



To: Davinnia Tan, Manager – Applications, Overseas Investment Office

ASSESSMENT REPORT: Fisher Funds Management Limited

Date	10 November 2022	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	202200350	Deadline	16 November 2022

Purpose

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

Released under the Official Information Act 1982

Key information

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

Applicant	Fisher Funds Management Limited (New Zealand: 66.01%, United States of America: 23.37%, Various: 10.62%)
Vendors	Kiwi Group Holdings Limited (New Zealand: 100%)
Asset	100% of the shares in Kiwi Wealth Management Limited
Consideration	\$310,000,000
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 55 working days because there is also a mandatory national interest assessment component. This application is currently on day 51, therefore a decision is due to the applicant by 16 November 2022. The Ministerial decision regarding the national interest component is due by 11 November 2022 and the Applicant's commercial deadline for consent is 11 November 2022.

A. Decision

Core tests

6. I determine that:

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

Relevant overseas person	Role
Toi Foundation	Indirect owner of Applicant
Fisher Funds Management Limited	Applicant
TA FF HoldCo Limited	Indirect owner of Applicant

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

Individuals with control	Role
Bruce James Murray McLachlan	CEO of Applicant
Michael Stuart Berk	Director of Applicant and Director of TA FF HoldCo Limited
Edward Francis Sippel	
Gregory Mark Wallace	Director of TA FF HoldCo Limited
Mark John Lazberger	Director of Applicant
Margaret Anne Blackburn	
Jennifer Clare Moxon	

David Clarence Clarke	
Guy Roper	Trustee of Toi Foundation and Director of Applicant
Wharehoka Craig Robert Wano	Trustee of Toi Foundation
Christopher Patrick Ussher	
Nicola Jane Ngawera	
Harvey Frank Dunlop	
Peter Seymour Dalziel	
Liana Huia Poutu	
Robin Brockie	
Sophie Ellie Braggins	
Iqbal Manzoor Haque	

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. The investment includes a transaction of national interest under section 20A because the transaction involves an investment by a non-NZ government investor.
8. I note that the deciding Minister has not declined consent to this transaction on the basis that the transaction is contrary to New Zealand's national interest.

Decision about whether to grant or decline consent

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

Davinnia Tan

Manager - Applications (Overseas Investment Office)

Date: 10 / 11 / 2022

B. Background and proposed transaction

10. Fisher Funds Management Limited (the **Applicant**) seeks consent to acquire 100% of the share capital in Kiwi Wealth Management Limited¹ (the **Target**) from Kiwi Group Holdings Limited (the **Proposed Transaction**).
11. The Applicant is a majority New Zealand owned² specialist investment manager with \$14.6 billion of funds under management on behalf of 250,000 New Zealand clients³ (including community trusts, charities, not-for-profits, councils, family offices, insurance companies, iwi, platforms, corporate pension schemes and individuals).
12. The Target is one of the holding companies for the Kiwi Wealth Group, a wealth and investment organisation. The Target manages the following products:
 - Kiwi Wealth KiwiSaver scheme
 - Managed Funds
 - Super Scheme
 - Private Portfolio Services.It also provides investment advice through its advisory arm, Kiwi Invest, and is currently one of six default KiwiSaver providers.
13. The Applicant was selected by Kiwi Group Holdings Limited (the **Vendor**) following a competitive bid process. The Applicant and Vendor entered into an Agreement for Sale and Purchase of Shares on 11 August 2022 (the **Agreement**). Settlement of the Agreement is conditional on OIO consent and on the issue of an Operational Readiness Notice under the terms of a separate transitional services agreement between Kiwibank Limited and the Target.
14. LINZ received one third party submission on the Proposed Transaction from a member of the public. LINZ does not consider that the submission impacts the approval of this application, which requires the satisfaction of the investor test only⁴.

C. Application of the Act

15. 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

¹ New Zealand company number 3758632, incorporated on 28 March 2012.

² 66.01% of the Applicant is owned by a New Zealand charitable trust (the Toi Foundation), as discussed in paragraphs 21-22 below.

³ Information up to date as at 31 March 2022.

⁴ The submitter raised two areas of concern; the Applicant's level of performance fees and whether the Proposed Transaction would lead to job losses amongst the Target's employees. The Applicant responded to the submission, stating that it will participate in the FMA Value for Money assessment in 2023 and that the Applicant's KiwiSaver schemes have been recognised as "outstanding value for money" by Canstar for the third year in a row. In relation to potential job losses, the Applicant stated that the integration of the businesses will lead to the duplication of functions, however a significant number of employees will be retained, together with a material presence in Wellington.

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 of the Act.

- You must also note whether the investment is a transaction of national interest and, if so, whether the deciding Minister⁹ has decided that the investment is contrary to New Zealand's national interest.¹⁰

16. We assess the investor test in Part D, and discuss national interest matters in Part E.

D. Applicant and investor test

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

Business Activities

18. The Applicant is a majority¹¹ New Zealand owned wealth and investment manager with a diverse range of clients. It manages multiple investment funds as well as three investment companies; Kingfish Limited, Barramundi Limited and Marlin Global Limited. The Applicant is the fourth largest KiwiSaver provider and the fifth largest investment manager in New Zealand. It currently employs 150 people and is based in Auckland.

Ownership

19. Fisher Funds Management Limited is a limited liability company¹² which was incorporated in New Zealand on 9 April 1998. The Applicant is owned as follows:

- 56.01% by Toi Foundation Investments Limited¹³ (TFIL);
- 10% by Toi Foundation Holdings Limited¹⁴ (TFHL); and
- 33.99% by TA FF HoldCo Limited¹⁵ (TA Fisher Investco).

20. On completion of the Proposed Transaction, Toi Foundation will consolidate its shareholding in the Applicant. Specifically, TFHL's 10% shareholding in the Applicant will be transferred to TFIL. Therefore, on completion of the Proposed Transaction, TFIL will hold a 66.01% shareholding in the Applicant.

21. The Applicant has incorporated two parent companies: FFML Holdco Limited¹⁶ and FFML Topco Limited¹⁷. These intermediary entities have been incorporated solely for the purposes of raising debt from and providing security to the debt finance providers which will fund the Proposed Transaction¹⁸. The directors of FFML Holdco Limited and FFML Topco Limited are all 'individuals with control' for the purposes of this application.¹⁹

Toi Foundation ownership

22. TFIL is a special purpose intermediary company that was incorporated to invest in the financial services sector. TFIL is wholly owned by TFHL.

⁹ Ordinarily the Minister of Finance however due to the Minister of Finance's role as a shareholder in the parent company of the Vendor, responsibility for this decision has been transferred to Minister Hipkins in accordance with section 7 of the Constitution Act 1986.

¹⁰ Section 18(b) of the Act.

¹¹ The Toi Foundation owns approximately 66.01% of the Applicant.

¹² Company number 903800.

¹³ Company number 5655589, incorporated on 27 March 2015.

¹⁴ Company number 5615203, incorporated on 26 February 2015.

¹⁵ TA FF HoldCo Limited received retrospective consent from the OIO for its acquisition of a 34% shareholding (and an up to 51% shareholding) in the Applicant in August 2018 (case 201720056).

¹⁶ Company number 8500633, incorporated 25 October 2022.

¹⁷ Company number 8499236, incorporated 20 October 2022.

¹⁸ The Applicant is wholly owned by FFML Holdco Limited and FFML Holdco Limited is wholly owned by FFML Topco Limited.

¹⁹ The directors of FFML Topco Limited are David Clarence Clarke, Guy Roper and Edward Francis Sippel. The directors of FFML Holdco Limited are David Clarence Clarke, Guy Roper, Edward Francis Sippel, Margaret Anne Blackburn and Michael Stuart Berk.

23. TFHL is wholly owned by Toi Foundation²⁰. TFHL is a special purpose intermediary company that was incorporated to hold assets in accordance with the objects and purposes declared by the trustees of Toi Foundation.
24. Toi Foundation is a charitable trust established in 1988. It is the ultimate owner of TFIL and TFHL. Toi Foundation was set up for the benefit of the Taranaki community. It derives its income from assets and investments (including in the Applicant) and applies this income to support not-for-profit organisations for purposes beneficial to the community.

TA Fisher Investco ownership

25. TA Fisher Investco (the minority shareholder in the Applicant) is owned by a series of parent companies, incorporated in Luxembourg (collectively referred to as the **Luxembourg Intermediaries**). [s 9(2)(b)(ii)]

- [Redacted]
- [Redacted]
- [Redacted]
- 26. [Redacted]
- [Redacted]
- 27. [Redacted]
- [Redacted]
- 28. [Redacted]
- [Redacted]
- 29. [Redacted]
- [Redacted]
- 30. [Redacted]
- [Redacted]
- 31. [Redacted]

²⁰ Toi Foundation was formerly called the TSB Community Trust, trust board number 9429042449430, created under an (amended) deed dated 30 May 1988, it changed its name to Toi Foundation on 28 April 2021.

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

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

Control

33. The Applicant makes decisions by simple majority of its Board. Certain “fundamental matters” require the unanimous approval of the Board. This includes the decision to approve the Proposed Transaction and any future approval of its divestment.
34. The Applicant’s Board and CEO will be responsible for day-to-day management of the Kiwi Wealth Group businesses. They will also control significant capital and operating expenditure (in accordance with a Financial Delegations & Authorities Policy and relevant expenditure thresholds).
35. TA Fisher Investco can appoint 2 directors to the Applicant’s Board, with Toi Foundation appointing the remaining 5 directors. The TA Fisher Investco appointees only have a minority interest in decision making in relation to the Applicant.
36. The investors in the TA Funds are purely passive investors which have invested in the TA Funds on arm’s length commercial terms and likely have no ability to control or influence the TA Funds or its investments (which are managed by TA Associates), including the Applicant or the Kiwi Wealth Group following completion of the Proposed Transaction.

Relevant overseas person and individuals with control

37. On this basis, we recommend that the ‘**relevant overseas person**’ is (collectively):

Relevant overseas person	Role
Toi Foundation	Indirect owner of Applicant
Fisher Funds Management Limited	Applicant
TA FF HoldCo Limited	Indirect owner of Applicant

38. We recommend that the ‘**relevant overseas person**’ is (collectively):

Individuals with control	Role
Bruce James Murray McLachlan	CEO of Applicant
Michael Stuart Berk	Director of Applicant and Director of TA FF HoldCo Limited
Edward Francis Sippel	
Gregory Mark Wallace	Director of TA FF HoldCo Limited
Mark John Lazberger	Director of Applicant
Margaret Anne Blackburn	
Jennifer Clare Moxon	
David Clarence Clarke	
Guy Roper	Trustee of Toi Foundation and Director of Applicant
Wharehoka Craig Robert Wano	Trustee of Toi Foundation

Christopher Patrick Ussher	
Nicola Jane Ngawera	
Harvey Frank Dunlop	
Peter Seymour Dalziel	
Liana Huia Poutu	
Robin Brockie	
Sophie Ellie Braggins	
Iqbal Manzoor Haque	

Summary of investor test

39. The relevant overseas persons and individuals with control established none of the factors contained in section 18A(4) of the Act.
40. For the reason set out above, our conclusion is that **the investor test has been met.**

E. Transaction of national interest

41. The proposed overseas investment is a transaction of national interest under the mandatory criteria in the Act.²³ This is because the investment involves a non-NZ government investor.²⁴ Specifically, [s 9(2)(b)(ii)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
42. The first step is for you to decide whether all of the other criteria for granting consent are met. If you are satisfied that they are, you must then refer the investment to the deciding Minister for a decision about whether the transaction is contrary to New Zealand's national interests. We will prepare a separate report to the deciding Minister for the national interest assessment.
43. Once the deciding Minister has made this decision, you will be able to make the final decision about whether to grant or decline consent.
44. If the deciding Minister determines that the investment:
 - is contrary to New Zealand's national interest, then consent has been declined;
 - is not contrary to New Zealand's national interests, then you must grant consent if the other tests are satisfied;
 - is not contrary to New Zealand's national interests but that actions are desirable to manage the risks posed by the investment, then you may consider what conditions are necessary to mitigate the risks posed by the investment.

²³ Section 20A of the Act.

²⁴ As defined in section 6 of the Act.

[REDACTED]
[REDACTED]
[REDACTED]

F. Conclusion

45. After considering the application, our view is that:
- the investor test has been met; and
 - the transaction is considered to be a transaction of national interest.
46. 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.



Emma Bailey
Solicitor
Overseas Investment Office

Date: 10 / 11 / 2022

G. List of Attachments

1. Proposed Decision
2. Intended ownership structure
3. Letter to Minister of Finance

Released under the Official Information Act 1982

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: 10 November 2022

The following people have been given the following consent:

Case	202200350
Consent	The Consent holder may acquire the Assets subject to the Conditions set out below.
Consent holder/s	Fisher Funds Management Limited (New Zealand company number 903800) We will also refer to each Consent holder and the Consent holders together as you .
Assets	100% of the shares in Kiwi Wealth Management Limited (New Zealand company number 3758632).
Timeframe	You have until 1 November 2023 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 the Overseas Investment Office as **OIO, us or we**.

Act means the Overseas Investment Act 2005.

Details	Required date
Automatic condition: National Interest	
You must not, in relation to the Asset, act or omit to act with a purpose or an intention of adversely affecting national security or public order.	At all times
Standard condition 1: acquire the Assets	
<p>You must acquire the Assets</p> <ol style="list-style-type: none"> by the date stated in the Consent. If you do not, your Consent will lapse and you must not acquire the Assets, and 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.</p> <p>Include details of:</p> <ol style="list-style-type: none"> the date you acquired the Assets (settlement), consideration paid (plus GST if any), the structure by which the acquisition was made and who acquired the Assets, and 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 in New Zealand

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:

- (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 referred to in paragraph (b) above. To avoid doubt, this includes the members of your governing body.

At all times

Standard condition 4: tell us about changes that affect you, the people who control you, or people you control

You must tell us in writing if any of the following events happens to any of the Consent holders:

- 7. 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.
- 8. You cease to be an overseas person or dispose of all or any part of the Asset.
- 9. 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.

Within 20 working days after the change

Released under the Official Information Act 1982

ATTACHMENT 2 – INTENDED OWNERSHIP STRUCTURE

(see following page)

Released under the Official Information Act 1982

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

Released under the Official Information Act 1982

ATTACHMENT 3 – LETTER TO MINISTER OF FINANCE

OVERSEAS INVESTMENT OFFICE



Toitū Te Whenua
Land Information
New Zealand

Case ref: 202200350

13 October 2022

Hon Grant Robertson
Minister of Finance
PARLIAMENT BUILDINGS

cc Rebecca McAtamney, Head of Regulatory Practice and Delivery (Overseas Investment),
rmcatamney@linz.govt.nz

Dear Minister

National interest assessment under the Overseas Investment Act 2005

I seek your decision on whether the following investment is contrary to New Zealand's national interests.

Fisher Funds Management Limited seeks consent under the Overseas Investment Act 2005 (the **Act**) to acquire 100% of the shares in Kiwi Wealth Management Limited.

This investment requires consent because it is an acquisition, by an overseas person, of more than 25% ownership or control interest in significant business assets where the value of those assets exceeds \$100 million (section 13(1)(a) of the Act). The investment requires a national interest assessment because one of the overseas persons is a non-New Zealand government investor (section 20A(1)(b) of the Act).

I have made an assessment that no factors have been established under section 18A of the Act and the investor test is met.

All decisions regarding investments in significant business assets have been delegated to the OIO pursuant to the Ministerial Delegation Letter dated 24 November 2021 (see Table A, Row A). Before I can determine whether to grant or decline the application, you need to decide whether the investment is contrary to New Zealand's national interest (section 20C of the Act). To assist with your consideration of the national interest assessment, I attach the Proposed Consent Decision that outlines the standard conditions that would apply if consent is granted. This includes the automatic condition that each consent holder must not, in relation to sensitive assets in which the relevant investment is made, act or omit to act with a purpose or an intention of adversely affecting national security or public order (section 25C of the Act.)

The Overseas Investment Office will separately provide you with a report addressing the national interest assessment.

Yours sincerely

Davinnia Tan
Manager, Applications
Overseas Investment Office