Submission

by

THE NEW ZEALAND INITIATIVE

to the Finance & Expenditure Committee

on the

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

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1. INTRODUCTION AND SUMMARY CONCLUSION

1.1 This submission on the Overseas Investment (National Interest Test and Other Matters) Amendment Bill 2025 is made by The New Zealand Initiative (the Initiative), a Wellington-based think tank supported primarily by major New Zealand businesses.

1.2 The Initiative's members span the breadth of the New Zealand economy. In combination, our members employ more than 150,000 people.

1.3 The Initiative undertakes research that contributes to the development of sound public policies in New Zealand. We advocate for the creation of a competitive, open, and dynamic economy and a free, prosperous, fair, and cohesive society.

1.4 Overseas investment has the potential to add greatly to domestic prosperity in small economies. Done well, it better integrates the local economy with international capital, overseas markets, proprietary technologies, and managerial expertise. It heightens international career opportunities for local employees and enhances domestic competition for the benefit of consumers. It can also lift local productivity and wage rates by wrapping more capital around each worker.

1.5 The Initiative supports the Bill's intentions to make New Zealand's overseas investment regime less of a barrier to reputable overseas investors. We particularly applaud the streamlined approach for applications subject to the national interest test, with its presumption of approval within 15 working days unless concerns are triggered. Also to be commended are the provisions to ease regulatory burdens for repeat investors and for those investors who already control 75% of the investment and wish to increase that interest.

1.6 However, it is very disappointing to see that, beyond such gains, the Bill is such a modest reform. The contrast with the wide-ranging reforms proposed in Treasury's "revised Cabinet paper on reform" of 12 July 2024 is dramatic. We suggest that the Cabinet reassesses New Zealanders' needs and opts for broader-based reform, particularly in relation to urban land.

1.7 We are also concerned that the measures in the Bill are expressed in such general terms as to allow future governments to turn the Bill into a much more restrictive measure than is now intended. Our detailed recommendations follow below.

2. RECOMMENDATIONS

2.1 The Bill should proceed, but with significant changes to increase its reform scope and to make the new regime less prone to post-reform regulatory creep:

(a) The Act's purpose statement should be amended to remove the word "privilege". (This word creates a presumption against overseas investments in so-called "sensitive" farm and residential land. The United States "welcomes" overseas investment. New Zealand needs to also.)

(b) The Bill should put respect for vendor's property rights at the centre of its reforms. (This would align with its intentions with Resource Management Act reform and provide a welcome signal to vendors and overseas investors. An enacted, rebuttable presumption in favour of permitting overseas investment

generally would make future regulatory creep harder, short of amending the Act.)

(c) If the concept of 'sensitive' land is to be retained, its scope should be markedly reduced by relaxing the parameters that define its extent. The ban on overseas purchases of residences should be lifted.

(d) The Bill should remove the economic benefit test for New Zealand in the case of 'sensitive land'. (The test is farcical when consideration paid is ignored and what improvements the unknown alternative buyer would have made is guesswork. And in practice, the provision leads to opportunistic pre-approval 'hold-out' demands.)

(e) The Select Committee might consider recommending replacing the proposed National Interest Test by the National Security and Public Order test that Treasury favoured in its Regulatory Impact Statement. (Treasury's reasons for favouring this more permissive option have weight.[1] The provision to declare some businesses to be strategically important could be used to make overseas ownership in fishing quota a special case.)

(f) New Zealanders moving to Australia, the United Kingdom and the United States can freely buy residential land in those countries. Where possible, New Zealand's regime should be reciprocally open.

(g) We also suggest that attention be given to additional measures that would make it harder for regulatory creep to occur in later years. An incomplete list of matters that might be considered includes:

(i) Greater clarity as to what constitutes or does not constitute 'contrary to the national interest'.

(ii) Enhanced transparency requirements for ministerial decision-making.

(iii) Stronger safeguards against ministerial or governmental instructions as to how the national interest test is to be applied.

(iv) Tighter limits or constraining processes on which businesses can be determined to be strategically important.

(v) Regular independent reviews of the Minister's and regulator's decisions since the last review, aimed at identifying changes in regulatory drift on in interpretations of key terms.

3. BACKGROUND TO THE INITIATIVE'S INTEREST IN THIS ISSUE

3.1 The Initiative has been concerned from its inception that New Zealand's extraordinarily restrictive overseas investment regime must be harming local living standards. Our first report in 2014, *Capital Doldrums: How globalisation is bypassing New Zealand*, set out the uninspiring facts about the modest foreign direct capital inflows into New Zealand. Our second report in 2014, *Open for Business*, made the case for a radically less restrictive and more welcoming New Zealand overseas investment regime.

[1] The Treasury, 24117 *Regulatory Impact Statement, International Investment Screening*, 27 November 2024, pp 15-16.

3.2 We repeated these messages for most of the next decade. We were encouraged in 2023 to see that the National and ACT parties agree, *inter alia,* to "limit ministerial decision-making to national security concerns and make such decisions timelier"[2]

3.3 In October 2024, we strongly welcomed the government's announcement to liberalise New Zealand's restrictive regime.[3] We commended New Zealand First for its support of these plans and said New Zealand should look to Ireland and Singapore as examples of how to harness foreign investment.

3.4 The Minister's proposed changes in October 2024 included "reversing the presumption that investment in New Zealand is a privilege and that investors must justify their transaction to the government". Investments would be able to proceed "unless there is an identified risk to New Zealand's interests".[4] The scope of investments that could be screened would remain to preserve the option to screen where needed. Screening would be fast-tracked where no risks to New Zealand's national interest were identified. The three tests ─ for the quality of the investor, the benefit for New Zealanders, and the national interest ─ would be consolidated.

3.5 This submission assesses the Bill against this background.

4. KEY FEATURES OF THE BILL

4.1 The explanatory note to the Bill sets out its key features.

- As foreshadowed, the Bill does not reduce the range of assets screened by the current Act.
- Contrary to our hopes, it will sustain the assertion that overseas investors are privileged if a government allows them to invest in New Zealand farmland, residential land or fishing quota.
- Consolidating the three tests into one test[5] only for all assets other than farm and residential land, and fishing quota.
- Setting a 15-working-day cap for decisions on consent applications, unless national interest risks are identified that require a national interest assessment.
- Creating a new power to specify by regulation classes of screened transactions for which there must be a national interest assessment.
- Empowering the regulator to impose conditions and grant consent under the national interest test, unless the relevant Minister has become involved.
- Prescribing that only the relevant Minister who thinks the transaction is contrary to the national interest can decline an investment.

4.2 These changes represent substantial but compromised progress towards what we had hoped for based on the government's 12 October 2024 announcement. The main compromise is retaining the presumption of privilege with respect to farm and

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2 Coalition Agreement, New Zealand National Party and ACT New Zealand, 54th Parliament, para 16, page 4.

3 Dr Oliver Hartwich, *Press Statement: The New Zealand Initiative urges swift action on bold FDI reforms*, 14 October 2024. Press Statement: The New Zealand Initiative urges swift action on bold FDI reforms | The New Zealand Initiative

4 Hon David Seymour, *Overseas investment changes to get New Zealand off the bench*, 12 October 2024, https://www.beehive.govt.nz/release/overseas-investment-changes-get-new-zealand-bench

5 See paragraph 1.8 above.

residential land and, to a lesser degree, fishing quota. Presumably, that is coalition politics at work.

4.3 Research on whether Australia, Canada, the United Kingdom or the United States use words like privilege in this context revealed that New Zealand is unique in this respect. It creates a presumption against foreign investment. Canada uses the words "encourage" and "benefits", the United Kingdom emphasises being "attractive" and "business-friendly", and the United States uses "enthusiastically welcome". Australia's legislation does not include a purpose clause, but its official foreign investment website states that it welcomes foreign investment.[6] Attracting quality foreign investment is a competitive market, and New Zealand's positioning plays to local xenophobia. If one cannot change the content of the Act, one can at least change its marketing.

4.4 We respectfully suggest that the Finance and Expenditure Committee should recommend more competitive wording for overseas investment in the Act's purpose statement. It should welcome it all, subject to compliance with the Act's provisions.

5. ADDITIONAL FEATURES OF THE BILL

5.1 The Bill also:

- removes the favourable pathway for "special forestry" investments;
- frees investors with at least 75% control to go higher without having to obtain consent, unless the business is strategically important;
- delegates decision powers to the Overseas Investment Office to a much greater extent;
- relaxes some requirements for repeat investors;
- creates new powers to determine a business to be strategically important (SIB), subjecting that business to mandatory notifications; and
- allows the regulator to provide retrospective exemptions for breaches and take proportionate action.

5.2 In spirit and intent these changes are in a more permissive direction, as foreshadowed. It is an open question as to how many businesses might be determined to be strategically important, what the criteria will be, and how they will be interpreted.

6 THE NATIONAL INTEREST TEST PROCESS

6.1 The new test has three stages: 1) is a risk identified in the first 15 days; 2) if so, a national interest assessment is required, and 3) if the assessment is not favourable to the applicant, the Minister decides whether to decline the application.

6.2 The factors the assessment of a proposed investment transaction must consider include the Act's purpose of managing risks to New Zealand's national interest, including national security and public order, and whether the identified risk to the national interest can be adequately managed by another regulatory regime. Factors that the assessment may consider include investor risk factors, other risk control options, and offsetting benefits.

[6] The Treasury, Australian Government, website Key concepts | Foreign investment in Australia

6.3 Note that the national interest test applies only to overseas investments other than in farmland, residential land and fishing quota. The tests for those investments are unchanged.

7. GENERAL DISCUSSION

7.1 **The Bill's reform framework is commendable**. Where its provisions apply, it should reduce political interference and streamline decisions, while retaining Ministerial oversight and the ability to intervene.

7.2 **The removal of special consideration for forestry and water bottling is a useful simplification** as it is not clear that they pose a greater risk than other activities.

7.3 **The narrow scope of the reform is a considerable disappointment**. It is noteworthy that in July 2024 Treasury[7] was working on an intention to achieve comprehensive reform, as the following quotes indicate:

> *5. With the overriding objective to screen foreign investment only on national security and public order grounds, the reformed regime and the policy work become less complex. …*
>
> *7. When undertaking the policy work, we will:*
>
> *a. Assume that the case has been made for screening foreign investment solely on national security and public order grounds based on international trends, comparative regimes in like-minded countries, and OECD guidelines for security screening (i.e. best practice). …*
>
> *d. Any regulatory settings in the Act (beyond those relating to residential land) that are superfluous to current national security and public order regime (i.e., the blanket screening of sensitive land, the benefit test, farmland advertising requirements, etc) will generally be assumed to be repealed as inconsistent with the focus on national security and public order only.*

7.4 Presumably, Cabinet subsequently decided to pursue the much more limited measures that are in the Bill. It is Cabinet's call as to what is politically possible, but **these more modest reforms will make less of a difference and leave a lot of unfinished business from continuing complexity, cost and confusion about the objectives**.

7.5 The government's decision to exclude farmland and residences from its liberalising measures is a major disappointment. **The decision does not appear to have a sound public policy justification.** It goes against the government's liberalising intent. The select committee could suggest, that if this decision is unchanged, Parliament should consider measures to reduce its costs. Our list of such measures includes:

- eliminating the troublesome and near-meaningless 'benefit to New Zealand' test;[8]

[7] Treasury Report:" Revised Cabinet Paper on reform of the Overseas Investment Act", T2024/1850, File Number IM-5-3-11-M107679, 12 July 2024. Redacted version.

[8] It makes no sense to ignore consideration paid as a benefit to New Zealand. The test is meaningless if the best of the forgone counterfactual's is unknown, as it may well be. The requirement opponents up scope for opportunistic rent-seeking demands that would not apply to a New Zealand buyer.

- restrict the definition of sensitive land to land that is meaningfully sensitive. If that is impossible reset the parameters that apply so that much less of New Zealand land is captured; and
- extending the special provisions for Australia and Singapore to countries like Canada, the United Kingdom and the United States. New Zealanders can move to Australia, the United Kingdom and the United States and buy a residence there. It is hard to see a policy justification for allowing people to become New Zealand residents or to work here and not be able to buy a house.

7.6 **The Bill should align the Overseas Investment Act with the government's plans to put property rights at the centre of its replacement Acts for the RMA**. Restrictions on overseas buyers curtail the ability of the vendor to sell to the highest bidder. Costly conditions of consent imposed on the overseas buyer add to the penalty on the vendor by depressing the sale price (*ex ante*). If such conditions are for the benefit of New Zealanders, New Zealanders should be willing to pay for the cost. These impositions are not the free lunch they appear to be.

7.7 The Initiative acknowledges the political sensitivity of these issues but does not see why the government could not reduce the barriers within those political constraints. We maintain that economic policy should be based on evidence rather than sentiment. The government should commission an independent economic analysis of the restrictions with a view to their future removal as part of ongoing liberalisation efforts.

7.8 **We suggest that the Committee review intensively Cabinet's decision to adopt a national interest test rather than Treasury's recommended national security and public order test.** In its July 2024 report, the Treasury "emphasised that risks beyond national security and public order are adequately managed by other domestic regulation". It observes that both overseas practice and the OECD's Guidelines for Recipient Country Capital investment policies relating to national security "provide a strong justification for narrowing the screening regime to focus on national security and public order".[9]

7.9 In our view, the Treasury is right to argue that the national security and public test would give overseas investors more confidence about what the rules were. It would thereby attract more overseas investment and thereby be more consistent with the government's objective to increase economic growth.

7.10 **We agree with the Treasury's RIS that care needs to be taken in the design of support arrangements** — orders in council regulations, guidance if government policy statements, if any, and in scheduled periodic independent reviews. These arrangements should aim to give overseas investors a high level of confidence that material regulatory creep will not occur through the life of their investments except in a transparent manner with Parliamentary oversight.

7.11 Currently, the Bill gives very little guidance as to the scope of either the definition of the national interest or of the criteria used to justify declaring a business to be strategically important. The broader the reach of those aspects, the less confidence overseas investor can have as to what the Bill means in practice.

7.12 **Why is a business strategically important only if it is owned by an overseas investor?** It is not clear why this regulation should apply specifically to overseas investors.

[9] Ibid, para 11, page 3.

8. CONCLUSION

8.1 The Overseas Investment (National Interest Test and Other Matters) Amendment Bill 2025 represents useful progress toward bringing New Zealand's foreign investment regime into line with international best practice.

8.2 The Initiative supports:

(a) the shift to the presumption in favour of investment in the form of the 15-day rule;

(b) the streamlined processing for routine transactions;

(c) the enhanced delegation to reduce Ministerial decision-making; and

(d) the more liberal arrangements for repeat investors and those who have a controlling interest of 75% and wish to increase it.

8.3 The Initiative questions:

(a) the decision to prefer a national interest test to the Treasury's preferred narrower national security and public order test ─ particularly when promoting economic growth is a major government policy focus;

(b) the Bill's failure to amend the Act to remove the word "privilege' from the Act's purpose statement, thereby unnecessarily perpetuating a presumption against the Bill seeks to overturn;

(c) the exclusion of farmland and residential land from these changes; and

(d) the Bill's failure to remove the 'benefit to New Zealand' aspect of the rules currently restricting overseas investment in farmland and residential land.

(e) the absence of measures in the Bill to narrow the definition of sensitive land to improve vendor's ability to get the best price for their properties.

8.4 The Initiative is concerned that much greater clarity is needed concerning matters of definition, criteria for interpretation and decisions, and review and appeal rights, if in practice, the new regime is to be as welcoming as its promoters hope.

8.5 The Initiative views this reform as an important step in a longer journey toward making New Zealand fully competitive for international capital. We encourage the government to build on these reforms with continued liberalisation as experience develops and public confidence in the new framework grows.

8.6 We appreciate the opportunity to submit on this important Bill and hope the Finance and Expenditure Committee finds our submission constructive in advancing New Zealand's economic interests through improved foreign investment settings.

ENDS