

To: Clare Needham, Acting Manager Applications, Overseas Investment Office

ASSESSMENT REPORT: E & J Gallo Winery

Date	21 May 2020	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	202000123	Priority	High

Action Sought

Decision Maker	Action	Suggested Deadline
Clare Needham, Acting Manager Applications, Overseas Investment Office	<ol style="list-style-type: none"> Review the attached report and decide whether to grant consent to the application Forward the report and attachments to the Primary Assessor 	25 May 2020

LINZ Contacts

Name	Position	Contact number	First contact
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ASSESSMENT REPORT: E & J Gallo Winery

Overview

Purpose

1. We seek your decision on the application by E & J Gallo Winery (the **Applicant**) under the Overseas Investment Act 2005 (the **Act**) to acquire Nobile wine brand and certain related assets (the **Investment**).
2. This transaction requires consent for the acquisition by an overseas person of property in New Zealand used in carrying on business in New Zealand, where the total value of the consideration exceeds \$100m.¹ The property to be acquired is interests in assets comprising: Nobile brand and associated intellectual property for worldwide use, all finished inventory (including both bulk and bottled wine) and the rights under certain grape supply agreements.
3. The decision is delegated to the regulator as the transaction relates to significant business assets only (i.e. the transaction does not include any sensitive land).²

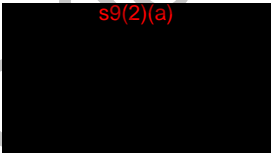
Key information

Applicant	E & J Gallo Winery (United States of America 100 00%)
Vendor	Constellation Brands Inc (United States of America 100%)
Consideration	Approximately ³ \$202 million
Application type	Significant business assets only
Relevant tests	Investor test (s18(1)(a)-(d) of the Act)

4. Please refer to the **A3 in Attachment 4** for overview tables summarising the application and the Overseas Investment Office’s (**OIO’s**) assessment.

Provisional recommendation

5. Our provisional recommendation is to **grant consent**.
6. If you agree to grant consent, we recommend that you make the determinations set out in paragraphs 7 to 9 below.



Charlie Hulley

Solicitor

Date: 21/ 05 /2020

¹ Section 13(1)(c) of the Act.
² Ministerial Designation and Delegation letter, 17 October 2018, Table A, Row A.
³ Using a USD/NZD exchange rate on 14 February 2020, total consideration is USD\$130 million.

Decision

7. I determine that:

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

ROP	Role
E & J Gallo Winery	Applicant and entity controlling the Investment
Gallo Wines New Zealand GP Limited	General partner of the acquiring entity (and indirectly wholly owned subsidiary of E & J Gallo Winery)
Gallo Wines New Zealand LP	Acquiring entity (and wholly owned subsidiary of E & J Gallo Winery)

7.2 the 'individuals with control of the relevant overseas person' are:

IWC	Role
Douglas Bowen Vilas	Vice President and Chief Financial Officer of E & J Gallo Winery
John Kenneth Menges JR	Vice President, General Counsel & Secretary of E & J Gallo Winery
Devinder Pal Singh	Vice President of E & J Gallo Winery
Matthew Joseph Gallo	Vice President of E & J Gallo Winery
Christopher David Gallo	Director of E & J Gallo Winery
Ernest Joseph Gallo	Chief Operating Officer of E & J Gallo Winery
Mathew Shane Zauner	Director of Gallo Wines New Zealand GP Limited
James Edward Coleman	Vice President and Co-Chairman of E & J Gallo Winery; Director of Gallo Wines New Zealand GP Limited
Robert Julio Gallo	Vice President and Co-Chairman of E & J Gallo Winery; Director of Gallo Wines New Zealand GP Limited
Joseph Ernest Gallo	Chief Executive Officer and President of E & J Gallo Winery; Director of Gallo Wines New Zealand GP Limited

7.3 the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment;

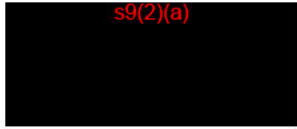
7.4 the relevant overseas person has demonstrated financial commitment to the overseas investment;

7.5 all the individuals with control of the relevant overseas person are of good character; and

7.6 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 certain persons not eligible for visas or entry permission under the Immigration Act); and

8. I am satisfied that the investor test in section 18(1)(a) - (d), as outlined in paragraph 7 above, has been met

9. Consent is granted to the investment in the form of the Proposed Decision in Attachment 1



Clare Needham

Acting Manager Applications (Overseas Investment Office)

Date: 22 / 05 / 2020

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Official Information Act 1982

Contents

ACTION SOUGHT.....	1
OVERVIEW	2
EXECUTIVE SUMMARY.....	6
APPLICANT AND INVESTOR TEST	7
PROVISIONAL RECOMMENDATION	12
LIST OF ATTACHMENTS.....	12
LIST OF OTHER DOCUMENTS IN THE BUNDLE.....	12
ATTACHMENT 1 - PROPOSED DECISION.....	13
ATTACHMENT 2 - GUIDANCE FOR APPLYING THE ACT	16
ATTACHMENT 3 - GOOD CHARACTER SEARCHES AND ANALYSIS	19
ATTACHMENT 4 - OVERVIEW TABLES FOR E & J GALLO WINERY 202000123	25

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Executive summary

10. The Applicant, E & J Gallo Winery (**Gallo Winery**) is the largest family owned winery in the world. Based in California (USA), Gallo Winery owns over 100 brands and exports wine globally. Gallo Winery is ultimately owned by s9(2)(a) family trusts mostly linked to members of the Gallo family. The Applicant confirmed no one individual has an ultimate beneficial ownership interest of more than 5% in Gallo Winery.
11. The Vendor, Constellation Brands New Zealand Limited (**Constellation NZ**) is a wholly owned subsidiary of Constellation Brands, Inc. (**Constellation Inc**) (together **Constellation Group**).
12. Gallo Winery has entered into a letter of agreement and asset purchase agreement (**APA**) to acquire, via a nominee limited partnership Gallo Wines New Zealand LP, the Nobile brand and certain related assets from Constellation NZ (**the Investment**). Gallo Winery seeks our consent because the consideration offered for the assets is over the \$100 million threshold and is therefore an investment in significant business assets.
13. The Investment is part of a wider transaction between Gallo Winery and Constellation Group in the United State of America (**US Transaction**).
14. This is an overseas investment in significant business assets only, as Gallo Winery has advised that no sensitive land is involved. We consider that all of the criteria for consent have been met, and we recommend that consent is **granted** for this transaction.
15. We asked the Applicant if the Investment is likely to be affected by the COVID-19 pandemic. The Applicant confirmed that it is proceeding with the Investment and that the information contained in the final version of the application dated 20 May 2020 remains true and correct and does not need to be revised considering the impact of COVID-19. The US Transaction has been delayed until June or July 2020, as detailed below.
16. Guidance for applying the Act is set out in **Attachment 2**.

Timing

17. The Applicant originally indicated they would like a decision by 15 April 2020 to coincide with the completion of the US Transaction. The Applicant further confirmed that the target close date for the US Transaction has been delayed until June or July 2020 as it continues to work through the Federal Trade Commission consenting process.
18. The decision on this application is still requested mid June 2020.
19. Processing days for the application to date are:

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
7	35	24	0

Applicant and investor test

20. This section describes the Applicant, and whether the investor test criteria in the Act are likely to be met.
21. We asked the Applicant if the Investment is likely to be affected by the COVID-19 pandemic. The Applicant confirmed that it is proceeding with the Investment and that the information contained in the final version of the application dated 20 May 2020 remains true and correct and does not need to be revised considering the impact of COVID-19.

Who is making the investment

22. The Applicant seeks consent to acquire the Nobile brand and associated intellectual property for worldwide use, all finished inventory (including both bulk and bottled wine) and the rights under certain grape supply agreements (the **Assets**) for approximately \$NZ202 million (\$USD130 million equivalent) (the **Investment**). Gallo Winery has agreed to acquire the Investment from Constellation Brands New Zealand Limited (**Constellation NZ**), a wholly owned subsidiary of United States owned Constellation Brands, Inc. (**Constellation Inc**) (together **Constellation Group**).
23. Gallo Winery and Constellation Inc agreed to the sale and purchase of the Assets under a letter of agreement and asset purchase agreement dated 11 December 2019 (**APA**). The Investment is part of a wider transaction between Gallo Winery's group of companies and Constellation Group in the United States (**US Transaction**).
24. Gallo Winery was established in 1933 and is the largest family owned winery in the world. Gallo Winery has its headquarters in California, United States of America. As well as being the largest exporter of Californian wine, Gallo Winery owns over 100 brands. Products it owns are available in more than 110 countries globally. Gallo Winery also imports wine from Argentina, France, Italy, Spain and New Zealand for distribution in the United States.
25. The Vendor is ultimately United States owned. It is a global beer, wine and spirits company. The Vendor stated that the sale of the Assets is part of a global transaction to realise capital. When the Vendor acquired the Assets it did not require consent under the Act as the Assets were valued below the statutory threshold for significant business assets and were developed by the Vendor to their current value over time.

Overview of assessment: investor test

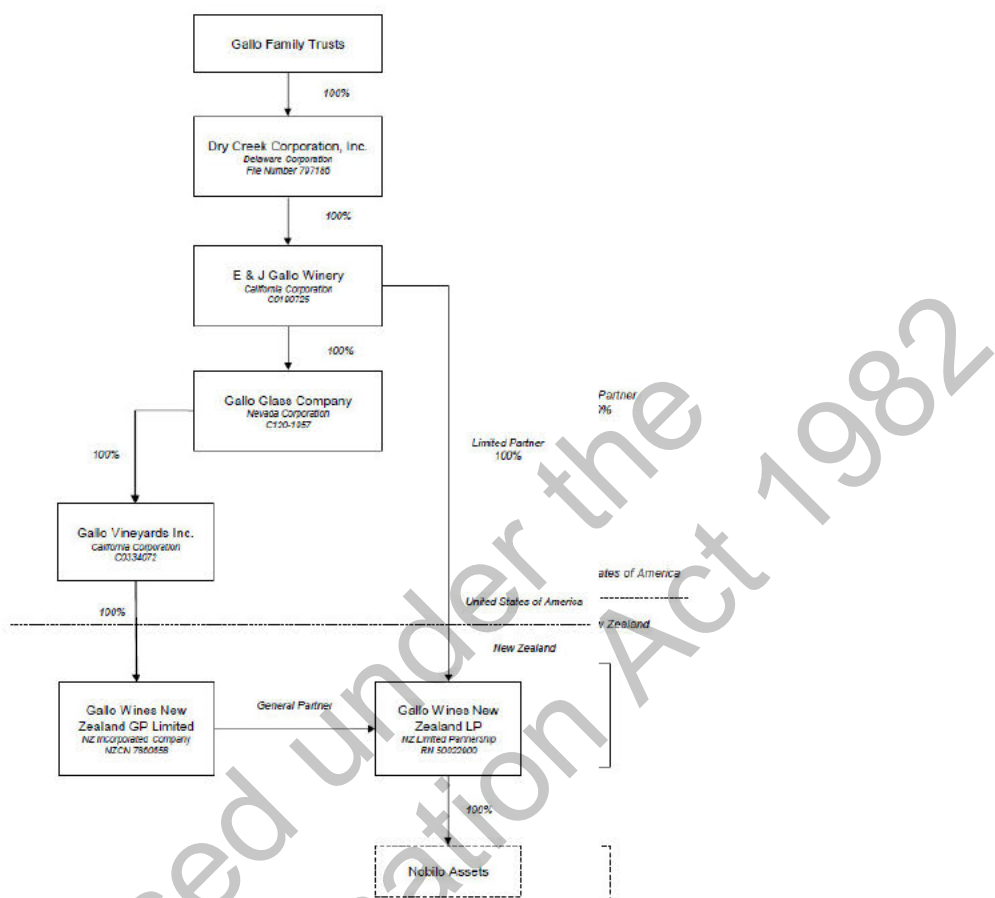
Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWC) confirmed	ROPs/IWCs identified	ROP and IWC identified.	Paras 26-32. Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	The Applicant and the IWC are experienced in the wine industry business. The Applicant is the largest family owned winery in the	Paras 33-37. Section 18(1)(a) of the Act.

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
		world and owns over 100 brands (including NZ wine brands) and exports wine globally. Most of the IWCs have worked for the Applicant for a number of years.	
ROP demonstrated financial commitment	Test met	The ROP has demonstrated financial commitment by entering into an asset purchase agreement and ancillary agreements to transfer the Assets and engaging legal, financial and operational advisers to complete due diligence.	Section 18(1)(b) of the Act.
Good character	Some matters of relevance	We have considered an ongoing intellectual property lawsuit and a recent regulatory breach. These do not preclude a finding of good character. These matters are discussed further in this report and in Attachment 3.	Paras 39-42 and Attachment 3. Sections 18(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	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.	Sections 18(1)(d) of the Act.

Ownership and control of the Applicant

26. Gallo Winery is wholly owned by Dry Creek Corporation Inc (**Dry Creek**). Dry Creek is a Delaware registered corporation whose shares are widely held by s9(2) shareholding trusts. The shareholding trusts are all beneficially owned by second and third generation members of the Gallo family and by a long-time Gallo family lawyer and advisor. The Applicant confirmed that because some shareholders in Dry Creek are trustees of multiple family trusts it gives them a combined shareholding in Dry Creek of at least 5%. However, the Applicant confirmed that no individual (either alone or together with associates) has an ultimate beneficial ownership interest in the Applicant, Gallo Winery, of greater than 5%, either by vote or otherwise, as at the date of this application.

27. Please refer to the below ownership structure diagram provided by the Applicant:



28. Gallo Winery intends to acquire the Investment via a nominee New Zealand registered limited partnership, Gallo Wines New Zealand LP (**Gallo LP**). Gallo LP and its general partner, Gallo Wines New Zealand GP Limited (**Gallo GP**), are indirectly wholly owned and controlled by Gallo Winery.
29. The Investment was approved by the board of directors of Gallo Winery. Significant decisions in relation to the Assets subject to the Investment will remain with the Gallo Winery board. The Applicant expects to implement formal delegations in relation to the Investment in due course.
30. Day to day management of the Investment will be undertaken by Gallo Winery's executive management team comprising: Joseph Ernest Gallo (Director and Chief Executive Officer), Ernest Joseph Gallo (Chief Operating Officer), Douglas Bowen Vilas (Vice President and Chief Financial Officer), Matthew Joseph Gallo (Vice President, North Coast Operations), John Kenneth Menges, Jr. (Vice President, General Counsel and Company Secretary) and Devinder Pal Singh (Vice President, Global Sourcing).
31. We have determined that the '**relevant overseas person**' (**ROP**) is (collectively):

ROP	Relationship
E & J Gallo Winery	Applicant and entity controlling the Investment
Gallo Wines New Zealand GP Limited	General partner of the acquiring entity (and wholly owned subsidiary of the Applicant)
Gallo Wines New Zealand LP	Acquiring entity (and wholly owned subsidiary of the Applicant)

32. We have determined that the 'individuals with control of the relevant overseas person' (IWC) are:

IWC	Role
Douglas Bowen Vilas	Vice President and Chief Financial Officer of Gallo Winery
John Kenneth Menges JR	Vice President, General Counsel & Secretary of Gallo Winery
Devinder Pal Singh	Vice President of Gallo Winery
Matthew Joseph Gallo	Vice President of Gallo Winery
Christopher David Gallo	Director of Gallo Winery
Ernest Joseph Gallo	Chief Operating Officer of Gallo Winery
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Joseph Ernest Gallo	Chief Executive Officer and President of Gallo Winery; Director of Gallo Wines New Zealand GP Limited

Business experience and acumen

s16(2)(a) and 18(1)(a) of the Act.

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.

33. In this case, the Investment can be described as the acquisition of a wine brand (Nobilo) including certain associated assets (i.e. inventory and the rights under certain grape supply agreements).
34. We have reviewed the biographical information provided by the Applicant for each of the IWC and note the IWC collectively have general business experience and acumen in the wine industry, most have been working for Gallo Winery for a number of years.
35. Gallo Winery operates in the global wine industry. Gallo Winery has experience working in New Zealand with established wine brands, including with Whitehaven Wine Company Limited (**Whitehaven**). Whitehaven owns and operates vineyards in Marlborough. Gallo Winery has the exclusive distribution rights for the Saint Clair and Whitehaven brands in the United States. Gallo Winery made an original equity investment in Whitehaven in return for a 36.4% shareholding interest. Gallo Winery have subsequently diluted their shareholding in Whitehaven to 24.99%.
36. The Applicant states that all the IWC have numerous years of business experience, including in the manufacturing and production of wine as either directors and/or senior executives of large companies with global operations.
37. The Applicant plans to apply its experience and knowledge to the Nobilo brand to help it grow internationally with a focus on the market in the United States of America. Gallo Winery owns over 100 wine brands globally, including in the United States of America and is therefore likely to be positioned to carry out its plans for the Nobilo brand.

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

Good character assessment

s16(2)(c) and 18(1)(c) of the Act.

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):

- 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);
- any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

39. The Applicant has provided a statutory declaration stating that the individuals with control are of good character, have not committed an offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the Investment. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.
40. Some matters were disclosed by the Applicant or identified through open source searches that gave rise to concerns due to their recent nature. Those matters were:
- A lawsuit was brought against Gallo Winery in 2019 for allegedly using patented irrigation technology without permission. The Applicant denies that the claim is valid and notes that it is still subject to ongoing legal proceedings. The Applicant notes that the matter does not implicate any of the IWCs and it is a current matter which Gallo Winery is actively defending. The Applicant commented that external counsel it hired confirmed the Applicant's own analysis that the claim is without merit. Our view is that even if an intellectual property / patent violation was found, it is unlikely to result in an adverse finding in relation to the good character of any of the IWCs because this would be a one-off violation of this kind, none of the IWC were named and the Applicant currently denies and is actively defending the allegation.
 - In 2019 the U.S. Environmental Protection Agency (EPA) reached a settlement with Gallo Winery to resolve risk management violations at its wine production facility in Fresno, California. Gallo Winery will pay a US\$57,839 civil penalty and spend an estimated US\$350,000 to reduce the risk of chemical accidents at its facility. The Applicant stated that it agreed to complete a supplementary environmental project valued at US\$350,000 to enhance safety equipment and procedures at the Fresno facility and paid a civil penalty. We do not consider this matter adversely affects a finding of good character as the Applicant took remedial steps. We do not view the matter as deliberate or as part of a pattern of behaviour. There is no suggestion of intentional wrongdoing and no further serious incidents of this nature have been identified. Additionally, we do not consider that the violation is relevant to the investment as the Applicant will not be required to implement plant health and safety protocol in relation to the Assets as it is not acquiring land or plant as part of the proposed Investment.
41. For the reasons outlined above, we do not consider these matters lead to an adverse finding in relation to good character. While we do not consider these matters impact on the good character test, we are bringing them to your attention

due to their recency. If you would like us to provide you with further information in relation to these matters, we would be happy to do so.

42. Some other matters were raised; however, these were at least 10 years ago and do not rise to the level of seriousness that means they would impact on the good character of the IWCs. We have discussed all matters raised in detail in **Attachment 3**.

Provisional recommendation

43. Our provisional recommendation is to **grant consent**, as we consider that the investor test have been met.
44. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and to paragraphs 8 and 9 of this Assessment Report to record your decision.

List of Attachments

1. Proposed Decision
2. Guidance for applying the Act

List of other documents in the Bundle

- A. Application

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: 21 May 2020

The following people have been given the following consent:

Case	202000123
Consent	Gallo Wines New Zealand LP (RN: 50022900) may acquire the Assets subject to the Conditions set out below.
Consent holder/s	Gallo Wines New Zealand LP E & J Gallo Winery We will also refer to each Consent holder and the Consent holders together as you .
Assets	Significant business assets being the Nobile brand and associated intellectual property for worldwide use, all finished inventory (including both bulk and bottled wine), and the rights under certain grape supply agreements; as agreed under letter of agreement dated 11 December 2019 and asset purchase agreement (not yet executed) between the Consent holder and Constellation Brands, Inc.
Timeframe	You have until 30 June 2021 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. If you do not, your Consent will lapse and you must not acquire the Assets, and 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. 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. 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 	At all times

<p>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. To avoid doubt, this includes the members of your governing body. 	
<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>

ATTACHMENT 2 - GUIDANCE FOR APPLYING THE ACT

1. You⁴ must grant consent to this overseas investment if you are satisfied that all of the applicable criteria in the Overseas Investment Act 2005 (**Act**) and the Overseas Investment Regulations 2005 (**Regs**) are met. You must decline to grant consent if you are not satisfied that all of the applicable criteria are met. You must not take into account any criteria or factors other than those identified as applying to this application in the table below.
2. The type of application you are considering is an application under the Significant business assets only pathway.
3. The following table sets out the criteria and factors that apply to this application:

Pathway	Criteria and factors (post-October 2018)
Significant business assets	Investor test – s 18

4. In the attached report the Overseas Investment Office identifies each of the relevant criteria and factors under section 18 that you are required to consider in this case.
5. Following is guidance in relation only to the criteria and factors that apply to this application.

Investor test – good character criterion

6. You must be satisfied that the relevant overseas person or (if that person is not an individual) all the individuals with control of the relevant overseas persons are of good character.
7. 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.
8. When undertaking the good character assessment, you 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.
9. 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 body corporate 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 body corporate is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.
10. 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 is of good character:
 - (a) offences or contraventions of the law by the person, or by any person in which the individual has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
 - (b) any other matter that reflects adversely on the person’s fitness to have the particular overseas investment.

⁴ ‘You’ here refers either to the decision-maker, being the relevant Minister(s) for a Ministerial application or the delegated decision-maker for a delegated application

11. All relevant matters must be weighed up before you make a decision that an individual is of good character. If you wish to rely on a matter to which the applicant has not had an opportunity to respond, then such an opportunity to respond needs to be given in order to meet the requirements of natural justice.
12. 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 you.
13. 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.
14. Matters which are unlikely to be relevant 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.
15. Briefly, some of the things we consider when weighing up “good character” include:
 - (a) the seriousness of the matter, which may include considerations of: what the matter was and the level of actual or potential harm; whether the matter was established by a relevant regulator or the Court and attributed to an Individual with Control (IWC) or Relevant Overseas Person (ROP); what the penalty or other sanction was (if any); whether the matter was a one-off event or repeated breaches including a pattern of non-compliance across a range of regulatory regimes; whether what occurred was inadvertent, negligent, reckless or deliberate; whether what occurred was legal in New Zealand but illegal in the jurisdiction in which it occurred, in which case we consider the culture and context of that country;
 - (b) relevance to this investment: we assess how relevant the particular matter is to the nature of this particular investment. For example, a dangerous driving conviction by an IWC would have low relevance in connection with the acquisition of a dairy farm, whereas a conviction for discharging farm effluent into a waterway would have a high relevance to the acquisition of a dairy farm;
 - (c) if a matter is an allegation, the credibility of the allegation including the reliability of the source and credibility of the information raised. Generally, if an allegation is reported in a number of sources and is not simply ‘copy and pasted’ it is likely to be regarded as having credibility;

- (d) connection to the Individuals with Control (IWCs) or Relevant Overseas Person (ROP): we assess the level of control between any of the IWCs of the ROP and the particular matter. For example, a breach of safety rules by an employee of subsidiary company where the company was fined would likely have a low (or no) connection with an IWC who was an executive director of the parent company, whereas an executive decision by a company to illegally collude with a competitor would likely have a high connection with that IWC;
 - (e) what actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring.
16. The onus is on the applicant to satisfy the decision maker that all the individuals with control are of good character.
17. If you have 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.

Conditions

18. Conditions may be imposed on any consent that is granted, under section 25(A) of the Act⁵. The attached Report recommends some conditions that you may wish to consider imposing in this case.

Decision

19. 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.

⁵ Section 25 of the Act prior to the Amendment Act.

ATTACHMENT 3 - GOOD CHARACTER SEARCHES AND ANALYSIS

The **good character table** below sets out matters that have been disclosed by the applicant or identified by the OIO through open-source searches of the relevant overseas persons (ROPs) and individuals with control (IWCs) and the OIO's analysis of them. Some matters will not be included in the table, for example where a matter relates to a person with the same name.

How to read the good character table: For each matter, the good character table shows:

WHAT		WHO	WHEN	HOW	WHY	
1	Matter category	Offence/ contravention/ allegation/ other matter	Name of ROP/IWC	Date occurred	Description of culpability and any mitigation / remediation undertaken	Our conclusion on the matter (why we have rated it as we have)
	Description of matter	Description of credibility	Description of proximity	Description of when (including pattern of behaviour)		

Ratings

Who: shows the **proximity** of the matter to the IWC

When: shows **how close in time** the matter was and whether it was part of a **pattern of behaviour**

How: shows the IWC's **culpability** and any **mitigation or remedial action** taken

HIGH	direct involvement of the individual or if the individual was not involved in the matter themselves they could reasonably have been expected to have known about it and acted on it
MEDIUM	the individual was involved in some capacity or ought reasonably to have been, but the matter was not the direct responsibility
LOW	the individual was not involved nor would reasonably be expected to have been

HIGH	within the past 2 years or part of a pattern of behaviour that has continued when the IWC/ROP was part of the enterprise
MEDIUM	within the last 3-10 years, or than 10 years but part of a pattern of behaviour that continued for some time including when the IWC/ROP was involved
LOW	older than 10 years and no pattern of behaviour

HIGH	the IWC/ROP was highly culpable and took limited (if any) remedial action, with little (or no) success
MEDIUM	the IWC/ROP has some culpability and some action, which was only effective to some degree
LOW	the IWC/ROP had low or no culpability and / or took effective remedial action (even where culpability was high). If there was a conviction or finding of liability by an investigatory, regulatory, judicial or quasi-judicial body, the minimum possible rating is 'Medium'

GOOD CHARACTER TABLE

#	WHAT	WHO	WHEN	HOW	WHY
1	<p>Matter category: Fraud dishonesty & corruption</p> <p>Allegation / other matter</p>	E & J Gallo (ROP)	2019	<p>Deny the claim and still subject to ongoing legal proceedings</p> <p>Deny the claim and still subject to ongoing legal proceedings</p>	<p>Does not implicate any of the IWCs. This is a current matter which E. & J. Gallo is actively defending. The company has engaged external counsel who have confirmed the company's own analysis that the claim is without merit. Even if found to be a violation of intellectual property / patent it is unlikely to result in an adverse finding in relation to good character because this would be a one-off violation of this kind, none of the IWC were named and the Applicant currently deny and are actively defending the allegation.</p>
	<p>A lawsuit was brought against E. & J. Gallo in 2019 for allegedly using patented irrigation technology without permission:</p>	Accusation against ROP	No other allegations etc of intellectual property / patent violations		
2	<p>Matter category: Other regulatory non-compliance</p> <p>Allegation / other matter</p>	E & J Gallo Wines (ROP)	2010	<p>The Applicant commented that it "revised its standard supplier terms and now imposes strict traceability requirements on all its international suppliers to ensure that all its wine is of a known origin."</p> <p>Could be inadvertent or negligent processes of checking supply chain - however, not enough information to decide and satisfied with comment provided (in light of duration passed since matter -i.e. 10 years)</p>	<p>At least 10 years ago, remedial actions taken by the applicant and no pattern of behaviour seen, which suggests remediation was effective.</p>
	<p>In 2010 a complaint was filed against E. & J. Gallo for engaging in unfair competition, false advertising and fraud in relation to certain varieties of its French wine.</p>	Issue with a third-party supplier falsely labelling the wine	10 years ago - 2010. No other matters reveal pattern of behaviour		

Matter category: Other regulatory non-compliance	Offence/Contravention	E & J Gallo (ROP)	2019		
3 The U.S. Environmental Protection Agency (EPA) has reached a settlement with E. & J. Gallo Winery to resolve risk management violations at its wine production facility in Fresno, California. E. & J. Gallo Winery will pay a \$57,839 civil penalty and spend an estimated \$350,000 to reduce the risk of chemical accidents at its facility.		Applicant owned plant where violations occurred	Not likely a pattern of behaviour - no other serious incidents / violations raised	Agreed to complete a supplemental environmental project valued at \$350,000 to enhance safety equipment and procedures at the Fresno facility and paid civil penalty. Not clear from information provided but no evidence of deliberate wrongdoing.	We do not consider this matter adversely affects a finding of good character, the violation related to a plant owned by the Applicant and some remedial steps were taken. We do not consider that the violation is relevant to the investment as the Applicant will not be required to implement plant health and safety protocol as it is not acquiring land as part of the proposed transaction.

Released under the
 Official Information Act 2082

<p>Matter category: Other regulatory non-compliance</p>	<p>Allegation / other matter</p>	<p>E & J Gallo Wine (ROP)</p>	<p>2011</p>		
<p>4 E. & J. Gallo Winery allegedly paid "slotting allowances" by giving items of value in order to obtain favourable product placement and display space. They were fined \$225, 000 USD by the Federal Alcohol Administration Act.</p>		<p>ROP offered an offer in compromise of an alleged violation relating to slotting allowances. Unclear the involvement of the IWCs, no evidence of direct involvement, does not appear to be a finding of guilt, rather a settlement between the ROP and the regulator.</p>	<p>This incident occurred almost 10 years ago. It does not reveal pattern of behaviour, however, another price-fixing / anti-competitive practices fine (as part of a group of 15 other large wine and liquor suppliers) in 2006 - this is discussed later.</p>	<p>There does not appear to be an admission of guilt based on the information available and the language used in that information.</p>	<p>This matter does not lead to an adverse finding of good character as the violation appears to be a settlement between the Alcohol and Tobacco Tax and Trade Bureau and the ROP. There does not appear to be an admission of guilt based on the information available and the language used "alleged" and "allegation". Overall this matter does not affect a finding of good character.</p>

Official Information Act 1982

Matter category: Fraud dishonesty & corruption	Offence/Contravention	E & J Gallo Winery (ROP)	2006			
5 E & J Gallo Winery fined an estimated \$153,333 for price-fixing or anti-competitive practices (fine based on even division of fine among 15 suppliers) .		E & J Gallo Winery named as one of 15 suppliers named	At least 10 years ago (14 years ago - October 2006). There is some link to a pattern of behaviour in that the RP got fined for slotting allowance violations in 2011 (another example of attempting to gain preferential treatment) - however this other incident occurred 9 years ago and this incident 10+ years ago therefore any pattern of behaviour cannot be considered to continue more recently.		N/A	This matter does not adversely affect an assessment of good character as the incident occurred at least 10 years ago, does not rise to the level of seriousness when considering incidents at least 10 years old, and does not reveal a recently continuing pattern of behaviour.

Official Information Act 1982

6	Matter category: Other regulatory non-compliance	Offence/Contravention (ROP)		2005		N/A	Does not preclude a finding of good character as one off of ence that seems of low level (as indicated by the fine) and is 15 years ago with no other information to suggest continuing pattern of behaviour.
	E & J. Gallo Winery was disciplined and fined UDS 3,750 by the U.S. Office of Foreign Asset Control for violations of the Cuba Sanctions Program.		E. & J. Gallo Winery named as entity involved	Seems like one off violation at least 10 (i.e. 15 years ago) - no pattern of offending.			
7	Matter category: Labour & employment	Allegation / other matter	Matthew Gallo (IWC)	2003		N/A	Does not preclude a finding of good character as allegation over 10 years ago and no information relating to any subsequent incidents that indicate a pattern. The Applicant's statement is that Matthew Gallo has "broken the law or acted improperly (either during the course of his employment with the Applicant and its associated entities or otherwise)."
	A complaint was filed against Matthew Gallo (of Gallo Winery) for promising raises to workers that supported an anti-union cause.		Matthew Gallo accused	Over 10 years ago, no pattern of behaviour.			


Search results from ICIJ, UNSC and Interpol

OIO's due diligence in relation to good character includes open-source searches of the International Consortium of Investigative Journalists (ICIJ) database, United Nations Security Council (UNSC) Terrorist Entities List, and Interpol Red Notice List. In this case, those searches [did not produce any relevant results, produced the following relevant results:

Some of the IWC, Joseph Ernst Gallo, Douglas Bowen Vilas, Robert J. Gallo and James Edward Coleman are listed on the ICIJ database as associated with E. & J. Gallo Winery and Burgundy Reinsurance Company, Ltd (a company located in Bermuda). The Applicant disclosed this and explained Burgundy was established for the legitimate purpose of allowing E. & J. Gallo Winery and its related affiliates direct access to reinsurance markets rather than through other insurance companies. The Applicant believes that Burgundy shows up on the ICIJ due to its connection with the law firm which assisted with the original incorporation in 1978. Further the Applicant confirmed that the IWC named have "never broken the law or acted improperly (either during the course of his employment with the Applicant and its associated entities or otherwise)". We note that there is no allegation of wrongdoing in the information provided, and the Applicant comment confirms this.

An IWC, Rob Gallo, is listed on the ICIJ as associated with Peak Management Group Ltd. The Applicant confirmed that the Robert Gallo in the application, has never been associated with Peak Management Group. We note there are no allegations or contraventions against the IWC – and the Applicant has confirmed there is no link between the IWC and entity identified.

ATTACHMENT 4 - OVERVIEW TABLES FOR E & J GALLO WINERY 202000123

 <p>NOBILLO PURE NEW ZEALAND</p>	<p>Application</p> <p>The Applicant, E & J Gallo Winery (Gallo Winery) seeks consent to acquire Nobilo brand and associated intellectual property for worldwide use, all finished inventory (including both bulk and bottled wine), and the rights under certain grape supply agreements (the Assets).</p> <p>The Applicant is the largest family owned winery in the world. Based in a California (USA), Gallo Winery owns over 100 brands and export wine globally. It is ultimately held by s9(2)(a) family trusts mostly linked to members of the Gallo family. The vendor, Constellation Brands Inc, is a global beer, wine and spirits company, and Constellation Brands New Zealand Limited is a wholly owned subsidiary which currently holds the Assets. The sale is part of global transaction by the vendor to realise capital.</p> <p>The purchase price is approximately NZ\$202 million (US\$130 million).⁶</p> <p>The Applicant plans to nominate its wholly owned limited partnership to complete the transaction.</p> <p>The consent is required because the consideration offered for the assets is over the \$100 million threshold and this is therefore an investment in significant business assets under s13(1)(c) of the Overseas Investment Act 2005.</p>	<p>Provisional recommendation</p> <ul style="list-style-type: none"> • Our provisional recommendation is to grant consent. • Relevant tests for this transaction: <ul style="list-style-type: none"> ◦ Investor Test (s18)
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Overview of assessment: Investor test

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWC) confirmed	ROPs/ IWCs identified	ROP and IWC identified.	Paras 26-32. Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	The Applicant and the IWC are experienced in the wine industry business. The Applicant is the largest family owned winery in the world today and owns over 100 brands (including NZ wine brands) and export wine globally. Most of the IWCs have worked for the Applicant for a number of years.	Paras 33-37. Section 18(1)(a) of the Act.
ROP demonstrated financial commitment	Test met	The ROP has demonstrated financial commitment by entering into an asset purchase agreement and ancillary agreements to transfer the assets included in the Investment and engaging legal, financial and operational advisers to complete due diligence.	Section 18(1)(b) of the Act.
Good character	Some matters of relevance	We have considered an ongoing intellectual property lawsuit and a recent regulatory breach. These do not prevent a finding of good character matters and are considered further in our report.	Paras 39- 42 and Attachment 3. Section 18(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	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.	Section 18(1)(d) of the Act.

⁶ Using a USD/NZD exchange rate on 14 February 2020, total consideration is USD\$130 million.