

House of Representatives

Supplementary Order Paper

Tuesday, 14 June 2005

Overseas Investment Bill

Proposed amendments

Hon Dr Michael Cullen, in Committee, to move the following amendments:

Clause 4(1)(b)(i)

To omit the words “and imposes a statutory marginal strip condition for certain overseas investments in sensitive land” (lines 20 to 22 on page 4).

Clause 6(1)

To omit the definition of **adjoin** (line 22 on page 5).

To omit paragraph (b) of the definition of **bed** (lines 4 to 6 on page 6), and substitute the following paragraphs:

- (b) in relation to a lake not controlled by artificial means, the space of land which the waters of the lake cover at its highest level without exceeding its physical margin; and
- (c) in relation to a lake controlled by artificial means, the space of land which the waters of the lake cover at the maximum operating level

To insert in the definition of **computer register**, after the words “set out in” (line 16 on page 6), the words “section 4 of”.

To omit the definition of **exempted interest** (lines 1 to 3 on page 7), and substitute the following definition:

exempted interest means an easement or *profit à prendre*

To omit from the definition of **interest** the word “; but” and paragraph (b) (line 37 on page 8 and line 1 on page 9).

To insert, after the definition of **foreshore or seabed** (after line 29 on page 7), the following definition:

give effect to an overseas investment—

- (a) means to acquire or dispose of any property, or establish any business, that results in an overseas investment in sensitive land, overseas investment in significant business assets, or overseas investment in fishing quota; but
- (b) excludes an acquisition, disposition, or establishment that is conditional on consent being obtained under this Act

To omit from the defined term **natural or physical resources** (line 12 on page 9) the word “**or**”, and substitute the word “**and**”.

To omit the definition of **relevant interest in land** (lines 8 to 10 on page 10).

Clause 6(5)

To omit from paragraph (a) the words “section 5” (line 12 on page 13), and substitute the words “sections 5 to 7”.

To omit from paragraph (c) the words “maximum number of votes that can be exercised” (lines 17 and 18 on page 13), and substitute the words “voting power”.

New clause 6(6)

To add, after clause 6(5) (after line 18 on page 13), the following subclause:

- (6) Section 7 of the Companies Act 1993 applies for the purposes of determining under this Act whether a person controls the composition of the governing body of another person as if references in that section to a company, a board, and directors were to a person, a governing body, and members of the governing body, respectively.

Clause 7(3)

To omit this subclause (lines 31 and 32 on page 14).

Clause 8(4)

To omit the words “**associated with**” (line 21 on page 15), and substitute the words “**associated land** in respect of”.

Clause 10(2)

To omit this subclause (lines 19 and 20 on page 16).

Clause 11

To omit this clause (line 24 on page 16 to line 5 on page 17), and substitute the following clause:

- 11 Consent must be obtained before overseas investment given effect**
- (1) Consent must be obtained for a transaction before the overseas investment is given effect under the transaction.
 - (2) The procedure for obtaining consent (including who must obtain consent) is set out in **subpart 2**.

Clause 12(a)(ii)

To omit the words “(including rights of renewal)” (lines 17 and 18 on page 17), and substitute the words “(including rights of renewal, whether of the grantor or grantee), and is not an exempted interest”.

Clause 17(1)

To insert, after the words “control of the” in paragraph (d) (line 37 on page 21), the word “relevant”.

To omit from paragraph (1)(e) the words “**subparagraphs (iii) and (iv)**” (line 17 on page 22), and substitute the words “**subparagraph (iii)**”.

To omit paragraph (1)(e)(iv) (lines 32 to 34 on page 22).

Clause 18(1)

To omit the words “The relevant Ministers” (line 17 on page 23), and substitute the words “If **section 17(1)(e)(ii)** applies, the relevant Ministers”.

To omit from paragraph (b) the words “**section 17(e)(ii) and (iii)**” (lines 21 and 22 on page 23), and substitute the words “**section 17(1)(e)(ii) and (iii)**”.

To omit from paragraph (c) the word “weight” (line 24 on page 23), and substitute the word “importance”.

Clause 18(2)

To omit from paragraph (ba)(i) the words “trout and salmon, and of wildlife that is protected under section 3 of the Wildlife Act 1953, or that is game for the purposes of that Act” (line 29 on page 24 to line 1 on page 25), and substitute the words “trout, salmon, wildlife protected under section 3 of the Wildlife Act 1953, and game as defined in section 2(1) of that Act”.

To omit from paragraph (ba)(ii) the words “providing, protecting, and improving” (line 3 on page 25), and substitute the words “providing, protecting, or improving”.

To omit from paragraph (d) the words “providing, protecting, and improving” (line 18 on page 25), and substitute the words “providing, protecting, or improving”.

Clause 19(1)(d)

To insert, after the words “control of the” (line 20 on page 26), the word “relevant”.

Clause 20

To insert, in the heading to this clause, after the word “**character**” (line 1 on page 27), the words “**and Immigration Act 1987**”.

Clause 21(2)

To omit the words “**Section 17(g)**” (line 23 on page 27), and substitute the words “**Section 17(1)(g)**”.

Clauses 21A to 21V and heading above clause 21A

To omit these clauses and this heading (line 1 on page 28 to line 4 on page 37).

Clause 23(1)(a)

To insert, after the words “making the” (line 14 on page 37), the word “overseas”.

Clause 27

To omit the words “before the transaction for which it is granted has been given effect to” (lines 5 and 6 on page 39), and substitute the words “for an overseas investment transaction before the overseas investment has been given effect”.

Clause 28(4)

To omit the words “prescribed fee” (line 19 on page 39), and substitute the words “fee required by regulations”.

Clause 29(1)(b)

To omit this paragraph (lines 27 to 31 on page 39), and substitute the following paragraph:

- (b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent is granted, unless compliance should reasonably be excused.

Clause 30(1)

To omit the words “and which has been given effect to” (lines 2 and 3 on page 40), and substitute the words “and under which the overseas investment has been given effect”.

To omit from paragraph (b) the words “it has been given effect to without the requisite consent or because giving effect to the transaction” (lines 4 to 8 on page 40), and substitute the words “the overseas investment has been given effect to without the requisite consent or because giving effect to the overseas investment”.

Clause 32(g)

To omit this paragraph (lines 7 to 12 on page 41), and substitute the following paragraph:

- (g) provide general information for the benefit of applicants for consent about New Zealand’s overseas investment rules:

Clause 35(3)

To insert in paragraph (a), after the word “criteria” (line 24 on page 42), the words “or factors”.

To insert in paragraph (b), after the word “types” (line 26 on page 42), the words “, value thresholds, and area thresholds”.

To omit from paragraph (d) the words “reserves or public parks” (line 30 on page 42), and substitute the words “reserves, public parks, or other sensitive areas”.

Clause 37(1)

To omit from paragraph (a) the words “foreshore and seabed” (line 4 on page 43), and substitute the words “foreshore, seabed, riverbed, or lakebed”.

To add to paragraph (f) (line 12 on page 43) the words “, the criteria and consent process, and the rules on overseas investment in sensitive New Zealand assets”.

Clause 38

To omit from subclause (1)(a) the words “that are sensitive for the purposes of **Table 2 in Part 1 of Schedule 1**” (lines 22 and 23 on page 43), and substitute the words “for which the adjoining land is sensitive under **Table 2 in Part 1 of Schedule 1**”.

To insert, after the word “by” in subclause (1)(b) (line 24 on page 43), the words “or for”.

To omit from subclause (1A)(b) the words “, historic heritage, the sea, rivers, or lakes” (line 2 on page 44), and substitute the words “or historic heritage”.

Clause 40

To add, after subclause (2) (after line 35 on page 44), the following subclause:

- (3) The regulator may retain or copy any information that is provided under this section.

Clause 42

To add, after subclause (3) (after line 34 on page 45), the following subclause:

- (4) The regulator may retain or copy any information or document that is provided under this section.

Clause 43

To omit the word “**transaction**” from the heading (line 3 on page 46), and substitute the words “**overseas investment**”.

To omit from subclause (1) the words “investment transaction” (line 6 on page 46), and substitute the words “overseas investment”.

Clause 48(1)(d)

To insert, after the word “or” (line 12 on page 48), the word “of”.

Clause 49(1)(d)

To insert, after the word “or” (line 34 on page 48), the word “of”.

Clause 50(1)(c)

To insert, before the word “interest” (line 27 on page 49), the words “the payment of”.

Clause 52

To insert, after the word “or” in paragraph (a) (line 5 on page 50), the word “of”.

To insert, after the word “or” in paragraph (b) (line 7 on page 50), the word “of”.

Clause 53(1)

To omit this subclause (lines 10 to 13 on page 50), and substitute the following subclause:

- (1) The regulator may require a person to pay an administrative penalty if the person files, provides, or produces a document required by or under this Act, regulations, or a condition of a consent or of an exemption with the regulator after the time when the document must be filed, provided, or produced.

Clause 61(1)

To omit paragraph (b) (lines 12 and 13 on page 54).

To omit from paragraph (c) the words “**section 17(g)**” (lines 14 and 15 on page 54), and substitute the words “**section 17(1)(g)**”.

To omit from paragraph (d) the words “providing what is required to satisfy the factor in **section 18(2)(e)** for foreshore, seabed, riverbed, or lakebed to be offered to the Crown” (lines 19 to 22 on page 54), and substitute the words

“providing what is required for an offer of foreshore, seabed, riverbed, or lakebed to the Crown to be sufficient for the purposes of **section 18(2)(e)**”.

To omit from paragraph (d)(iv) the words “satisfying the criteria” (line 33 on page 54), and substituting the words “being sufficient for the purposes of **section 18(2)(e)**”.

To insert, after the words “a means by which they may” in paragraph (f) (line 16 on page 55), the word “be”.

To omit from paragraph (f) the words “the Ministers or regulator in exercising functions or powers, or performing duties, or providing services” (lines 19 to 21 on page 55), and substitute the words “Ministers and the regulator in exercising functions and powers, and performing duties, and providing services”.

To omit from paragraph (f) the words “the Ministers or Commission” (line 22 on page 55), and substitute the words “Ministers and the Commission”.

To omit from paragraph (g) the words “the Ministers or regulator” (line 29 on page 55), and substitute the words “Ministers and the regulator”.

To omit from paragraph (h) the words “**section 53**” (line 6 on page 56), and substitute the words “**sections 53 and 53A**”.

To add to paragraph (j) (line 14 on page 56) the words “or associate or associated land”.

To insert, after the words “definition of overseas person” in paragraph (k) (line 20 on page 56), the words “or associate or associated land”.

Clause 62

To omit the word “**criteria**” from the heading (line 2 on page 57), and substitute the words “**consent process**”.

To omit from paragraph (a) the words “the factor in” (line 8 on page 57).

Clause 67(1)

To omit the words “this Act” (line 5 on page 58), and substitute the words “**section 63**”.

Clause 73

To insert, after the word “**associate**,” in *new section 57A(2)(b)* (line 3 on page 61), the words “**give effect to an overseas investment**,”.

To omit *new section 57B(2)* (lines 18 to 20 on page 61).

To omit *new section 57C* (lines 21 to 28 on page 61), and substitute the following section:

“**57C Consent must be obtained before overseas investment given effect**

“(1) Consent must be obtained for a transaction before the overseas investment is given effect under the transaction.

“(2) The procedure for obtaining consent (including who must obtain consent) is set out in **subpart 2 of Part 2** of the Overseas Investment Act **2004**.

To omit the words “the relevant overseas person has, or (if that person is not an individual) the individuals with control of the relevant overseas person collectively have,” from *new section 57G(1)(ab)* (lines 17 to 19 on page 64), and substitute the words “the individuals with control of the relevant overseas person collectively have”.

To omit the words “the relevant overseas person is not, or (if that person is not an individual) each individual with control of the overseas person is not, an individual” from *new section 57G(1)(c)* (lines 29 to 31 on page 64), and substitute the words “none of the individuals with control of the relevant overseas person are individuals”.

To omit the word “weight” from *new section 57H(1)(c)* (line 7 on page 66), and substitute the word “importance”.

To omit the word “prescribed” from *new section 57H(2)(b)* (line 31 on page 66), and substitute the words “that are set out in regulations”.

To insert, after the word “character” in the heading to *new section 57HA* (line 4 on page 67), the words “and Immigration Act 1987”.

To omit the words “**section 57G(1)(b) and (c)**” from *new section 57HA(1)* (line 5 on page 67), and substitute the words “**section 57G(1)(b)**”.

To omit the words “**section 57G(1)(b) and (c)**” from *new section 57HA(2)* (line 15 on page 67), and substitute the words “**section 57G(1)(c)**”.

Clause 77(2)

To insert, after the word “penalty” in paragraph (a) (line 15 on page 70), the words “or other remedy”.

Clause 78

To omit the word “existing” from the heading (line 30 on page 70).

To add to subclause (1) (line 36 on page 70) the words “or that are granted after that commencement by virtue of **section 77(2)**”.

Clause 79

To omit the word “existing” from the heading (line 10 on page 71).

To add to subclause (1) (line 16 on page 71) the words “or that are granted after that commencement by virtue of **section 77(2)**”.

Schedule 2, Part 1

To insert, after the words “**section 6(2)**” in the amendment to the Antarctic Marine Living Resources Act 1981 (line 8 on page 77), the words “and **(3)**”.

To omit from the amendments to the Fisheries Act 1996 the words “section 123(1)(c)” (line 17 on page 80), and substitute the words “section 132(1)(c)”.

To omit from the amendment to the Reserve Bank of New Zealand Act 1989 the words “same meaning given to **security** in **section 6**” (lines 10 and 11 on page 81), and substitute the words “meaning given to **security** in **section 6(1)**”.

Explanatory note

This Supplementary Order Paper amends the Overseas Investment Bill by removing the provisions concerning the compulsory acquisition of marginal strips from sensitive land sold to overseas persons. Those provisions created marginal strips on land adjoining the foreshore, lakes (with lakebeds of more than 8 hectares), and rivers (with beds 3 metres wide or more).

This Supplementary Order Paper also makes a number of technical amendments to the Overseas Investment Bill. These include consequential amendments, minor corrections and improvements, and drafting changes to improve clarity and consistency. The more significant changes are as follows:

- the timing for consent is amended so that consent for a transaction is now required when the overseas investment is given effect under the transaction (which may differ slightly from when the broader transaction is given effect). Contracts may still be entered into or given effect to if they are conditional on consent being obtained:
 - the regulator's information and guideline functions in *clauses 32 and 37* are revised to cover the overseas investment rules generally:
 - the power to exempt by or under regulations is revised to enable exemptions from the definition of **associate** and **associated land**, as a consequence of changes recommended by the select committee:
 - cross-references in operative provisions to there being exemptions under regulations are removed as they are unnecessary. There is no reduction in the exemption powers themselves.
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