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15 December 2016

Southern Paprika Limited
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WARKWORTH

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BY EMAIL

To whom it may concern

**Formal warning in respect of your failure to obtain consent under the
Overseas Investment Act 1973**

1. On 23 July 2016, Southern Paprika Limited (**Southern Paprika**) applied for consent to acquire 50% of the shares in Harbour Edge Avocados Limited (HEAL).
2. As part of this application, we learned that:
 - (a) Southern Paprika acquired a 50 ha property near Warkworth (**Warkworth Property**) in June 2005 without consent under the Overseas Investment Regulations 1995 (**1995 Regulations**); and
 - (b) Harbour Edge Avocados Limited (**HEAL**) acquired a 405 ha property near Tapanui (**Tapanui Property**) in 2015 without consent under the Overseas Investment Act 2005 (**2005 Act**).
3. At all material times Southern Paprika was an overseas person as it was ultimately 50% owned by a Dutch company, Beheermaatschappij Legmeerpolder B.V. (**BBV**). Southern Paprika's other shareholder has been Alexander Cropping Limited (**ACL**). ACL is owned by New Zealand investors.
4. At all material times, HEAL has been owned by BBV (24.9%), ACL (25.1%), and a New Zealand investor (50%).
5. We have been investigating whether Southern Paprika and HEAL required consent for their respective purchases, and if so, how they came to acquire the properties without consent.
6. We have concluded our investigation by imposing an administrative penalty against HEAL and issuing this warning letter to Southern Paprika, HEAL, ACL, and BBV.

Southern Paprika's purchase of the Warkworth Property

7. Southern Paprika's purchase of the Warkworth Property was given effect in breach of the 1995 Regulations. Southern Paprika required consent as it was an overseas person and was giving effect to an investment in 'land'.
8. The Warkworth Property was 'land' under the 1995 Regulations as it exceeded five hectares.
9. Southern Paprika has accepted that consent was required under the 1995 Regulations for its acquisition of the Warkworth Property and that consent was not obtained.

10. Southern Paprika has stated that it didn't think of the consent requirement at the time. It states that its solicitor did not advise of the need for consent under the 1995 Regulations despite having acted for Southern Paprika on an earlier application for consent.
11. We have concluded our investigation into the breach of the Act by Southern Paprika and we have decided to issue this formal warning letter. On the basis of our investigation to date, and given the passage of time, we do not intend to take any further enforcement action in relation to the acquisition of the Warkworth property without consent.

HEAL's purchase of the Tabora Property

12. HEAL's purchase of the Tabora Property in 2015 was given effect in breach of section 42 of the 2005 Act. HEAL required consent as it was an associate of Southern Paprika (an overseas person) and was giving effect to an overseas investment in sensitive land.
13. When the Tabora Property was purchased, HEAL's shareholders were BBV (24.9%), ACL (25.1%) and a New Zealand investor (50%).
14. The intention of BBV and ACL was always to transfer their interests in HEAL to Southern Paprika once consent was obtained under the 2005 Act. HEAL's solicitor advised that HEAL would not require consent to acquire the Tabora Property if BBV was only a 24% shareholder in HEAL, and that Southern Paprika could purchase those shareholdings later once consent had been granted. This arrangement was expected to avoid the perceived time and cost of applying for consent prior to the Tabora Property being acquired, and enable planting to be carried out earlier.
15. After carefully considering all of the relevant matters relating to HEAL's purchase of the Tabora Property we have decided to impose a \$15,000 administrative penalty under section 53 of the 2005 Act and to issue this formal warning letter.

Warning

16. We are formally warning you that Southern Paprika, BBV and their associates, including HEAL, must obtain consent before giving effect to any transaction which results in an overseas investment in sensitive New Zealand assets. In particular, you are reminded of the definition of an associate as set out in section 8 of the 2005 Act.
17. We consider that a prudent overseas investor would seek legal advice from a lawyer with experience dealing with the 2005 Act before entering into a transaction that could involve sensitive assets. We are concerned that Southern Paprika, ACL, BBV, HEAL and their associates were not properly advised in the instances described above. We expect Southern Paprika, ACL, BBV, HEAL, and their associates to seek experienced counsel in the future. We also expect that measures be put in place to ensure compliance with the Act in future when looking to acquire sensitive assets.
18. While we will not be taking any further action against Southern Paprika or HEAL at this time, we will take this warning into account if Southern Paprika, BBV or HEAL give effect to a transaction without consent in the future. We may draw this warning to the attention of a court in any subsequent proceedings brought by us.

Public information

19. We intend to publish this warning letter on our website.

Yours sincerely

[Redacted signature]

[Redacted name]

[Redacted title]

Overseas Investment Office

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