

Decision Date

16 March 2018

Duration of the Exemption

This Exemption comes into force on 16 March 2018, and expires at the close of 6 months from this date, unless varied under regulation 37(3) of the Regulations, or revoked earlier.

1. Interpretation

In this notice, unless the context otherwise requires—

Act means the Overseas Investment Act 2005.

Cargill Land means approximately 1.3436 hectares of land located at 1 Cargill Street, Waikiwi, Invercargill comprised in the computer freehold register 674660 (Southland Registry).

Cargill Application means the application by Heritage Lifecare Limited, Heritage Lifecare (BPA) Limited and Heritage Lifecare Villages Limited to acquire a freehold interest in the Cargill Land, application number 201720132.

Coldstream Land means approximately 0.5912 hectares of land located at 45 and 47 Burnett Street, Ashburton comprised in the computer freehold registers 344996, 37314, CB34B/1053, CB34B/1054, CB34B/1055, CB34B/1056, CB34B/1057, CB34B/1058, CB34B/938, CB34C/939, CB34C/940, CB34C/941 and CB34C/942 (Canterbury Registry).

Coldstream Application means the application by Heritage Lifecare Limited to acquire a freehold interest in the Coldstream Land, application number 201720108.

Exemption means the exemption in paragraph 3.

Exemption Holder means Adamantem Capital Fund I Trust 1A, acting by and through its Trustee and Manager.

Land means an equitable interest in the Cargill Land and the Coldstream Land.

Manager means Adamantem Capital Management Pty Limited.

OIO means the Overseas Investment Office.

Regulations means the Overseas Investment Regulations 2005.

Transaction means the Exemption Holder increasing its interest in Vintage Holdco Limited from 26.8% to approximately 33.6%.

Trustee means One Managed Investment Funds Limited as trustee of Adamantem Capital Fund I Trust 1A.

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. Exemption from the requirement for consent provisions of the Act

An exemption is granted from the requirement for consent to the Exemption Holder to increase its interest in Vintage Holdco Limited from 26.8% to approximately 33.6% being an overseas investment in sensitive land (being the Land only) and an investment in significant business assets.

4. 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 3 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 property;
 - (d) where applicable, copies of transfer documents and settlement statements;
 - (e) any other information that would aid the OIO in its function to monitor the conditions of the Exemption;
- (2) The Exemption will lapse if either of the following occurs or is occurring before the Transaction is completed:
 - (a) Vintage Holdco Limited has any interest (direct or indirect) in sensitive land other than the Land; or
 - (b) Vintage Holdco Limited has an interest in the Land (direct or indirect) that is greater than an equitable interest.
- (3) The Exemption Holder must dispose of its interest obtained in the Cargill Land as a result of the Transaction if consent is declined to the Cargill Application.
- (4) The Exemption Holder must dispose of its interest obtained in the Coldstream Land as a result of the Transaction if consent is declined to the Coldstream Application.

5. Reporting

- (1) 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. 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

Vintage Holdco Limited has an equitable interest in sensitive land as two of its 100% subsidiaries have entered into separate agreements to acquire the Cargill and Coldstream retirement facilities which are each located on sensitive land. Both of the agreements are conditional on consent being obtained under the Act.

The definition of "give effect to an overseas investment" in the Act excludes an acquisition that is conditional on consent being obtained under the Act. Therefore consent was not required prior to the agreements to acquire sensitive land being entered into by Vintage Holdco Limited's subsidiaries. The OIO has received applications in relation to each of these transactions.

The Exemption Holder currently has a 26.8% interest in Vintage Holdco Limited, therefore it has an indirect equitable interest in sensitive land as a result of the sale and purchase agreements which are conditional on consent being granted under the Act.

The Exemption Holder intends to increase this interest to approximately 33.6%. Consent is required to this transaction because:

- the Exemption Holder is acquiring rights or interests of Vintage Holdco Limited which owns or controls indirectly an interest in sensitive land; and
- the Exemption Holder will increase an existing 25% or more interest in Vintage Holdco Limited.

We consider that granting the exemption is consistent with the policy and purpose of the Act because:

- The Exemption Holder considers it could have undertaken the Transaction without an additional consent, if it was not for its indirect equitable interest in sensitive land.
- Vintage Holdco Limited's subsidiaries have applied for consent under the Act to acquire the sensitive land. The transactions will not be settled if consent cannot be obtained.
- Therefore the conditional equitable interest being acquired by the Exemption Holder is temporary in nature as it will only be held for the period between the Transaction occurring and either:
 - consent being acquired to the Coldstream Application and the Cargill Application and a freehold interest in the Land being acquired; or
 - the agreements being cancelled.
- The benefits to New Zealand that are likely to occur as a result of the acquisition of the sensitive land will be assessed as part of the applications by Vintage Holdco Limited's subsidiaries.
- The proposed transaction will result in the Exemption Holder increasing a minority indirect equitable interest in sensitive land.
- Where an interest in sensitive land that is conditional on consent being obtained under the Act is acquired directly, consent is not required to this interest. This is because the greater interest to which the conditional interest relates will not be acquired unless consent under the Act is first obtained.

Therefore we consider that it is appropriate to grant an exemption to the acquisition of the conditional equitable interest in sensitive land in this case and related significant business asset acquisition.

Any subsequent transactions relating to the shares and assets of Vintage Holdco Limited and the wider portfolio will remain subject to any applicable requirement for consent under the Act.