



To: Daniel White, Manager, Applications

## ASSESSMENT REPORT: Mercury Medical Holdings Limited

<b>Date</b>	4 March 2022	<b>Classification</b>	IN CONFIDENCE: Commercially sensitive
<b>OIO reference</b>	202100807	<b>Deadline</b>	9 March 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.

### Assessment timeframe requirements

A decision is required by 9 March 2022 to enable the decision to be communicated to the applicant in compliance with the prescribed assessment timeframe.

### Key information

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

<b>Applicant</b>	<b>Mercury Medical Holdings Limited</b> New Zealand (72.00%); United States of America (24.00%); Australia (4.00%).
<b>Vendors</b>	<b>Nirvana Family Partnership LP</b> New Zealand (100%)
<b>Asset</b>	Acquisition of up to 100% of the shares in Tamaki Health Group Limited
<b>Consideration</b>	\$77,000,000
<b>Sensitivity</b>	Value of the business is greater than \$100m
<b>Relevant tests</b>	Investor test: s18A National interest test: s18(1)(e)

### Timing

5. The Overseas Investment Regulations 2005 specify the total assessment timeframe for this application is 35 days. This application is currently on day 26, therefore a decision is due to the applicant by 9 March 2022.

## A. Decision

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### Core tests

6. I determine that:

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

Relevant overseas person	Role
MCF2 GP Limited ( <b>GP1</b> )	General Partner of fund owning Applicant
MCF2A General Partner Limited ( <b>GP2</b> )	General Partner of fund owning Applicant
Mercury Capital Investments Pty Limited ( <b>Manager</b> )	Manager of fund owning Applicant
Mercury Medical Holdings Limited	Applicant

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

Individuals with control	Role
Clark Elliot Perkins	Director of Applicant, GP1, GP2 and Manager CEO of Mercury Capital and 100% owner of GP1 and GP2
Craig Leonard Heatley	Director of Applicant, GP1, GP2 and Manager
Geoffrey Thomas Ricketts	Director of Applicant, GP1, GP2 and Manager
Thomas Wilton Sturgess	Director of Applicant, GP1, GP2 and Manager

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 16-33 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**.



Daniel White

Manager, Applications (Overseas Investment Office)

Date: 4 / 3 / 2022

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## **B. Background and proposed transaction**

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10. Tāmaki Health Group Limited (**THGL**) is the largest independent primary healthcare group in New Zealand, serving 230,000 enrolled patients across 45 clinics. THGL is the largest provider of urgent care and general practice clinics in New Zealand. THGL employs 1000 staff while providing affordable and accessible healthcare to vulnerable communities.
11. The Applicant obtained OIO consent to acquire an approximately 50% stake in THGL in 2017 (Case 201620106).
12. Nirvana Family LP (the **Vendor**) is a New Zealand based partnership associated with the founder of THGL. The Vendor owns an approximately 48.7% interest on THGL, with the Applicant also owning a 48.7% interest, and the balance being owned by minority shareholders.
13. The Applicant is seeking to acquire the Vendor's interest in THGL, with the purchase to be funded by cash consideration and the issuing of shares in the Applicant (which will result in the Vendor obtaining an approximately 10% share in the Applicant).

## **C. Application of the Act**

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14. The Asset is sensitive because the value of the business is more than \$100 million,<sup>1</sup> so consent is required.<sup>2</sup> The following criteria for an investment in significant business assets apply to this application:<sup>3</sup>
  - The investor test must be met.<sup>4</sup>
  - 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.<sup>5</sup>
15. We assess the investor test in Part D, and discuss national interest matters in Part E.

## **D. Applicant and investor test**

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

### **Business Activities**

17. The Applicant has an existing interest in the THGL, and through its existing interest in THGL, it has been active in the provision of medical services in New Zealand. Its parent fund Mercury Capital Fund 2 (**MCF2**) has interests in travel, print and procurement businesses in New Zealand.
18. MCF2 is one of three investment funds managed by Mercury Capital. Mercury Capital is a private equity firm managed by a Sydney-based team who oversee over A\$1 billion in committed capital funds. Mercury Capital focuses on long-
19. term investing in established Australian and New Zealand private businesses, with enterprise values of between \$50 million to \$300 million.

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<sup>1</sup> Section 13(1)(a)(ii) of the Act.

<sup>2</sup> Under sections 10(1)(b) and 13(1)(a) of the Act.

<sup>3</sup> Set out in section 18 of the Act.

<sup>4</sup> Section 18A (1)(a)-(d) of the Act.

<sup>5</sup> Section 18(1)(e) of the Act.

## Ownership

20. The Applicant is a special purpose investment company incorporated in New Zealand on 14 December 2016. The Applicant is a wholly owned subsidiary of MCF2.
21. The Applicant is owned 100% by two limited partnerships:
  - 71.9% by MCF2 LP, and
  - 28.1% by MCF2B LP (the **Limited Partnerships**).
22. The investors in the Limited Partnerships making up MCF2 are institutional and high net worth individuals and families from:
  - New Zealand (67.9%);
  - United States of America (23.8%);
  - Australia (8%);
  - Singapore (0.3%); and
  - the United Kingdom (0.1%).
23. The Limited Partnerships act by and through their respective general partners (GP1 and GP2), both of which are New Zealand incorporated entities.
24. 100% of the shares in GP1 and GP2 are owned by Clark Elliot Perkins, who is the CEO of Mercury Capital.
25. A diagram of the intended ownership structure is in **Attachment 2**.

## Control

26. GP1 and GP2 are controlled by their respective boards of directors. Each of those boards comprise the same four individuals, being:
  - Clark Elliot Perkins;
  - Craig Leonard Heatley;
  - Geoffrey Thomas Ricketts; and
  - Thomas Wilton Sturgess.
27. These four individuals are also the existing directors of the Applicant<sup>6</sup>, and of Mercury Capital Investments Pty Limited (the **Manager**), the company which manages MCF2. The general management and administration of the Limited Partnerships (and MCF2 generally) is delegated to the Manager.
28. The boards of GP1 and GP2 are ultimately responsible for making the investment and divestment decisions in respect of MCF2. The decision to invest further in THGL was made by the board of each of GP1, GP2 and the Applicant.
29. Day-to-day management of MCF2's investment in THGL will be the responsibility of GP1 and GP2 (and their four directors, each of whom is also a director of the Applicant) as well the ongoing directors of the Applicant.
30. Only the directors of the Applicant could approve significant capital and operating expenditure by the Applicant, and only the boards of GP1 and GP2 and the Manager

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<sup>6</sup> Following completion of the proposed transaction, the Vendor will have the right to appoint and remove one director of the Applicant (out of a maximum of seven directors) for as long as it holds at least 5% of the voting shares in the Applicant. The rest of the Applicant's directors, and the Chair, will be appointed (and removed) by MCF2. As these rights arise after settlement and as the Vendor is New Zealand based we do not consider this relevant to the assessment of ROP/IWCs.

could approve significant capital and operating expenditure in respect of MCF2's investment in THGL.

### Relevant overseas person and individuals with control

31. We recommend that the 'relevant overseas person' is (collectively):

Relevant overseas person	Role
MCF2 GP Limited	General Partner of fund owning Applicant
MCF2A General Partner Limited	General Partner of fund owning Applicant
Mercury Capital Investments Pty Limited	Manager of fund owning Applicant
Mercury Medical Holdings Limited	Applicant

32. We recommend that the 'individuals with control of the relevant overseas person' (IWC)<sup>7</sup> are:

Individuals with control	Role
Clark Elliot Perkins	Director of Applicant, GP1, GP2 and Manager CEO of Mercury Capital and 100% owner of GP1 and GP2
Craig Leonard Heatley	Director of Applicant, GP1, GP2 and Manager
Geoffrey Thomas Ricketts	Director of Applicant, GP1, GP2 and Manager
Thomas Wilton Sturgess	Director of Applicant, GP1, GP2 and Manager

### Summary of investor test

33. The relevant overseas persons and individuals with control established none of the factors contained in section 18A(4) of the Act.

34. For the reasons set out above our conclusion is that **the investor test has been met.**

### E. Not a transaction of national interest

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35. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.<sup>8</sup> 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).

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<sup>7</sup> Section 15.

<sup>8</sup> Under s 20A of the Act.

36. 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.<sup>9</sup> He has therefore not declined consent to the transaction.
37. We are directed<sup>10</sup> 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 more than 25 per cent ownership or control interest 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
  - 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).
38. We do not consider that this investment engages any of these risk factors.

## F. Conclusion

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39. After considering the application, our view is that:
- the investor test has been met; and
  - the transaction is not considered to be a transaction of national interest.
40. Therefore, we consider that the criteria for consent in section 18 have been met and our recommendation is to **grant consent**.



Craig Mundy-Smith

Senior Solicitor  
**Overseas Investment Office**

Date: 4/03/2022

## G. List of Attachments

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1. Proposed Decision
2. Intended ownership structure

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<sup>9</sup> Section 20B of the Act

<sup>10</sup> Supplementary Ministerial Directive Letter (8 June 2020).

## ATTACHMENT 1 PROPOSED DECISION

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### Consent for Overseas Person to Acquire Significant New Zealand Business Assets

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Read this consent carefully - you must comply with all the conditions. If you do not, you may be subject to fines or other penalties.

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#### Consent

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Decision date: [date]

The following people have been given the following consent:

<b>Case</b>	202100807
<b>Consent</b>	The Consent holder may acquire the Assets subject to the Conditions set out below.
<b>Consent holder/s</b>	Mercury Medical Holdings Limited (Company number 6183927) We will also refer to the Consent holder as <b>you</b> .
<b>Assets</b>	Up to a 100% interest in Tamaki Health Group Limited.
<b>Timeframe</b>	You have until 31 March 2023 to acquire the Assets.



## Conditions

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

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

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

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

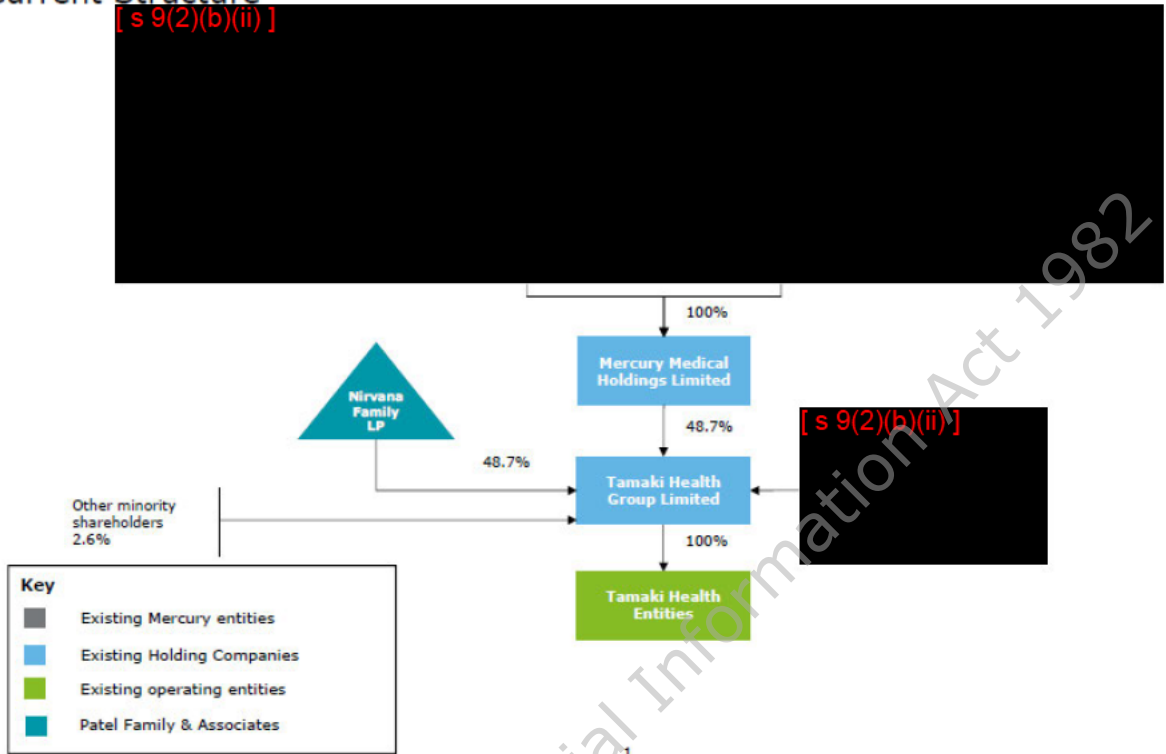
Details	Required date
<b>Standard condition 1: acquire the Assets</b>	
<p>You must acquire the Assets</p> <ol style="list-style-type: none"> <li>1. by the date stated in the Consent. If you do not, your Consent will lapse and you must not acquire the Assets, and</li> <li>2. Using the acquisition, ownership 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.</li> </ol>	As stated in the Consent
<b>Standard condition 2: tell us when you acquire the Assets</b>	
<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"> <li>1. the date you acquired the Assets (<b>settlement</b>),</li> <li>2. consideration paid (plus GST if any),</li> <li>3. the structure by which the acquisition was made and who acquired the Assets, and</li> <li>4. copies of any transfer documents and settlement statements.</li> </ol>	As soon as you can, and no later than two months after settlement
<b>Standard condition 3: remain not unsuitable</b>	
<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 <b>Individuals Who Control You</b> are individuals who:</p> <ol style="list-style-type: none"> <li>(a) are members of your governing body</li> </ol>	At all times

<p>(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</p> <p>(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.</p>	
<p><b>Standard condition 4: tell us about changes that affect you, the people who control you, or people you control</b></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"> <li>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.</li> <li>2. You cease to be an overseas person or dispose of all or any part of the Asset.</li> <li>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.</li> </ol>	<p>Within 20 working days after the change</p>

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# ATTACHMENT 2 – INTENDED OWNERSHIP STRUCTURE

## Current Structure



## MMH acquires remaining shares in Tamaki Health for cash and scrip

