

# OI Assessment Report 202400291 – NewCold Coöperatief U.A.

**Ki / To:** Clare Needham, Principal  
Customer Regulatory Specialist

**Mai / From** Ed Atienza, Senior Customer  
Regulatory Specialist

**Rā / Date:** 24 June 2024

**Rā Mutunga/  
Deadline** 25 June 2024

## Pūtake/Purpose

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

## Summary

|                       |  |
|-----------------------|--|
| <b>Applicant</b>      | <b>NewCold Coöperatief U.A.</b><br>North America Region (79%); People's Republic of China (9%);<br>Various (12%)                 |
| <b>Type</b>           | Establishment of business, being the establishment and operation of<br>an automated warehouse and cold chain logistics business. |
| <b>Consideration</b>  | \$[ s 9(2)(b)(ii) ]  |
| <b>Relevant tests</b> | Investor test <sup>1</sup><br>National interest criterion <sup>2</sup>   |

NewCold Coöperatief U.A. (**Applicant**) is a Dutch incorporated cooperative ultimately owned by investment funds managed by Westport Capital Partners. The Applicant is seeking consent to establish and operate automated warehouse and cold chain logistics facilities in New Zealand.

## Timing

A decision is required by 25 June 2024 to comply with the expectation in the Ministerial Directive Letter<sup>3</sup> that the majority of consent decisions are made within half the prescribed assessment timeframe.<sup>4</sup>

## Decision

1. I have determined that, for the reasons set out in this report:

<sup>1</sup> Sections 18(a) and 18A of the Act.

<sup>2</sup> Section 18(b) of the Act.

<sup>3</sup> Ministerial Directive Letter dated 6 June 2024.

<sup>4</sup> The assessment timeframe for this application is 35 working days.

- the relevant overseas person and individuals with control are as set out in the report;
  - the investor test has been met;
2. I note that the transaction is not considered to be a transaction of national interest.
  3. I therefore **grant consent** subject to the conditions in **Attachment 1**.

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

Clare Needham

Principal Customer Regulatory Specialist (Overseas Investment - LINZ)

Date: 27 / 06 / 2024

## A. Background and proposed transaction

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4. The Applicant is a Dutch incorporated cooperative ultimately owned by investment funds managed by Westport Capital Partners, a US-based investment management firm. The Applicant is establishing automated warehouse and cold chain logistics facilities in New Zealand (**Business**) anticipated to be operational by July 2027.
5. Each facility will involve the acquisition of industrial land and the construction of a substantial building, and installation of specialised warehouse and cold chain technology and equipment.

## B. Application of the Act

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6. Consent is required because the Business will be carried on for more than 90 days in any year and the costs of establishing the Business will exceed \$100 million. The following criteria for an investment in significant business assets apply to this application:<sup>5</sup>
  - The investor test must be met.<sup>6</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>7</sup>
7. If the Applicant wishes to acquire land considered sensitive under the Act to construct its automated warehouse and cold chain logistics facilities, it will file a separate consent application for that.
8. We assess the investor test in **Part C** and discuss national interest matters in **Part D**.

## C. Applicant and investor test

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

### Business Activities

10. The Applicant is the trading company for NewCold Group, a global business with 15 fully automated and conventional temperature-controlled storage facilities located in the United States of America (**US**), France, Germany, Italy, Poland, Portugal, Sweden, the United Kingdom and Australia. It employs over 2,000 employees and offers over 1.2 million pallet positions across the world.
11. [ s 9(2)(b)(ii) ]  
[REDACTED]

<sup>5</sup> Set out in section 18 of the Act.

<sup>6</sup> Sections 18(a) and 18A of the Act.

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

<sup>8</sup> [ s 9(2)(b)(ii) ]  
[REDACTED]

## Ownership and control

12. The Applicant is [ s 9(2)(b)(ii) ] owned by [ s 9(2)(b)(ii) ], a US [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] exercises control over [ s 9(2)(b)(ii) ] decision-making with respect to the Investment, including acquisition and divestment decisions.
13. [ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ]
14. The Applicant will establish an operating company in New Zealand, intended to be called NewCold New Zealand OpCo Limited.
15. A diagram of the intended ownership structure is in **Attachment 2**.

## Relevant overseas person and individuals with control

16. We recommend that the 'relevant overseas person' is (collectively):

| Relevant overseas person                      | Reason                                   |
|---|--|
| NewCold Coöperatief U.A.                      | Applicant                                |
| [ s 9(2)(b)(ii) ]<br>[ s 9(2)(b)(ii) ]        | [ s 9(2)(b)(ii) ] owner of the Applicant |
| NewCold New Zealand OpCo Limited <sup>9</sup> | Operating company in New Zealand         |
| [ s 9(2)(b)(ii) ]                             | [ s 9(2)(b)(ii) ]<br>[ s 9(2)(b)(ii) ]   |
| [ s 9(2)(b)(ii) ]                             | [ s 9(2)(b)(ii) ]                        |

17. We recommend that the 'individuals with control of the relevant overseas person'<sup>10</sup> are:

| Individuals with control <sup>11</sup>    | Reason |
|---|--------|
| Adrianus Josephus Franciscus Van Rijswijk |        |
| David Sanders                             |        |

<sup>9</sup> To be incorporated.

<sup>10</sup> Section 15 of the Act.

<sup>11</sup> Individual marked with an asterisk is not overseas person, either because they are a New Zealand citizen or are ordinarily resident in New Zealand, therefore they do not need to meet the investor test.

| Individuals with control* <sup>11</sup> | Reason  |
|---|---|
| Frank Huckschlag                        | Director of the Applicant   |
| Stephanie Maritha Bernadette Moggo-Hain |   |
| Johannes Pieter Otto                    | Director of the Applicant [ s 9(2)(b)(ii) ]<br>[REDACTED]<br>[REDACTED]   |
| [ s 9(2)(b)(ii) ]                       | [REDACTED]<br>[REDACTED]<br>[REDACTED]  |
| [REDACTED]                              |   |
| [REDACTED]                              |   |
| Abraham Izaak Johannis Hage             | Director of the Applicant, [ s 9(2)(b)(ii) ]<br>[REDACTED]<br>[REDACTED] and intended director of<br>NewCold New Zealand OpCo Limited |
| Abhynesh Abhyash Narian Maharaj*        | Director of the Applicant and intended<br>director of NewCold New Zealand<br>OpCo Limited   |
| Brian Arthur James Bedford-Moisan       | Intended director of NewCold New<br>Zealand OpCo Limited  |
| Viren Sunith Oliver Wijesinghe          |   |
| [ s 9(2)(b)(ii) ]                       | [REDACTED]  |
| [REDACTED]                              |   |
| [REDACTED]                              |   |
| [REDACTED]                              |   |

### Summary of investor test

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

## D. Not a transaction of national interest

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19. 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).
20. The Minister of Finance has not called the Investment in for a national interest assessment.<sup>13</sup>

## E. Conclusion

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21. For the reasons set out in this report, we consider that the criteria for consent have been met and our recommendation is to grant consent.
22. 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 9(2)(g)(ii) ]

Ed Atienza

Senior Customer Regulatory Specialist

Overseas Investment – LINZ

24 June 2024

## F. Attachments

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1. Proposed Decision
2. Intended ownership structure

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

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

## 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:** 27 June 2024

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

|                        |   |
|------------------------|---|
| <b>Case</b>            | 202400291   |
| <b>Consent holders</b> | NewCold Coöperatief U.A. (Trade Registry number 55703623)<br><br>Any entity directly or indirectly wholly owned by NewCold Coöperatief U.A.<br><br>We will also refer to each Consent holder and the Consent holders together as <b>you</b> . |
| <b>Consent</b>         | The Consent Holders may establish the Business subject to the Conditions set out below.   |
| <b>Business</b>        | Establishment and operation of automated warehouse and cold chain logistics facilities.   |
| <b>Timeframe</b>       | You have until 31 July 2028 to establish the Business.  |

## 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** below you may be subject to fines or other penalties.

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

## Definitions

**Act** means 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.

## Standard Conditions

You must comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand assets, including you:

| Details:  | Required date:  |
|---|---|
| <b>Standard condition 1: Establish the Business</b>   |   |
| You must establish the Business: <ul style="list-style-type: none"> <li>i. By the date stated in the Consent. If you do not, your Consent will lapse and you must not establish the Business; and</li> <li>ii. Only You - the named or described Consent Holders - may establish the Business.</li> </ul> | As stated in the Consent  |
| <b>Standard condition 2: Tell us when you establish the Business</b>  |   |
| You must tell us in writing when you have established the Business. You must include details of: <ul style="list-style-type: none"> <li>i. the date you establish the Business, and</li> <li>ii. the cost of establishing the Business (plus GST if any)</li> </ul>                                       | As soon as you can and no later than 2 months after you have established the Business |



| <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 sensitive New Zealand assets in accordance with section 18A(1) of the Act.</p> <p>The <b>Individuals Who Control You</b> are individuals who:</p> <ul style="list-style-type: none"> <li>i. are members of your governing body</li> <li>ii. directly or indirectly own or control more than 25% of you or of a person who itself owns or control more than 25% of you and</li> <li>iii. are members of the governing body of the people referred to in paragraph (ii) above.</li> </ul> | At all times                            |
| <b>Standard condition 4: Tell us about changes that affect you, the people who control you, or people you control</b>  |   |
| <p>You must tell us in writing if any of the following events happens to any of the Consent Holders:</p> <ul style="list-style-type: none"> <li>i. 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>ii. You cease to be an overseas person or dispose of all or any part of the Assets</li> <li>iii. 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> </ul>                      | Within 20 working days after the change |

## ATTACHMENT 2 INTENDED OWNERSHIP STRUCTURE

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

