



NZX Regulation Decision

Sanford Limited (“SAN”)

Application for a waiver from NZX Main Board Listing Rule 11.1.6 and approval under NZX Main Board Listing Rule 11.1.5

25 November 2016



Waiver and Approval from Listing Rules

Background

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

Decision

4. Subject to the conditions set out in paragraph 6 below, and on the basis that the information provided by SAN is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants SAN a waiver from NZX Main Board Listing Rule (**Rule**) 11.1.6, to the extent that this Rule would otherwise prevent SAN from suspending the voting rights attaching to securities that the Board has determined, in accordance with the process set out in the proposed Fourth Schedule of the New Constitution, are Affected Shares.

Decision

5. Subject to the conditions set out in paragraph 6 below, and on the basis that the information provided by SAN is complete and accurate in all material respects, NZXR grants SAN approval under Rule 11.1.5 to allow SAN to include provisions in its Constitution which allow the Board to restrict the transfer of SAN's securities to Overseas Persons and which allow the Board to require certain documentation and/or information in relation to a proposed transfer or transferee of SAN's securities, in the circumstances permitted under the proposed new clause 15, and clauses 3 and 5 of the proposed new Fourth Schedule, of the New Constitution.

Conditions

6. The waiver in paragraph 4 and approval in paragraph 5 above are provided on the conditions that:
 - a. SAN will be given a non-standard (NS) designation, in terms of its listing on the Main Board;
 - b. an outline and explanation of the provisions in the New Constitution that restrict the transfer of securities, and of the circumstances in which voting rights may be suspended (**Outline And Explanation Of The Effects**) are appropriately disclosed in any offering documents for equity securities, or securities convertible into equity securities, offered by SAN and statements provided to security holders under Rule 11.2.1;
 - c. an Outline And Explanation Of The Effects are included in the explanatory notes to the notice of shareholder meeting at which the New Constitution is proposed to be approved;
 - d. SAN includes an Outline And Explanation Of The Effects on its website and includes reference to that disclosure in each annual report published by SAN;



- e. SAN obtains approval from NZX in relation to the method of sale prior to exercising its power to require Compulsory Sale of Affected Shares on behalf of a shareholder; and
- f. The Outline And Explanation Of The Effects includes an explanation that:
 - i. should SAN become aware that a transfer of its securities will, if registered, cause SAN to exceed the Overseas Ownership Threshold, SAN has the ability to refuse to register that transfer of securities; and
 - ii. should SAN determine that certain of its securities are Affected Shares (whether due to the holder taking a transfer of those securities, a change in circumstances of the holder or otherwise), SAN has the power to suspend the voting rights attaching to those Affected Shares until those Affected Shares are disposed of to a Non-Overseas Person (whether as a result of a sale by the relevant shareholder or by SAN exercising its power to require the Compulsory Sale of Affected Shares on behalf of the relevant shareholder).

Reasons

7. In coming to the decision to provide the waiver and approval set out in paragraphs 1 and 2 above, NZXR has considered that:
- a. the policy underlying Rule 11.1.6 reflects the fundamental principle that shareholders are entitled to exercise the rights attaching to the securities they hold (especially the right to vote) and only in very limited circumstances should these rights be removed. NZXR is comfortable that the circumstances in which the voting rights of the Affected Securities may be suspended does not breach the policy of this Rule;
 - b. the provisions described in paragraph 9 of Appendix One only apply in limited circumstances. Specifically, the provision that grants the Board the power to suspend the voting rights attaching to the Affected Shares only applies once it is determined that the shares are in fact Affected Shares, and that suspension only applies up until the point that the Affected Shares are transferred to a Non-Overseas Person;
 - c. footnote (a) to Rule 11.1.5 contemplates the approval of transfer restrictions to prevent the aggregation of the holding of Equity Securities by a group of persons which could reasonably be expected to adversely affect some right, licence or property which forms a significant part of the business of an Issuer. NZXR is comfortable that the granting of this approval is in line with the discretion contemplated by this footnote;
 - d. the conditions contained in paragraph 6 will ensure that persons trading ordinary shares on market have notice of the limit on aggregate overseas ownership of SAN's securities and the consequences of holding securities which cause SAN to breach the Overseas Ownership Threshold. Further, any such person will have notice of SAN's power to suspend voting rights on and require (or effect) a transfer of Affected Shares; and
 - e. there is precedent for this decision.



Confidentiality

1. SAN has requested this application and any decision be kept confidential until SAN advises NZX that the notice of meeting for the SAN's 2016 Annual Meeting is distributed to its shareholders.
2. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants SAN's request.



Appendix One

1. Sanford Limited (**SAN**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board.
2. SAN owns a significant amount of provisional catch history, quota, and annual catch entitlement (**Fishing Quota**).
3. Investments by overseas persons (as defined in the Overseas Investment Act 2005 (**OIA**)) (**Overseas Persons**) in Fishing Quota require consent under the OIA and Fisheries Act 1996 (**FA**). Under section 57D of the FA, an overseas investment in Fishing Quota will occur where:
 - a. an Overseas Person acquires an interest in Fishing Quota; or
 - b. an Overseas Person acquires securities of an Issuer (**A**) that owns or controls interests in Fishing Quota if, as a result of the acquisition, A becomes an Overseas person.
4. An Issuer will be considered an Overseas Person under the OIA if 25% or more of its securities are held by Overseas Persons, which may include individuals or companies domiciled outside New Zealand (**Legislative Limit**).
5. SAN is currently not an Overseas Person because, as at 30 September 2016, SAN estimates that only approximately 16.2% of its securities are held by Overseas Persons. Accordingly, SAN does not currently require OIA consent to acquire Fishing Quota.
6. If an Overseas Person acquires securities in SAN and SAN consequently exceeds the Legislative Limit (which could occur via on-market transfers without SAN's knowledge):
 - a. the acquisition of SAN's securities that caused SAN to exceed the Legislative Limit will constitute an overseas investment in Fishing Quota and will require consent under the FA and OIA; and
 - b. SAN will itself become an Overseas Person and will require consent for any subsequent acquisitions of Fishing Quota.
7. If the acquirer that causes SAN to exceed the Legislative Limit fails to apply to the Overseas Investment Office (**OIO**) for consent prior to giving effect to that acquisition, SAN could potentially be required to forfeit ownership of all of its Fishing Quota to the Crown.
8. If SAN was required to forfeit all of its Fishing Quota, that would have a significant negative effect on SAN, as it would represent the loss of a major proportion of SAN's assets (in value terms) and result in SAN no longer being able to operate its fishing business (due to no longer holding Fishing Quota).
9. SAN proposes that its Constitution be amended (**New Constitution**) to give the Board the ability to:
 - a. require on request a current, or proposed new, shareholder to provide information concerning whether they are an Overseas Person under the OIA (clause 3 of the Fourth Schedule of the New Constitution);



- b. register a share transfer if:
 - i. the Board considers that it will, or is likely to, cause the extent of overseas ownership in SAN to exceed a specified percentage (currently set at 90%, however, the percentage can be increased by the Board) of the statutory level at which the number of securities in SAN held by Overseas Persons under the OIA makes SAN itself an Overseas Person (**Overseas Ownership Threshold**) and hence potentially subject to forfeiture of Fishing Quota in the absence of a remedy or exemption; or
 - ii. the transferee has not provided satisfactory documentary evidence on request, with respect to determining whether the registration of that transfer would cause the extent of overseas ownership in SAN to breach the Overseas Ownership Threshold,

(clause 15.4 and clause 5 to the Fourth Schedule of the New Constitution);

- c. suspend the voting rights attaching to any of SAN's securities which the Board determines, after following the process in the Constitution, have caused the extent of overseas ownership in SAN exceed the Overseas Ownership Threshold (**Affected Shares**) (clause 9.1(a) of the Fourth Schedule to the New Constitution); and
 - d. require the sale of Affected Shares, through a method previously approved by NZX, if the registered holder does not sell those securities to a person who is not an Overseas Person (**Non-Overseas Person**) within 20 working days, with the proceeds of the sale (less any costs of sale) being paid to the registered holder (**Compulsory Sale of Affected Shares**) (clause 9.1(b) of the Fourth Schedule to the New Constitution).
10. SAN has received independent advice that the Overseas Ownership Threshold has been set at an appropriate level, and is likely to provide SAN with sufficient headroom to measure and control the aggregate level of ownership of SAN's securities by Overseas Persons, considering the Board's broader powers to interrogate and control SAN's share register, the widespread awareness of the ownership restrictions, and the disincentives any party would have to cause SAN to intentionally breach the Legislative Limit.
11. The provisions outlined in paragraph 9 above enable SAN to monitor the aggregate holding of SAN's securities by Overseas Persons and to maintain it at a level below the Overseas Ownership Threshold. This is a key aspect of SAN's ability to reduce the risk of SAN being required to forfeit its Fishing Quota under the provisions of the FA by virtue of SAN becoming an Overseas Person without prior consent being obtained under the OIA (something which SAN would otherwise have very limited ability to control).
12. Clause 7 of the proposed new Fourth Schedule to the New Constitution includes a requirement for the Board to give notice to the relevant registered holder before making a determination that certain securities held by that holder are Affected Shares. The notice must explain the consequence of the Board determining that those securities are Affected Shares. After a specified period has passed during which time the holder is able to make representations to the Board, the Board of SAN is then able to:
- a. give notice to a holder with its final determination as to whether such securities are Affected Shares; and



- b. in the event that the Board has determined that such securities are Affected Shares, exercise the powers outlined in paragraphs 9.c and 9.d above.



Appendix Two

Rule 11.1.1

11.1.1 Subject to the provisions of any legislation, and to Rule 11.1.4 and Rule 11.1.5, no Issuer shall impose, in its Constitution or otherwise, any restriction on the right of a holder of a Quoted Security to transfer that Security, or any restriction upon registration of a properly completed transfer of Quoted Securities.

Rule 11.1.3

11.1.3 Subject to the provisions of Rule 11.1.5 and of any legislation no Issuer shall:

- (a) require any documentation relating to transfers other than to establish an entitlement to transfer; or
- (b) require any information relating to the transferee; or
- (c) impose any restriction on the acceptability of any common form of transfer.

Rule 11.1.5

11.1.5 An Issuer may, with the prior approval of NZX, incorporate in its Constitution or Trust Deed a provision restricting the issue, acquisition or transfer of Relevant Interests in Securities.

Rule 11.1.6

11.1.6 Except as expressly permitted by the Rules, no benefit or right attaching to a Security shall be cancelled or varied by reason only of a transfer of that Security.

