

### SUMMARY OF RESPONSE

Sensitive adjoining land

**We support Option 1**, which removes the section 37 list and restricts adjoining land which triggers a consent requirement to foreshore or lakebeds, and some land that is significant to Māori.

Screening leasehold land

**We propose a modified Option 1**, which increases the screening threshold for all land to 35 years. This more realistically reflects the point at which an occupational interest becomes akin to a capital interest (with only the latter requiring screening from a risk perspective). A 10-year threshold would have limited impact on issues with the status quo.

**We propose** some amendments to the lease re-grant exemption.

Periodic leases

**We support** the removal of the requirement for consent on all periodic leases, irrespective of the type of land, in order to address unintended consequences of reforms in 2018.

Definition of overseas persons as it applies to bodies corporate

**We propose a series of modified Options:**

**Option 1** with the following modifications, which strike a better balance between encouraging investment and addressing risk:

- Threshold should be 50% or more rather than 49%;
- Extended to unlisted companies.

**Option 2** to apply together with **Option 1** (rather than as an alternative) – that only substantial holdings or 5% or more are taken into account when considering whether the overseas person threshold is met (for listed companies only).

**Option 4** exemption application process for New Zealand connected overseas persons to supplement **Options 1** and **2**, but with less restrictive criteria.

We submit that provision should be made for an exemption process for New Zealand registered limited partnerships (where there is no effective overseas control).

Portfolio investors

**We support Option 1**, which establishes a class exemption for overseas portfolio investors that have policies of taking only minority investments in investee companies and not seeking board representation on investee company boards.

**We support the first limb of Option 2**, which proposes a class exemption for portfolio investors 51% of whose funds under management are invested on behalf of New Zealanders.

Tipping point for requiring consent

**We support Option 1**, which removes section 12(b)(iii), but do not believe a general anti-avoidance provision is necessary.

# Executive Summary

## Overseas Investment Reform

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Incremental investments

**We propose a modified Option 1**, where investors would be entitled to increase their control interest by any amount below a relevant key control threshold (eg 25% or 50%) with the following modifications:

- Enabling an overseas persons to (directly or indirectly) decrease its shareholding and subsequently increase it back to the level it had previously obtained consent for; and
- Removing the proposed 90% control threshold.

Application of exemption where the person increasing the shareholding is not the consent holder

**We support Option 2**, which allows upstream or downstream shareholders to qualify for the exemption.

Application to assets that did not require consent at time acquired

**We support Option 3**, which allows a shareholder to qualify for the exemption if consent was not required for the original transaction and was not in fact obtained, and the asset has since become sensitive.

Five year restriction on the exemption for incremental investments

**We support Option 4**, which removes the five-year limit.

Investor test

**We prefer Option 2**, which significantly narrows the investor test to capture only good character issues, and simplifies the criteria for the good character test.

In respect of the additional potential changes:

- On balance, we consider it is appropriate from a policy perspective to assess the character of New Zealander individuals with control;
- We disagree that the investor test should be applied to non-natural persons;
- We support the introduction of a standing consent for the investor test.

Benefits test

**We consider** the issues with the current benefits test would be best addressed by adopting a "not contrary to the national interest" test based on the Australian model, which considers only factors that are against the national interest in line with clear guidance and assessed by a body similar to the Foreign Investment Review Board ("**FIRB**") (with no benefits test).

**Otherwise we support Option 2**, which introduces a simplified benefits test together with a substantial harm test to be used only in exceptional circumstances (such as a threat to national security).

**We do not support Options 1 or 4.**

**We support** the removal of the requirement to demonstrate that the benefits are substantial and identifiable.

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We remain concerned that current issues in relation to the benefits test will be carried over if a version of it is retained and welcome further consultation on this point. In particular, we strongly believe that the benefits need to be assessed in a proportionate and risk based manner.

**Counterfactual test**      **We support Sub-Option A**, being a counterfactual of the state of the land as at the time of the application, and the introduction of a "no-detriment" test for transfers of interest in land between two overseas persons.

**Water extraction**      **We disagree** with the issues raised and note that existing legislation (such as the Resource Management Act 1991 ("**RMA**")) is the appropriate forum for managing concerns around water extraction.  
**Otherwise, we prefer Option 1**, which would apply where the investment directly related to water bottling or bulk export only.

**Tax concerns**      **We submit** that all Options presented are unnecessary and should not proceed. Concerns regarding overseas persons not paying enough tax in New Zealand are more appropriately dealt with as a matter of tax law reform and enforcement.

**Protection of Māori cultural values**      **We prefer Option 2**, which clarifies and broadens the benefits test to enable decision makers to take account of overseas persons' intentions to protect or enhance wāhi tūpuna that are listed under heritage legislation and / or promote or enhance a Māori reservation.

**Special Land**      **We support Option 1**, which clarifies that special land provisions apply only where an overseas person is buying a freehold interest in special land, and **Option 4** which shifts the responsibility for making an offer to the Crown from the vendor to the overseas person.

**Farmland advertising**      **We support Option 2**, which removes the requirement to advertise farmland.

**Timeframes for decisions**      **We support timeframes for decisions.** We do not have a preference between **Option 1** and **2** (there are advantages associated with both) and note that either Option is an improvement to the status quo. We suggest that the Overseas Investment Office's ("**OIO**") power to extend the timeframe requires reasons and is monitored by the Treasury.

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## Overseas Investment Reform

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#### Other matters

The following further submissions are made, which do not address specific proposals in the consultation paper:

- We propose an amendment to the Australian non-Government investor exemption to enable acquisitions effected through a special purpose vehicle ("**SPV**") (provided that it is a subsidiary of an Australian entity that meets the existing test), and by SPVs and portfolio entities that are managed by Australian-based private equity fund managers.
- We propose an amendment to provide that statutory rights granted under infrastructure legislation to "lifeline utilities" (as defined in the Civil Defence Emergency Management Act 2002) are exempted interests and therefore do not require consent.
- We propose an amendment to the Overseas Investment Regulations 2005 ("**Regulations**") to ensure that non-natural persons can be considered "qualifying individuals" for the purposes of the ownership and control test in Part 5 of the Regulations.
- We propose adjustment to, or guidance on, the exemptions provisions in the Act to ensure the exemptions application processes proposed will work as intended.
- We propose the introduction of an express statutory power for the Treasury to provide guidance on the intended implementation of the Act to the OIO.