NEW ZEALAND BANKERS ASSOCIATION

Submission

to the

Treasury

on the

Reform of the Overseas Investment Act 2005 – Facilitating productive investment that supports New Zealanders' wellbeing

24 May 2019

NEW ZEALAND BANKERS ASSOCIATION
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About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.

2. The following seventeen registered banks in New Zealand are members of NZBA:
   - ANZ Bank New Zealand Limited
   - ASB Bank Limited
   - Bank of China (NZ) Limited
   - Bank of New Zealand
   - China Construction Bank
   - Citibank, N.A.
   - The Co-operative Bank Limited
   - Heartland Bank Limited
   - The Hongkong and Shanghai Banking Corporation Limited
   - Industrial and Commercial Bank of China (New Zealand) Limited
   - JPMorgan Chase Bank, N.A.
   - Kiwibank Limited
   - MUFG Bank, Ltd
   - Rabobank New Zealand Limited
   - SBS Bank
   - TSB Bank Limited
   - Westpac New Zealand Limited

Background

3. NZBA welcomes the opportunity to provide feedback to the Treasury on its consultation document *Reform of the Overseas Investment Act 2005: Facilitating productive investment that supports New Zealanders' wellbeing* (**Consultation Document**). NZBA commends the work that has gone into developing the Consultation Document.

4. If you would like to discuss any aspect of the submission further, please contact:

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Introduction

5. NZBA supports reform of the Overseas Investment Act 2005 (**OIA**) and its aim to build productivity and support the economy through overseas investment. In particular, we support measures to reduce the regime's complexity and ensure that compliance is proportionate to risk.

6. NZBA has one submission on the Consultation Document as it relates to the definition of 'overseas person' in respect of bodies corporate.

Definition of 'overseas person' as it applies to bodies corporate is too broad with respect to financing transactions

7. The Consultation Document recognises that the current definition of 'overseas person' captures a range of domestically incorporated bodies that are majority owned and controlled by New Zealanders or which have strong connections to New Zealand. This includes New Zealand registered banks which are wholly owned subsidiaries of non-domestically incorporated entities (in particular, the four banks which the Reserve Bank of New Zealand recognises as being 'dominant' in all categories of domestic systemic importance in its review of the capital adequacy of registered banks).

8. In recognition of the existing widely drafted definition, the Overseas Investment Regulations 2005 provide for an exemption for common lending/financing transactions. The Overseas Investment Office states in its guidance that:[1]

> *The Regulations recognise that [requiring lenders to obtain consent for security arrangements] would interfere with the legitimate business interests of mortgage lenders and exemptions are provided to protect these interests. Regulation 41 exempts the acquisition by an overseas person of "securities" or rights or interests in "securities" under a "security arrangement.*

9. In addition to the types of financing referred to above, there is other financing undertaken by registered banks in which issues with the OIA may arise – the financing of asset purchases by way of sale and leaseback, and the financing of receivables purchases.

10. NZBA considers that Treasury should make changes to the OIA which ensure that the definition of 'overseas person' does not capture registered banks which are wholly owned subsidiaries of non-domestically incorporated entities with respect to the various types of financing transactions provided by those entities, not just those already provided for in the exemptions.

11. However, under the proposals in the Consultation Document, some banks would still be captured by the definition of 'overseas person' and would not satisfy Options 1 to 3. Additionally, these entities would fail to meet all of the suggested requirements for an exemption under Option 4 (noting that these criteria are intended to be examples).

12. As such, we submit that Option 4 should provide for an exemption where the entity in question is a registered bank under the Reserve Bank Act 1989 (**RBNZ Act**), and

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1 https://www.linz.govt.nz/overseas-investment/find-out-if-you-need-consent-invest-new-zealand/determining-ownership-or-control-interest

the financing in question is provided by that bank in the ordinary course of its provision of financial products and services.

13. Alternatively, all New Zealand registered banks could be deemed as non-overseas persons for the purpose of making an ‘overseas investment in significant business assets’, where such banks are doing so in the ordinary course of providing financial products and services.

14. We consider that a change which specifically recognises that New Zealand registered banks are an ‘overseas person’, or an express exemption from the requirements of the OIA with respect to financing provided in ordinary course of providing financial products and services, is consistent with the criteria for reform options:

(a) ‘Manages the risk of overseas investment to New Zealanders’ wellbeing’

(i) Risk is managed through the requirements of the RBNZ Act and the applicable Conditions of Registration.

(b) ‘Supports overseas investment in productive assets’

(i) New Zealand businesses (such as exporters and manufacturers) would be supported as they develop and grow by enabling the timely and cost effective provision of finance to them by registered banks in relation to their assets (including receivables). In addition, such financing may enable those businesses to access financing that they may not otherwise have access to.

(c) ‘Encourages more predictable, transparent and timely outcomes’

New Zealand businesses would have better access to financing through registered banks and would no longer be impacted by uncertainty over consent considerations, potential costs and timeframes as is currently the case under the OIA in relation to such financing.