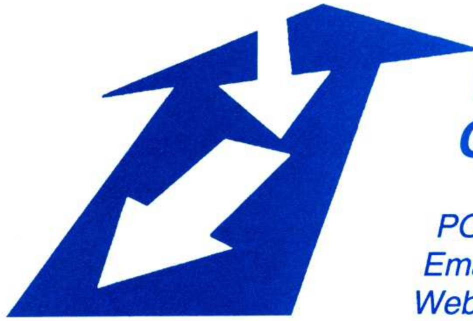

Campaign Against Foreign Control of Aotearoa

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20/5/19

OVERSEAS INVESTMENT ACT REFORM SUBMISSION

Overseas Investment
The Treasury

CAFCA is aware that this Stage 2 review of the Overseas Investment Act is not a "first principles" review. That is made clear in the consultation documents put out for discussion by Treasury. So, we won't spend any time on "first principles" (except point 13). It's no secret what our views are on the whole subject of foreign control – the answer is in our title. And you will find no shortage of explanatory detail on our Website (address above). We will confine ourselves to a very brief submission, touching on a few points of concern arising from the consultation documents.

1/ We are pleased to see that the review includes a national interest test, with Ministerial powers to reject applications on the grounds of "not being in the national interest". CAFCA has long recommended this. But this test should not be confined only to large foreign investments, but should be a blanket requirement for all foreign investment applications.

2/ We are concerned at the evidence in the consultation documents that would effectively weaken the 24.9% threshold that triggers the definition of foreign ownership. Options are offered to change it but none to leave it alone. We have a suggestion to change it and it's the same suggestion we made the last time CAFCA submitted on an Overseas Investment Bill (the present 2005 one) – reduce that foreign ownership/control definition to 10%.

3/ Likewise, do not increase the $100m threshold which triggers the need for a foreign investor to apply for permission. You can still buy an awful lot for $99.99 million in this country. And none of those purchases below $100m show up in any public record of foreign ownership of this country – it is an awfully big loophole in any statistics on the subject. And there are equally big loopholes in the other direction – Australia is the country of origin of the single biggest number of foreign investors but due to treaty provisions, the threshold for Australian investors is $530m. And it is $200m for applicants from various other countries (e.g. China), because of NZ's commitments under "free trade" agreements. In reality, that $100m threshold is more notional than real. Up until 1999, it was $50m and before that it was $10m. CAFCA recommends that the threshold be reduced to one of those two figures, preferably the lower one.

4/ We believe that whole area of foreign investment is too big and important to be left to the Overseas Investment Office (which is simply part of Land Information NZ). We recommend that it be undertaken by a dedicated Regulator, one with the same independent status and statutory powers as the Parliamentary Commissioner for the Environment.

5/ The whole "good character" part of the Act needs to be considerably tightened up and defined. It is currently only applicable to individuals, including those owning and/or controlling applicant companies. We are pleased to see that the consultation documents are considering extending that "not of good character" test to the companies themselves, which is something that CAFCA has long advocated. A corporate entity can be of bad character if it has a record of poor behaviour (which should include not just criminal and/or civil court matters, but the applicant's record in areas such as: the environment,

treatment of workers and unions, health and safety, political interference in a country's internal affairs, profiteering, asset stripping, monopoly, tax dodging, etc, etc). More and more applicants are private equity funds or freshly-minted companies set up in tax havens. This has the effect of concealing the ultimate owner/s, meaning that their character cannot be assessed under the current Act. That problem would be solved by extending the good character test to the applicant company or private equity fund.

6/ CAFCA is pleased that the consultation documents raise the prospect of treating water mining applications as a special category. Water usage and ownership, in all their various manifestations, are a major concern to the New Zealand people, right across the board. Water is the oil of the 21st Century and every such application should be subject to the national interest test. Not only that, the Act and the national interest test should be extended to capture those foreign companies simply buying existing water rights.

7/ The Act should be consistent with the Living Standards Framework that is being developed by Treasury. Meaning that it should take into account the impact on social, environmental and "human capital" issues, not simply its economic and financial considerations. We would single out impact on climate change as a major priority. It must be consistent with the Treaty of Waitangi.

8/ The Act should prioritise greenfield applications, as opposed to ones that simply take over an existing New Zealand company. CAFCA has been analysing the OIO/OIC Decisions for 30 years now, and we can say, without fear of contradiction, that greenfield applications have always been very thin on the ground. Very few applications offer any substantial investment in development over and above the cost of purchase (which is all too often at bargain rates). Any development capital promised (over and above the acquisition price) should be included in the consent summary. The consent summaries are far too cryptic.

9/ The Act should make it a condition that applicants based in or making substantial use of tax havens should be declined as a blanket policy. That act should make it very clear that tax dodgers are not welcome in New Zealand (either transnational corporations or individuals).

10/ A register of foreign-owned assets should be created (and it should include those below the current thresholds). There need to be much more readily available statistics.

11/ Too many applicants hide behind "commercial sensitivity". Approval should be conditional on the sale and/or purchase price being revealed.

12/ The full application should be publicly notified before any Decision is made. And the public should have the legally guaranteed right to submit on, and object to, the application before any Decision is made. This is standard procedure in other sectors. Why should would-be foreign investors be given special treatment? And the approving body needs to conduct regular follow ups and audits to assess the "benefits to New Zealand" stated by the applicant at the time of application.

13/ Finally, there needs to be a radical shift in emphasis in the foreign investment approval/oversight regime. The Government has said it is a privilege, not a right, for foreigners to buy land or companies in New Zealand. But the whole thrust of this proposed reform is to give foreign investors privileged treatment, to make things easier for them, to make the approval process more "efficient" and "streamlined". It needs to be written into the Act that the approving body works for the New Zealand people, not for the applicants. It is us who are the "clients".

Murray Horton
Secretary/Organiser