



NZX Regulation Decision

Tourism Holdings Limited (“THL”)

Application for a waiver from NZX Main Board Listing
Rule 8.1.7

27 February 2017



Waiver from NZX Main Board Listing Rule 8.1.7

Decision

1. On the basis that the information provided by THL is complete and accurate in all material respects, NZXR grants THL a waiver from Rule 8.1.7, to the extent that this Rule would otherwise prevent THL from issuing Options under the 2017 Option Scheme that confer the right to a change in exercise price.
2. 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.
3. The Rule to which this decision relates is set out in Appendix Two to this decision.
4. Capitalised terms which have not been defined in this decision have the meanings given to them in the Rules.

Reasons

5. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. the policy objective of Rule 8.1.7 is to ensure that Options may not be subsequently amended by the Issuer in a manner that is detrimental to the interests of the holders of the underlying Equity Securities. The policy will not be offended by the granting of this Rule;
 - b. the 2017 Option Scheme establishes a formula for the exercise price of the Options. While the formula will result in a fluctuating exercise price during the exercised period of the Option, THL cannot arbitrarily determine the exercise price. The exercise price may change, to the extent of THL's average cost of capital annually offset by dividends paid;
 - c. before the Options are issued, section 49 of the Companies Act requires that directors of THL who vote in favour of the issue must certify that the consideration and terms of issue of the Options, and shares on the exercise of those Options, are fair and reasonable to the company and to all existing shareholders. This provides additional comfort to shareholders as to the directors' view of the fair and reasonableness of each issue of Options;
 - d. any issues made under the 2017 Option Scheme will also be subject to the Rule 7.3.6, so the total number of Options will be subject to the 3% limit as prescribed by that Rule; and
 - e. there is precedent for this waiver.

Confidentiality

6. THL has requested this decision be kept confidential until THL announces the 2017 Option Scheme to the market.
7. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants THL's request.



Appendix One

1. Tourism Holdings Limited (**THL**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board (**Main Board**).
2. THL intends to establish a long-term incentive share option scheme (the **2017 Option Scheme**) for selected employees (each a **Participant**). Under the 2017 Option Scheme each Participant will be eligible to be granted Options to acquire **ordinary** shares in THL (**Shares**). The Options will not be listed and will not have voting rights. The Options, if exercised will convert on a one for one basis into fully paid ordinary shares in THL.
3. Should a Participant receive Options under the 2017 Option Scheme THL will provide the Participant with a notice setting out the number of Options the Participant is invited to acquire and the market price that will be used to calculate the exercise price. The Options will be granted to the Participant on the date specified in the grant notice (the **Grant Date**).
4. Options granted on a particular Grant Date will vest over time in tranches:
 - a. a third of the Options will vest two years after the Grant Date;
 - b. a third of the Options will vest three years after the Grant Date; and
 - c. a third of the Options will vest four years after the Grant Date.
5. Once Options have vested, subject to the terms of the 2017 Option Scheme, the Participant will be able to exercise the Options and receive Shares by paying the exercise price applicable to those Options.
6. The exercise price is determined by applying the formula set out in the terms of the 2017 Option Scheme (the **THL Formula**). Under the THL Formula the exercise price for an Option will be the volume weighted average price over the preceding 20 Business Days the Share had at the Grant Date of the option plus an uplift that reflects THL's average annual cost of capital for the first two years from the Grant Date less dividends paid in that two-year period.
7. The maximum number of unexercised Options (together with any partly paid shares then on issue under the Tourism Holdings Limited Long Term Incentive Scheme 2009) that may be outstanding at any time may not exceed 10% of the Ordinary Shares then on issue.
8. THL anticipates that issues under the 2017 Option Scheme will be made pursuant to NZX Main Board Listing Rule (**Rule**) 7.3.6, so the total number of Options issued in a 12 month period will be subject to the 3% limit as prescribed in that rule.
9. Rule 8.1.7 provides that an Option must not confer the right to change the exercise price or number of underlying Securities, unless such a change is made in accordance with the exceptions to that Rule. THL has applied to NZX Regulation (**NZXR**) for a waiver from Rule 8.1.7 as the exercise price of the Option is subject to fluctuation pursuant to the THL Formula.



Appendix Two

Rule 8.1.7

An Option must not confer the right to a change in the exercise price or number of underlying Securities, except if that Option:

(a) was issued with the approval of holders of Quoted Equity Securities, then the exercise price or number of underlying Securities may change in accordance with the formula or provision contained in the terms of the Option if there is a Rights issue to the holders of the underlying Securities; or

(b) was not issued with the approval of holders of Quoted Securities and there is a Rights issue to the holders of the underlying Securities, then the exercise price of that Option may be reduced according to the formula set out as follows:

$$O1 = O - E[P - (S + D)] N + 1$$

O1 = the new exercise price of the Option.

O = the Old exercise price of the Option.

E = the number of underlying Securities into which one Option is exercisable.

[Note: E is generally one unless the number has changed because of a bonus issue or capital change.]

P = the average market price per share (weighted by reference to volume) of underlying Securities during the 5 Business Days ending on the day before the Ex Date for the Rights.

S = the subscription price for a Security under the Rights issue.

D = the dividend (in the case of a trust, distribution) due but not yet paid on the existing underlying Securities (except those to be issued under the Rights Issue).

N = the number of Securities with Rights or entitlements that must be held to receive a Right to one new Security.

Provided that nothing in this Rule shall apply to any Option which was issued prior to the coming into force of this Rule or Listing of an Issuer.

