

From: oio@linz.govt.nz on behalf of [Overseas Investment Office Application submission online form](#)
To: John.Conlan@minterellison.co.nz
Cc: [REDACTED] s.9(2)(a)
Subject: Application received – AlphaTheta Corporation
Date: Tuesday, 6 June 2023 1:05:03 pm



Hi AlphaTheta Corporation

Thank you for your application to the Overseas Investment Office. Below are the details you have submitted.

Your application will now be reviewed to check you have provided all the information we need to assess your application. We will get back to you within 12 working days.

If your application can be accepted, we will:

- contact to advise you and provide information on the process
- request payment of the application fee, and
- provide an indication of the assessment timeframe
- or, we may require further information. If we do, we will start to process your application when we receive all the information we need.

If we cannot accept your application we will give our reasons for this.

In the meantime, there is more information on our website www.linz.govt.nz/overseas-investment

Ngā mihi nui
The Overseas Investment Office team

Application submission details

Submitted on Tue, 06/06/2023 - 13:03

Submission ID: 7727

Submitted values are:

Start

Application type

Consent

Consent type

Significant business assets only

Application detail

Details

Have you attended a pre-application meeting?

No

Are you resubmitting this application?

No

Is this a [retrospective application](#)?

No

Applicant name

AlphaTheta Corporation

Short description of Assets, or the Investment

Acquisition of 100% of the shares in Serato Audio Research Limited (NZCN 894999)

Full legal name of the target entity (if any)

Serato Audio Research Limited (NZCN 894999)

Applicant's address for service in New Zealand

MinterEllisonRuddWatts, Level 18, 125 The Terrace, Wellington 6011

Requested decision date

30/06/2023

Reason for requesting this date

The parties are targeting a completion date of 3 July and would therefore appreciate OIO progressing its application by 30 June 2023

Has an Agreement for Sale and Purchase been entered into?

No

Tell us why an Agreement for Sale and Purchase has not been entered into

The Sale and Purchase Agreement is currently under negotiation and is expected to be finalised by June 16. A copy of the current draft of the Sale and Purchase Agreement as at the date of submission of this application is attached as Appendix 01.

Both the Vendor and the Applicant are committed to proceeding with the Proposed Transaction as soon as possible and do not consider the outstanding matters for negotiation between the parties to impact the nature or scope of the Applicant's overseas investment consent requirements.

Accordingly, the Applicant requests that OIO proceed with its assessment of this Application notwithstanding the fact that the Sale And Purchase Agreement has not yet been fully finalised.

Decision maker

Overseas Investment Office

Does any information in this application need to be kept confidential from other parties to this application?

No

Contact details

s.9(2)(a)

Contact person name

John Conlan

Contact email

John.Conlan@minterellison.co.nz

Best contact phone number

s.9(2)(a)

Role in application

Legal representative

What law firm are you from (if applicable)?

MinterEllisonRuddWatts

Do you want to add another contact person?

Yes

s.9(2)(a)

Role in application

Legal representative

What law firm are you from (if applicable)?

MinterEllisonRuddWatts

Vendor/Lessor name

Alan James Wilderland

Gregory Noel Rathbun, Nicole June Hoek and Stephen Marcus Jason West

s.9(2)(a)

Bruce Raymond Shepperd, Nicole Jane Hoek, Stephen Marcus Jason West

s.9(2)(a)

Official Information Act 1982

Dianna Joan West, Rebecca Thomas and Stephen Marcus Jason West

s.9(2)(a)

Jeanne Merle Bertenshaw and Vulcan Trustee Co (2020) Limited

s.9(2)(a)

Serato Employee Trustee Limited

Vendor/Lessor's email

s.9(2)(a)

Vendor/Lessor's phone number

s.9(2)(a)

Vendor/Lessor's advisors' name

Bruno Bordignon

Vendor/Lessor's advisors' email

bruno.bordignon@avid.legal

Vendor/Lessor's advisors' phone number

+64 21 277 6660

Invoice details

Name and company for invoice

John Conlan, MinterEllisonRuddWatts

Postal address for invoice

PO Box 2793, Wellington 6140.

Defined terms

Defined terms

- Terms: the Act
Meaning: the Overseas Investment Act 2005
- Terms: Applicant
Meaning: AlphaTheta Corporation (Japan company number 0104-01-151827)
- Terms: Completion
Meaning: Completion of the Transaction
- Terms: NK
Meaning: Noritsu Koki Co., Ltd (Japan company number 1700-01-002607)
- Terms: Shares
Meaning: All of the share capital and securities on issue in the Target
- Terms: SPA
Meaning: The agreement for sale and purchase of the Shares between the Vendors and the Applicant, a copy of the current draft of which is attached as Appendix 01. A copy of the final SPA will be provided to OIO upon signing.
- Terms: Target
Meaning: Serato Audio Research Limited (NZCN 894999)

- **Terms: Target Group**
Meaning: The group comprised of the Target and its subsidiaries, being:
 - Serato Limited (NZCN 6220881);
 - Serato Employee Trustee Limited (NZCN 6616813)
 - Serato International Holdings (NZ) Limited (NZCN 5837809)
 - Serato Management Limited (NZCN 2184449)
 - Serato Inc Limited Partnership (NZRN 2226545);
 - Serato USA LLC (Delaware LLC file number 5867560)
- **Terms: Transaction**
Meaning: The acquisition of the Shares from the Vendors by the Applicant in accordance with the terms of the SPA
- **Terms: Vendors**
Meaning:
 - Alan James Wilderland;
 - Gregory Noel Rathbun, Nicole June Hoek and Stephen Marcus Jason West
 s.9(2)(a)
 - Bruce Raymond Shepperd, Nicole Jane Hoek, Stephen Marcus Jason West
 s.9(2)(a)
 - Dianna Joan West, Rebecca Thomas and Stephen Marcus Jason West
 s.9(2)(a)
 - Jeanne Merle Bertenshaw and Vulcan Trustee Co (2020) Limited
 s.9(2)(a) and
 - Serato Employee Trustee Limited.

Investment

Tell us about the proposed transaction and relevant agreements and steps involved in the transaction

The Applicant is a wholly owned subsidiary of NK. NK is a Japanese holding company with subsidiaries engaged in the (1) development and sales of audio equipment (ATC), (2) the manufacture and sales of pen-nib components (Teibow), and (2) development and sales of earphones (JLAB). NK's shares are listed on the Tokyo Stock Exchange.

The Applicant is an overseas person for the purposes of the Act as it is a body corporate that is incorporated outside New Zealand. It is also an overseas person for the purposes of the Act as it is wholly owned subsidiary of a company incorporated outside New Zealand.

The Transaction comprises the acquisition by the Applicant of the Shares from the Vendors and will occur on the terms set out in the SPA, a copy of the most recent draft of which is attached to this application as Appendix 01. A copy of the final SPA will be provided to OIO upon signing.

A structure diagram of the Target Group prior to and immediately following completion of the Transaction is also attached to this application as Appendix 02.

The purchase price for the Shares, at the Closing is approx. \$104 million NZD based on USD/NZ exchange rate of 0.62 (\$65 million USD), before post-closing adjustments for working capital, and earn outs.

Provide details of any pre-conditions to the completion of the acquisition other than OIO consent

While the Completion date for the Transaction will depend on when the relevant conditions precedent specified in the SPA are satisfied, both parties are negotiating and working in parallel with an objective to complete the transaction as soon as possible and ideally on 3 July, 2023.

The condition precedent in respect of the consent required under the Act is set out in clause [6.1.2] of the SPA.

s.9(2)(b)(ii)

s.9(2)(b)(ii)

However, the parties have a strong commercial desire to complete the Transaction as

soon as possible.

The Applicant therefore requests a decision on this application by no later than 30 June 2023.

Provide details of any pre-consent arrangements such as short-term leases, management agreements, etc

There are no pre-consent arrangements in place.

s.9(2)(b)(ii)

Describe the target entity/business

The Target Group operates a DJ and music production software business. For additional information about the Target Group, please visit the Target Group's website at <https://serato.com/>.

Does the Applicant have any existing interest in the sensitive assets and/or an existing relationship with the vendor / lessor?

No

Has the Applicant applied for, or is the transaction the subject of, any other regulatory consent(s)?

No

Tell us why the transaction requires consent under the Overseas Investment Act 2005, and reference the relevant sections of the Act

The Transaction requires consent under s10(1)(b) of the Act on the basis that the Applicant is acquiring the Shares from the Vendors and the total consideration being provided (subject to contingent earnouts) may exceed NZ\$100 million, and the Transaction is therefore an overseas investment in significant business assets under section 13(1) of the Act.

The Transaction will not result in an overseas investment in sensitive land under section 12 of the Act as the Target does not own or control (directly or indirectly) an interest in sensitive land.

The Applicant requests consent to acquire the Shares.

The Transaction is not a transaction of national interest (see section 8 below)

What is the amount being paid, or the value of the asset?

104000000

GST inclusive?

No

Comment (if any) about the amount being paid, or asset value

The total consideration payable for the Shares at Completion will be calculated using a base value of approx. \$104 million NZD (\$65 million USD) which is subject to:

- a number of adjustments as more fully described in the definition of "Completion Payment" and in [Schedule 5] of the SPA; and
- two uncapped earnout payments as more fully described in clause [5] of the SPA

As the total consideration, or more specifically, a contingent earn out is subject to

Target Group's future earnings, so it is difficult to predict the final total consideration.

As at March 31, 2023 the gross assets of the Target Group are estimated at **s.9(2)(b)(ii)**
s.9(2)(b)(ii)

Noting this is a share transaction, GST is not applicable

Provide details of how the transaction will be funded

s.9(2)(b)(ii)

Transactions

- Transaction name: The Transaction
Description: The acquisition by the Applicant of the Shares from the Vendors
When it is likely to occur: Last business day of the month during which the SPA becomes unconditional (except for the MAC), or the last business day of the immediately following month if the conditions are satisfied less than [5] Business Days from the end of the month

Applicant's ownership & structure

Does the Applicant have any current or past business operations in New Zealand?
No

Provide information about the Applicant's business operations, past and present, including those in New Zealand
AlphaTheta Corporation began as a division of Pioneer Corporation in 1994, when it released the world's first commercially available flat-top DJ CD player. Since then, AlphaTheta has been developing, manufacturing and selling DJ and club equipment for customers around the world. ATC was acquired by NK in 2020.

Has the sensitive asset, or Applicant and related entities been subject of an application for consent before?
No

Applicant's financial position

For the financial year from January 1 to December 31, 2022, the Applicant and its subsidiaries' audited consolidated:

- gross revenue was approx. **s.9(2)(b)(ii)**
- net profit was approx. **s.9(2)(b)(ii)**
- net assets was approx. **s.9(2)(b)(ii)**

See Appendix 03 for a certified translation and copy of the Applicant's financial statements for the period ending 31 March 2022.

Upload financial related documents

- [Appendix 03 Certified translation of the financial statements of ATC](#)

Tell us about ownership and control

Ownership

The Applicant is a limited liability company incorporated under the Companies Act of Japan on August 12, 2014. A copy of the Applicant's articles of incorporation and certificate of all valid items registered in the Japan commercial register is attached as Appendix 04.

The Applicant is 99.9% owned by NK, which is listed on the Tokyo Stock Exchange owned by 16,656 shareholders as at the end of the financial year 2022. The remaining 0.1% is owned by Mr Kayo Nishimoto.

As set out in the beneficial ownership table further below, as at the end of financial year 2022:

- Ms Kayo Nishimoto holds (including the indirect holding via his family's investment vehicles Sanku Planning and Nishimoto Kosan) 48.855% of the shares on issue in NK; and
- The Master Trust Bank of Japan., Ltd holds over 5% of the shares in NK
- No other individuals or entities hold more than 5% of the NK shares

A structure diagram showing ultimate ownership of the Applicant is attached as Appendix 02.

Control

The board of directors of the Applicant is appointed by shareholders' meeting by majority vote. Accordingly, NK only can appoint board of directors of the Applicants.

The board of NK is appointed by shareholders' meeting by majority vote. Thus, noting that Ms. Kayo Nishimoto holds less than a majority of the shares in NK, she cannot veto the appointment.

As a listed company, NK's business is conducted by its directors elected by majority vote of shareholders.

s.9(2)(b)(ii)

The Transaction itself is currently treated as insider information from a Japanese Securities Regulation and relevant law. Therefore, not only the details, but the fact that NK's group company is intending to undertake the Transaction, has not been shared with Ms. Kayo Nishimoto, Sanku Planning, Nishimoto Kosan, nor any other shareholders, irrespective of their percentage holdings in NK.

s.9(2)(b)(ii)

s.9(2)(b)(ii)

The Applicant is an overseas person for the purposes of the Act as it is a company incorporated outside New Zealand.

Provide incorporation, shareholder and director information for the Applicant and persons who have a more than 25% beneficial or legal interest in the Applicant (or equivalent information if the Applicant is not a company)

Applicant

- **Incorporation:** The Applicant is a limited liability company incorporated under the Companies Act of Japan (Japan company number 0104-01-151827)
- **Shareholder:** The Applicant is a 99.9% owned subsidiary of NK, a public company listed on the Tokyo Stock Exchange
- **Directors:** The board of directors of the Applicant comprises: Messrs. Yoshinori Kataoka, Masakazu Suzuki, Ryukichi Iwakiri and Ryosuke Yokobari.

NK

- **Incorporation:** NK is a limited liability company incorporated under the Companies Act of Japan (Japan company number 1700-01-002607)
- **Shareholder:** As above, NK is a public company listed on the Tokyo Stock Exchange. 42.16% of the shares in NK are held by Sanku Planning KK
- **Directors:** The board of directors of NK comprise: Messrs. Ryukichi Iwakiri, Ryosuke Yokobari, Akari Otsuka, Akihisa Ota, Motoaki Ibano, and Tsuyoshi Takada.

Sanku Planning

- **Incorporation:** Sanku Planning is a limited liability company incorporated under the Companies Act of Japan (Japan company number 1700-01-002501)
- **Shareholder:** Sanku Planning is a wholly owned subsidiary of Nishimoto Kosan K.K.
- **Directors:** The board of director of Sanku Planning comprise: Ms. Kayo Nishimoto

Nishimoto Kosan

- **Incorporation:** Nishimoto Kosan is a limited liability company incorporated under the Companies Act of Japan (Japan company number 1700-01-010564)
- **Shareholder:** s.9(2)(a)
- **Directors:** The board of directors of Nishimoto Kosan comprise: Messrs. Kayo Nishimoto, and Masanori Doi

Ms Kayo Nishimoto

- Ms. Nishimoto Kayo is a Japanese national residing in Japan, a descendant of the founder family and has inherited her equities of NK from her father, the founder.

s.9(2)(b)(ii)

Are there decision making delegations in place (formal or informal)?

Yes

What are the delegations, who controls the delegations, and how do they relate to the investment?

s.9(2)(b)(ii)

Tell us who could approve the acquisition of the investment and whether they consulted others (e.g. parent entities) before making the decision

s.9(2)(b)(ii)

Who can approve the divestment of the investment?

s.9(2)(b)(ii)

Who is responsible for the day to day management of the investment?

s.9(2)(b)(ii)

Who can approve significant capital and operating expenditure?

s.9(2)(b)(ii)

Upload structure-related documents

- [Appendix 06 Company registry of NK \(certified translation\)\(901373803.1\) 0.pdf](#) (10.02 MB)
- [Appendix 07 Articles of incorporation of NK \(certified translation\)](#)

- [\(901373792.1\)_0.pdf](#) (5.18 MB)
- [Appendix 08 Diagram showing the ownership of the Applicant prior to and following Completion\(901355856.2\)_0.pdf](#) (15.44 KB)
- [Appendix 04 Company registry of ATC \(including a certified translation\) \(901401711.1\).pdf](#) (1.63 MB)
- [Appendix 05 Certified translation of Articles of Association of the ATC\(901401708.1\).pdf](#) (1.21 MB)
- [Appendix 02 \(Part B\) Structure diagram of the Target Group following the Transaction\(901355865.2\)_0.pdf](#) (28.51 KB)
- [Appendix 02 \(Part A\) Structure diagram of the Target Group prior to the Transaction\(901355873.2\)_0.pdf](#) (16.93 KB)

Beneficial ownership table

- Owner: Kayo Nishimoto (Ms.)
Percentage (must total 100%): 48.855
Description: Ms. Kayo Nishimoto Kayo is a Japanese national residing in Japan, a descendant of the founder family and has inherited her equities of NK from her father, the founder.
As at 31 December 2022, Ms. Nishimoto was the largest shareholder of NK, directly holding 6.375% of NK's share, and the remaining shares indirectly through Sanku Planning which owns 42.120%.
- Owner: The Master Trust Bank of Japan., Ltd
Percentage (must total 100%): 6.79
Description: As at 31 December 2022, The Master Trust Bank of Japan, Ltd was the second largest registered shareholder in NK. The Master Trust Bank of Japan, Ltd's is a limited liability company incorporated under the Companies Act of Japan. It is an asset administration company (<https://www.mastertrust.co.jp/english/>).
Its shareholder list can be found from its corporate website under "Corporate Overview".
- Owner: Other
Percentage (must total 100%): 44.355
Description: Only the investors identified above hold a director or indirect interest which is greater than 5% of the aggregate interests in the Applicant.

Ownership by country table

- Country: Japan
Percentage (must total 100%): 80.56
- Country: United States of America
Percentage (must total 100%): 8.19
- Country: United Kingdom
Percentage (must total 100%): 6.38
- Country: Belgium
Percentage (must total 100%): 2.41
- Country: Switzerland
Percentage (must total 100%): 2.03
- Country: Various regions
Percentage (must total 100%): 0.43

Does the Applicant have any ROP individuals?

No

ROP entities

- Full legal name of entity in English: AlphaTheta Corporation
Full legal name in non-English characters: AlphaTheta株式会社
Other names (e.g. trading/former names): On June 1 2021 Dragonfly Corporation (Japan entity number 0104-01-151827 and AlphaTheta Corporation merged (which is similar to amalgamation process under NZ law) and the continuing entity, Dragonfly Corporation changed its name to Alpha Theta Corporation
Type of entity: Limited Liability Company
Jurisdiction: Japan
Unique identifier: 0104-01-151827
NZ Inland Revenue number, if held: n/a
- Full legal name of entity in English: Noritsu Koki Co., Ltd.
Full legal name in non-English characters: ノーリツ鋼機株式会社
Other names (e.g. trading/former names): June 1956: 有限会社ノーリツ光機製作所(Noritsu Koki Seisakujiyo Co., Ltd) established. November 1961: Changed its name to ノーリツ鋼機株式会社(Noritsu Koki Co., Ltd). On September 21 1989 ノーリツ研究センター(Noritsu Koki Research Center Co.,Ltd.) merged NK and changed name to current name
Type of entity: Limited Liability Company
Jurisdiction: Japan
Unique identifier: 1700-01-002607
NZ Inland Revenue number, if held: n/a

Explain the rationale for your selection

In terms of section 15 of the Act, the Applicant considers the ROPs in relation to the Transaction to be:

- (a) the Applicant, as the person directly making the overseas investment; and
- (b) NK, as the parent company (99.9) of the Applicant.

The Applicant submits that none of Sanku Planning, Nishimoto Kosan or Ms Kayo Nishimoto are ROPs in relation to the Transaction. NK is a company listed on the Tokyo Stock Exchange.

s.9(2)(b)(ii)

With the exception of Sanku Planning, Nishimoto Kosan or Ms Kayo Nishimoto no other entity or individual has a material ownership or control interest in the Applicant.

Individuals with control

Individuals with control (IWC)

- First name (in English): RYOSUKE
Last names (in English): YOKOBARI
Full legal name in non-English characters: 横張 亮輔

s.9(2)(a)

Role: Director and CFO of Noritsu Koki, Co., Ltd. Director of AlphaTheta Corporation
Date became IWC: Noritsu Koki: 26 MAR 2021. AlphaTheta: 18 MAR 2020
Is this individual also an ROP?: No
Has this individual met the Investor Test for a previous application decided under section 18A (post-22 March 2021)?: No
New Zealand Inland Revenue number, if held: n/a
Has this individual ever applied for a visa to travel to New Zealand?: No
Is this individual ordinarily resident in New Zealand?: No
Has this individual ever held an interest in a non-New Zealand government entity?: No
Has this individual ever held a position within a non-New Zealand government?: No
Has this individual ever held a position within an intelligence agency or served in the military?: No

- First name (in English): RYUKICHI
Last names (in English): IWAKIRI
Full legal name in non-English characters: 岩切 隆吉

s.9(2)(a)

Role: Representative Director and CEO of Noritsu Koki, Co., Ltd. Director of AlphaTheta Corporation
Date became IWC: Noritsu Koki: 21 JUN 2018. AlphaTheta: 18 MAR 2020
Is this individual also an ROP?: No
Has this individual met the Investor Test for a previous application decided under section 18A (post-22 March 2021)?: No
New Zealand Inland Revenue number, if held: N/A
Has this individual ever applied for a visa to travel to New Zealand?: No
Is this individual ordinarily resident in New Zealand?: No
Has this individual ever held an interest in a non-New Zealand government entity?: No
Has this individual ever held a position within a non-New Zealand government?: No
Has this individual ever held a position within an intelligence agency or served in the military?: No

- First name (in English): OTA
Last names (in English): AKIHISA

Full legal name in non-English characters: 太田 晶久

s.9(2)(a)

Role: Director of Noritsu Koki, Co., Ltd.

Date became IWC: 29 JUN 2015

Is this individual also an ROP?: No

Has this individual met the Investor Test for a previous application decided under section 18A (post-22 March 2021)?: No

New Zealand Inland Revenue number, if held: n/a

Has this individual ever applied for a visa to travel to New Zealand?: No

Is this individual ordinarily resident in New Zealand?: No

Has this individual ever held an interest in a non-New Zealand government entity?: No

Has this individual ever held a position within a non-New Zealand government?: No

Has this individual ever held a position within an intelligence agency or served in the military?: No

- First name (in English): TSUYOSHI

Last names (in English): TAKADA

Full legal name in non-English characters: 髙田 剛

s.9(2)(a)

Role: Director of Noritsu Koki, Co., Ltd.

Date became IWC: 26.MAR 2021

Is this individual also an ROP?: No

Has this individual met the Investor Test for a previous application decided under section 18A (post-22 March 2021)?: No

New Zealand Inland Revenue number, if held: n/a

Has this individual ever applied for a visa to travel to New Zealand?: No

Is this individual ordinarily resident in New Zealand?: No

Has this individual ever held an interest in a non-New Zealand government entity?: No

Has this individual ever held a position within a non-New Zealand government?: No

Has this individual ever held a position within an intelligence agency or served in the military?: No

- First name (in English): MOTOAKI

Last names (in English): IBANO

Full legal name in non-English characters: 伊庭野 基明

s.9(2)(a)

s.9(2) (a)

Date became IWC: 29 JUN 2015

Is this individual also an ROP?: No

Has this individual met the Investor Test for a previous application decided under section 18A (post-22 March 2021)?: No

New Zealand Inland Revenue number, if held: n/a

Has this individual ever applied for a visa to travel to New Zealand?: No

Is this individual ordinarily resident in New Zealand?: No

Has this individual ever held an interest in a non-New Zealand government entity?: No

Has this individual ever held a position within a non-New Zealand government?: No

Has this individual ever held a position within an intelligence agency or served in the military?: No

- First name (in English): AKARI

Last names (in English): OTSUKA

Full legal name in non-English characters: 大塚 あかり

s.9(2)(a)

Role: Director of Noritsu Koki, Co., Ltd

Date became IWC: 20 JUN 2019

Is this individual also an ROP?: No

Has this individual met the Investor Test for a previous application decided under section 18A (post-22 March 2021)?: No

New Zealand Inland Revenue number, if held: n/a

Has this individual ever applied for a visa to travel to New Zealand?: No

Is this individual ordinarily resident in New Zealand?: No

Has this individual ever held an interest in a non-New Zealand government entity?: No

Has this individual ever held a position within a non-New Zealand government?: No

Has this individual ever held a position within an intelligence agency or served in the military?: No

- First name (in English): YOSHINORI

Last names (in English): KAT AOKA

Full legal name in non-English characters: 片岡 芳徳

s.9(2)(a)

Role: President, CEO, and director of AlphaTheta Corporation

Date became IWC: 1 JUN 2021

Is this individual also an ROP?: No

Has this individual met the Investor Test for a previous application decided

under section 18A (post-22 March 2021)?: No
New Zealand Inland Revenue number, if held: n/a
Has this individual ever applied for a visa to travel to New Zealand?: No
Is this individual ordinarily resident in New Zealand?: No
Has this individual ever held an interest in a non-New Zealand government entity?: No
Has this individual ever held a position within a non-New Zealand government?: No
Has this individual ever held a position within an intelligence agency or served in the military?: No

- First name (in English): MASAKAZU
Last names (in English): SUZUKI
Full legal name in non-English characters: 鈴木 雅和

s.9(2)(a)

Role: Director of AlphaTheta Corporation
Date became IWC: 1 JUN 2021
Is this individual also an ROP?: No
Has this individual met the Investor Test for a previous application decided under section 18A (post-22 March 2021)?: No
New Zealand Inland Revenue number, if held: n/a
Has this individual ever applied for a visa to travel to New Zealand?: No
Is this individual ordinarily resident in New Zealand?: No
Has this individual ever held an interest in a non-New Zealand government entity?: No
Has this individual ever held a position within a non-New Zealand government?: No
No
Has this individual ever held a position within an intelligence agency or served in the military?: No

Explain the rationale for your selection

In terms of section 15 of the Act, the Applicant considers the IWCs in relation to the Transaction to be:

The directors of the Applicant

- Yoshinori Kataoka,
- Masakazu Suzuki,
- Ryukichi Iwakiri and
- Ryosuke Yokobari.

The directors of the NK

- Ryukichi Iwakiri,
- Ryosuke Yokobari,
- Akari Otsuka,
- Akihisa Ota,
- Motoaki Ibano, and
- Tsuyoshi Takada

The above comprise all members of the board of directors of each ROP.

IWC documents upload

- [Appendix 10_Copy of photo page of each IWC's passport\(901356397.2\)_0.pdf](#) (597.94 KB)
- [Appendix 09_Curriculum Vitae of each IWC\(901353954.2\).pdf](#) (141.71 KB)

Investor test

Repeat investor information

Have any individuals or entities relevant to this application met the investor test for a previous application decided under section 18A (post-22 March 2021)?

No

Investor Test - 12 Factors under [section 18A](#) of the Overseas Investment Act 2005

18A(4)(a)(i)

No

18A(4)(a)(ii)

No

18A(4)(a)(iii)

No

18A(4)(a)(iv)

No

18A(4)(a)(v)

No

18A(4)(a)(vi)

No

18A(4)(a)(vii)

No

18A(4)(b)

No

18A(4)(c)

No

18A(4)(d)

No

18A(4)(e)(i)

No

18A(4)(e)(ii)

No

18A(4)(f)

No

National Interest

Does the transaction fall under [Section 20A](#) of the Act?

No, the transaction is neither of the above.

Explain why the Applicant does or does not consider that the transaction involves a strategically important business.

The Target Group does not operate a “strategically important business” as defined in section 6(1) of the Act (as that definition applies for the purposes of section 20A of the Act). The Target Group’s business constitutes a DJ and music production software business.

Explain why the Applicant does or does not consider that the transaction involves a non-NZ government investor under section 20A(1)(a)-(b) of the Act.

The Applicant is a wholly owned subsidiary of NK. With the exception of the 48.855% interest (as at the end of financial year 2022) held by Mr Kayo Nishimoto (who is not a non-NZ government investor), the ownership of NK is widely held, as it is listed on Tokyo Stock Exchange. There are 16,656 shareholders of NK as at the end of the financial year 2022.

No non-NZ government investor holds an ownership or control interest in DLHD that, in aggregate, exceeds 25%.

As at the financial year ended December 31, 2022, there was no non-New Zealand Government Investor with an interest in the Applicant of 1% or greater. However as at the end of March 31, 2023, unofficially, the Government of Norway has increased its take from 0.001% to 2.43%.

Does the Applicant consider the transaction to be a transaction of national interest under [section 20B](#) of the Act?

No

If the Applicant considers the transaction is not a transaction of national interest under section 20B of the Act, provide submissions on why the transaction does not engage one of the scenarios outlined in the Annex of the 2021 directive letter from the Minister of Finance. Specifically, whether the transaction:

The Applicant notes the following:

Given the nature of the business of the Target Group, the Transaction is unlikely to pose any foreseeable risks to New Zealand’s national security or public order;

As this is the Applicant’s first investment in New Zealand, it does not consider that this Transaction (if completed) would give it significant market power or would result

in vertical integration of a supply chain.;

With the exception of the 48.855% interest (as at the end of financial year 2022) held by Mr Kayo Nishimoto (who is not a non-NZ government investor), there is only 1 shareholder, the Master Trust Bank of Japan, in the Applicant's holding company, NK, who hold more than 5% of its shares. No non-NZ government investor holds an ownership or control interest in the Applicant that, in aggregate, exceeds 25%;

given the nature of the business of the Target, the Applicant does not consider the granting of consent to the Transaction to be inconsistent with the Government's objectives; and

Given the nature of the business of the Target, the Transaction is unlikely to raise any Treaty of Waitangi or significant historic heritage issues.

Upload documents

Supporting Information upload

- [Appendix 13B - Statutory Declaration - Investor Test\(901401699.1\)_0.pdf](#) (212.77 KB)
- [Appendix 13A - Statutory Declaration - Application True and Correct\(901401697.1\)_0.pdf](#) (175.12 KB)
- [Appendix 12 Application Signature Form\(901401730.1\)_0.pdf](#) (218.05 KB)
- [Appendix 14 - Proof of Payment 0.pdf](#) (11.55 KB)
- [Appendix 01 - Draft Sale and Purchase Agreement\(901402111.1\).pdf](#) (2.05 MB)

Tax information

Upload Tax information submission confirmation

[Appendix 11 - Tax Information Form\(901401727.1\).pdf](#) (698.04 KB)

Appendices

- Appendix reference: Appendix 01
Name of document: Draft Sale and Purchase Agreement
- Appendix reference: Appendix 02
Name of document: Structure diagram of the Target Group prior to and following the Transaction
- Appendix reference: Appendix 03
Name of document: Financial Statements for the Applicant for the period ending 31 December 2022 (including a certified translation)
- Appendix reference: Appendix 04
Name of document: Company registry of the Applicant (including a certified translation)
- Appendix reference: Appendix 05
Name of document: Articles of Association of the Applicant (including a certified translation)

- Appendix reference: Appendix 06
Name of document: Company registry of NK (including a certified translation)
- Appendix reference: Appendix 07
Name of document: Articles of Associate of NK (including a certified translation)
- Appendix reference: Appendix 08
Name of document: Diagram showing the ownership of the Applicant prior to and following Completion
- Appendix reference: Appendix 09
Name of document: Copies of the CVs of each IWC
- Appendix reference: Appendix 10
Name of document: Copies of the passports of each IWC
- Appendix reference: Appendix 11
Name of document: Tax information form
- Appendix reference: Appendix 12
Name of document: Applicant signature form
- Appendix reference: Appendix 13
Name of document: Statutory declarations
- Appendix reference: Appendix 14
Name of document: Proof of payment of the lodgement fee

Declaration

Who is submitting the application?

I am the Applicant's advisor/external representative (lawyer acting on behalf of a client, other external advisors)

Name of person submitting application and declaring below

John Conlan, MinterEllisonRuddWatts

I have read, understood, and agreed to the privacy notice.

Yes

I have uploaded all documentation relevant to the claims made in this application and in support of the application.

Yes

I have uploaded proof of payment of the [lodgement fee](#) for this application.

Yes

I solemnly declare to the best of my knowledge, that all the information in this application form is true and correct.

Yes

True and correct

Yes

Investor test

Yes

Repeat investor test

No

I have uploaded the signed applicant declaration.

Yes

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