



NZ RegCo

NZ'S LISTED
MARKET REGULATOR

8.10.2021

NZ RegCo Decision

Good Spirits Hospitality Limited (GSH)
Application for waiver from NZX Listing Rule 5.1.1

Background

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

Waiver from Listing Rule 5.1.1

Decision

4. Subject to the conditions set out in paragraph 5 below, and on the basis that the information provided by Good Spirits Hospitality Limited (**GSH**) is complete and accurate in all material respects, NZ RegCo grants GSH a waiver from Rule 5.1.1, to the extent required to allow GSH to enter into and perform the Proposed Transaction without needing to obtain shareholder approval.
5. The waiver in paragraph 4 above is provided on the conditions that:
 - a. The Directors of GSH certify to NZ RegCo that the Proposed Transaction:
 - i) Does not significantly change, either directly or indirectly, the nature of the business of GSH and is in the ordinary course of its business;
 - ii) Is in the best interests of GSH and its shareholders;
 - iii) Has been and will be negotiated on an arms' length basis; and
 - b. The conditions and implications of this waiver are disclosed in GSH's next annual report.

Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZ RegCo has considered that:
 - a. the policy behind Rule 5.1.1 is to regulate those transactions which will significantly change the nature of an Issuer's business or which have a value that represents a majority of the equity that investors hold in the Issuer and, as a result, are deemed to be so significant to the Issuer, and therefore so likely to impact shareholders' interests, that shareholders should have an opportunity to consider the transaction and exercise their right to vote before the transaction can take effect. GSH has submitted, and NZ RegCo has no reason not to accept, that the granting of this waiver will not offend the policy behind Rule 5.1.1;
 - b. the value of the Right of Use of the Proposed Transaction is comparable to the value of the Right of Use of GSH's other leases and as such is within its ordinary course of business;
 - c. the NZX Guidance Note Major and Related Party Transactions provides example factors NZ RegCo may consider in granting waivers to Rule 5.1.1, these factors including that the agreement is entirely within the ordinary course of the Issuer's business or that it is negotiated on an arm's length basis;
 - d. the Proposed Transaction is within the ordinary course of GSH's business, rather than being a transaction that significantly changes the nature of the business;
 - e. the commercial terms of the Proposed Transaction have been negotiated on an arm's length commercial basis with an unrelated third party. The conditions of the waiver require the Directors of GSH to give a certification to this effect;

- f. the major transaction provisions of the Companies Act 1993 provide that transactions the value of which exceed 50% of the value of an Issuer's assets must be approved by a special resolution of shareholders, or be contingent on such approval. This requirement cannot be waived. Accordingly, shareholders are afforded the protections of the Companies Act 1993 for transactions that are significant compared to the value of an Issuer's assets and will have the opportunity to vote on these transactions. In this instance, the Proposed Transaction does not trigger this requirement and shareholder approval is not required by the Companies Act 1993;
 - i) the alternative would be for GSH to convene a special meeting of shareholders to approve the Proposed Transaction. GSH has submitted, and NZ RegCo has no reason not to accept, that this is undesirable and the benefits of doing so would outweigh the costs because:
 - (1) the Proposed Transaction reflects GSH's ordinary course of business which shareholders would expect GSH to enter into. The Proposed Transaction is in the best interests of GSH and its shareholders as it is intended to introduce an additional revenue stream to GSH's business, maximise shareholder value in the long term and be value accretive for GSH on a leverage basis;
 - (2) the terms of the Proposed Transaction are being negotiated with the Landlord on an arm's length commercial basis. The Proposed Transaction is within the experience of the management and the directors of GSH. Accordingly, GSH submits that no additional benefit would ensue for shareholders if a meeting were held at which their approval to the transaction was sought;
 - (3) the proposed costs of the refurbishment works will be funded using debt facilities provided to GSH by Pacific Dawn Limited, which have previously been considered and approved by shareholders or subject to a waiver from NZ RegCo; and
- g. There is precedent for this decision.

Confidentiality

- 7. GSH has requested this decision be kept confidential until the Agreement to Lease is unconditional and the Lease has been entered into.
- 8. In accordance with Rule 9.7.2(a), NZ RegCo grants GSH's request.

Appendix One

1. Good Spirits Hospitality Limited (**GSH**) is a Listed Issuer with ordinary shares quoted on the NZX Main Board.
2. GSH entered into an Agreement to Lease on or around 17 June 2021 (as amended on or around 10 September 2021), in respect of the premises situated at 85/87 Customs Street West, Auckland City currently trading as a sports bar and restaurant known as “The Fox” (**Agreement to Lease**).
3. Under the Agreement to Lease, the parties have agreed to enter into a deed of lease, on satisfaction or waiver of certain conditions, and GSH is permitted to undertake certain refurbishment works at the premises to meet its occupation and trading requirements (the **Proposed Transaction**).
4. The Agreement to Lease is conditional (amongst other things) on regulatory and shareholder approval being obtained (to the extent required).
5. The material terms of the proposed lease (**Lease**) are as follows:
 - a) the tenant will be GSH or its nominee (which will be a GSH subsidiary). If a subsidiary is nominated as the tenant, GSH will guarantee the subsidiary’s obligations under the Lease;
 - b) the expected commencement date is 6 October 2021 (being the date that is two weeks after Auckland entered into Covid-19 Alert Level 3); and
 - c) the initial term is nine years, with two rights of renewal of three years each (being a total potential term of 15 years).
6. It is estimated that the right of use value to GSH of the Lease will be approximately \$1.83 million. The refurbishment works will cost approximately \$1.822 million. The Gross Value of the Proposed Transaction is therefore \$3.652 million.
7. Rule 5.1.1 applies to the Proposed Transaction as it involves GSH entering into the Lease and acquiring assets (the refurbishment works) with a Gross Value above 50% of GSH’s Average Market Capitalisation. As at the date of this waiver, GSH’s Average Market Capitalisation is \$3.98 million.

Appendix Two

Rule 5.1.1

An Issuer must not enter into any transaction, or a related series of transactions, to acquire, sell, lease (whether as lessor or lessee), exchange, or otherwise (except by way of charge) dispose of assets where the transaction or related series of transactions:

- (a) would significantly change, either directly or indirectly, the nature of the Issuer's business, or
- (b) involves a Gross Value above 50% of the Average Market Capitalisation of the Issuer,

unless the transaction, or related series of transactions, is:

- (c) approved by an Ordinary Resolution, or a special resolution if approval by way of special resolution is required under section 129 of the Companies Act 1993, or
- (d) conditional upon such approval required by paragraph (c) above.