

To: Michael Appleyard, Manager Applications

ASSESSMENT REPORT: ICG Asia Pacific Fund IV SF (No.1) SCSp

Date	24 February 2022	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	202100733	Deadline	24 April 2022

Purpose

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

Action sought

1. Review this report.
2. Determine whether to grant consent and, if so, on what conditions.
3. Indicate your decision from page 3.

Key information

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

Applicant	ICG Asia Pacific Fund IV SF (No.1) SCSp Germany (49.97%), United Kingdom (21.43%), Singapore (9.7%), Netherlands (7.28%), South Korea (6.11%), Various (5.51%)
Vendors	Waterman Fund 3 LP; Pixel Group Nominee Limited (as bare trustee for various persons) New Zealand (91.61%), British Virgin Islands (6.62%), Various (1.77%)
Asset	Acquisition of 100% of the shares of Canopy Healthcare Group Limited (the Target)
Consideration	[s 9(2)(b)(ii)]
Sensitivity	Value of the business is greater than \$100m
Relevant tests	Investor test: s18A National interest test: s18(b)

Timing

5. Processing days for the application are set out in the table below. The OIO's processing time was within the 40 day target. There was a high number of days waiting for the Applicant due to it confirming the ownership structure for the investment.

Quality Assurance	OIO Processing	Waiting for Applicant	Third party consultation
2	25	35	0

A. Decision

Core tests

6. I determine that:

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

Relevant overseas person	Role
Jon Bidco Limited	Acquiring entity
ICG Asia Pacific Fund IV SF (No.1) SCSp	Applicant
[s 9(2)(b)(ii)] (GP Company)	General Partner of the Applicant and Main Fund
[s 9(2)(b)(ii)] (Main Fund)	Limited Partner of Applicant

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

Individuals with control	Role
Matthew Olsen	Directors of Jon Bidco Limited
James William Giannas	
[s 9(2)(a)]	Directors of GP Company

6.3 None of the relevant overseas persons and individuals with control of the relevant overseas person have established any of the factors contained in section 18A(4) of the Act.

7. I am satisfied that the investor test in section 18A, as outlined in paragraphs 30 to 55 below, has been met.

National interest assessment

8. I note that the overseas investment in significant business assets is not a transaction of national interest under section 20A of the Act and the Minister of Finance has not notified it is a transaction of national interest under section 20B of the Act.

Decision about whether to grant or decline consent

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



Michael Appleyard, Manager - Applications (Overseas Investment Office)

Date: 25 / 02 / 2022

B. Background and proposed transaction

10. The Applicant, ICG Asia Pacific Fund IV SF (No.1) SCSp intends to acquire 100% of the shares in Canopy Healthcare Group Limited (the **Target**) from the vendors (the **Transaction**).
11. The Applicant is a Luxembourg special limited partnership, and acts as an investment vehicle for its limited partners, ICG Asia Pacific Fund IV SF (No.1) (the **Main Fund**) and Intermediate Capital Group PC (**ICG**).
12. The Target, a company incorporated in New Zealand in 2018, is a leading New Zealand healthcare provider. The Target's key business divisions are:
 - TRG Imaging – established in 2004, the largest diagnostic imaging services provider in North Island, operating 18 clinics;
 - Auckland Breast Centre – a special breast cancer clinic, established in 2012 and owned by TRG; and
 - Canopy Cancer Care – New Zealand's largest private medical oncology provider, with 5 clinics across the North Island
13. The Target also has an 80% interest in iMIX, a fast-growing drug compounding company, which specialises in chemotherapy and immunotherapy compounding services for both public and private providers.
14. For completeness, we note that the Target has subsidiaries (directly or indirectly) in the New Zealand health sector including those wholly owned,¹ and those partially owned.²

Vendors

15. The Vendors are:
 - Waterman Fund 3 LP, a private capital fund raised and managed by Waterman Private Capital (holding 66.21% of the shares in the Target; and
 - Pixel Group Nominee Limited as bare trustee for the management shareholders who are certain New Zealand resident individuals, predominantly doctors, involved in management and operation of the Target Group, holding 33.79% interest in the Target.
16. As part of the Transaction, approximately 51% of the management interest will be rolled over into the post-completion ownership structure (the **Management Rollover Interest**).
17. The Applicant will acquire the Target via Jon Bidco Limited (**Jon Bidco**), with other intermediary entities (discussed in this report under the 'Ownership' section) used for financing and security arrangements.
18. Jon Bidco has entered into an agreement dated 24 December 2021 with the Vendors to acquire 100% of the shares in the Target (the **Share Sale Agreement**).
19. As well as the Share Sale Agreement being conditional on OIO consent, it is also conditional on Jon Bidco receiving change of control consents under certain 'Material Business Agreements' with [s 9(2)(b)(ii)]

¹ Pixel Group Nominee Limited, WM18 FinCo Limited, Canopy Cancer Care Limited, TRG Imaging Limited, Auckland Breast Centre Limited, Hawkes Bay Radiology Limited, Lakes Radiology Limited, Northern Radiology Limited, The Radiology Group (Wa kato) Limited, The Radiology Group Limited, TRG North Shore Limited, TRG Northland Limited, and TRGG Properties Limited.

² 50% of the shares of Breast Screen Bay of Plenty Limited, 57.54% of the shares of Waitemata MRI Limited, and 65% of the shares of Northland MRI Limited.

on terms acceptable to Bidco, or this condition being waived by Bidco. The last date on which this condition can be satisfied is the date which is 24 April 2022.

20. The Transaction is not subject to any other regulatory approvals.

Post-completion ownership

21. The Applicant has explained that following completion it is expected the Target will be held (indirectly via Bidco) as follows:

- Management shareholders: [REDACTED] % (depending on any post-completion investment by new doctor or management investors);
- Main Fund: [REDACTED] % (depending on any post-completion investment by new doctor or management investors); and
- ICG: [REDACTED] % (depending on any post-completion investment by new doctor or management investors).

Management Rollover Interest

22. The reinvestment of the Management Rollover Interest will be made via Jon Topco Limited (**Jon Topco**), a company incorporated in New Zealand as a subsidiary of the Applicant to facilitate this reinvestment.

23. Accordingly, the management shareholders will collectively have an indirect, post-completion ownership interest in the Target of approximately [REDACTED] %.

24. The Applicant has told us that the Management Rollover Interest of [REDACTED] % is an approximation because the final ownership interest will be determined based on the final consideration paid, which depends on the outcome of the purchase price adjustment mechanic in the Share Sale Agreement. However the Applicant does not expect there to be any material change to the Management Rollover Interest.

25. Under the terms of the Share Sale Agreement, the management shareholders are required to enter into the Shareholders' Agreement, which will govern the rights and obligations of the shareholders of Jon Topco following completion of the Transaction and the rollover investment arrangements.

ICG Co-investment Interest

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

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

C. Application of the Act

28. The Asset is sensitive because the value of Target's total gross assets is [s 9(2)(b)(ii)]³, exceeding the \$100 million screening threshold,⁴ so consent is required.⁵ The following criteria for an investment in significant business assets apply to this application:⁶

- The investor test must be met.⁷

³ The Applicant has agreed to purchase the Shares for [s 9(2)(b)(ii)] on a cash-free and debt-free basis. The final purchase price to be paid on completion is subject to a debt and working capital adjustment mechanic in accordance with the terms of the Share Sale Agreement.

⁴ Section 13(1)(a)(ii) of the Act.

⁵ Under sections 10(1)(b) and 13(1)(a) of the Act.

⁶ Set out in section 18 of the Act.

⁷ Section 18A of the Act.

- You must also note whether the investment is a transaction of national interest and, if so, whether the Minister of Finance has decided that the investment is contrary to New Zealand's national interest.⁸

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

D. Applicant and investor test

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

Business Activities

31. As noted above, the Applicant is a Luxembourg special limited partnership, and an investment vehicle for its limited partners, Main Fund and ICG.

Investment Capital Group (ICG)

32. ICG is a FTSE100 listed company, founded in 1989. It is regulated by the Financial Services Authority and has 15 offices across Europe, Asia and the US.
33. The Applicant submits that ICG is one of the largest private corporate debt and equity investors in the world, and also the largest non-bank funder of debt in Europe with over US\$65 billion assets under management. ICG has invested in over 420 equity and mezzanine transactions over the last 30 years. It has had a permanent presence in Asia Pacific since 2001 and manages over US\$1 billion in funds dedicated to the region.
34. The Applicant is ICG's fourth dedicated Asia Pacific fund, which has invested in several businesses with significant Australian / New-Zealand operations.⁹
35. Additionally, ICG has been an investor in many other Australian and New Zealand based businesses including Tegel, Perpetual Guardian, Ventura Bus Lines, Hoyts, Link Group (a fund administrator) and Veda Advantage (a credit bureau).

Ownership

36. The Applicant is a special limited partnership in Luxembourg established by a partnership agreement dated 20 February 2020. It is owned by its limited partners, Main Fund (as to █%) and indirectly ICG (as to █%). ICG as a listed company is widely held.
37. The Main Fund is a closed-ended fund and acts as an investment vehicle for institutional investors by making, holding, monitoring and realising investments in buy-outs, recapitalisations, development capital and expansion capital transactions in the Asia Pacific region.
38. Beneficial ownership of Main Fund is widely held, including by asset manager █ [s 9(2)(b)(ii)] (representing █% beneficial ownership of the Applicant). In terms of overall beneficial ownership of the Applicant, after ICG the next largest owners are [s 9(2)(b)(ii)] █%, and █¹⁰ [s 9(2)(b)(ii)] █% (also with █%).

Intermediary entities

39. The Applicant will acquire the Target via Jon Bidco, a wholly owned subsidiary formed to facilitate the Transaction.¹¹ The Applicant has also incorporated Jon Midco Limited

⁸ Section 18(1)(e) of the Act.

⁹ This includes the management buyout of Everlight Radiology in partnership with management and doctor shareholders, and the management buyout of CURA Day Hospitals in partnership with management and doctor shareholders.

¹⁰ [s 9(2)(b)(ii)] █

¹¹ As the acquiring entity Jon Bidco Limited is also named as a consent holder in the proposed consent.

(Jon Midco) and Jon Topco (mentioned above) as intermediary entities sitting between Jon Bidco and the Applicant.

40. The Applicant has explained that the ownership structure is driven by the Applicant's financing and security arrangements. [s 9(2)(b)(ii)]
41. Further, Jon Holdco Limited, is a limited liability company incorporated in Singapore for the purposes of holding the shares of Topco.
42. A diagram showing the Applicant's ownership structure, including the recently formed companies between the Applicant and the acquiring entity, is at **Attachment 2**.

Control

43. The Applicant's limited partners are passive investors with no board members or other governance rights in respect of the Target.
44. Main Fund is an [s 9(2)(b)(ii)]
45. For completeness, the general partner of the Applicant and the Main Fund is [s 9(2)(b)(ii)] (Fund GP). [s 9(2)(b)(i)]
46. Fund GP in turn acts by and through its general partner, [s 9(2)(b)(ii)] (GP Company) a limited liability company incorporated in Luxembourg. Accordingly, GP Company is effectively the general partner of the Applicant and the Main Fund.
47. [s 9(2)(b)(ii)]
48. The Transaction will be funded through a combination of:
- [s 9(2)(b)(ii)]
 - [s 9(2)(b)(ii)]
 - [s 9(2)(b)(ii)]
 - [s 9(2)(b)(ii)]
49. [s 9(2)(b)(ii)]
50. [s 9(2)(b)(ii)]
51. On completion of the Investment, Topco will oversee the day-to-day management of the Target, or otherwise delegate such matters to the existing internal management of the Target Group companies. The directors of Jon Topco are Matthew Olsen and James Giannas (who are also the directors of Jon Bidco and Jon Midco).

52. For the above reasons we assess that the directors of GP Company and the directors of Jon Topco effectively have control of the Applicant and the Investment.

Relevant overseas person and individuals with control

53. We recommend that the 'relevant overseas person' is collectively:

Relevant overseas person	Role
Jon Bidco Limited	Acquiring entity
ICG Asia Pacific Fund IV SF (No.1) SCSp	Applicant
[s 9(2)(b)(ii)] (GP Company)	General Partner of the Applicant and Main Fund
[s 9(2)(b)(ii)] (Main Fund)	Limited Partner of Applicant

54. We recommend that the 'individuals with control of the relevant overseas person' (IWC)¹² are:

Individuals with control	Role
Matthew Olsen	Directors of Jon Bidco Limited
James William Giannas	
[s 9(2)(a)]	Directors of GP Company

Summary of investor test

55. The relevant overseas persons and individuals with control established none of the factors contained in section 18A(4) of the Act. Our conclusion is that **the investor test has been met.**

E. Not a transaction of national interest

56. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.¹³ This is because the investment does not involve a non-NZ government investor, or an investment in a strategically important business (as defined in the Act).
57. We have not referred this transaction to the Minister of Finance for him to call it in for a national interest assessment on a discretionary basis.¹⁴ He has therefore not declined consent to the transaction.

¹² Section 15.

¹³ Under s 20A of the Act.

¹⁴ Section 20B of the Act

58. We are directed¹⁵ that the starting point is the assumption that overseas investment is in New Zealand's national interest and that we should only seek the Minister of Finance to exercise his discretion for a national interest assessment if the proposed investment:
- could pose risks to New Zealand's national security or public order
 - would grant an investor significant market power within an industry or result in vertical integration of a supply chain
 - has foreign government or associated involvement that was below the 10 per cent threshold for automatic application of the national interest test, but granted that government (and/or its associates) disproportionate levels of access to or control of sensitive New Zealand assets or
 - would have outcomes that were significantly inconsistent with or would hinder the delivery of other Government objectives,
 - raises significant Treaty of Waitangi issues, or
 - relates to a site of national significance (e.g. significant historic heritage).
59. We do not consider that this investment engages any of these risk factors.

F. Conclusion

60. After considering the application, our view is that:
- the investor test has not been met; and
 - the transaction is not considered to be a transaction of national interest.
61. Therefore, we consider that the criteria for consent in section 18 have been met and our recommendation is to **grant consent**.
62. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and from page 3 of this Assessment Report to record your decision.



Andrew Wells
Senior Solicitor
Overseas Investment Office

Date: 24/2/2022

G. List of Attachments

1. Proposed decision and conditions
2. Intended ownership structure

¹⁵ Supplementary Ministerial Directive Letter (24 November 2021).

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	202100733
Consent	The Consent holder may acquire the Assets subject to the Conditions set out below.
Consent holder/s	ICG Asia Pacific Fund IV SF (No.1) SCSp and Jon Bidco Limited (company number 8279914). We will also refer to each Consent holder and the Consent holders together as you .
Assets	100% of the shares of Canopy Healthcare Group Limited (company number 7119454).
Timeframe	You have until [date] 2023 to acquire the Assets.

Conditions

Your Consent is subject to the conditions set out below. These apply to all overseas people who are given consent to acquire significant business assets, including you.

You must comply with them all. Be aware that if you do not comply with the conditions you may be subject to fines or other penalties.

In the Consent and the Conditions, we refer to the Overseas Investment Office as **OIO, us or we**.

Act means the Overseas Investment Act 2005.

Regulations means Overseas Investment Regulations 2005

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

Details	Required date
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 not unsuitable	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Assets in accordance with section 18A(1) of the Act.</p> <p>The Individuals Who Control You are individuals who:</p> <ol style="list-style-type: none"> (a) are members of your governing body (b) directly or indirectly, own or control more than 25% of you or of a person who itself owns or controls more than 25% of you, and (c) are members of the governing body of the people referred to in paragraph (b) above. To avoid doubt, this includes the members of your governing body. 	At all times

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

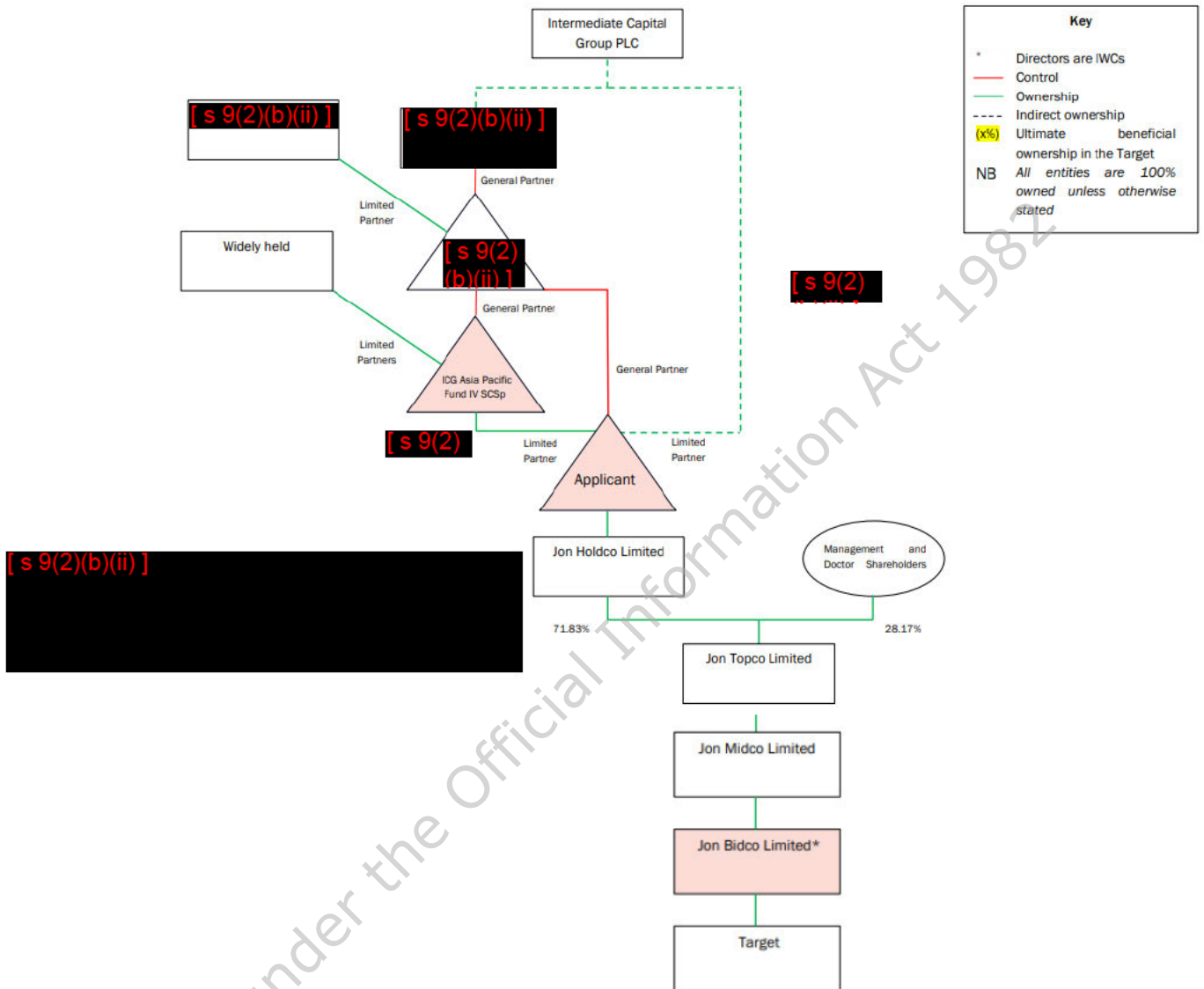
You must tell us in writing if any of the following events happens to any of the Consent holders:

1. You become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act.
2. You cease to be an overseas person or dispose of all or any part of the Asset.
3. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you.

Within 20 working days after the change

Released under the Official Information Act 1982

ATTACHMENT 2 – INTENDED OWNERSHIP STRUCTURE



Released under the Official Information Act 1982