



# NZX Regulation Decision

Serko Limited (“SKO”)

Application for a waiver from NZX Listing Rule 5.2.1

16 October 2019



# Waiver from Listing Rule 5.2.1

## Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by SKO is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants SKO a waiver from NZX Listing Rule (**Rule**) 5.2.1, to the extent that this Rule would otherwise require SKO to obtain the approval of shareholders to enter into a Material Transaction with Related Parties.
2. The waiver in paragraph 1 above is provided on the conditions that:
  - a. the two independent directors of SKO who are not participating in the Sell Down certify to NZXR:
    - i. the terms of the Material Transaction have been entered into and negotiated on an arm's length and commercial basis;
    - ii. SKO was not unduly influenced to enter into the Material Transaction by the Related Parties; and
    - iii. entry into the Material Transaction is in the best interest of all SKO's shareholders.
  - b. the waiver, its conditions and its implications are disclosed in SKO's next annual report.
3. The 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.
4. The Rule to which this decision relates is set out in Appendix Two to this decision.
5. Capitalised terms which have not been defined in this decision have the meanings given to them in the Rules.

## Reasons

6. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
  - a. The policy of Rule 5.2.1 is to ensure that a Related Party does not exercise undue influence or use personal connections to reach a favourable outcome for, or a transfer of value to, the Related Party in respect of a transaction and that shareholders are given an opportunity to review transactions where the board may have been subject to actual or perceived influence from a Related Party.
  - b. SKO submits, and NZXR has no reason not to accept, that these circumstances are not applicable because:
    - i. the underwriting agreement entered into in respect of the Offer will be on market-standard terms, and negotiated with the Underwriter on an arms' length basis;
    - ii. the Sellers will be giving customary representations and warranties regarding their Shares in the underwriting agreement, and will pay their proportional share of the cost of the underwrite;



- iii. the price that the Sellers will receive under the Offer will be the same price as is received by SKO for the newly issued shares, and will be an arms' length, market price agreed as between SKO (the Board of which includes the Independent Directors who are not Sellers) and the Underwriter following confidential sounding of the Initial Offer with selected institutional investors;
- iv. two of SKO's Independent Directors (out of three Independent Directors on SKO's board) will not be participating in the Sell Down, but are members of the due diligence committee established in relation to the Offer and the SKO Board and therefore will be required to approve the launch of the Offer (including the price at which shares will be offered with agreement of the Underwriter);
- v. the Sellers' participation will be fully disclosed to SKO's shareholders;
- vi. there will not be any feature of SKO's participation in the Offer or the documentation entered into in connection with the Offer that will be unduly influenced by the fact that Related Parties of SKO are involved in the Offer; and
- vii. the Initial Offer is in the best interests of SKO and its non-related shareholders as it will increase SKO's free float, providing greater liquidity for investors, and will allow for an increase in participation by retail and institutional investors (including an expected broadening of the share register investor base by introducing new shareholders). In addition, SKO submits that the Initial Offer gives SKO access to new capital to accelerate its growth plan, which will unlock value for shareholders.

## Confidentiality

- 7. SKO has requested that this decision be kept confidential until SKO releases an announcement relating to the Offer.
- 8. In accordance with Rule 9.7.2, NZXR grants SKO's request.



## Appendix One

1. Serko Limited (**SKO**) is a Listed Issuer with ordinary shares quoted on the NZX Main Board.
2. SKO is considering undertaking a capital raising which would comprise an offer of up to \$40 million newly issued ordinary shares by SKO (the **Issue**). Alongside the Issue, certain existing shareholders (**Sellers**) are proposing to offer up to \$20 million existing shares (the **Sell Down**) to selected institutional and retail investors (both the Issue and the Sell Down will be offered together, in the **Initial Offer**).
3. Following the Initial Offer, SKO proposes to undertake a share purchase plan (**SPP**), offering up to approximately \$5 million newly issued shares to SKO's existing shareholders (the Initial Offer and the SPP together being the **Offer**).
4. SKO has an Average Market Capitalisation (**AMC**) of approximately \$311,552,815 as at 14 October 2019. An issuance of approximately \$40,000,000 of new shares under the Issue would constitute approximately 12.84% of the current AMC of SKO.
5. The Initial Offer will be underwritten by Deutsche Craigs Limited (the **Underwriter**) and offered to participants at a price agreed to between SKO and the Underwriter.
6. Two of the Sellers are Related Parties of SKO as Directors, senior managers and/or holders of greater than 10% of SKO shares currently on issue (the **Related Parties**). All Sellers are employees or Directors of SKO.

### Material Transaction with Related Parties

7. SKO will provide an indemnity to the Underwriter in the underwriting agreement in the event the Underwriter incurs losses as a result of the Underwriter's participation in the Offer.
8. In accordance with the underwriting agreement, SKO would be exposed to liability above 10% of its AMC in the unlikely event that the Underwriter incurs a loss of an amount equal to or greater than 10% of SKO's AMC as a result of the Underwriter's involvement in the Initial Offer.
9. The Offer constitutes a Material Transaction as defined in the Rules as it involves SKO entering into an underwriting agreement which could expose SKO to liability above 10% of SKO's AMC.
10. The Sellers are joint parties to the underwriting agreement, giving customary representation and warranties in the underwriting agreement for their shares. Therefore, the Related Parties are direct parties to the Material Transaction, triggering the shareholder approval requirements of Rule 5.2.1.
11. SKO sought a waiver from Rule 5.2.1 to the extent that the Related Parties entering into the agreement with the Underwriter would otherwise require approval by ordinary resolution of the shareholders of SKO.



## Appendix Two

### **Rule 5.2.1 Transactions with Related Parties**

Rule 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 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.

