

1 Decision Date

28 June 2016

2 Interpretation

(1) In this notice, unless the context otherwise requires—

Act means the Overseas Investment Act 2005.

Crown has the meaning given in section 2(1) of the Public Finance Act 1989.

Exemption means the exemption in paragraph 4, subject to the conditions in paragraph 5.

Regulations means the Overseas Investment Regulations 2005.

requirement for consent provisions of the Act has the meaning given to it in the Regulations.

Solid Energy means Solid Energy New Zealand Limited.

(2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this Exemption has the same meaning as in the Act or the Regulations (as the case may be).

3 Duration of the Exemption

This Exemption comes into force on 28 June 2016, and expires at the close of 28 June 2021, unless varied under regulation 37(3) of the Regulations, or revoked earlier.

4 Exemption

(1) The following entities are exempt from the definition of *overseas person* for the requirement for consent provisions of the Act:

(a) Solid Energy; and

(b) Any wholly owned subsidiary of Solid Energy that is incorporated in New Zealand.

(2) This Exemption will apply only if all of the ordinary voting shares in Solid Energy are held by the Crown acting through the Minister of Finance and the Minister for State Owned Enterprises.

(3) To avoid doubt, this Exemption does not exempt Solid Energy and its wholly owned subsidiaries from the definition of overseas person for the purposes of determining whether another person is an overseas person under the Act.

5 Conditions of the Exemption

(1) All of the ordinary voting shares in Solid Energy must be held by the Crown acting through the Minister of Finance and the Minister for State Owned Enterprises.

- (2) Solid Energy must report in writing to the Overseas Investment Office within four weeks of the end of each financial year (30 June) with:
 - (a) details of transactions entered into by it, or its wholly owned subsidiaries, during that year that would have required consent were it not for the Exemption; and
 - (b) for each class of shares in Solid Energy, the percentage of that class of shares in Solid Energy held by overseas persons.
- (3) If requested in writing by the Overseas Investment Office, Solid Energy must provide a written report within 10 working days (or such other timeframe as specified) on any matter relating to its compliance with:
 - (a) the representations and plans made or submitted in support of the application for the Exemption; or
 - (b) the conditions of the Exemption.

6 Amendment or revocation of the Exemption

The Exemption and conditions of the Exemption may at any time be amended or revoked by the Overseas Investment Office.

7 Sanctions

The Act provides for civil and criminal sanctions for breaching the Act, failing to comply with conditions of exemption and failing to provide information required by the Overseas Investment Office. The Overseas Investment Office has an obligation to investigate and act upon alleged and suspected breaches of the Act.

8 Explanatory note

The purpose of the Exemption is to exempt Solid Energy and its wholly owned New Zealand subsidiaries from the definition of *overseas person* to allow them to acquire interests in sensitive land during the period from 28 June 2016 to 28 June 2021.

Solid Energy is a state-owned enterprise with all of its ordinary voting shares owned by the Crown.

Solid Energy must sell its assets pursuant to a Deed of Company Arrangement. As part of the preparation for sale, Solid Energy and its subsidiaries intend to acquire further interests in sensitive land.

Because a number of banks (that are overseas persons under the Act) hold more than 25% of the issued redeemable preference shares in Solid Energy, Solid Energy is also an overseas person under the Act. These shares are redeemable for cash and no voting rights attach to them.

The Exemption is consistent with the purpose the Act because the issue of the redeemable preference shares was exempt under regulation 33(1)(d) of the Regulations and all of the ordinary voting shares in Solid Energy are held by the Crown acting through the Minister of Finance and the Minister for State Owned Enterprises. The Ministers have the power to appoint the board of directors. Ownership and control of Solid Energy remains in New Zealand hands.