



Decision required under the Overseas  
Investment Act 2005: Mercury Medical Holdings Limited

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<b>Date</b>	5 July 2017
<b>Security Level</b>	Commercial: In Confidence
<b>Priority</b>	High
<b>Case Number</b>	201620106
<b>Consent Required By</b>	As soon as possible

Contact for Telephone Discussion

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<b>Name</b>	<b>Position</b>	<b>Telephone (wk)</b>	<b>Cellphone</b>	<b>First Contact</b>
Jenna Reid	Manager Applications	04 460 0152		✓
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## Annexures:

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1. Report of the Overseas Investment Office (the "**OIO**") on the proposed overseas investment ("**Report**").
2. Application for consent with supporting material ("**Application**").

## Instructions:

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3. The regulator must grant consent to this overseas investment if it is satisfied that all of the criteria in section 18 of the Overseas Investment Act 2005 (the "**Act**") are met. It must decline to grant consent if it is not satisfied that all of the criteria in section 18 are met. The regulator must not take into account any criteria other than those identified in section 18.
4. For completeness, it is noted that the Applicant is seeking consent to acquire significant business assets and not sensitive land. Therefore, the Applicant is not required to demonstrate the Investment will, or is likely to, benefit New Zealand or that that benefit will be, or is likely to be, substantial and identifiable (a requirement of section 16(1)(e)(ii)-(iii) of the Act). Accordingly, the decision of *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147, insofar as it found that benefits must be assessed using a with or without approach rather than a before and after approach, is not relevant to the Application.
5. In the attached Report, the OIO identifies each of the criteria under section 18 that the regulator is required to consider in this case.

## Conditions

6. Conditions may be imposed on any consent that is granted, under section 25. The attached Report recommends some conditions that you may wish to consider imposing in this case.

## Decision

7. The decision that you are required to make should be based on information available to you that you consider is sufficiently reliable for that purpose. The information that the OIO has taken into account in making its recommendation is summarised in the attached Report.

## Decision:

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8. I have determined that:
  - (a) the '**relevant overseas person**' is (collectively) *MCF2 GP Limited, MCF2A General Partner Limited* and *Mercury Medical Holdings Limited*; and
  - (b) the '**individuals with control of the relevant overseas person**' are Craig Leonard Heatley, Thomas Wilton Sturgess, Geoffrey Ricketts and Clark Elliot Perkins.
9. I am satisfied that the criteria for consent in section 18 have been met:
  - (a) the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment;
  - (b) the relevant overseas person has demonstrated financial commitment to the overseas investment;

- (c) all the individuals with control of the relevant overseas person are of good character; and
  - (d) each individual with control of the relevant overseas person is not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.
10. Consent is granted to the Investment subject to the conditions in Appendix 1 of the Report.



Jenna Reid – Manager Applications

Date 05.07.2017

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Report of the Overseas Investment Office  
on the application for consent by  
Mercury Medical Holdings Limited  
Case: 201620106

Contents

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SUMMARY OF KEY INFORMATION ..... 4

APPLICATION ..... 4

APPLICANT..... 4

BACKGROUND TO THE INVESTMENT ..... 5

OUTLINE OF THE INVESTMENT ..... 5

RATIONALE FOR THE INVESTMENT ..... 6

SENSITIVE LAND ..... 6

ASSESSMENT PROCESS..... 6

CRITERIA SET OUT IN SECTION 18..... 7

THIRD PARTY SUBMISSIONS..... 9

APPENDIX 1 – CONDITIONS OF CONSENT ..... 10

APPENDIX 2 – GOOD CHARACTER ASSESSMENT..... 12

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## Summary of Key Information

<b>Applicant</b>	<b>Mercury Medical Holdings Limited</b> (New Zealand 72%, United States of America 24%, Australia 4%)
<b>Vendors</b>	<b>Nirvana Family Partnership LP</b> (New Zealand 100%)
<b>Consideration</b>	\$77,200,000
<b>Recommendation</b>	Grant Consent

## Application

1. For consent for Mercury Medical Holdings Limited (the "**Applicant**") to carry out an overseas investment in significant business assets, being the acquisition of rights or interests in up to 100% of NMH Holdings Limited (the "**Investment**").
2. Approval for the Investment is required under the Act, as the Applicant is seeking an interest of approximately 50% in assets, with a value exceeding \$100 million.

## Applicant

3. The Applicant is ultimately 100% owned and controlled by Mercury Capital Fund 2 ("**Mercury**"). The Applicant advises that Mercury is a Sydney headquartered managed fund, focused on long term investing in established Australian and New Zealand private businesses, with enterprise values of between \$50 million and \$200 million. Mercury's predominant investment interests are in the health industry, in Australia.
4. Mercury's underlying investors are comprised of institutional and high net worth individuals and families across New Zealand (72%), United States of America (24%) and Australia (4%). The Applicant advises that these investors have a purely economic interest in Mercury, as all decision making in respect of Mercury's investment portfolio is made by Mercury's two general partners: MCF2 GP Limited and MCF2A General Partner Limited (the "**General Partners**").
5. This Application constitutes the first application for consent under the Act from the Applicant (and its associated entities).

### Governance Arrangements

6. Mercury is managed by Mercury Capital Investments Pty Limited (the "**Manager**"), which is made up of a Sydney based team, who oversee over AUD\$420 million in committed capital funds. The Applicant advises that the Manager performs a role which is akin to Mercury's executive function. Under the direction of the boards of directors of the General Partners, the Manager provides various services under a management agreement. The services include:
  - identifying investment opportunities;
  - making investment recommendations to the boards of the General Partners;
  - undertaking due diligence of investment opportunities;
  - providing advice and assistance in respect of negotiating the acquisition and disposal of investments;
  - monitoring performance of investments and reporting to the General Partners;
and

- providing administration and management support services.

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

#### *Existing investments*

8. Mercury's existing investments include:

- **Nexus Day Hospitals Holdings Limited** – the Applicant advises that this is the second largest operator of day hospitals in Australia, consisting of 11 day hospitals.
- **Hexagon Holdings Limited** – an independent label manufacturing business, employing 520 staff across ten production facilities (located in New Zealand and Australia).

### Background to the Investment

#### *Business activities of Target*

9. The Applicant advises that the medical business sought to be acquired through the Investment is a network of 27 primary care clinics, located in the Auckland region.
10. The Applicant advises that Mercury considers the Investment represents an attractive opportunity for its underlying investors. In particular, the Applicant considers that the business delivers patients with high standards of clinical care and service. Mercury believes there is opportunity to execute an accelerated growth strategy which would expand the medical business, through the opening of new sites, acquisitions of similar businesses and geographic expansion outside the Auckland market. If successful in the execution of this strategy, the medical business would significantly increase the number of employees at each business, as well as increase the number of patients served across the Auckland, and wider New Zealand community.

### Outline of the Investment

11. The acquisition of the medical business is structured by way of the acquisition of shares (by the Applicant) in NMH Holdings Limited ("**NMH Holdings**") being the holding company of the medical business). The Investment will result in a joint venture arrangement as between the current owners and the new overseas investor.

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

13. Following completion of the Investment NMH Holdings (being the holding company of the medical business) will be owned by the Applicant and Nirvana Family Partnership LP (as to 50%), as depicted below:

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

## Rationale for the Investment

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14. The Applicant submits that the medical group represents an attractive investment opportunity for Mercury's underlying investors. In particular, the Applicant considers that the business occupies a leading position in its home market of Auckland, is of a large scale, professionally managed and delivers to patients and customers with high standards of clinical care and service.
15. Mercury believes there is opportunity to execute an accelerated growth strategy, which would expand the medical business, through the opening of new sites, acquisitions of similar businesses and geographic expansion outside the Auckland market. If successful in the execution of this strategy, the medical group would significantly increase the number of employees in the business, as well as increase the number of patients served across the Auckland and wider New Zealand community.

## Sensitive Land

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16. The application does not involve sensitive land.

## Assessment Process

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17. We have sought sufficient information from the Applicant for us to be assured about the accuracy of the information supplied and have sought sufficient evidence from the Applicant for us to be able to judge whether the criteria that apply are met.
18. We did not consider it necessary to seek input from third parties in order to verify the information or evidence gathered.
19. We have determined that the:
  - (a) **'relevant overseas person'** is (collectively) *MCF2 GP Limited, MCF2A General Partner Limited and Mercury Medical Holdings Limited*; and

(b) **'individuals with control of the relevant overseas person'** are Craig Leonard Heatley, Thomas Wilton Sturgess, Geoffrey Ricketts and Clark Elliot Perkins.

20. The entities comprising the 'relevant overseas person' are made up of the Applicant company, and each of the General Partners (for the investment managers that will hold a stake in the Investment). The 'individuals with control' are comprised of the directors of the selected 'relevant overseas person' entities.

## Criteria set out in section 18

21. s18(1)(a) Overseas Investment Act 2005

<b>Does the relevant overseas person, or (if that person is not an individual) do the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to that overseas investment?</b>	✓
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The Court of Appeal has confirmed that the wording of this criterion allows considerable flexibility in determining what business experience and acumen is relevant to a proposed investment. More or less specific expertise may be required depending on the nature of the investment. Business experience and acumen that contributes to an investment's success may be treated as relevant, even though the investor may have to supplement its experience and acumen by utilising the experience and acumen of others to ensure the investment succeeds.

In this case, the Investment can be described as the entry by an overseas person into a joint venture arrangement with an incumbent New Zealand investor, with interests in general practice medical centres.

We have reviewed the biographical information provided by the Applicant for each of the individuals with control and note:

- each of the individuals with control have relevant tertiary qualifications in law, medicine or business, as well as extensive experience in senior management or as company directors; and
- the individuals with control will appoint directors to the holding company of the Investment with relevant experience.

Having regard to the above, we are satisfied that the individuals with control of the relevant overseas persons collectively have business experience and acumen relevant to the overseas investment.

22. s18(1)(b) Overseas Investment Act 2005

<b>Has the relevant overseas person demonstrated financial commitment to the overseas investment?</b>	✓
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The 'financial commitment' criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the Investment (intentions are not sufficient).

In this case we are satisfied that the relevant overseas person has demonstrated financial commitment by:



- arranging new external financing with s 9(2)(b) and equity contributions from Mercury's investors;
- entering into an agreement for sale and purchase of the Investment; and
- engaging professional advisers in relation to the Investment.

## 23. s18(1)(c) Overseas Investment Act 2005

<b>Is the relevant overseas person, or (if that person is not an individual) are all the individuals with control of the relevant overseas person, of good character?</b>	✓
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The decision maker must be satisfied that the individuals with control are of good character. Section 19 of the Act specifies that the decision-maker must take the following factors into account (without limitation) in assessing whether a person is of good character:

- offences or contraventions of the law by the person, or by any person in which the person has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not); and
- any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

The Applicant has provided a statutory declaration stating that the individuals with control are of good character, have not committed an offence or contravened the law as described above and know of no other matter (apart from any matter which has been explicitly disclosed) that reflects adversely on their fitness to have the Investment. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.

We have also conducted open source background checks on the individuals with control and found various matters of potential relevance to this criterion. These issues are addressed in detail at Appendix 2 of this Report. For the reasons set out in therein (and relying upon the submissions of the Applicant on such matters), we have concluded that that the individuals with control have satisfied this criterion.

## 24. s18(1)(d) Overseas Investment Act 2005

<b>Is the relevant overseas person, or (if that person is not an individual) is each individual with control of the relevant overseas person, not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009?</b>	✓
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Section 15 of the Immigration Act specifies that certain convicted or deported persons are not eligible for a visa or permission to enter or be in New Zealand. Section 16 provides a power to deny a visa or permission to enter New Zealand for other specified reasons, such as if the individual is likely to be a threat or risk to security or public order.

The Applicant has provided a statutory declaration stating that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957. We have also conducted open source background checks on those individuals and found nothing relevant to this criterion.

Therefore, we are satisfied that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

### Third Party Submissions

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25. No third party submissions were received.

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## Appendix 1 – Conditions of Consent

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Consent is granted subject to the following conditions:

### Interpretation

Any term or expression that is defined in the Overseas Investment Act 2005 and used, but not defined, in this consent has the same meaning as in the Overseas Investment Act 2005.

**Act** means the Overseas Investment Act 2005.

**Application Letter** means the application letter dated 22 December 2016 and all subsequent representations made on behalf of the Consent Holder.

**Consent Holder** means Mercury Medical Holdings Limited.

**Individuals with Control** means:

- (a) the individuals who have, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder or a Parent of the Consent Holder; and
- (b) the members of the governing body of the Consent Holder or a Parent of the Consent Holder; and
- (c) includes, for the avoidance of doubt, the members of the governing body of Mercury Medical Holdings Limited, MCF2 GP Limited and MCF2A General Partner Limited.

**Investment** means the Consent Holder's acquisition of rights or interests in up to 100% of NMH Holdings Limited.

**Parent of Consent Holder** means a person that has, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder, and includes a person that has, directly or indirectly, a 25% or more ownership or control interest in any Parent of the Consent Holder.

**Regulations** means the Overseas Investment Regulations 2005.

**Settlement Date** means the date the acquisition of the Investment took place.

### Special Conditions

*When the transaction must be given effect to*

1. The consent will lapse if the Investment has not been acquired by and transferred to the Consent Holder within 12 months of the date of consent.

*Good character*

1. The Individuals with Control must:
  - (a) continue to be of good character; and
  - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.

*Reporting to the OIO*

2. The Consent Holder must notify the OIO in writing as soon as practicable, and no later than twelve months from the date of consent, whether settlement of the acquisition of the Investment took place. If settlement of the acquisition of the Investment did take place, the notice must include:
  - (a) the Settlement Date;
  - (b) final consideration paid (plus GST, if any);

- (c) the structure by which the acquisition was made, and who acquired the Investment;
  - (d) where applicable, copies of transfer documents and settlement statements; and
  - (e) any other information that would aid the OIO in its function to monitor conditions of consent.
3. The Consent Holder must notify the OIO in writing within 20 working days if:
- (a) the Consent Holder, any Individual with Control, or any person in which the Consent Holder or any Individual with Control has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
  - (b) any Individual with Control:
    - (i) ceases to be of good character; or
    - (ii) commits an offence or contravenes the law (whether convicted or not); or
    - (iii) becomes aware of any other matter that reflects adversely on an Individual with Control's fitness to have the Investment; or
    - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
  - (c) the Consent Holder:
    - (i) ceases to be an overseas person; or
    - (ii) disposes of the Investment.
4. If requested in writing by the OIO, the Consent Holder must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to their 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.

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## Appendix 2 – Good Character assessment

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1. This section deals with the impact of certain matters on the character of the 'individuals with control of the relevant overseas person' ("**IWC**") and the fitness of the Applicant to have the Investment.

### Good character criterion

2. Section 18(1)(c) of the Act requires that the decision maker be satisfied that all the individuals with control of relevant overseas person are of good character.
3. Section 19(1) of the Act states that the relevant decision maker must take the following factors into account (without limitation), in assessing whether or not a particular 'individual with control' is of good character:
  - (a) offences or contraventions of the law by that individual, or by any person in which that individual has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not):
  - (b) any other matter that reflects adversely on that individual's fitness to have the particular overseas investment

Legally Privileged Information

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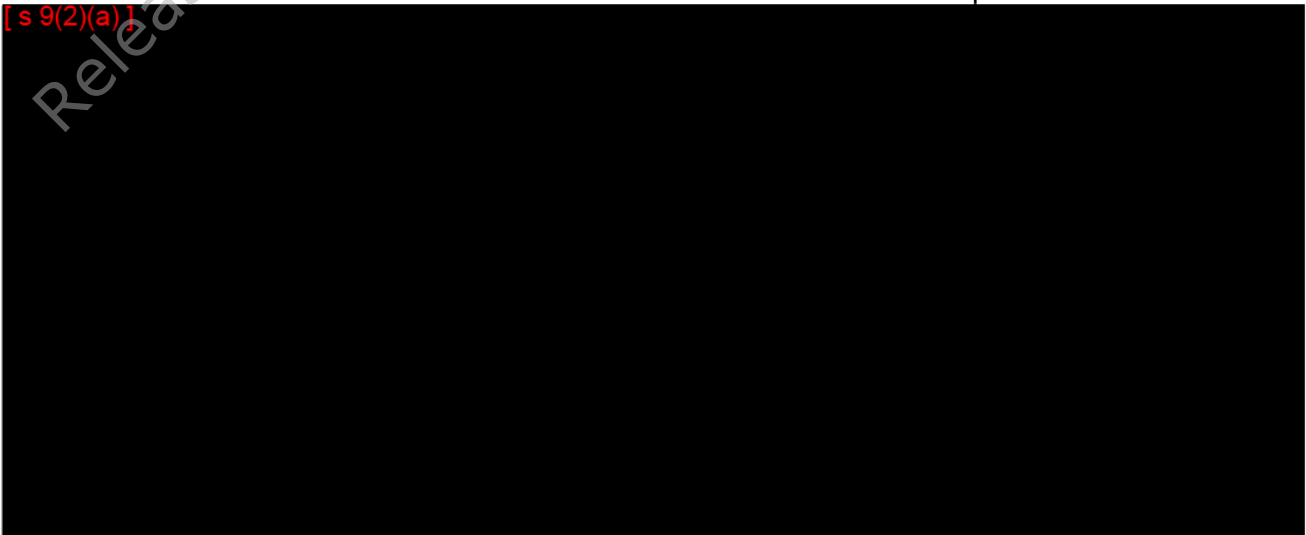
What matters do you need to take into account in making this good character assessment?

21. Section 19(1) makes it mandatory that the decision-maker to consider any offences or contraventions of the law by an IWC or by any person in which the IWC has, or had at the time of the offence or contravention, a 25% or more ownership or control interest. Other (non-mandatory) factors that we consider are relevant to the decision maker's assessment are canvassed in detail below.

Our analysis on the character of the IWC

21. Our view is that the matters set out in detail below should not affect the Applicant's fitness to have the Investment. The rationale for our view is also explained below.

[ s 9(2)(a) ]



[ s 9(2)(a) ]

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[ s 9(2)(a) ]

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