

Decision Date

- (1) 13 April 2022

Duration of the Exemption

- (2) This Exemption comes into force on 13 April 2022 and expires at the close of 12 April 2023.

Interpretation

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

Act means the Overseas Investment Act 2005.

Exemption means the exemption in paragraph (5).

Exemption Holder means SunPork Holdings Pty Limited (Australian company number 652 750 019).

Land means:

- a freehold interest in approximately 142.8540 hectares of land at 562 Monument Road, Maramarua, North Waikato;
- a freehold interest in approximately 31.1608 hectares of land at 118 Frost Road, Onewhero, South Auckland;
- a freehold interest in approximately 30.8922 hectares of land at 715 Mitchells Road, Hororata, Canterbury;
- a freehold interest in approximately 10.1778 hectares of land at 207 Substation Road, Hororata, Canterbury; and
- a freehold interest in approximately 208.5950 hectares of land at 60 Pilbrow Road, Palmerston, North Otago.

OIO means the Overseas Investment Office.

Regulations means the Overseas Investment Regulations 2005.

Target means PIC NZ Holdings Limited (Company number 1911145).

Transaction means the acquisition by the Exemption Holder of 25A shares in the Target owned by the Vendor.

Vendor means Rakino PE Limited.

- (4) 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).

Exemption from farm land offer criterion

- (5) The requirement in section 16(1)(f) of the Act does not apply to the Land in respect of the Transaction.

Conditions of the Exemption

- (6) The exemption in paragraph (5) only applies to transactions entered into on or before 12 April 2023.
- (7) If requested in writing by the OIO, the Exemption Holder must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
- (a) the representations and plans made or submitted in support of the application for the Exemption; or
 - (b) the conditions of the Exemption.

Amendment or revocation of the Exemption

- (8) The Exemption and conditions of the Exemption may at any time be amended or revoked by the Overseas Investment Office.

Sanctions

- (9) 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 the Overseas Investment Office. The Overseas Investment Office has an obligation to investigate and act upon alleged and suspected breaches of the Act.

Reasons for Exemption

A related entity of the Exemption Holder, SunPork Aotearoa Pty Ltd (SunPork Aotearoa), owns 66.67% of the Target and the Exemption Holder is seeking to acquire the remaining 33.33% of the Target from the Vendor. Post-completion of the proposed Transaction, it is intended that SunPork Aotearoa will transfer its interest in the Target (or SunPork Aotearoa will be transferred) to the Exemption Holder, such that the Target will be wholly-owned by the Exemption Holder.

The Target indirectly owns farm land. SunPork Holdings Pty Limited has sought an exemption from the requirement in section 16(1)(f) of the Act for the Vendor to offer the farm land or section 12 interest for acquisition by New Zealanders on the open market.

The purpose of the farm land advertising criterion is to give New Zealand investors an opportunity to try to acquire farm land.

SunPork has a pre-emptive right pursuant to a Shareholders Agreement to acquire any shares in the Target that the Vendor proposes to sell. Accordingly, such advertising would not be genuine as the shares would not genuinely be available for New Zealanders to acquire in these circumstances as SunPork would be extremely unlikely and unwilling to waive its pre-emptive rights.

In this case, New Zealand investors will not have a realistic opportunity to acquire the Vendor's minority share in the Target. Accordingly, advertising the Vendor's shares in the Target will not realistically increase the opportunity for New Zealand investors to acquire an interest in the farm land.

Advertising the Vendor's minority share in the Target would also risk putting prospective purchasers to the unnecessary cost of investigating the assets, inspecting the land, and undertaking due diligence in circumstances where a sale of the shares to them would be extremely unlikely.