



NZX Regulation Decision

Millennium & Coptorne New Zealand Limited (MCK)

Application for a waiver from NZX Main Board Listing Rule 9.2.1

1 June 2016



Waiver from NZX Main Board Listing Rule 9.2.1

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by MCK is complete and accurate in all material respects, NZXR grants MCK a waiver from Rule 9.2.1 to the extent required to allow MCK to enter into the Proposed Transaction without first obtaining shareholder approval in relation to the Related Party relationships with H-Reit and M&C RML.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - (a) the Independent Directors of MCK certify to NZX that, in their opinion:
 - i. the terms of the Proposed Transaction will be on commercial and arm's length basis;
 - ii. MCK has not been influenced in its decision to enter into the Proposed Transaction by the interests of M&C RML, H-Reit, or any Associated Person of M&C RML and H-Reit (other than CDL Investments New Zealand Limited, whose interests have been considered in line with the interests of MCK's shareholders generally);
 - iii. the Proposed Transaction has, and will be, considered by MCK (at both board and management level) independently of M&C RML and H-Reit. Specifically, Mr Wong Hong Ren, Mr Vincent Yeo, and Mr Aloysius Lee Tse Sang took no part in the decision to proceed with the Proposed Transaction, and have not, and will not, participate in any discussions or decision-making on MCK's behalf, regarding the Proposed Transaction; and
 - iv. entry into the Proposed Transaction is fair and reasonable to, and in the best interests of, MCK and the shareholders of MCK who are not Associated Persons of H-Reit and M&C RML;
 - (b) this waiver, its conditions and the implications of this waiver are disclosed in MCK's next half year and annual reports; and
 - (c) MCK will obtain an independent report from Horwath HTL. For this waiver to be relied upon, that report must independently opine that the terms of the Proposed Transaction are on arm's length, are within normal market parameters for a transaction of this nature, and are fair to MCK shareholders who are not Associated Persons of H-Reit and M&C RML. MCK will make this independent report available to its shareholders by releasing this over Market Announcement Platform (but may redact any information in that report which it considers is commercially sensitive).
3. The information on which this waiver decision is based is set out in Appendix One to this decision. The waiver will not apply if this information is not, or ceases to be, full and accurate in all material respects.
4. The Rules to which this decision relates is set out in Appendix Two to this decision.
5. Capitalised terms that are not defined in this waiver decision take on the definitions assigned 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) Rule 9.2.1 seeks to regulate transactions where a Related Party to a Material Transaction may gain favourable consideration due to their relationship with the Issuer. NZXR may waive the requirement to obtain shareholder approval of the Material Transaction if it is satisfied that the involvement of any Related Party is plainly unlikely to have influenced the promotion of, or the decision to enter into, the transaction. The granting of this waiver will not offend the policy behind Rule 9.2.1;
 - (b) MCK has submitted, and NZXR has no reason not to accept, that the Related Parties are plainly unlikely to have influenced entry into or the terms of the Proposed Transaction, as:
 - i. entry into, and the terms of the Proposed Transaction have, and shall be negotiated on an arm's length commercial basis, by MCK's Independent Directors, without the involvement of the related directors;
 - ii. while M&C Plc has an indirect ownership stake in H-Reit (through its 36% holding in CDL Hospitality Trusts) H-Reit is a trust, and therefore plays a passive role in this context of this transaction. It is instead H-Reit's manager (M&C RML) who controls the decisions of how the trust is managed;
 - iii. M&C plc is a substantial shareholder in MCK and is therefore unlikely to seek to influence the Proposed Transaction, through M&C RML, to the detriment of MCK's shareholders;
 - iv. the Related Party relationships created by M&C RML and MCK sharing both a common director, and former director (Mr Wong Hong Ren and Mr Vincent Yeo, respectively) have, and will, be restricted so that these parties are unable to influence the promotion or decision to enter into the Proposed Transaction, to the benefit of M&C RML;
 - (c) the certifications provided by MCK's Independent Directors, as a condition of the waiver, provide comfort that the Proposed Transaction has been entered into on arm's length commercial terms, the H-Reit and M&C RML related Directors have not exercised any undue influence over the MCK board in respect of the Proposed Transaction, and the Proposed Transaction is fair and reasonable to, and in the best interests of, MCK and the shareholders of MCK who are not Associated Persons of H-Reit and M&C RML;
 - (d) the condition contained in paragraph 2(c) above, will ensure that MCK's shareholders are provided with an independent report, which supports and reinforces the Independent Directors' certifications discussed above; and
 - (e) there is precedent for this decision.

Confidentiality

- 7. MCK has requested that its application, and NZXR's decision, be kept confidential until MCK releases an announcement confirming entry into the Proposed Transaction with M&C RML, if any.
- 8. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants MCK's request.

Appendix One

1. Millennium & Copthorne Hotels New Zealand Limited (**MCK**) is a Listed Issuer with securities quoted on the NZX Main Board. As at the date of this waiver decision, MCK's current Average Market Capitalisation (**AMC**) is approximately \$195,319,837.
2. MCK wishes to enter into a transaction whereby MCK would:
 - (a) enter into an lease agreement (**Lease**) with M&C REIT Management Limited (**M&C RML**) on behalf of CDL Hospitality Real Estate Investment Trust (**H-Reit**), as H-Reit's manager, to lease the Rendezvous hotel in Auckland (**Rendezvous**); and/or
 - (b) enter into an management agreement (**Management Agreement**) with M&C RML on behalf of H-Reit, as H-Reit's manager, under which MCK would manage and operate the Rendezvous (together, the **Proposed Transaction**).
3. Each of the Proposed Transaction, and its underlying, constituent transactions form a Material Transaction for the purpose of NZX Main Board Listing Rule (**Rule**) 9.2.2, as:
 - (a) the 2015 annual report of CDL Hospitality Trusts last valued the Rendezvous at \$117 million. The Rendezvous therefore has an Aggregate Net Value of more than 10% of MCK's AMC, causing the Lease to be a Material Transaction under Rule 9.2.2(a);
 - (b) while the terms of the Management Agreement are yet to be negotiated, MCK has indicated that the costs incurred by MCK under the Management Agreement will likely exceed 1% of MCK's AMC, causing the Management Agreement to be a Material Transaction under Rule 9.2.2(e); and
 - (c) the Proposed Transaction (Lease and/or Management Agreement) will therefore also constitute a Material Transaction for the purposes of Rule 9.2.2.
4. Millennium & Copthorne Hotels plc (**M&C plc**) own a 75% stake in MCK through its holding of 70% of MCK's ordinary shares on issue, and 85% of its non-voting, preference shares. MCK also shares a common director with M&C plc, Mr Aloysius Lee Tse Sang.
5. H-Reit is therefore a Related Party, who shall be indirect party to the Proposed Transaction, as:
 - (a) H-Reit is part of the CDL Hospitality Trusts, which is a stapled group consisting of H-Reit, a property trust, and a business trust. M&C plc owns 36% of CDL Hospitality Trusts; and
 - (b) H-Reit is therefore a Related Party of MCK pursuant to Rule 9.2.3(c), as H-Reit is an Associated Person of M&C plc, who is as a holder of more than 10% of a class of securities in MCK, carrying votes.
6. M&C RML is also a Related Party, who shall be direct party to the Proposed Transaction, as
 - (a) M&C RML is an indirectly, wholly owned subsidiary of M&C plc. In addition to this, a current and former director of MCK both sit on the board M&C RML, Mr Wong Hong Ren and Mr Vincent Yeo, respectively.
 - (b) M&C RML is a Related Party of MCK pursuant to Rule 9.2.3(c) as M&C RML is an Associated Person of:
 - i. M&C plc, who is as a holder of more than 10% of a class of securities in MCK, carrying votes;
 - ii. Mr Wong Hong Ren, a current Director of MCK; and

- iii. Mr Vincent Yeo, a former Director of MCK who will have held a directorship at MCK for a time within the six months period before the date that MCK enters into the Proposed Transaction.
7. MCK has approached NZX Regulation (**NZXR**) for a waiver from Rule 9.2.1 to the extent that this Rule would otherwise require MCK to obtain shareholder approval to enter into the Proposed Transaction.



Appendix Two

Rule 1.8 Associated Persons

- 1.8.1 In the Rules, a person is an Associated Person of another person if the first person is associated with the other in terms of Rules 1.8.2 to 1.8.6.
- 1.8.2 A person (the “first person”) is associated with another person (the “second person”) if, in making a decision or exercising a power affecting an Issuer, the first person could be influenced as a consequence of an Arrangement or relationship existing between, or involving, the first person and the second person.
- 1.8.3 Without limiting Rule 1.8.2, the first person is associated with the second person if:
- (a) the first person is a company, and the second person is:
 - (i) Director of that company; or
 - (ii) Related Company of that company; or
 - (iii) Director of a Related Company of that company; or
 - (b) the first person is a spouse, domestic companion, child or parent of the second person, or a nominee or trustee for any of them or for the second person; or
 - (c) the first person is a Director of a company, or holds a Relevant Interest in Securities carrying more than 10% of the Votes of a company and the first person and the second person are parties to an Arrangement relating to the control of, or the control or ownership of Securities in, that company, which Arrangement affects Securities of that company carrying more than 30% of the total Votes attaching to Securities of that company; or
 - (d) the first person and the second person are acting jointly or in concert; or
 - (e) the first person and/or the second person propose to do, or are likely to do, anything which will cause them to become associated in terms of paragraphs (a) to (d) above or Rule 1.8.2.
- ...
- 1.8.5 If the first person is associated with the second person in terms of Rule 1.8.2 to 1.8.4, then the second person shall be deemed to be associated with the first person.

Rule 9.2 Transactions with Related Parties

- 9.2.1 An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:
- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- ...
- unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.
- 9.2.2 For the purposes of Rule 9.2.1 “Material Transaction” means a transaction or a related series of transactions whereby an Issuer:



(a) purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Net Value in excess of 10% of the Average Market Capitalisation of the Issuer; or

...

(f) provides or obtains any services (including without limitation obtaining underwriting of Securities or services as an Employee) in respect of which the actual gross cost to the Issuer in any financial year (ignoring any returns or benefits in connection with such services) is likely to exceed an amount equal to 1% of the Average Market Capitalisation of the Issuer; or

...

9.2.3 For the purposes of Rule 9.2.1, "Related Party" means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

...

(c) an Associated Person of the Issuer or any of the persons referred to in (a) or (b), other than a person who becomes an Associated Person as a consequence of the Material Transaction itself (or an intention or proposal to enter into the Material Transaction itself);

