

1 Decision Date

30 May 2023

2 Duration of the Exemption

This Exemption comes into force on the decision date and for each Record of Title at the Development, expires three months after the Record of Title is first issued or on 31 December 2025, whichever is earlier.

3 Interpretation

- (1) In this notice, unless the context otherwise requires—
 - a) **Act** means the Overseas Investment Act 2005
 - b) **Development** has the same meaning as in the Transitional Exemption Certificate
 - c) **Exemption** means the exemption in paragraph 3.
 - d) **Exemption Holder** means Shundi Customs Limited (New Zealand Company number 5342341)
 - e) **Transition Exemption Certificate** means the Transitional Exemption with Certificate issued to the Exemption Holder on 15 April 2019 under Schedule 1AA Clause 6 of the Act.
 - f) **LINZ** means Toitū Te Whenua Land Information New Zealand
 - g) **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) The acquisition of a dwelling in the development does not require consent for the purposes of section 10(1)(a) of the Act to the extent that it will result in an overseas investment in sensitive land if—
 - a) the purchaser entered into the transaction on or before 22 August 2023,
 - b) the purchaser becomes the registered owner of the dwelling within the earlier of
 - (i) three months of the Record of Title for the dwelling being issued, or
 - (ii) 31 December 2025, and
 - c) the purchaser acquires the dwelling from the developer.

5 Amendment or revocation of the Exemption

The Exemption may at any time be amended or revoked by LINZ.

6 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 LINZ. LINZ has an obligation to investigate and act upon alleged and suspected breaches of the Act.

7 Reasons for Exemption

An exemption has been granted so that acquisition of a dwelling in the Development does not require consent for the purposes of section 10(1)(a) of the Act to the extent that it will result in an overseas investment in sensitive land if—

- a) the purchaser entered into the transaction on or before 22 August 2023,
- b) the purchaser becomes the registered owner of the dwelling within three months of the Record of Title the dwelling being issued, and
- c) the purchaser acquires the dwelling from the developer.

Transitional Exemption Certificates allow overseas persons to buy units in a building without first obtaining consent under the Act. Unlike other consent and exemption pathways, a Transitional Exemption Certificate allows the investor to reside in the unit or use it as a holiday home. Transitional Exemption Certificates helped to ensure that developments that began prior to amendments to the Act in 2018 weren't unduly affected. This was important for apartment developments, which often require pre-sales to ensure funding for the project.

Shundi Customs Limited (**Shundi**) is constructing a high-rise apartment building in the Auckland CBD, consisting of 221 residential units. Shundi was granted its Transitional exemption certificate on 15 April 2019. It was a condition of the Transitional exemption Certificate that "a person must acquire any land in reliance on this exemption before the Expiry Date". The Expiry Date is 22 August 2023.

There is ambiguity about when land will be "acquired". There were two possible interpretations of "acquire":

- a) the overseas person must enter into an agreement to buy a dwelling by the Expiry date; or
- b) the overseas person must become the registered owner of the dwelling by the Expiry Date.

The purpose of this exemption is to resolve that ambiguity by clearly applying the first interpretation.

Compliance with the Act (without the exemption) would be impractical, inefficient, unduly costly, or unduly burdensome. Individual purchasers have options to seek consent for their individual purchases, however these consents would be subject to mandatory conditions that were not contemplated at the time the Transitional Exemption Certificate was granted.

The exemption is minor or technical because it seeks to do no more than to resolve uncertainty about the way the Act applies. The exemption does not seek to substantively alter the intended operation of the Act.

The extent of the exemption granted is not broader than reasonably necessary. The exemption only applies to transactions to which the Transitional Exemption Certificate would otherwise apply, and does no more than give effect to one of the two competing interpretations.