

# FOREIGN INVESTMENT: POLICIES AND EFFECTS ON THE PETROLEUM INDUSTRY IN NEW ZEALAND

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## Abstract

The theme of this Conference is "The Post Maui Challenge — Investment and Development Opportunities." In order to ensure the development and exploitation of petroleum discoveries in New Zealand, considerable capital will be required, particularly from overseas. This paper briefly reviews the Government's foreign investment policies and procedures, and highlights some trends.

## Introduction

Since European settlement, foreign investment and international trade have been key ingredients in the growth of internationally competitive agriculture, food processing, manufacturing and resource-based industries in New Zealand. The choice of New Zealand as an investment destination can and does depend on a range of factors, and other papers will assess their impact on investment decisions, and how they measure up with our competitors who are also seeking foreign capital from the world markets.

Therefore it is important to set out the Government's attitude towards overseas investment from a policy perspective and to indicate how this is interpreted and enacted from an operational point of view.

We all know that New Zealand's extensive programme of economic reform was launched in the mid-1980s and this led to sweeping regulatory changes on several fronts. In the foreign direct investment area, the changes have been more gradual but firmly in the direction of increased liberalisation.

It is worth pausing for a few minutes and tracing briefly the history of foreign investment surveillance in New Zealand.

Surveillance of foreign investment began 50 years ago at the time of the Second World War and was significantly extended in late 1964 with the promulgation of the Overseas Takeovers Regulations.

The Capital Issues (Overseas) Regulations of September 1965 not only had the effect of requiring all companies operating in New Zealand to obtain the Minister of Finance's consent for any offshore borrowing, but also meant that consent was required before any overseas company could commence operating here.

In 1969 an inter-departmental committee comprising the Reserve Bank, Treasury and Department of Trade and Industry was formed to co-ordinate decisions on various aspects of overseas investment policy that had previously been considered separately by the three bodies under separate pieces of legislation. This Committee was replaced in 1973 when the Overseas Investment Act was passed. The Act

established the Overseas Investment Commission (OIC) and charged the Reserve Bank with providing the Secretariat for that Commission.

The Government's major objectives in supervising overseas investment were:

- "(a) to ensure that New Zealand's natural and human resources are developed to the benefit of New Zealand, in a manner which accords with the best interests of New Zealand and consistently with the preservation of a social and physical environment which promotes the well-being of all New Zealanders;
- (b) within this overriding objective, to maximise the benefit to New Zealand available from the international transfer of capital and technology, and thus to ensure that overseas investment contributes to the maintenance of a satisfactory rate of economic growth in New Zealand, while making certain that ownership and control of New Zealand resources is not unwisely or unnecessarily transferred to overseas residents."

The detailed policy criteria for considering Overseas Investment proposals were wide ranging. They included consideration of the environment, regional development opportunities and the taxation yield to New Zealand. These were in addition to the belief that benefits in terms of employment, access to new technology, improved competition and the balance of payments should accrue to New Zealand. Overseas interests looking for control of a New Zealand entity had to show that significant new benefits to the economy would result from the new ownership *vis-à-vis* the existing situation.

Government's philosophy at that time, however, was that overseas capital was not a substitute for New Zealand savings, but a supplement to it and was not to be accompanied by an increase in the level of foreign ownership.

The Government was also concerned to see that the level of overseas ownership and control in particular industries was not excessive in relation to the benefits which New Zealand received from this investment and that no overseas company was able to operate against the national interest.

In 1979 changes were made to make it clear to overseas investors that New Zealand welcomed foreign investment. The criteria for assessing overseas investment applications became less detailed, concentrating more on those benefits that provided expansion to local enterprises and markets via access to new markets, skills and technology. Economic growth, job opportunities and the balance of payments impact remained other major benefits looked for in proposals from foreign investors. In weighing up benefits, the degree of local equity participation, environmental impact, regional development, impact on Government policy and the ability of small shareholders to realise their investment were all to be considered.

1984 saw a significant liberalisation in the financial sector. The removal of Exchange Controls enabled the repatriation of capital, profits and dividends, for any amount, and for any purpose to be undertaken without the need for any administrative or official clearance whatsoever. In October 1985, a new set of overseas investment regulations was promulgated. The principal reason was to remove the requirement for approval to borrow offshore by New Zealand companies and remove limits on overseas persons using local finance. A change was made in the level of assets acquired which did not require Overseas Investment Commission consent. The level had been \$100 000 since 1974 but was raised to \$500 000 under the new regulations. A subsequent amendment in April 1987 further raised this to \$2 000 000.

In August 1989 Government announced a further amendment to the Regulations. It established a new threshold of \$10 million below which Overseas Investment Commission approval was not required. The only exceptions related to the three specified sensitive sectors of rural land, broadcasting and commercial fishing. Broadcasting was subsequently deleted from the schedule in 1992. All investments by foreigners in these sectors (regardless of dollar value) require the consent of the Commission.

The criteria by which proposals from overseas investors are assessed were refined slightly in July 1990 to focus on the economic benefits that would accrue to New Zealand. In essence, however, they remain very similar to those that have operated since 1979.

You can see how Governments have steadily and consistently liberalised their approach to foreign investment over the past 30 years. This has been more evident recently, with the emphasis shifting from the control of foreign investment to more of a monitoring role. However, the Government does reserve the right to refuse an investment proposal if it is considered undesirable. Government's current philosophy is to welcome and encourage foreign investment, *without* discrimination. This is reflected in the liberal approach adopted by Government with its foreign investment policies. However, this stance is not always recognised overseas, and this aspect is recognised by Government ministers who have been attempting to redress the problem in recent times.

As mentioned earlier, the Government's foreign investment policy is administered via the Overseas Investment Commission which acts under powers delegated from the Minister of Finance. This body was established to rationalise existing foreign investment policy and provide a focus for all matters concerning foreign investment. The Overseas Investment Commission consists of two members from the

business community, including the chairman, plus a representative from each of the Ministry of Commerce and the Reserve Bank of New Zealand.

You will recall that the Reserve Bank of New Zealand has an additional role in that it provides the Secretariat for the Commission. As Secretary of the Commission my primary function is to liaise between the Secretariat and the Commission. An applicant's contact with the Commission is via the Secretariat through which applications are submitted for processing to ensure they meet the Commission's requirements. The approval procedure is generally straightforward and most applications can be processed within 10 days unless further information is required. The Commission produces a Guide (free of charge) to those persons who wish to make an application for consent in terms of the Regulations.

## Consent Statistics

Since 1974 there has been a substantial increase in the total level of applications to the Commission. During that year, 278 applications from overseas investors were approved, whereas in 1989 this figure had risen to 1538. The reduction in the number of applications approved since 1990 can be attributed to the setting of the new \$10 million threshold.

## Source Statistics

Australia has always been, and remains, the greatest single source of applications. Manufacturing and the service sectors have benefited mostly from foreign investment almost equally until the 1980s when the service sector tended to show greater growth.

## Petroleum Statistics

In 1993 the OIC approved 2 applications involving the petroleum sector. This compared with 5 applications in 1992, 6 in 1991, 2 in 1990, 18 in 1989, 34 in 1988 and 24 in 1987.

The statistics reflect the concern of offshore investors as to the desirability of investing in New Zealand. However, the reduced number of applications may also be affected by the \$10 million threshold set in August 1989.

Since 1991 there has been little evidence of new player interest in the New Zealand petroleum sector with the only major development being an application from Conoco Northland Ltd, which is ultimately owned by the Du Pont Corporation of the USA obtaining consent in 1993 to undertake petroleum exploration and exploitation in the Northland Basin.

The Commission's overall functions can be described as follows:

1. To allow the Government to monitor significant and sensitive investment proposals and provide an avenue through which benefits can be promoted, and those few undesirable proposals rejected;
2. To provide a means of control over the level of foreign ownership of natural resources including land and sea;
3. To provide a means of control over the level of foreign ownership in sensitive sectors;
4. To allay public concerns, regarding the operations of foreign interests in New Zealand, that could arise if they were not supervised.

As part of the fulfilment of these functions the Commission is required to advise the Government on all matters relating to foreign investment.

The Overseas Investment Regulations are simple and straightforward in their application. A non-New Zealand entity is referred to in the Regulations as an "overseas person". More specifically an overseas person is any company formed overseas or any individual not ordinarily resident in New Zealand. In addition, the definition includes any New Zealand company in which 25 percent or more of the voting power is held by overseas persons. An overseas person must obtain consent to:

- commence business in New Zealand as a branch or subsidiary
- acquire 25 percent or more of the ownership or control in a New Zealand company
- acquire the assets of an existing business
- increase the proportion of shares held in a company *only* if the "investment" exceeds \$10 million, *or* where the investment is in one of the two specified sensitive sectors namely; Commercial Fishing, and Rural Land, where *all* transactions (regardless of dollar value) require examination

Before going on I would like to stress that the 25 percent threshold as it relates to overseas persons is not an indication of preferred levels of investment; it is merely a trigger point for Commission involvement. I would also stress that the consent of the Commission is not required where an overseas person wishes to acquire less than 25 percent of the shares in a New Zealand company.

## Criteria

The Government has announced that it will streamline the regulatory process for foreign investors. It has decided that investment proposals will fall into two categories, "general" and "specified land".

"General" investment proposals are deemed to be more than \$10 million by overseas persons in New Zealand, and must be notified to the Commission 10 working days prior to proceeding.

### Information requirements

Notification of proposed investments must include sufficient information to enable the Commission to establish that:

1. The investor has business experience and acumen.
2. The investor is demonstrating commitment to the proposed investment by placing at risk capital of their own.

3. There is no investor with at least a 25 percent beneficial interest in the proposed investment who has a criminal record that would disqualify them from obtaining permanent residence in New Zealand.

### Assessment criteria

The Commission is required to assess each notified investment to ascertain that net economic benefits will accrue to New Zealand. The Commission is required by the regulations to presume that net economic benefits exist if it has been able to establish the three points listed under Information Requirements above.

**Specified land investments** (regardless of the amount involved) will have to meet not only the above criteria but also be likely to achieve a result in one or more of the following:

- the introduction of new technology or business skills
- the development of new export markets or increased export market access
- the creation of new job opportunities or the retention of existing jobs that would otherwise be lost
- added market competition, greater efficiency, greater productivity or enhanced domestic services
- introduction of additional investment for development purposes
- increased processing in New Zealand of New Zealand's primary products

In addition, where such benefits are perceived, 100 percent overseas ownership can be approved in all sectors. However, it should be noted that the Fisheries Act 1983 precludes the allocation of fishing quota to an overseas party (limited to 24.9 percent), unless the Director General of the Ministry of Agriculture and Fisheries grants an exception.

I have indicated the factors that are taken into account by the Commission when considering an application. The Commission does not guarantee the success of the venture being proposed. Its decision is based on the *perceived benefits* as outlined in the case under consideration. The Commission's consent merely allows the overseas party to compete on an equal footing with New Zealand entities.

Finally, the Commission's members have a wide range of experience and skills, which are necessary to ensure that Government's foreign investment policies are carried out in a consistent, logical and proper manner.

## Author

PAUL TINDILL is the current Secretary of the Overseas Investment Commission, a position he has held for 6 years. He was educated at St Patricks College, Wellington and Victoria University and is a qualified accountant and member of the New Zealand Society of Accountants. Prior to his present position, he held a number of managerial positions in the Reserve Bank's Registry, Financial Markets, Corporate Services and Internal Audit Departments. During the prices and wages freeze, he was Secretary of the Dividends and Directors Fees Appeal Authority.