

12 March 2015

[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your request dated 23 February 2015 made pursuant to the Official Information Act 1982 ("OIA") and received by us on 23 February 2015. We address questions 1) and 2) together and work through the remaining questions in sequence below.

1. **What information does the NZSuperfund have concerning progress that Ogin has made toward the commercial development of the turbine?**
2. **Has Ogin instructed the NZSuperfund as to when it expects to make a commercial product and when power performance assessments, made in accordance with the IEC61400 standard, will be available to support sales agreements?**

The Guardians of New Zealand Superannuation (the "**Guardians**") holds numerous Board reports, emails and file notes concerning the New Zealand Superannuation Fund's investment in Ogin Inc. ("**Ogin**") and how it is progressing.

Broadly speaking, in their reports to the Guardians, Ogin has informed us that:

- its commercialisation plans are progressing on schedule with a comprehensive roll-out plan in place;
- the results of industry standard performance assessments on prototype pre-commercial units are in line with or better than their expectations;
- the company has already received third party design certification to the industry standard and is pursuing further type certification as part of its commercial deployments;
- the company is currently going through an initial series of commercial production which will go through another round of extensive testing and validation by reputable third parties before being released and sold to a customer as part of the first commercial project; and
- global commercial opportunities are greater than anticipated.

The Guardians maintain regular contact with Ogin, which has included meeting with staff at their Boston headquarters and visiting multiple prototypes installed in the field.

We have decided to withhold the specific documents that we possess relating to questions 1 and 2, on the basis that we have good reasons for doing so under section 9 of the OIA. We have considered whether the public interest in favour of disclosing that information outweighs our reasons for withholding it, and have concluded that it does not. The grounds on which we have withheld these documents are as follows:

- **Section 9(2)(b)(i) – to protect information where the making available of the information would disclose a trade secret.** In investing the Fund we are carrying out commercial activities and competing in a global market for access to the best investment opportunities. The companies in which we invest, such as Ogin, are each commercial entities in their own highly competitive markets. They

are very concerned about protecting their trade secrets and other intellectual property. A significant part of Ogin's business is the development of unique technologies relating to wind energy generation. Much of the information relating to Ogin's products and technologies is therefore confidential information comprising trade secrets. Companies such as Ogin will not work with us or permit us to invest in them if we cannot uphold the confidentiality of this truly sensitive information.

The interests of Ogin and its shareholders (including the Guardians) in protecting these trade secrets outweighs any public interest that might exist in release of this information. We strongly believe that it is in the public interest that we can maintain the highest standards of commercial sensitivity in regards to the companies we invest in.

- **Section 9(2)(b)(ii) – to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.** As noted above, Ogin is a commercial entity developing unique technologies. To disclose commercially sensitive information about Ogin's operations is likely to unreasonably prejudice Ogin's commercial position.

For example, making available detailed information about the company's timeframes and progress towards commercialisation is likely to be of commercial benefit to Ogin's competitors.

We also do not want to discourage other entities in which we might wish the Fund to invest from transacting with us because of the risk that confidential information about their business might be disclosed to the public under the OIA. We strongly believe that it is in the public interest that we can maintain the highest standards of commercial sensitivity with those we work with.

As noted in our letter to you of 12 December 2013, there are already processes and measures in place to hold the Guardians accountable to the Government and the public in respect of our management of the Fund. The public interest in mitigating the risk of the Guardians being constrained in their future investment opportunities (and thereby achieving a lower return on the Fund's investments) also weighs in favour of withholding the information. In short, we do not consider that the public interest in disclosure of this information outweighs the reasons for withholding it.

- **Section 9(2)(ba)(i) – protect information which is subject to an obligation of confidence, where making it available would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied.** Our engagements and discussions with the companies in which we invest are frequently conducted on a confidential basis, with our correspondence with these companies being subject to an obligation of confidence. These companies are reassured by our pledges to maintain and respect confidentiality. They will not work with us if we cannot uphold confidentiality of this truly sensitive information, creating a very real risk that future engagement and the supply of such information to the Guardians would be jeopardised. This information is needed by the Guardians in order to manage the Fund's investment portfolio effectively. It is in the public interest that we can maintain the highest standards of confidentiality and commercial sensitivity with those we work with.

The information Ogin communicates to the Guardians is provided subject to express confidentiality obligations. In the event the Guardians were to disclose

this confidential information to the public, it is likely that other entities in which the Guardians might wish to invest (or other parties with which the Guardians might wish to contract) will be reluctant to engage with the Guardians because of the risk of disclosure of their confidential information. That outcome would damage the public interest that exists in ensuring that the Guardians is able to compete on a level playing field with other investors, maximising returns to the Fund.

- **Section 9(2)(k) – prevent the disclosure or use of official information for improper gain or improper advantage.** Disclosure of this information would enable competitors and counterparties of both Ogin and the Guardians to obtain an improper advantage in circumstances where similar information about Ogin is not available to the public.

3. Has the NZSuperfund recovered further costs or written down the value of the investment?

We have neither recovered further costs nor written down the value of the investment.

4. What is the value of the Ogin investment in the NZSuperfund's books?

We continue to value the investment (post-repayment of the debt portion) at cost - US\$30m. Note: private market assets are typically revalued annually.

Your right to seek a review by the Ombudsmen's Office

You have the right to make a complaint to the Office of the Ombudsman and seek an investigation and review of the Guardians' decision to withhold information under the OIA as set out above. Contact details for the Office of the Ombudsman are set out below.

Free phone: 0800 802 602 (+64 4 4739533)
Email: info@ombudsman.parliament.nz
Fax: (04) 471 2254
Website: <http://www.ombudsmen.parliament.nz/>

Yours sincerely



Stewart Brooks
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