

Our Ref: 201810080

13 January 2020

CRV Limited & Animal Breeding Services (2007) Limited

Overseas Investment Office
Radio New Zealand House
155 The Terrace
PO Box 5501
Wellington 6145
New Zealand
+64 4 460 0110
www.linz.govt.nz

BY EMAIL

Attention: Managing Directors

Formal warning in respect of CRV Limited & Animal Breeding Services (2007) Limited's failure to obtain consent under the Overseas Investment Act 2005

1. This warning letter is to record that CRV Limited (**CRV**) and Animal Breeding Services (2007) Limited (**ABS**) failed to obtain consent under the Overseas Investment Act 2005 (**the Act**).
2. CRV and ABS are ultimately majority owned by the Netherlands cooperative, Coöperatie Rundvee Verbetering¹. It is this ownership and control that causes CRV and ABS to be overseas persons for the purposes of the Act.
3. The breaches concern leasehold interests in certain Rukuhia land and CRV's acquisition of shares in ABS (together called **the sensitive assets**). Consent was not obtained for these transactions.
4. We appreciate that CRV and ABS self-reported the breaches as soon as they were discovered after instructing new counsel and have fully cooperated with our subsequent investigation.

CRV and ABS's acquisition of interests in sensitive assets

5. ABS and CRV reported that they obtained the following interests in sensitive assets:

Shareholding change

- (a) On 31 July 2012, CRV International purchased the assets of Liberty Genetics Limited through a special purpose vehicle, Liberty Genetics 2012 Limited. The effect of this transaction was that ABS became an overseas person because CRV International acquired more than 25% of the shares in ABS, being Liberty Genetics Limited's 25.01% interest in ABS.
- (b) Consent was required under the Act for this shareholding change because CRV International, a body corporate that is incorporated outside New Zealand, obtained 25% or more of ABS at a time when ABS held a leasehold interest in sensitive land for a term of 3 years or more (including any rights of renewal).

Rukuhia, Koppens and Piggery lease transactions

Rukuhia lease

¹ CRV International BV (**CRV International**) is the registered shareholder of CRV and the majority shareholder in ABS. CRV International is owned by CRV Holdings BV which is, in turn, owned by the Netherlands cooperative, Coöperatie Rundvee Verbetering.

- (c) In 2012, ABS leased approximately 8.8 hectares of sensitive land at 3680 State Highway 3, Te Awamutu for a term of more than 3 years (**Rukuhia lease**).
- (d) We consider CRV International's indirect acquisition of shares in ABS (described at 5(a) above) when ABS held the Rukuhia lease to be an overseas investment in sensitive land because ABS became an overseas person as a result of CRV International's investment when it held an:
 - (i) interest in non-urban land greater than 5 hectares; and
 - (ii) that interest was a lease for a term of 3 years or more.
- (e) Aside from the piggery area of the Rukuhia land (discussed further below), we understand that CRV has now vacated the Rukuhia land.

Neighbouring leases

- (f) Between 2010 and 2017, ABS leased approximately 4 hectares of land adjacent to the Rukuhia land, known as the neighbouring land², for a term of more than three years pursuant to the following leases:
 - (i) the first neighbouring lease commenced on 1 November 2010 and expired in October 2015. When ABS became an overseas person in 2012, there were approximately 3 years and 3 months left to run before the first neighbouring lease expired; and
 - (ii) from 1 November 2015, ABS and the Lessor entered into a new lease for the neighbouring land for an initial term of 8 months, with four rights of renewal of 1 year each.
- (g) We consider these interests in the Rukuhia land to be an overseas investment in sensitive land because an overseas person, ABS, acquired an:
 - (i) interest in associated land to the Rukuhia land; and
 - (ii) that interest was a lease for a term of 3 years or more.
- (h) We understand that ABS no longer has any interest in the neighbouring land.

Piggery lease

- (i) In April 2016 certain minority shareholders in ABS entered into a lease over the piggery area with New Zealand Transport Authority for a potential term of 5 years (Piggery lease).
- (j) We consider these minority shareholders were associates of ABS and therefore consider this interest in the Rukuhia land to be an overseas investment in sensitive land because associates of ABS acquired an:
 - (i) interest in associated land to the Rukuhia land³; and
 - (ii) that interest was a lease for a term of 3 years or more.
- (k) We understand the piggery lease has a final expiration date of 31 July 2020 and that ABS will have no interest in the piggery area of the Rukuhia land after this time. Furthermore, the piggery area of the Rukuhia land is no longer associated land given that ABS no longer has an interest in the Rukuhia land.

² While not sensitive land in and of itself (being less than 5 hectares of non-urban land), the neighbouring land adjoined the Rukuhia land and is therefore associated land for the purposes of s 8(4) of the Act.

³ While not sensitive land in and of itself (being less than 5 hectares of non-urban land), the Piggery land adjoins the Rukuhia land and is therefore associated land for the purposes of s 8(4) of the Act.

CRV and ABS's breaches of the Act

6. As ABS and CRV are overseas investors under the Act, ABS's acquisition of certain leasehold interests in the Rukuhia land, and CRV's acquisition of shares in ABS at certain times, resulted in ABS and CRV obtaining interests in sensitive assets.
7. Sections 10 to 12 of the Act required CRV and ABS to obtain consent under the Act through the OIO for each of these transactions. As a result of CRV and ABS failing to obtain consent, CRV and ABS has breached the Act.
8. We have concluded our investigation into the breaches of the Act by CRV and ABS and have decided to issue this formal warning letter in respect of the breaches concerning the shareholding changes and the Rukuhia land. A number of matters have influenced our decision, including:
 - (a) the inadvertence of the breaches;
 - (b) the fact that CRV no longer has any interests in the Rukuhia land that require OIO consent; and
 - (c) that CRV and ABS have self-reported these breaches and cooperated fully with our investigation.

Warning

9. We are formally warning CRV and ABS that they must obtain consent before giving effect to any transaction which results in an overseas investment in sensitive New Zealand assets.
10. 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.
11. 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, ABS and CRV should consider implementing a compliance programme to ensure it does not inadvertently breach the Act during any future overseas investment transactions.
12. While we will not be taking any further action against CRV and ABS at this time, we will take this warning into account if CRV and/or ABS 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

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

Yours sincerely



Clare Needham
Acting Manager, Enforcement
Overseas Investment Office