

NZ RegCo

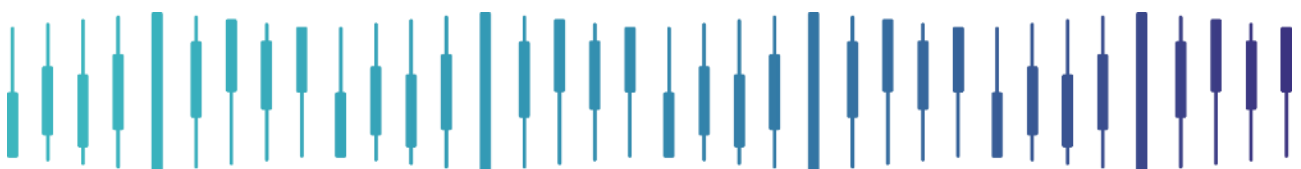
NZ'S LISTED
MARKET REGULATOR

01.12.2021

NZ RegCo Decision

Tourism Holdings Limited (**THL**)

Application for Ruling under NZX Listing Rules
4.9.1(a)(ii) and 5.1.2(a)(iii), and Waiver from NZX Listing
Rule 4.9.1(a)



Background

1. The information on which these decisions are based is set out in Appendix One to this decision. The ruling and 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.

Ruling under Listing Rules 4.9.1(a)(ii) and 5.1.2(a)(iii)

Decision

4. On the basis that the information provided by THL is complete and accurate in all material respects, NZX Regulation Limited (**NZ RegCo**) grants THL a ruling that for the purposes of Rules 4.9.1(a)(ii) and 5.1.2(a)(iii), the Scheme provides a similar level of protection to the recipients of the offer as the Takeovers Regulations 2000 (**Takeovers Code**) or Appendix 3 of the Rules.

Reasons

5. In coming to the decision to provide the ruling set out in paragraph 4 above, NZ RegCo has considered that:
 - a. the process for implementing and approving a scheme of arrangement in Australia and the Australian regulatory supervision of it (including that of the Courts) is such that it provides a similar or greater level of protection as the Takeovers Code or Appendix 3 of the Rules;
 - b. the level of disclosure under an Australian law scheme booklet under which securities are offered is sufficiently similar to a New Zealand law scheme booklet such that recipients are sufficiently well informed of the merits of the Scheme; and
 - c. the Australian Securities and Investments Commission (ASIC) has recognised that the regulation of schemes of arrangement in New Zealand is similar to that of Australia.

Waiver from Listing Rule 4.9.1(a)

Decision

6. Subject to the condition set out in paragraph 7 below, and on the basis that the information provided by THL is complete and accurate in all material respects, NZ RegCo grants THL a waiver from Rule 4.9.1(a) to the extent this rule would require THL to offer THL shares under the Scheme to the Excluded Shareholders.
7. The waiver in paragraph 6 above is provided on the condition that THL must arrange the sale of any THL shares to which the Excluded Shareholders would be entitled if they were eligible to receive them under the Scheme, and account to the Excluded Shareholders for the net proceeds.

Reasons

8. In coming to the decision to provide the waiver set out in paragraph 6 above, NZ RegCo has considered that:
 - a. the policy behind the Rule is that all holders of the same class of shares should receive the same consideration for their shares. The Excluded Shareholders hold a minority of shares,

being approximately 0.1%, and costs associated with the issuance of shares in those jurisdictions outweighs the benefit of the Rule;

- b. the Excluded Shareholders will be compensated through the allotment of the securities which would have been offered to the Excluded Shareholders to a nominee company which then sells them and transfers the net proceeds to the Excluded Shareholders;
- c. the granting of this waiver is consistent with the exemption policy of the Takeovers Panel in relation to scrip offers;
- d. the Rules contain similar exclusions in relation to the issuance of shares to shareholders in overseas jurisdictions by way of Rule 4.4.1(e); and
- e. as part of the Scheme being approved, the arrangements for Excluded Shareholders will be a matter considered by the Court when it decides whether to make orders to convene an Apollo shareholder meeting.

Confidentiality

- 9. THL has requested that this application and any decision be kept confidential until the release of an announcement that the scheme implementation deed relating to the proposed Scheme has been signed.
- 10. In accordance with Rule 9.7.2(a), NZ RegCo grants THL's request.

Appendix One

1. THL is a Listed Issuer with Securities Quoted on the NZX Main Board.
2. THL is proposing to acquire all of the shares in Apollo Tourism & Leisure Ltd (**Apollo**) under an Australian scheme of arrangement to be entered into between Apollo and its shareholders (**Scheme**).
3. The consideration payable under the Scheme will be settled by the issuance of new ordinary shares in THL to all Apollo shareholders resident in New Zealand, Australia and the United Kingdom (**Local Shareholders**). The registered Local Shareholders hold approximately 99.9% of the shares in Apollo.
4. Shares due to shareholders in other jurisdictions (**Excluded Shareholders**) will be issued to a nominee, with instructions to sell them in an orderly manner and account to Excluded Shareholders for the proceeds.
5. THL is proposing to rely on Rules 4.9.1(a) and 5.1.2(a)(iii) to undertake the Scheme.

Appendix Two

Rule 4.9 Issues relating to takeovers, conversions, minimum holdings and amalgamations

4.9.1 An Issuer may issue Equity Securities if:

- (a) the issue is in consideration of an offer made by the Issuer in accordance with:
 - (i) the Takeovers Code or a scheme of arrangement under Part 15 of the Companies Act 1993, or
 - (ii) the takeover regime of a jurisdiction other than New Zealand which NZX considers provides a similar or greater level of protection to the recipients of the offer as the Takeovers Code or Appendix 3, and

the offer is made to all holders (other than the Issuer) of any Equity Securities in any other entities Listed on the Main Board or on another stock exchange, except if the other entity is an Associated Person of the Issuer or of any Director of the Issuer,

[...]

Rule 5.1 Disposal or Acquisition of Assets

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.

5.1.2 Rule 5.1.1 does not apply to:

- (a) a takeover offer made by an Issuer:
 - (i) to a Code Company in accordance with the Takeovers Act 1993 or by a scheme of arrangement under Part 15 of the Companies Act 1993,
 - (ii) to an Issuer which is covered by Appendix 3 of these Rules, in accordance with the relevant provisions in the Governing Document of that other Issuer which complies with Appendix 3, or

- (iii) to any person, in accordance with the takeover law of a jurisdiction other than New Zealand applicable to that person where this provides, in the opinion of NZX, a similar or greater level of protection to the recipients of the offer as the Takeovers Code or Appendix 3,

[...]