

To: Andrew Wells, Principal Customer Regulatory Specialist

ASSESSMENT REPORT: **Bettcher Industries, Inc.**

Date	18 December 2023	Classification	IN CONFIDENCE: Commercially sensitive
LINZ reference	202300863	Deadline	12 February 2024

Purpose

We seek your decision on an application for consent to acquire significant business assets under the Overseas Investment Act 2005 (**Act**).

Action sought

1. Review this report
2. Determine whether to grant consent and, if so, on what conditions.
3. Indicate your decision from page 3.

Key information

4. For the reasons set out in this report, our recommendation is to **grant consent**.

Applicant	Bettcher Industries, Inc. United States of America (44%); South Korea (8%); People's Republic of China (7.6%); Singapore (5.4%); Luxembourg (5.3%) and Various (29.6%).
Vendors	MHM Automation Limited New Zealand (92.3%); Australia (4.6%) and Various (3.1%).
Asset	Acquisition of 100% of the shares in MHM Automation Limited.
Consideration	\$151,000,000
Relevant tests	Investor test: s18A National interest test: s18(b)

Timing

5. The Overseas Investment Regulations 2005 specify the total assessment timeframe for this application is 35 working days. This application is currently on day 12, therefore a decision is due to the applicant by 12 February 2024.

A. Decision

Core tests

6. I determine that:

6.1 The 'relevant overseas person' is (collectively):

Relevant overseas person	Role
Merlin NZD BidCo Limited	Acquiring entity
Bettcher Industries, Inc.	Applicant
KKR Merlin Aggregator L.P	Majority ([s 9(2)(b)(ii)]) owner of Applicant.
[s 9(2)(b)(ii)]	

6.2 The 'individuals with control of the relevant overseas person' are:

Individuals with control	Role
David Peter Lang	Director of Merlin NZD BidCo Limited
Massimo Bizzi	Director of the Bettcher Industries, Inc. and Merlin NZD BidCo Limited
Kevin Gerard Harry	
[s 9(2)(b)(ii)]	

6.3 None of the relevant overseas persons and individuals with control of the relevant overseas person have established any of the factors contained in section 18A(4) of the Act.

National interest assessment

7. I note that the overseas investment in significant business assets is not a transaction of national interest under section 20A of the Act and the Minister of Finance has not notified it is a transaction of national interest under section 20B of the Act.

Decision about whether to grant or decline consent

8. My ultimate decision is to grant consent subject to the conditions in the Proposed Decision in **Attachment 1**.

[s 9(2)(a)]

Andrew Wells

Principal Customer Regulatory Specialist (Overseas Investment – LINZ)

Date: 21 December 2023

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B. Background and proposed transaction

9. Bettcher Industries Inc.¹ (the **Applicant**) is seeking consent under the Act to acquire 100% of the shares in MHM Automation Limited² (the **Target**) and its subsidiaries.³ The Target designs and creates automated engineering solutions for the primary and logistics sectors.
10. The Applicant is a manufacturer in the food processing industry. It is ultimately indirectly owned by private equity firm, [s 9(2)(b)(ii)]. The Applicant has nominated recently incorporated Merlin NZD Bidco Limited⁴ (**Merlin NZD**) to acquire the shareholding.
11. The purchase is to be in accordance with a Scheme Implementation Agreement (**Agreement**) dated 3 November 2023. The Agreement includes consideration of NZD \$1.70 per share.
12. The transaction involves the purchase of more than 20% of the NZX listed shareholding of the Target and is subject to a court process in accordance with the Companies Act 1993.

C. Application of the Act

13. The Asset is sensitive because the value of the business is more than \$100 million,⁵ so consent is required.⁶ The following criteria for an investment in significant business assets apply to this application:⁷
 - The investor test must be met.⁸
 - You must also note whether the investment is a transaction of national interest and, if so, whether the Minister of Finance has decided that the investment is contrary to New Zealand's national interest.⁹
14. We assess the investor test in Part D, and discuss national interest matters in Part E.

D. Applicant and investor test

15. This section describes the Applicant and assesses whether the investor test is met.

Business Activities

16. The Applicant is a manufacturer of precision cutting and trimming tools for the food processing industry. It holds patents for almost 100 products, employs 300 people and distributes products to 70 countries. The Applicant's presence in New Zealand is limited to the import of its goods via a third-party distributor.
17. Its ultimate indirect owner, [s 9(2)(b)(ii)] has previously sought and been granted consent for the acquisition of significant business assets in varied industries such as finance, animal healthcare and bus transportation. There have been no prior investments into the engineering industry.

¹ United States company number 2145492

² New Zealand company number 125412

³ MHM IP Limited, MHM Land Limited, Wyma Engineering (NZ) Limited, Xenos Limited, MHM New Zealand Limited and MHM International Limited

⁴ New Zealand company number 9012503

⁵ Section 13(1)(a)(ii) of the Act.

⁶ Under sections 10(1)(b) and 13(1)(a) of the Act.

⁷ Set out in section 18 of the Act.

⁸ Section 18A(4) of the Act.

⁹ Section 18(1)(e) of the Act.

Ownership

18. The Applicant is indirectly majority owned [s 9(2)(b)(ii)] by KKR Merlin Aggregator L.P.¹⁰ (KKR Merlin LP). [s 9(2)(b)(ii)]

[s 9(2)(b)(ii)]

19. [s 9(2)(b)(ii)]

20.

21.

22. The Applicant nominated its wholly owned subsidiary, Merlin NZD to acquire the shareholding on its behalf.

23. A diagram of the intended ownership structure is in **Attachment 2**.

24. For these reasons, we recommend that the 'relevant overseas person' (ROP) is (collectively):

Relevant overseas person	Role
Merlin NZD BidCo Limited	Acquiring entity
Bettcher Industries, Inc.	Applicant
KKR Merlin Aggregator L.P	Majority [s 9(2)(b)(ii)] owner of Applicant

[s 9(2)(b)(ii)]

Control

25. Following the acquisition, the directors of the Applicant will oversee of day-to-day management of the Target.

26. It is expected that decisions relating the significant capital and operating expenditure will involve the directors of [s 9(2)(b)(ii)]

¹⁰ United States partnership number 6347857

[s 9(2)(b)(ii)]

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27. Therefore, we recommend that the ‘**individuals with control of the relevant overseas person**’ (IWC)¹⁵ are:

Individuals with control	Role
David Peter Lang	Director of Merlin NZD BidCo Limited
Massimo Bizzi	Director of the Applicant
Kevin Gerard Harry	
[s 9(2)(b)(ii)]	

Summary of investor test

28. The relevant overseas persons and individuals with control established none of the factors contained in section 18A(4) of the Act, our conclusion is therefore that **the investor test has been met**.

E. Not a transaction of national interest

29. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.¹⁶ This is because the investment does not involve a non-NZ government investor, or an investment in a strategically important business (as defined in the Act).
30. The Minister of Finance has not called the transaction in for a national interest assessment.¹⁷

Conclusion

31. After considering the application, our view is that:
- the investor test has been met; and
 - the transaction is not considered to be a transaction of national interest.
32. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and from page 3 of this Assessment Report to record your decision.

[s 9(2)(a)]

¹⁵ Section 15.

¹⁶ This condition is required by Schedule 2, clause 18(2) of the Act.

¹⁷ Under s20B of the Act.

Heidi Hughes

Customer Regulatory Specialist - Assessment
Overseas Investment- LINZ

Date: 18 / 12 / 2023

F. List of Attachments

1. Proposed Decision
2. Intended ownership structure

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ATTACHMENT 1 PROPOSED DECISION

Consent for Overseas Person to Acquire Significant New Zealand Business Assets

Read this consent carefully - you must comply with all the conditions. If you do not, you may be subject to fines or other penalties.

Consent

Decision date: 22 December 2023

The following people have been given the following consent:

Case	202300863
Consent	The Consent holder may acquire the Assets subject to the Conditions set out below.
Consent holder/s	Bettcher Industries, Inc. (United States company number 2145492) and Merlin NZD Bidco Limited (New Zealand company number 9012503) We will also refer to each Consent holder and the Consent holders together as you .
Assets	100% of the shares in MHM Automation Limited by scheme of arrangement under Part 15 of the New Zealand Companies Act 1993
Timeframe	You have until 31 December 2024 to acquire the Assets.

Conditions

Your Consent is subject to the conditions set out below. These apply to all overseas people who are given consent to acquire significant business assets, including you.

You must comply with them all. Be aware that if you do not comply with the conditions you may be subject to fines or other penalties.

In the Consent and the Conditions, we refer to Toitū Te Whenua Land Information New Zealand as **LINZ, us or we**.

Act means the Overseas Investment Act 2005.

Details	Required date
Standard condition 1: Acquire the Assets	
<p>You must acquire the Assets</p> <ol style="list-style-type: none"> 1. by the date stated in the Consent. If you do not, your Consent will lapse and you must not acquire the Assets, and 2. Using the acquisition, ownership, and control structure you described in your application. Note, only you - the named Consent holder - may acquire the Assets, not your subsidiary, trust, or other entity. 	As stated in the Consent
Standard condition 2: Tell us when you acquire the Assets	
<p>You must tell us in writing when you have acquired the Assets. Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the Assets (settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Assets, and 4. copies of any transfer documents and settlement statements. 	As soon as you can, and no later than two months after settlement
Standard condition 3: Remain not unsuitable to Invest in New Zealand	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Assets in accordance with section 18A(1) of the Act. The Individuals Who Control You are individuals who:</p> <ol style="list-style-type: none"> a. are members of your governing body b. directly or indirectly, own or control more than 25% of you or of a person who itself owns or controls more than 25% of you, and c. are members of the governing body of the people 	At all times

Details	Required date
<p>referred to in paragraph (b) above.</p> <p>To avoid doubt, this includes the members of your governing body.</p>	
<p>Standard condition 4: Tell us about changes that affect you, the people who control you, or people you control</p>	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act. 2. You cease to be an overseas person or dispose of all or any part of the Asset. 3. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you. 	<p>Within 20 working days after the change</p>

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Reporting Conditions

We need information from you about how your investment plan is tracking so we can monitor your progress against the Conditions.

In addition to Settlement reporting (as set out in Standard Condition 2), you must provide LINZ with reports detailing the progress of the investment. The reports must:

1. be submitted via our [Webform](#) by 31 January 2025
2. contain information about your progress in implementing the special conditions (which can include photographs, maps or aerial imagery as evidence of compliance with relevant conditions),
3. follow the format of the template annual report published on our website

If requested in writing by LINZ, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

- a. the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the Consent was granted, or
- b. the conditions of this Consent.

Power to vary reporting date

The dates on which reports are due to be provided may be changed by agreement between LINZ and the Consent Holder, provided that this power may not be used to give a time extension for an individual report.

Power to narrow scope of reports

LINZ may temporarily or permanently waive the requirement to report on a particular matter.

Power not to require further reporting

LINZ may waive the requirement to submit a report and may waive the requirement for future reporting.

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ATTACHMENT 2 – INTENDED OWNERSHIP STRUCTURE

[s 9(2)(b)(ii)]

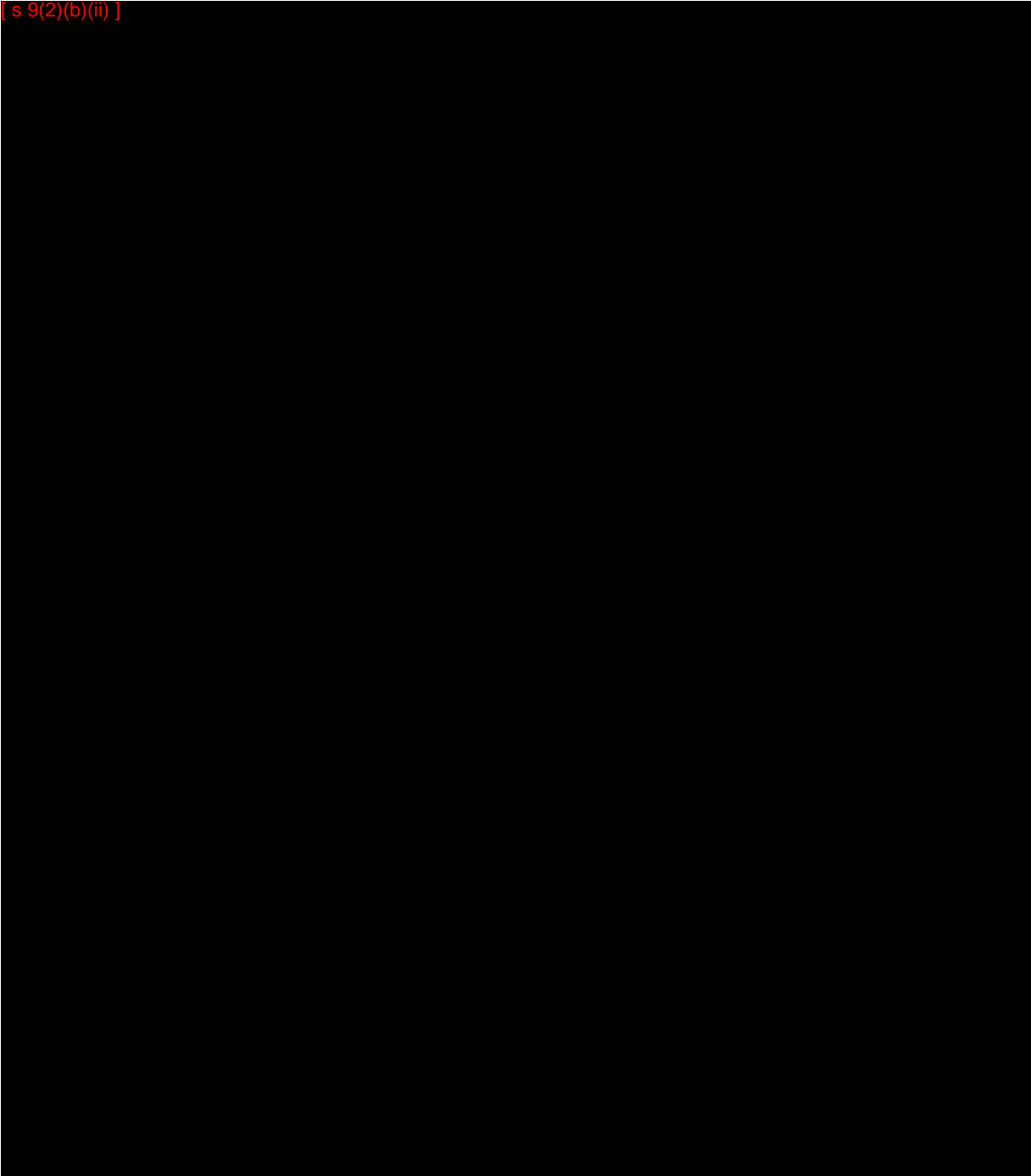


Figure 1: post-acquisition structure

[s 9(2)(b)(ii)]

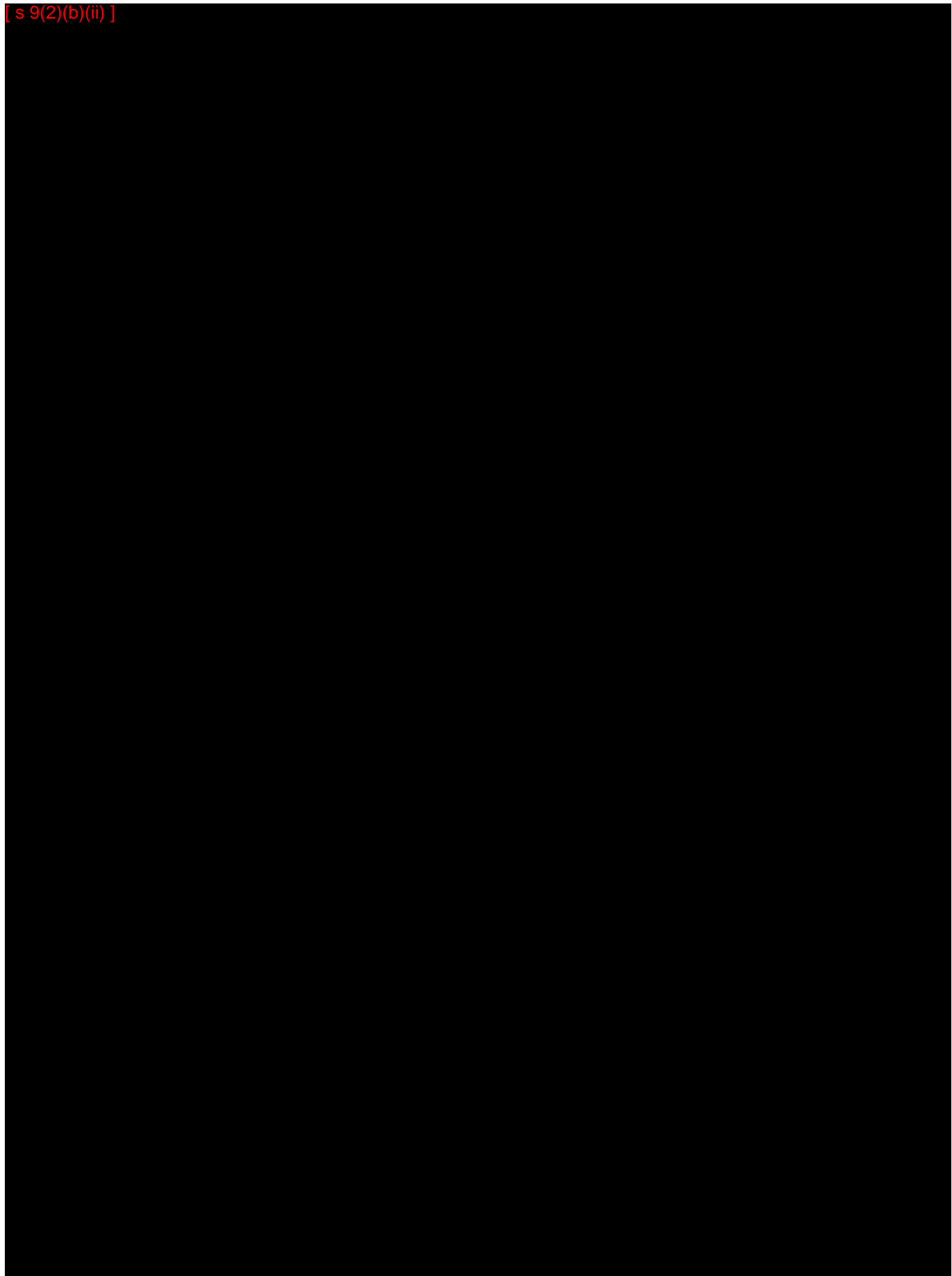


Figure 2: alternative post-acquisition company structure