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**Land Information  
New Zealand**  
*Toitū te whenua*

## LINZ Briefing: Overseas Investment Office's investigation of UBNZ Assets Holdings Limited

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<b>Date:</b>	29 August 2012	<b>Priority:</b>	High
<b>Deadline:</b> NA			

### Purpose

This purpose of this briefing is to outline the process by which the Overseas Investment Office has investigated suspected breaches of the Overseas Investment Act 2005 by UBNZ Assets Holdings Limited, and others.

Actions sought		Deadline
Associate Minister of Finance	Note the contents of this brief.	NA
Minister for Land Information	Note the contents of this brief.	NA

### Contacts for discussion (if required)

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Name	Work phone	Mobile phone	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

## **Recommendations**

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1. I recommend that you **note** the contents of this briefing.

Brian Usherwood  
**General Manager, Crown Property and Investment**

Date: / /

**Noted**

**Noted**

Hon Dr Jonathan Coleman  
**Associate Minister of Finance**

Hon Maurice Williamson  
**Minister for Land Information**

Date: / /

Date: / /

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## Introduction

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1. Natural Dairy (NZ) Holdings Limited ("Natural Dairy") is a Cayman Islands registered, Hong Kong listed company which entered into agreements to acquire 20 farms ("the farms") owned by companies ("the Crafar companies") associated with the Crafar family in May 2009. Natural Dairy was never going to acquire the farms directly, instead, a New Zealand company, UBNZ Assets Holdings Limited ("UBNZ Assets"), controlled by May Wang (a New Zealand citizen), was going to acquire the farms, with Natural Dairy then acquiring all of the shares in UBNZ Assets.
2. Beginning in October 2008, Ms Wang and Jack Chen (a New Zealand permanent resident) marketed the farms for sale on behalf of the Crafar companies. In May 2009, Mr Chen became the Chief Executive of Natural Dairy, and less than two weeks later, UBNZ Assets agreed to acquire the farms from the Crafar companies, and Natural Dairy agreed to acquire the shares in UBNZ Assets.
3. The purchase of the first four farms came to be settled earlier than the remaining farms. The Overseas Investment Office ("OIO") considers that UBNZ Assets was an associate of Natural Dairy, and was not entitled to acquire these four farms without consent under the Overseas Investment Act 2005 ("2005 Act"). In doing so, the OIO considers that UBNZ Assets has committed offences against the 2005 Act.
4. Hong Kong's Independent Commission Against Corruption ("ICAC") has brought very serious charges against Ms Wang and Mr Chen, including alleging that Ms Wang and Mr Chen conspired to defraud Natural Dairy and its shareholders.
5. The OIO, Serious Fraud Office ("SFO") and ICAC have all conducted investigations into these matters. The purpose of this briefing is to outline the OIO's investigation and explain what action the OIO proposes to take in respect of the suspected breaches of the 2005 Act.

## An overview of the Overseas Investment Act 2005

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6. The 2005 Act regulates the acquisition of sensitive land by overseas persons and associates of overseas persons.
  - (a) Section 7 provides that 'overseas persons' include: companies incorporated outside New Zealand; and individuals who are not New Zealand citizens and not ordinarily resident in New Zealand.
  - (b) Section 8 provides that 'associates' of overseas persons include: persons who are controlled by an overseas person; agents, trustees, or representatives of overseas persons; persons acting jointly or in concert with overseas persons; and persons participating in an overseas investment as a consequence of any arrangement or understanding with an overseas person.
  - (c) Section 12 provides that an 'overseas investment in sensitive land' is the acquisition of sensitive land, or securities in an entity<sup>1</sup> that owns or controls sensitive land. Examples of 'sensitive land' include non-urban land larger than 5ha and land larger than 0.2ha that adjoins the foreshore.
7. Section 22 provides that each overseas person or associate making the investment must apply for consent. Consent must be obtained before the overseas investment is given effect under the transaction.

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<sup>1</sup> If the purchaser (either alone or together with its associates) has a 25% or more ownership or control interest in the target company; or the overseas purchaser (either alone or together with its associates) has an increase in an existing 25% or more ownership or control interest in the target; or the target becomes an overseas person.

8. Section 41 provides that, if the regulator has reason to suspect that a person has committed an offence under the 2005 Act, the regulator may, by notice in writing, require any person to provide documents and information that in the regulator's opinion may furnish evidence in relation to an offence.
9. Section 42 of the 2005 Act provides that it is an offence for a person required to apply for consent to give effect to an overseas investment transaction without consent. A person who commits an offence under section 42 is liable on conviction to a fine not exceeding \$300,000, or in the case of an individual, to imprisonment for a term not exceeding 12 months.
10. Section 47 provides that the High Court may order disposal of property if it is satisfied that a person has, in relation to property, contravened this Act or committed an offence under the 2005 Act.
11. Section 48 provides that the High Court may order a person to pay a civil penalty to the Crown or any other person specified by the court if they have contravened the 2005 Act or committed an offence under this Act. The court may order the person to pay a civil penalty not exceeding the higher of \$300,000 or any quantifiable gain made in relation to the property.

## **The UBNZ Group**

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12. The UBNZ Group comprised four key entities: the UBNZ Trust, UBNZ Trustee Limited ("UBNZ Trustee"), UBNZ Funds Management Limited ("UBNZ Funds"), and UBNZ Assets.
  - (a) the UBNZ Trust is a trust settled by Ms Wang. According to a High Court judgment, the UBNZ Trust was the means by which Ms Wang would profit from the farm transactions.
  - (b) UBNZ Trustee is a New Zealand company owned by Ms Wang. It was trustee of the UBNZ Trust until 23 December 2010.
  - (c) UBNZ Funds is a New Zealand company previously owned by Ms Wang, Mr Chen and others, and more recently owned by the UBNZ Trust.
  - (d) UBNZ Assets is owned by the UBNZ Trust.

## **Background**

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### ***Ms Wang and Mr Chen marketed the farms***

13. Ms Wang and Mr Chen, along with one other person, began marketing the farms for sale in October 2008. This was prior to the Crafar companies being placed into receivership. Ms Wang and Mr Chen decided to use UBNZ Funds as the vehicle for the 'dairy farm project'. At the time, Ms Wang had a 40% indirect shareholding in UBNZ Funds, while Mr Chen had a 30% indirect shareholding in UBNZ Funds.<sup>2</sup>
14. By early May 2009, it is clear that Natural Dairy had become involved in the acquisition of the farms.

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<sup>2</sup> Neither Ms Wang nor Mr Chen owned their shares in UBNZ Assets directly. Each owned shares in a company which in turn owned the shares in UBNZ Assets. Ms Wang was the sole shareholder of UBNZ Trustee, which owned 40% of the shares in UBNZ Assets, while Mr Chen owned 50% of the shares in NZ Global Financial Investment Group Limited, which owned 60% of the shares in UBNZ Assets.

***Mr Chen left UBNZ, and joined Natural Dairy***

15. On 7 May 2009, Mr Chen was appointed as the Chief Executive, executive director and chairman of Natural Dairy.
16. On 8 May 2009, Mr Chen transferred his 30% indirect shareholding in UBNZ Funds to Ms Wang.

***UBNZ and Natural Dairy agreed to buy the farms***

17. Between 10 May 2009 and 22 May 2009, UBNZ Funds, UBNZ Assets, Natural Dairy and others entered into a series of agreements which collectively provided for:
  - (a) UBNZ Funds to acquire the farms from the Crafar companies (which were still not in receivership);
  - (b) UBNZ Funds to on-sell the farms to UBNZ Assets; and
  - (c) Natural Dairy to acquire all of the shares in UBNZ Funds.
18. By acquiring the shares in UBNZ Assets, Natural Dairy would effectively become the owner of the farms).
19. Despite the connection between Ms Wang and Mr Chen, Natural Dairy made a statement to the Hong Kong Exchange on 4 June 2009, saying:

To the best of the information, knowledge and belief of the Directors having made all reasonable enquiries, [UBNZ Trustee] and [UBNZ Funds] and their respective ultimate beneficial owners are third parties independent of the Company and its connected persons.
20. The acquisition of the four farms was settled on 10 and 15 February 2010. By this time, the Crafar company which owned two of the four farms was in receivership, and the transaction was settled by the receiver.

***Natural Dairy approached the OIO for non-binding guidance***

[REDACTED]

21. On 20 January 2010, the OIO was approached by a [REDACTED], a solicitor for Natural Dairy, seeking 'non-binding guidance' about the proposed purchase of four farms owned by the Crafar companies. The proposal was part of a larger transaction whereby 20 farms were to be acquired.
22. Mr [REDACTED]'s outline of the investment was accurate, but materially incomplete. What Mr [REDACTED] did not say that Mr Chen was involved with both the vendor and purchaser, did not say that the share sale agreement gave Natural Dairy considerable control over UBNZ Assets, and did not say that the farm purchase was being entirely funded by Natural Dairy.
23. A partner of Mr [REDACTED], [REDACTED], took exception to the OIO's concerns. He wrote to the OIO on 5 February 2010 insisting that the OIO express an unfettered view that the investment did not require consent under the 2005 Act. Mr [REDACTED] characterised Natural Dairy as a 'minor investor', and claimed that the OIO had misinterpreted the 2005 Act. Mr [REDACTED] copied his letter to the Minister of Finance, in what the OIO considers was an attempt to pressure the OIO into saying that the purchase of the farms did not require consent.

***OIO begins an investigation***

24. The OIO began investigating the purchase of the four farms on 19 March 2010.
25. Between 13 and 16 April 2010, the OIO issued seven notices under section 41 of the 2005 Act.

***First application for consent from UBNZ Funds, UBNZ Assets and Natural Dairy***

26. On 24 March 2010, the OIO received an application for consent from UBNZ Funds, UBNZ Assets and Natural Dairy.
27. On 31 March 2010, the OIO returned the application as the application was incomplete and incapable of being processed.
28. The incomplete application proved to be a useful source of information however. The application gave the OIO a set of sale and purchase agreements, from which the OIO could begin to analyse the true relationship between the UBNZ companies and Natural Dairy. The sale and purchase agreements showed that:
  - (a) Natural Dairy was funding the acquisition of farms by UBNZ Funds and UBNZ Assets;
  - (b) Natural Dairy had considerable control over UBNZ Assets, and
  - (c) the farms were being acquired by UBNZ Funds, and on-sold to UBNZ Assets at an approximately 100% mark-up.

***First request for information from ICAC***

- [REDACTED]
29. On 30 March 2010, ICAC wrote to New Zealand officials asking for help investigating alleged corruption by 'senior officials' of Natural Dairy. ICAC asked for [REDACTED], among other things.
  30. ICAC's request was passed to the OIO. The OIO provided the [REDACTED] information to ICAC on 6 May 2010.
  31. [REDACTED]

***OIO takes its concerns to the Police and the SFO***

32. The OIO began an investigation into the purchase of the four farms on 19 March 2010.
33. Between 13 and 16 April 2010, the OIO issued seven notices under section 41 of the 2005 Act.
34. By May 2010, the OIO had become concerned about the legitimacy of the UBNZ/Natural Dairy transactions. In particular, the OIO was concerned about the overpayment for the farms by UBNZ Assets, the overpayment for shares in UBNZ Assets by Natural Dairy, and the allegation of secret commissions being investigated by ICAC.
35. These concerns led to discussions with the Police. The Police conducted a brief investigation, agreed with the OIO that there were grounds for concern, and concluded that the matter should be referred to the SFO.

36. On 12 August 2010, officials from the OIO and the Police met officials from the SFO. A confidential briefing was provided to the SFO by the OIO on 20 August 2010.

***UBNZ Assets tries to establish that it is not an associate of Natural Dairy***

37. On 1 June 2010, UBNZ Assets applied to the High Court for a declaration that, provided it executed certain documents, it would not be an associate of Natural Dairy. In the OIO's view, the documents were intended to break the links which had, until then, made UBNZ Assets and Natural Dairy associates.
38. The High Court rejected the application on 11 June 2010, finding that Natural Dairy had 'absolute control' over the ownership of UBNZ Assets'. The decision was appealed by UBNZ Assets, and a hearing date of 13 April 2011 was set.

***Second and third applications for consent from UBNZ Funds, UBNZ Assets and Natural Dairy***

39. On 6 July 2010, the OIO received an application for consent under the 2005 Act relating to the 16 farms that had not yet been acquired.
40. On 10 August 2010, the OIO received an application for *retrospective* consent under the 2005 Act relating to the four farms that had previously been acquired without consent.

***Second request for information from ICAC***

[REDACTED]

41. On 10 September 2010, ICAC again wrote to New Zealand officials seeking information. Among other things, ICAC asked for [REDACTED].
42. Again, ICAC's request was passed to the OIO. The OIO provided the [REDACTED] information on 11 October 2010.

***SFO decides to investigate***

43. On 21 October 2010 the SFO confirmed that, acting on information received from the OIO, it had commenced an investigation into transactions between Natural Dairy and the UBNZ Group.

***Ministers decline to grant consent***

44. On 21 December 2010, the OIO recommended that the relevant Ministers decline both applications for consent under the 2005 Act. The OIO's recommendation was that the 'good character' criterion was not met.
45. The OIO's particular concerns were that:
  - (a) ICAC and the SFO were investigating alleged corruption by 'senior officials' of Natural Dairy;
  - (b) Natural Dairy had made inaccurate statements to the Hong Kong Exchange;
  - (c) Ms Wang was facing charges brought by the Ministry of Economic Development in respect of her involvement in Dynasty Group Limited;
  - (d) Ms Wang may have committed offences against the Tax Administration Act 1994 by failing to file more than 300 tax returns;

(e) The High Court (in respect of insolvency proceedings) had found that Ms Wang approached the High Court in an 'evasive' and 'disingenuous' manner, and with 'a singular lack of candour'.

46. On 22 December 2010, the relevant Ministers accepted the OIO's recommendation and rejected the two applications for consent under the 2005 Act. The decision was announced on 23 December 2010.

***UBNZ Assets drops its appeal of the finding that that it is an associate of an overseas person, Natural Dairy***

47. On 30 March 2011, after extensive discussions, UBNZ Assets and Natural Dairy discontinued the appeal and agreed to pay the OIO costs in both the High Court and the Court of Appeal. The discontinuation of the appeal removed a major obstacle to the completion of the OIO's investigation.

***OIO seeks Crown Law Office advice about its enforcement options***

48. On 18 May 2011, the OIO wrote to the Crown Law Office seeking advice about the enforcement options provided for in the 2005 Act. This advice was sought in light of the OIO coming to a preliminary view that offences had been committed by UBNZ Assets and others.

49. The Crown Law Office's advice highlighted what could be described as a drafting error in the 2005 Act. While it was intended that section 48 not be subject to a limitation period<sup>3</sup>, no account was taken of the fact that the Limitation Act 1950 imposed a limitation period on the section 48 (civil penalty) remedy. The effect of the error is that the civil penalty remedy is not available in this case (the two years having already expired).<sup>4</sup>

***OIO reconsiders its enforcement options***

50. In light of the unavailability of the civil penalty, the OIO considered bringing prosecutions instead of seeking civil penalties. The OIO's conclusion was that while the evidence it had was sufficient to seek the disposal and civil penalty remedies (which need to be proven on the balance of probabilities only) it was not sufficient to support a prosecution (which need to be proven beyond reasonable doubt).

51. Accordingly, the OIO issued a further seven notices under section 41 of the 2005 Act requiring persons to provide the OIO with documents and information. These notices were issued between 25 and 31 October 2011.

***Ms Wang and Mr Chen charged in Hong Kong***

52. On 17 October 2011, ICAC laid charges against Ms Wang and Mr Chen. On 19 January 2012, an employee of Natural Dairy, Eric Yee, was charged. If convicted, Mr Wang, Mr Chen and Mr Yee could be imprisoned for up to 14 years.

53. In summary, the charges are:

(a) Ms Wang and Mr Chen are charged with conspiring to defraud Natural Dairy and its shareholders, by claiming that UBNZ Trustee, UBNZ Funds and Ms Wang, were independent of Natural Dairy and Mr Chen, and not disclosing that Ms Wang and Mr Chen had an arrangement to market the farms for sale.

<sup>3</sup> The Treasury was responsible for instructing the Parliamentary Counsel Office to draft the 2005 Act. The 2005 Act was drafted before the OIO came into existence.

<sup>4</sup> Note that the limitation issue is only relevant to offences that occur prior to 2011. The Limitation Act 2009, which replaces the Limitation Act 1950, extends the limitation period to 6 years for offences committed on or after 1 January 2011.



- (b) Ms Wang, Mr Chen and Mr Yee are charged with conspiring to defraud Natural Dairy and its shareholders by claiming that the 20 farms had been making a profit of about NZ\$18.5 million for the financial year ending 31st May 2009 and not disclosing and concealing the true financial position of the farms.
- (c) Mr Chen had been charged with dealing with the proceeds of crime.
- (d) Ms Wang and Mr Chen have been charged with conspiring to defraud in relation to the conversion of convertible notes into shares in Natural Dairy.

54. A copy of the publicly available information about the charges is attached.

***Hong Kong proceedings under the Organised and Serious Crimes Ordinance***

[REDACTED]

55. On 26 October 2011, the High Court of Hong Kong made a restraint order prohibiting Ms Wang, Mr Chen, Ye Fang (Mr Chen's wife), Goldmate Securities (USA) Ltd and Super Worth International Ltd (collectively, "the respondents") from disposing of, dealing with or diminishing the value of their property in Hong Kong or elsewhere personally, through others acting on their behalf, on their instructions or with their encouragement, or in any other way. The order applies to property in the respondents' own names and in the names of others.

56. [REDACTED]

57. [REDACTED]

58. [REDACTED]

59. [REDACTED]

[REDACTED]

[REDACTED]

60. [REDACTED]

61. [REDACTED]

***Investigation is completed***

- [REDACTED]
62. Between December 2011 and April 2012, work on the investigation slowed as resources were redeployed to the work on Milk New Zealand Holding Limited's proposed acquisition of the remaining 16 farms. These resources were used to help draft the recommendation to Ministers, to help defend the judicial review brought by a group led by Sir Michael Fay, redraft the OIO's recommendation, defend the appeal of the judicial review decision, and defend a further a judicial review sought by the Fay led group.
  63. In May 2012, the OIO issued five further notices under section 41 to gather the last information required in order to make a prosecution decision. The responses to these notices brought the OIO's file to more than 6400 documents.
  64. The OIO completed its investigation on 2 August 2012.
  65. The OIO's conclusion was that while offences had been committed, prosecutions were not warranted, and the correct action was to bring proceedings under section 47 of the 2005 Act seeking disposal of the four farms.
  66. On 3 August 2012, the OIO sought the approval of the Solicitor-General to instruct the Auckland Crown Solicitor to begin disposal proceedings on its behalf. The Solicitor-General's approval was required under paragraph 6(c) of the Cabinet Directions for the Conduct of Crown Legal Business 1993.
  67. On 10 August 2012, the Solicitor-General told the OIO that she was prepared to grant approval subject to [REDACTED].
  68. [REDACTED].

**Offences and Enforcement Options**

69. The OIO's view is that:
  - (a) UBNZ Funds and UBNZ Assets each committed offences against section 42 by giving effect to overseas investments without consent.
  - (b) Ms Wang committed offences against section 42 by aiding and abetting UBNZ Funds and UBNZ Assets to give effect to overseas investments without consent.
70. The OIO considers that prosecutions are not appropriate.
71. The three primary candidates for prosecution are UBNZ Funds, UBNZ Assets and Ms Wang. The alleged breaches of the 2005 Act are in fact just one step in the conduct which has resulted in fraud charges being laid against Ms Wang and Mr Chen in Hong Kong. The OIO considers that these charges are a sufficient response to their action.
72. The OIO would review its position if Ms Wang were not convicted in Hong Kong.

## Timeline of key events

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<b>Oct-2008</b>	Ms Wang and Mr Chen begin marketing the Crafar farms for sale (see paragraphs 13 and 14 for more information).
<b>7-May-2009</b>	Mr Chen appointed as the Chief Executive, executive director and chairman of Natural Dairy (see paragraph 15).
<b>8-May-2009</b>	Mr Chen transferred his 30% indirect shareholding in UBNZ Funds to Ms Wang (see paragraph 16).
<b>May-2009</b>	UBNZ Funds, UBNZ Assets, Natural Dairy and others enter into agreements which collectively provide for the acquisition of the Crafar farms (see paragraphs 17 to 19 for more information).
<b>20-Jan-2010</b>	A solicitor for Natural Dairy seeks non-binding advice from the OIO about whether the acquisition of the Crafar farms needed consent under the 2005 Act (see paragraphs 0 to 23 for more information).
<b>10-Feb-2010 15-Feb-2010</b>	The acquisition of the four farms is settled (see paragraph 20 for more information).
<b>19-Mar-2010</b>	OIO begins an investigation (see paragraph 24).
<b>24-Mar-2010</b>	OIO receives an application for consent from UBNZ Funds, UBNZ Assets and Natural Dairy (see paragraph 26).
<b>31-Mar-2010</b>	OIO returns application to the applicants as it did not contain sufficient information to allow it to be processed (see paragraphs 27 and 28 for more information).
<b>30-Mar-2010</b>	ICAC writes to New Zealand officials asking for help investigating alleged corruption by 'senior officials' of Natural Dairy (see paragraph 0 for more information).
<b>13-Apr-2010 – 19-Apr-2010</b>	OIO issues seven notices under section 42 of the 2005 Act (see paragraph 25).
<b>6-May-2010</b>	OIO provides information to ICAC (see paragraph 30 for more information).
<b>May-2010</b>	OIO approaches the Police about its concerns about the bona fides of Natural Dairy (see paragraphs 31 to 35 for more information).
<b>01-Jun-2010</b>	UBNZ Assets and Natural Dairy seek a declaration from the High Court that a proposed restructure of the transaction would not require OIO consent (see paragraph 37 for more information).
<b>11-Jun-2010</b>	The High Court dismisses the declaration application by UBNZ Assets and Natural Dairy (see paragraph 38 for more information).
<b>06-Jul-2010</b>	The OIO receives a replacement application for consent from UBNZ Assets and Natural Dairy. The application relates to 16 of the 20 farms being acquired. (See paragraph 39).
<b>10-Aug-2010</b>	The OIO receives an application for retrospective consent from UBNZ Assets and Natural Dairy. The application seeks retrospective consent for the remaining four farms. (See paragraph 40).
<b>12-Aug-2010</b>	Officials from the OIO and the Police met officials from the SFO (see paragraph 36).

<b>20-Aug-2010</b>	The OIO provides a confidential written briefing to the SFO (see paragraph 36).
<b>10-Sep-2010</b>	ICAC again writes to New Zealand officials seeking information (see paragraph 0 for more information).
<b>11-Oct-2010</b>	OIO provides information to ICAC (see paragraph 42 for more information).
<b>21-Oct-2010</b>	SFO announces investigation into Natural Dairy and UBNZ Assets (see paragraph 43 for more information).
<b>21-Dec-2010</b>	OIO recommended that the relevant Ministers decline both applications for consent (see paragraphs 44 and 45)
<b>22-Dec-2010</b>	UBNZ Assets and Natural Dairy's two applications declined by the relevant Ministers (see paragraph 46).
<b>30-Mar-2011</b>	UBNZ Assets discontinues its appeal of the finding that that it is an associate of an overseas person, Natural Dairy (see paragraph 47).
<b>18-May-2011</b>	OIO seeks Crown Law Office advice about enforcement provisions of the 2005 Act (see paragraphs 48 and 49 for more information).
<b>17-Oct-2011</b>	Ms Wang and Mr Chen charged with offences in Hong Kong. The charges relate to the proposed purchase of the Crafar farms by UBNZ Assets and Natural Dairy. (See paragraphs 52 and 53 for more information).
<b>25-Oct-2011 - 31-Oct-2011</b>	OIO issues seven notices under section 41 of the 2005 Act (see paragraphs 50 and 51 for more information)
<b>26-Oct-2011</b>	Hong Kong's High Court makes a restraint order prohibiting Ms Wang, Mr Chen, and others from disposing of, dealing with or diminishing the value of their property in Hong Kong or elsewhere (see paragraphs 55 to 59 for more information).
<b>[REDACTED]</b>	<b>[REDACTED]</b>
<b>May-2012</b>	OIO issues five further notices under section 41 of the 2005 Act (see paragraphs 0 and 63 for more information).
<b>2-Aug-2012</b>	OIO completes its investigation (see paragraph 64).
<b>3-Aug-2012</b>	OIO seeks the approval of the Solicitor-General to begin proceedings under section 47 of the 2005 Act (see paragraph 66 or more information).
<b>10-Aug-2012</b>	Solicitor-General tells the OIO that she is prepared to grant approval subject to <b>[REDACTED]</b> (see paragraphs 67 and 68 for more information)

## **Charge 1 (Against D1 and D2)**

### **Statement of Offence**

Conspiracy to defraud, contrary to Common Law and punishable under section 159C(6) of the Crimes Ordinance, Cap.200.

### **Particulars of Offence**

CHEN Keen and HAO May (formerly known as WANG May Yan), between the 7<sup>th</sup> day of May 2009 and the 16<sup>th</sup> day of December 2010, both dates inclusive, conspired together, in Hong Kong, to defraud China Jin Hui Mining Corporation Limited (“CJHM”), its directors, existing shareholders, potential investors and the Stock Exchange of Hong Kong Limited by dishonestly,

- (a) falsely representing in announcements and circulars issued by CJHM that UBNZ Trustee Limited and UBNZ Funds Management Limited and their respective ultimate beneficial owners, namely the said HAO May, were third parties independent of the said CJHM and its connected persons, namely the said CHEN Keen; and,
- (b) not disclosing and concealing that the said CHEN Keen and HAO May had an pre-existing agreement dated 8<sup>th</sup> October 2008 with Latitude Asia Limited (BVI) to share in commission arising from or received through the sale or purchase of dairy farms of the CraFarm Group in New Zealand (“the Farms”),

thereby inducing CJHM to purchase the Farms through the acquisition of UBNZ Assets Holdings (HAO May’s company), without knowing the true extent of the interest of the said CHEN Keen and HAO May in the said acquisition.

**Charge 2 (Against D1, D2 and D3)**

**Statement of Offence**

Conspiracy to defraud, contrary to Common Law and punishable under section 159C(6) of the Crimes Ordinance, Cap.200.

**Particulars of Offence**

CHEN Keen, HAO May (formerly known as WANG May Yan) and YEE Wenjye (also known as YU Wenjie), between the 7<sup>th</sup> day of May 2009 and the 2<sup>nd</sup> October 2009, both dates inclusive, conspired together, in Hong Kong, to defraud China Jin Hui Mining Corporation Limited (“**CJHM**”), its directors, existing shareholders, potential investors and the Stock Exchange of Hong Kong Limited by dishonestly,

- (a) falsely representing that dairy farms owned by the CraFarms Group in New Zealand (“**the Farms**”) had been making a profit of about NZ\$18.5 million for the financial year ending 31<sup>st</sup> May 2009; and,
- (b) not disclosing and concealing the true financial position of the Farms,

thereby inducing CJHM to purchase the Farms through the acquisition of UBNZ Assets Holdings Limited without knowing the true financial position of the said Farms.

**Charge 3 (Against D1, D2 and D4)**

**Statement of Offence**

Conspiracy to defraud, contrary to Common Law and punishable under section 159C(6) of the Crimes Ordinance, Cap.200.

**Particulars of Offence**

CHEN Keen, HAO May (formerly known as WANG May Yan) and NG Yat-fung, between the 1<sup>st</sup> day of August 2010 and the 3<sup>rd</sup> day of September 2010, both dates inclusive, in Hong Kong, conspired together and with LUO Ji, to defraud Computershare Hong Kong Investors Services Limited (“Computershare”), by dishonestly, falsely representing that the Board of Directors of Natural Dairy (NZ) Holdings Limited (formerly known as China Jin Hui Mining Corporation Limited), had given consent to convert Convertible Note-A and Convertible Note-B issued in favour of UBNZ Trustee Limited and others, thereby inducing Computershare to convert the said Convertible Note-A and Convertible Note-B into Natural Dairy (NZ) Holdings Limited shares in favour of the convertible notes bearers.

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**Charge 4 (Against D1)**

**Statement of Offence**

Dealing with property known or reasonably believed to represent proceeds of an indictable offence, contrary to sections 25(1) and 25(3) of the Organized and Serious Crimes Ordinance, Cap.455.

**Particulars of Offence**

CHEN Keen, between the 2<sup>nd</sup> day of March 2010 and the 9<sup>th</sup> day of March 2010, both dates inclusive, in Hong Kong, knowing or having reasonable grounds to believe that property, namely a chose in action in the sum of \$73,736,252.56 Hong Kong currency, being a credit balance in the account numbered 072-718-010001759 maintained with the Industrial and Commercial Bank of China (Asia) Limited in the name of Goldmate Securities (USA) Limited, in whole or in part, directly or indirectly, represented the proceeds of an indictable offence, dealt with the said property.

Dated this 18<sup>th</sup> Day of May 2012

(Laura NG)

Senior Public Prosecutor

Released under the  
Official Information Act 1982





HCMP 2111 of 2011

**IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO. 2111 OF 2011**

26 OCT 2011

**IN THE MATTER OF THE  
ORGANIZED AND SERIOUS CRIMES ORDINANCE (CAP. 455)  
AND  
IN THE MATTER OF**

**Male CHEN Keen** Respondent 1 ("R1")  
**(Holder of Hong Kong Identity Card No. R369722(2))**

**Female HAO May** Respondent 2 ("R2")  
**(Holder of New Zealand Passport No. LA751405 and  
formerly known as WANG May Yan, holder of New  
Zealand Passport No. EB552557)**

**Female YE Fang** Respondent 3 ("R3")  
**(Holder of Hong Kong Identity Card No. R499446(8))**

**Goldmate Securities (USA) Limited** Respondent 4 ("R4")  
**(Company Registry No. 588579)**

**Super Worth International Limited** Respondent 5 ("R5")  
**(BVI Company No. 1530766)**

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**RESTRAINT ORDER PROHIBITING  
DISPOSAL OF ASSETS IN HONG KONG AND ELSEWHERE  
[S.15 of the Organized and Serious Crimes Ordinance, Cap. 455]**

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## **IMPORTANT NOTICE TO THE RESPONDENTS**

(1) This Order prohibits you from dealing with your property in the Hong Kong Special Administrative Region (“Hong Kong”) or outside Hong Kong.

(2) The Order is subject to any exceptions, which are set out in the Order. You should read the whole of this document carefully. You are advised to consult a solicitor as soon as possible. You have the right to ask the Court to vary or discharge this Order.

(3) If you disobey this Order, you may be found guilty of Contempt of Court and you may be sent to prison or fined or your property may be seized. It is now a criminal offence to deal with property, which is subject to a restraint order.

**Before the Honourable Madam Justice M. POON in Chambers**

**(Not Open to Public)**

### **ORDER**

An application was made on the 26<sup>th</sup> day of October 2011 by Assistant Director of Public Prosecutions (Ag.) for the Secretary for Justice, to the Judge who read the draft order, and the affirmation listed in Schedule 1 and accepted the undertakings of the Secretary for Justice in Schedule 2 at the end of this Order. After hearing the application, the Judge made the following Order:-

**IT IS ORDERED** that:-

### **RESTRICTION ON DISPOSAL OF PROPERTY**

1. The Respondents must not :

- (a) remove from Hong Kong any of the property which is located in Hong Kong whether in their own names or not, and whether solely or jointly owned,

and

- (b) in any way dispose of, or deal with, or diminish the value of any of their property, which is located within Hong Kong or outside Hong Kong, whether in their own names or not, and whether solely or jointly owned. Without prejudice to the generality of the foregoing, this prohibition includes the following property in particular :

**R1, R3 and R4**

**(a) Cash Bail**

HK\$ 5 million deposited with the Eastern Magistracy.

**(b) Credit balance in bank accounts held by R1**

<u>Item</u>	<u>Bank</u>	<u>Account No.</u>	<u>Balance</u> <u>(HK\$)</u>
1	Standard Chartered Bank (Hong Kong) Limited	003-972-1-995734-4	\$14,215,522.01 (as on 12.3.2011)
2	Standard Chartered Bank (Hong Kong) Limited	003-972-0-998634-1	\$899 (as on 12.3.2011)
3	Standard Chartered Bank (Hong Kong) Limited	003-972-1-995733-6	US\$115.74 (HK\$902.77 @7.8) (as on 12.3.2011)

<u>Item</u>	<u>Bank</u>	<u>Account No.</u>	<u>Balance (HK\$)</u>
4	Nanyang Commercial Bank Limited	043-508-1-018193-0	\$63,624.32 (as on 11.10.2011)
5	Nanyang Commercial Bank Limited	043-508-0-004736-5	\$30,579.24 (as on 11.10.2011)
6	Citibank (HK) Limited	12675210	\$3.1 (as at 9.3.2011)
		<b>Total</b>	<b>\$14,311,530.44</b>

**(c) Stock and shares in securities account held by R1**

<u>Item</u>	<u>Securities company</u>	<u>Account No.</u>	<u>Balance (HK\$)</u>
1	Haitong International Securities Co Ltd.	02-0154560-30	Current account: \$166,138.42  Securities value:- \$4,800,435.80 (as on 1.3.2011)
2	Haitong International Securities Co Ltd.	02015456022	\$0.38 (as on 1.3.2011)
3	Sun Hung Kai Investment Services Limited	06357812-0001	\$60.74 (as on 18.2.2011)
		<b>Total</b>	<b>\$4,966,635.34</b>

**(d) Real property held by of R1**

<b>Address</b>	<b>Registered Owner(s)</b>	<b>Date of Registration</b>	<b>Purchase Value</b>	<b>Market value as at</b>
<b>Lot No.:</b> Kowloon Inland Lot No. 11055  <b>Share of the Lot:</b> 175/74479  <b>Address:</b> Flat A on 28 <sup>th</sup> Floor of Tower 1, Harbourfront Landmark, No. 11 Wan Hoi Street, Kowloon.	R1	28.8.2007	HK\$23,880,000	HK\$33,500,000 (as on 27.9.2011)

**(e) Credit balance in bank account held by R3, which is under the effective control of R1**

<b><u>Item</u></b>	<b><u>Bank</u></b>	<b><u>Account No.</u></b>	<b><u>Balance (HK\$)</u></b>
1	HSBC	812-004570-888 (consolidated account)	\$52,019,184.92 (as on 3.9.2011)

**(f) Credit balance in bank accounts held by R4, which are under the effective control of R1**

<b><u>Item</u></b>	<b><u>Bank</u></b>	<b><u>Account No.</u></b>	<b><u>Balance (HK\$)</u></b>
1	ICBC (Asia) Ltd	718-010-00175-9	\$969.81 (as on 31.8.2011)
2	ICBC (Asia) Ltd	718-030-00228-8	\$2,112.42 (as on 16.8.2011)
		<b>Total</b>	<b>\$3,082.23</b>

**R2 and R5**

**(a) Cash Bail**

HK\$ 5 million deposited with the Eastern Magistracy.

**(b) Credit balance in bank accounts held by R2**

<u>Item</u>	<u>Bank</u>	<u>Account No.</u>	<u>Balance (HK\$)</u>
1	ICBC (Asia) Ltd	718-800-10359-0 (Consolidated account)	\$3,564,775.22 (as on 23.9.2011)
2	Bank of China (Hong Kong) Limited	875-0-041389-3	\$5,000.00 (as on 23.3.2010)
3	Bank of China (Hong Kong) Limited	875-1-146130-0	\$1,319.70 (as on 20.8.2010)
		<b>Total</b>	<b>\$3,571,094.92</b>

**(c) Credit balance in bank accounts held by R5, which is under the effective control of R2**

<u>Item</u>	<u>Bank</u>	<u>Account No.</u>	<u>Balance (HK\$)</u>
1	ICBC (Asia) Ltd	718-502-00465-0	\$569,699.65 (as on 31.8.2011)
2	ICBC (Asia) Ltd	718-520-00508-4	\$1,848.06 (as on 31.8.2011)
3	ICBC (Asia) Ltd	718-530-00227-1	NZ\$8,962.03 (HK\$55,923 @ 6.24) (as on 31.8.2011)
		<b>Total</b>	<b>\$627,470.71</b>

**DISCLOSURE OF INFORMATION**

2. On or before the 30<sup>th</sup> day of December 2011, the Respondents shall serve upon the Secretary for Justice until a further Order of the Court, an affidavit / affirmation disclosing the full value of any salary or other earnings, together with any money, goods or other assets whatsoever which are held by them, whether in their own names or on their behalf by some other person or company, and whether located within or outside Hong Kong, and identifying with full particularity the nature and location of such assets and in whose name those assets are held and the sources from which such assets are derived and without prejudice to the generality of the foregoing :-

- (a) details of all accounts held with banks, deposits taking companies or other financial institutions whether located within or outside Hong Kong, including details sufficient to identify the accounts, the present balance of the accounts and any encumbrances on the accounts;
- (b) particulars, including addresses, of all real property, whether freehold or leasehold, in which the Respondents have any proprietary interest, the nature and extent of that interest and details of any mortgage or charge thereon stipulating any sum loaned in respect of such property and how much is outstanding. Full particulars of any rent paid to them, their servants or agents by any person including which account such rent is paid into or how such rent is otherwise applied;
- (c) particulars of all securities, including but not limited to unit trusts, shares or debentures in any company or corporation, public or private, whether incorporated in Hong Kong or elsewhere,

insurance policies and any other deposits or investments held by them;

- (d) particulars of all personal property including but not limited to jewellery, cash, motor vehicles, antiques or other items of value; and
- (e) particulars of any monies owed to them by other persons or companies or vice versa.

- 3. (a) No disclosure made in compliance with this order shall be used as evidence against the Respondents in any criminal prosecution, except in proceedings under section 31 of the Crimes Ordinance, Cap. 200.
- (b) The information disclosed in compliance with this order shall not be used for any purpose other than these proceedings and confiscation proceedings, and shall not be disclosed or otherwise divulged to any third party without leave of this court.

#### QUALIFICATIONS

- 4. Nothing in this Order shall :-
  - (a) prevent any person affected by this Order, including any financial institution, from paying any money restrained by this Order to the party responsible for enforcement of any Confiscation Order which may hereafter be made by the Court of First Instance or District Court against the Respondent in satisfaction of part or the whole of the said Confiscation Order; and



- (b) prevent the levy of distress upon any goods subject to this Order for the purpose of enforcement of any Confiscation Order which may hereafter be made by the Court of First Instance or District Court.

#### **DURATION OF THIS ORDER**

5. This Order will remain in force unless it is varied or discharged by a further Order of the Court. The return day for the inter partes hearing of this Order shall be fixed on the 26<sup>th</sup> day of March 2012.

#### **EFFECT OF THIS ORDER**

6. A Respondent who is an individual who is ordered not to do something must not do it himself/herself or in any other way. He/She must not do it through others acting on his/her behalf or on his/her instructions or with his/her encouragement.

#### **THIRD PARTIES**

7. **Effect of this Order.** It is a Contempt of Court for any person notified of this Order knowingly to assist in or permit a breach of this Order. Any person doing so may be imprisoned or fined, or have his assets seized. A person who knowingly deals in any realizable property in contravention of this order commits an offence and is liable :-

- (a) on conviction upon indictment to a fine of HK\$500,000 or to the value of the realizable property the subject of the restraint order concerned which has been dealt with in contravention of that order, whichever is greater, and to imprisonment for 5 years; or

- (b) on summary conviction to a fine of HK\$250,000 and to imprisonment for 2 years.

### **SERVICE**

8. The Order is to be served upon Respondents 1, 2 and 3 at his/her place of residence or place of custody or such place as he/she may be located by an authorized officer as soon as practicable; and upon Respondents 4 and 5 at their respective registered offices.

9. Notice of this Order shall be given to persons and companies affected by it.

### **UNDERTAKINGS**

10. The Secretary for Justice gives to the Court the undertakings set out in Schedule 2 to this Order.

### **VARIATION OR DISCHARGE OF THIS ORDER**

11. The Respondents, or anyone affected by this Order, may apply to the Court at any time to vary or discharge this Order (or so much of it as affects that person), but anyone wishing to do so should give not less than 2 clear days' notice before the date fixed for the application to the Secretary for Justice.

### **REGISTRATION**

12. The Secretary for Justice shall be at liberty to lodge for registration of this Order at the relevant government registry/ies.

**NAME AND ADDRESS OF COUNSEL ACTING ON BEHALF OF THE  
SECRETARY FOR JUSTICE**

13. Counsel for the Secretary for Justice is :-  
Paul HO, Assistant Director of Public Prosecutions (Ag.)  
Prosecutions Division, Department of Justice  
7/F., High Block, Queensway Government Offices,  
66 Queensway, Hong Kong.  
Tel : 2867 2352  
Fax: 2536 8429

**INTERPRETATION OF THIS ORDER**

14. In this Order "he", "him", or "his" include "she", "her", "hers" and "it" or "its" and "they", "them" or "their".
15. When there are two or more Respondents then (unless otherwise stated) :
- (a) references to "The Respondent" mean both or all of them;
  - (b) an Order requiring "The Respondent" to do or not to do anything requires each Respondent to do it or not to do it; and
  - (c) a requirement relating to service of this Order, or of any legal proceedings on "The Respondent" means on each of them.

**SCHEDULE 1**

**Affirmation**

The Judge read the affirmation of ICAC Chief Investigator GIDWANI Sudir Gulab dated the 24<sup>th</sup> day of October 2011 before making this Order.

**SCHEDULE 2**

**Undertakings given to the Court by the Secretary for Justice**

AND UPON the undertaking of the Secretary for Justice through the said Counsel :

1. To serve upon any banks which may hold accounts belonging to the Respondents and where applicable the Land Registry, the Companies Registry, the Transport Department and any third parties of which the Secretary for Justice may be given notice, a copy of this Order.
2. To pay the reasonable costs, damages, and expenses of any person or body, other than the Respondents, to whom notice of this Order may be given in ascertaining whether any assets that are the subject of the Order are within his possession or control or which are incurred by him in complying with the terms of this Order.
3. If for any reason this Order ceases to have effect, the Secretary for Justice will forthwith take all reasonable steps to inform, in writing, any person or company to whom he has given notice of this Order, or who he has reasonable grounds for supposing may act upon this Order, that it has ceased to have effect.

Dated this 26<sup>th</sup> day of October 2011.

Registrar, High Court

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO. 2111 OF 2011

IN THE MATTER OF THE  
ORGANIZED AND SERIOUS CRIMES ORDINANCE (CAP. 455)  
AND  
IN THE MATTER OF

Male CHEN Keen Respondent 1 ("R1")  
(Holder of Hong Kong Identity Card No. R369722(2))

Female HAO May Respondent 2 ("R2")  
(Holder of New Zealand Passport No. LA751405 and  
formerly known as WANG May Yan, holder of New  
Zealand Passport No. EB552557)

Female YE Fang Respondent 3 ("R3")  
(Holder of Hong Kong Identity Card No. R499446(8))

Goldmate Securities (USA) Limited Respondent 4 ("R4")  
(Company Registry No. 588579)

Super Worth International Limited Respondent 5 ("R5")  
(BVI Company No. 1530766)

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ORDER

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Filed this 26<sup>th</sup> day of October 2011 at 3:05 a.m./p.m.

Department of Justice  
7/F., High Block,  
Queensway Government Offices,  
66 Queensway,  
Hong Kong

Tel.: 2867 2352  
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