
Notice of Decision
Case: 20200826

Decision Date: 16 March 2021

Duration of the Exemption

- (1) This Exemption comes into force on the Decision Date and may be used until **31 December 2023** (the “**Use-by Date**”).

Interpretation

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

Act means the Overseas Investment Act 2005.

Deceased means [s 9(2)(a)]

Exemption means the exemption in paragraph 4.

Exemption Holder means the trustees of the estate of [s 9(2)(a)]

OIO means the Overseas Investment Office.

Regulations means the Overseas Investment Regulations 2005.

Residential Property means a property comprising residential (but not otherwise sensitive) land.

Surviving Partner means [s 9(2)(a)] a New Zealand citizen.

- (3) 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).

Exemption from the requirement for consent provisions of the Act

- (4) The Exemption Holder is exempt from the requirement for consent under the Act to acquire a half share in a Residential Property.

Conditions of the Exemption

- (5) The other half share in any Residential Property acquired by the Exemption Holder must be held at the time of acquisition by the Surviving Partner.
- (6) The Exemption Holder must notify the OIO in writing as soon as practicable, and no later than the Use-by Date, whether the transaction(s) in paragraph 4 took place. If the transaction(s) did take place, the notice must include:
- (a) details of the property acquired by the Exemption Holder including:
 - i. the physical address of the property;
 - ii. the record of title reference;
 - iii. the legal description.
 - (b) the date upon which settlement of the relevant transaction occurred;
 - (c) final consideration paid (plus GST, if any);
 - (d) the structure by which the acquisition was made, and who acquired the property;
 - (e) where applicable, copies of transfer documents and settlement statements; and
 - (f) any other information that would aid the OIO in its function to monitor the conditions of the Exemption.
- (7) 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 the conditions of the Exemption.

Amendment or revocation of the Exemption

- (8) The Exemption and conditions of the Exemption may at any time be amended or revoked by the OIO.

Sanctions

- (9) 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 OIO. The OIO has an obligation to investigate and act upon alleged and suspected breaches of the Act.

Reasons for Exemption

- (10) This exemption is granted under section 61D of the Act by the delegated decision-maker.
- (11) It provides an exemption from the requirement to obtain consent by the trustees of an estate to acquire a ½ share/interest in a residential property. The residential property is being acquired to provide a replacement home for the benefit of the Deceased's Surviving Partner, a New Zealander and the other ½ share will be owned by that New Zealander. It is intended that the New Zealand ½ share owner will reside in the Residential Property as his home for so long as he wishes.
- (12) The exemption is consistent with the purposes in section 61B(a), (c)(v) and (c)(viii) of the Act. We note the following circumstances of this case:
- compliance with the Act in this case is unduly burdensome, taking into account the sensitivity of the sensitive assets and the nature of the proposed overseas investment transaction. The relevant sensitive asset is for the trustees of the Deceased's estate to hold only a partial interest in residential property that is intended to provide a home for a New Zealander who is the Surviving Partner of the Deceased. Without the exemption, the New Zealander would be unlikely to be able to reside in his own home as he previously did (and do so in the area of NZ that he wishes to live following the passing of his partner);
 - the exemption sought will enable the replacement of normally exempted relationship property and provide a home for the Surviving Partner (a New Zealander) pursuant to arrangements under the Deceased's estate;
 - the person that will be fundamentally controlling the residential property will be a New Zealander, being the Surviving Partner that will be residing in the home.
- (13) The decision-maker has determined that it is appropriate and desirable to grant an exemption in the collective circumstances particular to this case, and that the exemption is not broader than is reasonably necessary to address those circumstances.