



## Memorandum

To:	Simon Pope, Manager Enforcement
From:	Will McGrath, Senior Solicitor Enforcement Jatin Mistry, Senior Investigator Enforcement
Date:	15 December 2022
File Ref:	202200443
Subject:	<b>Administrative penalty of \$20,000 for retrospective consent application post-investigation</b>
For Your:	<b>Approval</b>

### Summary

1. CPC International Investments LLC (**CPC**) seeks retrospective consent under the Overseas Investment Act 2005 (**the Act**) for the acquisition of approximately 3.4310 ha of land at 243 Waitao Road, Tauranga (**the Land**).
2. The acquisition of the Land occurred as part of a wider transaction by which CPC acquired a range of assets of Global Investment Holding AS (**GIH**) from across the globe via a Share Purchase Agreement dated 23 December 2021.
3. The matter was first self-reported to Enforcement on the basis that the applicant intended to seek retrospective consent.
4. Legal advice as to whether the Land was sensitive was only sought after the agreement had been signed. On an initial investigation, there appeared to be nothing to suggest that CPC's failure to obtain consent wasn't inadvertent. We, therefore, raised no issues with CPC applying for retrospective consent and accept that the breach was inadvertent.
5. We recommend an administrative penalty under the Act, which is set at \$20,000 pursuant to section 53 of the Act, and regulation 36 of the Overseas Investment Regulations 2005.

### Facts – why retrospective consent required

6. CPC is a US-incorporated company that proposes to acquire from GIH 100% of the shares in Bayhill Functions Limited as one of many of GIH's global assets. CPC is a subsidiary of BMS International (**BMSI**) – a United States charitable corporation s9(2)(g)(i) [REDACTED]. As CPC is US-incorporated it is an overseas person.
7. The Land has a property category on the District Valuation Roll of 'residential' and is therefore 'residential land', and sensitive land, under the Act.
8. CPC's acquisition of interests in Bayhill Functions Limited therefore requires consent because it will result in CPC acquiring an interest in sensitive land.

### Inadvertence of the breach

9. We are satisfied the breach was inadvertent.
10. According to Christina Lefever, 'none of the New Zealand legal advisors had sufficiently detailed information about the transaction and the relationship between CPC and GIH to identify the issue earlier in the sale process.' The parties have, therefore, held off on recording the transfer of shares in Bayhill Functions Limited (the registered owner of the Land) with the Companies Office until the issue of consent under the Act had been resolved.
11. The parties have been cooperative with the OIO, first communicating with Enforcement to seek approval to apply for retrospective consent, and then seeking consent. While the parties have held off on recording the share transfer, ultimately the beneficial ownership of the shares has already transferred (it has just not been recorded with the companies office).

## Assessment of appropriate penalty – for transactions on or post 22 October 2018

12. In accordance with regulation 36 of the Overseas Investment Regulations 2005, the amount of the retrospective penalty is \$20,000. I do not consider that requiring the applicant to pay this amount would be unduly harsh or oppressive given the nature of, and the reason for, the retrospective application. I discuss those matters below:
  - (a) The asset consists of 3.4310 ha of land, being sensitive residential land under the Act. The shares in Bayhill Functions Limited were acquired for allocated consideration of NOK12,000,000. As at 23 December 2021 (when the agreement was signed), this was the equivalent of approximately NZD1,880,069. The Applicant submits the equivalent consideration was NZD1,976,472. I am satisfied that on either calculation, the consideration was below \$2 million;
  - (b) the breach occurred due to the parties' legal advisors failure to flag the transaction as requiring consent under the Act;
  - (c) none of the parties have been subject to previous enforcement action;
  - (d) the applicant has co-operated with the OIO, which does not preclude the imposition of an administrative penalty.

## Recommendation

13. I recommend that the Regulator impose an administrative penalty of \$20,000. I do not consider the amount to be unduly harsh or oppressive having regard to the value of the consideration paid for the Shares, or the nature of, and the reasons for, the retrospective consent.

s9(2)(a)

Simon Pope  
Manager Enforcement

Agree:  X  
Disagree:

Date: