

12 August 2022

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OIA 28147

Personal details removed for proactive release

I refer to your email of 9 June 2022 in which you request the following under the Official Information Act 1982 (OIA):

Earlier this year, you announced that New Zealand had been added to a list of 'CFIUS Excepted Foreign States' by the US government. This addition eased legal requirements that made it more costly for 'dual' citizens like Peter Thiel and Larry Page to invest in corporations connected to the US intelligence establishment.

Section 800.1001 of US CFR Title 31 specifies that states which wish to attain this status must abrogate their sovereignty and allow US intelligence to further surveil their citizens and corporations.

I am requesting:

- * all documents relating to the decision to pursue this status*
- * all documents relating to the concessions made as part of this negotiation*
- * any communications with 'New Zealand citizens' and their representatives lobbying for this change- including those from paper citizens like Thiel and Page*

On 8 July 2022, the deadline to respond to your request was extended to 12 August 2022.

The information relevant to your request is attached. We have withheld some information under the following sections of the OIA:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 6(b)(i): to protect the passing of information from another government on a confidential basis; and
- 9(2)(a): to protect individuals' privacy.

New Zealand's accession to the United States (US) 'excepted states list' was publically described by the US Treasury Department as being based "among other factors, on its intelligence-sharing relationship with the United States and its collective defence arrangement and cooperation with the United States". No negotiations with the US took place on this issue and we have no records of New Zealand citizens lobbying for this change. As such, we have no information to release in

response to your second and third requests. Therefore, we are refusing these parts of your request under section 18(e) of the OIA.

Where the information has been withheld under section 9 of the OIA, we have identified no public interest in releasing the information that would override the reasons for withholding it.

Please note that we may publish this letter (with your personal details redacted) on the Ministry's website.

If you have any questions about this decision, you can contact us by email at: DM-ESD@mfat.govt.nz. You have the right to seek an investigation and review by the Ombudsman of this decision by contacting www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, nā

A handwritten signature in black ink, appearing to be 'SC', written on a light blue background.

Sarah Corbett
for Secretary of Foreign Affairs and Trade



17 January 2020

Minister of Foreign Affairs	For action by	21 January 2020
Minister for Trade and Export Growth	For action by	21 January 2020

US Foreign Investment Screening Reforms: Initial Outcomes

BRIEFING General Purpose

PURPOSE To note New Zealand has not been included in a small list of 'excepted states' under US foreign investment screening reforms; and to set out our intended actions to secure New Zealand's accession to that list.

Recommended referrals

Prime Minister	For information by	22 January 2020
Minister of Finance	For information by	22 January 2020
Minister of Defence	For information by	22 January 2020

Contact details

NAME	ROLE	DIVISION	WORK PHONE
Andrew Bishop	Policy Officer	Americas Division	s9(2)(a)
Mark Holden	Investment Issues Adviser	Trade Negotiations Division	

Minister's Office comments

US Foreign Investment Screening Reforms: Initial Outcomes

Key points

- On 13 January 2020, the US Department of the Treasury released a final determination on national security reviews for select foreign investments and real estate transactions in the US. Under the revised investment screening regulations, foreign investments in US critical technology, critical infrastructure and sensitive data will face more strenuous scrutiny on national security grounds. The new rules will come into effect from 13 February 2020.
- Three countries have been included within an 'excepted states' list under the new regulations, enabling their qualifying investors to be subject to lesser compliance requirements. Those countries are Australia, the UK, and Canada. It appears that the exceptions derive in part from the formal defence and security alliances that each of those countries has with the US, and in part from similarities with the US in each of those countries' existing or proposed investment screening regimes.
- New Zealand has not been included in the first iteration of the 'excepted states' list. While the practical implications of non-inclusion from the 'excepted states' list appear, on our initial assessment, to be limited, ^{s6(a)}
- US Treasury officials have informed us that New Zealand will be in a strong position to eventually be added to the list of 'excepted states', based on implementation of our own recently-announced foreign investment screening reforms which will align us more closely with the US approach. ^{s6(a)}
- New Zealand Treasury officials and the Embassy in Washington, D.C. will maintain close contact with US Treasury and other relevant US agencies to keep them abreast of progress with stage two of our Overseas Investment Act reforms, and to seek clarity on the steps required for New Zealand to be added to the 'excepted states' list.
- We propose to take all relevant opportunities to advocate for New Zealand's prompt inclusion in a future iteration of the 'excepted state' list, including through the Defence Minister's forthcoming visit to Washington D.C.



Ben King
Acting Secretary of Foreign Affairs and Trade

US Foreign Investment Screening Reforms: Initial Outcomes

Recommendations

It is recommended that you:

- 1 **Note** that New Zealand is not included in a list of 'excepted states' for potentially preferential treatment under new US Department of the Treasury foreign investment screening rules, while Australia, the UK and Canada are included; **Yes / No**
- 2 s6(a), s6(b)(i) **Yes / No**
i
i
- 3 **Agree** that officials take all relevant opportunities to advocate for New Zealand's prompt inclusion in a future iteration of the 'excepted state' list; and seek clarity on the steps required to achieve this; **Yes / No**
- 4 **Note** that the media talking points provided earlier remain current and that these are attached. **Yes / No**

Rt Hon Winston Peters
Minister of Foreign Affairs

Hon David Parker
Minister for Trade and Export
Growth

US Foreign Investment Screening Reforms: Initial Outcomes

Report

1. New Zealand has not been included in a list of countries under which state and non-state investors will be exempted from new US investment screening regulations in certain circumstances, whereas Australia, the UK and Canada have been included. While on our initial assessment the omission may prove to have little practical impact on New Zealand companies' investment in the US, ^{s6(a)}
 2. On 13 January, the US Department of the Treasury published a finalised set of regulations aimed at strengthening the US overseas investment screening regime. The changes will make foreign investment into the US more onerous: non-controlling and non-passive investments involving critical technology, critical infrastructure and sensitive data will now have to file with the Committee on Foreign Investment in the US (CFIUS), amending what was previously a voluntary process. ^{s6(a)}
 3. Australia, the UK and Canada are the only three countries included in an initial iteration of an 'excepted states' list under CFIUS. State and non-state investors from excepted foreign countries will be exempt from aspects of the new regulations affecting non-controlling "covered investments" and certain real estate transactions, provided that they meet other criteria that qualify them as 'excepted investors'. These tests include having a board with less than 25 percent representation by foreign nationals from non-excepted states, and an ownership limit for an individual investor from a non-excepted state of 10 percent.
 4. There are no set requirements for being named an 'excepted state', ^{s6(a), s6(b)(i)}
- We assess that the UK, Canada and Australia's formal military and security alliance relationships would have been a factor in the US's decision to list as early 'excepted states'.
5. US Treasury's final decision document states that the list of eligible foreign states "may expand in the future". Senior US Treasury officials have advised that New Zealand would be a "strong candidate" for the next update in light of New Zealand's own overseas investment screening reforms. No decisions have yet been made about when CFIUS will next reconsider the list. This will only be worked through after initial implementation of the new regulations in February.
 6. New Zealand officials made a series of representations to the US prior to announcement of the final regulations. These efforts included a letter from the Secretary of the New Zealand Treasury to US Treasury Secretary Steven

US Foreign Investment Screening Reforms: Initial Outcomes

Mnuchin, outlining the significance of New Zealand's own investment reforms and the ways in which those changes will bring New Zealand's regime into closer alignment with that of the US.

Implications for investors

7. New Zealand Treasury officials advise that inclusion in the 'excepted state' list may in practice yield only limited economic benefits to investors from those affected countries. For instance, the rules will require (among other measures) that each member and observer to a board of directors is either a US national or a foreign national who is exclusively a national of one or more excepted foreign states – with similar restrictions applied to voting, economic, profit and asset upon dissolution interests for each individual foreign person involved in any given investment proposal. ^{s6(a)}

s6(a)

8. ^{s6(a)}

Next steps

9. We propose that officials at the New Zealand Embassy in Washington, D.C. speak again with US Treasury officials (and other relevant US agencies where appropriate) to seek clarity on the steps required for New Zealand to be added to the 'excepted states' list and to advocate for New Zealand's early accession to that list, particularly on the basis of US advice about New Zealand's status as a strong candidate for inclusion. The Embassy will work in conjunction with other New Zealand agencies (including in particular with the New Zealand Treasury) to promote stronger awareness in the US system of the details of New Zealand's own foreign investment screening reforms, and how these are set to align effectively with the stated objectives of the new US foreign investment rules.
10. We also propose that officials take all relevant opportunities to advocate for New Zealand's prompt inclusion in the future iteration of the 'excepted states' list, including through the Defence Minister's forthcoming visit to Washington DC.

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Annex

The following media talking points were provided to Ministers on 14 January and remain current:

- The US Department of the Treasury has released a final determination on national security reviews for select foreign investments and real estate transactions in the US. The new rules come into effect on 13 February.
- Foreign investments in US critical technology, critical infrastructure and sensitive data will face more strenuous scrutiny on national security grounds.
- Three countries have been added to an 'excepted states' list and may face lesser compliance requirements. Those countries are Canada, the UK, and Australia. The exceptions derive from formal defence and security alliances that each of those countries has with the US, as well as similarities with the US in their existing investment screening regimes.
- New Zealand has not been included in the first iteration of the 'excepted states' list. US officials have informed us that New Zealand will be in a strong position to eventually be added to the list, based on our own recently-announced foreign investment screening reforms.
- *[If asked why New Zealand was not included, when Australia, Canada and the UK were]* These countries have formal defence alliances with the US. New Zealand is a very close partner of the US, and we have a very strong defence relationship. However, our defence relationship stops short of a formal alliance, which is a factor in determining the 'excepted states' list.
- *[If pressed on why New Zealand was not included]* There are many other countries which have close relationships with the US, including formal allies, and have not been included in the initial list of 'excepted states'. Germany, Japan and France would be relevant examples.
- *[If asked about Five Eyes implications]* The US decision relates to foreign investment screening rules. It bears no relation to New Zealand's intelligence cooperation with our partners.
- *[If asked about the US economic relationship]* New Zealand has a valuable economic and investment relationship with the US. US officials have suggested that our proposed foreign investment screening reforms will effectively address US requirements
- *[If asked about FTA ambitions]* There is strong political support in the US and in New Zealand for improving our bilateral trade and economic relationship. We will continue to talk with the US about how we can build on that in 2020 – including in investment.