

To: Charlotte Connell, Manager Applications, Overseas Investment Office

ASSESSMENT REPORT (VARIATION): B.S.A. International and Sanulac Oceania Pty Limited – Vary timeframe Condition 1

Date	REPORT DATE 25 March 2021	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	201810245	Priority	High

Action Sought

Decision Maker	Action	Suggested Deadline
Anneke Turton, Manager Applications, Overseas Investment Office	<ol style="list-style-type: none"> Review the attached report and decide whether to agree to vary the consent and grant the variation application Forward the report and attachments to the Primary Assessor 	31 March 2021

LINZ Contacts

Name	Position	Contact number	First contact
Anneke Turton	Manager Applications	04 830 2513	<input type="checkbox"/>
Jan de Bruin	Senior Advisor	04 460 0195	<input checked="" type="checkbox"/>

ASSESSMENT REPORT (VARIATION):): B.S.A. International and Sanulac Oceania Pty Limited Overview

Purpose

1. We seek your decision on the variation of conditions application by B.S.A. International and Sanulac Oceania Pty Limited ("**Applicant**") under the Overseas Investment Act 2005 ("**the Act**") to postpone the timeframe to exercise a call option to acquire New Zealand New Milk Trading Limited ("**New Milk Trading**") from 31 March 2021 to 30 November 2025.
2. New Milk Trading is the infant formula brand of the New Zealand New Milk group of companies, which distributes infant formula products into the People's Republic of China ("**PRC**"). It is part of a larger acquisition of New Zealand New Milk companies by the Applicant which was previously approved by the OIO in 2019.
3. The Applicant also wishes to have New Zealand New Milk Brands Limited ("**New Milk Brands**") added as a consent holder to the application. This company was acquired as part of the original consent. It is incorporated in New Zealand and is now 100% owned by Sanulac Oceania Pty Limited, the Australian subsidiary of the Applicant, which again is 100% owned the Applicant.
4. The decision has been delegated to the OIO.¹

Recommendation

5. For the reasons set out in this report, our recommendation is to grant the variation application.

[s 9(2)(a)]

Jan de Bruin
Senior Advisor
Date: 25 /03 /21

Decision

6. I agree to vary the Consent as set out in **Attachment 1**.

[s 9(2)(a)]

Anneke Turton
Manager Applications (Overseas Investment Office)
Date: 25 / 03 / 2021

¹ All variation decisions are delegated to the OIO pursuant to Table A (G) of the Designation and Delegation letter dated 17 October 2018.

Description of Application and Investment

Applicant

7. On 16 May 2019, the Applicant was granted consent to acquire 100% of the shares in each of:
 - (a) New Zealand New Milk Limited;
 - (b) New Zealand New Milk Brands Limited; and
 - (c) New Milk Trading.
8. This was an overseas investment in significant business assets and required consent because the consideration provided for the securities of these three companies exceeded \$100 million.
9. The vendor in the case of the original consent, for companies (a) and (b) was Aspen Pharmacare Holdings Limited ("**Aspen**"), a global pharmaceutical and nutritional company registered in South Africa.
10. The vendor for company (c) New Milk Trading, was/is New Zealand New Milk Brands Holdings Limited, which is 100% New Zealand owned.
11. [s 9(2)(b)(ii)]

[s9(2)(b)(ii)]

Relevant Overseas Person

13. We have determined that the 'relevant overseas person' ("ROP") is (collectively):

Entity	Relationship
B.S.A. International	Applicant and parent company of the acquiring entity
B.S.A.	Parent company of the Applicant
Sanulac Oceania Pty Ltd	Applicant and subsidiary company of BSA International
New Milk Brands	Acquiring entity and subsidiary company of the Applicant
[s9(2)(a)]	[s9(2)(b)(ii)]

14. The acquisition of New Milk Trading will be via the execution of a call option allowing New Milk Brands to acquire 100% of the ordinary shares in New Milk Trading.
15. New Milk Brands is a company incorporated in New Zealand that is directly owned 100% by Sanulac Oceania Pty Ltd, and was a subject of the original acquisition by the Applicant.
16. As the call option to acquire New Milk Trading will be completed by New Milk Brands it needs to be added as a consent holder, which also makes it an ROP, as noted in the table above.

Individuals with Control

17. We have determined that the 'individuals with control' ("IWC") of the ROP person are:

Individual	Role
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[s9(2)(a)]	[s9(2)(b)(ii)]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

18. We conducted updated due diligence checks on the IWCs when considering this variation application, and no adverse information was found. We consider the IWCs continue to be of good character.

Background to the variation and the variation sought

19. New Milk Trading's business of distributing infant formula products into the PRC has been quite successful.

20.

[s9(2)(b)(ii)]

21.

[s9(2)(b)(ii)]

Reason for the variation

22.

[s9(2)(b)(ii)]

23.

[s9(2)(b)(ii)]

Our assessment

Assessment on request for time extension

24.

[s9(2)(b)(ii)]

25.

[s9(2)(b)(ii)]

Recommended variation

26. We consider it is reasonable to grant the variation requested and we recommend the application to vary the consent be granted. Our recommended varied consent is set out in **Attachment 1**.

Third party submissions

27. No third party submissions were sought or received.

List of attachments

1. Recommended consent – Draft
2. Guidance for applying the Act

Released under the Official Information Act 1982

**ATTACHMENT 1 – PROPOSED VARIED NOTICE OF DECISION
(MARKED-UP)**

**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

Original Decision date: 16 May 2019

Varied: X March 2021

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

Case	201810245
Consent	The Consent holders may acquire the Assets subject to the Conditions set out below.
Consent holder/s	B.S.A. International (Belgian company number <u>0443.205.173</u>) Sanulac Oceania Pty Ltd (Australian Business Number <u>47 629 973 977</u>) <u>New Zealand New Milk Brands Limited (NZ company number 5418767), once it has been acquired by BSA International and Sanulac Oceania Pty Limited</u> We will also refer to each Consent holder and the Consent holders together as you .
Assets	<ul style="list-style-type: none">• 100% of the shares in New Zealand New Milk Limited (Company number 3285329),• 100% of the shares in New Zealand New Milk Brands Limited (Company number 5418767), and• 100% of the shares in New Zealand New Milk Trading Limited (Company number 5463063).
Timeframe	You have until 31 March 2021 to acquire the Assets, <u>except in respect of New Zealand Milk Trading Limited, which you will have until 30 November 2025 to acquire.</u>

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">1. by the date stated in the Consent. If you do not, your Consent will lapse and you must not acquire the Assets (<u>noting that there is no obligation to acquire the shares in New Zealand New Milk Trading Limited, as this acquisition is the subject of a call option that may be exercised by New Zealand New Milk Brands Limited</u>), and2. 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">1. the date you acquired the Assets (settlement),	As soon as you can, and no later than two months after settlement

<ol style="list-style-type: none"> 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. 	
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 2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. <p>These sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to be a threat or risk to security, public order or the public interest.</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 25% or more of you or of a person who itself owns or controls 25% or more of you, and (c) are members of the governing body of the people referred to in paragraph (b) above. <p>To avoid doubt, this includes the members of your governing body.</p>	<p>At all times</p>

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 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:
 - (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.

Within 30 working days after the change

ATTACHMENT 2 - GUIDANCE FOR APPLYING THE ACT

1. 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.
2. The information that the OIO has taken into account in making its recommendation is summarised in the Report.
3. Section 27 of the Act provides that a consent may be varied with the agreement of the consent holder and conditions of consent may be varied or added to with the agreement of the consent holder or revoked.
4. The Act does not spell out what you need to take into account in considering an application for variation of consent. The Act does not give specific guidance as to the circumstances in which consents may be varied but confers a wide discretionary power on the decision-maker to vary a consent or its conditions so long as the consent holder agrees.
5. This discretionary power should be exercised consistently with the purpose of the Act.

Released under the Official Information Act 1982