

**STANDING SENATE COMMITTEE ON BANKING, COMMERCE AND THE ECONOMY
(BANC)**

Senate

Parliament of Canada

Follow-up to Patrick Leblond's Testimony

Bill C-34, An Act to amend the Investment Canada Act

March 13, 2024

1. Transparency of decisions

My research shows that, like Canada, other countries with international investment review mechanisms do not release information about their decisions or reviews. All they provide are annual or quarterly reports summarizing their activities:

- United States: [CFIUS annual reports to Congress](#)
- Australia: [quarterly reports](#)
- New Zealand: [annual reports](#)

The only exception is the United Kingdom, which releases notices of final orders in addition to annual reports:

- United Kingdom: [annual reports](#) and [notices of final orders](#) (see Appendix 1 below for section 29 of the Act requiring the publication of notices)

2. Composition of the Committee on Foreign Investment in the United States (CFIUS)

(Source: <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-overview>)

The Secretary of the Treasury is the Chairperson of CFIUS, and notices to CFIUS are received, processed, and coordinated at the staff level by the Staff Chairperson of CFIUS, who is the Director of the Office of Investment Review and Investigation in the Department of the Treasury.

The members of CFIUS include the heads of the following departments and offices:

- Department of the Treasury (chair)

- Department of Justice
- Department of Homeland Security
- Department of Commerce
- Department of Defense
- Department of State
- Department of Energy
- Office of the U.S. Trade Representative
- Office of Science & Technology Policy

The following White House offices also observe and, as appropriate, participate in CFIUS's activities:

- Office of Management & Budget
- Council of Economic Advisors
- National Security Council
- National Economic Council
- Homeland Security Council

The Director of National Intelligence and the Secretary of Labor are non-voting, *ex-officio* members of CFIUS with roles as defined by statute and regulation.

3. New Zealand: an interesting case

First, New Zealand took a different approach than Canada. Rather than focusing on the “entity carrying on operations,” as Canada does, the [Overseas Investment Act](#) focuses on “sensitive assets.”¹ This includes both tangible and intangible assets (e.g., data). National security is also a consideration.²

Second, New Zealand has an agency dedicated to the operational implementation of the foreign investment regulatory regime: [Land Information New Zealand \(LINZ\)](#). LINZ is responsible for the following activities associated with the Overseas Investment Act:

- **Information and education** to improve understanding of the law and influence the quality of applications.

¹ “Sensitive New Zealand assets are: sensitive land, significant business assets, fishing quota.”

“Investment can include: acquiring a sensitive asset, acquiring shares or securities in an entity that holds sensitive assets, leasing a sensitive asset for more than 10 years, spending more than \$100 million to establish a business or acquire assets for a business.” (<https://www.linz.govt.nz/our-work/overseas-investment-regulation>)

² “The Act also provides for a 'national security and public order call-in power' (NSPO regime). This allows screening of investments in strategically important businesses that would not otherwise require consent, such as those involving the acquisition of military technology.” (<https://www.treasury.govt.nz/information-and-services/regulation/systems-we-steward/overseas-investment-regulatory-system>)

- **Engagement** and building partnerships with other organisations and agencies through a strategic and targeted programme to grow understanding of the overseas investment regime and increase compliance and self-regulation.
- **Assessment** of applications and recommendations to the Minister, or decision where appropriate, whether consent should be granted and what conditions should be required.³
- **Intelligence** analysis and due diligence supported by operational risk and compliance assessments, and information sharing as an active participant in New Zealand's intelligence network.
- **Monitoring** of overseas investors, investments and the wider environment to identify potential breaches and other risks to New Zealand.
- **Enforcement** and investigation of potential breaches to manage risks to New Zealand, including ensuring investors dispose of their sensitive New Zealand assets if necessary.

Lastly, consultation appears to be much more extensive in New Zealand than in Canada. It is reported that LINZ is supported by a standing committee made up of members from the following departments and agencies:

- Intelligence and security agencies,
- the Department of Internal Affairs,
- the Department of Prime Minister and Cabinet,
- Inland Revenue,
- Land Information New Zealand,
- Ministry of Business, Innovation and Employment,
- Ministry of Defence,
- Ministry of Foreign Affairs and Trade,
- Customs,
- Police,
- New Zealand Trade and Enterprise,
- Reserve Bank,
- The Treasury

LINZ also consults stakeholders on a regular basis:

- “LINZ undertakes a range of regular and ad hoc consultation and engagements. Engagement can take many forms, such as interviewing investors, testing draft forms with lawyers, or workshopping processes with partner agencies. For example, LINZ:

³ Decisions for investment are at the discretion of the Minister of Finance, Minister for Land Information, and Minister of Ocean and Fisheries. Ministers generally delegate some decisions to LINZ senior officials; however, any application can be called up for a Ministerial decision.

- convenes a Legal Reference Group, which is a small group of lawyers experienced with the Act who provide free and frank advice on issues of relevance.
- presents regularly to lawyers, real estate agents, investment advisors, and partner agencies to improve understanding of the regime which increases compliance with it. We have a key performance indicator (KPI) and Statement of Performance Expectations (SPE) of 40 presentations/articles per year to measure our activity.
- regularly engages with investors, lawyers, investment advisors, and partner agencies.”

APPENDIX 1

National Security and Investment Act 2021 (UK)

29 Publication of notice of final order

(1) Subject to subsection (3), the Secretary of State must publish, in such manner as the Secretary of State considers appropriate, notice of the fact that—

- (a) a final order has been made,
- (b) a final order has been varied or revoked.

(2) The notice under subsection (1) must be published as soon as practicable and must—

- (a) state the date on which the order, variation or revocation comes into force, or how that date is to be determined,
- (b) state each person, and each description of person, who is required to comply with the order,
- (c) describe the trigger event and entity or asset concerned,
- (d) include a summary of the order, variation or revocation, its effect and the reasons for it,
- (e) include any other information that the Secretary of State considers it appropriate to include.

(3) The Secretary of State may exclude from the notice under subsection (1) anything the publication of which the Secretary of State considers—

- (a) would be likely to prejudice the commercial interests of any person, or
- (b) would be contrary to the interests of national security.