

Settlement agreement

Chief Executive of Land Information New Zealand

Zhongliang Hong

Xueli Ke

IRL Investment Limited

Grand Energetic Company Limited

Parties

Chief Executive of Land Information New Zealand, of level 7, 155 The Terrace, Wellington, the designated Regulator under the Overseas Investment Act 2005 (**Act**) (**Regulator**)

Zhongliang Hong, businessperson of No. 25, Lane 6777, Boyuan Road, Jiading District, Shanghai, China (**Mr Hong**)

Xueli Ke, businessperson of No. 12 Wu Gang Garden XiJin Cheng Road, Hangcheng, Changle City, China (**Mr Ke**)

IRL Investment Limited New Zealand company number 4846479 having its registered office at 18 Shipherds Avenue, Epsom, Auckland (**IRL**)

Grand Energetic Company Limited New Zealand company number 5143361 having its registered office at 18 Shipherds Avenue, Epsom, Auckland (**Grand Energetic**)

(together the **Parties**)

1 Background

- 1.1 The Regulator is designated under s 30(1) of the Act and various letters of designation and delegation as the regulator of that Act. The Regulator's functions include enforcement of the Act, and monitoring compliance with the conditions of consents granted under the Act.
- 1.2 Mr Hong is a businessperson. He is a citizen of China. He is a beneficial owner of both IRL and Grand Energetic, holding a 50 per cent interest in each company.
- 1.3 Mr Ke is a businessperson. He is a citizen of China. He is a beneficial owner of both IRL and Grand Energetic, holding a 50 per cent interest in each company.
- 1.4 IRL is a company registered in New Zealand. Its sole shareholder and director is Mr Xinrong Gu, who acts as an agent for the beneficial owners, Mr Hong and Mr Ke.
- 1.5 Grand Energetic is a company registered in New Zealand. Its sole shareholder and director is Ms Haiyang Zhang, who acts as an agent for the beneficial owners, Mr Hong and Mr Ke.
- 1.6 The Defendants and their associates made investments in New Zealand property and undertook various transactions described in the Statement of Claim attached as Schedule 3 (together, **NZ Transactions**).
- 1.7 As a result of retrospective consent applications dated 30 October 2014 and additional inquiries conducted by the Regulator in accordance with her compliance monitoring and investigatory functions under s 31 of the Act, the Regulator formed the view that:
 - (a) the investment in the Lodge via Churchill Estate Limited breached s 42 of the Act;
 - (b) the transfer of the Lodge to Grand Energetic breached s 43 of the Act; and

- (c) the investment in the Farm via IRL breached s 42 of the Act.
- 1.8 The Parties have agreed to settle all matters arising from the NZ Transactions on the terms set out in this Agreement.

2 Interpretation

2.1 In this Agreement:

- (a) **Admissions** means the admissions contained in clause 5.
- (b) **Admitted Causes of Action** means the Admitted Causes of Action at clause 5.3.
- (c) **Agreed Disposal Order** means an order imposed by the Court in accordance with the clause 5.9 of this Agreement that Grand Energetic dispose of the Lodge.
- (d) **Agreed Penalty** means the pecuniary penalties defined in clause 5.6.
- (e) **Agreed Statement of Facts** means the Agreed Statement of Facts attached at Schedule 1.
- (f) **Agreement** means this settlement agreement including all schedules attached to it.
- (g) **Alleged Conduct** means the alleged conduct that was the subject of investigations in respect of the NZ Transactions, and includes the matters set out in the Agreed Statement of Facts.
- (h) **Court** means the High Court of New Zealand or, on appeal, the Court of Appeal of New Zealand or the Supreme Court of New Zealand.
- (i) **Court Costs** means Court costs as the Court may order.
- (j) **Default Notice** means a written notice issued under clause 13.3 by one Party giving notice that the other Party is in breach of the Agreement.
- (k) **Defendants** means the First, Second, Third and Fourth Defendants (as defined in the Statement of Claim attached as Schedule 3), together.
- (l) **Farm** means the property located at 185 Sandspit Road, Warkworth comprised in computer freehold register CT 504461 and described as Lot 2 DP 426537.
- (m) **Information** includes all information, documents, material and evidence of any kind whatsoever, including all oral, written and electronic material in relation to the:
 - (i) Regulator's monitoring and enforcement activities referred to at clause 2.1(p); and
 - (ii) anticipated proceeding referred to at clause 2.1(w) (including any information created before or after the commencement of that proceeding).
- (n) **Joint Memorandum of Counsel** means the draft Joint Memorandum of Counsel attached as Schedule 4.

- (o) **Lodge** means the property at 471 Wylie Road, Warkworth comprised in CT 294353 and described as Lot 3-4 DP 372768 including an accommodation facility known as Kourawhero Lodge.
- (p) **Monitoring and Enforcement Activities** means monitoring and enforcement activities carried out by the Regulator under the Act.
- (q) **Notice of Admissions** means the Notice of Admissions attached as Schedule 2.
- (r) **NZ Transactions** means the transactions in respect of the Lodge and the Farm properties in New Zealand described in the Statement of Claim attached to this Agreement as Schedule 3.
- (s) **Party** means any party to this Agreement.
- (t) **Penalty Hearing** means the hearing or fixture in the Proceeding at which the Parties will ask the Court to approve the orders set out in clauses 6.5 and 6.6.
- (u) **Penalty Judgment** means a judgment of the Court determining the pecuniary penalty payable by each of Mr Hong, Mr Ke, and IRL in the Proceeding, whether confidential or public. Where a Penalty Judgment of a particular Court is specified, it is the judgment of that Court.
- (v) **Person** extends to non-natural persons and includes any association of persons whether incorporated or not.
- (w) **Proceeding** means the anticipated proceeding that will be commenced upon the acceptance of the Statement of Claim for filing.
- (x) **Statement of Claim** means the draft Statement of Claim attached as Schedule 3.
- (y) **Sums on Trust** means the following amounts held on trust in an account nominated by the Regulator:
 - (i) \$9,056,425.87 in proceeds from the 18 June 2018 sale of the Farm; and
 - (ii) \$280,550, representing part of a deposit paid for a proposed purchase of the Lodge, which did not settle and led to forfeiture of the deposit; and
 - (iii) interest that has accrued while the above sums have been held on trust.
- (z) **Working Day** has the definition set out at rule 1.3 of the High Court Rules 2016.

3 Settlement considerations

- 3.1 In determining to enter into this Agreement, the Regulator has taken the following considerations into account (without limitation):
 - (a) the importance of ensuring that overseas investors apply for the requisite consents when investing in New Zealand property;

- (b) the public interest in maintaining public confidence in the integrity of the overseas investment regime;
- (c) that the Defendants admit the matters set out in the Notice of Admissions;
- (d) that the NZ Transactions relate to alleged activity within New Zealand;
- (e) the nature, seriousness, time, and frequency of the activity comprising the NZ Transactions, including the steps taken by the Defendants to circumvent the operation of the Act;
- (f) that Mr Hong, Mr Ke, and IRL have voluntarily disposed of the Farm, and in the process have realised a quantifiable gain for the purpose of s 48(2) of the Act of approximately \$2,747,360;
- (g) there is no quantifiable gain on the Lodge for the purpose of s 48(2) of the Act;
- (h) the Defendants' cooperation with the Regulator in investigating the NZ Transactions;
- (i) all other mitigating factors relating to the Defendants;
- (j) the likely penalty that may be imposed; and
- (k) the steps that the Defendants will take under this Agreement.

4 Cooperation

- 4.1 The Defendants will promptly, fully and voluntarily continue to adhere to the terms of the 19 October 2017 deed of undertaking by Grand Energetic and Zhang Haiyang.
- 4.2 The obligation in clause 4.1 above is continuing and will cease when the Lodge is disposed of.
- 4.3 For the avoidance of doubt, nothing in clause 4.1 above constitutes consent by the Defendants to waiver of legal professional privilege.

5 Admissions

- 5.1 The Parties have reached a full and final settlement of the claims against the Defendants made in the Statement of Claim on the terms set out in this Agreement.
- 5.2 In respect of the matters detailed in the Agreed Statement of Facts and Notice of Admissions respectively:
 - (a) Mr Hong admits that he is liable under s 48 for contravening ss 42 and 43 of the Act;
 - (b) Mr Ke admits that he is liable under s 48 for contravening ss 42 and 43 of the Act; and
 - (c) IRL admits that it is liable under s 48 for contravening s 42 of the Act.

- 5.3 The Defendants admit the Admitted Causes of Action by signing:
- (a) this Agreement;
 - (b) the Agreed Statement of Facts attached as Schedule 1; and
 - (c) the Notice of Admissions attached as Schedule 2.
- 5.4 The Defendants' admissions are made only for the purposes, and in respect, of resolving the Proceeding, and are not made for the purposes, or in respect, of any other claims, actions, proceedings or investigations.
- 5.5 The Regulator's acceptance of the Agreed Statement of Facts and the Notice of Admissions are only for the purpose of resolving the Proceeding.
- 5.6 The Parties will recommend that the Court impose penalties (after any applicable discounts) of:
- (a) \$307,500 on Mr Hong;
 - (b) \$307,500 on Mr Ke; and
 - (c) \$2,335,256 on IRL;
- in accordance with clause 6.5 of this Agreement (collectively **Agreed Penalty**).
- 5.7 The parties have conferred and agree that initial disclosure is not required in the High Court proceedings contemplated in this Agreement.
- 5.8 The Parties will recommend that the Court makes an order that Grand Energetic dispose of the Lodge, and that disposal occurs no later than six months after this Agreement is executed and becomes effective between the Parties (**Agreed Disposal Order**).
- 5.9 Despite clause 5.8, the parties will not recommend that the Court makes a Disposal Order if Grand Energetic disposes of the Lodge before the Penalty Hearing.
- 5.10 The Regulator will not take any further proceedings against the Defendants or Mr Gu or Ms Zhang in respect of the NZ Transactions in accordance with clause 10.1 of this Agreement.
- 5.11 The Regulator may take into account the existence and content of this Agreement in respect of any future application made under Part 2 of the Act by Mr Hong, Mr Ke, IRL or Grand Energetic, or any subsidiary of IRL or Grand Energetic, whether wholly owned or otherwise.
- 5.12 For the avoidance of doubt, nothing in this Agreement (including but not limited to clauses 5.1, 5.9, and 10.1) shall be construed as:
- (a) resolving any past, continuing, or future contraventions of the Act arising from the NZ Transactions about which the Regulator does not have reasonable notice; or
 - (b) preventing the Regulator from commencing or continuing any civil or criminal proceedings against the Defendants, or any other person in respect of the matters described in paragraph 5.12(a).

6 Imposition of the Agreed Penalty and Agreed Disposal Order

Parties to file Agreed Statement of Facts and Notice of Admissions

- 6.1 Within two Working Days of execution of the Agreement, the Regulator will file in the High Court of New Zealand at Auckland, and will serve on the Defendants:
- (a) the Statement of Claim attached to this Agreement as Schedule 3;
 - (b) a notice of proceeding; and
 - (c) a certificate of counsel under Rule 8.4(2)(b) of the High Court Rules 2016, stating that the parties have conferred and agree that initial disclosure is not required in the proceeding.
- 6.2 Within two Working Days after receiving service of the endorsed Statement of Claim, the Defendants will file and serve the signed Notice of Admissions attached as Schedule 2.
- 6.3 Within two Working Days of the filing of the Notice of Admissions, the Regulator will file:
- (a) the signed Agreed Statement of Facts attached as Schedule 1; and
 - (b) the Joint Memorandum of Counsel requesting a penalty hearing attached as Schedule 4.

Progression to Penalty Hearing

- 6.4 The Parties will cooperate and use all reasonable endeavours to ensure that the Penalty Hearing proceeds on the first available date that the Court proposes.

Agreed Penalty, Agreed Disposal Order and content of submissions

- 6.5 The Parties agree and undertake that:
- (a) they will each recommend that the Court impose the Agreed Penalty (which reflects discounts of 10 to 15 per cent on the appropriate starting points for admissions of liability and all other mitigating factors) and the Agreed Disposal Order;
 - (b) they will make written and oral submissions recommending to the Court that it impose the Agreed Penalty and Agreed Disposal Order;
 - (c) none of the Parties will seek in any way to suggest or argue to the Court that a different penalty should be imposed or that any penalty should be imposed on Grand Energetic; and
 - (d) they will otherwise support the Agreed Penalty and Agreed Disposal Orders before the Court.

Court Costs

- 6.6 The Parties will advise the Court that they have resolved the issue of costs in the High Court, and will ask the Court to order by consent that the costs of the Parties are to lie where they fall.

- 6.7 Other than the costs referred to in clause 7, the Parties agree that, other than any costs arising from any breach of this Agreement, no Party is entitled to any other costs award in this Proceeding.

7 Monitoring and Enforcement costs

- 7.1 The Parties agree that it is reasonable and appropriate that Mr Hong and Mr Ke contribute to the costs of the Regulator in bringing and settling this Claim. The Parties agree that the contributions will be as follows:

- (a) \$10,000 for Mr Hong; and
- (b) \$10,000 for Mr Ke.

- 7.2 The above sums represent a contribution to the cost of the Regulator's Monitoring and Enforcement Activities (together, **Monitoring and Enforcement Costs**).

- 7.3 The Parties will advise the Court that Mr Hong and Mr Ke have arranged for the Monitoring and Enforcement Costs to be paid to the Regulator.

8 Effecting Payment

- 8.1 The Regulator will, within 10 Working Days of the Penalty Judgment, effect the transfer from the Sums on Trust, to a bank account nominated by the Regulator, of funds to meet:

- (a) the Monitoring and Enforcement Costs detailed in section 7; and
- (b) either:
 - (i) the Agreed Penalty, in the event the High Court imposes the Agreed Penalty in the Penalty Judgment; or
 - (ii) if the High Court does not impose the Agreed Penalty, any pecuniary penalties and Court Costs ordered by the High Court.

- 8.2 Immediately upon effecting the transfer of the amounts detailed above in paragraph 8.1, the Regulator will effect the transfer of the remainder of the Sums on Trust to a bank account nominated by Mr Hong and Mr Ke.

9 Disposal of the Lodge

- 9.1 Grand Energetic will dispose of the Lodge no later than six months after the date that this Agreement is executed and becomes effective between all the Parties.

- 9.2 For the avoidance of doubt, an inability to obtain a sale price acceptable to Grand Energetic, Mr Hong or Mr Ke shall not release the obligation to effect disposal of the Lodge within the timeframe set out above in clause 9.1.

10 No further proceedings

- 10.1 Except as provided for in clauses 5.12 and 13.5, the Regulator will not commence or continue further civil or criminal proceedings against the Defendants, or any

subsidiaries or interconnected bodies corporate, or any present or former director, officer, agent or employee of IRL or Grand Energetic, or any subsidiary in connection with matters that are the subject of the claims set out in the Statement of Claim.

11 Confidentiality and comment

Comment on settlement of Proceeding prior to release of Penalty Judgment

- 11.1 Subject to clauses 11.2 and 11.7, any Party may issue a press release or make a public comment:
- (a) prior to the Penalty Hearing, stating that:
 - (i) the Parties have entered into a settlement to resolve the Proceeding on terms acceptable to both parties; and
 - (ii) a penalty hearing before the High Court will take place in due course; and/or
 - (b) after the hearing but before the High Court orders the pecuniary penalty payable in the Penalty Judgment, stating that the matter is before the court and a judgment will be issued in due course or, in the event the court orders the pecuniary penalty payable but does so before delivering the penalty judgment, stating that while the court has ordered the pecuniary penalty payable, the matter is otherwise still before the court and that no other further comment will be made until after the Penalty Judgment is issued.
- 11.2 The Defendants will not issue any media release or make any public comment permitted by clause 11.1 until after the Regulator has made a media release or public comment as permitted by clause 11.1.
- 11.3 The Parties will not otherwise disclose the terms of this Agreement (including the Agreed Penalty and Agreed Disposal Order) prior to the release of the Penalty Judgment.

Comment after release of Penalty Judgment

- 11.4 Subject to clauses 11.5 and 11.7, any Party may issue a press release or make a public comment in relation to this Agreement or the outcome of the Penalty Hearing after the public release of any Penalty Judgment.
- 11.5 The Defendants will not issue any media release or make any public comment permitted by clause 11.4 until after the Regulator has made a media release or public comment as permitted by clause 11.4, or two Working Days after the public release of any Penalty Judgment, whichever is earlier.
- 11.6 The Parties may disclose the full terms of this Agreement following the release of the Penalty Judgment. This may include, but is not limited to, the Regulator publishing this Agreement on its website. The Defendants will not disclose the full terms of this Agreement until after the Regulator has done so, or two Working Days after the public release of any Penalty Judgment, whichever is earlier.

Comments to be consistent with Admissions, Agreement and Agreed Statement of Facts

- 11.7 No Party will issue any media release or make any public comment that is inconsistent with either the Defendant's admissions in the Notice of Admissions, the Agreed Statement of Facts, or this Agreement.

12 Appeals from the Penalty Judgment

- 12.1 If the Court imposes the Agreed Penalty, no Party may appeal or apply to recall or set aside that Penalty Judgment.
- 12.2 If the Court imposes a penalty that differs from the Agreed Penalty, then either Party may appeal the Penalty Judgment.
- 12.3 In the event that an appeal is brought under clause 12.2:
- (a) the terms of this Agreement will remain binding on the parties, including, for the avoidance of doubt, clause 6.5; and
 - (b) the Parties will each bear their own costs on any appeal (subject to any order from the Court directing otherwise), and shall not apply for, or otherwise seek, costs to be ordered against the other.

13 Non-compliance with Agreement

Default Notice for breaches of the Agreement

- 13.1 If any Party (**Notifying Party**) suspects or believes that a Party (**Defaulting Party**) is in breach of the Agreement, or will in the future breach the Agreement, the Notifying Party must notify the Defaulting Party in writing:
- (a) of the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will likely occur; and
 - (b) that the Notifying Party is contemplating issuing a Default Notice.
- 13.2 After notifying the Defaulting Party, the Notifying Party must:
- (a) give the Defaulting Party 10 Working Days to:
 - (i) respond to the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will occur; and
 - (ii) take steps to remedy any breach of the Agreement that has occurred or would otherwise occur; and
 - (b) have regard to the Defaulting Party's response, and any remedial action taken.
- 13.3 If the Notifying Party has followed the process in clauses 13.1 and 13.2, and the Defaulting Party fails to comply with any term of this Agreement, the Notifying Party may give written notice that the Defaulting Party is in breach of the Agreement (**Default Notice**).

- 13.4 No Party may give a Default Notice after the full amount of the Agreed Penalty and any Court Costs have been paid, and the Agreed Disposal Order has been effected in accordance with this Agreement.

Notifying Party may take steps or commence proceedings following a Default Notice

- 13.5 Following service of a Default Notice, the Notifying Party may:
- (a) take any steps to enforce the Penalty Judgment and Agreed Disposal Order;
 - (b) take any steps to enforce the obligations outlined in this Agreement.

14 General

Entire Agreement

- 14.1 This Agreement constitutes the entire understanding and agreement between the Parties in relation to the Proceeding, and fully supersedes any and all prior agreements, arrangements, representations or understandings (whether orally or in writing) between the Parties pertaining to the Proceeding.
- 14.2 The Parties represent and agree that:
- (a) no oral contracts, arrangements, understandings, agreements or promises contrary to the terms of this Agreement exist;
 - (b) in the course of the Proceeding they have exchanged or will exchange Information. Each Party has made its own assessment of the merits of that Information, and in reaching this settlement each Party acknowledges that it is yielding its right to test, challenge, supplement or amend that Information at trial;
 - (c) they have carefully read and fully understand all of the provisions of this Agreement, including the Schedules; and
 - (d) they are each voluntarily entering into this Agreement after having had the opportunity to receive independent legal advice.

No misrepresentation arising from Information provided

- 14.3 The Parties acknowledge that neither Party has been induced to enter the Agreement by any representation made in, or in connection with, any Information provided by the other Party. Accordingly, neither Party may cancel the Agreement or be entitled to damages on account of any misrepresentation alleged to arise from or in connection with the provision of such Information (whether under the Contract and Commercial Law Act 2017 or otherwise).

Use and disclosure of Information

- 14.4 The Regulator may use Information provided by the Defendants for the purpose of carrying out any of the Regulator's functions or obligations under any enactment, but may not disclose such information to any third party other than in accordance with clauses 14.5 and 14.6 below.

- 14.5 Subject to seeking appropriate Court orders to protect any Information that is confidential:
- (a) the Regulator may disclose Information provided to it by the Defendants in the following circumstances:
 - (i) to witnesses, solicitors, barristers and other advisers or consultants retained by the Regulator in the Proceeding;
 - (ii) to any Court in the Proceeding (including without limitation to the parties in the Proceeding pursuant to a discovery order made under Part 8 High Court Rules), including proceedings instituted in accordance with clauses 5.12 and 13.5;
 - (iii) as the Regulator otherwise considers necessary or desirable with the Defendants' prior written consent; or
 - (iv) as required by law.
- 14.6 Subject to clause 14.5, if any third party requests from the Regulator disclosure of any Information provided to it or the Defendants during the Investigation or in the Proceeding, the Regulator will notify the Defendants and will provide them with a reasonable opportunity to oppose such a request, including by Court action.

Defence to enforcement proceedings

- 14.7 The Defendants agree that:
- (a) the Penalty Judgment, or any other judgment obtained on the Agreement, and/or on the Agreed Statement of Facts pursuant to the Agreement, is enforceable in the Courts of New Zealand;
 - (b) they will not raise by way of defence to any proceedings to enforce the Agreement or to obtain judgment on the Agreed Statement of Facts, and/or the Statement of Defence or the Penalty Judgment pursuant to the Agreement, the fact that the sums payable under the Agreement, or in respect of the Penalty Judgment, are a penalty; and
 - (c) they will submit to the jurisdiction of the Courts of New Zealand for the purpose of any proceeding arising from this Agreement.

Monetary amounts

- 14.8 Dollar amounts stated in this Agreement are in New Zealand dollars.

Amendments in writing

- 14.9 No amendment to this Agreement will be effective unless it is in writing and signed by each of the Parties.

Authorities

- 14.10 Each person executing this Agreement warrants that he or she has the full authority to enter into this Agreement and bind the Party for which he or she purports to enter into this Agreement.

Severance

- 14.11 Any provision in this Agreement that is unlawful will be severed and the remaining provisions remain enforceable, but only if the severed provision is not material to the purpose of this Agreement.

Parties to bear their own costs

- 14.12 Except where specified in this Agreement, each Party will meet its own expenses incurred in the course of performing its obligations under this Agreement.

Governing law

- 14.13 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.

Further assurances

- 14.14 The Parties agree to make all applications, execute all documents and do all acts and things as may be necessary to give effect to its obligations under this Agreement.

No waiver

- 14.15 Failure by the Regulator to enforce any provision of this Agreement will not operate as a waiver of that provision in respect of that act or omission or any other act or omission.

Counterparts

- 14.16 The Parties may enter into this Agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single, binding and enforceable Agreement.

15 Communications

- 15.1 Any notice or communication pursuant to this Agreement will be delivered as follows:

- (a) if addressed to the Regulator, by hand delivery or email to the following addresses:

Overseas Investment Office
Level 7, Radio New Zealand House
155 The Terrace
Wellington 6011
New Zealand

Attention: Kirsty Millard
KMillard@linz.govt.nz

Copy to: Meredith Connell
Level 13, Pencarrow House
58-66 Jervois Quay
New Zealand
Attention: Fionnghuala Cuncannon
fionnghuala.cuncannon@mc.co.nz

- (b) If addressed to the Defendants, by hand delivery or email to the following address:

Kensington Swan
Solicitors
18 Viaduct Harbour Avenue
Auckland 1010
New Zealand

Attention: David Campbell
david.campbell@kensingtonswan.com

Execution

Signed by and on behalf of Chief Executive
of Land Information New Zealand
in the presence of:

Authorised signatory

Name

Signature of witness

Witness Name

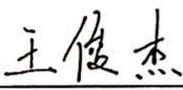
Witness Address

Witness Occupation

Signed by Zhongliang Hong
in the presence of:



Zhongliang Hong



Signature of witness

Junjie Wang

Witness Name

12F, No 40, Youyi Road, Baoshan District, Shanghai, China 201999

Witness Address

Accountant

Witness Occupation

Signed by Xueli Ke
in the presence of:

柯雪利

Xueli Ke

李生银

Signature of witness

Shengyin. Li

Witness Name

Gongche Town, Gangkou District, Fangchenggang, Guangxi, China

Witness Address

Office Manager

Witness Occupation

Signed by and on behalf of IRL Investments
Limited

in the presence of:

First authorised signatory

Name

Second authorised signatory

Name

Signature of witness

Witness Name

Witness Address

Witness Occupation

Signed by Xueli Ke
in the presence of:

Xueli Ke

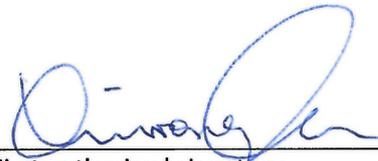
Signature of witness

Witness Name

Witness Address

Witness Occupation

Signed by and on behalf of IRL Investments
Limited
in the presence of:



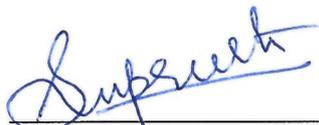
First authorised signatory

Xinrong Gu

Name

Second authorised signatory

Name



Signature of witness

Supreeth S

Witness Name

Witness Address

111 Pacific Highway North Sydney NSW

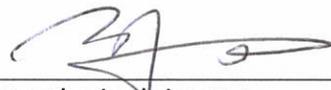
Witness Address

Witness Occupation

Engineer

Witness Occupation

Signed by and on behalf of **Grand Energetic Company Limited**
in the presence of:

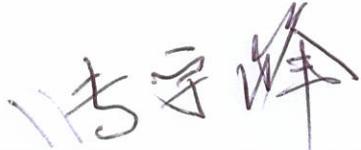


First authorised signatory

Name Haiyang Zhang

Second authorised signatory

Name



Signature of witness

Yu Feng Zhang
Witness Name

18 shipherds Ave Epsom
Witness Address

Witness Occupation

Schedule 1: Agreed Statement of Facts between the Plaintiff and the Defendants

**In the High Court of New Zealand
Auckland Registry**

**I Te Koti Matua O Aotearoa
Tāmaki Makaurau Rohe**

CIV 2018-

**Between The Chief Executive of Land Information New Zealand
Plaintiff**

**And Zhong Liang Hong
First Defendant**

**And Xueli Ke
Second Defendant**

**And IRL Investment Limited
Third Defendant**

**And Grand Energetic Company Limited
Fourth Defendant**

Agreed Statement of Facts

2019

**MEREDITH
CONNELL**

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T: +64 4 914 0530
fionnghuala.cuncannon@mc.co.nz |
sam.lowery@mc.co.nz

Agreed Statement of Facts

1 Introduction and overview

- 1.1 The Plaintiff (**Regulator**) alleges, and the First, Second, Third and Fourth Defendants (**Mr Zhong Liang Hong, Mr Xueli Ke, IRL Investment Limited (IRL)** and **Grand Energetic Limited (Grand Energetic)** respectively) accept that:
- (a) the investment in the property at 471 Wylie Road, Warkworth (**Lodge**) and transfer to Churchill Estate Limited (**Churchill Estate**) breached section 42 of the Overseas Investment Act 2005 (**Act**);
 - (b) the transfer of the Lodge to Grand Energetic breached section 43 of the Act; and
 - (c) the investment in the property at 185 Sandspit Road, Warkworth (**Farm**), breached section 42 of the Act.

2 The Defendants

Mr Hong

- 2.1 Mr Hong is a Chinese citizen and businessman.
- 2.2 At all relevant times, Mr Hong was not a New Zealand citizen and did not hold a New Zealand residence class visa. Mr Hong has always been an “overseas person” under section 7 of the Act.

Mr Ke

- 2.3 Mr Ke is a Chinese citizen and businessman.
- 2.4 At all relevant times, Mr Ke was not a New Zealand citizen and did not hold a New Zealand residence class visa. Mr Ke has always been an “overseas person” under section 7 of the Act.

IRL

- 2.5 IRL is a company having its registered office at 18 Shiphherds Avenue, Epsom, Auckland. IRL was incorporated on 11 December 2013.
- 2.6 IRL’s sole director and shareholder is and has always been Mr Xinrong Gu, an associate of Messrs Hong and Ke and a New Zealand citizen. IRL’s beneficial owners are Mr Hong and Mr Ke, each of whom own a 50% interest in IRL.
- 2.7 On 10 December 2013, the day before IRL was incorporated, Mr Gu entered an agency agreement with Mr Hong and Mr Ke. Pursuant to the agency agreement, Mr Gu’s role as IRL’s sole director and shareholder is as agent for Mr Hong and Mr Ke.
- 2.8 Accordingly, IRL is and has always been controlled by Mr Hong and Mr Ke or subject to their direction.

Grand Energetic

- 2.9 Grand Energetic is a company having its registered office at 18 Shiphards Avenue, Epsom, Auckland. Grand Energetic was incorporated on 14 April 2014.
- 2.10 Grand Energetic's sole director and shareholder is and has always been Ms Haiyang Zhang, an associate of Messrs Hong and Ke and a New Zealand citizen. Grand Energetic's beneficial owners are Mr Hong and Mr Ke, each of whom own a 50% interest in Grand Energetic.
- 2.11 On 17 April 2014, three days after Grand Energetic was incorporated, Ms Zhang entered an agency agreement with Mr Hong and Mr Ke. Pursuant to the agency agreement, Ms Zhang's role as Grand Energetic's sole director and shareholder is as agent for Mr Hong and Mr Ke.
- 2.12 Accordingly, Grand Energetic is and at all relevant times has been controlled by Mr Hong and Mr Ke or subject to their direction.

3 The Investment Partnership

- 3.1 In 2012, Mr Hong and Mr Ke formed a partnership with Mr Arthur Qui Churchill, a New Zealand citizen, to undertake property investments in New Zealand (**Investment Partnership**).
- 3.2 From mid-2012 until mid-2013, the Investment Partnership operated on an undocumented basis.
- 3.3 The Investment Partnership was formalised on 24 June 2013 when the following documents were signed:
- (a) Trust, Investment and Collaboration Agreement;
 - (b) Trust Agreement;
 - (c) Instrument of Confirmation of Trust Undertakings; and
 - (d) Letter of Confirmation.
- 3.4 At all relevant times, Mr Churchill was an "associate" of Mr Hong and Mr Ke under section 8 of the Act because he:
- (a) was an agent, trustee or representative or acted on behalf of Mr Hong and Mr Ke in relation to the overseas investment; and/or
 - (b) acted jointly or in concert with Mr Hong and Mr Ke in relation to the overseas investment; and/or
 - (c) participated in the overseas investment as a consequence of an arrangement or understanding with Mr Hong and Mr Ke.
- 3.5 At all relevant times the Investment Partnership was an "overseas person" under section 7 of the Act because it was a partnership in which 25% or more of the partners were overseas persons.

4 Overseas investment in the Lodge

Investment via Churchill Estate

- 4.1 The Lodge is a block of rural land, comprised in CT 294353 being a parcel described as Lot 3-4 DP 372768 and having a total land area of 44.421 hectares, which includes an accommodation facility known as Kourawhero Lodge.
- 4.2 On 20 July 2012, the Investment Partnership (through Mr Churchill) entered into an agreement to purchase the Lodge and chattels (**First Lodge Agreement**) for NZ\$2,550,000 on an “and/or nominee” basis.
- 4.3 On 19 October 2012, the First Lodge Agreement settled and title to the Lodge was transferred to Churchill Estate (as nominated by Mr Churchill) on behalf of the Investment Partnership. Churchill Estate is a company, and Mr Churchill is its sole director and shareholder.
- 4.4 Sections 10 and 11 of the Act required OIO consent to be obtained prior to the investment in the Lodge.
- 4.5 The First Lodge Agreement was not conditional on the Investment Partnership obtaining consent under the Act to acquire the Lodge, and no such consent was obtained or sought by Mr Hong, Mr Ke or their associates.
- 4.6 The failure to obtain consent was a breach of section 42 of the Act.

Proceedings against Mr Churchill

- 4.7 In October 2013, Messrs Hong and Ke became aware that Mr Churchill had misappropriated funds in relation to the Lodge and unbeknownst to them, had taken out a mortgage against the Lodge for his own purposes. Messrs Hong and Ke became concerned about their investments and took steps to protect them:
- (a) on 16 January 2014, a law firm acting for Mr Hong registered a caveat in his name against the title for the Lodge;
 - (b) on 1 April 2014, Messrs Hong and Ke commenced legal proceedings against Mr Churchill in the High Court; and
 - (c) on 1 May 2014, Messrs Hong, Ke and Churchill entered into a formal settlement agreement on terms that involved the transfer of the Lodge from Churchill Estate to Grand Energetic.

Transfer to Grand Energetic

- 4.8 On 17 April 2014, Grand Energetic entered into an agreement to purchase the Lodge from Churchill Estate (**Second Lodge Agreement**) for NZ\$2,570,000.
- 4.9 On 1 May 2014, the Second Lodge Agreement settled and title to the Lodge was transferred to Grand Energetic.
- 4.10 Sections 10 and 11 of the Act required OIO consent to be obtained prior to the transfer of the Lodge to Grand Energetic.

- 4.11 The Second Lodge Agreement was not conditional on Grand Energetic obtaining consent under the Act, and no such consent was obtained or sought by Mr Hong, Mr Ke or their associates.
- 4.12 The failure to obtain consent for the transfer of the Lodge to Grand Energetic was a breach of section 42 of the Act.
- 4.13 No later than 5 April 2014, Messrs Hong and Ke were aware that OIO consent was required for the investments in the Lodge and the Farm.
- 4.14 Despite that knowledge, Messrs Hong and Ke took the following steps for the purpose of circumventing the operation of the Act:
- (a) causing Grand Energetic to be incorporated as a company;
 - (b) entering into the 17 April 2014 agency agreement with Ms Zhang;
 - (c) causing Grand Energetic to enter into the Second Lodge Agreement; and
 - (d) causing Grand Energetic to take legal title to the Lodge.
- 4.15 The steps listed above in paragraph 4.14 contravened section 43 of the Act.

Retrospective OIO consent application

- 4.16 On 30 October 2014, Messrs Hong and Ke submitted a retrospective consent application to the OIO in relation to the Lodge.
- 4.17 Messrs Hong and Ke withdrew the retrospective consent application on 14 September 2017.

Efforts to dispose of the Lodge

- 4.18 On 1 October 2018, Messrs Hong and Ke instructed a licensed real estate agent to market the Lodge for sale. To date, the efforts to sell the Lodge have been unsuccessful.

No quantifiable gain on the Lodge

- 4.19 Messrs Hong and Ke have provided the OIO with a valuation of the Lodge performed by a registered valuer. On the basis of that valuation, which the OIO accepts for the purposes of these proceedings only, the parties agree there is no quantifiable gain on the Lodge for the purpose of section 48(2) of the Act.

5 Overseas investment in the Farm

Purchase by the Investment Partnership

- 5.1 The Farm is a block of rural land, comprised in computer freehold register CT 504461 being a parcel described as Lot 2 DP 426537 and having a total land area of 79.3364 hectares.

- 5.2 On 11 December 2012, the Investment Partnership (through Mr Churchill) entered into an agreement to purchase the Farm (**Farm Agreement**) for NZ\$4,480,000 on an “and/or nominee” basis.
- 5.3 The Farm Agreement was not conditional on the Investment Partnership obtaining consent under the Act to acquire the Farm, and no such consent was obtained or sought by Mr Hong, Mr Ke or their associates.

Transfer to IRL

- 5.4 The Farm Agreement provided for a settlement date of 16 December 2013. On that date, Mr Churchill and Mr Gu signed a Deed of Nomination nominating IRL to settle the Farm transaction. On 6 January 2014, the Farm Agreement settled and title to the Farm was transferred to IRL.
- 5.5 Sections 10 and 11 of the Act required OIO consent to be obtained prior to the investment in the Farm.
- 5.6 The Deed of Nomination and settlement of the Farm Agreement by IRL was not conditional on IRL obtaining consent under the Act, and no such consent was obtained or sought by Mr Hong, Mr Ke or their associates.
- 5.7 The failure to obtain consent for the transfer of the Farm to IRL was a breach of section 42 of the Act.

Retrospective OIO consent application

- 5.8 On 30 October 2014, Messrs Hong and Ke submitted a retrospective consent application to the OIO in relation to the Farm.
- 5.9 The OIO declined the retrospective consent application on 1 September 2016.

Disposal of the Farm

- 5.10 On 18 June 2018, IRL transferred legal title to the Farm to a third party pursuant to a sale and purchase agreement dated 17 January 2018 and a Deed of Nomination dated 14 June 2018.
- 5.11 IRL received total consideration of NZ\$10,100,000 for the transfer of the Farm to the third party.

Quantifiable gain on the Farm

- 5.12 For the purpose of section 48(2) of the Act, the quantifiable gain on the Farm investment was approximately \$2,747,360, which is the difference between the purchase price of NZ\$4,480,000 and the sale price of NZ\$10,100,000, less agreed expenses associated with the investment (agent fees, subdivision and associated legal costs, rates, tax, insurance, repair and maintenance, valuation fees, and interest on funding used to finance the investment).

6 Accepted breaches of the Act

- 6.1 The First, Second, Third and Fourth Defendants (**Defendants**) accept that:

- (a) The investment in the Lodge via Churchill Estate gave effect to an overseas investment in the Lodge without the requisite consent, in breach of section 42 of the Act.
- (b) The transfer of the Lodge to Grand Energetic constituted knowingly or recklessly entering into a transaction, executing an instrument, or taking any other step for the purpose of circumventing the operation of the Act, in breach of section 43 of the Act.
- (c) The entry into the Farm Agreement by the Investment Partnership and subsequent settlement by IRL gave effect to an overseas investment in the Farm without the requisite consent, in breach of section 42 of the Act.

6.2 For the purpose of this proceeding only, the Defendants accept that the Regulator is entitled to seek judgment in respect of the first, second and third cause of action set out in the Statement of Claim.

7 Other factual matters relevant to penalty

Cooperation

- 7.1 The Defendants have acknowledged that they have breached sections 42 and 43 of the Act.
- 7.2 Messrs Hong and Ke filed retrospective consent applications in relation to both the Lodge and the Farm, as detailed above in paragraphs 4.16 and 5.8.
- 7.3 Messrs Hong and Ke complied with the OIO's requests for documents and attended voluntary interviews with the OIO.
- 7.4 Messrs Hong and Ke entered into enforceable undertakings with the OIO regarding the process for the marketing and disposal of the Lodge and Farm, which included transferring the proceeds of any sale to a trust account nominated by the OIO until these proceedings were resolved.
- 7.5 Messrs Hong and Ke have taken steps to dispose of the Farm and Lodge. The Farm has been sold as described above in paragraphs 5.10 and 5.11. Efforts to sell the Lodge continue.

Date: 2019

.....
 Authorised representative of
 Chief Executive of Land Information New Zealand

.....
 Zhongliang Hong
 Authorised representative of the Defendants

Schedule 2: Notice of Admissions

Draft

**In the High Court of New Zealand
Auckland Registry**

**I Te Koti Matua O Aotearoa
Tāmaki Makaurau Rohe**

CIV 2018-

**Between The Chief Executive of Land Information New Zealand
Plaintiff**

**And Zhong Liang Hong
First Defendant**

**And Xueli Ke
Second Defendant**

**And IRL Investment Limited
Third Defendant**

**And Grand Energetic Company Limited
Fourth Defendant**

Notice of Admissions

2019

**MEREDITH
CONNELL**

Solicitors:
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PO Box 24546, Wellington 6140
T: +64 4 914 0530
fionnghuala.cuncannon@mc.co.nz |
sam.lowery@mc.co.nz

Notice of admissions

The First, Second, Third and Fourth Defendants by their Solicitor say:

For the purposes of rules 15.15 and 15.16 of the High Court Rules 2016, the First, Second, Third and Fourth Defendants admit, for the purpose of this proceeding only:

- (a) the facts set out in the agreed statement of facts dated [date]; and
- (b) to that extent, the first, second and third causes of action in the Statement of Claim dated [date].

Date: 2019

.....
D Campbell
Counsel for the Defendants

Schedule 3: Statement of claim

Draft

**In the High Court of New Zealand
Auckland Registry**

**I Te Koti Matua O Aotearoa
Tāmaki Makaurau Rohe**

CIV 2018-

Between **The Chief Executive of Land Information New Zealand**
of Level 7, 155 The Terrace, Wellington
Plaintiff

And **Zhong Liang Hong** of Shanghai, China, Businessman
First Defendant

And **Xueli Ke** of Changle City, China, Businessman
Second Defendant

And **IRL Investment Limited** a company having its registered office
at 18 Shiphers Avenue, Epsom, Auckland
Third Defendant

And **Grand Energetic Company Limited** a company having its
registered office at 18 Shiphers Avenue, Epsom, Auckland
Fourth Defendant

Statement of Claim

2019

**MEREDITH
CONNELL**

Solicitors:
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sam.lowery@mc.co.nz

Statement of Claim

The Plaintiff by his Solicitor says:

The parties

The Plaintiff

- 1 The Plaintiff, the Chief Executive of Land Information New Zealand, is designated under section 30 of the Overseas Investment Act 2005 (**Act**) as the “regulator” of that Act. The Plaintiff’s functions include enforcement of the Act.

The First Defendant

- 2 The First Defendant, Mr Zhong Liang Hong, is a Chinese citizen and businessman. At all relevant times he was an “overseas person” under section 7 of the Act because he:
 - (a) was not a New Zealand citizen; and
 - (b) did not hold a New Zealand residence class visa.

The Second Defendant

- 3 The Second Defendant, Mr Xueli Ke, is a Chinese citizen and businessman. At all relevant times he was an “overseas person” under section 7 of the Act because he:
 - (a) was not a New Zealand citizen; and
 - (b) did not hold a New Zealand residence class visa.

The Third Defendant

- 4 The Third Defendant, IRL Investment Limited (**IRL**), is a company having its registered office at 18 Shiphers Avenue, Epsom, Auckland.
- 5 At all relevant times, IRL was an “associate” of Mr Hong and Mr Ke under section 8 of the Act because IRL was controlled by Mr Hong and Mr Ke or subject to their direction.

Particulars

- (a) IRL’s sole director and shareholder is, and at all relevant times has been, Mr Xinrong Gu, a New Zealand citizen.
- (b) Pursuant to an agency agreement dated 10 December 2013, Mr Gu’s role as IRL’s sole director and shareholder is as agent for Mr Hong and Mr Ke.

- (c) IRL's beneficial owners are Mr Hong and Mr Ke, each of whom holds a 50% interest in IRL.

The Fourth Defendant

- 6 The Fourth Defendant, Grand Energetic Company Limited (**Grand Energetic**), is a company having its registered office at 18 Shipherds Avenue, Epsom, Auckland.
- 7 At all relevant times, Grand Energetic was an "associate" of Mr Hong and Mr Ke under section 8 of the Act because Grand Energetic was controlled by Mr Hong and Mr Ke or subject to their direction.

Particulars

- (a) Grand Energetic's sole director and shareholder is, and at all relevant times has been, Ms Haiyang Zhang, a New Zealand citizen.
- (b) Pursuant to an agency agreement dated 17 April 2014, Ms Zhang's role as Grand Energetic's sole director and shareholder is as agent for Mr Hong and Mr Ke.
- (c) Grand Energetic's beneficial owners are Mr Hong and Mr Ke, each of whom holds a 50% interest in Grand Energetic.

The Investment Partnership

- 8 In 2012, Mr Hong and Mr Ke formed a partnership with Mr Arthur Qui Churchill to undertake property investments in New Zealand (**Investment Partnership**).

Particulars

- (a) From mid-2012 until mid-2013, the Investment Partnership operated on an undocumented basis.
 - (b) The Investment Partnership was formalised by way of the following documents signed on 24 June 2013:
 - (i) Trust, Investment and Collaboration Agreement;
 - (ii) Trust Agreement;
 - (iii) Instrument of Confirmation of Trust Undertakings; and
 - (iv) Letter of Confirmation.
- 9 Mr Churchill is a New Zealand citizen.
 - 10 At all relevant times, Mr Churchill was an "associate" of Mr Hong and Mr Ke under section 8 of the Act because he:
 - (a) was an agent, trustee or representative or acted on behalf of Mr Hong and Mr Ke in relation to the overseas investment; and/or

- (b) acted jointly or in concert with Mr Hong and Mr Ke in relation to the overseas investment; and/or
- (c) participated in the overseas investment as a consequence of an arrangement or understanding with Mr Hong and Mr Ke.

11 At all relevant times the Investment Partnership was an “overseas person” under section 7 of the Act because it was a partnership in which 25% or more of the partners were overseas persons.

Overseas investment in the Lodge

12 471 Wylie Road, Warkworth is a block of rural land, comprised in CT 294353 being a parcel described as Lot 3-4 DP 372768 and having a total land area of 44.421 hectares, which includes an accommodation facility known as Kourawhero Lodge (**Lodge**).

13 The Lodge is “sensitive land” under section 12 and Schedule 1, Part 1 of the Act because it is:

- (a) non-urban land; and
- (b) larger than 5 hectares.

Overseas investment in the Lodge via Churchill Estate Limited

14 On 20 July 2012, Mr Churchill, acting on behalf of the Investment Partnership, entered into an agreement to purchase the Lodge from Lawrence and Lorraine Mann and Frederick Dick (**First Lodge Agreement**).

15 The purchase price for the Lodge was NZ \$2,350,000, plus NZ \$200,000 for chattels.

16 The First Lodge Agreement was entered into on an “and/or nominee” basis.

17 The First Lodge Agreement was not conditional on Mr Churchill obtaining consent under the Act to acquire the Lodge.

Particulars

- (a) On its front page the First Lodge Agreement had an option to indicate that consent under the Act was required.
- (b) The “Yes” option was crossed out.

18 On 19 October 2012, the First Lodge Agreement settled and title to the Lodge was transferred to Churchill Estate Limited (**Churchill Estate**) (as nominated by Mr Churchill) on behalf of the Investment Partnership.

19 Churchill Estate is a company, whose sole director and shareholder is Mr Churchill.

20 At all relevant times, Churchill Estate was an “associate” of Mr Hong and Mr Ke under section 8 of the Act because it:

- (a) was an agent, trustee or representative or acted on behalf of Mr Hong and Mr Ke in relation to the overseas investment; and/or
 - (b) acted jointly or in concert with Mr Hong and Mr Ke in relation to the overseas investment; and/or
 - (c) participated in the overseas investment as a consequence of an arrangement or understanding with Mr Hong and Mr Ke.
- 21 The entry into the First Lodge Agreement by Mr Churchill and its settlement by Churchill Estate were overseas investment transactions because they resulted in an overseas investment in sensitive land.

Transfer of the Lodge to Grand Energetic

- 22 On 14 April 2014, Mr Hong and Mr Ke caused Grand Energetic to be incorporated with Ms Haiyang Zhang as its sole director and shareholder.
- 23 The purpose of incorporating Grand Energetic was to circumvent the operation of the Act, a step Mr Hong and Mr Ke took knowingly or recklessly.
- 24 On 17 April 2014, Mr Hong and Mr Ke entered into an agency agreement with Ms Zhang, under which Ms Zhang was to discharge her duties as Grand Energetic's sole director under Mr Hong and Mr Ke's direction (**Grand Energetic Agency Agreement**).
- 25 The purpose of the Grand Energetic Agency Agreement was to circumvent the operation of the Act, a step Mr Hong and Mr Ke took knowingly or recklessly.
- 26 Also on 17 April 2014, Mr Hong and Mr Ke caused Grand Energetic to enter into an agreement on their behalf to purchase the Lodge from Churchill Estate (**Second Lodge Agreement**).
- 27 The purchase price for the Lodge was NZ \$2,570,000.
- 28 The purpose of Grand Energetic entering into the Second Lodge Agreement was to circumvent the operation of the Act, a step Mr Hong and Mr Ke took knowingly or recklessly.
- 29 The entry into the Second Lodge Agreement by Grand Energetic was an overseas investment transaction because it resulted in an overseas investment in sensitive land.
- 30 The Second Lodge Agreement was not conditional on Grand Energetic obtaining consent under the Act to acquire the Lodge.

Particulars

- (a) On its front page the Second Lodge Agreement had an option to indicate that consent under the Act was required.
- (b) The "Yes" option was crossed out.

- 31 On 1 May 2014, the Second Lodge Agreement settled and title to the Lodge was transferred to Grand Energetic. From that point, Grand Energetic and Ms Zhang held the Lodge as bare trustees for Mr Hong and Mr Ke.
- 32 The purpose of Grand Energetic taking legal title to the Lodge was to circumvent the operation of the Act. Mr Hong and Mr Ke knowingly or recklessly caused this step to be taken.
- 33 The entry into the Second Lodge Agreement by Grand Energetic and its settlement were overseas investment transactions because they resulted in an overseas investment in sensitive land.

Failure to obtain Overseas Investment Office consent

- 34 Neither Mr Hong, nor Mr Ke, nor their associates applied for consent under subpart 2 of the Act before giving effect to the transactions described above in paragraphs 14 to 31.

Overseas investment in the Farm

- 35 185 Sandspit Road, Warkworth is a block of rural land, comprised in computer freehold register CT 504461 being a parcel described as Lot 2 DP 426537 and having a total land area of 79.3364 hectares (**Farm**).
- 36 The Farm is “sensitive land” under section 12 and Schedule 1, Part 1 of the Act because it is:
- (a) non-urban land; and
 - (b) larger than 5 hectares.

Overseas investment in the Farm through Mr Churchill

- 37 On 11 December 2012, Mr Churchill, acting on behalf of the Investment Partnership, entered into an agreement to purchase the Farm from Warwick Mortimer and Erin Mortimer (**Farm Agreement**).
- 38 The purchase price for the Farm was NZD \$4,480,000.
- 39 The Farm Agreement had a settlement date of 16 December 2013 and was entered into on an “and/or nominee” basis.
- 40 The entry into the Farm Agreement by Mr Churchill on behalf of the Investment Partnership was an overseas investment transaction because it resulted in an overseas investment in sensitive land.
- 41 The Farm Agreement was not conditional on Mr Churchill obtaining consent under the Act to acquire the Farm.

Particulars

- (a) On its front page the Farm Agreement had an option to indicate that consent under the Act was required.

(b) The “Yes” option was crossed out.

Transfer of the Farm to IRL

- 42 On 10 December 2013, Mr Hong, on behalf of himself and Mr Ke, entered into an agency agreement with Mr Xinrong Gu, under which Mr Gu was to discharge his duties as IRL’s director under Mr Hong and Mr Ke’s direction (**IRL Agency Agreement**).
- 43 On 11 December 2013, Mr Hong and Mr Ke caused IRL to be incorporated with Mr Gu as its sole director and shareholder.
- 44 On 16 December 2013, Mr Churchill and Mr Gu signed a Deed of Nomination nominating IRL to settle the Farm transaction.
- 45 On 6 January 2014, the Farm Agreement settled and title to the Farm was transferred to IRL. From that point, IRL and Mr Gu held the Farm as bare trustees for Mr Hong and Mr Ke.
- 46 The entry into the Deed of Nomination and the settlement of the Farm Agreement by IRL were overseas investment transactions because they resulted in an overseas investment in sensitive land.

Failure to obtain Overseas Investment Office consent

- 47 Neither Mr Hong, nor Mr Ke, nor their associates applied for consent under subpart 2 of the Act before giving effect to the transactions described above in paragraphs 37 to 45.

Disposal of the Farm

- 48 On 18 June 2018, IRL transferred legal title to the Farm to a third party pursuant to a sale and purchase agreement entered dated 17 January 2018, and a deed of nomination dated 14 June 2018.
- 49 IRL received total consideration of \$10,100,000 for the transfer of the Farm to the third party.

First Cause of Action: Breach of the Act by Mr Hong and Mr Ke giving effect to an overseas investment in the Lodge without the requisite consent (transfer to Churchill Estate)

- 50 The plaintiff repeats paragraphs 2 to 34, above.
- 51 Mr Hong and Mr Ke, as persons required to apply for consent to an overseas investment transaction under the Act, contravened section 42 of the Act by giving effect to an overseas investment transaction in the Lodge without the consent required by the Act by:
- (a) causing Mr Churchill, their associate, to enter into the First Lodge Agreement on behalf of the Investment Partnership; and/or
 - (b) causing Churchill Estate, their associate, to take legal title to the Lodge on behalf of the Investment Partnership.

Wherefore the Plaintiff seeks:

- (a) civil penalties under section 48 of the Act; and
- (b) costs.

Second Cause of Action: Breach of the Act by Mr Hong and Mr Ke knowingly or recklessly entering into a transaction, executing an instrument, or taking any other step for the purpose of circumventing the operation of the Act in respect of the Lodge (transfer to Grand Energetic)

52 The plaintiff repeats paragraphs 2 to 34, above.

53 Mr Hong and Mr Ke contravened section 43 of the Act by knowingly or recklessly entering into a transaction, executing an instrument, or taking any other step for the purpose of circumventing the operation of Act by:

- (e) causing Grand Energetic to be incorporated as a company; and/or
- (f) entering into the Grand Energetic Agency Agreement; and/or
- (g) causing Grand Energetic to enter into the Second Lodge Agreement; and/or
- (h) causing Grand Energetic to take legal title to the Lodge.

Wherefore the Plaintiff seeks:

- (a) civil penalties under section 48 of the Act; and
- (b) costs.

Third Cause of Action: Breach of the Act by Mr Hong, Mr Ke and IRL giving effect to an overseas investment in the Farm without the requisite consent (transfer to IRL)

54 The plaintiff repeats paragraphs 2 to 3.5 and paragraphs 35 to 47, above.

55 Mr Hong, Mr Ke and IRL, as persons required to apply for consent to an overseas investment transaction under the Act, contravened section 42 of the Act by giving effect to an overseas investment in the Farm without the consent required by the Act by:

- (a) causing Mr Churchill, their associate, to enter into the Farm Agreement on behalf of the Investment Partnership; and/or
- (b) causing IRL to enter into the Deed of Nomination on behalf of Mr Hong and Mr Ke; and/or
- (c) causing IRL to take legal title to the Farm on behalf of Mr Hong and Mr Ke.

Wherefore the Plaintiff seeks:

- (a) civil penalties under section 48 of the Act; and

- (b) costs.

This document is filed by Fionnghuala Joy Cuncannon, solicitor for the Plaintiff, of the firm Meredith Connell. The address for service of the defendant is Level 13, 58-66 Jervois Quay, Wellington.

Documents for service on the filing party may be left at that address for service or may be:

- (a) posted to the solicitor at PO Box 24546, Manners Street, Wellington 6140;
- (b) transmitted to the solicitor by fax to +64 4 914 0549; or
- (c) emailed to the solicitor at fionnghuala.cuncannon@mc.co.nz, with copies sent to litigation@mc.co.nz.

Draft

Schedule 4: Joint memorandum of counsel requesting penalty hearing

Draft

**In the High Court of New Zealand
Auckland Registry**

**I Te Koti Matua O Aotearoa
Tāmaki Makaurau Rohe**

CIV 2018-

**Between The Chief Executive of Land Information New Zealand
 Plaintiff**

**And Zhong Liang Hong
 First Defendant**

**And Xueli Ke
 Second Defendant**

**And IRL Investment Limited
 Third Defendant**

**And Grand Energetic Company Limited
 Fourth Defendant**

Joint memorandum requesting penalty hearing

2019

**MEREDITH
CONNELL**

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Joint memorandum requesting penalty hearing

May it please the Court:

Introduction

- 1 The parties have reached a settlement in this proceeding, and have entered into a settlement agreement dated [date].
- 2 Accordingly, in response to the statement of claim dated [date] filed by the plaintiff, the Chief Executive of the Overseas Investment Office (**Regulator**), the first, second, third and fourth defendants (**Defendants**) filed a notice of admission of the causes of action dated [date].

Penalty hearing fixture sought

- 3 As part of the settlement, the parties have agreed penalties to be submitted for the Court's approval. The parties therefore respectfully request a penalty fixture. In preparation for that fixture the parties have, together with this memorandum, filed an agreed statement of facts.
- 4 Accordingly the parties respectfully seek directions that:
 - (a) a one and a half hour penalty fixture be scheduled;
 - (b) the Regulator's submissions shall be filed ten working days prior to the penalty hearing;
 - (c) the Defendants' submissions shall be filed five working days prior to the penalty hearing.
- 5 The parties will consult with the Registry as to a date for a penalty fixture.

Date: 2019

.....
F Cuncannon | S Lowery
Counsel for the Plaintiff

.....
D Campbell
Counsel for the Defendants