

Departmental Disclosure Statement

Overseas Investment (National Interest Test and Other Matters) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Treasury.

The Treasury certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

8 May 2025

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Part One: General Policy Statement

Purpose of the Bill

The purpose of this Bill is to amend the Overseas Investment Act 2005 (the Act) to reduce compliance costs and make decision making timelier, while also ensuring that the Government has the tools necessary to safeguard New Zealand's national interest, including its national security and public order.

The Bill forms part of the Government's economic strategy "Going for Growth", one pillar of which is promoting global trade and investment. Overseas investment can help to finance the gap between New Zealand's national savings and investment needs, enhance productivity, and support higher-paying jobs.

Global capital flows are competitive. This Bill seeks to make New Zealand a more attractive place to invest by speeding up consent for low-risk investments. This will address the restrictiveness of the current regime.

Key features

The Bill retains screening for the list of assets currently screened under the Act, but seeks to achieve its intended purpose by:

- ensuring that the purpose statement acknowledges it is a privilege to invest in New Zealand farm land, residential land, and fishing quota, acknowledging the unique sensitivity of those assets and recognises the role of overseas investment in increasing economic opportunity:
- consolidating the national interest, benefit to New Zealand, and investor tests into a single test for all assets other than farm land, fishing quota, and residential housing, for which the existing consent pathways will remain:
- requiring the regulator to grant consent within 15 working days unless there are reasonable grounds to consider that a risk to national interest exists, in which case a national interest assessment is required:
- creating a new regulation-making power enabling regulations to specify new classes of screened transactions that must undergo a national interest assessment:
- enabling the regulator to impose conditions and grant consent under the national interest test except when the transaction has been escalated to, or called in by, the relevant Minister:
- providing that only the relevant Minister can decline an investment if the relevant Minister considers the transaction is contrary to the national interest. This power will not be delegable.

Additional features

The Bill will also:

- create new regulatory powers to identify new types of strategically important businesses (**SIBs**) and to require mandatory notification of overseas investment in SIBs where previously this was voluntary:
- create repeat investor provisions like the existing repeat investor provisions for investors applying under the new national interest test whose circumstances have not changed:
- remove the current consent requirement for investors seeking to increase their greater than 75% ownership interest to 100% given there is no effective change in control (excluding acquisitions of strategically important businesses):
- delegate most decisions to the regulator, unless otherwise specified by the relevant Minister:
- enable retrospective exemptions to give the regulator more options to address breaches of the Act, and take proportionate compliance action: and
- make other minor and technical changes to improve the efficiency of the regime.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
OECD Economic Surveys; New Zealand 2024, OECD, May 2024, Full Report OECD – The New Zealand economic survey published by OECD discusses the restrictiveness of New Zealand's overseas investment screening regime. At the time of publication, New Zealand's overseas investment screening regime was ranked as the most restrictive in the OECD according to the OECD's FDI Restrictiveness Index. The report commented that foreign investment in New Zealand is low. It noted previous reforms of the Overseas Investment Act and recommended further easement of our FDI rules to reduce compliance costs and increase certainty for investors, while maintaining the national security component of the current screening regime.	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Regulatory Impact Statement: International Investment Screening, Treasury, 27 November 2024, Regulatory impact statements The Treasury New Zealand	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
No, the RIS did not meet the threshold for independent assessment by the Ministry for Regulation.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
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The RIS's preferred option was that all transactions except for investments in residential housing will be subject a single risk-based test and the investor test and benefit test would be otherwise repealed. Cabinet decided to retain the existing consent requirements for farmland and fishing quota (the benefit test and investor test) [CAB-25-MIN-0013]. The RIS did not cover this arrangement.

A summary of the more material decisions that were made through the drafting process has been included below. These decisions were not covered by the RIS:

- **Forestry requirements and conditions:** While the RIS covered all transactions going through a single modified national interest test (including forestry), it did not analysis the specific implications for forestry. An additional function of the Ministerial Directive Letter will be to specify requirements and conditions for investments in land used for forestry activities (Clause 22, Section 34 amended).
- **Consent will no longer be required where there is no change in control:** Investors who already have full control of a company (that is, greater than 75% interest) will no longer require consent to further increase their ownership. This will not extend to purchases involving Strategically Important Businesses (SIBs) and investors will continue to be screened when increasing to 25%, 50% and 75% thresholds.
- **Powers of delegation:** The Act will be amended to specify that unless not permitted under the Act or otherwise specified via notice, the regulator will be delegated decision-making powers under the Act (Clause 21, Section 32 amended).
- **Water bottling factor:** The benefit test's water bottling factor will be repealed as it is rarely applicable and overlaps with existing regulator regimes and the national interest test (Clause 12 repeals section 17(3)).
- **Electronic filing:** Residential land statements will be allowed to be made and collected electronically and held by a third party (including the Crown) instead of being held by the conveyancer (Clauses 24 and 25 amend sections 51A and 51C).
- **Retrospective exemptions, including for accidental breaches:** The Bill provides for retrospective exemptions. This power will provide flexibility, provide the regulator with more options to address breaches of the Act and support a proportionate approach to enforcement (*Clause 27 amends, section 61D amended*).

Ensuring appropriate information management: Notifications made under the NSPO regime provide data that is used to assess risks to national security. These disclosures are often voluntary. To protect future disclosures, the Bill clarifies that notifications made under the NSPO regime may be withheld in accordance with section 6(a) of the Official Information Act 1982 (which relates to information that may prejudice the security or defence of New Zealand or international relations of the Government of New Zealand) (Clause 30, section 87 amended).

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The Bill creates a new consolidated national interest pathway. Future governments may use the Ministerial Directive Letter to define which risks should be managed or are 'contrary to the National Interest'.</p> <p>The RIS (Regulatory impact statements The Treasury New Zealand) was assessed as meeting the regulatory impact assessment requirements.</p> <ul style="list-style-type: none"> • The RIS provides qualitative description of the channels through which costs and benefits may arise • No quantitative cost benefit analysis (CBA) could be completed as a comprehensive CBA would depend on the implementation of the proposed changes, including how the Government chooses to define national interest in the MDL. <p>No group of persons are expected to suffer a substantial unavoidable loss of income or wealth.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>The regulator (LINZ) will continue to monitor compliance with the Act. These matters are considered at a high level in the RIS: Regulatory impact statements The Treasury New Zealand. Further information on LINZ's approach to monitoring compliance can be found here: Our compliance approach Overseas investment Guidance</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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New Zealand's trade agreements, including the World Trade Organisation's General Agreement on Trade in Services (GATS), and OECD Codes of Investment Liberalisation include binding international obligations on investment screening.

The Ministry for Foreign Affairs and Trade was consulted on policy design and the draft Bill to ensure that the proposals contained in the Bill are:

- consistent with New Zealand's international obligations; and

consistent with the policy space preserved in trade agreements for the operation of our overseas investment screening regime.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Bill does not change which persons or assets are screened.

While the Bill seeks to improve the efficiency of screening for low-risk assets, the Bill continues to provide equivalent protections for iwi allowing the Government to call in and block any sale of assets to an overseas person if the sale is contrary to the National Interest.

Due to condensed timeframes, iwi, hapu and relevant Māori national organisations have not been consulted on this proposal. Te Arawhiti and Te Puni Kōkiri were consulted on this proposal and did not raise any inconsistencies with the principles of the Treaty of Waitangi.

The existing screening regime, and proposals in the Bill do not generally interact with Māori interests. Existing protections for Māori interests in the Act are not amended by this Bill.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	NO
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at: [Advice on consistency of Bills with the Bill of Rights Act | New Zealand Ministry of Justice](#)

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
The Bill does not affect the application of the Privacy Act 2020, including the privacy principles set out in section 22 of that Privacy Act.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
<p>Treasury consulted with other departments in developing the policy proposals in the Bill. A draft of the Bill was also shared with these agencies for feedback. Some policy proposals were tested with the Legislation Design and Advisory Committee.</p> <p>Treasury engaged with a small number of legal experts on the issues they identified with the current Act and secondary instruments.</p> <p>Broader consultation with stakeholders (such as investors and New Zealand businesses) and the general public did not occur, due to significant time constraints. However, feedback from previous engagements and consultations on the Overseas Investment Act has informed the development of the policy proposals in this assessment.</p> <p>In 2019, the Treasury conducted a public consultation on proposed reforms to the Act. Meetings were also held across New Zealand and in Sydney, Australia, with investors, professional advisors, members of the business community, iwi organisations and Māori businesses.</p> <p>There was broad agreement that there is scope to considerably improve the efficiency of the Act without compromising the Government's ability to manage risks associated with overseas investment, with some suggestion that the screening regime should be framed negatively – that is, there would be a presumption investment could continue unless specific risks were identified.</p> <p>As part of the Phase Two reform and the consultation on screening settings for forestry conversions, Treasury ran a number of hui with, and received submissions from, iwi and other Māori organisations. Although consultation was on specific proposals, hui and submissions at the time included general conversation on overseas investment screening.</p> <p>Treasury has engaged regularly with legal firms and experts on their (and their clients') perspectives on the overseas investment regime since it was reformed in 2021.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
Treasury has worked closely with LINZ, the regulator under the Overseas Investment Act, to ensure policy proposals are workable and to avoid unintended consequences. PCO has shared several versions of the Bill to enable LINZ to provide feedback on the workability of provisions.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The Bill will provide the regulator with the power to grant consents and impose conditions on overseas investments that are subject to the national interest test.</p> <p>This is appropriate given that highly sensitive transactions involving farm land, residential land and fishing quota will remain subject to the benefit test. As only around two per cent of transactions are declined, the national interest test will be applied to a large volume of transactions that are predominantly low risk. The screening and potential escalation of these transaction is therefore largely administrative in nature.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The Bill amends the definition of strategically important businesses (SIBs) to provide that an existing regulation-making power currently used to narrow down the scope of existing categories of SIBs can also be used to prescribe additional types of businesses that are SIBs in the Act.</p> <p>For the above NSPO regulation-making power, existing requirements in the NSPO regime will apply which place criteria on the transactions these regulations can apply to. That is, when recommending a regulation be made in relation to a new SIB class, the Minister must:</p> <ul style="list-style-type: none"> - have regard to New Zealand's international obligations; and <p>be satisfied that the regulation is no broader than is reasonably necessary to manage risks to national security and public order.</p>	
4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES

Regulations relating to the national interest pathway

The Bill creates a new regulation-making power to prescribe additional classes of transactions that automatically require a full national interest assessment. This power only applies to assets already screened under the regime. This power will support the durability of the screening regime by enabling it to be responsive to new and emerging risks.

The timeframe for the “initial national interest risk assessment” will be set via regulation consistent with other timeframes in the Act. The timeframe for this risk assessment must be no greater than 15 working days. Providing 15 days to determine whether a national interest assessment is required will allow low risk or less sensitive applications to be consented quickly.

Secondary Legislation: changes to the Ministerial Directive Letter (MDL)

The Bill amends the Ministerial Directive Letter’s operating provisions to provide the following additional functions:

- identify any risks or factors that decision-makers should consider when escalating transactions to a national interest assessment, granting consents, imposing conditions or declining transactions under the National Interest Test;
- the Government’s preferred approach to undertaking a national interest assessment; and
- requirements and conditions for applications relating to transactions where the relevant land is used for forestry.

The above functions of the Ministerial Directive Letter will support consistent application of the national interest test. Additionally, due to the public-facing nature of the Ministerial Directive Letter, these functions will provide certainty to investors over how the national interest test will be applied.

Regulations relating to the National Security and Public Order powers

The Bill creates a regulation-making power to require that certain call-in transactions must be notified. This would apply to an identified subset of SIBs, where notifications of transactions were previously voluntary. This power will also support the regime to be more responsive to new and emerging risks, by allowing regulations to be made to provide that investors must notify LINZ of high-risk SIBs.

For the above NSPO regulation-making power, existing requirements in the NSPO regime will apply which place criteria on the transactions these regulations can apply to. That is, when recommending a regulation be made to prescribe additional classes of transactions of SIBs which require notification, the Minister must:

- have regard to New Zealand’s international obligations; and

be satisfied that the regulation is no broader than is reasonably necessary to manage risks to national security and public order.

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>Retrospective exemptions – the Bill enables the Minister to grant individual exemptions retrospectively. This power could be used in cases where an investor realises after the fact that a consent was required and there is limited value in pursuing compliance action.</p> <p>Providing for retrospective exemptions will improve flexibility and allow the regulator to act more fairly and reasonably. There is already an equivalent power in the Act that provides for retrospective consents. Section 61E and Section 61F will apply to retrospective exemptions which will place limits on granting exemptions, for example the exemption must be no broader than necessary.</p>	

