



# Memorandum

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](http://www.linz.govt.nz)

To: Simon Pope, Manager Enforcement

From: Nelson Curry, Senior Solicitor, Enforcement

Date: 27 April 2023

File Ref: 202000423 (Apps) / 201310014 (Enforcement)

Subject: **Administrative penalty for retrospective consent**

For Your: **Approval**

## Summary

1. This memorandum seeks your decision on the appropriate administrative penalty for a retrospective consent application for acquiring and increasing interests in a sensitive land-owning company in breach of the Overseas Investment Act 2005 ("**Act**").

### Breaches

2. Mr Gui Guojie is the chairperson of Shanghai CRED Real Estate Development Co. Ltd ("**Shanghai CRED**") and previously owned an approximately 39.92% ownership stake (directly and indirectly). Shanghai CRED owns approximately 1,119 hectares of sensitive land at the Karikari Peninsula, Northland, acquired under two OIO consents.
3. In November 2017, Mr Guojie acquired further direct and indirect interests in Shanghai CRED through two transactions that resulted in those interests collectively increasing from approximately 39.92% to 83.34%.
4. Because the transactions are being undertaken by the same upstream investor, we have treated them as the same overseas investment for the purpose of this memorandum and the retrospective consent.
5. The breach occurred because the investors did not seek legal advice from their New Zealand representatives and consider the breaches were inadvertent. Total consideration paid for the transactions was in excess of NZD **9(2)(b)(ii)**.
6. Shanghai Yuehua and Mr Guojie, via Shanghai CRED, self-reported the breaches of the Act and explained that the upstream share transfers had resulted in inadvertent compliance issues, and have sought retrospective consent to remedy matters.

### Penalty

7. The regulator may require an administrative penalty be paid before deciding a retrospective consent application per s 53 of the Act, as further specified in the Overseas Investment Regulations 2005 ("**Regulations**").
8. I recommend that, for the reasons set out in this memorandum, the maximum \$20,000 administrative penalty be imposed, **9(2)(b)(ii)** that amount is not unduly harsh or oppressive given the nature of, and the reasons for, the retrospective consent.

## Facts – why retrospective consent is required

### Background

9. Shanghai CRED owns approximately 1,119 hectares of sensitive land in Karikari Peninsula, Northland through its ownership of Carrington Resort and Whatuwhiwi Holiday Park. The land was acquired pursuant to two OIO consents in 2013 and 2015.
10. Shanghai CRED has approximately NZD 92,000 million in registered share capital. It is part of a group of Chinese registered property development companies that undertake business, finance, and consulting services as well as real estate development, construction, demolition and surveying.
11. Mr Guojie is the chairperson of Shanghai CRED and, at the time each of the two consents, Mr Guojie indirectly owned approximately 40% of Shanghai CRED. After the two transactions below, Mr Guojie indirectly owns more than 80% of Shanghai CRED.

### Requirement for consent

12. Shanghai Yuehua is a China-incorporated company providing a range of business, finance, and consulting services. Mr Guojie is a Chinese citizen, who has over 40 years experience in real estate development, construction, demolition and surveying.
13. In June 2013, Shanghai CRED was granted consent under the Act to obtain approximately 1,116 ha of land at Karikari Peninsula, Northland, land commonly known as Carrington Resort. Carrington Resort was acquired from an American owner who [REDACTED].
14. Subsequently, in March 2015 Carrington Holiday Park Jade LP (ultimately owned and controlled by Shanghai CRED) was granted consent to acquire approximately 2.5 ha of land at Karikari Peninsula which consists of the Whatuwhiwi Top 10 Holiday Park. Carrington Holiday Park Jade LP is ultimately 100% owned by Shanghai CRED.
15. Shanghai CRED notified the OIO in July 2018 that changes in ownership of Shanghai CRED occurred in November 2017 in breach of the Act:
  - a. a 40.13% shareholder in Shanghai CRED, Shanghai Yuehua, increased its interest to 63.35%; and
  - b. Mr Guojie acquired a 60% shareholding in Shanghai Bao Yang which held a 33.85% interest in Shanghai CRED.
16. These changes in ownership required consent because Shanghai CRED had a beneficial interest in Carrington Resort and Whatuwhiwi Top 10 Holiday Park, and:
  - a. Shanghai Yuehua increased a 25% or more interest in sensitive land (through its 40.13% shareholding in Shanghai CRED) in breach of section 12(b)(ii) of the Act; and
  - b. Mr Guojie acquired a more than 25% interest in an entity (Shanghai Bao Yang) that has an interest in sensitive land (through its 33.85% interest in Shanghai CRED) in breach of section 12(b)(i) of the Act.
17. The net effect of these transactions is that Mr Guojie has increased his interest in Shanghai CRED and the sensitive land from 39.92% to 83.34% without consent.

### Application for consent

18. Following several months of discussions with Shanghai CRED, Shanghai Yuehua and Mr Guojie have sought retrospective consent to the shareholding changes described above, on the basis of an amended development plan and investments to date following the change in shareholding.
19. If retrospective consent is not granted, we may consider taking enforcement action in relation to the breaches.

## Assessment of appropriate penalty

### Law

20. The regulator may require an administrative penalty be paid before deciding a retrospective consent application per s 53 of the Act.
21. The relevant transactions were entered into on or around November 2017. Therefore, per clause 3 of the Schedule 1AA of the Regulations, the regulations in force at the time the overseas investment was entered into apply for the purpose of determining an administrative penalty.
22. The applicable version of the Regulations, reprinted as at 1 February 2017, provide that the administrative penalty that the regulator may require an applicant for a retrospective consent to pay is an amount that is not more than \$20,000 (regulation 32).
23. In determining whether to impose this penalty, the regulator must consider whether requiring the applicant to pay that amount would be unduly harsh or oppressive given:
  - (a) The value of the consideration for the asset that was acquired under the relevant overseas investment transaction; or
  - (b) The nature of, and the reasons for, the retrospective consent.

### Assessment

24. I do not consider imposing the \$20,000 administrative penalty is unduly harsh or oppressive.
25. In terms of the value of consideration, the investors paid (collectively) in excess of NZD [REDACTED] million for the overseas investment. This penalty represents approximately [REDACTED] % of that value.
26. The reason for the breach is, according to Chapman Tripp (on behalf of Mr Guojie and Shanghai Yuehua) that the breaches were inadvertent and not deliberate because the changes in shareholding occurred entirely offshore and unfortunately advice on the New Zealand legal implications of the changes in shareholding was not sought.
27. The nature of the retrospective consent relates to significant increases in ownership changes, which relate to a large area of sensitive land (in excess of 1,000 hectares) in the iconic far north of New Zealand.
28. I observe that, per *Chief Executive of Land Information New Zealand v Carbon Conscious NZ Ltd* [2016] NZHC 558, ultimate responsibility for legal compliance rests with the parties who must obtain consent.
29. Here, that is Mr Guojie and Shanghai Yuehua who, as overseas persons, must comply with the Act and ensure that they obtain appropriate advice in carrying out its business in New Zealand.
30. I would therefore expect investors undertaking an overseas investment of the size that has been given effect to here would seek and receive legal advice from New Zealand representatives, before proceeding.

## Recommendation

31. I recommend that the Regulator impose an administrative penalty of \$20,000, being the amount fixed in regulations for a breach relating to this type of sensitive land.
32. I do not consider the amount to be unduly harsh or oppressive having regard to the value of the consideration paid for the property, and the nature of, and the reasons for, the retrospective consent.

s9(2)(a)

Simon Pope  
Manager Enforcement

Agree:  X  
Disagree:

Date:

Released under the Official Information Act 1982