

ASSESSMENT REPORT: NZ Healthcare Investments Limited

For	Louise Hornabrook Manager Applications	From	Kirsty Hulena Senior Solicitor
Date	18 November 2020	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	202000458	Suggested deadline	23 November 2020

Purpose

1. We seek your decision on an application for consent to acquire significant business assets under the Overseas Investment Act 2005 (the **Act**).
2. This decision has been delegated to the Overseas Investment Office (**OIO**).¹
3. For the reasons set out in this report, our recommendation is to **grant consent**. If you agree, we recommend you make the decision on pages 6 and 7.

Key information

Applicant	NZ Healthcare Investments Limited 50% New Zealand; 50% Canada
Vendor	Healthscope Pathology Holdings No 2 Pty Limited [s 9(2)(b)(ii)]
Consideration	[s 9(2)(b)(ii)]
Application type	Significant business assets
Relevant tests	Investor test (s18(1)(a)-(e))

A. Background and proposed transaction

4. The Applicant intends to acquire 100% of the shares in APHG NZ Investments Limited (the **Shares**) which is the largest pathology services² provider in New Zealand³. The Vendor is selling the Shares as it considers this business is ancillary to its private hospital business in Australia.
5. The Applicant intends to support APHG NZ Investments Limited's (**APHG**) staff to continue delivering the best possible pathology services to District Health Boards and patients in a cost-efficient manner. As it is currently a smaller business unit inside a larger foreign healthcare provider, APHG does not have the capital available to pursue attractive growth initiatives. The Applicant's ultimate owners submit that they will support APHG's growth by providing capital and expertise.

¹ See paragraphs 7 and 8, below.

² Pathology is a medical specialty that determines the cause and nature of diseases by examining and testing body tissues

³ Operating under the brands Southern Community Laboratories, Labtests, Medlab South and Gribbles.

B. Application of the Act

6. The criteria for consent for an overseas investment in significant business assets apply (the "investor test"):⁴
 - a) The individuals with control must have business experience and acumen relevant to the investment.⁵
 - b) NZ Healthcare Investments Limited must demonstrate financial commitment to the investment.⁶
 - c) The individuals with control must be of good character.⁷
 - d) Those individuals cannot fall within the terms of section 15 and 16 of the Immigration Act 2009.⁸

Delegated decision

7. All decisions regarding investments in significant business assets have been delegated to the OIO.⁹
8. The delegation includes all ancillary powers and functions,¹⁰ including the power to determine who the relevant overseas person is and who the individuals with control of that person are.¹¹

National Interest

9. This investment requires a national interest assessment because the relevant overseas person is a non-New Zealand government investor (section 20A(1)(b) of the Act). The Overseas Investment Office will separately provide the Minister of Finance with a report addressing the national interest assessment.
10. While you can determine the investor test, you can only grant consent after the Minister of Finance has considered the transaction and has not declined consent to the transaction under section 20C of the Act on the grounds that it is contrary to national interest.

C. Applicant and investor test

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

Ownership and relevant overseas person

12. The Applicant is 50% beneficially owned by Ontario Teachers' Pension Plan Board (**OTPP**) and 50% by the Guardians of New Zealand Superannuation (**Guardians**). OTPP oversees Canada's largest single profession pension plan and Guardians is the Crown Entity responsible for managing the NZ Super Fund.
13. Each of these entities hold their interest via a single holding company-OTPP by Ontario Limited (**Ontario Holdco**) and Guardians by NZSF Healthcare Limited.

⁴ Set out in section 18(1).

⁵ s18(1)(a)

⁶ s18(1)(b)

⁷ s18(1)(c)

⁸ s18(1)(d)

⁹ See Table A, row A of the delegation letter dated 17 October 2018.

¹⁰ See the first bullet point in Table A of the delegation letter dated 17 October 2018.

¹¹ See sections 15(1) and (2) of the Act.

Approvals and rights and powers

14. [s 9(2)(b)(ii)]
15. Under the Applicant's constitution none of its shares carry voting rights or the power to appoint and/or remove directors. Instead it allows for these rights and powers to be held by an appointer entity that is not a direct shareholder in the Applicant.
16. OTPP ultimately indirectly owns its appointer entity which is a newly incorporated Canadian company also named Ontario Limited (**OTPP Appointer**). OTPP Appointer has the power to appoint, remove or replace up to 3 of the 7 directors of each of the Applicant and APHG NZ Investments Limited.
17. Guardians itself holds the power to appoint, remove or replace up to 3 of the 7 directors of each of the Applicant and APHG¹².
18. Both OTPP Appointer and Guardians will jointly appoint an independent chairperson post completion of the transaction.

Guardians and NZSF Healthcare

19. Guardians and NZSF Healthcare Limited are not overseas persons but could be considered associates of the Applicant under the Act¹³ and therefore require consent under the Act. However we do not consider Guardians or its holding company NZSF Healthcare Limited should be considered associates given the statutory framework imposed on them:
- a) while accountable to the Government, Guardians is legally separate and operationally independent; and
 - b) as a Crown Entity Guardians must act in a manner consistent with the New Zealand Superannuation and Retirement Income Act 2001 meaning it must invest the NZ Super Fund on a prudent commercial basis avoiding prejudice to New Zealand's international reputation.
20. Accordingly, we recommend that the '**relevant overseas person**' (ROP) is (collectively):

ROP	Role
NZ Healthcare Investments Limited	The Applicant
Ontario Limited (Ontario Holdco) <i>Company number 002767640</i>	Company holding Ontario Teachers' Pension Plan Board interest in the Applicant
Ontario Limited (OTPP Appointer) <i>Company number 002767641</i>	Holds rights and powers relating to the Applicant and APHG NZ Investments Limited

Control

21. We recommend that the following be considered '**individuals with control**':

¹² Guardians not being a direct shareholder in the Applicant, holding its interest via NZSF Healthcare Limited
¹³ Section 8 of the Act.

IWC	Role
Rajeev Ruparelia	Director of the Applicant, Ontario Holdco, OTPP Appointer and Member of the OTPP Equities Investment Committee
Hishaam Mirza	Director of the Applicant
William Goodwin	Director of the Applicant
[s 9(2)(a)]	Member of the OTPP Equities Investment Committee
	Member of the OTPP Equities Investment Committee
	Member of the OTPP Equities Investment Committee
	Member of the OTPP Equities Investment Committee
	Member of the OTPP Equities Investment Committee
	Member of the OTPP Equities Investment Committee
	Member of the OTPP Equities Investment Committee
	Member of the OTPP Equities Investment Committee

Experience

22. The members of the OTPP Equities Investment Committee and Ontario Holdco have extensive private equity and portfolio investment experience as well as experience in board and management positions in multi-national corporations.
23. Accordingly, when considered together, we conclude that the individuals with control have sufficient business experience and acumen relevant to the proposed investment.

Good character

24. While the Applicant has disclosed certain matters relevant to character, we consider these do not prevent a finding that the individuals with control are of good character. The matters disclosed have been assessed and included as **Attachment 2**.
25. There are also historic matters for OTPP which have already been considered in a previous consent application¹⁴ which were assessed and which we were satisfied did not impact on the good character of the Applicant.
26. We are satisfied that the individuals with control are of good character and statutory declaration as to good character can be relied on.

¹⁴ Case number 201900631

Summary of investor test

27. For the reasons set out above and summarised in the table below, our provisional conclusion is that **the investor test has been met**.

Investor test	OIO assessment		Cross-references
	Risk	Comments	
Collectively have business experience and acumen relevant to the investment	Test met	The individuals with control have extensive private equity and portfolio investment experience as well as experience in board and management positions in multi-national corporations.	See paragraphs 22-23 s18(1)(a) of the Act.
ROP demonstrated financial commitment	Test met	The Applicant has engaged professional advisers in relation to the proposed transaction.	s18(1)(b) of the Act.
Good character	No concerns	We are satisfied the IWCs are of good character.	See paragraphs 24-26 and Attachment 3 . s18(1)(c) of the Act.
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	Statutory declarations have been provided confirming that each IWC is not of the kind referred to in ss 15 or 16 of the Immigration Act.	s18(1)(d) of the Act.

Recommendation

28. Therefore, our recommendation is to **grant consent** (subject to the Minister of Finance not declining consent under section 20C).
29. If you agree, we recommend that you make the determinations set out in paragraphs 31-38 below.

Timing

30. Processing days for the application to date are below. OIO processing fell well within the target timeframe of 40 business days.

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
14	13	11	0

Decision

I determine that:

31. The 'relevant overseas person' is (collectively):

ROP	Role
NZ Healthcare Investments Limited (Applicant)	Will hold the investment
Ontario Limited (Ontario Holdco) <i>Company number 002767640</i>	Company holding Ontario Teachers' Pension Plan Board interest in the Applicant
Ontario Limited (OTPP Appointer) <i>Company number 002767641</i>	Holds rights and powers relating to the Applicant and APHG NZ Investments Limited

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

IWC	Role
Rajeev Ruparelia	Director of the Applicant, Ontario Holdco, OTPP Appointer and Member of the OTPP Equities Investment Committee
Hishaam Mirza	Director of the Applicant
William Goodwin	Director of the Applicant
[s 9(2)(a)]	Member of the OTPP Equities Investment Committee
	Member of the OTPP Equities Investment Committee
	Member of the OTPP Equities Investment Committee
	Member of the OTPP Equities Investment Committee
	Member of the OTPP Equities Investment Committee
	Member of the OTPP Equities Investment Committee
	Member of the OTPP Equities Investment Committee
	Member of the OTPP Equities Investment Committee

33. The individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment.
34. The relevant overseas person has demonstrated financial commitment to the overseas investment.

35. All the individuals with control of the relevant overseas person are of good character.
36. 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 (which sections list persons not eligible for visas or entry permission under the Immigration Act).
37. I am satisfied that the investor test in section 18(1)(a)-(d), as outlined in paragraphs 22 to 27 above, has been met.
38. The Minister of Finance has not declined consent to this transaction on the basis that the transaction is contrary to New Zealand's national interest.
39. Consent is granted to the investment in the form of the Proposed Decision in **Attachment 1**.



Louise Hornabrook
Manager Applications (Overseas Investment Office)

Date: 18 / 11 / 2020

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: [date]

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

Case	202000458
Consent	NZ Healthcare Investments Limited (company number 8075716) may acquire the Assets subject to the Conditions set out below.
Consent holder/s	NZ Healthcare Investments Limited We will also refer to each Consent holder and the Consent holders together as you .
Assets	100% of the shares in APHG NZ Investments Limited (company number 3135205)
Timeframe	You have until 30 November 2021 to acquire the Assets.

Released under the Official Information Act 1982

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
Automatic Condition: National Interest	
You must not, in relation to the Assets, act or omit to act with a purpose or an intention of adversely affecting national security or public order.	
Standard condition 1: acquire the Assets	
<p>You must acquire the Assets</p> <ol style="list-style-type: none"> 1. by the date stated in the Consent. If you do not, your Consent will lapse and you must not acquire the Assets, and 2. Using the acquisition, ownership and control structure you described in your application. Note, only you – the named Consent holder – may acquire the Assets, not your subsidiary, trust or other entity. 	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"> 1. the date you acquired the Assets (settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Assets, and 4. 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"> 1. must continue to be of good character, and 	At all times

2. must not become an individual of the kind referred to in [section 15](#) or [section 16](#) of the Immigration Act 2009. 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 be a threat or risk to security, public order or the public interest.

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.

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:

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 more than 25% 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 more than 25% ownership or control interest:
 - (a) becomes bankrupt or insolvent
 - (b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or

Within 20 working days after the change

(c) becomes subject to any form of external administration.	
---	--

Released under the Official Information Act 1982

ATTACHMENT 2 DRAFT LETTER TO MINISTER OF FINANCE

OVERSEAS INVESTMENT OFFICE



Case ref. 202000458

Hon Grant Robertson
Minister of Finance
PARLIAMENT BUILDINGS

cc Vanessa Horne, Group Manager (Overseas Investment), vhorne@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.

NZ Healthcare Investments Limited seeks consent under the Overseas Investment Act 2005 (the **Act**) to acquire 100% of the shares in APHG NZ Investments Limited.

This investment requires consent because it is an acquisition, by an overseas person, of significant business assets where the total value of consideration exceeds \$100 million (section 13(1)(a) of the Act). The investment requires a national interest assessment because the overseas person is a non-New Zealand government investor (section 20A(1)(b) of the Act).

I have made an assessment that the four elements of the investor test are met:

- the individuals with control have business experience and acumen relevant to the overseas investment;
- the relevant overseas persons have demonstrated financial commitment to the overseas investment;
- all the individuals with control of the relevant overseas persons are of good character
- each individual with control (of the relevant overseas persons) is not an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009.

All decisions regarding investments in significant business assets have been delegated to the OIO pursuant to the Designation and Delegation Letter dated 17 October 2018 (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

Louise Hornabrook
Manager, Applications
Overseas Investment Office

Encl.

ATTACHMENT 3 – GOOD CHARACTER SEARCHES AND ANALYSIS

The OIO undertook an open-source search of the relevant overseas persons (ROPs) and individuals with control (IWCs). The table below summarises the matters we identified.

Matter and date	Matter	Applicant response	OIO assessment						
<p>1. Dismissal of an OTPP employee (2016)</p> <p><i>Connection to IWC / ROP</i></p> <table border="1"> <tr> <td>Low</td> <td>Med</td> <td>High</td> </tr> </table> <p><i>Relevance to this investment</i></p> <table border="1"> <tr> <td>Low</td> <td>Med</td> <td>High</td> </tr> </table>	Low	Med	High	Low	Med	High	<p>An OTPP employee was dismissed for breaching OTPP's code of business conduct by sharing a copy of a private work-related memorandum with a personal friend who was also in the investment business. The employee sued for wrongful dismissal and was awarded USD1 million in damages. The damages were based on certain amounts the employee would have received and earned under OTPP's short-term incentive plan and long-term incentive plan in which the employee participated during the period of reasonable notice.</p>	<p>OTPP board members and employees are required to adhere to OTPP's code of conduct which promotes ethical corporate behaviour and implores employees to discharge their responsibilities to the highest levels of integrity and good faith. OTPP employs approximately 1200 employees across Canada, London and Hong Kong and prides itself on an innovative, diverse, and inclusive working culture, where employee rights and wellbeing are paramount.</p> <p>On occasions where employee disputes arise (which OTPP submits are rare) it endeavours to strike the correct balance between employee rights and wellbeing and the good-faith obligations it has to its investors and the wider investment community.</p> <p>OTPP sought to uphold the principles of its code of conduct in light of some behaviour by an employee that potentially compromised OTPP's reputation as an ethical business operator. The final decision by the court differed from the position that OTPP took on the issue, but OTPP acted in good faith at all times throughout the proceeding and has complied with the final judgment.</p>	<p>Low</p> <p>This is a dispute with a single employee which has been settled. OTPP acted in good faith and the employee had committed a breach of the code of conduct. OTPP complied with the final judgment and we do not consider it impacts on the character of OTPP, members of the OTPP Equities committee or the Applicant.</p>
Low	Med	High							
Low	Med	High							

Matter and date	Matter	Applicant response	OIO assessment						
<p>2. Complaint filed against OTPP by the Official Committee of Unsecured Creditors of CFM Corporation (2008)</p> <p><i>Connection to IWC / ROP</i></p> <table border="1"> <tr> <td>Low</td> <td>Med</td> <td>High</td> </tr> </table> <p><i>Relevance to this investment</i></p> <table border="1"> <tr> <td>Low</td> <td>Med</td> <td>High</td> </tr> </table>	Low	Med	High	Low	Med	High	<p>The complaint sought to avoid over USD300 million in claims asserted by Ontario Teachers' Pension Plan Board arising out of its failed investments in Canadian fireproof manufacturer CFM Corp.</p>	<p>This matter arose from claims pursued by OTPP against CFM Corp after it filed for bankruptcy in 2008. In pursuing the claims, OTPP acted in the best interests of its investors by seeking to recoup the value of its investment in CFM. The complaints filed against OTPP in response sought to preserve the financial interests of CFM's unsecured creditors. This claim was amicably settled through the successful bankruptcy process.</p>	<p>Low</p> <p>This matter occurred 12 years ago and was amicably settled. OTPP was acting in the best interests of its shareholders and we do not consider it impacts on the character of OTPP, members of the OTPP Equities committee or the Applicant.</p>
Low	Med	High							
Low	Med	High							
<p>3. Investment in entity owning immigration detention centres (2019)</p> <p><i>Connection to IWC / ROP</i></p> <table border="1"> <tr> <td>Low</td> <td>Med</td> <td>High</td> </tr> </table> <p><i>Relevance to this investment</i></p> <table border="1"> <tr> <td>Low</td> <td>Med</td> <td>High</td> </tr> </table>	Low	Med	High	Low	Med	High	<p>OTPP acquired more than 20,000 shares in GEO Group Inc. — worth just over half a million dollars — a company which investing in private U.S. prison companies that run immigration detention centres.</p>	<p>OTPP did own some GEO Group stock as part of a quantitative trading strategy involving hundreds of stocks for a short period of time in early 2019. OTPP often trades in and out of companies that are part of major stock indexes, but it sincerely regrets holding exposure to this stock as it does not fit within its responsible investment principles. This stock will not be part of OTPP's portfolio going forward, as it is not the kind of investment OTPP wants to be part of.</p>	<p>Low</p> <p>OTPP sold this investment once it realised what it had invested in. It does intend to make any similar investments in the future as this does not align with its investment principles. As such we do not consider that it impacts on the character of OTPP, members of the OTPP Equities committee or the Applicant.</p>
Low	Med	High							
Low	Med	High							