

Notice of Decision
Case: 202200335

1 Decision Date

31 October 2022

2 Duration of the Exemption

The exemption in paragraph 4 applies to transactions entered into on or before 31 October 2027.

3 Interpretation

(1) In this notice, unless the context otherwise requires:

Act means the Overseas Investment Act 2005

Exemption means the exemption in paragraph 4

Exemption Holders means Genesis and FRV and/or any entity established by Genesis and FRV, where FRV is the only overseas person with an ownership or control interest

FRV means FRV NZ1 Limited

Genesis means Genesis Energy Limited

Land means the land described in the Appendix

Qualifying Interest means a leasehold or freehold interest in the Land being acquired exclusively or nearly exclusively for operating a solar farm for electricity generation

Qualifying Transaction means the acquisition of a Qualifying Interest by the Exemption Holders or a person where FRV is the only overseas person with an ownership or control interest

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 farm land offer criterion under the Act

The requirement in section 16(1)(f) of the Act does not apply in respect of an application for consent under the Act for a Qualifying Transaction.

5 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 when required to do so. Toitū Te Whenua has an obligation to investigate and act upon alleged and suspected breaches of the Act.

6 Reasons for Exemption

The purpose of the requirement to advertise farm land is to give New Zealand investors an opportunity to try to acquire farm land.

An exemption from this requirement may be granted if the decision maker considers that the overseas investment need not meet this requirement by reason of the circumstances relating to the particular overseas investment or section 12 interest or the nature of the land to which the section 12 interest relates.

An exemption may only be granted if there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption, and the extent of the exemption is not broader than is reasonably necessary to address those circumstances.

Genesis and FRV intend to develop a solar farm on the Land and have sought an exemption from the requirement for farm land to be advertised.

In this case, an exemption is appropriate and desirable as:

- the interests are likely to be leasehold interests only (a freehold interest will not be acquired unless an existing property owner expressly wants to sell their property rather than lease it)
 - in the case of a leasehold interest, the freehold ownership of the Land will not change as a result of the transaction, and any future sale of the freehold to an overseas person could only occur after being offered for sale on the open market
 - in the case of a freehold interest, approximately 56% of the beneficial ownership of the Land will remain with a sector of New Zealanders via Genesis (as at August 2022, Genesis is 93.84% New Zealand owned with a 51.23% share held by the Government)
- solar farming is a temporary use of the Land, and the Land can revert to an exclusively farming use should the Land no longer be needed for a solar farm
- there are commercial considerations that make advertising less practical for solar farm developments than for other developments
 - there is often a need to proactively approach existing property owners due to the very specific land requirements needed for a solar farm (the existing property owners may have no general desire to lease or sell their land to a third party)
 - until feasibility studies are undertaken, it is often unclear what land will be suitable for solar farm purposes and therefore what land will need to be advertised
 - investors are likely to face uncertainty and a commercially unacceptable risk if they are forced to undertake extensive feasibility studies without first obtaining a right to acquire the land needed for their proposed solar farm (there would be nothing preventing the existing property owners from selling or leasing their land to a third party, including the investors' competitors)
- the Exemption is consistent with the principle that overseas investment should benefit New Zealand, noting the high importance the Government places on renewable energy.

The relevant Ministers consider that the extent of the Exemption is not broader than is reasonably necessary as it is limited to specific properties and acquisitions for the purpose of developing a solar farm, only applies for a limited period of time, and the interests are likely to be leasehold interests only.

Appendix – Land to which this Exemption applies

Withheld under section 9(2)(b)(ii) of the Official Information Act 1982