

To: Clare Needham, Principal Customer Regulatory Specialist

## ASSESSMENT REPORT: DB Breweries Limited

<b>Date</b>	30 November 2023	<b>Classification</b>	IN CONFIDENCE: Commercially sensitive
<b>LINZ reference</b>	202300815	<b>Deadline</b>	14 December 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 2.

### Key information

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

<b>Applicant</b>	<b>DB Breweries Limited</b> (Netherlands 27%, Various 73%)
<b>Vendors</b>	<b>Jamie Darren Willians and Andrew Robert Williams as trustees of the 3 Ratbags Trust</b> New Zealand (100%)  <b>Jamie Darren Willians and Andrew Robert Williams as trustees of The White Socks No.3 Trust</b> New Zealand (100%)
<b>Asset</b>	Up to 100% of the shares in Star Hospitality Group Limited
<b>Consideration</b>	\$100,000,000
<b>Relevant tests</b>	Investor test: s18A National interest test: s18(b)

### Timing

5. The Overseas Investment Regulations 2005 (**Regulations**) specify the total assessment timeframe for this application is 35 working days. This application is currently on day 25. A decision is due to the applicant by 14 December 2023.

## A. Decision

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### Core tests

6. I determine that:

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

Relevant overseas person	Role
DB Breweries Limited	Applicant and acquiring entity
Heineken Asia Pacific Pte. Ltd	100% owner of the Applicant
Heineken N.V.	100% owner of Heineken Asia Pacific Pte. Ltd

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

Individuals with control	Role
Matthew John Cassilis Wilson	Director of DB Breweries Limited
Lisa Marie Matchett	
Darron Michael Curphy	
Karyn Denise O'Loughlin	
Jacco Cornelis van der Linden	Vice-President of Heineken Asia Pacific Pte. Ltd
Dolf Gijsbert Servaas van den Brink	Chairman of Executive Board of Heineken N.V.
Harold Petrus Johannes van den Broek	Member of Executive Board of Heineken N.V.

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) ]



Clare Needham  
Principal Customer Regulatory Specialist (Overseas Investment – LINZ)  
Date: 5 / 12 / 2023

## **B. Background and proposed transaction**

9. DB Breweries Limited (the **Applicant**) seeks consent for the possible future acquisition of up to 21,046,880 shares in the target, Star Hospitality Group Limited (**Investment**).
10. The Applicant manufactures and distributes beverages. The Applicant currently owns 80.49% of the target, Star Hospitality Group Limited (**SHGL**), which is the largest hospitality group in New Zealand
11. SHGL was incorporated for the purpose of acquiring all the issued share capital in Joylab Group Limited (**Joylab**) and Kapura Limited (**Kapura**), which operate a combined total of about 60 hospitality venues across Auckland, Tauranga and Wellington. The Vendors (the **Management Shareholders**) are trustees of two trusts that, among other shareholders, formerly owned and operated Kapura. In the sale of that company to SHGL, [ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ]
12. Earlier this year SHGL acquired 100% of the issued share capital of Joylab<sup>1</sup> and 100% of the issued share capital of Kapura<sup>2</sup>. [ s 9(2)(b)(ii) ]  
the Management Shareholders were each issued 10,523,440 shares in SHGL.
13. The shares in SHGL are held follows:
  - a. The Applicant – 86,809,165 (80.49%)
  - b. The Management Shareholders in their capacity as trustees of the 3 Ratbags Trust – 10,523,440 (9.757%); and,
  - c. The Management Shareholders in their capacity as trustees of the White Socks No.3 Trust – 10,523,440 (9.757%)
14. A shareholders agreement dated 28 April 2023 (**Shareholders Agreement**) provides for the acquisition and sale of shares in SHGL (the **Liquidity Put**) between the Management Shareholders and the Applicant subject to conditions.
15. The Investment in respect of which consent is sought may occur either:
  - [ s 9(2)(b)(ii) ]
  - [ s 9(2)(b)(ii) ]
16. In anticipation of these events and the requirement for consent, the Shareholders Agreement requires the Applicant to seek any necessary consent required for the Investment under the Act or the Regulations [ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ]

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<sup>1</sup> The Applicant previously owned 60% of the issued share capital in Joylab and the Applicant contributed those shares to SHGL whilst the residual shares in Joylab were acquired from JAG Hospitality Limited.

<sup>2</sup> From the previous owners of Kapura, among whom were the Management Shareholders

## C. Application of the Act

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17. The Asset is sensitive because the Applicant would increase its shareholding to 100%<sup>3</sup> and the value of the business is more than \$100 million,<sup>4</sup> so consent is required.<sup>5</sup> The following criteria for an investment in significant business assets apply to this application:<sup>6</sup>
- The investor test must be met.<sup>7</sup>
  - 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.<sup>8</sup>
18. We assess the investor test in Part D, and discuss national interest matters in Part E.

## D. Applicant and investor test

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

### Business Activities

20. The Applicant<sup>9</sup> manufactures and distributes beverages and operates a hospitality group. The Applicant operates its hospitality group via SHGL. The Applicant is a well-known brand name in New Zealand and employs up to or about 500 people across the country.

### Ownership

21. The ultimate owner of the Applicant is L'Arche Green N.V. a company incorporated in the Netherlands which manufactures alcoholic beverages. The shares in L'Arche Green N.V. are owned by two families, the Heineken family (Netherlands 88.86%) and the Hoyer family (Germany 11.14%).
22. Heineken Holding N.V. is a holding company incorporated in the Netherlands and is listed on the Dutch stock exchange. L'Arche Green N.V. owns 54.1% of Heineken Holding N.V. and the remaining 45.9% is owned by various public shareholders, none of whom own more than 5% of the shares.
23. Heineken N.V. is a company incorporated in the Netherlands and is listed on the Dutch stock exchange. Heineken Holding N.V. owns 50.5% of the shares in Heineken N.V. and the remaining 49.5% is owned by various public shareholders, none of whom own more than 5% of the shares. Heineken N.V. is a multi-national brewing company owning breweries in over 70 countries.
24. Heineken N.V. is the 100% owner of Heineken Asia Pacific Pte. Ltd. Heineken Asia Pacific Pte. Ltd is incorporated in Singapore. The Applicant is a wholly owned subsidiary of Heineken Asia Pacific Pte. Ltd, which is its sole shareholder.
25. The most recent annual reports for Heineken Holding N.V. and Heineken N.V. indicate that a majority of those entities' publicly owned shares are owned by shareholders in the Americas, the United Kingdom and Ireland<sup>10</sup>.

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<sup>3</sup> Section 12(1)(b)(ii)(A) of the Act

<sup>4</sup> Section 13(1)(a)(ii) of the Act.

<sup>5</sup> Under sections 10(1)(b) and 13(1)(a) of the Act.

<sup>6</sup> Set out in section 18 of the Act.

<sup>7</sup> Section 18A(4) of the Act.

<sup>8</sup> Section 18(1)(e) of the Act.

<sup>9</sup> Incorporated in New Zealand on 19 July 1966

<sup>10</sup> Given this is a public float, these figures are always fluctuating.

26. A diagram of the ownership structure of the Applicant is in **Attachment 2**.
27. Given the information set out above, we recommend that the 'relevant overseas person' is (collectively):

Relevant overseas person	Role
DB Breweries Limited	Applicant and acquiring entity
Heineken Asia Pacific Pte. Ltd	100% owner of the Applicant
Heineken N.V.	100% owner of Heineken Asia Pacific Pte. Ltd

### Control

28. The Applicant and its Board will be responsible for managing the Investment. [ s 9(2)(b)(ii) ]
29. [ s 9(2)(b)(ii) ]
30. The Directors of DB Breweries Limited are Matthew Wilson, Lisa Matchett, Darron Curphy and Karyn O'Loughlin. The Regional President of Heineken Asia Pacific Pte. Limited is Jacco van der Linden.
31. The Director's and members of the Executive Board of Heineken N.V. are Dolf van den Brink and Harold van den Broek. [ s 9(2)(b)(ii) ]
32. Therefore, we recommend that the 'individuals with control of the relevant overseas person' (IWC)<sup>11</sup> are:

Individuals with control	Role
Matthew John Cassilis Wilson	Director of DB Breweries Limited
Lisa Marie Matchett	Director of DB Breweries Limited
Darron Michael Curphy	Director of DB Breweries Limited
Karyn Denise O'Loughlin	Director of DB Breweries Limited
Jacco Cornelis van der Linden	Regional President Heineken Asia Pacific Pte. Limited
Dolf Gijsbert Servaas van den Brink	Chairman of Executive Board of Heineken N.V.
Harold Petrus Johannes van den Broek	Member of Executive Board of Heineken N.V.

### Summary of investor test

33. The relevant overseas persons and individuals with control established none of the factors contained in section 18A(4) of the Act.

<sup>11</sup> Section 15.

## **E. Not a transaction of national interest**

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34. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.<sup>12</sup> 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).
35. We have not referred this transaction to the Minister of Finance for her to call it in for a national interest assessment on a discretionary basis.<sup>13</sup> She has therefore not declined consent to the transaction.
36. We are directed<sup>14</sup> that the starting point is the assumption that overseas investment is in New Zealand's national interest and that we should only escalate to the Minister of Finance to exercise her discretion for a national interest assessment if the proposed investment:
- could pose risks to New Zealand's national security or public order
  - would grant an investor significant market power within an industry or result in vertical integration of a supply chain
  - has foreign government or associated involvement that was below the 10 per cent threshold for automatic application of the national interest test, but granted that government (and/or its associates) disproportionate levels of access to or control of sensitive New Zealand assets
  - would have outcomes that were significantly inconsistent with or would hinder the delivery of other Government objectives
  - raises significant Treaty of Waitangi issues, or
  - relates to a site of national significance (e.g. significant historic heritage).
37. We do not consider that this investment engages any of these risk factors.

## **F. Conclusion**

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38. 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.
39. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and from page 2 of this Assessment Report to record your decision.

[ s 3(2)(a) ]

Martin Carter

Customer Regulatory Specialist (**Overseas Investment – LINZ**)

Date: 30 / 11 / 2023

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<sup>12</sup> Under s 20A of the Act.

<sup>13</sup> Section 20B of the Act

<sup>14</sup> Ministerial Directive Letter (24 November 2021).

## **G. List of Attachments**

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1. Proposed Decision
2. Ownership structure

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## ATTACHMENT 1 PROPOSED DECISION

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### Consent for Overseas Person to Acquire Significant New Zealand Business Assets

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

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#### Consent

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Decision date: 5 December 2023

The following people have been given the following **consent**:

<b>Case</b>	202300815
<b>Consent</b>	The Consent holder may acquire the Assets subject to the Conditions set out below.
<b>Consent holder/s</b>	DB Breweries Limited (company number 71013) We will also refer to each Consent holder and the Consent holders together as <b>you</b> .
<b>Assets</b>	Up to 100% of the shares in Star Hospitality Group Limited.
<b>Timeframe</b>	You have until 31 December 2029 to acquire the Assets.

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## 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.

**Regulations** means Overseas Investment Regulations 2005

Any term or expression that is defined in the Act or Regulations and used, but not defined, in this consent has the same meaning as in the Act or Regulations.

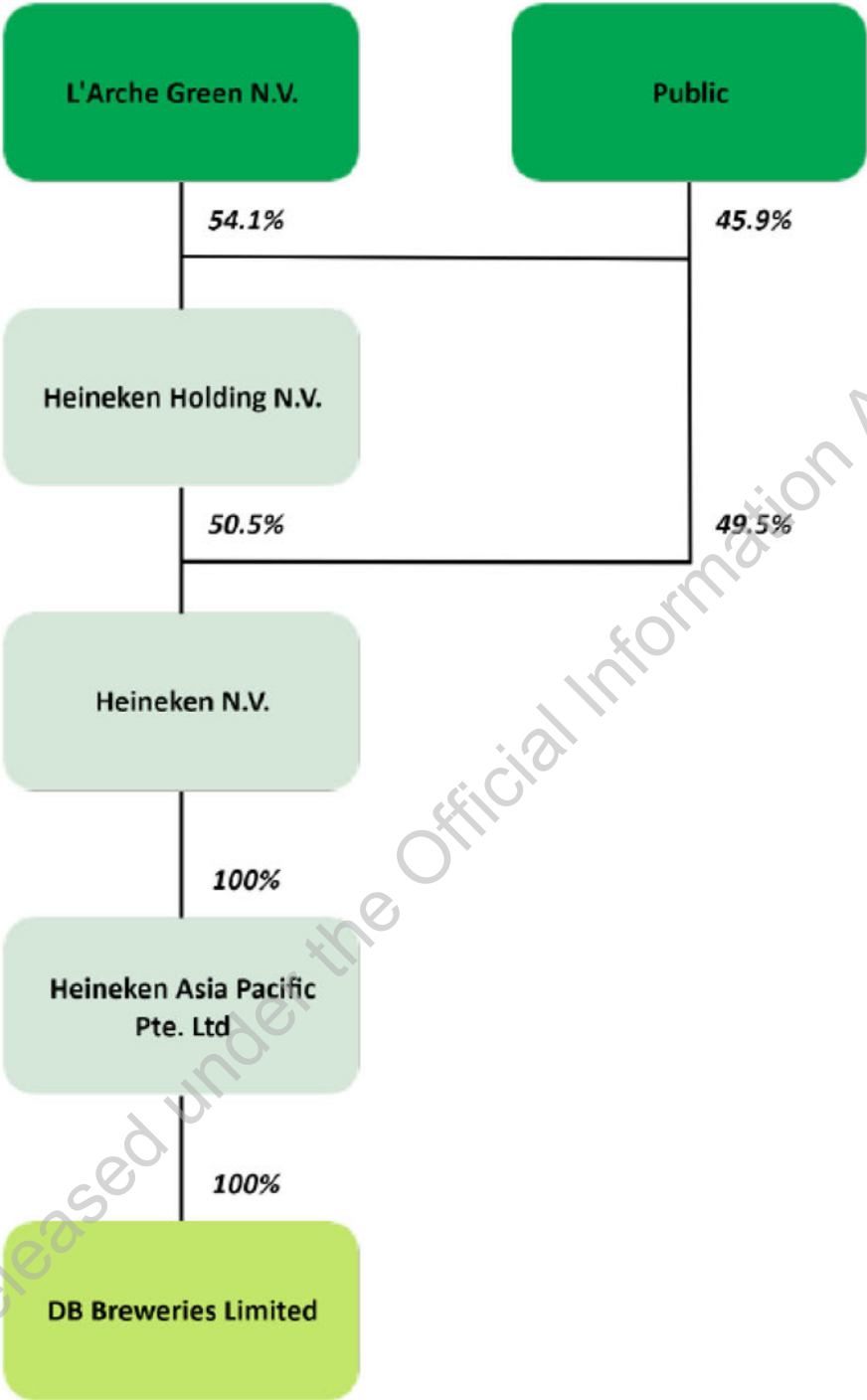
Details	Required date
<b>Standard condition 1: Acquire the Assets</b>	
<p>You must acquire the Assets</p> <ol style="list-style-type: none"><li>1. By the date stated in the Consent. If you do not, your Consent will lapse and you must not acquire the Assets, and</li><li>2. Using the acquisition, ownership, 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.</li></ol>	As stated in the Consent
<b>Standard condition 2: Tell us when you acquire the Assets</b>	
<p>You must tell us in writing when you have acquired the Assets. Include details of:</p> <ol style="list-style-type: none"><li>1. the date you acquired the Assets (<b>settlement</b>),</li><li>2. consideration paid (plus GST if any),</li><li>3. the structure by which the acquisition was made and who acquired the Assets, and</li><li>4. copies of any transfer documents and settlement statements.</li></ol>	As soon as you can, and no later than two months after settlement
<b>Standard condition 3: Remain not unsuitable to Invest in New Zealand</b>	
<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.</p> <p>The <b>Individuals Who Control You</b> are individuals who:</p> <ol style="list-style-type: none"><li>a. are members of your governing body</li></ol>	At all times

Details	Required date
<p>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</p> <p>c. are members of the governing body of the people referred to in paragraph (b) above.</p> <p>To avoid doubt, this includes the members of your governing body.</p>	
<p><b>Standard condition 4: Tell us about changes that affect you, the people who control you, or people you control</b></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"> <li>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.</li> <li>2. You cease to be an overseas person or dispose of all or any part of the Asset.</li> <li>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.</li> </ol>	<p>Within 20 working days after the change</p>

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**ATTACHMENT 2 – OWNERSHIP STRUCTURE**

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