

1 Decision Date

24 August 2016

2 Duration of the Exemptions

This Exemption comes into force on 24 August 2016, and expires at the close of 31 August 2017, unless varied under regulation 37(3) of the Regulations, or revoked earlier.

3 Interpretation

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

Act means the Overseas Investment Act 2005.

Exemption means the exemption in paragraph 4.

Exemption Holder means Falvey Orchards LP (number 2587883)

Land means a freehold interest in:

- (a) approximately 18.9 hectares of land at Timaru, Canterbury, being the land contained in certificate of title CB45B/265; and
- (b) approximately 16.5921 hectares of land at Timaru, Canterbury, being the land contained in certificate of title CB20F/1467.

OIO means the Overseas Investment Office.

Regulations means the Overseas Investment Regulations 2005.

(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).

4 Exemption from the requirement for consent provisions of the Act

(1) An Exemption is granted to the Exemption Holder, exempting the following transaction from the requirement for consent:

- (a) an overseas investment in sensitive land being the acquisition of the Land from M A Orchards Limited (company number 3945459).

5 Conditions of the Exemption

(1) The Exemption Holder must notify the OIO in writing as soon as practicable, and no later than twelve months from the date of the Exemption, whether the transaction in paragraph 4(1) took place. If the transaction did take place, the notice must include:

- (a) the date upon which settlement of the transaction occurred;
- (b) final consideration paid (plus GST, if any);
- (c) the structure by which the acquisition was made, and who acquired the Land;

- (d) where applicable, copies of transfer documents and settlement statements; and
 - (e) any other information that would aid the OIO in its function to monitor the conditions of the Exemption.
- (2) If requested in writing by the OIO, the Exemption Holder must provide a written report within 20 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 Adoption of conditions of consent 201320054

- (1) Upon completion of the transaction in paragraph 4(1), the Exemption Holder must comply with the following conditions as if it were the applicant or consent holder in relation to consent 201320054:
- (a) The individuals with control of the Exemption Holder, must:
 - (i) continue to be of good character; and
 - (ii) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.
 - (b) The Exemption Holder must notify the OIO in writing within 20 working days if:
 - (i) any individual with control of the Exemption Holder:
 - (A) ceases to be of good character; or
 - (B) commits an offence or contravenes the law (whether convicted or not); or
 - (C) becomes aware of any other matter that reflects adversely on the Applicant's fitness to have the Investment; or
 - (D) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
 - (ii) any person in which the Exemption Holder, or any individual with control of the Exemption Holder has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
 - (iii) the Exemption Holder:
 - (A) ceases to be an overseas person; or
 - (B) disposes of the Land.
 - (c) The Exemption Holder must create the FTE employment opportunities in accordance with the projection of labour needs and hiring at Appendix P of M A Orchards' application for consent dated 27 September 2013.
 - (d) The Exemption Holder must report in writing to the OIO for two years from the date of Exemption (on an annual basis on the anniversary of the date of consent 201320054, being 18 August) as to the progress of the investment plan, including details of:
 - (i) any job opportunities created in New Zealand;

- (ii) any remitting of export receipts to the Investment in New Zealand;
 - (iii) any greater efficiency or productivity;
 - (iv) any additional capital introduced for development purposes; and
 - (v) any additional investments in New Zealand.
- (e) If requested in writing by the OIO, the Exemption Holder must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
- (i) the representations and plans made or submitted in support of the application by M A Orchards and notified by the regulator as having been taken into account when consent 201320054 was granted; or
 - (ii) the conditions of consent 201320054.
- (2) The Exemption Holder must also comply with Section 28 of the Act as if it were the applicant or consent holder in relation to consent 201320054, which provides that it is a condition of every consent, whether or not it is stated in the consent, that:
- (a) the information provided by each applicant to the OIO or the relevant Ministers in connection with the applications was correct at the time it was provided; and
 - (b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the OIO as having been taken into account when the consent was granted, unless compliance should be reasonably excused.

For the purposes of section 28(1)(b), the representations and plans made or submitted in support of the application and taken into account when consent was granted are those contained in the correspondence listed in the schedule to the statutory declaration of Bruce Douglas Allen dated 6 May 2014 and in all attachments annexed to that correspondence.

7 Monitoring conditions

- (1) For the purpose of monitoring compliance with condition 6, the regulator may, by notice in writing, require the Exemption Holder to provide the regulator with the information or documents or both that are specified in the notice.
- (2) The Exemption Holder must:
 - (a) comply with the regulator's notice within the timeframe specified in it; and
 - (b) certify that the information provided to the regulator, including information contained in any documents provided, is correct.
- (3) The regulator may retain or copy any information or document that is provided in accordance with this condition.

8 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.

9 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.

10 Explanatory note

The purpose of the Exemption is to exempt Falvey Orchards LP from the requirement for consent to acquire sensitive land that is currently owned by M A Orchards Limited.

M A Orchards Limited has the same ultimate beneficial ownership as Falvey Orchards LP. The acquisition of the Land is part of a corporate reorganisation in which the ultimate owners of Falvey Orchards LP and M A Orchards Limited intend to rationalise their assets so that their orchard businesses are held by one entity rather than two.

The transaction requires consent because Falvey Orchards LP is an overseas person and the Land is sensitive land as defined in the Act.

The exemption is consistent with the purpose the Act because it is analogous to the exemption contained in regulation 33(1)(a) of the Regulations and the ultimate beneficial ownership of the Land will not change as a result of the transaction.

Any subsequent transactions by Falvey Orchards LP will remain subject to any applicable requirement for consent under the Act.