

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 1 August 1995

OVERSEAS INVESTMENT AMENDMENT BILL

Proposed Amendments

Rt. Hon. W. F. BIRCH, in committee, to move the following amendments:

Clause 1 (3): To insert, after the number "6", (line 4 on page 2) the expression "(1) and (3)".

Clause 2A: New section 2A: To insert after paragraph (a) (after line 7 on page 5) the following paragraph:

"(ab) Where the person is acting with the other person in concert under any contract, arrangement, or understanding in relation to the particular overseas investment:

Clause 6: New section 14: To omit from paragraph (i) the word "may" (line 13 on page 13) and substitute the word "shall".

To omit paragraph (k) (lines 18 to 20 on page 13), and substitute the following paragraph:

"(k) Prescribing or providing for the fixing of fees and charges in connection with—

"(i) Applications for approvals, consents, permissions, or exemptions made under this Act or regulations made under this Act and the consideration of such applications:

"(ii) Monitoring compliance with the conditions of any approval, consent, permission, or exemption granted under this Act or regulations made under this Act:

"(iii) Any other matter under this Act or regulations made under this Act:

To omit from subclause (2) the words "this section" (lines 26 and 27 on page 13), and substitute the words "that subsection".

Clause 6A: New section 14A: To insert in subsection (1), after the word "permission", (line 40 on page 13) the word "only".

To omit from subsection (2) the words "may, but are not required to, have regard" (lines 28 and 29 on page 14) and substitute the words "shall have regard only".

Clause 9: To omit *clause 9* (lines 18 to 39 on page 18, all of page 19, and lines 2 to 22 on page 20).

Clause 12: New section 18A: To omit the proposed new section (lines 5 to 18 on page 21), and substitute the following section:

“18A. (1) In any case where the High Court, on the application of the Commission, is satisfied that any person has in relation to the acquisition of any securities or any rights or interests in any securities, or any land or any estate or interest in land, or any other property or any rights or interests in any other property, as the case may be,—

“(a) Acted in contravention of this Act or regulations made under this Act; or

“(b) Failed to comply with any condition of any approval, consent, permission, or exemption granted under this Act or regulations made under this Act,—

the Court may, by order, give directions for the disposal by that person of such securities or any rights or interests in such securities, or such land or any estate or interest in such land, or such property or any rights or interests in such property as shall be specified in the order.

“(2) An application under **subsection (1)** of this section may be made at any time within 2 years from the date on which the contravention or failure to comply occurred”.

New Schedule: To omit paragraph (c) of the item **Foreshore, lakes, and reserves**, and substitute the following paragraph:

(c) Any land that exceeds 0.4 hectares in area and—

(i) Is held for conservation purposes under the Conservation Act 1987; or

(ii) Is provided as a reserve, a public park, for recreation purposes, or as a private open space, or is proposed for any such purpose, or is subject to a heritage order, under any operative regional plan or proposed or operative district plan under the Resource Management Act 1991; or

(iii) Is the subject of a notice of requirement for a heritage order by a heritage protection authority under the Resource Management Act 1991 or by the Historic Places Trust under the Historic Places Act 1993; or

(iv) Is an historic place, an historic area, wahi tapu, or a wahi tapu area entered in the register established under the Historic Places Act 1993 or in respect of which an application or proposal for entry in the register has been made under that Act; or

(v) Forms part of an historic place entered in that register or on which is situated any building, object, or chattel that is entered in that register or in respect of which an application or proposal for entry in that register has been made under that Act.

EXPLANATORY NOTE

The amendment to *clause 1 (3)* is a drafting amendment and removes any inconsistency between *clause 1 (3)* and *clause 6 (2)*. *Clause 6 (2)* enables regulations to be made under the proposed new *section 14* before that new section is itself brought into force.

The amendment to the proposed new *section 2A* extends the definition of the term "associated person" to include persons acting in concert under any contract, arrangement, or understanding in relation to the acquisition of land.

The amendment to the proposed new *section 14 (i)* is necessary as a result of the amendment to the proposed new *section 14A (2)*.

The proposed new *paragraph (k)* makes it clear that regulations can prescribe fees and charges for making and considering applications for approval, consent, permission, or exemption and for monitoring compliance with any conditions imposed.

There are 2 amendments to the proposed new *section 14A*.

Subsection (1), as drafted, requires the Minister of Finance or, where the overseas investment relates to land, the Minister of Finance and the Minister of Lands, to grant consent to an overseas investment if satisfied as to the matters specified in the section. The effect of the amendment to subsection (1) is that such consent can only be granted if the Minister of Finance or the Minister of Finance and the Minister of Lands are satisfied as to those matters.

Subsection (2), as drafted, provides that, in determining whether an overseas investment that relates to land would be in the national interest, the Minister of Finance and the Minister of Lands may, but are not required to, have regard to the matters specified. The proposed amendment to subsection (2) will make it mandatory to have regard only to those matters.

It is proposed to omit *clause 9* of the Bill. *Clause 9* relates to the application of the Official Information Act 1982 to applications for consent to overseas investments, information supplied in connection with such applications, and decisions relating to such applications.

The proposed new *section 18A* will enable the High Court to order the disposal of property acquired in contravention of regulations made under the principal Act. It is proposed to extend the Court's power under this section to cases where there has been a failure to comply with any condition of any approval, consent, permission, or exemption.

The proposed *Schedule* specifies the classes of land where consent will be required. In the case of foreshore, lakes, and reserves, consent to the acquisition of land will be required where the land exceeds 0.4 hectares and includes or adjoins:

- (a) The foreshore; or
- (b) Any lake the bed of which exceeds 8 hectares; or
- (c) Any land that exceeds 0.4 hectares and is provided as a reserve, public park, for recreational purposes, or as private open space, or is subject to a heritage order under any operative regional plan or proposed or operative district plan under the Resource Management Act 1991.

The amendment to this item of the *Schedule* extends the description of the land referred to in paragraph (c) to include land held for conservation purposes, land that is subject to a notice of requirement for a heritage order, land that is registered or proposed for registration under the Historic Places Act 1993 as an historic place, an historic area, wahi tapu, or a wahi tapu area, and land on which any building that is registered or proposed for registration as an historic place is situated.