



Decision required under the Overseas Investment Act 2005: InterOperability Bidco, Inc.

Date	19 October 2018
Security Level	Commercial: In Confidence
Priority	High
Case Number	201810128
Decision Required By	3 January 2019

Contact for Telephone Discussion

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Executive Summary:

Investment

1. This overseas investment (**Investment**) relates to two related companies entering into two closely related transactions, together being an investment in significant business assets. The total consideration for the Investment is \$225m.
2. InterOperability Bidco, Inc. and Healthier Populations Holdco Limited want to invest in Orion Health Group Limited, a global company that develops software to drive efficiency in healthcare and improve healthcare outcomes.
3. InterOperability Bidco, Inc. seeks consent to acquire the InterOperability Business from Orchestral Developments Limited for \$205m.
4. In a related transaction, Healthier Populations Holdco Limited seeks consent to acquire a 24.9% ownership interest in the Healthier Populations Business of Orion Health Group Limited, by purchasing shares from Orion (Grafton) Limited for \$20m.
5. As part of the broader transaction, Orion Health Group Limited proposes to subsequently subscribe for 24.9% of the shares in InterOperability Bidco, Inc.. This will result in InterOperability Bidco, Inc. acquiring a 75.1% ownership interest in the InterOperability Business, which is currently operated by Orion Health Group Limited.

Applicants

6. InterOperability Bidco, Inc. and Healthier Populations Holdco Limited are considered to be co-applicants (**Applicants**).
7. The Applicants are ultimately wholly owned by HgCapital Mercury 2 Nominees Limited, which is a nominee company for the limited partnerships comprising the fund making the present Investment (**Fund**). Related company Hg Pooled Management Limited manages the investments made by the Fund, including the present Investment. The directors of the Applicants and Hg Pooled Management Limited, and the members of the Investment and Realisation Committees which sit within Hg Pooled Management Limited have control over the Investment.

Consent required

8. This is an overseas investment in significant business assets therefore consent under section 10 of the Overseas Investment Act 2005 (**Act**) is required. No sensitive land is involved.

Investor test

9. We have received and reviewed the submissions from the individuals with control of the relevant overseas person and are satisfied they have the business acumen and experience required for this Investment, have demonstrated financial commitment, and are of good character. Overall, we are satisfied the criteria in section 18 of the Act are met.

Instructions

10. Please see **Appendix 2** for instructions on how to make a decision and guidance on the relevant factors and criteria for consent.

Decision:

11. I have determined that:

(a) the 'relevant overseas person' is (collectively):

Entity	Relationship
InterOperability Bidco, Inc.	Applicant, acquiring the InterOperability business
Healthier Populations Holdco Limited	Applicant, acquiring 24.9% of the shares in Orion (Grafton) Limited
Hg Pooled Management Limited	Fund Manager

(b) the 'individuals with control of the relevant overseas person' are:

Individual	Role
[s 9(2)(a)]	Director of Hg Pooled Chair and member of Investment Committee of the Fund Manager
[s 9(2)(a)]	Member of Investment Committee of the Fund Manager
[s 9(2)(a)]	Director of Hg Pooled Member of Investment Committee of the Fund Manager
[s 9(2)(a)]	Member of Investment Committee of the Fund Manager
[s 9(2)(a)]	Member of Investment Committee of the Fund Manager
[s 9(2)(a)]	Member of Investment Committee of the Fund Manager
[s 9(2)(a)]	Chair and member of Realisation Committee of the Fund Manager
[s 9(2)(a)]	Member of Realisation Committee of the Fund Manager
[s 9(2)(a)]	Director of Hg Pooled Member of Realisation Committee of the Fund Manager
[s 9(2)(a)]	Director of InterOperability Bidco, Inc. Director of Healthier Populations Holdco Limited Member of Realisation Committee of the Fund Manager
[s 9(2)(a)]	Member of Realisation Committee of the Fund Manager

Individual	Role
[s 9(2)(a)] [REDACTED]	Member of Realisation Committee of the Fund Manager
[s 9(2)(a)] [REDACTED]	Director of InterOperability Bidco, Inc. Director of Healthier Populations Holdco Limited

12. 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; and
 - (b) the relevant overseas person has demonstrated financial commitment to the overseas investment; and
 - (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.
13. Consent is granted to the overseas investment in the form of the Proposed Decision in Appendix 1 and subject to the conditions set out in the Proposed Decision.



Anneke Cockerell – Acting Manager Applications

Date 19/10/2018

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Report of the Overseas Investment Office
on the application for consent by
InterOperability Bidco, Inc. and Healthier Populations
Holdco Limited
Case: 201810128

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What is the Investment?

Applicant	InterOperability Bidco, Inc. and Healthier Populations Holdco Limited (North American Public 40.0%, European Public 43.0%, Middle Eastern Public 17.0%)
Vendor	Orchestral Developments Limited (New Zealand 91.92%, Canada 8.08%) Orion (Grafton) Limited (New Zealand 91.92%, Canada 8.08%)
Consideration	\$225,000,000
Recommendation	Grant Consent

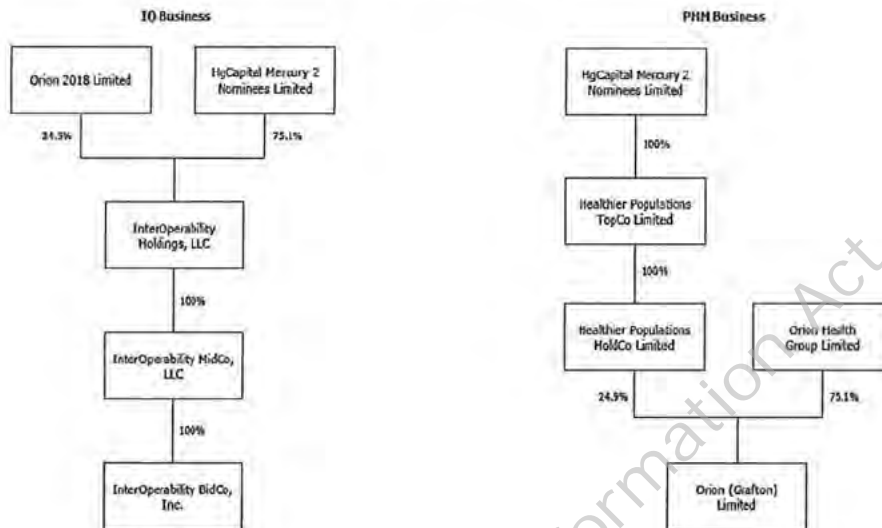
Description of the Investment

1. The Investment involves the Applicants acquiring the InterOperability Business (**IO Business**) from Orchestral Developments Limited and acquiring a 24.9% ownership interest in the Healthier Populations Business (**PHM Business**) from Orion (Grafton) Limited.
2. Orchestral Developments Limited and Orion (Grafton) Limited are wholly owned subsidiaries of Orion Health Group Limited (**Orion Health**). Prior to the Investment, the IO Business and the PHM Business were operated by Orion Health and its subsidiaries as part of Orion Health's existing business.
3. The Investment involves two interdependent transactions, where:
 - (a) InterOperability Bidco, Inc. (**InterOperability Bidco**) proposes to acquire the IO Business and assets from Orchestral Developments Limited for \$205m; and
 - (b) Healthier Populations Holdco Limited (**Healthier Populations Holdco**) proposes to acquire a 24.9% ownership interest in the PHM Business from Orion (Grafton) Limited for \$20m.
4. As part of the broader transaction, Orion Health¹ proposes to subsequently subscribe for 24.9% of the shares in InterOperability Bidco's parent, InterOperability Holdings, LLC.

¹ Note that Orion Health is not an overseas person, so doesn't require consent for this share subscription.

5. The following diagrams describe the ownership structures of the IO Business and the PHM Business after the transactions described above have occurred: ²

Transaction Structure Diagram



6. The ownership structures of the IO Business and the PHM Business, including the relationship between the Applicants, the HgCapital Mercury 2 Nominees Limited company, and the fund that makes the Investment, are described in more detail below.

Target's Business Activities

7. Orion Health is a global company that develops software to drive efficiency in healthcare and improve healthcare outcomes. Orion Health's head office is in Auckland, New Zealand, and Orion Health employs more than 1,200 people in 24 offices across 15 countries. Its information technology solutions are implemented in more than 30 countries and used to facilitate healthcare for more than 100 million patients.
8. The IO Business, in which InterOperability Bidco, Inc. will acquire a 75.1% ownership interest,³ is the InterOperability business performed by Orion Health and its subsidiaries involving the development, production, sales and support of software services designed to integrate healthcare environments through the acquisition and exchange of health data, including the development, production, sales and support of the Rhapsody software solution.
9. The PHM Business, in which HP Holdco will acquire a 24.9% ownership interest, is the Healthier Populations business of Orion Health and its subsidiaries involving the development, production, sales and support of software services designed to connect, consolidate and structure healthcare information to make it accessible and available across a geographic region, including the development, production, sales and support of the Amadeus, Coordinate, Engage software solutions.

² Orion 2018 Limited was incorporated on 28 June 2018 for the purposes of holding the IO Business of Orion Health Group Limited.

³ See the discussion below regarding the subsequent subscription by Orion Health for 24.9% of the shares in InterOperability Bidco, Inc.'s parent, InterOperability Holdings, LLC.

Rationale for Investment

10. The Applicants emphasised the experience of HgCapital LLP in investing in healthcare and in building technology, services, and industrial technology businesses. As explained in further below, HgCapital LLP is the top corporate entity in the Hg Capital group and wholly owns Hg Pooled Management Limited.
11. HgCapital LLP invests in companies which it considers has the potential to grow more quickly than other companies in their sector, create employment and become the leaders in their industry. The intention is to grow both the IO Business and the PHM Business after acquisition by using HgCapital LLP's expertise and market position to strengthen their positions as technology leaders.

Sensitive Assets

12. The sensitive assets are significant business assets, being a 75.1% ownership (initially 100%) interest in the IO Business and assets and a 24.9% interest in the PHM Business (share subscription), with a combined value of \$225 million.
13. The application does not involve sensitive land.

Who is making the Investment

Applicants

14. The Applicants are InterOperability Bidco and Healthier Populations Holdco. InterOperability Bidco is a company incorporated in the State of Delaware, USA. Healthier Populations Holdco is a company incorporated in England and Wales.
15. The Applicants are each special purpose vehicles incorporated for the purpose of the Investment. As shown in the diagrams below, the Applicants are ultimately wholly owned by HgCapital Mercury 2 Nominees Limited, which is a nominee company for the 6 limited partnerships comprising the fund making the present Investment (**Fund**). The Applicants are making the Investment into the IO Business and the PHM Business on behalf of the Fund.
16. The Fund is managed and administered by related company Hg Pooled Management Limited (**Hg Pooled**), which has general day to day control of the Fund, including committing the Fund to investments and realisations, based on approvals provided by the Investment Committee and Realisation Committee which sit within Hg Pooled.

Structure and ownership of the Fund

17. The structure of the Fund is shown in the following diagram:

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



18. The above diagram shows the 6 limited partnerships comprising the Fund. The Applicant advises that the limited partnerships are each English limited partnerships with no separate legal personality and that they co-invest alongside each other in investments made by the Fund, including the Investment.
19. The 6 limited partnerships are managed by Hg Pooled, which is wholly owned by HgCapital LLP. The members of HgCapital LLP are named in the Application, and comprise 14 individuals and Dogmer4 Limited, which is the borrowing entity of HgCapital LLP. Some of the members of HgCapital LLP are individuals with control in respect of the Investment, due to their roles as directors of the Applicants and/or Hg Pooled, or their membership of the Investment or Realisation Committees which sit within Hg Pooled.
20. The legal title in all of the Fund's underlying investments are held by HgCapital Mercury 2 Nominees Limited (**Nominee company**), which holds these underlying investments on bare trust as nominee for the Fund. The Nominee company is wholly owned by HgCapital Mercury 2 General Partner (Guernsey) Limited.
21. The Applicants have confirmed that no investor in the Fund (being limited partners in the limited partnerships) holds more than 20% of the interests in the Fund as a whole, or in any underlying investment made by the Fund. The following limited partners in the limited partnerships comprising the Fund have an interest in the Fund which is great than 5%:
- (a) [s 9(2)(b)(ii)]
 - (b) [s 9(2)(b)(ii)]

- (c) [s 9(2)(b)(ii)]
- (d) [s 9(2)(b)(ii)]
- (e) [s 9(2)(b)(ii)]
22. The investors in the Fund are all passive investors and exercise no management or control over the Fund or any of its investments.
23. The investors in the 6 limited partnerships are described as follows:
- the investors in the limited partnerships HgCapital Mercury 2 A L.P., HgCapital Mercury 2 B L.P., HgCapital Mercury 2 C L.P. and HgCapital Mercury 2 D L.P. are all institutional investors, including private and public pension funds, endowments, insurance companies, financial institutions and other funds;
 - the investor in HgT Mercury L.P. is HgCapital Trust Plc, a publicly listed closed ended investment company, managed by Hg Pooled. All of these investors are well known and experienced across several investment asset classes, including private equity funds; and
 - the investors in the other limited partnership, HgCapital Mercury 2 Executive Co-Invest L.P., are individual investors, including partners and staff of HgCapital LLP. All individual investors are classified as professional clients in accordance with the UK Financial Conduct Authority's conduct of business sourcebook, with regards to their investments, and have consented to such classification.
24. The general partner of each limited partnership is HgCapital Mercury 2 General Partner L.P., Inc, which is a Guernsey incorporated entity (the **General Partner**). In respect of the General Partner, the Applicants advise that:
- the managing general partner of the General Partner is HgCapital Mercury 2 General Partner (Guernsey) Limited (the **Managing GP**);
 - the second general partner of the General Partner is Alderaan Second General Partner LLP (**Second GP**). The Second GP is required because of a specific regulation contained in Guernsey law and serves an exclusively administrative role for the Fund; it has less than 20% of the interests in the General Partner and no responsibility for management or operation of the partnership and no voting rights;
 - the Managing GP and Second GP are ultimately wholly owned by Alderaan Holdco Limited, a company owned by [s 9(2)(a)] [s 9(2)(a)] (each of whom are members of HgCapital LLP and individuals with control for the purposes of this application); and
 - the limited partners of the General Partner are all individuals and entities associated with HgCapital. None of these limited partners have an interest of 5% or more of the interests in the Fund.
25. Hg Pooled and the Managing GP are parties to a management agreement under which the Managing GP has appointed Hg Pooled as manager of the limited partnerships comprising the Fund.

Ownership of Applicant InterOperability Bidco

26. InterOperability Bidco’s current ownership structure is shown in the following diagram:

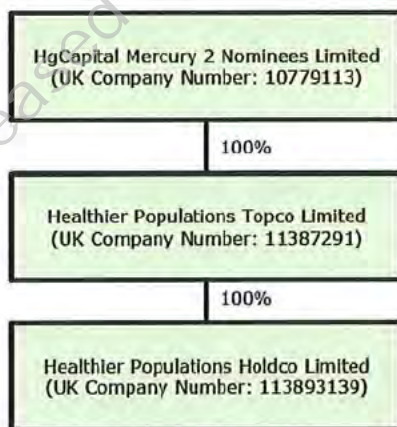


27. The Applicants submit that all of InterOperability’s shares are owned by InterOperability Midco, LLC, and InterOperability Midco LLC is wholly owned by InterOperability Holdings, LLC, which is wholly owned by the Nominee company.

28. InterOperability Bidco is therefore ultimately wholly owned by the Nominee company which, as discussed above, holds shares as nominee for the limited partnerships in respect of investments made by the Fund.

Ownership of Applicant Healthier Populations Holdco

29. Healthier Population Holdco’s current ownership structure is shown on the following diagram:



30. The Applicants submit that all of Healthier Population Holdco’s shares are owned by Healthier Populations Topco Limited. All of the shares in Healthier Populations Topco Limited are held by the Nominee company (as nominee for the limited partnerships).
31. Healthier Populations Holdco is therefore also ultimately wholly owned by the Nominee company.

Who controls the Applicants

32. None of InterOperability Midco, LLC (intermediary), InterOperability Holdings, LLC (intermediary), Healthier Populations Topco Limited (intermediary re PHM Business) or the Nominee company control the Applicants in relation to the Investment. These companies will not be involved in the day-to-day management of or any strategic decisions concerning the Investment, the assets or the shares and will therefore have no material role in relation to the Investment.
33. As noted above, the Nominee company holds shares as nominee for the limited partnerships. As a nominee, it does not exert any control over any shares which it holds. Management and control of those shares resides with Hg Pooled, the Fund Manager.
34. The Applicants state that, in general, decisions relating to the Investment will be made by Hg Pooled as the entity managing and administering the Fund (and therefore any shares held by the Applicants on the Fund’s behalf). Hg Pooled is a wholly owned subsidiary of HgCapital LLP. However, HgCapital LLP will have no role in relation to the Investment and will not be actively involved in any day to day management of, or strategic decisions relating to, the Investment or any future divestment of the Investment if successful.
35. Based on the Applicants’ submissions, we consider that the decisions relating to the Investment will be made by the directors of the Applicants and Hg Pooled, and the members of the Investment Committee and Realisation Committee collectively. Therefore, it is these individuals who control the relevant overseas person with respect to the Investment.

Relevant Overseas Person

36. We have determined that the ‘**relevant overseas person**’ is (collectively) InterOperability Bidco, Inc. and Healthier Populations Holdco Limited and Hg Pooled Management Limited.

Individuals with Control

37. We have determined that the ‘**individuals with control of the relevant overseas person**’ are:

Individual	Role
[s 9(2)(a)]	Director of Hg Pooled (the Fund Manager) Chair and member of Investment Committee of the Fund Manager
[s 9(2)(a)]	Member of Investment Committee of the Fund Manager

Individual	Role
[s 9(2)(a)]	Director of Hg Pooled (Fund Manager) Member of Investment Committee of the Fund Manager
[s 9(2)(a)]	Member of Investment Committee of the Fund Manager
[s 9(2)(a)]	Member of Investment Committee of the Fund Manager
[s 9(2)(a)]	Member of Investment Committee of the Fund Manager
[s 9(2)(a)]	Chair and member of Realisation Committee of the Fund Manager
[s 9(2)(a)]	Member of Realisation Committee of the Fund Manager
[s 9(2)(a)]	Director of Hg Pooled (Fund Manager) Member of Realisation Committee of the Fund Manager
[s 9(2)(a)]	Director of the Applicant InterOperability Bidco, Inc. Director of the Applicant Healthier Populations Holdco Limited Member of Realisation Committee of the Fund Manager
[s 9(2)(a)]	Member of Realisation Committee of the Fund Manager
[s 9(2)(a)]	Member of Realisation Committee of the Fund Manager
[s 9(2)(a)]	Director of the Applicant InterOperability Bidco, Inc. Director of the Applicant Healthier Populations Holdco Limited

Business Activities

38. All of the entities making up the relevant overseas person were incorporated for the purpose of establishing and operating the Fund, which is a private equity fund raised by HgCapital LLP and managed by Hg Pooled (refer to the above diagram showing the structure of the Fund).
39. The Applicants advise that HgCapital LLP:
- was established in December 2000, and since then has progressively invested to establish a private equity investment platform;
 - has close to 140 employees in three offices, in the United Kingdom, Germany and Luxembourg with total assets under management of approximately £9 billion (approximately NZ\$17.1 million);

- (c) also (i.e. in addition to the Fund) currently operates the HgCapital 5, HgCapital 6, HgCapital 7 and HgCapital 8 Funds and the HgCapital Mercury Fund (a Technology, Media and Telecommunications fund); and
 - (d) has sector expertise across Technology, Media and Telecommunications, Services and Industrials.
40. The Applicants also submit that Hg Pooled, acting in its capacity as manager for the limited partnerships comprising the Hg Capital 7 Fund has an interest in 9,538,373 ordinary shares in Gentrack Group Limited (11.4% of Gentrack Group Limited's issued share capital). Gentrack Group Limited is an entity listed on the NZX Main Board and ASX. These shares were issued to Devaron (NZ) Limited, an indirect wholly-owned subsidiary of Hg Pooled, on 30 March 2017. The Applicants submit that to the best of their knowledge, the relevant overseas person does not currently have, and have not previously had, any other business operations in New Zealand.

Does the Applicant meet the Investor Test criteria?

Business Experience s18(1)(a)

The relevant overseas person, or the individuals with control of the relevant overseas person, must have business experience and acumen relevant to the overseas investment. There is considerable flexibility in determining what is relevant and 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.

- 41. In this case, the Investment can be described as relating to a global health software business.
- 42. We have reviewed the biographical information provided by the Applicants for each of the individuals with control and note that the individuals collectively have extensive experience and qualifications relating to business, investment, and technology investment specifically.
- 43. 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.

Financial Commitment s18(1)(b)

The financial commitment criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the overseas investment.

- 44. In this case we are satisfied that the relevant overseas person has demonstrated financial commitment by the Applicants:
 - (a) negotiating and entering into a Sale and Purchase Agreement and PHM Subscription Agreement in respect of the IO Business and the PHM Shares, as well as related transaction documentation;
 - (b) expending (and continuing to expend) considerable time and cost in evaluating the Investment; and

- (c) incurring costs, internally and with third party consultants and advisors, including in relation to undertaking legal, financial, tax and technology due diligence and the preparation and lodging of their application.

Good Character s18(1)(c)

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):

- (a) offences or contraventions of the law by A, or by any person in which A 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 the person's fitness to have the particular overseas investment.

- 45. The Applicants disclosed information on a few matters potentially relevant to our assessment. However, the Applicants submit that these matters do not affect the good character of the individuals with control.
- 46. The Applicants have provided a statutory declaration stating that the individuals with control are of good character. The declaration states that the individuals with control have not committed an offence or contravened the law and no other matter reflects adversely on their fitness to have the Investment.
- 47. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.
- 48. We have conducted open source background checks on the individuals with control. We have also sought additional information in relation to one of the matters disclosed by the Applicants.
- 49. Our analysis in relation to the good character requirement is set out in Appendix 3.
- 50. We do not consider any of the matters affect the fitness of the individuals with control to have this investment, and we are satisfied that the individuals with control are of good character.

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Immigration Act s18(1)(d)

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.

51. The Applicants have 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.
52. 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.

Consent criteria

53. As detailed above, we are satisfied that the criteria in section 18 are met, and therefore consent should be granted to the Investment.

Third Party Submissions

54. No third party submissions were received.

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Appendix 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: 19 October 2018

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

Case	201810128
Consent	<p>InterOperability Bidco, Inc. may acquire the IO Business Assets (as defined below) subject to the Conditions set out below.</p> <p>Healthier Populations Holdco Limited may acquire the PHM Business Assets (as defined below) subject to the Conditions set out below.</p>
Consent holder/s	<p>InterOperability Bidco, Inc.</p> <p>Healthier Populations Holdco Limited</p> <p>We will also refer to each Consent holder and the Consent holders together as you.</p>
Assets	means the IO Business Assets and the PHM Business Assets
IO Business Assets	100% of the InterOperability Business and assets from Orchestral Developments Limited, company number 582521
PHM Business Assets	24.9% of the shares in Orion (Grafton) Limited, company number 6908436
Timeframe	You have until 31 October 2019 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**.

Details	Required date
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. <p>If you do not, your Consent will lapse and you must not acquire the Assets, and</p> <ol style="list-style-type: none"> Using the acquisition, ownership and control structure you described in your application. <p>Note, only you – the named Consent holder – may acquire the Assets, not your subsidiary, trust or other entity.</p>	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 of good character	
<p>You and the Individuals Who Control You:</p> <ol style="list-style-type: none"> must continue to be of good character, and must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. <p>These sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to prevent a</p>	At all times

<p>threat or risk to security, public order or the public interest.</p> <p>The Individuals Who Control You are individuals who:</p> <ul style="list-style-type: none"> (a) are members of your governing body (b) directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you, and (c) are members of the governing body of the people referred to in paragraph (b) above. <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, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about offences or contraventions that you are charged with or sued over and any investigation by enforcement or regulatory agencies or professional standard bodies. 2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Assets; or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (see standard condition 3). 3. You cease to be an overseas person or dispose of all or any part of the Assets. 4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You, hold (or at the time of the event held) a 25% or more ownership or control interest: <ul style="list-style-type: none"> (a) becomes bankrupt or insolvent (b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or (c) becomes subject to any form of external administration. 	<p>Within 20 working days after the change</p>

Appendix 2 - Instructions

1. 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.
2. For completeness, it is noted that the Applicants are seeking consent to acquire significant business assets and not sensitive land. Therefore, the Applicants are 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.
3. In the attached Report the Overseas Investment Office identifies each of the criteria under section 18 that the regulator is required to consider in this case.

Conditions

4. 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

5. 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 Overseas Investment Office has taken into account in making its recommendation is summarised in the attached Report.

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Appendix 3 - Good Character

INTRODUCTION

1. As part of the application (**Application**), a few matters/allegations were disclosed about the Applicants and some of the individuals with control. We also carried out standard open-source checks. We have made enquiries about the relevant matters and sought and received comments from the Applicants.
2. The purpose of this Appendix is to outline the relevant matters, the Applicants' comments on these, and our assessment of the good character criterion as it applies to the Application (section 18(1)(c) of the Act).
3. For the purpose of this Application, the individuals with control of the relevant overseas person (**IWC**) are set out in the report.
4. We have assessed each of the matters/allegations. For the reasons set out below, we consider that the matters do not prevent a finding that the individuals with control of the relevant overseas person are of good character.

GOOD CHARACTER CRITERION

5. Under section 18(1)(c) of the Act, one of the criteria for consent is that the relevant overseas person(s) or, (if the relevant overseas person is not an individual) all the individuals with control of the relevant overseas persons are of good character.
6. The term "good character" is not defined in the Act. The majority of the Select Committee reporting back on the Bill in 2005 confirmed that the "good character" test was needed as it is important to ensure that all persons investing in New Zealand are people unlikely to act inappropriately and bring New Zealand into disrepute.
7. When undertaking the good character assessment, the decision-maker must be satisfied that the character of all the individuals with control of the relevant overseas person is sufficient so that they should be granted the privilege of owning or controlling sensitive New Zealand assets.
8. Section 19(1) of the Act states that the following factors must be taken into account (without limitation) in assessing whether or not a person (**A**) is of good character:
 - (a) offences or contraventions of the law by A, or by any person in which A 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 the person's fitness to have the particular overseas investment.
9. All relevant matters must be weighed up before making a decision that an individual is of good character.
10. How much weight should be given to a particular matter depends on a number of factors, including how closely linked the particular matter is with the investment being made. While submissions on weighting given by the relevant overseas person or individual with control may be considered, the ultimate decision as to the weighting to be given to relevant matters is for the decision-makers.
11. Matters which might be relevant include:
 - (a) Credible allegations of offending or contraventions of the law (assessing whether the allegation is sufficiently linked to an individual with control or relevant overseas person);
 - (b) Investigations, prosecutions or other enforcement action by regulatory or professional bodies;
 - (c) Track record in New Zealand.

12. Matters which are unlikely to be relevant or given significant weighting include:
- (a) Adverse information that does not relate to an individual with control (for example, offences or contraventions by a relevant overseas person which occurred before the particular individual became involved with the relevant overseas person);
 - (b) Where the decision-maker is satisfied that allegations about a relevant overseas person or individual with control have been fully investigated by the relevant regulatory or other authority and the person or individual has been cleared of any wrongdoing;
 - (c) Adverse information that does not impact on the character of a relevant overseas person or individual with control.
13. The good character test is applicable to individuals, not entities such as body corporates. However, where the investment is to be carried out by a body corporate, the character of the relevant individuals who control the body corporate will need to be considered. Where an offence or contravention is committed by a person/entity to which an individual had a 25% or more ownership or control interest, this is a mandatory consideration. Where the individual's interest in the person is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.
14. The onus is on the Applicants to satisfy the decision-maker that all the individuals with control are of good character.
15. If the decision-maker has doubts about the character of an individual with control which result in it not being satisfied that the test for good character has been met, then the application for consent must be declined.

GOOD CHARACTER ALLEGATIONS / MATTERS CONSIDERED

16. The Applicants disclosed a few allegations to the OIO, including both a current investigation and a closed investigation relating to alleged monopolistic behaviour (see discussion below).
17. We also carried out standard open-source checks. Our checks revealed a historical allegation of sex discrimination against HgCapital LLP, and some information about individuals which we concluded did not relate to the IWCs. We did not consider it necessary to seek comment from the Applicants on these matters. The historical allegation of sex discrimination is discussed below.

Concordia Investigation

Allegation

18. HgCapital LLP (**HgCapital**)⁴ was a previous owner of Concordia, a pharmaceutical company that is presently being investigated by the UK Competition and Markets Authority regarding monopolistic behaviour which resulted in the price of a thyroid drug being increased by 6000%.

Applicants' submissions

19. The Applicants informed us that Concordia was a business which HgCapital invested in from 2009 until 2012 when it stopped investing in the healthcare sector. The Applicants stated that HgCapital no longer has a healthcare investment team.
20. The Applicants submit that, given the passage of time since this investment, the fact that HgCapital no longer invests in this sector, and the relevant team responsible for this investment has left HgCapital, that the investigation is of no relevance to the presently proposed Investment.

⁴ Please refer to the diagram in paragraph 17 showing the structure of the Fund, which describes how HgCapital LLP relates to the Applicants and to the present investment.

21. The Applicants further submitted that five of the IWC were partners of HgCapital at the time of the alleged infringement (Nicholas James Humphries, Matthew Edward Brockman, Kai Romberg, Richard Donner, and Justin von Simson), but that none of the IWCs named in the application played a direct role in the alleged infringement.
22. The Applicants confirmed that none of the five IWCs were directors or partners of Concordia (or any predecessor entity, such as Mercury Pharma) at the time of the alleged infringement. The Applicants also confirmed that none of the five IWCs had any role in making or controlling pricing decisions relating to the thyroid drug. In addition, the Applicants stated that HgCapital firmly denies, and is vigorously defending, all allegations.

Our assessment

23. Certain IWCs were partners of HgCapital during the period the alleged infringement occurred. However, the Applicants have confirmed that these IWCs were not directors or partners of Concordia or its predecessors at that time, and that they had no role in making or controlling the pricing decisions under investigation. We are not aware of any information that suggests these IWCs had any personal role in these matters. In light of the information provided, we do not consider this matter prevents the relevant IWCs from meeting the good character criterion in section 18(1)(c) of the Act.

Denton investigation

Allegation

24. HgCapital, owner of FTSS, proposed to take over Denton ATD, a company specialising in the development of crash-test dummies and other anthropomorphic test devices. This proposed take over was investigated by the European Commission due to fears it could harm competition in the market. The concern was that Denton ATD and FTSS were the world's two largest suppliers of crash-test dummies, and also produce other devices used for safety tests in the car industry.

Applicants' submissions

25. The Applicants submit this is of no relevance for the present transaction because while the European Commission investigated this transaction due to fears it could harm competition in the market; the Commissioner closed its investigations after the parties decided to terminate their sale and purchase agreement. As such, HgCapital did not proceed with the proposed takeover.

Our assessment

26. We note that the proposed takeover did not ultimately proceed and, while there was an investigation, we are not aware of any wrong doing or breaches of the law by either the relevant overseas person or individuals with control. We therefore do not consider that this matter prevents the relevant IWCs from meeting the good character criterion in section 18(1)(c) of the Act.

Historical allegation

27. Our good character search revealed that a sex discrimination case against HgCapital by former senior female director, Jill Ridley-Smith, was settled shortly before the case appeared in Court. However, the article discussing the case dates from February 2009, there is very little other information around it, and there are no other similar allegations. We therefore do not consider that this matter prevents the IWCs from meeting the good character criterion in section 18(1)(c) of the Act.

Conclusion

28. For the reasons set out above, we do not consider the matters raised prevent the IWCs from meeting the good character criterion.

29. The Applicant has provided a statutory declaration stating that the individuals with control are of good character. The declaration states that the individuals with control have not committed an offence or contravened the law and no other matter reflects adversely on their fitness to have the Investment.
30. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.
31. Our overall assessment is that we are satisfied that the individuals with control of the relevant overseas persons are of good character.
32. We note that the conditions proposed in **Appendix 1** include a requirement that the individuals who control the Applicant (as defined in the conditions) continue to be of good character.

Released under the Official Information Act 1982

