

SOME RESTRICTIONS ON OVERSEAS INVESTMENT IN  
NEW ZEALAND

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GOVERNMENT ENCOURAGEMENT

Overseas investment is generally welcome in New Zealand although there are a number of Governmental restrictions on such investment. In a general policy statement issued on the 27th November, 1962, the Minister of Finance, the Hon. H.R. Lake, made it clear that overseas investment was welcome in New Zealand.

"We welcome overseas investment particularly in projects which invite New Zealanders to share in their equity finance. We will continue to do our best to ensure that financial and administrative conditions in New Zealand make investment here attractive to overseas capital." (1)

In a recent exchange of letters this year between the Associated Chambers of Commerce of New Zealand and the Minister of Industries and Commerce the Hon. J.R. Marshall, the Minister wrote as follows :

"The answers to your three questions -

- (i) Is capital investment in this Dominion welcome,
- (ii) Is there freedom for the investor to remit dividends overseas,
- (iii) Can the invested capital be repatriated if required, are certainly in the affirmative, but qualifications do need to be made and the conditions of investment made clear to potential investors. It would not, therefore, be appropriate to issue anything less than the detailed reference source proposed." (2)

The Department of Industries and Commerce has been preparing since 1964, a detailed Overseas Investment Code which is now nearly ready for publication. It is important to realise from the outset that New Zealand is not open to all forms of investment. Government approval to raising capital and loans overseas is usually granted only after an extensive investigation and is often made subject to special terms and conditions.

GOVERNMENT POLICY ON OVERSEAS INVESTMENT

The basic elements of the Government's policy on overseas investment are (according to the then Minister of Finance, the Hon. H.R. Lake) quite clear. They are

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- (1) <sup>\*LL. B.</sup> The Minister's statement is quoted by The Tariff and Development Board in its Report to the Minister of Industries and Commerce on Criteria for Industrial Development June 1963 at page 35.
  - (2) The text of the Minister's letter is to be found in N. Z. Commerce February 15th 1966 at page 39.

threefold. (3) First to continue to attract and encourage worthwhile investment from abroad; this applies particularly to investment which offers continued access to advanced technology and which brings with it the benefits of research design skills and management methods. Secondly, to ensure that the incoming capital contributes to the growth and development of our economy and to the efficient employment of our resources. In this context the Government keeps in mind the impact on our balance of payments of such investment and the cost of servicing it. The third objective is to preserve the general freedom of New Zealand residents to employ or dispose of their property as they think fit. These three objectives are only a very broad statement of policy. Proposals for new industries or the expansion of existing ones which involve import licences, agreements with overseas interests on royalty payments and service fees or the employment of overseas capital are considered by the Department of Industries and Commerce for recommendation. A set of working rules established for administrative purposes (4) is given below :-

### 1. Quality and Price

"The aims should be to have quality at least up to international standards. This gives standards for output, keeps industry abreast of overseas developments and maintains living standards. If a proposal is for goods to be made which are at present imported, reasonable price, comparability and maintenance of quality are looked for.

### 2. New Zealand Content

"New Zealand content of the products should be as high as economically possible. It is not practical to be more specific and have a minimum percentage; each case needs to be considered individually. If all materials have to be imported then they should be in a form as near to the crude stage as possible, and add the greatest value from processing in New Zealand and the minimum demand on overseas funds. If there are existing manufacturers in an industry their performance in this respect is taken into account and new entrants are expected to do as least as much processing. The content of skill and management should preferably be high.

### 3. Import Savings and Export Earnings

"New industrial development should strengthen New Zealand's economic structure through reducing the dependence on imports or producing new commodities which can be exported or both. Each new project should be able to show a positive contribution to the balance of payments. There may be other aspects of a new project which justify its approval, e. g. to increase competition, to add desirable variety, to introduce improved productivity. In the absence of other special circumstances, however, a project which cannot have worthwhile overseas exchange benefits (directly or indirectly) is not generally regarded as having an immediate

(3) Budget 1964 at page 10.

(4) Report to the Minister of Industries and Commerce on Criteria for Industrial Development by the Tariff and Development Board, June 1963 Section D at page 49; see also The Future of Manufacturing in New Zealand N. Z. Institute of Public Administration at page 204; also see Criteria for Industrial Development Industries and Commerce Paper, 1962 and Towards Economic Maturity W. B. Sutch, April 1963.

claim on scarce overseas funds for the import of plant and raw materials.

#### 4. Overseas Investment and New Zealand Participation

"Many new projects involve investment from overseas. In general the government welcomes an inflow of capital for manufacturing development. But it is desirable that a proposal allow for the maximum New Zealand participation in equity capital to ensure that the control of substantial or vital industries is not solely in foreign hands; that the policy of an overseas company's New Zealand subsidiary does not conflict with the country's interest; that there is not an undue drain on overseas funds through the remittance of profits; that the industry makes a contribution to the balance of payments; that it does not restrict imports by limiting the area where goods can be sold; and that New Zealand can share in the profitable growth of new industries. The maximum New Zealand participation in equity capital is therefore preferred.

#### 5. Internal Competition

"An assessment is made of the present and future market in considering a proposal. An additional unit may be desirable in an industry to increase the level of competition. On the other hand where there is already similar domestic production a project is not preferred where it will result in undue excess capacity for the forseen market with a consequent waste of resources. It would be a different matter, however, if the new unit were to introduce new technology.

"To achieve optimum economy some projects cater for the whole or nearly all the domestic market. In the present balance of payments difficulties, account is taken of domestic production in the provision made for imports each year and any subsequent proposals to enter the new industry would be approved if there were room in the market.

#### 6. Potentiality as Growth Point

"Account is taken of the potentiality a project may have as a growth point for other industries. A wire-drawing industry for example can lead to new or expanded production in wire rope, wirenetting, nail making, and other fabricated wire products. Or the industry may be able to provide some skill component or process which will enable other industries to produce more economically.

#### 7. Restrictive Factors

"Some times proposals which involve overseas capital entail certain obligations which are restrictive. For example, raw materials may have to be purchased from a particular source or exports from New Zealand may be prohibited altogether or confined to certain parts of the world. Approval is not generally given to projects which include such restrictions for they are not considered to be in the best interests of New Zealand. Manufacturers in New Zealand should be free to buy their materials and equipment from the best and cheapest source rather than from a predetermined one where the price can be loaded to include a hidden "royalty" or other fee. They should also be free to export when and wherever possible products which contain New Zealand labour skills and possibly capital

and material resources. In short export possibilities and the service to the New Zealand user must always be at a maximum.

#### 8. Development of New Skills

"Account is taken of the new skills and technique which a new enterprise might introduce into New Zealand, particularly if they have application in other industries.

#### 9. Overseas Research

"Projects which are supported by overseas concerns can bring into New Zealand the benefits of overseas research. The value of this in New Zealand would not only depend on the result of the research but also on the industry concerned. However it should not be overlooked that in some cases New Zealand concerns may arrange access to research by retaining arrangements. To these working rules were added Criteria for Industrial Development by the Tariff and Development Board in June, 1963 (5), which criteria were approved by the Government on the 27th day of August, 1963. (6) On that date the Minister of Industries and Commerce the Hon. J.R. Marshall wrote to the Chairman of the Tariff and Development Board as follows :

"I am pleased to inform you that the Government has now fully considered the report of the Board on "Criteria for Industrial Development" and agrees that in determining the nature and character of industries that should be encouraged in New Zealand regard should be paid to all the criteria enumerated in the report. (6)"

The criteria may be summarised as follows :

- (i) THE contribution the industry makes to developing export markets or otherwise earning overseas exchange.
- (ii) THE extent to which industry, can by import substitution, save the expenditure of overseas funds both immediately and in the long term.
- (iii) THE extent to which the industry aids the further development of natural resources.
- (iv) THE extent to which the industry is dependent on or requires to use imported raw materials as compared with raw materials of domestic origin.
- (v) THE extent to which the industry provides employment opportunities and the best use of labour and management resources and offers scope for development of industrial skills.
- (vi) THE extent to which the industry is competitive as to price, design, quality and range with imports and is capable of meeting quantitatively the needs of the market.
- (vii) THE extent to which the industry requires protection against imports.
- (viii) THE extent to which the industry requires the participation of overseas capital either as equity capital or by way of loans.

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(5) Criteria for Industrial Development op. cit.

(6) The full text of the Minister's letter is printed as a Forward to the Report by The Tariff and Development Board (op. cit.)

"An inflow of overseas capital is desirable where it is accompanied by technical knowledge, use of patents and the introduction of new skills or when New Zealand capital is not readily available.

"The nature of the overseas investment will vary according to the needs of the industry but broadly loan capital would be most favoured. In the case of equity capital the amount available for subscription in New Zealand and the degree of control of the industry retained in New Zealand would be important factors. Where practicable it is desirable that control should be held by New Zealand interests.

- (ix) THE extent to which the industry will form a basis for the development of associated industries.
- (x) THE extent to which the industry has access to overseas research, design and techniques and industrial skills and the usefulness in making a contribution to New Zealand industrial development.
- (xi) THE extent to which the industry takes advantage of research facilities available in New Zealand or makes provision for its own research.
- (xii) THE extent to which an industry is of the optimum size having regard to both the domestic and export markets.
- (xiii) THE extent to which the industry makes the greatest economic utilisation of capital equipment.
- (xiv) THE extent to which the industry makes a contribution to the national security in that it has strategic importance or is able to provide goods essential for the people and the maintenance of the economy in the event of serious adverse external circumstances arising.
- (xv) THE extent to which the industry makes a contribution to regional development.
- (xvi) THE extent to which the industry has already received assurances from the government and is complying with undertakings given in return.

The criteria are applied to specific industries where a government decision is required - tariff concessions or protection, grant of import licenses or prohibition from competing imports, and exchange control approval, for example, for royalty payments, capital issues, approval for raising capital and loans overseas or for an overseas company to establish a branch.

Tariff matters are considered by the Tariff and Development Board (7); capital issues matters by Treasury (8); exchange control matters by the Reserve Bank (9); and import and exchange control matters relevant to industrial development by the Department of Industries and Commerce (10). It is recognised that individual

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- (7) Tariff and Development Board Act 1961.
  - (8) For administrative convenience The Minister of Finance delegates his powers under the Capital Issues (Overseas) Regulations 1965 to the Secretary to the Treasury.
  - (9) For administrative convenience the Minister of Finance delegates his powers under the Exchange Control Regulations 1965 to the Reserve Bank of New Zealand.
  - (10) See the Reports of the Industries and Commerce Department for the years ended 31st March, 1964 and 31st March, 1965.

proposals need not conform to every one of the sixteen criteria already outlined (11).

## LEGISLATION ON OVERSEAS INVESTMENT

### 1. News Media Ownership

News Media Ownership Act, 1965 prohibits a body corporate incorporated outside New Zealand or a company controlled by persons domiciled outside New Zealand from establishing or operating a private broadcasting station or from publishing a newspaper. The act also provides that in every news company the voting power that any one member domiciled out of New Zealand is entitled to exercise shall not exceed 15 per cent of the total voting powers exercisable by all members of the company. In short the Act is specifically designed to discourage overseas investment in New Zealand in news media.

### 2. The Reserve Bank of New Zealand Act, 1964

Part 4 of the Reserve Bank of New Zealand Act 1964, deals with overseas exchange and other transactions. Section 28 gives the Governor-General, by Order in Council, power to make regulations for inter alia control of overseas exchange transactions. More specifically regulations can be made for such matters inter alia :

- (a) Taking, sending or transfer of money or securities to or from New Zealand;
- (b) The commencement of business in New Zealand by companies incorporated outside New Zealand;
- (c) Any dealing or transaction having the effect of the purchase, borrowing, sale, loan or exchange of foreign currency or foreign securities.

The regulations already made pursuant to the Section 28 are as follows :

- (a) Overseas Take-over Regulations 1964
- (b) Capital Issues (Overseas) Regulations 1965
- (c) Exchange Control Regulations 1965

#### (a) Overseas Take-over Regulations 1964

These regulations apply to take-over offers made by overseas persons. "Overseas Person" is defined inter alia as :-

- (i) Any person not ordinarily resident in New Zealand, or
- (ii) Any company or body corporate that is incorporated outside New Zealand or any company within the meaning of the Companies Act, 1955 which is for the purposes of that Act a subsidiary of

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- (11) The Board recommended the application of the criteria where appropriate to particular industries. It emphasised in its Report that because of the many aspects involved and the fact that only some may be applicable to a particular industry, any range of criteria laid down will generally not be capable of fulfilment in one case, and will be applicable in part or in varying degree only : see the Board's Report (op. cit.) at page 90 paragraph 361.

any company or body corporate incorporated outside New Zealand.

"Take-over scheme" is defined as a scheme involving the making of offers for the acquisition of any shares in a company which together with shares, if any, to which the offender is already beneficially entitled, carry the right to exercise or control the exercise of 25 per cent or more of the voting power at any general meeting of the offeree company.

The regulations provide that where take-over offers are made or proposed to be made to offerees by or on behalf of any overseas person the offeror or his agent shall on or before the date of the offer send to the Registrar at the Head Office of the Reserve Bank of New Zealand in Wellington notice in writing stating that their offers are being made or are proposed to be made. The notice must contain (inter alia) information as to what consideration is to be paid in cash and to what extent the payment is to be made from overseas funds.

Upon receipt of a notice, the same is registered by the Registrar. Upon registration the Minister must determine within 14 days whether or not the take-over offer should be further considered with a view to requiring his consent thereto. The Minister may in his discretion refuse his consent to take-over offers made or proposed to be made by or on behalf of an overseas person, or may grant his consent either unconditionally or upon such terms and conditions as he thinks fit.

These regulations should be read with care to ensure that arrangements are not made for overseas companies to take more than a 25 per cent shareholding in an existing New Zealand company without first obtaining the prior consent of the Minister of Finance and fully observing the provisions of the Overseas Take-over Regulations, 1964.

(b) Capital Issues (Overseas) Regulations, 1965

Regulation 3 governs the borrowing or raising money outside New Zealand. It provides that except with the consent of the Minister of Finance it is not lawful -

- (i) for a body corporate, incorporated in New Zealand or certain unincorporated bodies carrying on business in New Zealand to borrow money outside New Zealand;
- (ii) for any such body corporate to raise money outside New Zealand by the issue of shares or to make a call on shares issued to a person not ordinarily resident in New Zealand;
- (iii) for any body corporate to issue shares or securities to a person not ordinarily resident in New Zealand if the body is incorporated in New Zealand or the shares or securities are registered in New Zealand; or
- (iv) for any person to circulate outside New Zealand an offer for subscription sale or exchange of shares in or securities of a body corporate incorporated in New Zealand.

This Regulation applies to interests in a unit trust as it applies to shares in a body corporate. References in the foregoing to the issue of securities also

cover the issue of certain deposit receipts.

Regulation 3 does not apply to any transaction if the total of all amounts borrowed raised called up or offered in that transaction and in all other such transactions within the immediately preceding year does not exceed £10,000.0.0.

Regulation 4 forbids the issue for circulation outside New Zealand of a prospectus or like document offering shares or securities in a body corporate incorporated in New Zealand unless it states that the Minister's consent has been obtained or that such consent is not required.

Regulation 6 provides that a company incorporated outside New Zealand shall not register or commence business in New Zealand without the Minister's consent.

Regulation 7 authorises the Minister to delegate his powers under the Regulations to the Secretary to the Treasury or any other person. In practice the application for consent is made to the Secretary to the Treasury.

Regulation II specifically provides that nothing in these regulations shall limit or effect the operation of the Exchange Control Regulations 1965. This means in practice that a consent obtained from Treasury under the Capital Issues (Overseas) Regulations is always made subject to the obtaining of the consent of the Reserve Bank under the Exchange Control Regulations 1965.

(c) Exchange Control Regulations 1965

Regulation 3 provides that except with the consent of the Minister no person including corporate bodies shall inter alia -

- (i) Take or send any money from New Zealand. It is important to note that the making, in respect of an overseas person, of a book entry whose effect is either to create a credit overseas, or to extinguish a debt overseas, in the name of a New Zealand company is deemed for the purposes of the regulations to be the taking or sending of money out of New Zealand. (12).
- (ii) Take, send or transfer any securities from New Zealand or transfer a security from a register in New Zealand to a register outside New Zealand.
- (iii) Being ordinarily resident in New Zealand issue transfer or deliver any security to a person who is not ordinarily resident in New Zealand.

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(12) Regulation 2 (5) (b) Exchange Control Regulations 1965.



- (iv) Being ordinarily resident in New Zealand borrow, whether by way of the issue of any security, foreign security, or otherwise any money outside New Zealand.
- (v) Enter into any contract, arrangement, device, plan or scheme whereby payment is made or to be made or any liability incurred or to be incurred, whether by way of royalty or otherwise in New Zealand or elsewhere, in respect of the use of any patent, trade mark, design or copyright or any scientific, technical, industrial or commercial knowledge, information or assistance, if the first proprietary rights relating to such patent, design, trade mark or copyright or such scientific, technical, industrial or commercial knowledge information or assistance, originated outside New Zealand.

In relation to (ii), (iii) and (iv) it is important to note that "securities" are defined in the Regulations as including (inter alia) shares, debentures, mortgages, liens and dividend warrants. In connection with the meaning of the words "ordinarily resident in New Zealand" Regulation 2 (2) should be studied carefully.

Regulation 6 authorises the Minister to delegate his powers under the regulations to the Reserve Bank of New Zealand or any other person. In practice, application for consent or exemption from the Regulations is made to the Reserve Bank of New Zealand.

(d) Royalty Agreements with Overseas Licensors

Under Regulation 3 (g) of the Exchange Control Regulations 1965 the prior approval of the Reserve Bank is required before any New Zealand resident (either an individual or a company) may enter into any agreement with an overseas resident to make any payment either in New Zealand or overseas for any form of knowledge or assistance such as any service, patent or process which has originated outside New Zealand.

For the information of those who may wish to enter into licensing or other agreements with overseas licensors, the following is the policy of the Reserve Bank where royalties and other fees are involved:-

1. The Reserve Bank has no rigid rule that royalty payments must be limited to a certain rate, and all cases are considered on their merits. The appropriate rate may therefore vary from industry to industry and with the complexity of the process and the value of the article to the New Zealand economy, taking into account the existing supply and quality of the goods available locally and whether existing manufacturers are paying royalties to overseas licensors or not. Higher royalty rates naturally require greater justifications.
2. The rate of royalty should be based on the New Zealand ex factory selling price less the cost of any components imported from the licensor for

direct use in the manufacturing process. This is because the Reserve Bank will not agree to the payment of royalty in addition to profit to the licensor on the sale of goods.

3. Agreements which contain guaranteed minimum payment clauses are not normally approved. In other words, the royalty must be calculated on actual production.
4. Agreements which call for initial "lump sum" payments are not normally approved, unless it can be shown that there are special features which would justify such a payment.
5. The duration of an agreement should be kept reasonably short. If long term agreements (10 years or more) are proposed, they will normally require special justification.
6. The overseas licensor's liability for any New Zealand taxation payable on his royalty earnings in New Zealand must be paid by him from this source. The Reserve Bank will not agree to the New Zealand tax commitments of the licensor being paid by the New Zealand party and will only agree to the royalty, net of any New Zealand tax, being paid and remitted to the overseas licensor.
7. There is no printed form to be filled in for application to the Reserve Bank. A draft copy of the agreement (or correspondence which clearly states all the terms of the arrangement) should be submitted to the Reserve Bank with a covering letter giving full details of the proposal. The following information would assist the Bank in reaching a decision :-
  - (a) the nature of the product, and the "know-how" involved in making it,
  - (b) The likely demand for the product and therefore the estimated cost of making it,
  - (c) advantages of proposed product over competitors already available,
  - (d) whether additional imports of raw materials or components will be required,
  - (e) if the rate of royalty is not expressed as a percentage of ex factory price less imported components, a comparison with this basis,
  - (f) details of any export potential or overseas exchange saving.

#### IMPORT LICENSING SYSTEM

An import licensing system is operative in New Zealand by virtue of the Customs Act, 1913, its amendments and statutory regulations made thereunder. In practice the Government's influence upon overseas investment in New Zealand

has also been felt through this import licensing system as new manufacturers from overseas must always obtain licenses for plant, raw materials and other essential imports. All import (and exchange control) matters relevant to industrial development are examined by the Department of Industries and Commerce which applies the criteria previously outlined to all applications. The Department prefers a partnership arrangement between New Zealand and overseas interests in the ownership of new manufacturing units. The two reasons for such a preference are given in the Report of the Department of Industries and Commerce for the year ended 31st March, 1965. (13). They are according to the Report, as follows :-

"First, a substantial New Zealand ownership reduces the dependence on overseas sources of finance and the consequent strain on overseas exchange by way of interest and dividends to service it. Secondly, some direct New Zealand representation in the management and direction of the industry ensures the country's interests are kept in mind. It is of interest that two-thirds of the new manufacturing projects or expansions or existing industries for which import licenses were recommended in 1964 were either New Zealand owned or New Zealand controlled. In most other cases arrangements were concluded for substantial New Zealand participation in equity capital".

#### TAXATION ON INCOME FROM OVERSEAS INVESTMENT IN NEW ZEALAND

Taxation considerations can, in practice, restrict the raising of capital and loans from certain countries overseas particularly the E.E.C. countries. Hence it is essential to study the relevant provisions of the Land and Income Tax Act, 1954 and its amendments as well as the Double Taxation Agreements (if any) between New Zealand and the country where the overseas investor resides.

##### A. The Land and Income Tax Amendment Act, 1964

The Land and Income Tax Amendment Act, 1964, made substantial and far reaching changes to the Land and Income Tax Act, 1954, in relation to the taxation of income from overseas investment in New Zealand. Three major changes were made to bring New Zealand into line with the tax practice of most overseas countries.

First the exemption from dividend tax then applying to non resident companies was abolished.

Secondly, interest and royalties payable from New Zealand to overseas residents were made liable for taxation in New Zealand.

Thirdly, as dividends are not paid directly by New Zealand branches of overseas firms an additional tax was applied on the income of those branches.

An income tax in the form of a withholding tax was applied to payments of dividends, interests and royalties to companies and individuals not resident in New Zealand. The rate of withholding tax at present is 30 per cent for dividends, and 30 per cent for interest and royalties paid to individuals.

However, dividends paid to overseas companies or individuals resident in Australia and Japan are taxed at the rate of 15 per cent which is the rate provided in existing Double Taxation Agreements with those countries.

The withholding tax on dividends is a final tax. However in respect of interest and royalties the tax is only a minimum and is subject to reassessment. The withholding tax is collected at the point where the income is paid, credited or distributed by a person or company in New Zealand.

There are many companies incorporated overseas which derive income from New Zealand from branches or otherwise. They do not declare dividends from New Zealand and therefore are not liable to pay this withholding tax. Special tax provisions cover such cases. An additional tax which is at a flat rate of  $7\frac{1}{2}$  per cent is imposed on taxable income from New Zealand of such overseas companies other than Mutual Life Insurance Companies.

Space does not permit a more detailed examination of the Land and Income Tax Amendment Act, 1964. (14). This legislation is of vital importance to overseas investors investing in this country.

#### B. Overseas Investment Companies

The income of certain overseas investment companies is exempt from social security income tax by virtue of section 86A of the Land and Income Tax Act, 1954. Investment companies domiciled outside New Zealand which derive no income from New Zealand except interest and have no investments or other assets in New Zealand except the principal money from which interest is derived are exempt from social security income tax. Power is also given to the Governor General in Council to exempt from social security income tax all those overseas companies whose investments are used wholly or principally for the purpose of developing New Zealand and consist principally of capital from which interest is derived. (15).

Section 78B provides that where such company does not carry on business in New Zealand and its investments are for national developments the Governor General may by an Order in Council reduce income tax to any lower tax ruling in

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(14) For a detailed examination of the Act see N. Z. Current Taxation February 1965 (Butterworths Taxation Service).

(15) Section 86A Land and Income Tax Act 1964.

the company's country of residence. Section 78C allows an additional rebate of a sum equal to 5 per cent of so much of the taxable income of the company as consists of income derived from investments or other assets that are deemed to be development assets.

### C. Double Taxation Agreements

Section 172 of the Land and Income Tax Act, 1954 authorises the issue of Orders in Council giving legal effect to any agreement made by New Zealand with any other country for relief from double taxation.

Agreements have already been concluded with the governments of the United Kingdom, Canada, the United States of America, Sweden, Australia and Japan. (16).

These agreements provide for the removal of double taxation in three ways.

1. By providing for the assessment of certain classes of income on a "residence" basis. This income is assessed only in the country in which the recipient of the income resides and is exempt in the country from which it is derived.
2. By providing for the assessment of certain classes of income on an origin basis i.e. in the country in which the income is derived. The classes of income which are assessed on an origin basis include (a) trading profits, (b) rents, (c) interest.
3. By providing that where the income is taxed in both countries the country with the secondary right to tax, usually the country of residence in cases where income is to be taxed on an origin basis, must allow a credit to avoid double taxation. In these circumstances the overall effect is that the taxpayer is taxed in both countries but the total tax paid cannot exceed the highest rate imposed in either country. A taxpayer can not be treated more severely than is the resident of a country which imposes on its own residents the highest rate on the particular class of income. (17).

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(16) The Agreements are contained in Orders in Council :-

With Canada	-	Order No.	1948/98
" United States	-	" "	1952/72
" Sweden	-	" "	1956/191
" Australia	-	" "	1960/67
" Japan	-	" "	1963/49
" United Kingdom	-	" "	1966/119

(17) See Cunningham's Taxation Laws of New Zealand (5th ed. 1963) at paragraph 883.

GOVERNMENT RESTRICTIONS IN CAPITAL MARKETS OVERSEAS

Very little overseas investment in New Zealand comes from E. E. C. countries possibly because of lack of Double Taxation Agreements with those countries makes investment in New Zealand unattractive to European companies.

Most overseas investment in New Zealand comes from one of three capital markets namely the United Kingdom, the United States of America and Australia. Direct overseas investment in New Zealand in 1964/65 totalled about £24,000,000, of which nearly £11,000,000 came from the United States of America. (18). There are, however, certain governmental restrictions in these three capital markets which restrict the flow of capital and loans to this country. Briefly they are as follows :-

A The United Kingdom

In a drastic effort to bring British payments into balance the Chancellor of the Exchequer on May 5th, 1966 announced in his budget speech in the House of Commons a voluntary programme of control on investments to New Zealand, Australia, South Africa and the Irish Republic. He said (19) that British investors would not be allowed to increase their holdings of shares in New Zealand significantly and added that earnings on British investments already made in New Zealand should be remitted as fully as possible and not re-invested. All companies and firms which have plans for investment in New Zealand are being asked to consider postponing them. They have also been asked to make every effort to finance projects from local resources of capital rather than from Britain. Those companies which desire to proceed have been invited by the British Chancellor of the Exchequer, Mr Callaghan to submit their schemes to the Bank of England to see whether they promised a quick substantial and continuing benefit to the British Balance of Payments. The benefit might take the form of starting up a new and continuing stream of exports or an exceptionally large and quick return in profits earned and remitted from the investment. The benefit defined in this way should be large enough to equal the cost of the original investment in two or three years. If the schemes do not fulfil these criteria the companies concerned are being invited to withdraw or postpone them. Projects which cost less than £25,000 per year are being exempted.

It is interesting to note the criteria laid down by the British Government for investment in this country in some ways are directly contrary to our own Criteria for Industrial Development already outlined in this paper. Although the British programme of control on investments to New Zealand is entirely a voluntary

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(18) For more accurate figures see New Zealand Balance of Payments 1964-65 Department of Statistics Publication, Wellington, New Zealand.

(19) See press reports in N. Z. Herald May 5th 1966 and Auckland Star May 7th 1966.

one the Chancellor of the Exchequer has already written to the Chairmen of more than 200 British companies which between them provide over 90 per cent of Britain's investment in this country and requested that they all participate fully in the programme. (20).

#### B. The United States of America

In the United States there is a voluntary programme of control on investments made in New Zealand (amongst other developed countries) which has in force been in since March, 1965. (21). The Presidents Cabinet Committee on Balance of Payments recommended late last year that the voluntary programme be continued in 1966, (22), which recommendation was approved by the President on the 2nd December, 1965. (23).

Nine hundred of the largest corporations in the United States including all Edge Act companies are participating in the new programme. The corporations have been called upon to limit direct investments during the two years period 1965/66 to 90 per cent of the amount invested during the 3 year period 1962/64. For this purpose direct investment is defined to include net outflows from the U. S. A. plus undistributed profits of subsidiaries abroad. The new limit will permit an annual level of direct investments during 1965 and 1966 combined equal to 135 per cent of the annual average during 1962/64 period. (22).

The guide lines laid down for the companies to observe (24) (N. B. there is no detail set of regulations applying to the programme) are inter alia as follows :

1. The postponement or cancellation of marginal direct investment projects in developed countries.
2. Great reliance on funds obtained abroad to finance direct investment.
3. Repatriation of short term financial assets in excess of those needed for working capital in developed countries.

It is important to note that the guide lines relating to direct investments do

- (20) See press report from London Auckland Star May 11th 1966 on page 1.
- (21) For details of the initial programme see Financing International Operations an American Management Association publication at page 182.
- (22) Weekly Compilation of Presidential Documents (U. S. Government Publication) Monday, December 13th 1965, Volume 1, Number 20.
- (23) Op. Cit.
- (24) See article by Andres F. Brimmer (Assistant Secretary of Commerce for Economic Affairs) in International Commerce (U. S. Government Publication) October 18th 1965.

not call for an explicit reduction in the level of such investments. Instead the stress is on the financing of expenditure on facilities abroad with funds raised abroad. (24).

The guide lines are, in the writer's opinion, in harmony with our own criteria for overseas investment in New Zealand in that United States companies establishing manufacturing units in New Zealand are expected to do so on a partnership basis with New Zealand companies. It is important to note that United States companies can easily get around these guide lines by arranging for moneys to come to New Zealand not directly from the United States but from some other well-heeled subsidiary in say a European country. (25).

### C. Australia

Little is known in New Zealand about Australian Overseas Exchange Control except that the approval of the Reserve Bank of Australia is required for all remittances overseas. The relevant Australian provisions are the Banking Act, 1959 and the Banking (Foreign Exchange) Regulations. Full information on Australian exchange control requirements can be obtained directly from the Superintendent of Exchange Control, Reserve Bank of Australia, Martin Place, Sydney.

### CONCLUSION

A possible way around the governmental restrictions in capital markets overseas as well as the New Zealand governmental restrictions on direct capital investment in New Zealand is the use of corporate contract management which separates the ownership from the managerial aspects of foreign investment.

This solution has been suggested by Mr Peter G. Gabriel of McKinsey & Co., the New York management consulting firm in a recent survey in the Columbia University "Journal of World Business".

In practice corporate contract management would involve an overseas corporation promoting a New Zealand company and managing it for a fee without acquiring any equity capital in the company. The writer believes that more overseas corporations will in future adopt this practice in preference to direct investment in New Zealand industry.

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- (24) See article by Andrew F. Brimmer (Assistant Secretary of Commerce for Economic Affairs) in International Commerce (U.S. Government Publication) October 18th 1965.
- (25) See Jodson's Investment Digest of Australia and New Zealand November 12th 1965 at page 612.