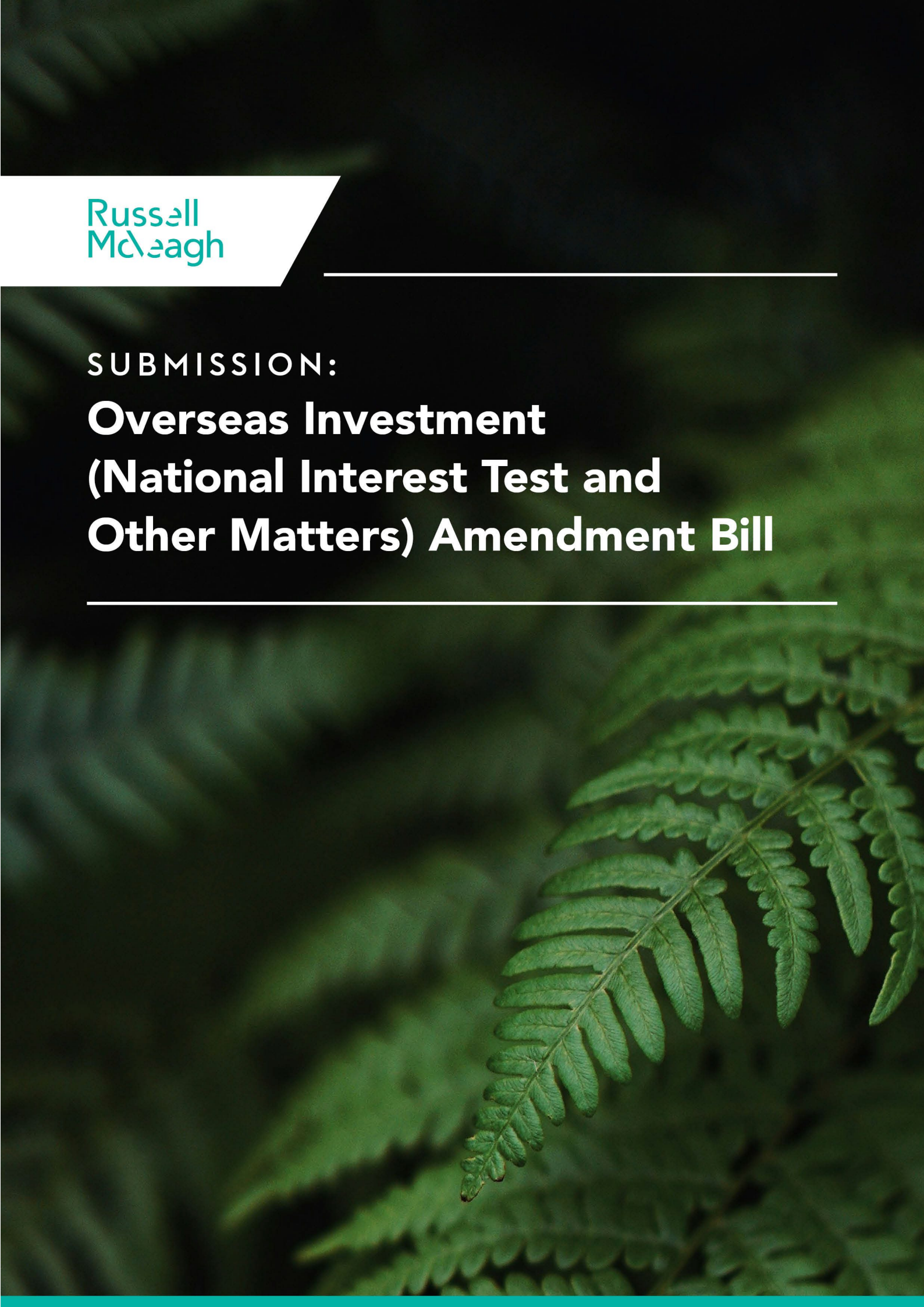
Russell McVeagh

SUBMISSION:

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



SUBMISSION – OVERSEAS INVESTMENT (NATIONAL INTEREST TEST AND OTHER MATTERS) AMENDMENT BILL

1. INTRODUCTION

1.1 Russell McVeagh is pleased to have the opportunity to make a submission on the Overseas Investment (National Interest Test and Other Matters) Amendment Bill introduced on 17 June 2025 ("**Bill**"). We do so as an adviser to a wide range of investors into New Zealand across the full breath of the New Zealand economy, including infrastructure, energy, manufacturing, technology, agriculture and horticulture.

1.2 We welcome the Overseas Investment Act 2005 ("**Act**") reform process and the Bill's objective to appropriately balance the risks of overseas investment with the recognition of its importance as an enabler of economic growth in New Zealand, by reducing compliance costs and decision making timeframes, while also ensuring that the Government has the tools necessary to safeguard New Zealand's national interest, including its national security and public order.

1.3 We agree that New Zealand should continue to be a country which attracts and welcomes high quality foreign investment. New Zealand is highly reliant on offshore capital in order to grow, for businesses to continue to flourish, and for the foundation for a prosperous New Zealand. Overseas investment brings with it a number of significant benefits to New Zealand, including access to financial capital that is essential for economic growth and to develop and sustain employment opportunities. It also brings with it global experience and expertise, which helps to support and develop our domestic talent and encourages innovation and growth across all industries.

1.4 Foreign investors play a significant role in growing New Zealand businesses and creating jobs, which in turn benefits New Zealanders. Global investment and private equity funds provide capital, strategic expertise, and global networks to New Zealand businesses, which help local companies scale operations, expand into new markets, improve operational efficiency, and accelerate innovation. By backing ambitious local management teams and injecting funding for growth initiatives, such as new product development, digital transformation and entry into new offshore markets, these large foreign investors have enabled businesses across sectors like healthcare, manufacturing, technology, and food production to thrive. This has resulted in stronger, more competitive New Zealand businesses and has contributed to significant job creation and upskilling across the New Zealand economy.

1.5 The need for foreign investment is also particularly important in the infrastructure sector. As a small, capital-constrained economy, New Zealand relies on international capital to fund large-scale infrastructure projects that are essential for long-term productivity, connectivity, and resilience. Foreign investment supports the development of vital assets such as transport networks, energy generation and distribution assets, digital infrastructure, and water services, areas that require significant upfront funding and expertise that may not always be available domestically.

1.6 By attracting high-quality foreign investors, New Zealand can accelerate the delivery of major infrastructure projects, create skilled jobs, and enable broader regional development.

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International capital also brings global experience, innovation, and efficiency to project design and delivery. Ultimately, foreign investment helps build the foundations for sustainable economic growth, improves public services, and strengthens New Zealand's competitiveness in a global economy.

1.7 In our experience, despite recent improvements to consent processes and timeframes, the current overseas investment regime is still operating in a manner which disrupts and delays quality investments and investors that are unlikely to present any risk to New Zealand or cause concern for New Zealanders, and results in additional cost, time and execution risk that is disproportionate to the sensitivity and risk of the captured investments. Compliance with the regime remains onerous and time consuming, and these issues are causing potential foreign investors (and some existing foreign investors) to view New Zealand as a less attractive country in which to invest, deterring investment that would otherwise benefit New Zealand without furthering the protective objectives of the Act. Arguably, New Zealand's regime has fallen out of step with the rest of the developed world with its restrictiveness. Certainly, it has fallen well behind what we see in other benchmark countries, such as Ireland.

1.8 While the proposed amendments as set out in the Bill go a long way to addressing some of the key problems with the regime, particularly the timing and outcome uncertainty that comes with the current consent process and requirements, we outline some alternative and additional proposals which we believe are necessary in order to achieve the objectives of the reform, while still ensuring that those investments and transactions that are potentially of greater risk to New Zealand are captured and assessed appropriately. Failing to address some of the existing issues with the Act (that have been excluded from the scope of the current proposed reforms in the Bill) poses a risk of further reducing overseas investor confidence in New Zealand as an investment destination.

1.9 Russell McVeagh would be happy to engage further with the Finance and Expenditure Committee on the matters raised in this submission, or the reform of the Act and the Overseas Investment Regulations 2005 ("**Regulations**") generally. Our submission has been prepared by partners and senior lawyers who are experts in this area and does not purport to represent the views of our clients.

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Executive Summary

Overseas Investment Reform

SUMMARY OF RESPONSE

Submissions on the Bill

Ministerial Directive Letter and the discretion of the responsible Minister and the Government of the day	The details of Overseas Investment Office ("**OIO**") application requirements, conditions that apply to certain investors or investments, and what is (or is not) in the national interest have been left to the discretion of the responsible Minister to publish in the Ministerial directive letter. While we appreciate this creates flexibility for the Government to adjust foreign investment control settings, this creates uncertainty for investors, both in terms of their initial investment and future investments.
Definition of "forestry activity"	The forestry activity definition is limited to plantation forestry for commercial timber production. Permanent and carbon capture forestry activity would not come within this definition, and is considered to be farmland under the Act. Investments in existing harvest forests and carbon capture forests will be treated very differently under the new regime, with investments in the former subject to the national interest pathway, while the latter requires meeting the benefits to New Zealand farm land test.
Incremental investments in farm land and the benefits to New Zealand test	Incremental increases to existing interests in farm land by overseas persons who have already received OIO consent for their initial investment (and demonstrated the benefits of that investment) should be subject to the national interest test rather than requiring new benefits to be established under the benefits to New Zealand farm land test.
Character and capability	The reference to character and capability in the national interest test and consideration of the investor risk factor may lead to this factor being applied more broadly than intended and could be interpreted similarly to the former "good character" and "business experience and acumen" tests that were replaced by the current investor test.
No substantive change in ownership or control of repeat investors	It is not clear what constitutes a substantive change for the purposes of the repeat investor test. We submit that the test should be clarified, to apply a brightline test (for example, 50% or more) to ensure certainty in interpretation and application. Additionally, investors who are substantially controlled by persons who control previously consented investors (such as private equity and investment fund managers who regularly invest in New Zealand) should be considered repeat investors, notwithstanding the particular fund or investment vehicle being utilised may be different.

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Uncertainty on requirements of OIO applications	The absence of clear guidelines on required information and the uncertainty of whether an application will be referred to a stage two assessment under the new national interest test, and what information will be required as part of that assessment, may result in longer application preparation times for investors, longer review times by the OIO and greater transaction uncertainty.
100% ownership and control threshold retained for investments in SIBs	We do not consider that retaining the 100% ownership or control threshold solely for investments in strategically important businesses ("SIBs") is supported by policy. The 100% threshold should be removed for all investments, such that existing owners of 75% or more of a SIB can increase their investment to 100% without requiring further OIO consent.
Technical and drafting amendments	We have proposed certain technical and drafting amendments to the Bill and the existing Act to correct what we perceive to be errors in the drafting and to avoid unintended consequences.
Submissions on the existing Act and the New Zealand foreign investment regime	
$100m significant business assets threshold	The monetary threshold that applies to investments in significant business assets has not changed since 2005 when the Act came into force. This threshold should be adjusted as part of the current reform process, and adjusted periodically going forward, to ensure it only captures the appropriate value transactions.
Alternative monetary threshold for Australian investors	The alternative higher significant business assets monetary threshold for certain Australian investors does not apply if those Australian investors undertake transactions using a New Zealand subsidiary or a newly incorporated Australian entity. This technicality in the Regulations should be amended and should focus on the substance of the underlying investor rather than the form of the particular entity making the investment.
New Zealand citizen foreign investment vehicles	The definition of overseas person should be amended to exclude foreign companies or other foreign registered investment vehicles that are more than 75% owned and controlled by New Zealand citizens. New Zealand citizens who undertake transactions using existing foreign investment entities should not be required to seek OIO consent solely because they elect to undertake the transaction using such entities.
Complex assessment fees	The current approach to applying a complex application assessment fee is unduly costly and disproportionate to the actual complexity of the relevant applications. The complex fee arrangements should be reconsidered as part of the broader consideration of application fees for the new regime.

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SUMMARY OF RESPONSE

Notification threshold for SIBs	Notification to the OIO for investments in SIBs should only be triggered if an ownership or control threshold has been reached or exceeded or where, as a result of such investment, the investor has acquired disproportionate access to or control of the underlying SIB.

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2. MINISTERIAL DIRECTIVE LETTER AND THE DISCRETION OF THE RESPONSIBLE MINISTER AND THE GOVERNMENT OF THE DAY

2.1 The Act gives the responsible Minister the power to direct the OIO by a Ministerial directive letter, and requires the OIO to comply with it. The scope of the Ministerial directive letter is broad, and includes the Government's general policy approach to overseas investment in sensitive New Zealand assets and the conditions of consents or direction orders that should be imposed on investments.

2.2 The Bill expands the scope of the Ministerial directive letter to include the risks or factors that are grounds to suggest that a national interest assessment is required and the Government's preferred approach to undertaking a national interest assessment. The Ministerial directive letter can be amended and replaced from time to time by the responsible Minister without the requirement for public consultation or parliamentary debate.

2.3 This means that in practice, the responsible Minister and the Government of the day can decide what is or isn't in the national interest and has the discretion to block certain transactions or investors from doing business in New Zealand. The ability to change these settings without a formal legislative reform process or any consultation gives rise to significant uncertainty for foreign investors looking to make investment decisions in New Zealand.

2.4 Foreign investors cannot be certain that the Government of the day will not change its view on a particular investor or type of investment (for example investments in certain industries). Transactions that may be approved under the current Government or Minister may be considered to be contrary to the national interest by successive governments or ministers. This uncertainty means that foreign investors are less likely to commit to investments in New Zealand, as they do not have the confidence that foreign investment settings will not be changed with no (or little) notice or consultation, which could lead to incomplete or stranded investments in New Zealand. The certainty of future development is a key factor in making investment decisions.

2.5 We submit that the details of the relevant requirements, conditions and factors to be considered under the national interest test should be included in the Act or Regulations themselves rather than being subject to ministerial discretion on a case-by-case basis or within the scope of the Ministerial directive letter.

3. DEFINITION OF "FORESTRY ACTIVITY"

3.1 The proposed definition of "forestry activity" in the Bill is limited to plantation forestry for harvest. This is consistent with how the current Act determines what type of forestry land is to be assessed under the special forestry test, as opposed to forestry land that is required to be assessed under the benefits to New Zealand modified farm land benefits test.

3.2 The New Zealand forestry industry undertakes a range of forestry activities and uses for forestry land. These activities include both traditional plantation forestry for commercial production, as well as permanent forestry to be used to absorb and store carbon dioxide. Permanent and carbon capture forestry would not come within the proposed definition of "forestry activity" and, while subject to interpretation, would therefore likely be considered farm land under the Act.

3.3 Under the proposed changes in the Bill, overseas investments in existing plantation harvest forests and carbon capture forests will now be treated very differently under the regime. Investments in existing

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plantation harvest forests (whether by acquisitions of the relevant land, lease or forestry right directly, or investments in companies that have an interest in the relevant forestry land, lease or forestry right) will be subject to the national interest pathway, and will therefore seemingly be approved so long as they are not contrary to New Zealand's national interest.

3.4 However, investments in existing carbon capture forestry will be required to meet the benefits to New Zealand modified farm land benefits test, showing that the investment will, or is likely to, benefit New Zealand, with significant weight placed on factors relating to economic benefits and the oversight and participation by New Zealanders. This test will apply the same way to investments in existing permanent carbon forestry as it will for investments in land used for traditional faming activities.

3.5 For investments in existing established permanent forestry, it can be difficult for investors to demonstrate how the investment will benefit New Zealand under the required factors, particularly when the transaction is the transfer of ownership in upstream entities that have interests in the relevant land from one overseas investor to another, where there is no impact to the underlying business or land.

3.6 We submit that such investments are not truly investments in farm land, and therefore should not be required to meet the benefits to New Zealand test. Investments in existing permanent forestry should be treated the same as investments in existing harvest forestry, and should therefore be subject to the new national interests test only.

3.7 To achieve this, the proposed definition of "forestry activity" should be amended to remove the requirement for the activity to involve harvest for wood, and should expressly include activities relating to carbon capture activities.

3.8 The expansion of the definition of forestry activity will not result in an increase of conversions of existing farm land to forestry. Farm to forestry conversions are already captured under the benefits to New Zealand test and will continue to do so. Existing permanent carbon forestry is not farm land, and therefore should not be treated with the same sensitivity as farm land.

3.9 There is also other legislation that regulates permanent forestry, which is in itself being considered as part of wider reforms of the industry (as set out in the Parliamentary Commissioner for the Environment report: "Alt-F Reset: Examining the Drivers of Forestry in New Zealand"). We submit that alternative regulatory controls are the more appropriate way to regulate permanent forestry, therefore there is no need for the Act to impose additional burdensome regulatory processes on investments in existing permanent forestry once it has been established.

4. INCREMENTAL INVESTMENTS IN FARM LAND AND THE BENEFITS TO NEW ZEALAND TEST

4.1 Farm land has essentially been excluded from the scope of the proposed changes under the Bill and the new national interest test. This means that investments in farm land, including investments in companies that have an interest in the relevant farm land, will continue to be subject to the benefits to New Zealand modified farm land benefits test, requiring that the investment will, or is likely to, benefit New Zealand (with significant weight placed on factors relating to economic benefits and the oversight and participation by New Zealanders).

4.2 In particular, incremental increases of existing investments in farm land (for example, where an upstream shareholder increases its existing more than 25% ownership or control interest to (for example) a 50% ownership or control interest) still requires the investor to meet the benefits to New

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Zealand modified farm land benefit test. This is still the case where the existing investor applied for a received OIO consent in respect of their initial investment, and met the benefits to New Zealand test in respect of that investment.

4.3 We submit that incremental increases of existing investments in farm land through the relevant ownership or control thresholds, where an existing investor has already received OIO consent and shown the benefits that the investment will bring to New Zealand, should not require new and additional benefits (particularly where the original benefits are still being realised and the conditions of the original consent are being met) but should be subject to the new national interest test.

4.4 It can be difficult for existing owners of farm land (or of interests in companies that own farm land) to show how increasing their ownership, say by acquiring shares in a company from a co-shareholder or buying out a minority shareholder, will result in any benefits to New Zealand under the relevant factors, particularly where there is no change to the underlying business or land and no additional capital is being invested.

4.5 The OIO already accepts that a sufficient benefit can include permitting shareholding changes (see decision 202400768), where the OIO accepted that a benefit for a transaction involving a change in shareholding included that it will improve New Zealand's international reputation in allowing transactions involving existing shareholders to increase their interests.

4.6 If allowing the change of shareholding is a benefit in itself (which the OIO has accepted) then it follows that such changes in shareholding should be automatically permitted without the requirement of other benefits being demonstrated, so long as there are no national interest concerns.

5. CHARACTER AND CAPABILITY FACTOR

5.1 We broadly agree with the non-mandatory factors that the OIO may have regard to when undertaking a national interest assessment. However, we are concerned that the reference to "character and capability" as part of the investor risk factor in the new proposed section 19C(2)(a), may lead to this factor being applied more broadly than intended.

5.2 Specifically, the "character and capability" phrasing is similar to the expansive "good character" and "business experience and acumen" tests that were applied prior to the introduction of the current investor test. The current negative brightline test sought to restrain the scope of matters being considered by the decision makers which, under the prior good character test, had expanded to the point where any allegations, regardless of the credibility of the source, needed to be addressed.

5.3 The previous "good character" and "business experience and acumen" tests were problematic for a number of reasons. In relation to the former good character requirements, the Minister was required to consider offences and contraventions of the law (concepts that were undefined) and "any other matter that reflects adversely on the person's fitness to have the particular overseas investment". In order to meet this test, applicants were required to provide all material that could possibly fall within the broad scope of these requirements, even if it clearly had no bearing on character.

5.4 The good character issue, in particular, resulted in additional and disproportionate delays, costs and angst for applicants, with associated reputational damage to New Zealand as an investment destination. Applicants were too frequently required to address immaterial or otherwise irrelevant matters that have no bearing on the character of the individuals with control, or related to entirely

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different people, and often necessitated formal responses from senior personnel on these matters. The OIO would often undertake google searches of investors, directors and owners of companies and ask applicants to explain any potentially negative results they found, even if the results were not based on credible sources, and in some cases, were in relation to a different person with the same or similar name. The process of responding to these requests and engaging with senior personnel within global reputable businesses was embarrassing and entirely out of line with foreign direct investment regulators from other jurisdictions.

5.5 While the business experience and acumen factor was not as problematic as the good character factor, Treasury recognised at the time that it added little to the investor assessment process and was, therefore, wasteful of both the OIO's and applicant's time in addressing it. Requiring directors of foreign investors to positively establish that they had the appropriate business experience to run the business that was being acquired was a burdensome and time intensive process. Businesses select the senior personnel as managers and directors for a range of valid reasons that are in the best interests of that business. In our view, so long as there are no issues or risks associated with those senior personnel (ie there are no negative factors associated with them) then this should be sufficient in itself to allow such investors to make investments in New Zealand.

5.6 We are confident that reintroducing the former "good character" and "business experience and acumen" tests is not the intention of this section, given the test has already been updated and the purpose of this Bill is to remove unnecessary and overly complicated barriers to investment.

5.7 Therefore, we submit that this provision should be updated either to delete the references to "character and capability" entirely, or to direct the decision maker to consider only those factors that are relevant as part of the current investor test (if required).

5.8 In our view, clarifying the test in this way will ensure overseas investors can easily understand the factor being considered, and that the factor is considered consistently.

6. NATIONAL INTEREST TEST APPLICATIONS WHERE NO SUBSTANTIVE CHANGE IN OWNERSHIP OR CONTROL

6.1 We are supportive of the proposed new repeat investor provisions, which the OIO may apply unless there has been a "substantive change to the individual or individuals with ownership or control of the relevant overseas person" since the earlier assessment was made.

6.2 However, it is not clear what constitutes a substantive change for this purpose. For ease of application, it would be preferable to apply a brightline test (for example, a change to 50% or more of the ownership or control of the investor). This is particularly important for larger entities listed on stock exchanges, which typically have larger boards of directors with regular rotating appointments, such that it is highly likely one or two of those directors will change each year. This should not be considered substantive, but we are concerned that it may be applied as such, therefore negating the value of the repeat investor provisions.

6.3 We submit that a new subsection is added to proposed section 29B as follows:

(5) *For the purposes of this section, a change to the individual or individuals with ownership or control of the relevant overseas person will be substantive if there is a change in 50% or more of individuals with control of the relevant overseas person.*

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6.4 As a broader point, the repeat investor test should not be limited to the particular entity that made the previous investment, but should apply to any investors within the same ownership group or substantively under the same control as the previous investor.

6.5 An example of this is a private equity or investment fund managed by a reputable investment manager. Investments are often made using newly established funds or ownership structures for each particular investment. Such funds are currently considered to be new overseas investors, even if they have been established by the same investment manager or private equity fund.

6.6 We submit that such investment funds or structures should be considered to be repeat investors if they are essentially controlled by the same persons as previous investors who have received OIO consent.

7. UNCERTAINTY FOR REQUIREMENTS OF OIO APPLICATIONS

Information requirements

7.1 The scope of information that will be required to be submitted by applicants seeking OIO consent under the new National interests pathway is not set out in the Bill and will not be included in the amended Act. The scope of information required, including the application forms and the supporting documentation, will be largely determined by the OIO, as is currently the case.

7.2 We understand that for applications that require a stage two national interest assessment, it is proposed that the OIO will require additional information in order to make an assessment as to whether it has reasonable grounds to consider that the transaction may be contrary to New Zealand's national interest.

7.3 Depending on what information is required at this stage of the assessment process, compared to the information that is required at the initial / stage one process, the gathering of this information and documentation by applicants and their advisers is likely to take additional time to respond to the requests for information. This will result in increases to the total timeframe of the consent process, as we expect the OIO review process will pause until the requested information has been provided, as is the current approach taken by the OIO.

7.4 Investors will therefore be driven to acquire and supply all possible information in their applications, in case the application gets escalated to stage two, so as to not result in time delays. This will lead to longer application preparation times for applicants, as well as more fulsome applications, potentially including a larger amount of information and documentation at the outset, even for low risk transactions. This will likely result in the OIO taking longer to process such applications as part of the stage one review, in order to review all the information and documentation submitted.

7.5 The OIO should publish what information will be required for applications involving stage one and stage two national interest assessments, and provide clear guidance on what information will or will not be required in order to keep application preparation times, review times, and costs to a minimum.

Fees

7.6 There is also uncertainty about how application fees will be charged under the new national interest pathway. The OIO has not yet published an updated schedule of fees for the different consent applications.

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7.7 Under the current framework, there is an additional $83,700 fee for applications that require a national interest assessment. If the OIO charges a similar fee for applications that require a stage two national interest assessment, investors will not know at the outset whether their application will incur a material additional fee in the event a stage two assessment is required by the OIO (other than for investments in SIBs and by non-New Zealand government investors, which will automatically require a stage two assessment).

7.8 The potential for a significant fee in addition to the known lodgement, assessment and monitoring fees is a material consideration for investors and is likely to deter investors from making applications where there is a uncertainty in the fees they will be required to pay, particularly where there is no national interest concern but the OIO determines in its own discretion to escalate the transaction to a stage two assessment.

7.9 We submit that the OIO should consider the most appropriate method for charging investors application fees in a way that is fair and reasonable, avoids hidden costs and unexpected fee increases and is proportionate to the actual time, cost and resources required by the OIO to assess such applications.

8. 100% OWNERSHIP AND CONTROL THRESHOLD RETAINED FOR INVESTMENTS IN STRATEGICALLY IMPORTANT BUSINESSES

8.1 Under the current Act, an overseas person that has an existing 75% or more ownership or control interest in securities of a person requires OIO consent for transactions that result in that person increasing their ownership or control interest to 100%.

8.2 The Bill proposes to remove the 100% ownership or control interest threshold, such that investors who have an existing 75% or more interest can acquire the remainder of the interests without requiring OIO consent. However, this excludes investments in SIBs, in which the 100% threshold has been retained.

8.3 We do not consider that retaining the 100% ownership or control threshold solely for investments in strategically important businesses is supported by policy. We therefore submit that the 100% ownership or control interest threshold should be removed for all investments and assets.

8.4 We do not consider that there is any substantive difference in practice between the level of control that an investor has with ownership above 75% (and up to 99.99%, which is currently permitted) compared to 100%. Retaining this threshold for investments in SIBs is burdensome, particularly if the application will automatically require a stage two assessment and therefore applications will require additional and more fulsome information and documentation, and will not be decided within the 15 working day stage one assessment timeframe.

8.5 We consider that such investments are low risk from a national interest perspective, on that basis that the investor looking to increase their ownership in a SIB already has significant level of ownership or control (and in practice, likely entirely controls the investment at a lower than 100% ownership). We therefore do not consider that the requirement to obtain consent for an increase in ownership and control by an existing investor who has an ownership or control interest of 75% or more is proportionate to the application requirements and transaction delays that will arise as a result.

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9. TECHNICAL AND DRAFTING AMENDMENTS

9.1 We have proposed certain technical and drafting amendments to the Bill and the existing Act to correct what we perceive to be errors in the drafting and to avoid unintended consequences.

Clause 19 of the Bill: New section 29B inserted (National interest test applications where no substantive change in ownership or control)

9.2 The proposed new section 29B(3) refers to "*the individual or individuals with ownership or control of the relevant overseas person...*" The existing Act includes separate concepts of "individuals with control of the relevant overseas person" and "ownership or control interest".

9.3 We presume the wording in new section 29B(3) is not intended to create a new concept that is different to or expands the existing established "individuals with control of the relevant overseas person" or "ownership or control interest" concepts that are currently used in the Act.

9.4 On that basis, we submit that the words "ownership or" should be deleted from the proposed new section 29B(3), such that it reads "*the individual or individuals with control of the relevant overseas person...*"

9.5 If the above wording is retained, it is not clear whether the regulator is now required to take into account other ownership considerations in addition to the existing "individuals with control of the relevant overseas person" or "ownership or control interest" concepts when determining whether there has been a substantive change to the repeat investor.

9.6 We note the proposed drafting for the new section 29B(5) set out in our submission in paragraph 6.3 above should be amended accordingly to remove the reference to "ownership" if this drafting change is accepted.

Section 16(1)(e) of the Act: Criteria if some relevant land is residential and some or all is sensitive for some other reason

9.7 The proposed amendments to section 16 of the Act will result in investments in certain sensitive land being required to meet the old benefits to New Zealand and investor tests, where such land should now go through the new national interest test. Accordingly, sections 16(1)(d) and 16(1)(e) should be amended.

9.8 The proposed new section 16(1)(d) captures land where some of the land is residential but some or all of the land is sensitive for some other reason. This means that all of the relevant land, whether that part of the land is residential or not, will be subject to the commitment to reside test or the benefit to New Zealand test. The part of the land that is sensitive for another reason (and is not residential land (or farm land) should be decided under the national interest test.

9.9 Accordingly, section 16(1)(d) should be amended to add the word "*if the relevant land is all residential land but its not…*"

9.10 Further, the new proposed section 16(1)(e) captures land that is not described in paragraphs (b) to (d). As paragraph (c) is proposed to be repealed, 16(1)(e) captures land that is either (i) partly residential and partly or all otherwise sensitive; and (ii) land that is sensitive land, but not residential. For such land, the benefits to New Zealand and the investor test apply.

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9.11 For land that is partly residential and partly or all otherwise sensitive, only the part of the land that is residential should be subject to the benefits to New Zealand test, whereas the land that is otherwise sensitive should be subject to the national interest test, provided it is not farm land. Similarly, for land that is sensitive land, but not residential, provided it is not farm land, only the national interest test should apply.

9.12 Accordingly, section 16(1)(e) should be amended so it reads:

> *(e) if some, but not all, of the relevant land is residential land then paragraphs (b) and (d) shall apply to that part, in each case to the extent applicable:*

9.13 Section 16(1)(fa) should also be amended so it reads:

> *(fa) if:*
>
> *(i) the relevant land is not described in paragraphs (b), (d), (ea) or (f), the national interest test is met; and*
>
> *(ii) paragraph (e) applies to the relevant land, for that part of the relevant land which is not residential land, the national interest test is met.*

9.14 Based on the above amendments, the proposed new section 16(1)(fa) would then capture investments in sensitive land (or parts thereof) that is not residential land or farm land, with such investments being subject to the national interest test, which we understand is the intention of the proposed amendments.

9.15 We would be happy to work with the Finance and Expenditure Committee on the above drafting suggestions to ensure that the proposed amendments to the legislation have the desired impact and accurately reflect the purpose of the proposed reforms.

10. SIGNIFICANT BUSINESS ASSETS THRESHOLD

10.1 Section 13(1) of the Act provides for the monetary threshold that determines whether a transaction constitutes an investment in significant business assets. This threshold is set at $100 million, or an alternative threshold set out in the Regulations. The $100 million threshold was set in 2005 when the Act first came into force and has not been updated since then.

10.2 We submit that the Act should be amended to adjust the significant business assets monetary threshold to a more appropriate threshold based on valuations today. It should also be periodically updated to reflect changes in valuations from time to time.

10.3 According to the Reserve Bank of New Zealand inflation calculator, $100 million in 2005 is equivalent to approximately $167 million in today's terms. Similarly, $100 million today is the equivalent to approximately $59 million in 2005.

10.4 By retaining a fixed financial threshold, the Act now captures proportionately more transactions at a lower valuation in real terms. In our experience, a number of transactions are being undertaken at values around the $100 million threshold. These transactions are only now being captured due to inflation of asset prices and transaction valuations, and would likely not have been transactions that would have been subject to OIO consent if undertaken in 2005.

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10.5 The adjustment of the significant business assets monetary threshold would ensure that the appropriate value transactions are being captured and proportionately lower value transactions are not subject to OIO consent, which would reduce compliance costs and delays for the parties to such transactions, encouraging more investment in relevant New Zealand businesses.

10.6 The OIO (or Government) should also commit to adjust the threshold periodically to ensure that the threshold appropriately reflects valuations from time to time. Balancing this is the need for certainty for investors, so however this adjustment is made, it should be clearly published and accessible to the public so that investors are clear on what the relevant threshold is at the time of any investment.

10.7 We do not consider that this would be a complex adjustment to the Act, either in terms of its interpretation or enforcement. A similar mechanism is used to adjust the significant business assets threshold for Australian non-Government and Government investors, where the OIO publishes the adjusted threshold each year in the Gazette and on its website.

11. AUSTRALIAN NON-GOVERNMENT AND GOVERNMENT INVESTORS

11.1 The Regulations provide for an alternative higher significant business assets monetary threshold that applies to investments made by Australian non-government investors or Australian government investors. These thresholds are significantly higher than the default $100 million significant business assets threshold set out in the Act (for 2025, the alternative thresholds are $650 million and $136 million respectively).

11.2 The alternative higher threshold applies to Australian non-government investors who are:

(a) an Australian individual;

(b) an Australian enterprise (subject to certain requirements); and

(c) a non-NZ enterprise that is acting through an Australian branch of the enterprise (subject to certain requirements).

11.3 However, due to this definition, if an Australian non-government investor seeks to undertake a transaction in New Zealand using a New Zealand subsidiary (even a 100% wholly owned subsidiary) or a newly incorporated Australian entity, the definition does not apply to that subsidiary and therefore, the entity undertaking the transaction constitutes an "overseas person" and the ordinary monetary threshold applies. A similar outcome applies to an Australian government investor.

11.4 In our experience, a significant number of Australian investors that would fall within the definition of Australian non-government investor or Australian government investor do not get the benefit of the alternative monetary threshold because they undertake the investment in New Zealand using a New Zealand subsidiary. These transactions are therefore subject to OIO consent where they would not be if they were being undertaken by the Australian investor directly. This results in transaction delays and increased costs.

11.5 We submit that the definition of Australian non-government investor and Australian government investor should include New Zealand subsidiaries that are wholly owned by an Australian non-government investor or an Australian government investor, and should focus more on the substance of who is ultimately behind the entity making the investment.

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11.6 We do not consider that there is any policy rationale to the higher threshold applying to Australian individuals or companies, but not to New Zealand subsidiaries that are entirely owned and controlled by such Australian individuals or companies.

11.7 In providing for the higher threshold for Australian investors, the OIO and the Government has presumably accepted that in scope Australian individuals and enterprises pose an inherently lower risk to New Zealand than those from other countries. If such Australian investors choose to undertake transactions in New Zealand using New Zealand entities, in our view this is of no greater risk to New Zealand, and in fact is of even less risk to New Zealand, as the entity making the investment and owning the assets is subject to other New Zealand laws and regulations.

12. NEW ZEALAND CITIZEN FOREIGN INVESTMENT VEHICLES

12.1 Under the current Act, if a New Zealand citizen wishes to make an investment in New Zealand via a corporate structure that includes an overseas entity (even where the New Zealand citizen wholly owns that overseas entity), then the "overseas persons" definition is triggered, and consent may be required for the investment if the relevant thresholds are met.

12.2 Conversely, if the investment was made directly by the New Zealand citizen (or through solely New Zealand entities) then the "overseas persons" definition would not be triggered.

12.3 This is problematic as high-net worth individuals often prefer to make investments via their usual investment structures and entities (which often include overseas corporate entities), to ensure all investments are channelled through a common structure (for simplicity, cost, and control reasons).

12.4 We submit that the definition of "overseas person" should be amended to exclude overseas corporate entities where New Zealand citizens retain at least 75% ultimate ownership and control of each entity in the investment structure (including any overseas entities).

13. FEES FOR COMPLEX APPLICATIONS

13.1 In our view, the approach to changing a higher fee for "complex" applications is inflexible and disproportionate to the actual complexity of the applications that are deemed to be "complex" for the purposes of the Act.

13.2 Regulation 34A provides that a complex application fee applies if the application includes five or more relevant overseas persons or 10 or more individuals with control of the overseas persons. The difference between a standard and a complex application fee is significant.

13.3 By way of example, the assessment fee for a standard Sensitive land: Benefit to New Zealand – Farm land benefit test application is currently $51,700 (excluding the lodgement fee and monitoring compliance fee). The application fee for a complex Sensitive land: Benefit to New Zealand – Farm land benefit test application is currently $119,600 (a difference of $61,700).

13.4 The OIO's assessment fee for a "complex" application is therefore more than double that for a standard application.

13.5 In some instances, an application can be deemed to be a complex application simply because there is one more individual with control of the relevant overseas person. On that basis, the exact same

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application with 10 IWC's would cost an applicant $61,700 more than the exact same application with only nine IWCs.

13.6 Similarly, a lengthy and complicated application, with large amounts of information and documentation for the OIO to review, but with only nine IWCs would be deemed to be a standard application, whereas an application that was very simple, but had 10 IWCs (due to the large number of directors on the board of the relevant overseas person) would be deemed to be complex.

13.7 While we appreciate that the OIO requires some method to account for the additional time, resources and costs that it incurs in reviewing more complicated and lengthy applications, we do not consider that the current approach is an appropriate method of doing so. We expect that the current binary determination of a complex application simply due to one additional IWC or ROP often has no bearing or relativity to the amount of resource or cost incurred by the OIO in assessing these applications.

13.8 As discussed above, while it is not yet known what the fee structure will be for the new national interest test, as the sensitive land: benefit to New Zealand test is being retained for overseas investments in farm land, we submit that as part of the overall consideration of fees and application fee structures, this point is taken into consideration and the provisions in the regulations that apply to fees are re-examined accordingly.

13.9 As a more general comment on fees, the current application fee framework is highly costly and disproportionate to the risk to New Zealand brought about by the relevant transaction, or to the resources required to process the relevant application, particularly when a national interest assessment is triggered. In our experience, application fees for transactions have often reached amounts in excess of $200,000, even when the consent required has been triggered by a minor change in ultimate ownership of a low risk New Zealand asset or interest in land.

13.10 The Government should consider whether an alternative funding model should be introduced to reduce application fees and the corresponding cost to foreign investors (many of whom are actually majority New Zealand owned and operated businesses who are "overseas persons" by virtue of having an foreign investor with a qualifying ownership or control interest), such as the funding model used to resource the Commerce Commission.

14. NOTIFICATION THRESHOLDS FOR STRATEGICALLY IMPORTANT BUSINESSES

14.1 Under the current Act, an investment of any amount in a SIB (which can include the acquisition of a single share or of any value) triggers a notification under the National Security and Public Order regime (other than with respect to listed issuers or media businesses). This notification is also triggered by an existing owner acquiring shares or securities of a different class to those it already holds.

14.2 While certain categories of SIBs trigger a voluntary notification, others, including investments in businesses involved in military or dual use technology, trigger a mandatory notification. For such mandatory notified investments, the investment cannot be given effect until notification is made and clearance to proceed to given by the OIO.

14.3 The requirement to notify and await clearance from the OIO for these transactions, particularly when the investor only acquires an immaterial ownership interest, and does not obtain any access or control of the underlying business, results in delays and costs that are disproportionate to the risk associated with such investments.

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14.4 We submit that the notification to the OIO for investments in SIBs should only be triggered if an ownership or control threshold has been reached or exceeded (as with the consent regime, at 25%, 50% and 75%, but not 100%, for the reasons set out in the submission above) or where as a result of such investment, the investor has acquired disproportionate access to or control of the underlying SIB.

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