



NZX Regulation Decision

Good Spirits Hospitality Limited (“GSH”)

Application for waiver from NZX Listing Rule 5.2

24 September 2020



Background

1. The material information on which this decision is based is set out in Appendix One to this decision. This waiver will not apply if that information is not, or ceases to be, full and accurate in all material respects.
2. The Rules to which this decision relates is set out in Appendix Two.
3. Capitalised terms that are not defined in this decision have the meanings given to them in the NZX Listing Rules (**Rule**).

Waiver from NZX Listing Rule 5.2

Decision

4. Subject to the condition set out in paragraph 5 below, and on the basis that the information provided by GSH is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants GSH a waiver from Rule 5.2 to the extent that this Rule prohibits GSH from entering into a variation (**Variation**) to a financial facility with PDL without shareholder approval.
5. The waiver in paragraph 4 above is provided on the condition that the directors of GSH certify to NZXR that:
 - a. the Variation and Consideration are in the best interests of GSH and its shareholders;
 - b. the Variation and Consideration have been negotiated and entered into on an arm's length commercial basis;
 - c. PDL did not unduly influence the decision of the directors of GSH to enter into the Variation; and
 - d. PDL did not unduly influence the decision of the directors of GSH to issue to PDL up to 5.1% of the ordinary shares of GSH as consideration for the Variation.

Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZXR has considered that:
 - a. The relationship between PDL and GSH has already been approved by shareholders at a shareholders' meeting in June 2018, and there is no material change to that relationship. There is no change to the loan amount, interest rate payable, the security for the loan, or fees (other than a reduction in the fee payable on prepayment as described in paragraph 3(d) of Appendix One) under the Facility.
 - b. The policy of Rule 5.2 is to ensure that shareholders have an opportunity to consider, and vote on, Material Transactions where there is or may be a perception of, or the potential for, undue influence by a Related Party on an issuer's decision to enter into a transaction or agree to its terms. The granting of the waiver will not offend this policy because:
 - i. GSH submits, and NZXR has no reason not to accept that the Variation and Consideration were negotiated on an arm's length basis and contains amendments that the directors of GSH consider to be in the best interests of GSH, regardless of whether PDL is a shareholder;

- ii. of the four directors of GSH, three are classified as independent directors, and one is not classified as independent because of a relationship with a shareholder other than PDL. No director has any relationship with PDL; and
 - iii. PDL is the largest shareholder of GSH, with a 19.9% shareholding which will simultaneously with the Variation, increase to 24.99%. However, three other major shareholders hold between them over 34% of the shares.
- c. The condition in paragraph 5 provides comfort that the Variation and Consideration have been negotiated and entered into on an arm's length commercial basis and that PDL's shareholding has not influenced the decision to enter into the Variation and Consideration.
- d. There is precedent for this decision.

Confidentiality

7. GSH has requested that this decision be kept confidential until an announcement of the Variation is released to the market.
8. In accordance with Rule 9.7, NZXR grants GSH's request.



Appendix One

1. Good Spirits Hospitality Limited (**GSH**) is a Listed Issuer with Securities Quoted on the NZX Main Board.
2. The Better Bar Company Limited, a wholly-owned subsidiary of GSH, is party to a financial facility with Pacific Dawn Limited (**PDL**) having a maximum amount of \$34.5 million (**Facility**). PDL is a wholly-owned subsidiary of Nomura Asia Pacific Holdings Co., Ltd, a member of the Nomura Group. The entry into of the financial facility was approved by GSH shareholders at a meeting held on 25 June 2018.
3. GSH and PDL propose to enter into a further variation of the Facility (Variation). The material parts of the Variation are:
 - a) the date for repayment of the loan will be extended to 31 July 2022.
 - b) the financial ratio covenants will be removed, but a provision will be added to the effect that if PDL and GSH do not agree on revised financial ratio covenants by 15 February 2021, that will be a “review event” which may lead to a requirement for the loan to be repaid;
 - c) GSH may not pay dividends or other distributions without the approval of PDL;
 - d) the amount payable on early repayment of part of the Facility will be changed from one year’s interest on the amount prepaid to 2% of the amount prepaid;
 - e) a provision will be added that GSH must apply the proceeds of sale of bar venues in repayment of the loan;
 - f) the existing quarterly amortisation payments will be removed and provisions as to the application of free cashflow in repayment of the loan will be changed;
 - g) the restrictions on capital expenditure by GSH will be changed; and
 - h) a provision will be added to provide PDL with monthly cashflow forecasts.
4. At the same time as the Variation is entered into, GSH proposes to issue to PDL, as consideration, further ordinary shares to take PDL to a holding of no more than 25% of the ordinary shares of GSH (**Consideration**). The proposed issue will be effected in accordance with Rule 4.5 and shareholder approval is not required.
5. The new shares will be issued to PDL in consideration of PDL agreeing to the extension of the term of the Facility, the waiver of covenants under the Facility and to amend the amount payable if there is early repayment of the loan, as referred to in paragraphs 3(a), (b) and (d) above.
6. A waiver is required from Rule 5.2 as the Variation is considered part of a related series of transactions that constitute a Material Transaction with a Related Party. The Facility is considered a Material Transaction under the Rules as GSH has incurred an obligation to PDL of an amount above 10% of GSH’s Average Market Capitalisation (**AMC**) and GSH continues to be liable under a guarantee that could expose GSH with a liability above 10% of GSH’s AMC. PDL is a Related Party of GSH because it currently holds 19.9% of the shares in GSH.



Appendix Two

5.2 Transactions with Related Parties

5.2.1 An Issuer must not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct party to the Material Transaction, or
 - (b) a beneficiary of a guarantee or other transaction which is a Material Transaction,
- unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3) or conditional on such approval.

Material Transaction means a transaction, or a related series of transactions, whereby an Issuer:

[...]

- (c) borrows, lends, pays or receives money, or incurs an obligation of an amount above 10% of the Average Market Capitalisation of the Issuer (except in the case of an issue of Debt Securities, in which case only the nominal amount of Debt Securities being issued to any Related Party or to any Employees of the Issuer are to be taken into account),

[...]

Related Party means a person who, at the time of a Material Transaction, or at any time within the previous six months, was:

- (a) a Director or Senior Manager of the Issuer or any of its Subsidiaries,
- (b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes,
- (c) an Associated Person of the Issuer or any of the persons referred to in (a) or (b), except where the person becomes an Associated Person as a consequence of the Material Transaction, or
- (d) a person in respect of whom there are arrangements which are intended to result in that person becoming, or expected to become, a person described in (a), (b), or (c) other than as a consequence of the Material Transaction,

[...]

