



Notice of Decision**Case: 201710117**

1. Decision Date

10 September 2018

2. Interpretation

In this notice, unless the context otherwise requires—

Exemption means the exemption in clause 4 subject to the conditions in clause 5.**Fisheries Act** means the Fisheries Act 1996.**OIO** means the Overseas Investment Office.**Overseas Investment Act** means the Overseas Investment Act 2005.**Regulations** means the Overseas Investment Regulations 2005.**Sanford** means Sanford Limited.

Any term or expression that is defined in the Fisheries Act, Overseas Investment Act or the Regulations and used, but not defined, in this Exemption has the same meaning as in the Fisheries Act, Overseas Investment Act or the Regulations (as the case may be).

3. Duration of the Exemption

This Exemption comes into force on the decision date and expires on 31 August 2023, unless varied under regulation 37(3) of the Regulations, or revoked earlier.

4. Exemption

Sanford is exempt from the requirement for consent under section 57B of the Fisheries Act subject to the conditions in clause 5.

5. Conditions of the Exemption

- (a) Sanford must not give effect to an overseas investment in fishing quota without first obtaining consent under the Fisheries Act if it knows (or should reasonably know) that it is an overseas person.
- (b) Sanford must analyse its share register (**Quarterly Analysis**) by 28 February, 31 May, 31 August and 30 November of each year in order to determine whether it has become an overseas person. The analysis must be completed as at a date that is not less than four weeks prior to the date of the Quarterly Analysis.
- (c) If Sanford becomes aware that it has become an overseas person, it must:
 - (i) notify the OIO in writing within 10 working days of becoming aware; and
 - (ii) if it has given effect to an overseas investment in fishing quota since becoming an overseas person, either:

- cease to be an overseas person within four months of becoming aware (or by such time as Sanford and the OIO may agree) (**Flexibility End Date**); or
 - dispose of the relevant interests in fishing quota (**Interests for Disposal**) pursuant to clause 5(c).
- (d) If Sanford is required under clause 5(b)(ii) to dispose of any Interests for Disposal, it must dispose of the Interests for Disposal as follows:
- (i) within six weeks of the Flexibility End Date, Sanford must actively market the Interests for Disposal for sale on the open market (including engaging a fishing quota broker to market the Interests for Disposal for sale);
 - (ii) within twelve months of the Flexibility End Date, Sanford must dispose of the Interests for Disposal to a third party who must not be an associate of Sanford. If Sanford fails to do so, it must offer the Interests for Disposal for sale by auction or tender within a further three months (with no reserve price or minimum bid set for the auction or tender) and dispose of the Interests for Disposal.
- (e) Sanford must notify the OIO in writing at least 15 working days prior to amending the Fourth Schedule of its constitution or any provision in its constitution which affects the operation of the provisions in the Fourth Schedule.
- (f) Sanford must not give effect to a overseas investment in fishing quota in reliance on this exemption if Sanford:
- (i) fails to undertake a Quarterly Analysis;
 - (ii) amends the Fourth Schedule of its constitution or any provision in its constitution which affects the operation of the provisions in the Fourth Schedule without notifying the OIO in accordance with clause 5(d).
 - (iii) otherwise breaches the conditions of this exemption; or
 - (iv) gives effect to an overseas investment in sensitive land or an overseas investment in significant business assets in breach of the Overseas Investment Act.
- (g) If requested in writing by the OIO, Sanford must provide the OIO with:
- (i) a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
 - the representations and plans made or submitted in support of the application for the Exemption; or
 - the conditions of the Exemption.
 - (ii) a copy of any Quarterly Analysis within 10 working days.

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**

The purpose of this Exemption is to exempt Sanford Limited, should it unknowingly become an overseas person, from the requirement for consent in section 57B of the Fisheries Act 1996. A majority of Sanford's shareholders are currently New Zealanders.

For the avoidance of doubt, this Exemption is not intended to:

- exempt Sanford from the requirement to obtain consent under sections 10(1)(a) and 10(1)(b) of the Overseas Investment Act 2005;
- exempt an overseas person other than Sanford from the requirement for consent before giving effect to an overseas investment in fishing quota that includes the acquisition of rights or interests in Sanford's securities; or
- preclude Sanford from applying for consent to give effect to an overseas investment in fishing quota *before* giving effect to that investment if it knows it has become an overseas person.

As a listed company, Sanford has limited visibility and control over who owns its shares. Sanford is concerned that it may inadvertently become an overseas person if an overseas person acquires shares in Sanford without Sanford's approval or knowledge.

If Sanford unknowingly becomes an overseas person and then acquires fishing quota without consent, that fishing quota may be liable to be forfeit to the Crown without compensation. Sanford considers that forfeiture would be a disproportionate outcome and notes that any impacts on shareholder value would predominately affect New Zealand shareholders.

Sanford has implemented changes to its constitution to assist it to monitor and control its level of overseas ownership. However, these amendments do not eliminate the risk of Sanford becoming an overseas person without Sanford's knowledge. This exemption provides Sanford with a temporary window within which to remedy transactions that do not comply with the overseas investment fishing provisions.