

OVERSEAS INVESTMENT BILL

EXPLANATORY NOTE

THIS Bill establishes a Commission to consider proposals for overseas investment in New Zealand. The Commission is to be called the Overseas Investment Commission. The functions of the Commission under the new Act are advisory and supervisory, but regulations may be made under the new Act authorising the Commission to exercise other functions and powers (including any discretionary power or authority) relating to overseas investment in New Zealand.

Clause 1 relates to the Short Title.

Clause 2 relates to interpretation. The definition of the term "overseas person" follows, with some modifications, the definition of the same term used in the Overseas Take-overs Regulations 1964 (S.R. 1964/221). *Sub-clauses (2) and (3)* follow provisions contained in subclauses (6) and (7) of section 28 of the Reserve Bank of New Zealand Act 1964.

Clause 3 establishes the Commission.

Clause 4 relates to appointing deputies of members.

Clauses 5 and 6 relate to qualifications for membership and casual vacancies.

Clause 7 relates to procedural matters at meetings of the Commission.

Clause 8 enables resolutions of the Commission to be passed without a meeting.

Clause 9 relates to the functions of the Commission.

Clause 10 enables fees and travelling allowances to be paid to the appointed members of the Commission.

Clause 11 provides that the members of the Commission are not personally liable for any act or default of the Commission done in good faith.

Clause 12 relates to members' interests, and includes the Overseas Investment Commission in Part II of the First Schedule to the Local Authorities (Members' Interests) Act 1968.

Clause 13 enables the Reserve Bank of New Zealand to provide secretarial and clerical services for the Commission.

Clause 14 empowers the Governor-General to make regulations for various purposes relating to overseas investment. At present, regulations made under the Reserve Bank of New Zealand Act 1964 relate to many of those purposes.

Clause 15 relates to ministerial consents, and, with slight changes, follows the precedent of section 50A of the Reserve Bank of New Zealand Act 1964 (as inserted by section 3 of the Reserve Bank of New Zealand Amendment Act 1968, and amended by the Reserve Bank of New Zealand Amendment Act 1970).

Clause 16 relates to delegation by the Minister of Finance and the Commission of their respective powers under the new Act.

Clause 17 relates to offences against the new Act.

Clause 18 relates to penalties for offences.

Clause 19 provides that the new Act is to be administered in the Reserve Bank of New Zealand.

Hon. Mr Rowling

OVERSEAS INVESTMENT

ANALYSIS

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A BILL INTITULED

An Act to make better provision for the supervision and control of overseas investment in New Zealand

BE IT ENACTED by the General Assembly of New Zealand
5 in Parliament assembled, and by the authority of the same,
as follows:

1. Short Title—This Act may be cited as the Overseas Investment Act 1973.

2. Interpretation—(1) In this Act, unless the context
10 otherwise requires,—

“Commission” means the Overseas Investment Commission constituted by this Act:

- “Head office”, in relation to a body corporate, means the place from which its administrative management is conducted:
- “Minister” means the Minister of Finance:
- “Money” includes the bank notes and other currency, 5
postal notes, and money orders of New Zealand or any other country: and also includes promissory notes and bills of exchange:
- “Nominee”, in relation to an overseas person, means—
- (a) Any company directly or indirectly controlled 10
by the overseas person or by any company that is the nominee of the overseas person; or
- (b) Any company that directly or indirectly controls or is interested in, beneficially or otherwise, any shares in the capital of the overseas 15
person or of a nominee of the overseas person or that is entitled, directly or indirectly, to any part of the profits of the overseas person or a nominee of the overseas person; or
- (c) Any person subject to the direction or control, 20
whether direct, indirect, general, or specific, of any company that is an overseas person or the nominee of an overseas person, whether or not the direction or control is legally enforceable; or
- (d) Any person who, in any transaction, acts as 25
agent, trustee, representative, or in any way on behalf of the overseas person or a nominee of the overseas person or is in any way subject to the direction, control, or influence of the overseas person or a nominee of the overseas person, whether or not, 30
in respect of the transaction, the relationship between that person and the overseas person or nominee is such as to confer legally enforceable rights on either party:
- “Overseas investment” means any investment in New 35
Zealand by an overseas person; and includes any proposal for overseas investment in New Zealand by an overseas person:
- “Overseas person” means—
- (a) Any person not ordinarily resident in New 40
Zealand; or

5 (b) Any company or body corporate that is incorporated outside New Zealand, or any company within the meaning of the Companies Act 1955 that is for the purposes of that Act a subsidiary of any company or body corporate incorporated outside New Zealand; or

10 (c) Any company within the meaning of the Companies Act 1955, in which the right to exercise or control the exercise of 25 percent or more of the voting power at any general meeting of the company is held by any overseas person or overseas persons,—

15 and includes the nominee of any overseas person whether the nominee is himself an overseas person or not:

“Person” includes any individual person, a corporation sole, a corporation aggregate, and any association or combination of individual persons or corporate or unincorporate bodies:

20 “Property” has the same meaning as in the Property Law Act 1952:

25 “Securities” includes shares, stock, bonds, debentures, debenture stock, mortgages, liens, treasury bills, coupons or warrants representing dividends or interest, and life or endowment insurance policies, in whatever currency the securities are expressed and whether they are situated in New Zealand or elsewhere; and also includes any document or means whereby the right to the ownership or provision of any money or security, or any interest therein, may be exercised; but does not include promissory notes or bills of exchange.

30 (2) For the purposes of this Act, an individual shall be deemed to be ordinarily resident in New Zealand at any time if at the time—

35 (a) He is domiciled in New Zealand; or

40 (b) He is residing in New Zealand and his usual place of abode is, and has been for the immediately preceding period of 12 months, in New Zealand, whether or not he has been occasionally or temporarily absent from New Zealand during that period.

- (3) For the purposes of this Act—
- (a) A body corporate shall be deemed to be ordinarily resident in New Zealand if it is incorporated in New Zealand or has its head office in New Zealand:
- (b) Where any body corporate incorporated outside New Zealand and carrying on business through a branch or branches in New Zealand does not have its head office in New Zealand, each such branch shall be deemed to be a separate person and shall, together with the person in New Zealand for the time being having control of the business in New Zealand, be deemed to be ordinarily resident in New Zealand, and such persons shall in respect of the branch be jointly and severally liable accordingly; but nothing in this paragraph shall be construed to relieve the body corporate from any obligation or liability to any penalty under this Act or any regulations made under this Act.

3. Overseas Investment Commission—(1) There is hereby established a Commission to be called the Overseas Investment Commission.

- (2) The Commission shall consist of—
- (a) Two members (referred to in this Act as appointed members) who shall be appointed by the Governor-General on the recommendation of the Minister, and of whom one shall be appointed as Chairman:
- (b) The Governor of the Reserve Bank of New Zealand or such officer of the Reserve Bank of New Zealand as the Governor may from time to time nominate as his representative:
- (c) The Secretary to the Treasury or such officer of the Treasury as the Secretary to the Treasury may from time to time nominate as his representative:
- (d) The Secretary of the Department of Trade and Industry, or such officer of the Department of Trade and Industry as the Secretary of the Department may from time to time nominate as his representative.

(3) The appointed members shall be appointed for a term of not more than 3 years, but may be reappointed.

(4) The powers of the Commission shall not be affected by any vacancy in its membership.

(5) No person shall be deemed to be employed in the State services for the purposes of the State Services Act 1962, or in the Government service for the purposes of the Superannuation Act 1956, by reason only of his being a member of the Commission.

4. Deputies of members—(1) In any case in which the Minister is satisfied that any appointed member is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Minister may appoint any person capable of being appointed as a member of the Commission to act as deputy for that member during his incapacity.

(2) In the case of the incapacity of the Chairman, his deputy may or may not be one of the other members, but shall in any case be a person capable of being appointed as a member of the Commission; and, if the deputy of the Chairman is one of the other members, some other person may be appointed to act as the deputy of that member.

(3) Any deputy appointed under this section shall, while he acts as such, be deemed to be a member of the Commission, and the deputy of the Chairman shall have all the powers of the Chairman.

(4) No appointment of a deputy and no act done by him as such, and no act done by the Commission while any deputy is acting as such, shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

5. Disqualification of members of Commission—The following persons shall be incapable of being appointed to be members of the Commission:

- (a) A member of Parliament:
- (b) A mentally disordered person within the meaning of the Mental Health Act 1969:
- (c) A bankrupt who has not obtained his order of discharge or whose order of discharge has been suspended for a term not yet expired or is subject to conditions not yet fulfilled:
- (d) A person convicted of any offence punishable by imprisonment, unless he has received a free pardon or has served his sentence or otherwise suffered the penalty imposed on him.

6. Casual vacancies in Commission—(1) Subject to subsections (3) and (4) of this section, if any appointed member of the Council—

- (a) Dies; or
- (b) Resigns his office by writing under his hand delivered 5
to the Minister; or
- (c) Is absent without leave from 3 consecutive meetings
of the Commission; or
- (d) Becomes a member of Parliament; or
- (e) Becomes a mentally disordered person within the 10
meaning of the Mental Health Act 1969; or
- (f) Is adjudged a bankrupt; or
- (g) Is convicted of any offence punishable by imprison-
ment for a term of 2 years or more; or
- (h) Is convicted of any offence punishable by imprison- 15
ment for a term of less than 2 years and is sentenced
to imprisonment for that offence,—

he shall thereupon cease to be a member, and the vacancy thereby created shall be deemed to be a casual vacancy.

(2) In any case to which paragraph (g) of subsection (1) 20
of this section applies—

- (a) The disqualification shall not take effect until the
expiration of the time for appealing against the
conviction and, in the event of an appeal against
conviction, until the appeal is determined; and 25
- (b) The member concerned shall be deemed to have been
granted leave of absence until the expiration of
that time, and shall not be capable of acting as
a member during the period of that leave of
absence. 30

(3) In any case to which paragraph (h) of subsection (1) 30
of this section applies—

- (a) The disqualification shall not take effect until the
expiration of the time for appealing against the
conviction or the sentence and, in the event of an 35
appeal against conviction or against the sentence
or both, until the appeal is determined; and
- (b) The member concerned shall be deemed to have
been granted leave of absence until the expiration
of that time, and shall not be capable of acting 40
as a member during the period of that leave of
absence.

(4) Every casual vacancy in the office of an appointed member of the Commission shall as soon as practicable be filled by the appointment of a member in place of the vacating member and the member elected or appointed to fill any casual vacancy shall hold office for only the residue of the term of the vacating member.

7. Meetings of Commission—(1) The Chairman shall convene meetings of the Commission whenever he deems it necessary to do so.

10 (2) At all meetings of the Commission the quorum necessary for the transaction of business shall be 3 members.

(3) The Chairman shall preside at all meetings of the Commission at which he is present.

15 (4) In the absence of the Chairman or his deputy from any meeting, the members present shall elect one of their number to preside at that meeting.

(5) All questions arising at any meeting of the Commission shall be decided by a majority of the valid votes recorded thereon.

20 (6) At any meeting of the Commission the Chairman or other person presiding shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

25 (7) Subject to the provisions of this Act and of any regulations made under this Act, the Commission may regulate its procedure in such manner as it thinks fit.

8. Passing of resolutions by Commission without a meeting—(1) Anything that may be done by resolution passed at a meeting of the Commission may be done by the Commission by means of a resolution signed in accordance with subsection (2) of this section without a meeting or any prior notice being required; but any member of the Commission, or his duly appointed deputy, may by notice in writing to the Chairman of the Commission require that 35 the matter be determined at a meeting of the Commission, in which case a meeting of the Commission to determine the matter shall be held as soon as a meeting can be called.

(2) Every resolution to be made without a meeting of the Commission shall be signed by all the members of the 40 Commission, or their duly appointed deputies.

(3) Every resolution of the Commission made without a meeting of the Commission shall be deemed to be passed as soon as it is delivered to the Chairman, or if it is constituted by several instruments as soon as all the instruments constituting it have been delivered to the Chairman, who shall note on the resolution or the last received instrument constituting the resolution the date of the passing of the resolution, and shall forthwith notify that date to each member, or his duly appointed deputy, required to sign a resolution made without a meeting of the Commission.

(4) Notwithstanding that for the purposes of making a resolution without a meeting of the Commission the signatures of all the members or their deputies entitled to act as members in the matter are required to the resolution, it shall be sufficient for the purposes of this section if those signatures are given on separate instruments having the same form and setting forth the same resolution, in which case those instruments shall together constitute the resolution.

9. Functions of Commission—The functions of the Commission shall be—

- (a) To consider proposals concerning overseas investment that are to be submitted for approval, consent, permission, or exemption in accordance with regulations made under this Act:
- (b) To advise the Minister, or, as regulations made under this Act may so require, to determine, whether the proposals so submitted are in the national interest and whether any approval, consent, permission, or exemption to them should be granted or refused:
- (c) To advise the Minister, or, as regulations made under this Act may so require, to decide, on the compatibility of any proposal for overseas investment with the policy of the Government relating to any other matter:
- (d) To advise the Government on such means as will ensure that the fullest possible benefit from overseas investment will accrue to New Zealand in promoting economic growth and development by the efficient utilisation of resources, and the highest degree of production, trade and employment:

- (e) To keep under continuous supervision, and, if regulations made under this Act so require, to control, the level and extent to which overseas persons may own or control property in New Zealand, and to report from time to time on this matter to the Minister:
- 5 (f) To advise the Government on all matters relating to overseas investment in New Zealand:
- (g) To exercise and perform such functions, powers, and duties in relation to overseas investment as are conferred or imposed on it under this Act or regulations made under this Act.

10 (2) In the exercise of its functions, powers, and duties, the Commission shall comply with the general policy of the Government in relation to the functions of the Commission, and shall comply with any general or special directions given by the Minister to the Commission by notice in writing pursuant to the policy of the Government in relation to those functions, powers, and duties.

20 **10. Fees and expenses**—(1) The Commission is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

25 (2) There shall be paid out of money appropriated by Parliament for the purpose to the appointed members of the Commission within the meaning of this Act, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

30 **11. Members of Commission not personally liable**—No member of the Commission shall be personally liable for any act or default done or made by the Commission or by any member of the Commission in good faith in the course of the operations of the Commission.

35 **12. Application of the Local Authorities (Members' Interests) Act 1968**—The Local Authorities (Members' Interests) Act 1968 is hereby amended by inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item:

40 "The Overseas Investment Commission | 1973, No. 00—The Overseas Investment Act 1973."

13. Services for Commission—The Governor of the Reserve Bank of New Zealand shall cause the Reserve Bank of New Zealand to provide such secretarial and clerical services as may be necessary to enable the Commission to discharge its functions.

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14. Regulations—(1) The Governor-General may from time to time, by Order in Council, make all such regulations as may be necessary for giving full effect to the provisions of this Act and for its due administration.

(2) Without limiting the generality of subsection (1) of 10 this section, regulations may be made under this section prohibiting, controlling, or regulating—

- (a) The commencement of businesses in New Zealand by bodies incorporated outside New Zealand:
- (b) Any dealing or transaction having the effect of raising 15 or borrowing money outside New Zealand by any person ordinarily resident in New Zealand:
- (c) Any dealing or transaction having the effect of raising or borrowing money in New Zealand by any 20 overseas person:
- (d) The ownership or acquisition of or control over any securities or rights or interests in securities by any overseas person.

(3) Without limiting the generality of subsections (1) and (2) of this section, regulations may be made under this 25 section for all or any of the following purposes:

- (a) The registration of securities in the names of, or the issue, sale, transfer, or delivery of securities to, or the furnishing of information in relation to the ownership or acquisition of or control over securities 30 or rights or interests in securities by, any overseas person:
- (b) Providing for the granting, refusal, and revocation of consents, permissions, and exemptions in respect of 35 any matter to which any regulations made under this Act relate; and authorising the imposition, variation, and revocation of conditions subject to which any consent, permission, or exemption may be granted:

- 5 (c) Providing for the furnishing of information and the production of books or documents to the Minister or the Commission or any other person for the purposes of this Act or any regulations made under this Act, and for the verification of any such information:
- 10 (d) Authorising the Minister or the Commission or any other person to exercise any discretionary power or authority for the purposes of this Act or any regulations made under this Act:
- (e) Providing for and regulating the giving or service of notices for the purposes of this Act or of any regulations made under this Act, and the effect of such notices.

15 **15. Consents under regulations**—(1) Where pursuant to any regulations made under this Act the prior consent of the Minister is required to the entry into any transaction or the execution of any instrument, and any such transaction or instrument is entered into or executed without such consent

20 having been obtained, the Minister may at any time thereafter, in his discretion, give his consent to the entry into the transaction or the execution of the instrument, as the case may require; and thereupon, subject to the terms of the consent, the transaction or instrument, and any relationships, rights, or interest created thereby or arising thereunder,

25 shall, if they or any of them would otherwise be invalid by reason of the prior consent of the Minister not having been given, be as valid and effectual as if the Minister's consent had been obtained before the entry into the transaction or the execution of the instrument.

30 (2) Any consent pursuant to subsection (1) of this section may be given—

(a) In respect of such transactions, instruments, or persons or classes of transactions, instruments, or persons

35 as the Minister may determine, or in respect of any specified transaction, instrument, or person:

(b) Wholly or partly and either unconditionally or subject to such conditions as the Minister thinks fit.

(3) Any consent pursuant to subsection (1) of this section

40 to the entry into any transaction or the execution of any instrument shall be deemed to be a consent given under the regulations requiring consent to such entry or execution.

16. Delegation by the Minister—(1) The Minister may from time to time, by writing under his hand, delegate to the Commission or any other person any of his powers under this Act (other than under section 3, or section 4, or sub-section (2) of section 9, of this Act) or regulations made under this Act (including this power of delegation). 5

(2) The Commission may from time to time delegate to any person any of the powers or functions conferred on it by this Act or by regulations made under this Act.

(3) Any delegation may be made to a specified person or to persons of a specified class, or may be made to the holder for the time being of a specified office or appointment or to the holders of offices or appointments of a specified class. 10

(4) Any delegation may be made subject to such conditions and restrictions as the Minister or, as the case may require, the Commission, thinks fit, and may be made either generally or in relation to any particular matter or class of matters. 15

(5) Subject to any general or special directions given or conditions or restrictions imposed by the Minister or, as the case may require, the Commission, any person to whom any powers or functions are delegated may exercise those powers or functions in the same manner and with the same effect as if they had been conferred directly by this Act or regulations made under this Act and not by delegation. 20

(6) Every person purporting to act pursuant to any delegation shall be presumed to be acting in accordance with the terms of the delegation, in the absence of proof to the contrary. 25

(7) The delegation of any power or function shall not prevent the exercise of that power or function by the Minister or, as the case may require, the Commission. 30

(8) Any delegation may be revoked at any time.

(9) Until it is revoked, every delegation shall continue in force according to its tenor, notwithstanding the fact that the Minister or other person by or to whom it was made may have ceased to hold office; and in any such case the delegation shall continue in force as if made by or to the successor in office of the Minister or that person, as the case may be. 35

17. **Offences against Act**—Every person commits an offence against this Act who—

- 5 (a) Without lawful excuse, acts in contravention of or fails to comply in any respect with any provision of any regulations made under this Act or with any direction, notice, requirement, or condition given or imposed under those regulations:
- 10 (b) Resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under this Act or any regulations made under this Act:
- 15 (c) With intent to deceive, makes any false or misleading statement or any material omission in any offer or declaration made for the purposes of this Act or any regulations made under this Act or in any communication with or application to the Minister or the Commission or any other person (whether in writing or otherwise) for the purposes of this Act or those regulations.

20 18. **Penalties for offences**—(1) Every person who commits an offence against this Act is liable on conviction on indictment—

- 25 (a) In the case of an individual, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding \$2,000, and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day on which the offence has continued, or to both such imprisonment and such fine:
- 30 (b) In the case of a body corporate, to a fine not exceeding \$4,000 and, if the offence is a continuing one, to a further fine not exceeding \$2,000 for every day on which the offence has continued.

35 (2) The Summary Proceedings Act 1957 is hereby amended by inserting in Part II of the First Schedule, in the appropriate alphabetical order, the following words:

“The Overseas Invest- ment Act 1973	17	Offences relating to over- seas investment”
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40 19. **Act to be administered in the Reserve Bank of New Zealand**—This Act shall be administered in the Reserve Bank of New Zealand.