NZVCA
NEW ZEALAND PRIVATE EQUITY & VENTURE CAPITAL ASSOCIATION INC

24 June 2016

Hon Louise Upston
Minister of Land Information
Parliament Buildings
Wellington

Dear Minister

Overseas Investment Act and Regulations

We set out, in the schedule to this letter, certain high level suggestions which may assist to streamline application processes under the Overseas Investment Act 2005 (**OIA**) and to reduce waiting times under that act.

For ease of reference, we have divided these suggestions into:

(1) practical efficiencies; and

(2) legal suggestions.

We appreciate that a change to the underlying legislation is not currently being considered and accordingly we have given our preliminary thoughts on how these suggestions could be implemented through either regulatory action or new exemptions. We would welcome the opportunity to discuss implementation with you.

We believe that, in order to move New Zealand toward international norms the Overseas Investment Office (OIO) must commit to a target of no more than 60 days for the processing of the most complex (and high profile) applications (with shorter periods for less complex/ less material applications). We note that such a target would still place New Zealand out of line with Australia (where the legislation references a 30 day period) but would at least help to give overseas investors a reasonable expectation as to how long their investment will take to process.

Current processing times are creating significant commercial issues due to long intervening periods of uncertainty caused by an outstanding condition which is largely outside the control of either party. While these costs, (including opportunity costs), are not visible to the OIO they are highly material and are a strong deterrent both for those seeking investment and for prospective foreign investors hoping to satisfy that demand.

The suggestions scheduled to this letter are designed with this overall target in mind. However, in our view, implementation of the attached suggestions are unlikely, in and of themselves, to deliver an effective system consistent with the Government's stated objective of increasing overseas investment.

We believe that funding of the OIO will continue to be inadequate, even factoring in recent increases in the budget and fee increases, particularly in the context of current overseas investment levels. Given, as noted at the Auckland meeting on 21 June, the current regime not only defers but also deters foreign investment, the cost/benefit of increasing funding to the OIO (minor amounts, in the grand scheme) should be clear.

In addition to greater resourcing, the consent process would be improved by the publication of enhanced guidance materials, particularly in the area of the counterfactual for sensitive land applications. A regular newsletter, along the lines of the Takeovers Panel's Code Word, would also be a useful engagement tool.

We trust that the attached suggestions are helpful and look forward to discussing them further with you in due course.

Yours sincerely

Colin McKinnon
For and on behalf of the **New Zealand Private Equity & Venture Capital Association**

SCHEDULE

SUGGESTIONS OF THE NZVCA

PRACTICAL SUGGESTIONS

(1) Outsourcing

Given the "lumpy" (and unpredictable) nature of the OIO's workload, we believe that the OIO should look to outsource part (or all) of the process relating to certain applications (perhaps those which are deemed to be least sensitive) in times of most stress.

We note the comment by the OIO (made in the Auckland seminar on 21 June) that outsourcing to commercial firms is difficult given potential conflicts of interest. However, we believe that, even if a number of firms are involved in a given application, there will always be a top level law firm which will not be conflicted and to whom the work might be safely outsourced.

(2) Fees should be customised, to a greater extent, to the complexity of the application meaning additional resources can be committed to the most complex investments.

(A) We suggest that a sliding scale of fees be introduced, tailored to deal with different types of application and for investors who make repeat applications. Different timeframes for processing such applications should exist based on the likely complexity or simplicity.

(B) Situations exist where urgent consent is required. We suggest that the OIO introduce an “optional” higher fee payable for a fast tracking process. This would be similar to a LIM application process where there are higher application fees payable for urgent processing and lower fees payable for a standard processing timeframe.

LEGAL SUGGESTIONS

(3) Narrow the requirement to obtain consent in connection with certain classes of "Sensitive Land"

(A) The requirement to obtain consent in connection with certain classes of "sensitive land" should be eliminated through regulatory and other action (e.g. amending the section 37 list). Many transactions are caught by the regime merely because of an incidental land interest which has no real sensitivity and is of little value to the public (the rat-infested stream example).

(B) Changes that could be made include:

(i) removing small recreation reserves from the list published in accordance with section 37 of the Act;

(ii) exempting from the requirement for consent applications involving land or esplanade reserves that separate the relevant land from the foreshore; and

(iii) increasing the size thresholds for urban land that adjoins reserves of foreshore.

(4) Reduce the categories of persons required to go through the full application process.

(A) Where an investor has been approved by the OIO in the past, it should not have to provide the same level of information on each subsequent investment. To simplify the

process, repeat applicants should be able to provide a simplified set of generic information to the OIO (perhaps supplemented by a "no change" statement). This should be an administrative issue, not requiring legislative or regulatory change.

(B) When an acquisition involves complex transactions (multiple parallel, related, inter-conditional transactions), only one application encompassing the whole acquisition structure should be required, enabling a reduction in processing time.

(5) Simplification of Good Character Requirements

New guidelines should be developed and published detailing the OIO's approach to the "good character" requirement. Relevance and materiality should (as with much of the OIO process) be the guiding principles. For example, a minor driving offence of an applicant, who is applying to the Overseas Investment Office to get consent to acquire "significant business assets" in New Zealand, should not be taken into account (or be required to disclosed) as it is irrelevant. On the other hand, a charge for fraud, for example, would be clearly relevant.

We submit that adopting this approach is presently open under the Act and Regulations, without the need for any formal legal action.