

**Overseas Investment Office**

Radio New Zealand House  
155 The Terrace  
PO Box 5501  
Wellington 6145  
New Zealand  
+64 4 460 0110  
[www.linz.govt.nz](http://www.linz.govt.nz)

Our Ref: 201520102

13 September 2018

Min Jia  
C/- Bay Law Office  
PO Box 48042  
Blockhouse Bay  
Auckland 0644

**BY EMAIL**

Dear Min Jia

**Warning letter in respect of transactions involving the ownership of O:TU between 2014 and 2015.**

1. I am writing to you in respect of three transactions entered into by you and Marlborough Wine Estates Group Limited (**Marlborough Wine**) between 2014 and 2015. All the transactions involved overseas persons and sensitive land as defined under the Overseas Investment Act 2005 (**Act**). Despite this, you did not seek consent under the Act before giving effect to these transactions.

The transactions

2. On 7 April 2013, O:TU Investments Limited (**O:TU**) obtained consent under the Act to acquire an interest in approximately 336.4891 hectares of sensitive land in Marlborough (**the original consents**).
3. At the date the original consents were granted, you had a 97% shareholding in O:TU. The other 3% was held by Global Force Worldwide Limited (**GFW**). The sole shareholder of GFW was Lin Xiumei.
4. At all material times, you were an overseas person, not being a New Zealand citizen and not being ordinarily resident in New Zealand.
5. Since the original consents, three transactions took place that resulted in you or Marlborough Wine increasing your interests in O:TU. Consent was not sought for these transactions.
  - (a) On 13 March 2014, Min Jia acquired Lin Xiumei's shares in GFW (effectively increasing his interest in O:TU from 97% to 100%). This transaction required consent under the Act, but was not sought before it was given effect.
  - (b) In March 2015, Marlborough Wine, of which you were a 91.38% shareholder, acquired all of the shares in O:TU. The remaining 8.62% shareholder was the Otuwhero Trust, which held the shares on trust for your wife, Ly Lee. The effect of this transaction was to reduce your interest in O:TU to 91.38%. This transaction required consent under the Act, but was not sought before it was given effect. We understand that this transaction was conducted in order to list Marlborough Wine on the NXT Market.
  - (c) For completeness, we note that Marlborough Wine was listed on the NXT in June 2016. The effect of the listing, and related transactions, was to reduce your interest to 67.71%. No consent was required for this transaction.

- (d) On 25 September 2015, you were appointed the primary beneficiary of the Otuwhero Trust, effectively becoming the beneficial owner of the 8.62% shareholding previously owned by your wife. The result was to increase your ultimate ownership of O:TU to 74.1%. This transaction required consent which was not originally sought.
6. Three of the transactions above required consent under the Act.
  7. Through your lawyer, you brought the transactions to our attention in September 2015 and through our subsequent investigation the precise details of these transactions became apparent.
  8. Your explanation for these transactions has been:
    - (a) The first transaction (13 March 2014) occurred because Lin Xiumei did not want to invest any further funds in O:TU and wished to exit the investment.
    - (b) The second transaction (March 2015) was the result of the restructure that was implemented in preparation for a public listing of the shares in Marlborough Wine on the NXT market. You obtained legal advice from listing advisors that having more than one ultimate shareholder, including an offshore company (GFW) as a shareholder in Marlborough Wine, would complicate the listing process.
    - (c) The third transaction (25 September 2015) occurred because you received accounting advice suggesting that the Otuwhero Trust should transfer its 8.62% interest in Marlborough Wine to you.
  9. We do not consider the explanations given resolve the fact the transactions involved overseas persons and sensitive land and required consent under the Act before they were given effect.
  10. That said, we have taken into account that you originally had consent in 2013 to obtain a 97% in O:TU and that none of the transactions materially alter your ownership or control in relation to the land O:TU owns. In fact, your shareholding is now lower than what you had consent to acquire. We therefore consider your offending to be at the low end of the range for possible breaches of the Act. In light of this, and the co-operation you have shown with our investigation, we have decided to conclude our investigation by issuing this warning to you.

#### Warning

11. We formally record that we consider that you and Marlborough Wine have breached the Act in relation to land now owned by Marlborough Wine through three transactions occurring between 2014 and 2015. While we have decided not to take further enforcement action at this time on the basis that the ultimate control and ownership in the investment did not change and you have subsequently dropped the level of your shareholding, we are concerned at the lack of consideration shown to the requirements of the Act.
12. We take this opportunity to remind you that we expect good investors to act in compliance with the requirements of the Act. We consider that a prudent overseas investor would consider the requirements of the Act (including, if necessary, seeking legal advice from a lawyer familiar with the Act) in terms of any transaction involving sensitive land in New Zealand.

13. We expect that measures be put in place to ensure compliance with the Act in future when looking to acquire sensitive assets. We will also take this warning into account if you give effect to any transaction without consent in the future. We may draw this warning to the attention of a court in any subsequent proceedings brought by us.

Yours sincerely



Pedro Morgan  
Acting Manager Enforcement  
Overseas Investment Office

DDI: +64 4 460 2785

Email: [pmorgan@linz.govt.nz](mailto:pmorgan@linz.govt.nz)