

24 May 2019

Overseas Investment Act Reform
The Treasury
PO Box 3724
Wellington 6140

By Email: overseasinvestment@treasury.govt.nz

Dear Sir/Madam

REFORM OF THE OVERSEAS INVESTMENT ACT 2005 CONSULTATION DOCUMENT

Introduction

TIA is the peak body for the tourism industry in New Zealand. With around 1,600 members, TIA represents a range of tourism-related activities including hospitality, accommodation, adventure and other activities, attractions and retail, airports and airlines, transport, as well as related tourism services.

In preparing this letter we have engaged with TIA members from the hotel sector as well as the Walking Access Commission (WAC). We thank these organisations for their feedback.

Feedback on the Consultation Document

1. What should we screen – Purchases of land next to sensitive land, and leases of sensitive land.

Access to Public Conservation Land

An area of concern for the tourism industry is when overseas investors purchase land that currently includes public walkways or easements to Public Conservation Land. There have been well-publicised examples of where this access has been reduced or prohibited under a new ownership agreement. WAC summarise it well in their submission – “This category includes situations where historical informal agreements to access waterways, foreshore or PCL have lapsed, and where there are existing demands of specific access routes. The latter may include longstanding public demands to improve access to PCL (such as Kawakawa Station, where consent for purchase was granted under the OIA in 2015), and access for existing projects (such as Te Araroa Trail, cycleways, and community driven active transport projects).”

We support the recommendation made by WAC that "...the reformed Act requires a mandatory condition for the establishment of access to and along lakes, rivers and the coast, and to land managed by the Department of Conservation, where this does not currently exist."

The responses from the hotel sector on this section include:

- "The OIA is a barrier for companies who have large overseas shareholders / owners who are keen to make significant investments in businesses and land in New Zealand. Obtaining Overseas Investment Office (OIO) consent is a time-consuming and costly process which does make bids from overseas companies unattractive. Applications are costing upwards of six figures for external costs (lawyer, consultant and OIO fees) in addition to the large burden placed on executive time and focus. If two companies were competing for the same business or piece of (sensitive) land, the company which would not need to seek OIO consent would have a time advantage to complete the transaction so companies who do require OIO consent have to plan their transactions well in advance and allow for sufficient time for consent to be obtained. All that said, given the small size of NZ capital markets, the reality is that major transactions will likely involve an overseas component of some sort so having OIO consent as a condition of an acquisition agreement is not uncommon."
- "I understand there is sensitivity re selling large blocks of land (e.g. large farms, high country stations, etc.) I'm sure most NZ'ers would understand that there should be some restrictions around the sale of such land. But I'm not sure that the sale of existing hotel assets (including land) needs to be seen as 'sensitive'. There probably should be sensitivity re sale of 'greenfields' sites for potential hotel investment, or luxury lodge sites, especially if the development never happens e.g. premium lakefront land."
- A comment that amendments to sensitive land need to be reviewed. The example given is where hotels adjoin council land such as a carpark or vacant council land. This currently requires OIO approval and in their view "is red tape that doesn't need to exist".

2. Who should we screen – Drawing the line on the level of control or ownership that makes a 'New Zealand company'

We received a range of feedback on this section, provided below:

- "From what I understand, the current process involves the Minister making a final decision re OIO approvals. It seems there are unexplained and unreasonable delays with the current system, and this must be a disincentive to investors into NZ. I would have thought that setting a deadline for a decision once the application is complete would be a good idea. Say 3 months maximum."
- "The current definition of "overseas person" imposes a significant regulatory and commercial burden. Currently the test thresholds are 25% overseas shareholding / voting

control / control of the governing body. This has given rise to perverse outcomes where shareholding (but not control of the governing body) has hovered around the 25% threshold from day or week to day or week depending on the level of share trading by overseas investment institutions who have no wish to control the board. Rather than look at the level of shareholding, “control” must depend on whether a particular shareholder has control of the board of directors / governing body. If that is the standard to be set, the threshold for overseas ownership could be as high as 40-45% without having to designate a company as an “overseas company.”

- “Over 50% of hotels are already foreign owned, so the transfer for one foreign party to another via OIO seems pointless.”

3. How can we improve the screening process – Assessing investors’ character and capabilities, and the potential impacts of the investment

We received one response to this section. In summary the respondent noted they considered this to be “...a very technical issue...and prefers Option 2”.

Conclusion

Feedback from our respondents demonstrate that these reforms are complex and potentially significant. Should you require more information or further discussion from the tourism industry we would be willing to arrange a meeting between industry representatives and Treasury officials to discuss the proposals and their impacts on tourism in more detail.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Roberts', written in a cursive style.

Chris Roberts
Chief Executive