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**Memorandum**

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<b>To</b>	<b>China International Capital Corporation Hong Kong Securities Limited</b> 29th Floor, One International Finance Centre 1 Harbour View Street Central Hong Kong	<b>BNP Paribas Securities (Asia) Limited</b> 60/F-63/F Two International Finance Centre 8 Finance Street Central Hong Kong
	<b>CCB International Capital Limited</b> 12/F, CCB Tower 3 Connaught Road Central Central Hong Kong	<b>OrbusNeich Medical Group Holdings Limited</b> Cricket Square, Hutchins Drive PO Box 2681 Grand Cayman, KY1-1111 Cayman Islands

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<b>From</b>	M.E. Rosing Stibbe
<b>Date</b>	13 June 2022
<b>Re</b>	<b>OIBV / DPPS investigation</b>

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**1. CRIMINAL INVESTIGATION**

- 1.1 In August 2014, during the audit of Orbus International BV (“OIBV”), the auditor raised questions about transactions between OIBV and cardiologists working at Belgian hospitals.
- 1.2 A criminal investigation into these transactions was launched by the Fiscal Intelligence and Investigation Service (“Fiod”), under the direction of the Dutch Public Prosecution Service (“DPPS”, the only authority in the Netherlands empowered to prosecute suspects of criminal behaviour) in February 2018.
- 1.3 After OIBV became aware of the criminal investigation, it engaged Stibbe to act as criminal defense counsel. OIBV fully cooperated with the criminal investigation.

- 1.4 After nearly three years of thorough investigation, the DPPS and Fiod finished its investigation in July 2020. According to the DPPS, OIBV gave gifts to cardiologists at Belgian hospitals to gain a more favourable position concerning the supply of medical products to the hospitals where those cardiologists worked. The hospitals were not aware of these arrangements between OIBV and the cardiologists.
- 1.5 The DPPS was of the opinion that OIBV concealed the aforementioned arrangement in its financial records through invoicing a certain price per product to the hospital, receiving sales proceeds from the hospitals, drawing up credit notes addressed to the hospitals for part of the proceeds without actual issuance of those credit notes, paying the amounts underlying the credit notes to the cardiologists and allegedly using consultancy agreements to make payments to cardiologists.
- 1.6 According to the criminal file, the investigation did not identify any member of the group of which OIBV forms part (other than OIBV itself) as a suspect, nor did the investigation reveal that the then or current Directors and members of senior management of OrbusNeich Medical Group Holdings Limited were aware of or involved in the alleged criminal conducts and/or approved the payments, credit notes or agreements involved.

## **2. OUT-OF-COURT SETTLEMENT**

- 2.1 In December 2020, Stibbe received a copy of the criminal file with the aforementioned results of the criminal investigation. Before providing the criminal file, the DPPS indicated that it was open to an out-of-court settlement with OIBV. The DPPS also informed OIBV that none of the individuals involved would be prosecuted in court.
- 2.2 A settlement agreement was signed and concluded on 3 June 2021. The settlement agreement was signed by two directors of OIBV, who are both legally authorized to represent OIBV.
- 2.3 Pursuant to the settlement agreement, OIBV paid a fine of €174,000 and a disgorgement of illegally obtained advantage of €174,000.
- 2.4 A press release on the out-of-court settlement was published by the DPPS on 7 July 2021.
- 2.5 The foregoing steps as referred in paragraphs 2.3 and 2.4 are all settlement conditions before the out-of-court settlement could take effect. Since all settlement conditions have been met, the settlement agreement is legal, valid, binding and enforceable.
- 2.6 In principle, the settlement agreement grants full and final discharge to OIBV of (the facts and circumstances from) the relevant criminal investigation conducted by the DPPS and all ensuing consequences yet to arise, of whatever nature. This means that all criminal liability related to the repayment agreements with the cardiologists mentioned in the criminal file is settled.
- 2.7 Only a successful complaint from a directly interested party (*rechtstreeks belanghebbende*) can undo the settlement. Such a complaint should be filed at the Court of Appeal within three

months after the press release regarding the settlement agreement was published. The complaint entails a request to the Court of Appeal to order the DPPS to prosecute the person or the entity that the DPPS has settled with or whose case has been dismissed.

- 2.8 Taking into account that the press release regarding the settlement agreement was published on 7 July 2021, the three-month period in which the complaint should be filed has expired on 6 October 2021, and we are not aware of any complaint filed about the settlement with OIBV. If and to the extent that a complaint is still filed, such complaint should be declared inadmissible by the Court of Appeal due to expiry of the aforementioned three-month period.

### **3. OTHER INVESTIGATIONS AND PROCEDURES**

- 3.1 We are not aware of any complaints, or other investigations or procedures against ONM Holding BV or OIBV.
- 3.2 From Dutch and European law perspective, it would be rather difficult, if not impossible for foreign authorities to prosecute the acts, which have been settled in the Netherlands. Dutch and European law protect citizens from being prosecuted twice for the same conduct.
- 3.3 In theory, interested parties could initiate civil proceedings against the (former) suspects or persons or entities involved in the repayments agreements on the basis of unlawful act (*onrechtmatige daad*) or breach of contract (*wanprestatie*).
- 3.4 In principle, the statute of limitations on civil proceedings is five years from the day following that on which the injured party became aware of both the damage and the (legal) person liable for it.
- 3.5 We are not aware of any summons or letter interrupting the limits for civil proceedings by interested parties. Based on the contents of the criminal file, we believe that the risk of civil proceedings against the (former) suspects or other persons or entities within the Group are low. The investigation did not show that the parties had suffered financial damage as a result of the actions of the suspects. Any damages will therefore have to be substantiated by interested parties who claim to have suffered such damages.

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