
Exemption from the farm land offer criterion

Read this decision carefully - you must comply with all the conditions. If you do not, we may revoke your exemption.

Decision (Case 202300296)

1. Decision Date

28 August 2023

2. Interpretation

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

Act means the Overseas Investment Act 2005.

Exemption means the exemption in paragraph 4.

Exemption Holder means BENZ Somerton Limited.

Land means a leasehold interest for 34 years over not less than 60 hectares and not greater than 73 hectares of the land (subject to survey) at 948 Somerton Road, RD14 Rakaia, 7784, New Zealand contained in records of title CB21A/211 and CB24A/63.

LINZ means Toitū Te Whenua Land Information New Zealand.

Qualifying Interest means a leasehold interest in the Land being acquired exclusively or nearly exclusively for operating a solar farm for electricity generation

Qualifying Transaction means the acquisition of a Qualifying Interest by the Exemption Holder

Regulations means the Overseas Investment Regulations 2005.

(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).

3. Duration of the Exemption

This Exemption expires on 6 October 2026.

4. Exemption from farm land offer criterion under the Act

The requirement in section 16(1)(f) of the Act does not apply in respect of an application for consent under the Act for a Qualifying Transaction decided on or before 6 October 2026.

5. 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 LINZ. LINZ has an obligation to investigate and act upon alleged and suspected breaches of the Act.

6. Reasons for Exemption

The purpose of the requirement to advertise farm land is to give New Zealanders an opportunity to acquire farm land on the open market.

An exemption from this requirement may be granted if the decision maker considers that the overseas investment need not meet this requirement by reason of the circumstances relating to the particular overseas investment or section 12 interest or the nature of the land to which the section 12 interest relates.

An exemption may only be granted if there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption, and the extent of the exemption is not broader than is reasonably necessary to address those circumstances.

The Exemption Holder intends to develop a solar farm on the Land and has sought an exemption from the requirement for farm land to be advertised.

In this case, an exemption is appropriate and desirable as:

- there are circumstances that make advertising less appropriate for solar farm developments than for other developments
 - there is often a need to proactively approach existing property owners due to the very specific land requirements needed for a solar farm (the existing property owners may have no general desire to lease or sell their land to a third party)
 - until feasibility studies are undertaken, it is often unclear what land will be suitable for solar farm purposes and therefore what land will need to be advertised
 - investors are likely to face uncertainty and risk which may discourage investments if they are forced to undertake extensive feasibility studies without first obtaining a right to acquire the land needed for their proposed solar farm (there would be nothing preventing the existing property owners from selling or leasing their land to a third party, including the investors' competitors)
- the Exemption is consistent with the principle that overseas investment should benefit New Zealand, noting the high importance the Government places on renewable energy.

- solar farming is a temporary use of the Land, and the Land can revert to an exclusively farming use should the Land no longer be needed for a solar farm
- the interests are leasehold interests only. The freehold ownership of the Land will not change as a result of the transaction, and any future sale of the freehold to an overseas person could only occur after being offered for sale on the open market

The relevant Ministers consider that the extent of the Exemption is not broader than is reasonably necessary as it is limited to specific properties and acquisitions for the purpose of developing a solar farm, only applies for a limited period of time, and the interests are leasehold interests only.