

**Decision Date**

13 May 2019

**Duration of the Exemption**

This Exemption comes into force on 13 May 2019, and expires either at the close of 13 May 2021 or the date Vodafone Europe B.V. ceases to hold an interest in VFNZ (whichever occurs first).

**Interpretation**

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

**Act** means the Overseas Investment Act 2005.

**Exemption** means the exemption in paragraphs 3 and 4.

**Exemption Holder** means Vodafone Europe B.V.

**Network Utility Land** means residential (but not otherwise sensitive) land owned by a Network Operator for the purpose of providing Telecommunications Services.

**Network Operator** has the same meaning as in section 5 of the Telecommunications Act 2001.

**OIO** means the Overseas Investment Office.

**Regulations** means the Overseas Investment Regulations 2005.

**Telecommunications Services** has the same meaning as in section 5 of the Telecommunications Act 2001.

**VFNZ** means Vodafone New Zealand Limited.

(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).

**Exemption from the requirement for consent provisions of the Act**

(3) The requirement to obtain consent under section 10(1)(a) of the Act does not apply to a transaction to the extent that:

(a) An overseas person is acquiring securities in VFNZ or a direct or indirect parent of VFNZ; and

(b) the relevant land in the overseas investment consists only of Network Utility Land; and

(c) the overseas person is acquiring securities from Vodafone Europe B.V. or a direct or indirect parent of Vodafone Europe B.V..

(4) This exemption does not exempt an overseas person from any other requirement for consent including:

- (a) The requirement for consent to acquire significant business assets under section 10(1)(b); or
- (b) The requirement for consent to acquire sensitive land that is not Network Utility Land.

### **Conditions of the Exemption**

- (5) The Exemption Holder must notify the OIO in writing if a transaction is settled in reliance on this Exemption. The notice must be provided within two months from the date of settlement and include the following (to the extent the Exemption Holder holds, or can reasonably be expected to obtain, this information):
  - (a) the date upon which settlement of the transaction occurred;
  - (b) final consideration paid (plus GST, 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**

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

### **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.

### **Reasons for Exemption**

The Regulations contain a class exemption for network utility operators (regulation 57). Among other things, that exemption exempts Network Operators from having to obtain consent to acquire residential (but not otherwise sensitive) land for the purposes of providing Telecommunications Services (e.g. cell sites). The purpose of that exemption is to overcome the additional time delay, financial cost and uncertainty of outcome for the development of network infrastructure.

But, the class exemption does not extend to non-Network Operator overseas persons investing in the Network Operator that owns such land.

This Exemption exempts overseas persons investing in VFNZ from having to obtain a sensitive land consent under section 10(1)(a) of the Act. The Exemption only applies if VFNZ's only sensitive land is Network Utility Land. It does not exempt an overseas person from having to obtain consent to acquire significant business assets, or if VFNZ has other types of sensitive land.

Section 61B(c)(vi) of the Act allows for individual exemptions to be granted in respect of interests in land acquired for the purpose of providing network utility services. The Exemption only applies in respect of such land.

The Overseas Investment Office considers that there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption in relation to the Network Utility Land. In light of VFNZ being able to acquire the Network Utility Land without consent, the Overseas Investment Office considers that those assets should not be relevant to a person investing in VFNZ.

In making its decision, the Overseas Investment Office considered the purpose of the Act and the existence of the class exemption in regulation 57. The Exemption has been framed as narrowly as possible while still being effective, and is therefore no broader than reasonably necessary to address the circumstances.