

Decision Date

12 June 2020

Duration of the Exemption

- (1) This Exemption comes into force on 12 June 2020, and may be used until 15 June 2021 (the “Use-by Date”).

Interpretation

- (2) In this notice, unless the context otherwise requires —

Act means the Overseas Investment Act 2005.

Exemption means the exemption in paragraph 4 of this Notice of Decision.

Exemption Holder means Mr. David Anders McIntyre, Ceres Global, Inc and Vesta Financial, Inc.

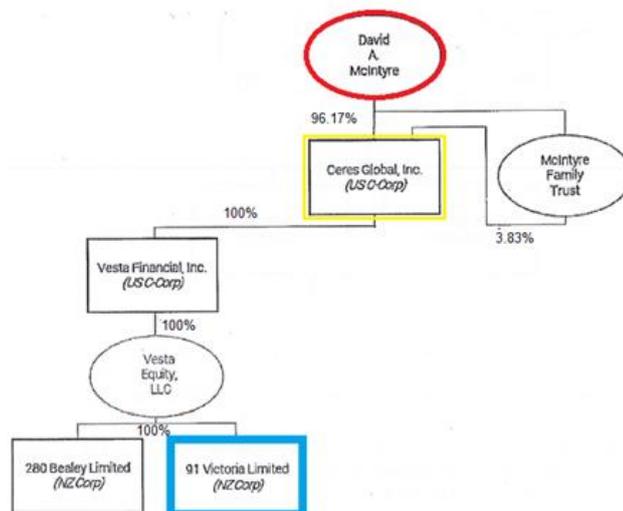
Land-owning Subsidiary means 91 Victoria Limited, a New Zealand company that owns sensitive land at 91 Victoria Street, Christchurch.

OIO means the Overseas Investment Office.

Regulations means the Overseas Investment Regulations 2005.

Residential Property means the properties at 91 Victoria Street in Christchurch, including all units in the apartment building at this address that are classed as residential land under the Act.

Corporate Restructure means the restructure of the Ceres corporate group that will result in the following upstream ownership interests in the Land-owning Subsidiary:



- (3) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this Notice of Decision has the same meaning as in the Act or the Regulations (as the case may be).

Exemption from the requirement for consent provisions of the Act

- (4) The Exemption Holder is exempt from the requirement for consent under the Act for transactions to undertake the Corporate Restructure of the upstream corporate group that holds interests in the Land-owning Subsidiary, including transactions that will result in increases in the Exemption Holder's indirect ownership or control interests in the Land-owning Subsidiary.

Conditions of the Exemption

- (5) The Exemption Holder must notify the OIO in writing as soon as practicable, and no later than the Use-by Date, whether the transactions in paragraph 4 took place. If the transactions did take place, the notice must include:
 - (a) the date upon which settlement of the relevant transaction occurred;
 - (b) final consideration paid (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; and
 - (e) any other information that would aid the OIO in its function to monitor the conditions of the Exemption.
- (6) 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.

Amendment or revocation of the Exemption

- (7) The Exemption and conditions of the Exemption may at any time be amended or revoked by the Overseas Investment Office.

Sanctions

- (8) 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.

Background and reasons for the Exemption

- (9) This Exemption is granted under section 61D of the Act by the delegated decision-maker. It exempts transactions to allow for the completion of an overseas restructure of the Ceres corporate group.
- (10) The Corporate Restructure will result in minor changes to the indirect upstream ownership of a New Zealand subsidiary that owns land now classed as 'sensitive land' under the Act.
- (11) The Land-owning Subsidiary is a small New Zealand company in a larger international corporate group that is ultimately beneficially owned by Mr McIntyre (the Applicant) and his family trust. The Applicant is the founder of Ceres Environmental Services, a US-based international disaster recovery company that provides debris and environmental services.
- (12) The Land-owning Subsidiary has owned the Residential Property since 2014. The relevant land contains an apartment building that was damaged in the Christchurch earthquake, and the Land-owning Subsidiary has plans to repair and develop it into habitable dwellings. The Residential Property did not include any 'sensitive land' until amendments to the Act were made in 2018, so OIO consent was not required for the initial acquisition of the land.
- (13) As a result of the Corporate Restructure, the Applicant's indirect interest in the Land-owning Subsidiary will increase a small amount (6.17%). The Corporate Restructure also includes intermediate entities (Vesta Financial Inc and a new holding company, Ceres Global Inc) acquiring indirect interests in the Land-owning Subsidiary.

- (14) The change in ownership and control that will arise from the Corporate Restructure is one of form rather than substance. The Applicant and his family trust are already the ultimate beneficial owners of the Land-owning Subsidiary. There is not a material change in control. There is also no change in the extent to which the Residential Property is in overseas ownership.
- (15) The Corporate Restructure will have very little (if any) impact on the effective control of the Residential Property. It is also unlikely to have any impact on the asset itself.
- (16) The exemption falls within the purpose in section 61B(b), as the exemption is minor or technical. The decision-maker has determined that it is appropriate and desirable to grant an exemption in the collective circumstances of this case, and that the exemption is not broader than is reasonably necessary to address the circumstances. In considering the exemption criteria, the decision-maker had regard to the purpose of the Act as well as other factors that are set out in section 61E(2)(b).