

24 May 2019

Submission on the Reform of the Overseas Investment Act 2005 Consultation Document

To the Treasury

By email to overseasinvestment@treasury.govt.nz

PEPANZ Submission: Reform of the Overseas Investment Act 2005 Consultation Document

Introduction

The Petroleum Exploration and Production Association of New Zealand ("PEPANZ") represents private sector companies holding petroleum exploration and mining permits, service companies and individuals working in the industry.

This document constitutes the PEPANZ's submission to the Treasury on the Reform of the Overseas Investment Act 2005 Consultation Document¹, which closes for consultation on 24 May 2019.

Submission

Context about the New Zealand Petroleum Sector

1. Multinational companies play an important role in the New Zealand petroleum sector, both in exploring for new petroleum resources and producing oil and gas. This activity contributes to economic well-being and energy security at both the regional and national level. Foreign direct investment has played an important role in developing these resources and we note that all offshore fields are owned by overseas corporations, and in the absence of international capital New Zealand would have less development and energy security than is the case.
2. The upstream oil and gas sector contributes over \$2.5 billion to New Zealand's Gross Domestic Product (GDP), the Government collects approximately \$500 million in royalties and tax from the sector annually, and oil exports are worth approximately \$1.5 billion per annum.²
3. Petroleum exploration, with its long lead times and significant capital and operating costs, requires sound and stable settings for investments to be made, especially in frontier basins with modest geological prospectivity such as New Zealand. To maintain international investment, it is important that settings are enabling and that perceptions of New Zealand as an international investment destination are positively upheld.

¹ <https://treasury.govt.nz/publications/consultation/reform-overseas-investment-act-2005>

² Employment, export and GDP figures: Venture Taranaki "The Wealth Beneath Our Feet" (2015).

Royalty figures: Ministry for Business, Innovation and Employment (MBIE) "Energy in New Zealand 2018" (2018).

Regional incomes: Statistics New Zealand (March 2018).

Perceptions of New Zealand as an investment destination

4. The consultation document observes that "Some international surveys have ranked New Zealand's investment screening regime among the most restrictive regimes in the world³." We note the Fraser Institute's Global Petroleum Survey 2018⁴, which shows that New Zealand's ranking in its Policy Perception Index fell to 46th out of 80 in 2018, from 14th out of 97 in 2017.
5. The Fraser Institute cites poorer political stability as a factor in that fall, and the collapse in status takes into account the way the decision of 12 April 2018 to ban new oil and gas exploration outside of onshore Taranaki appears to have been made, and the resulting political and sovereign risk.

Increased ministerial discretion in relation to "significant business assets"

6. To avoid further detriment to New Zealand as an investment destination in the resources sectors (and to inward investment more generally across other sectors), politicisation of regulatory decision-making should be strongly avoided. For this reason, we express serious concern about the consultation document's consideration to introduce further ministerial discretion when assessing acquisitions of "significant business assets".
7. As an example of how such discretion can be applied to the detriment of companies even under the *existing* legislation, we note with concern the decision from the Minister for Land Information Hon Eugenie Sage to block OceanaGold Corporation from purchasing farmland in Waihi to expand its gold mining operations⁵. Regrettably, we have seen reports that the case for OceanaGold was strong and that a bias against the mining sector (rather than the facts of the application) may have influenced decision-making.
8. If amendments are made to increase ministerial discretion, this would open even wider the likelihood of that decisions are seen as based not on sound analysis but on ideology or party politics. Such a situation would increase regulatory uncertainty, likely decrease investment, and potentially increase the cost of capital to account for the higher risk. Additionally, use of discretion may be more likely to open decision-makers to judicial review challenges in relation to the exercise of such discretion.

Environmental considerations

9. We oppose increasing environmental factors as a consideration when assessing application. In relation to the environment, strengthening barriers to overseas investment are unwarranted and inappropriate given:
 - New Zealand already has a comprehensive and robust framework for assessing environmental effects and greenhouse gas emissions; and
 - the expertise of specialist environmental regulators should be preferred, rather than relying on the Overseas Investment Office

Assessing character of applicants

10. Under the current regime, applicants must demonstrate their character upon each application. We support the proposals to streamline the process (including the possibility of granting Standing Consent to approved investors), especially for 'repeat investors' which have proven their character previously.
11. We also draw attention to the regime of the Crown Minerals Act 1991, which establishes a rigorous process for assessing permit applications (including the transfer of permits) which specifically considers matters such as operators' technical capability, ability to comply with health and safety and environmental legislation, and financial capability to comply with work programmes. To some extent, the Government can rely on this assessment without needing to rely solely on the OIO regime.

³ Page 9. Reform of the Overseas Investment Act 2005 Consultation Document.

⁴ <https://www.fraserinstitute.org/sites/default/files/global-petroleum-survey-2018.pdf>

⁵ This decision was contrary to the view of joint decision-maker Associate Minister of Finance Hon Dr David Clark, who wanted to approve the application but was vetoed.