

8 Evidence shows that overseas investment provides better access to markets, technology and capital, and, as a result, a more productive economy. Overseas investment can help domestic firms to adopt innovative technologies and processes, transfer new expertise and skills into the country being invested in, access distribution networks and markets that would otherwise be unavailable, and participate in global value chains.

9 I direct you to administer the regime in a manner that focusses on realising the benefits of overseas investment to support our economic objectives. Specifically, I note that the Government believes overseas investment is generally beneficial and therefore I direct that you consider every opportunity to:

9.1 minimise compliance costs on investors,

9.2 impose a burden that is no broader than necessary for you to fulfil your regulatory functions, and

9.3 prioritise your resources towards higher-risk applications, recognising the majority of investment poses no-to-low risk.

10 I am nevertheless aware that overseas investment can sometimes pose risks. However, in most cases Parliament has enacted domestic legislation (that applies to both domestic and foreign investors) to manage impacts of economic activity. When administering the Act, I direct that:

10.1 if you identify a risk that is addressed by another regulatory regime, that risk should generally be considered sufficiently mitigated unless there is compelling evidence to the contrary, and

10.2 generally, any conditions imposed on a transaction should be no broader than necessary to provide confidence that statutory tests in the Act will be met (and not duplicate or impose requirements over and above those set out in other legislation).

11 The national interest test is a 'backstop tool' and allows the Government to block transactions that are contrary to the national interest. For the avoidance of doubt, the national interest test does not require investors to demonstrate a transaction is consistent with the national interest.

12 To support investor certainty, the Act requires certain higher risk transactions to be automatically assessed as to whether they might be contrary to the national interest. The Minister responsible for the Act also has discretion to apply any other consent application to the test under section 20B of the Act.

13 I direct that the regulator should draw a transaction to the attention of the Minister under section 20B of the Act if there are reasonable grounds to believe that the proposed investment:

13.1 could pose risks to New Zealand's national security or public order,

13.2 could have outcomes that would be significantly inconsistent with or could hinder the delivery of other Government priorities,

13.3 could pose a risk to the Crown's obligations under the Treaty of Waitangi, or

13.4 relates to a site of national significance (e.g. significant historic heritage or conservation value).

14 When undertaking a detailed assessment of whether a transaction is contrary to the national interest, the regulator must:

14.1 acknowledge the starting assumption of the test is that overseas investment is in the national interest,

14.2 be informed by the *Guidance Note: Foreign Investment Policy and National Interest Guidance* published on The Treasury website, and

14.3 reflect consultation and input from relevant partner agencies.[1]

Specific directions

15 In addition to the general policy approach above, I direct you on the following matters.

16 Under the benefit to New Zealand test, you should recognise:

16.1 policy decisions made by Cabinet (amongst other matters), the objectives set out in the Coalition Agreements that underpin the formation of the Government, and the Speech from the Throne that sets out our policy priorities.

16.2 Where an investment demonstrates strong benefits under one or two benefit factors, other factors may require less consideration if the threshold for meeting the benefit test is clearly met without reference to them.

17 You should take a 'risk-based approach' to administering the regime, by focussing effort on higher-risk transactions,[2] you should:

17.1 carry out less verification of claims made by investors in low-risk cases, for example, relying on statutory declarations made by applicants as verification of the information provided. You should only seek to verify information when you

[1] Such as those agencies listed in section 126 of the Act.

[2] Higher risk transactions include transactions proposed by first time investors, or those with poor compliance histories, transactions involving high public interest or involving especially sensitive assets, or where investors are making obviously unrealistic claims.

have reason to suspect that the information is unreliable. Consult with other government agencies only where appropriate, for example to:

17.1.1 verify risks to the national interest, national security or public order,

17.1.2 assess other significant risks or significant benefits,

17.1.3 confirm whether the Act's tests have been met in borderline cases,

17.1.4 ensure compliance with international obligations.

17.2 Generally, any conditions imposed on a transaction should be no broader than necessary to provide confidence that statutory tests in the Act will be met (and not duplicate or impose requirements over and above that set out in other legislation).

Time frames

18 The regulations set the time frames for applications to be granted or refused. In line with the direction above to allocate your resources efficiently by focussing on higher risk transactions, I expect you to:

18.1 assess 80 per cent of consent applications[3] within half the relevant time frame in the Regulations,

18.2 report to Ministers and the public yearly through your annual report on the extent to which consent applications have been completed with half the relevant time frames in the Regulations,

18.3 report on whether you are meeting this framework for time frames for consents under the 'one home to live-in' pathway[4] separately from the remaining categories of consent, and

18.4 report back to me and the Minister for Land Information (jointly with the Treasury) on:

18.4.1 options for reporting to Ministers and the public on this framework for time frames (including frequency of reporting and reporting on individual categories), and

18.4.2 whether other decisions made under the Act (such as exemptions) could also be made more quickly.

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[3] This excludes variation and exemption applications, applications under the standalone investor test, and notifications under the national security and public order risks management regime, which are not consent applications. The Ministerial Directive Letter was not designed to improve the processing times for these applications and notifications. While these applications are excluded from this specific expectation around time frames, we expect LINZ to still process these applications faster, over time, as the Ministerial Directive Letter will enable more efficient use of resources more broadly.

4 The 'one home to live in' pathway refers to the commitment to reside in New Zealand test (which applies to residential land) and the intention to reside in New Zealand test (which applies to non-residential land).

Other directions

19 I have annexed additional directions that are minor and technical in nature. I have also annexed directions to the regulator relating to the treatment of applications relating to the build-to-rent sector.

Date letter takes effect

20 Subject to paragraphs 21 and 22 below, I revoke all previous directions under section 34 of the Act in force at the date of this letter (the Revoked Directives), with effect from 6 June 2024.

21 This letter will take effect on 6 June 2024, and applies in relation to any transaction, application or other matter, where provisions in the Act or the Regulations as they read on or after that date apply.

22 In other cases, where an earlier version of the provisions in the Act or Regulations apply under the transitional arrangements in Schedule 1AA of the Act or Schedule 1AA of the Regulations, then the directives in this letter will apply alongside any Revoked Directives that are necessary to give effect to the earlier version of the Act.

Yours sincerely,

Hon David Seymour

Associate Minister of Finance

Annex One: Minor and Technical Directions

Intention to reside in New Zealand indefinitely

1 Under section 16(1)(c)(i) of the Act, overseas persons intending to reside in New Zealand indefinitely are not required to show that their investment in sensitive land is likely to benefit New Zealand. This supports migrants in the process of moving to New Zealand to make New Zealand their home and make a positive contribution to society.

2 An intention to reside in New Zealand indefinitely must involve a definite plan and accompanying actions. In determining whether a person is intending to reside indefinitely, the Regulator must consider any active steps that have been taken by the investor to actually reside in New Zealand.

3 In order to meet the intention to reside in New Zealand criterion in section 16(1)(c)(i), the Government considers the overseas person will generally:

3.1 hold a residence class visa or an entrepreneur work visa, and

3.2 show actions and plans, with supporting evidence, consistent with an intent to reside in New Zealand within 12 months.

4 The Regulator may impose as a condition of consent a time limit within which the overseas person must move to New Zealand and become ordinarily resident. The Government would generally expect the overseas person to move to New Zealand within 12 months from the date of consent and become ordinarily resident within two years[5] from the date of consent.

The national security and public order call-in power notification

5 I expect you to assess a notification in two steps within the 55 working day time frame in the Regulations:

5.1 an initial risk assessment within 15 working days, where you consider if a transaction could pose a significant risk to New Zealand's national security or public order (those that do not pose a significant risk will be issued with a direction order allowing them to proceed), and

5.2 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 time frame in the Regulations.

6 When assessing and providing advice on the risks and benefits of a transaction, the Regulator must:

6.1 be informed by the *Guidance Note: Foreign Investment Policy and National Interest Guidance* (June 2021) published on the Treasury website, and

6.2 reflect consultation and input from relevant partner agencies.

[5] A longer period may be considered for migrants holding an entrepreneur work visa.

7 The Regulations allow extensions to be granted to the 55 working day time frame. 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).

Fresh or seawater areas

8 The Act and Regulations require the Crown to notify the owner of its decision on acquisition of fresh and seawater areas within twelve months of the water areas acquisition notice being registered or provided. In practice, I expect these notifications to occur within six months, except in cases which are unusually complex. To allow the Government to monitor when extensions occur, I expect that you notify the Minister for Land Information whenever this six-month time frame is being exceeded. I also expect you to give reasonable notice to owners of any extensions.

Exemptions

9 The Act defines 'overseas person' in a way that results in some entities and managed investment schemes that are majority owned or funded by New Zealanders and have a strong connection with New Zealand, being required to obtain consent.

10 The Act permits exemptions for persons, transactions, rights, interests or assets that the Minister considers to be majority owned and substantively controlled by New Zealanders.[6] The decision-maker may grant individual exemptions to applicants that satisfy this threshold.[7] This aligns with the Act's purpose, as it is clear that the degree of New Zealand ownership and control is what determines whether an entity is an overseas person, not other matters such as New Zealand employees or having headquarters in New Zealand.

11 I consider that such exemptions should generally be granted to non-listed bodies corporate, managed investment schemes (MIS) and limited partnerships, where they meet the criteria specified below unless good reason exists not to.

Exemptions

Non-Listed Bodies Corporate

12 In order to be eligible for an exemption from consent requirements, the Government considers a domestically incorporated non-listed body corporate will generally:

12.1 not be majority owned by overseas persons. That is, be less than 50 per cent owned by overseas persons,

12.2 not be substantively controlled by overseas persons. That is, 25 per cent or less of the entity's total securities are cumulatively controlled by overseas persons, each of whom hold 10 per cent or more of the entity's total securities, and

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[6] Section 61B(c)(viii).

[7] Section 61D.

12.3 not be open to access or control by a foreign government. That is, no foreign government (or its associates) holds 10 per cent or more of the entity's total securities.

Managed Investment Schemes (MIS)

13 In order to be eligible for an exemption from consent requirements, the Government considers a MIS will generally:

13.1 not be majority owned by overseas persons. That is, less than 50 per cent of the value of the managed investment products in the MIS are invested on behalf of overseas persons,

13.2 not be substantively controlled by overseas persons. That is, 25 per cent or less of the managed investment products in the MIS that entitle holders to vote are invested on behalf of overseas persons, each of whom have 10 per cent or less of those products,[8] and

13.3 not be open to access or control by a foreign government. That is, no foreign government (or its associates) holds 10 per cent or more of value of the managed investment products in the MIS.

Limited Partnerships

14 In order to be eligible for an exemption from consent requirements, the Government considers a limited partnership will generally:

14.1 not be majority owned by overseas persons. That is, less than 50 per cent of the limited partnership interest is held by overseas persons,

14.2 not be substantively controlled by overseas persons. That is, 25 per cent or less of the general partner is cumulatively controlled by overseas persons that each hold a 10 per cent or less of the interests in the general partner, and

14.3 not be open to access or control by a foreign government. That is, no foreign government (or its associates) holds 10 per cent or more of the partnership interest.

Other matters for consideration

15 In addition to the specified criteria, in determining whether to grant an exemption to these kinds of entities, the Government would expect the Regulator to consider:

15.1 the entities' suitability to own or control New Zealand assets (assessed in accordance with the Investor Test in section 18A of the Act), and

15.2 the degree of access or control foreign governments (or their associates) hold in the entity.

16 The Government would expect the exemption to depend on compliance with conditions being maintained, including the condition that the investor remain not unsuitable to own or control the assets.

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[8] A MIS that has an overseas person as manager or trustee should not be considered to have substantive control for the purpose of this directive.

Farm land advertising exemption

17 The following is non-exhaustive list of examples of the circumstances where an applicant may be eligible for an exemption from the farm land advertising requirement, under section 20 of the Act:

17.1 when there is substantial compliance (for example, where the advertising does not meet all of the requirements but nonetheless achieves the purpose of advertising),

17.2 for future advertising (for example, where an investor seeks consent to acquire selected properties in the future should they be put up for sale – advertising occurs after consent), and

17.3 when there is only one natural buyer (for example, a boundary adjustment or landlocked land).

Annex Two: Build-to-Rent

Welcoming Build-to-Rent (BTR) and other investment in New Zealand's housing supply

1. This annex provides interim guidance to encourage investment in the BTR sector in particular, reflecting our initial focus to boost investment that supports greater housing supply and improved rental market outcomes.

2. Addressing the housing crisis is a key focus for this Government – New Zealand needs additional housing supply across a range of housing models, including private rentals. We consider overseas capital can help boost the scale of development needed to address this challenge, particularly in the BTR sector.

3. BTR refers to privately owned rental housing of 20 dwellings or more. We consider BTR has the potential to increase the supply of quality and secure rental housing and improve the resilience of our housing market. This sector is still emerging in New Zealand and could benefit from overseas capital to build at large-scale.

4. To support investment in BTR and other housing developments in New Zealand, I have directed officials to progress amendments to the Overseas Investment Act to overcome the barriers to growth in the sector.

5. To provide clarity to investors on the operation of existing pathways in the interim, I have set out guidance below on the Government's current interpretation and approach to assessments under the benefit to New Zealand and increased housing tests.

The Benefit to New Zealand Test

6. The Act explicitly provides that the "reduced risk of illiquid assets" can be considered under the benefit to New Zealand test. An example of where this might apply is where an overseas person is purchasing an existing built-to-rent development, and that purchase would better ensure the asset remains liquid.

7. I note that in addition to considering it important to minimise the number of stranded assets, I consider overseas investment in BTR, including in existing BTR developments, to be a clear example of a benefit to New Zealand.

8. Unless there is compelling evidence to the contrary, I direct the regulator to consider investment that supports housing supply and the continued operation of an existing large-scale housing development as a benefit when undertaking assessments under the Benefit to New Zealand test.

9. The benefits that flow from addressing the risk of stranded assets and from the continued operation of an existing large-scale housing development may be sufficient to satisfy the Benefit to New Zealand test, even if no other benefits will result from the investment.

Increased Housing Test

10. Schedule 2 clause 20 of the Act requires that, to obtain an exemption to the on-sale requirement under the increased housing test for large-scale rental arrangements, investors are required to be "in the business of providing new residential dwellings" through shared equity, rent-to-buy, or rental arrangements.

11. Clause 19 similarly requires that, to get consent for a new or existing BTR development under the benefit to New Zealand test, an investor must be "in the business of providing residential dwellings" through one of these arrangements.

12. Consistent with the Regulator's current approach, when determining whether a person meets these requirements, I direct the Regulator to:

    12.1 consider the nature of any existing business (including related entities),

    12.2 consider what overt steps have been taken to commence providing residential dwellings by one or more of the required arrangements (and especially overt steps taken to enter the built-to-rent market), and

    12.3 not require investors to have previously completed or operated a BTR development.