

23 January 2018

Chair
Finance & Expenditure Committee
Parliament Buildings
Wellington

Dear Chair

Re: Overseas Investment Amendment Bill

BusinessNZ wishes to make some comments regarding the *Overseas Investment Amendment Bill* (referred to as "the Bill").

The Coalition Agreement between the New Zealand Labour Party and the New Zealand First Party includes, among other commitments, to "*strengthen the Overseas Investment Act*". In addition, the Government has clearly stated its intent in its first 100 days in office to "*ban overseas speculators from buying existing houses*". BusinessNZ acknowledges that the Bill has been drafted within a tight timeframe to meet these specific objectives that were well signaled leading up to the 2017 General Election. Also, given the fact that the Bill is one of the first pieces of legislation for the new Government, realistically we would expect changes to the Overseas Investment Act to proceed via the Bill. Therefore, BusinessNZ has purposely chosen not to provide a detailed submission on the Bill. Instead, we wish to cover some key factors that the Select Committee needs to take into account when examining the Bill.

Given we have a broad membership of members from all sectors and sizes of enterprise, there is every possibility the Bill will have various impacts on our members, not to mention wider business community. From discussions with individual members who also intend to submit or who have an interest in the area, we understand that there will be various points raised that the Select Committee should take into consideration. From BusinessNZ's perspective, we believe the Select Committee needs to be cognisant of any unintended consequences from the Bill that particularly affect the business community.

We note that in Treasury's report dated 30 November, paragraph 40 points out that "*under the tight timeframes for a matter of this complexity There is a risk that technical aspects of the Bill will need to be revisited during the Select Committee process or through the intended Supplementary Order Paper*". Indeed, the Treasury report has gone through a number of drafts to ensure the Bill is as robust as possible given the constrictions of the 100 day timeframe. However, it is important that the Select Committee understands that unlike other legislative changes that have typically gone through a rigorous and robust consultation process leading up to the drafting of the Bill, in all likelihood the Bill in question will require further amendments beyond that of other Bills at this stage.

From our perspective, at a broad level the Select Committee needs to fully appreciate how the passed legislation will affect not only New Zealand's overall productivity and growth, but also the possibility of new jobs not being created. Businesses will make decisions based on the total cost of an operation, which includes unnecessary and repetitive compliance costs. They will also examine the opportunity costs of large operations, particularly if timeframes for certain projects are pushed out by a significant margin or there is uncertainty as to outcomes because of the requirement for a regulatory consent.

More specifically, we know that a number of internationally owned businesses in New Zealand often acquire and lease new sites for both expansion of existing operations and for the construction of new commercial or industrial premises. These include big box retailers, shopping mall owners, hardware retailing and supermarkets. Because of space restrictions for suitable sites, it is often the case that adjacent residential properties need to be purchased to ensure new or expanded operations are as efficient and productive as possible.

The Bill states that overseas persons who are not resident in New Zealand will generally not be able to buy existing houses or other pieces of residential land (generally referred to as sensitive land in the Bill). However, overseas persons would be able to buy sensitive land if they develop the land and add to New Zealand's housing supply, or convert the land to another use and are able to demonstrate this would have wider benefits to the country. In addition, we note that Australian residents are omitted from these restrictions, given Australia exempts New Zealanders from their domestic ban on foreign house buyers. Therefore, a reciprocal arrangement has been included.

As the Bill stands, companies from Australia that are looking to set up or expand operations in New Zealand would need Overseas Investment Office consent every time a New Zealand residential house is purchased, despite the purchase assisting towards increased commercial operations, which in most cases should provide more jobs and growth for the New Zealand economy. The consent process will undoubtedly create increased timing and cost issues for many of these businesses (and in some cases this may mean the proposal does not proceed). In addition, there will undoubtedly be uncertainty around how the issue of removing residential stock from the market (once developed) will be perceived and handled.

There have already been some options proposed and highlighted in the Treasury reports to the Government to mitigate some of these concerns. First, we note that paragraph 67, page 17 of the Treasury report dated 7 November 2017 stated that *"with respect to Australian enterprises and legal persons, we propose to adopt the regime used to implement the CER IP which requires 75% or more Australian ownership and control in order for the exemption from screening to apply"*. However, this option was not further explored in subsequent drafts of the Treasury paper.

Second, in the Treasury report dated 30 November, Progressive Enterprises Ltd indicated interest in a number of possible options including exempting Australian companies and/or an exemption being made available for redevelopment proposals, whereby existing residential dwellings are purchased with the intent of redevelopment for commercial use.

While BusinessNZ has no strong views as to what options are best going forward, they highlight the fact that the Bill will have an adverse effect on the commercial and industrial options available for offshore businesses having or wanting a presence in New Zealand. Given the objectives of the Bill, we understand that simply exempting all Australian businesses (rather than a limited category, for example, Australian Listed companies or NZ companies wholly owned by an Australian Listed company) in a similar way to the

exemption provided for Australian residents would most likely create a backdoor for all overseas businesses to purchase sensitive land in New Zealand. However, we believe simply choosing not to adequately address these issues is not the way forward either.

In summary, BusinessNZ acknowledges that changes to the Overseas Investment Act will most likely proceed. However, rather than moving forward with a set of policy parameters that recognize pragmatic options for all players involved, there is a sizeable risk of the Bill providing unintended consequences that at the very least will require further legislative changes down the track, not to mention legislation that could curb the prosperity and potential for our country.

Therefore, we would strongly welcome the Select Committee in its attempts to understand where the Bill can be improved so as to minimize any harm by way of job creation and business growth that may take place with the Bill in its current form.

Thank you for the opportunity to comment.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Kirk Hope', written in a cursive style.

Kirk Hope
Chief Executive
BusinessNZ