

1 Decision Date

21 October 2018

2 Duration of the Exemption

This Exemption comes into force on 21 October 2018, and remains in force 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.

Aurum Holdings means Aurum Holdings M.K.I. Limited.

Aurum Ventures means Aurum Ventures M.K.I. Limited, which is ultimately owned by the MK Special Assets Trust.

Exemption means the exemption in paragraph 4.

Exemption Holder means Morris Kahn.

OIO means the Overseas Investment Office.

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

(1) An Exemption is granted exempting the following transactions from the requirement for consent:

- (a) the transfer of Aurum Holding's interest in Walter Peak Station from Aurum Holdings to Morris Kahn; and, following this,
- (b) the transfer of that interest in Walter Peak Station from Morris Kahn to the trustee of the MK Special Assets Trust to be held in trust for the MK Trust and in turn for Morris Kahn during his life.

(2) The transactions are to be given effect in the following manner:

- (a) by Morris Kahn replacing Aurum Holdings as a beneficiary of the Walter Peak Station Trust, and then by Aurum Ventures replacing Morris Kahn as a beneficiary of the Walter Peak Station Trust; and
- (b) by Morris Kahn acquiring Aurum Holding's shares in Walter Peak Station Limited, and then by Aurum Ventures acquiring those shares from Morris Kahn.

(3) The transactions set out above must take place by 31 October 2019.

5 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 transfer of interests in paragraph 4 took place. If the transfer did take place, the notice must include:
 - (a) the date or dates upon which settlement of the transaction or transactions occurred;
 - (b) final consideration paid (plus GST, if any);
 - (c) the final structure put in place by the transfer of interests;
 - (d) where applicable, copies of transfer documents and settlement statements; and
 - (e) any other information that would aid the OIO in its function to monitor the conditions of the Exemption.
- (2) 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

The exemption allows Morris Kahn to restructure his interest in Walter Peak Station (but without changing his ultimate beneficial ownership or control of that interest).

The 'restructuring' exemption in r 33(1)(a) does not apply in this case due to unique circumstances of the existing and proposed ownership structures. However, we are satisfied that the transactions are analogous to, and within the policy of, r 33(1)(a) and are therefore satisfied that the exemption should be granted.

This exemption does not allow Mr Kahn to increase his interest in Walter Peak Station, and does not change Mr Kahn's ultimate beneficial ownership or control of his interest in Walter Peak Station.

Any future transactions relating to Mr Kahn's interest remain subject to the requirement for consent under the Act.

Any future acquisition of other sensitive New Zealand assets by Mr Kahn also remain subject to any applicable requirement for consent under the Act.

