

Deborah Russell MP
Chairperson
Finance and Expenditure Committee
Parliament Buildings
Wellington 6160

15 May 2020

Dear Chair

I am writing to you on behalf of the Property Council with regards to the Overseas Investment (Urgent Measures) Amendment Bill which was introduced to the Parliament on 14 May 2020 as a package to replace the Overseas Investment Amendment Bill (No 2). Earlier this month, we wrote two letters to the Associate Finance Minister, Hon David Parker, regarding possible changes to the Overseas Investment Amendment Bill (No 2). They are attached for your information.

Property Council has a broad membership, which includes a wide range of commercial and residential property owners and developers in New Zealand. Several of our members are NZX listed companies and therefore attract foreign investment alongside investment by New Zealanders.

We want to commend the Government on bringing forward amendments to the Overseas Investment Act 2005 to mitigate the economic effects of COVID-19. Particularly, that the Government will fast track some aspects of the Phase II reforms aimed at cutting unnecessary red tape (e.g. carve-outs for "sensitive adjoining land", changes to the process for assessing "good character" and removing some fundamentally New Zealand companies from the need to seek Overseas Investment Office's consent). These changes are welcomed and long overdue.

We believe that changes to the Overseas Investment Act I, if done properly, would bring considerable investment benefits and ensure that majority owned and controlled New Zealand entities are not caught by the overseas investment regime. There are, however, certain aspects of the proposed amendments that require further consideration and consultation with stakeholders to ensure the Bill delivers on the objectives set by the Government. Below I have outlined the main concerns that have been expressed by our members, and the actions the Government could take to achieve a wider range of benefits for all.

National interest test

The Bill brings forward the national interest test that currently sits in the Overseas Investment Amendment Bill (No 2). However, the current drafting of the Bill may create some unnecessary uncertainty. In particular, the Bill does not provide a clear definition of a 'national interest test' and its legislative criteria despite the earlier Treasury's recommendation. It means that the Bill grants the Minister a very broad discretion to decline an application that is "contrary to the national interest" without any legislative criteria to underpin this decision. Without a clear definition, there will be uncertainty and speculation about its intended application.

Further to this, there might be some uncertainty around whether transactions that have already been signed, but are not conditional on Overseas Investment Office's approval must be screened. This would possibly result in a large number of notifications being made where it is clear that deal drivers did not relate to COVID-19.

Given the above, we strongly support the Government's intention to introduce guidance on what constitutes the national interest to inform the assessment. We are, however, concerned that the factors that will be considered as

NATIONAL OFFICE

Foyer Level
51 Shortland Street
PO Box 1033
Auckland 1140

P +64 9 373 3086
F +64 9 379 0781
E enquiries@propertynz.co.nz
propertynz.co.nz

Corporate Sponsors



McCONNELL PROPERTY

KPMG



YARDI

part of the assessment remain very broad, as per the Cabinet Paper. This again would create unnecessary uncertainty. Therefore, we recommend clearer guidance and definition are required around the types of factors that indicate that a transaction could be contrary to the national interest test.

We also have concerns in regard to the decision-making paradigm. We believe that, at this level of decision-making, there should be at least two ministers to ensure a reasonable balance and natural justice.

Timeframes for decision making under the emergency notification power

The Bill introduces statutory time frames of 40 working days for decisions by the regulator once regulations are made. This comprises 10 days for initial triage, after which a large majority of transactions would be able to proceed, and then 30 days for national interest assessment if it is required. The extension period will be 30 days.

We believe that most transactions will be cleared within 10 working days. However, we are concerned that this can cause significant disruption for urgent transactions. Further to this, the additional up to 60 days where a detailed review is required could result in a transaction not proceeding and or a firm failing as a result. Therefore, we recommend the Government reconsider the process to ensure more efficient and streamlined screening.

Alternative option to protect New Zealand's best interests

We support the Government's intention to protect New Zealand's best interests in important assets. However, a wider range of options around how to achieve this should be considered. One of the options could be lowering the monetary threshold for non-land business assets. We believe the Government should consider this option as it will protect valuable assets while attracting overseas investment.

Formal consultation and next steps

Given the devastating impact of the COVID-19 pandemic, any changes to the Bill should be carefully considered and framed to better support the New Zealand economy. Therefore, we believe that more extensive consultation is particularly crucial at this point in time considering the widespread impact of the Bill on New Zealand as a whole. This is also important to ensure that the industry buy-in and input is considered to make informed decisions. Given that, we wish to be heard in support of this letter as part of the Committee's deliberations. If time permits, we would welcome the opportunity to present our views to the Committee.

We welcome further discussion and collaboration with the Committee to provide input from the property sector as part of the formal consultation process for the Overseas Investment Amendment Bill (No 3.). Please do not hesitate to contact me on leonie@propertynz.co.nz or (027) 436 6526.

Yours sincerely



Leonie Freeman
Chief Executive,
Property Council New Zealand

Copied to all Finance and Expenditure Committee members

NATIONAL OFFICE

Foyer Level
51 Shortland Street
PO Box 1033
Auckland 1140

P +64 9 373 3086
F +64 9 379 0781
E enquiries@propertynz.co.nz
propertynz.co.nz

Corporate Sponsors



McCONNELL PROPERTY

KPMG



YARDI