

17 March 2008

Ms Clare MacMillan  
Clerk  
Regulations Review Committee  
Parliament Buildings  
WELLINGTON

Dear Ms MacMillan

We are writing pursuant to Standing Order 315 to submit a complaint to your committee concerning the Order in Council of 3 March 2008 amending the Overseas Investment Regulations 2005. The amendment affects the offer of the Canada Pension Plan Investment Board (CPPIB) for a 40 percent shareholding in Auckland International Airport Limited (AIAL). Statements by the minister of finance Dr Michael Cullen suggest it is designed to stop the bid succeeding.

In terms of Standing Order 315 (2) we submit that the regulation:

**(b) Trespasses unduly on personal rights and liberties**

The announcement of the action wiped some \$300 million off the value of the company. The Legislation Advisory Committee Guidelines for good regulatory practice call for an examination of whether vested rights are taken and whether compensation should be payable. The vested rights of shareholders were indeed affected and no compensation was offered. If the action were genuinely in the public interest the costs should arguably be borne by taxpayers at large, not shareholders in the company.

**(c) Appears to make some unusual or unexpected use of power conferred by the statute under which it is made**

The action was unusual (we are aware of no similar action under the Overseas Investment Act designed to affect the outcome of a specific transaction) and certainly unexpected (the fall in the share price indicated that the market was not expecting any such action). As commentators have put it, the rules were changed in the closing minutes of the game.

**(d) Unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal**

The final administrative decision will be made by two ministers of the Crown and is not subject to judicial review except on narrow grounds. The terms of the amendment are open to wide interpretation, particularly the words "strategically important infrastructure". The government has declined to clarify their meaning. The rights and liberties of persons should not be put at risk by introducing such discretionary administrative powers.

**(f) Contains matter more appropriate for parliamentary enactment**

This is a major initiative affecting a company which ranks in the top 10 in the New Zealand stock exchange. In terms of good regulatory practice (which the government has been saying it is keen to improve) we consider the policy initiative should have been subject to a Regulatory Impact Statement (RIS) and been a parliamentary measure. No RIS has been produced and thus the government has not demonstrated to the public that the benefits of the regulation exceed its costs. A transparent parliamentary process should have been followed.

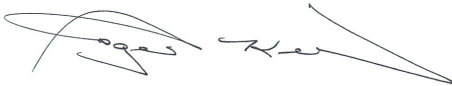
**(g) Is retrospective where this is not expressly authorised by the empowering statute**

The amendment affects, and is designed to affect, an offer that has already been made. In that sense the action is arguably retrospective. (Whether the offer is finally approved or not is not relevant to this ground of complaint.)

We wish to emphasise that in making this complaint no view is being taken of the merits of the CPPIB bid. The concern is with the process used to take the action and the lack of consistency with Standing Orders. Economic growth and prosperity in New Zealand depend on sound and reliable rules for investment. The action taken by the government has been perceived as arbitrary and politically motivated and can only reduce confidence in New Zealand as a place in which to invest and do business. This is against the public interest. The Wellington Regional Chamber of Commerce issued the attached statement on the subject.

We should be grateful if your committee would consider this complaint. We would be happy to appear before it.

Yours sincerely



Roger Kerr  
Executive Director  
New Zealand Business Roundtable



Charles Finny  
Chief Executive  
Wellington Regional Chambers of  
Commerce

**Media Release**  
**4 March 2008**

### **Overseas Investment Amendment not a Good Look**

The decision to amend the Overseas Investment Act regulations should have been debated in Parliament and consulted with stakeholders not made behind closed doors through order in council, according to the Wellington Regional Chamber of Commerce.

“We acknowledge that New Zealand’s foreign investment regime is relatively liberal but the decision has major implications for overseas perceptions of New Zealand’s openness to foreign investment, of how government in New Zealand operates, as well as this government’s respect for property rights and private sector transactions,” said Chamber CEO Charles Finny.

“The decision sends a signal, rightly or wrongly, that the government is anti-foreign investment.

“More importantly, coming at this late stage in Canadian Pension Plan’s offer to shareholders in Auckland International Airport, and following last week’s urgent measures to block beneficial tax breaks for that transaction, it suggests that the government is too eager to step in and block private sector transactions which aren’t seen as politically acceptable.

“Taking such action through order in council without public consultation or parliamentary debate suggests that the government has no regard for the merits of public debate, contestable ideas or alternative points of view.

“The decision will send a message to foreign investors to think twice before investing in New Zealand. It may now be harder to attract private sector partners for infrastructure projects. We are also concerned at the implications this move will have for the P4 investment negotiations which are now set to involve the US, and for the negotiation of other FTAs.

“Government could have used existing conditions under the Act to address the Canadian Pension Plan’s offer for Auckland Airport if necessary. Changing the rules half way through the process is not a good look”, Mr Finny concluded.

**For further comment please contact Charles Finny on 027 544 1547**