

Our Ref: 201510088

8 September 2017

Mawhinney & Co
PO Box 1754
QUEENSTOWN 1754

BY EMAIL

Attention: Russell Mawhinney

Dear Russell

Warning in respect of incorrect legal advice given to overseas investors

1. As you know, we have been investigating your understanding of the sensitive land provisions of the Overseas Investment Act 2005 (**Act**).
2. Our investigation began after we learned that Pounamu Holdings 2014 Limited (**Pounamu**) had acquired the Glenorchy Campground without consent in 2014. Pounamu's failure to obtain consent resulted from your incorrect legal advice.
3. As a result of the Glenorchy Campground matter, we decided to investigate whether you had incorrectly advised other overseas investors.
4. We reviewed 364 transactions in which you acted for the purchaser between 2012 and 2016. Of these transactions, only two involved sensitive land being transferred to an overseas person without consent: the Pounamu transaction and one other.
5. We have concluded our investigation by sending this warning letter to you which records a number of actions you have agreed to take.

Incorrect legal advice

6. Our investigation has revealed that you gave incorrect legal advice about Overseas Investment Act matter on two occasions since 2012:
 - (a) the Glenorchy Campground transaction in 2014; and
 - (b) the sale of [REDACTED] to [REDACTED] in 2012.
7. In each case, you incorrectly advised your clients about the need for consent, despite the need for consent being clear.

Glenorchy Campground

8. In this case, you correctly advised your clients that they were overseas persons but incorrectly advised that the main campground site was not sensitive land.
9. Your view was that land was sensitive only if it was *both*:
 - (a) in table 1 of part 1 of schedule 1 of the Act; and
 - (b) adjoined land in table 2 of part 1 of schedule 1 of the Act.
10. Your conclusion was that while the land adjoined land in table 2, it was not in table 1, and therefore was not sensitive land. As a result, consent was not sought.

11. Your interpretation of the Act was clearly incorrect. Land is sensitive if it is *either*:
 - (a) in table 1 of part 1 of schedule 1 of the Act; or
 - (b) adjoined land in table 2 of part 1 of schedule 1 of the Act.
12. We expect that all property lawyers should be about to interpret this part of the Act correctly.
13. The purchase of the Glenorchy Campground was granted retrospective consent in June 2015. As a result, your clients were required to pay a retrospective penalty under section 53 of the Act.
[REDACTED]
14. In this case, a residential property on the hill overlooking Queenstown, was sold to [REDACTED] in 2012. [REDACTED] were overseas persons.
15. You advised your clients you couldn't definitively say that the land was not sensitive land, but that you believed there is a good argument for saying that it was not. You left them to "...make a judgment call..." as to whether they wished to pursue the purchase or not based on your advice.
16. In fact, there was no question that the property was sensitive land. The land is sensitive because at [REDACTED] ha it exceeds 0.4 ha, and adjoins the [REDACTED] [REDACTED] which is clearly in a class listed in the section 37 list.¹
17. Your clients decided to proceed without consent. However, they did so without being correctly informed that the land was sensitive and that consent should be sought under the Overseas Investment Act. Your clients have subsequently on-sold the property.

Your agreement not to advise overseas investors

18. You have agreed to take steps to minimise the risk of incorrect advice being given to overseas investors in the future:
 - (a) You will refrain from giving advice on Overseas Investment Act matters, and instead direct your clients to people who have expertise in interpreting the Act.
 - (b) You have removed any claim to give advice on Overseas Investment Act matters from your website and will ensure that such a claim is removed from any other marketing materials.
 - (c) You will undertake appropriate education into the operation of the Overseas Investment Act.
19. After an appropriate passage of time, once you have undertaken appropriate education, and provided that you retain access to support from experts on the Overseas Investment Act, then you could return to giving advice on Overseas Investment Act matters.

Warning

20. We are formally warning you that you must improve your understanding of the Overseas Investment Act before giving legal advice on it.

¹ The land adjoined the [REDACTED] which the Queenstown Lakes District Plan has designated for use as a recreation reserve.

21. We consider that prudent overseas investors would seek legal advice from a lawyer with experience dealing with the 2005 Act before entering into a transaction that could involve sensitive assets. As two of your clients were incorrectly advised in the instances described above, we consider that your knowledge of the Act is currently insufficient to provide that advice.
22. We expect you to take the steps agreed at paragraph 18 above before giving advice on Overseas Investment Act matters again.
23. While we will not be taking any further action against you at this time, we will take this warning into account if you give incorrect legal advice on Overseas Investment Act matters in the future.

Public information

24. We intend to publish this warning on our website.

Yours sincerely



Kirsty Millard
Manager Enforcement
Overseas Investment Office

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