

# Corporate Advisory Alert

24 July 2009

## Overseas Investment regime to be streamlined

The Government announced yesterday a stream-lining of the procedure for obtaining consent for overseas investments, in addition to the further exemptions to the need for consent announced earlier this month.

The announcements take into account advice provided by a Technical Reference Group, which includes Garth Sinclair from this firm, which is working with Treasury on the review and are the first stage in a two stage process to update the overseas investment rules.

The changes are intended to increase investment into New Zealand by providing simplified and more certain rules, whilst addressing public concerns relating to overseas ownership of national assets.

### **Greater delegation to the Overseas Investment Office (OIO)**

The Government has delegated additional authority to the OIO, so that the OIO will fully determine a higher number of applications. The Government will, however, retain sole authority to determine applications relating to rural sensitive land and land adjoining waterways. These changes are now in effect.

It is expected that the enhanced delegation to the OIO will reduce the number of ministerial decisions by 40% and that this will help to reduce the assessment time for decisions previously determined by the Government by up to two weeks.

### **Strategic Asset Test**

The Government also announced that it will be looking at removing the strategic asset test which was put in place during the Canadian Pension Plan Investment Board's bid to acquire a strategic stake in Auckland International Airport Limited. The Government's view is that this test creates

confusion and uncertainty. It will instead consider introducing as a "final reserve power" a new national interest test. The Government has indicated that this would rarely be used and that it would be required to set out for the public and to Parliament in a clear and transparent manner its reasons for declining the investment.

### **Overhauling the Overseas Investment Act (OIA)**

The second and more substantial work is in relation to the OIA itself. The Government is due to consider the recommendations of Treasury and the Technical Reference Group in this regard over the next few weeks.

The intention of the overhaul is to improve the following areas of the OIA:

- (1) the thresholds determining which land and business investment are screened, with these being amended where necessary to ensure that only genuinely sensitive assets are captured by the need for consent;
- (2) to simplify the screening of investments in sensitive land - whilst overseas investment will continue to be subject to a higher standard than domestic investors, the Government has indicated that it wishes to avoid requiring investors to meet arbitrary requirements; and
- (3) to provide greater certainty for overseas investors by looking to remove the Strategic Asset Test as referred to above.

The Government will be considering recommendations for legislative change in the next few weeks, with a view to introducing legislation to Parliament in September to be passed later this year.

### **Additional exemptions**

Since 9 July, there have been three new exemptions to the requirement to obtain consent to overseas investment and a widening of an existing exemption. These are to deal with

applications which are largely of a technical nature and have little or no impact on the overseas ownership or control of sensitive assets.

The exemption for on-sales between companies within the same group has been widened, so that it now applies to any group company where the overseas investor directly or indirectly owns at least 95% of the group. Previously, the companies need to be wholly owned by the investor for the exemption to apply.

The new exemptions cover:

- (a) the acquisition of a portfolio or bundle of two or more security arrangements with a total value of \$100 million or less;

- (b) the acquisition of securities by an underwriter in its ordinary course of business which it holds for less than 6 months (and does not exercise any voting rights); and
- (c) the acquisition of securities by someone who previously received consent for an acquisition on identical terms within 5 years of the initial consent and where the new securities are less than 5% of the initial securities acquired.

#### **Further announcements**

We will update clients on the results of the second stage of the Overseas Investment review as soon as these are announced by Government.

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