

Our Ref: 201710119

28 July 2017

Itoham Yonekyu Holdings Inc
c/o Crengle Shreves & Ratner
PO Box 10236
Wellington

BY EMAIL

Attention: Rob McInnes

Formal warning in respect of Itoham Yonekyu Holdings Inc's failure to obtain consent under the Overseas Investment Act 2005

1. On 13 April 2015 Itoham Foods Inc (**Itoham Foods**) obtained consent under the Overseas Investment Act 2005 (**the Act**) to acquire up to 65% of the shares in ANZCO Foods Limited (**ANZCO**)¹, which has:
 - (a) assets in excess of \$100 million; and
 - (b) an interest in approximately 1,648.3688 hectares of land in Taranaki, Rangitikei, Canterbury, Marlborough, Otago and Westland, which is sensitive land under the Act;together called the "sensitive assets."
2. On 9 May 2017, Itoham Foods and its holding company, Itoham Yonekyu Holdings Inc (**Itoham Yonekyu**), applied for consent to increase its shareholding in ANZCO from 65% to 100%.
3. As part of the application, we learned that:
 - (a) On 1 April 2016, newly incorporated Itoham Yonekyu acquired Itoham Foods and Yonekyu Corporation Inc (**the transaction**). The transaction was essentially a merger of Itoham Foods and Yonekyu Corporation. The existing shareholders in Itoham Foods and Yonekyu Corporation received shares in Itoham Yonekyu.
 - (b) As a result of the transaction, Itoham Yonekyu acquired an indirect controlling interest in ANZCO through Itoham Foods, meaning that Itoham Yonekyu acquired an interest in the sensitive assets without the Overseas Investment Office's consent.
4. At all material times Itoham Yonekyu was an overseas investor as it was incorporated in Japan.
5. We have been investigating whether Itoham Yonekyu required consent for the transaction, and if so, how it came to acquire an interest in sensitive assets without consent.
6. We have concluded our investigation by issuing this warning letter to Itoham Yonekyu.

¹ See decision number: 201510023

Requirements of the Act

7. Sections 10 to 12 of the Act require a person to obtain consent for a transaction that will result in an overseas investment in sensitive assets before the overseas investment is given effect under the transaction.
8. Section 42 of the Act provides that a person who is required to apply for consent to an overseas investment transaction commits an offence if that person gives effect to the overseas investment (including obtaining an interest in sensitive assets) without the consent required under the Act.
9. Section 48 of the Act provides that a person in breach of the Act may be required to pay a civil penalty for a contravention or offence under the Act.

Itoham Yonekyu's indirect interest in ANZCO

10. Itoham Yonekyu was created as a result of the transaction on 1 April 2016, being the merger of Itoham Foods and Yonekyu Corporation Inc.
11. Prior to the transaction, Mitsubishi Corporation was the largest shareholder in both Itoham Foods (24.31%) and Yonekyu Corporation (71.12%). After the transaction, Mitsubishi Corporation's shareholding in Itoham Yonekyu was 38.94%. As a result of the transaction, Mitsubishi Corporation's indirect shareholding in ANZCO increased by 9.516%, from 15.8015% to 25.3175%. No other person has a greater than 5% shareholding in Itoham Yonekyu.
12. As Itoham Yonekyu is an overseas investor under the Act, its acquisition of Itoham Foods led to it obtaining an interest in sensitive assets through Itoham Foods' 65% shareholding in ANZCO. Sections 10 to 12 of the Act required Itoham Yonekyu to obtain consent under the Act through the Overseas Investment Office for the transaction to acquire Itoham Foods. As a result of Itoham Yonekyu failing to obtain consent, Itoham Yonekyu has breached the Act.
13. Itoham Yonekyu says that the breach of the Act was inadvertent. No New Zealand lawyers were involved in implementing the transaction and all material documents and procedures relating to the transaction took place in Japan. There appears to have been an incorrect assumption by the parties involved in the transaction that New Zealand laws would not be relevant to a transaction which took place in Japan and in which all companies directly involved in the transaction were incorporated and based in Japan.
14. We have concluded our investigation into the breach of the Act by Itoham Yonekyu and we have decided to issue this formal warning letter. A number of matters have influenced our decision, including the small increase in Mitsubishi Corporation's shareholding in ANZCO, the inadvertence of the breach and that Itoham Yonekyu has cooperated fully with our investigation.

Warning

15. We are formally warning Itoham Yonekyu that it must obtain consent before giving effect to any transaction which results in an overseas investment in sensitive New Zealand assets.
16. We consider that a prudent overseas investor would seek legal advice about the application of New Zealand laws, including seeking legal advice from a lawyer with experience dealing with the Act, before entering into a transaction that involves sensitive assets in New Zealand. We are concerned that Itoham Yonekyu did not seek legal advice in New Zealand at the time of the transaction when it was evident that it would result in an indirect increase in shareholding by an overseas investor in ANZCO.

17. We expect that measures be put in place to ensure compliance with the Act in future when looking to acquire sensitive assets. If it has not done so already, Itoham Yonekyu should consider implementing a compliance programme to ensure it does not inadvertently breach the Act during any future overseas investment transactions.
18. While we will not be taking any further action against Itoham Yonekyu at this time, we will take this warning into account if Itoham Yonekyu gives effect to any transaction without consent in the future. We may draw this warning to the attention of a court in any subsequent proceedings brought by us.

Public information

19. We intend to publish this warning letter on our website.

Yours faithfully



Kirsty Millard
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Overseas Investment Office

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