

1 Decision Date

22 December 2016

2 Duration of the Exemptions

This Exemption comes into force on 22 December 2016, and expires at the close of 22 December 2020, 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.

Custodial Securities means securities or rights or interests in securities in the Applicant –

- (a) bought or obtained by the Custodian on the instructions of another person (the "**Customer**"); and
- (b) in which the Custodian holds the right or interest that the Custodian acquires (other than any Permitted Security Interest) on trust for, or on behalf of, the Customer; and
- (c) in or to which
 - (i) the Ultimate Investor is beneficially interested or entitled; and
 - (ii) the Custodian acquires no beneficial interest or entitlement other than –
 - (A) a Permitted Security Interest; and
 - (B) if the Custodian ("**B**") is the Customer of another Custodian ("**A**"), any beneficial right or interest acquired that B holds on trust for, or on behalf of, another person who is B's Customer and that B acquired in B's capacity as A's customer; and
- (d) in respect of which the Custodian makes no decisions, but instead acts on the decisions and instructions (directly or indirectly) of the Customer or the Ultimate Investor, for example, decisions to sell and decisions on how to exercise any powers or rights in relation to voting attached to or conferred by those securities.

Custodian means a person –

- (a) who is in the business of obtaining and holding property for, and on the instructions and decisions of, other people; and
- (b) who is acting in the ordinary course of that business.

Exemption means the exemption in paragraph 4.

Exemption Holder means Genesis Energy Limited.

OIO means the Overseas Investment Office.

Permitted Security Interest means a beneficial interest or entitlement under a security arrangement (if any) that –

- (a) in substance secures the Customer's obligation to pay fees to the Custodian for the Custodian's services to the Customer; and
- (b) is entered into by the Custodian and the Customer in good faith and in the ordinary course of the Custodian's business; and
- (c) requires that the beneficial interest in or entitlement to the Custodial Securities be retransferred to the Customer or extinguished on the payment of those fees.

Ultimate Investor means the person who is ultimately entitled to hold or call for the right to hold the right or interest in the Custodial Securities that the Custodian holds for the Customer (and who may be the Customer or, if the Customer is also a Custodian, who may be another person).

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

The Exemption Holder is exempt from the definition of Overseas Person, to the extent that the Exemption Holder would (but for the Exemption) constitute an Overseas Person due to a Custodian having any right or interests in Custodial Securities, but would not constitute an Overseas Person if, instead of the Custodian, the Ultimate Investor had the right or interest in those Custodial Securities that the Custodian has.

Example 1

The Exemption Holder's share register indicates that 26% of its issued shares are held by Custodians, which are prima facie Overseas Persons. The remainder of the Exemption Holder's shares are held legally and beneficially by New Zealanders.

Approximately 80% of the underlying beneficial shareholders of the shares which are held by the Custodians are held on behalf of New Zealanders. Accordingly, 94.8% of the Exemption Holder's shares are beneficially owned by New Zealanders.

Result:

The Exemption permits the Exemption Holder, in determining whether it has become an Overseas Person, to "look through" the Custodians' holdings on its share register, to the underlying beneficial shareholders.

As 94.8% of the Exemption Holder's shares are beneficially owned by New Zealanders, the Exemption provides that the Exemption Holder is not an Overseas Person. Accordingly, it will not require consent to acquire significant business assets and/or sensitive land.

Example 2

The Exemption Holder's share register indicates that 26% of its issued shares are held by Custodians, which are prima facie Overseas Persons, and 20% are held legally and beneficially by Overseas Persons. The remaining 54% of the Exemption Holder's shares are held legally and beneficially by New Zealanders.

Approximately 50% of the underlying beneficial shareholders of the shares which are held by the Custodians are held on behalf of New Zealanders, with the remaining 50% of the underlying beneficial shareholders being Overseas Persons.

Result:

The Exemption permits the Exemption Holder, in determining whether it has become an Overseas Person, to "look through" the Custodians' holdings on its share register, to the underlying beneficial shareholders.

As 33% of the Exemption Holders shares are beneficially owned by Overseas Persons, the Exemption Holder *will* constitute an Overseas Person.

Accordingly, it *will* require consent to acquire significant business assets and/or sensitive land.

5 Conditions of the Exemption

If requested in writing by the OIO, the Exemption Holder must make all reasonable efforts to procure and provide to the OIO within 20 working days (or such longer timeframe as specified) details of the percentage of its issued equity securities which are legally held by Custodians that are, to the extent that the Exemption Holder or the relevant Custodian can reasonably determine such information, beneficially by Overseas Persons.

6 Amendment or revocation of the Exemption

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

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 OIO. The OIO 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 allow Genesis Energy Limited, when carrying out its determination of whether or not it constitutes an Overseas Person, to "look through" any Custodians on its share registry, to the underlying beneficial ownership of its shares.

Genesis Energy Limited states the Exemption will facilitate its day-to-day activities with confidence that the presence of overseas Custodians on its

share register will not in and of itself render it an Overseas Person (and accordingly trigger the consent requirements in the Act).