

DRAFT FOR CONSULTATION

Notice of Exemptions from Farm Land Offer Criterion (Pursuant to Section 20 of the Overseas Investment Act 2005) 2016

Pursuant to section 20(b) of the Overseas Investment Act 2005, the Minister of Finance and the Minister for Land Information give the following notice.

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Notice

1 Title

This notice is the Notice of Exemptions from Farm Land Offer Criterion (Pursuant to Section 20 of the Overseas Investment Act 2005) 2016.

2 Commencement

This notice comes into force 28 days after the date of its notification in the *Gazette*.

3 Interpretation

In this notice, unless the context otherwise requires,—

Act means the Overseas Investment Act 2005

family member, in relation to any person (A), means—

- (a) a person who is related to A by blood within the fourth degree of relationship; or
- (b) A's spouse, civil union partner, or de facto partner; or

- (c) a person who is the spouse, civil union partner, or de facto partner of a third party to whom A is related by blood within the fourth degree of relationship; or
- (d) the adopted child of A; or
- (e) the adopted child of a third party who is within the third degree of relationship to A

farm land securities, in relation to relevant land that is or includes farm land, means the securities to which the overseas investment relates (*see also* the definition of relevant land in section 6(1) of the Act)

FMC Act means the Financial Markets Conduct Act 2013

overseas group means a group that comprises an overseas person and 1 or more persons that are directly or indirectly wholly owned by that overseas person.

4 Exemption from farm land offer criteria

Every person is exempted from section 16(1)(f) of the Act for a transaction to the extent that giving effect to the transaction has any of the following effects:

- (a) the acquisition by an overseas person of farm land securities that are quoted on a licensed market (within the meaning of section 6(1) of the FMC Act);
- (b) the acquisition by an overseas person of farm land securities, where—
 - (i) the securities are acquired under an offer that is a regulated offer within the meaning of section 41 of the FMC Act or under an offer of financial products referred to in clause 19 of Schedule 1 of that Act; and
 - (ii) in the case of a regulated offer, a product disclosure statement for that offer was lodged with the Registrar of Financial Service Providers and given to investors in accordance with section 50 of the FMC Act; and
 - (iii) in the case of an offer of financial products referred to in clause 19 of Schedule 1 of the FMC Act, the notice referred to in clause 20 of Schedule 8 of the Financial Market Conduct Regulations 2014 has been given to the licensed market operator for that offer:
- (c) the acquisition by an overseas person of farm land securities, where—
 - (i) the takeovers code in force under the Takeovers Act 1993 applies to the acquisition; and
 - (ii) the acquisition is under an offer made to all holders of those securities other than the offeror (whether the offer is for all or some of the farm land securities):

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- (d) the acquisition by an overseas person of farm land securities, where the farm land to which the farm land securities relate has, in accordance with a procedure prescribed by regulations made under the Act, been offered for sale or acquisition on the open market to persons who are not overseas persons:
 - (e) the acquisition by an overseas person of farm land securities of a company or any other body corporate that owns or controls farm land, where, immediately before the transfer, the overseas person and the person from whom the farm land securities are acquired do not together have (directly or indirectly)—
 - (i) a beneficial entitlement to, or beneficial interest in, 50% or more of the farm land securities of the company or other body corporate; or
 - (ii) the right to exercise or control the exercise of 50% or more of the voting power at a meeting of the company or other body corporate; or
 - (iii) the right to control the composition of 50% or more of the board of directors (or other persons or body exercising powers of management, however described) of the company or other body corporate:
 - (f) the acquisition of farm land or farm land securities by an overseas person from a family member (whether or not the family member is an overseas person):
 - (g) the acquisition of farm land or farm land securities by an overseas person, where—
 - (i) the acquisition is from another member of the same group, another partner in the same partnership, or another member of the same joint venture as part of a reconstruction or reorganisation of that group, partnership, or joint venture; and
 - (ii) the group is an overseas group or the partnership or joint venture is an overseas person:
 - (h) the acquisition of farm land or farm land securities by an overseas person from another overseas person as part of a wider acquisition or merger, where—
 - (i) the wider acquisition or merger is being undertaken by other members (**relevant persons**) of the same overseas groups as those overseas persons; and
 - (ii) the wider acquisition or merger involves the acquisition of the whole or a substantial part of the specified securities in, or the business of, 1 or more relevant persons in 1 or more overseas jurisdictions; and

- (iii) each relevant person is incorporated outside New Zealand:
- (i) the acquisition of farm land or farm land securities by an overseas person who has applied for, and been granted, a permanent residence visa under the Immigration Act 2009 if, within 12 months after the grant of that visa, that person becomes ordinarily resident in New Zealand:
- (j) the acquisition by an overseas person (**A**) of a lease or any other interest (other than a freehold estate) in farm land, where—
 - (i) the lease or other interest is for a term of not more than 20 years (including rights of renewal, whether of the grantor or grantee); and
 - (ii) in the 20 years prior to the date of A's acquisition, where that farm land (or any part of it) was (or was part of) the relevant land in relation to any other overseas investment in sensitive land (**previous transaction**),—
 - (A) consent was obtained to that previous transaction; and
 - (B) that previous transaction was not exempt from the criterion in section 16(1)(f) of the Act and that criterion was complied with:
- (k) the acquisition by an overseas person (**A**) of farm land securities in a person (**P**) where,—
 - (i) at the date of A's acquisition, the only interest (other than an exempted interest) in farm land that is sensitive land (as defined in Schedule 1 of the Act) that P owns or controls (directly or indirectly) is a lease or any other interest (other than a freehold estate) for a term of not more than 20 years (including rights of renewal, whether of the grantor or grantee); and
 - (ii) in the 20 years prior to the date of A's acquisition, where that farm land (or any part of it) was (or was part of) the relevant land in relation to any other overseas investment in sensitive land (**previous transaction**),—
 - (A) consent was obtained to that previous transaction; and
 - (B) that previous transaction was not exempt from the criterion in section 16(1)(f) of the Act and that criterion was complied with.

5 Revocation

The Notice of Exemptions From Farm Land Offer Criteria Pursuant to Section 20 of the Overseas Investment Act 2005, made on 1 August 2005 and published in the *Gazette* on 11 August 2005, at pp 3018 and 3019, is revoked.

Dated at Wellington this day of 2016.

Minister of Finance.

Minister for Land Information.

Explanatory note

This note is not part of the notice, but is intended to indicate its general effect.

This notice, which comes into force on the 28th day after the date of its notification in the *Gazette*, sets out exemptions from section 16(1)(f) of the Overseas Investment Act 2005 (the **Act**). Section 16 of the Act sets out the criteria for an overseas investment in sensitive land. If the relevant land in relation to a proposed overseas investment in sensitive land is or includes farm land, section 16(1)(f) of the Act requires that the farm land or farm land securities be offered first for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations. However, that requirement does not apply to the extent that an exemption in this notice applies.

This notice—

- replaces the Notice of Exemptions From Farm Land Offer Criteria Pursuant to Section 20 of the Overseas Investment Act 2005 made on 1 August 2005 (the **2005 notice**). The 2005 notice is revoked. The exemptions in the 2005 notice are, in general, restated in this notice (in clause (4)(a) to (i)); however, some exemptions are updated in this notice to take into account changes in the law (for example, the regulation of financial market conduct);
- provides for 2 new exemptions from section 16(1)(f) of the Act. The new exemptions are in clause (4)(j) and (k). The first new exemption relates to the acquisition of a lease or any other interest (other than a freehold estate) in farm land for a term of not more than 20 years. The second new exemption relates to the acquisition of farm land securities in a person if the only interest (other than an easement or a *profit à prendre*) owned or controlled by that person in sensitive farm land is a lease or any other interest (other than a freehold estate) for a term of not more than 20 years. If the farm land was the subject of a previous overseas investment in sensitive land in the 20 years prior to the date of acquisition under a transaction, the new exemptions will apply only if consent was obtained for the transaction that resulted in that previous overseas investment and the requirements of section 16(1)(f) of the Act were complied with.

**Notice of Exemptions from Farm Land Offer Criterion
(Pursuant to Section 20 of the Overseas Investment Act
2005) 2016**

Explanatory note

Regulatory impact statement

The Treasury produced a regulatory impact statement on 24 March 2016 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

This notice is administered by the Treasury.