

24 May 2019

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Overseas Investment Act Reform
The Treasury
PO Box 3724
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Sent via email: overseasinvestment@treasury.govt.nz

Dear Andrew

Reform of the Overseas Investment Act 2005

First Gas Limited welcomes the opportunity to make a submission to The Treasury on the consultation paper "Reform of the Overseas Investment Act 2005" released in April 2019. We are also making this submission on behalf of Gas Services NZ Limited (GSNZ), a separate business with common shareholders that owns the Ahuroa Gas Storage facility (trading as Flexgas) and Rockgas.¹

We support the review of the Overseas Investment Act (the Act) and agree that an easier process would assist in encouraging investment in New Zealand. We are concerned that the positive improvements proposed to the Act, however, will be overshadowed by the introduction of broader investor screening processes with greater discretion. Our submission focuses on:

- The need for investor certainty to meet New Zealand's growing infrastructure needs;
- How the increased level of Ministerial and government official discretion proposed for some of the investment screening options will undermine investor certainty and will therefore be detrimental to the objectives of the Act; and
- Our support for many of the minor improvements proposed that will enable a more efficient process.

We expand on these points below.

About the First Gas Group

First Gas and GSNZ are owned by Australian investors, First State Funds. First State Funds is part of the Commonwealth Bank of Australia's group of companies and comprises of two infrastructure funds managed by First State Investments. First State Investments,² is a leading global infrastructure asset manager, overseeing approximately \$240 billion of infrastructure assets across Australia, New Zealand and Europe.

Our owners are committed to growing their portfolio of infrastructure assets and continue to invest in infrastructure worldwide. In 2016, they purchased the First Gas pipeline assets from Vector Limited and Maui Developments Limited, and in 2018 they extended their investment in New Zealand through the purchase of the Ahuroa gas storage facility (trading as Flexgas) and Rockgas LPG business from Contact Energy.

First Gas operates 2,500 kilometres of gas transmission pipelines, and more than 4,700 kilometres of gas distribution pipelines across the North Island. These gas infrastructure assets transport natural

¹ Information on Flexgas and Rockgas is available from www.flexgas.co.nz and www.Rockgas.co.nz respectively

² First State Investments is known in Australia as Colonial First State Global Asset Management. For more information on First State Investments see www.firststateinvestments.com.

gas from Taranaki to major industrial gas users, electricity generators, businesses and homes, and transport around 20 percent of New Zealand's primary energy supply. Our distribution network services approximately 63,000 consumers across the regions of Northland, Waikato, Central Plateau, Bay of Plenty, Gisborne and Kapiti.

GSNZ is an affiliated company that owns energy infrastructure across New Zealand. The Ahuroa gas storage facility can store up to 18PJ of gas³ with expansion planned over the next two years to increase the injection and withdrawal rates of the facility. Rockgas has over 80 years' experience providing LPG to over 90,000 customers throughout New Zealand.

With investment of over \$1.9 billion in New Zealand's energy infrastructure, our owners are committed to a long-term future in New Zealand. Given these interests, our submission focuses on foreign investment in energy infrastructure, and our recent experience with the Overseas Investment Office (OIO) and the Act. Our experience with the OIO to date has generally been positive. The minor frustrations we have experienced when making applications have been discussed within the consultation paper, with proposed solutions identified.

New Zealand needs investment in infrastructure and investors need some certainty

New Zealand needs investment in its infrastructure to meet the current needs and growing ambitions of our country. The Treasury has highlighted to Government that many of our key infrastructure networks need critical investment on an unprecedented level. The Treasury estimates that \$129 billion is expected to be spent on capital projects between 2019 and 2029.⁴

The issue facing New Zealand is that while we have a range of domestic investment needs,⁵ our domestic savings rate does not provide a pool of capital that is sufficient to meet the level of investment needed. In addition, to ensure that domestic wealth is maximised, it likely makes sense for local investors to look internationally and diversify where their capital is invested (resulting in a two-way flow of capital out of and into New Zealand). This results in a clear need for foreign investment to bridge the financing deficit.

To encourage foreign investment in long-term assets such as infrastructure, investors need certainty of process and confidence in a fair and reasonable outcome. Under the current requirements of the Act, we agreed with the review findings that there may be uncertainty about the outcome of an application, and the process can be time consuming- and costly.

Increased discretion in investment screening process undermines investor certainty

We support the objectives of this review of the Act – providing more predictable, transparent and timely outcomes that support overseas investment, while ensuring New Zealand maintains the ability to manage any risk from overseas investment. Maintaining the investor test, with the improvements suggested is a positive step.

However, First Gas is concerned that the increased level of Ministerial and government official discretion proposed for some of the investment screening options will undermine investor certainty, and consequently be detrimental to the objectives of the regime. We observe that:

- While the consultation paper acknowledges that the five options proposed may generally have a positive impact on managing the risk of overseas investment to New Zealanders well-being, they have largely a negative effect in supporting overseas investment in productive assets;
- Further, four of the five options have a negative effect on delivering more predictable, transparent and timely outcome;⁶
- Broader Ministerial discretion written into legislation may give the perception of greater risk, as this discretion could be used for political reasons or applied inconsistently. For example, the “substantial harm” test in Option two provides Ministers with broader grounds to deny consent to investment.

³ For context 18PJ is the equivalent amount of energy from all the hydro lakes.

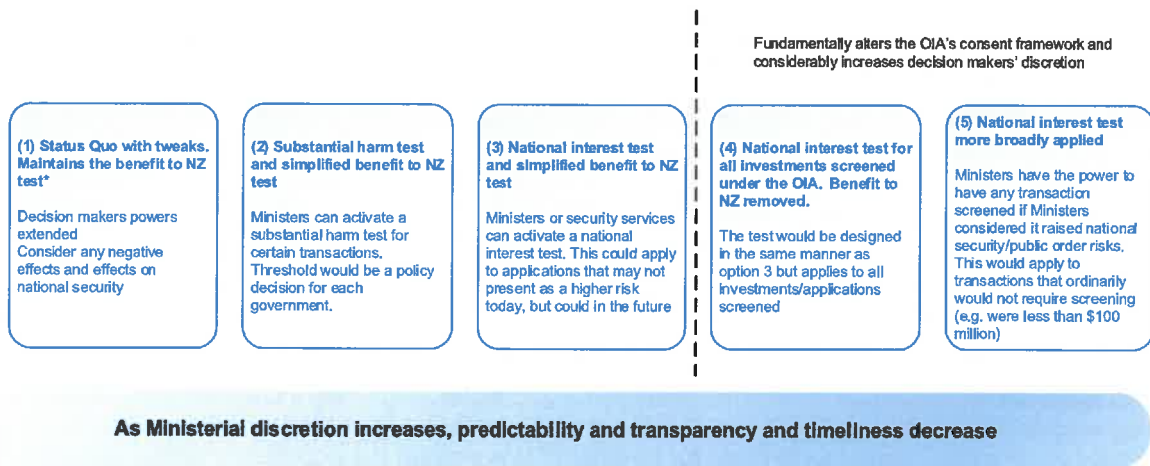
⁴ <https://treasury.govt.nz/information-and-services/nz-economy/infrastructure>

⁵ Consultation paper, paragraph 21

⁶ Consultation paper, table 15, pages 77 – 79.

We outline in Figure 1 below how as Ministerial discretion in each of the options increases, predictability, transparency and timeliness for applicants may decrease.

Figure 1: Increasing Ministerial discretion leads to lower certainty



*all options maintain the investor test

We are concerned that the level of discretion proposed in options 4 and 5 will reduce the ability and/or appetite of international investors to invest in New Zealand's businesses, or may change the banks view on the value of their security. The fundamental changes to the consent framework proposed in options 4 and 5 significantly broaden the consent process and increase Ministerial discretion beyond that which is efficient or necessary. Any perceived benefits to this increased discretion are likely to be negated by the effect on investor perception of risk. All applications to purchase significant business assets or sensitive land become subject to the National Interest test under option 4. This affects all investments screened under the Act, adding unnecessary cost and time to the process.

We believe there needs to be an appropriate balance between mitigating risk and attracting foreign investment to meet New Zealand's needs. Rather than making fundamental change to the regime to resolve concerns, it would be more effective and efficient to address specific issues through other legislation, or within the Act rather than broadening Ministerial discretion. The tax issues raised in the consultation paper, for instance, could be considered as part of a review of the taxation regime.

Focus on targeted measures to address specific concerns

Recommend that guidelines around discretionary screening would be required if options 2 – 5 are adopted

Should the Government elect to extend the level of ministerial discretion to that proposed in Options 2 – 5, we strongly recommend the development of guidelines and the parameters of any challenge to applications alongside the amendments to the Act. Guidelines will provide investors with some certainty of any additional screening they are likely to encounter throughout the application process. We would expect full justification and reasoning to be disclosed for any decision made to reject an application in the national interest or because it would cause harm. In the absence of case law, the reasoning and justification can serve to offer precedent to prospective investors.

Improvements that improve the efficiency of the process are welcomed

We support a review of the Act that creates positive environment for future investment. In general, we consider applications to the OIO progress well, but agree that improvements could be made to increase the efficiency, timeliness and effectiveness of the process.

Support excluding scrutiny of New Zealand parties

The proposed amendments to the investor test achieve an appropriate balance between simplifying the test where it makes sense whilst extending the amount of information provided when persons or companies first look to invest in New Zealand. Excluding New Zealanders from the investment test aligns with the aims of the Act, ensuring that only overseas investors are subject to scrutiny. We

believe that it is unnecessary to require the same level of information from New Zealanders that are individuals with control (IWCs) or relevant overseas parties (ROPs).

First Gas and GSNZ have New Zealand Directors that are considered IWCs. Under the current regime they are required to submit to the same scrutiny as IWCs based internationally. Removing this requirement will lower the administrative burden in applications, while still achieving the aims of the Act.

Support standing consent proposal

Reducing the frequency with which the screening requirements are triggered is pragmatic and makes the process more efficient. The introduction of a standing consent within the investor test recognises that in some instances the burden of evidence of good character may be reduced. IWCs or ROPs with a proven record in New Zealand, and where there have been no major changes since the last application may provide a reduced level of information in the application to the OIO. First State Investments purchased First Gas in 2016. The standing consent may have made the subsequent purchase of Ahuroa and Rockgas in New Zealand more streamlined.

Support amendments around incremental investments

We welcome the proposed amendments clarifying and simplifying when incremental investments require additional consent. We agree that the technical issues highlighted in the consultation paper create unnecessary compliance costs for investors.⁷ We support the adoption of option two that allows any upstream or downstream shareholder in the consent holder to qualify for an exemption. This would mean that small upstream transactions that do not result in any material changes to the ultimate ownership of or control of the sensitive assets, do not require consent.

In our recent purchase of Ahuroa, one of the beneficial owners had a very minor change in shareholding during the application process. This added much time and cost to the application process to meet the investor test, for a change that had no bearing or impact on the application.

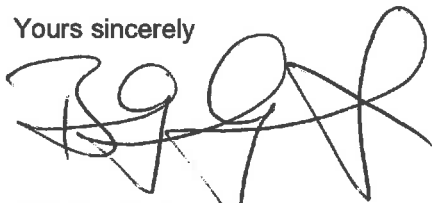
We also support the following minor amendments:

- The option to extend the investor test to include assessment of corporate character if this provides the OIO and Government with more assurance over foreign investment; and
- The proposed broadening of the investment test to consider entities as well as individuals. By broadening the investment test, the Overseas Investment Office (OIO) can assure the Government that entities are of "good character."

Contact details

If you have any questions regarding this submission, please contact Karen Collins, Regulatory Policy Manager, on 027 472 7798 or via email at karen.collins@firstgas.co.nz.

Yours sincerely



Ben Gerritsen
General Manager Commercial and Regulation

⁷ Consultation paper, technical issue: incremental investments above a 25 percent interest, pages 45 – 49.