

NZ RegCo

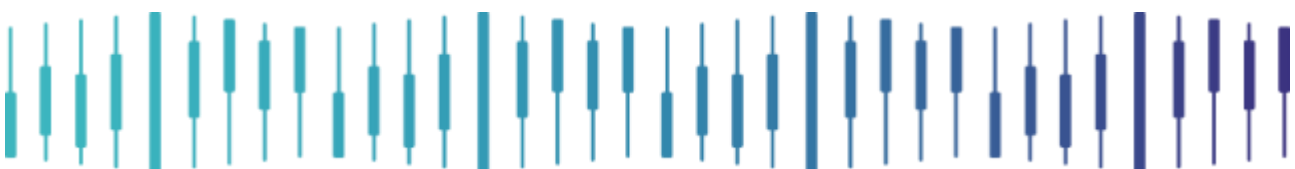
NZ'S LISTED
MARKET REGULATOR

21 March 2023

NZ RegCo Decision

Millennium & Copthorne Hotels New Zealand Limited
("MCK")

Application for waiver from NZX Listing Rules 5.2.1
("Rule")



Background

1. 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.
2. The Rules to which this decision relates are set out in Appendix Two to this decision.
3. Capitalised terms that are not defined in Appendix One to this decision have the meanings given to them in the Rules.

Waiver from Rule 5.2.1

Decision

4. Subject to the conditions set out in paragraph 5 below, and on the basis that the information provided by MCK is complete and accurate in all material respects, NZ RegCo grants MCK a waiver from Rule 5.2.1 to the extent required to allow MCK to enter into and perform the Acquisition by way of Consortium Bid with CDL (or another entity within the CDL group that is a Related Party) (the **Waiver**).
5. The waiver of Rule 5.2.1 in paragraph 4 above is granted on the conditions that:
 - (a) The Independent Directors of MCK must certify (on behalf of the MCK Board) to NZ RegCo that:
 - (i) the terms of the Acquisition have been negotiated and entered into on an arm's length commercial basis;
 - (ii) the Acquisition has been considered independently of the relevant Related Party of the CDL group under a Consortium Bid and that person did not unduly influence MCK's decision to enter into the Acquisition or vote on any resolution to approve the entry into the Acquisition;
 - (iii) in their opinion, entry into the Acquisition is in the best interests of MCK and MCK's shareholders who are not Associated Persons of the relevant Related Party of the CDL group; and
 - (iv) the terms and conditions for MCK entering into the Acquisition are substantially the same as those applying to the relevant Related Party of the CDL group; and
 - (b) The Waiver, its conditions and implications are disclosed in either MCK's:
 - (i) interim report for the 6 months ending 30 June 2023; or
 - (ii) annual report for the year ending 31 December 2023.

Reasons

6. In coming to the decision to provide the Waiver, NZ RegCo has considered that:
 - (a) Rule 5.2.1 seeks to regulate transactions where a Related Party to a Material Transaction may 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. The NZX Guidance Note on Major and Related Party Transactions notes that NZ RegCo may waive the requirement to obtain approval of a Material Transaction if it is satisfied that the personal connections with, or involvement or personal interest of any Related Party, are immaterial or plainly unlikely to have influenced the promotion of, or the decision to enter into, the transaction or its terms or conditions. MCK has submitted, and NZ RegCo has no reason not to accept, that the granting of the Waiver will not offend the policy behind Rule 5.2.1.

- (b) MCK has submitted, and NZ RegCo has no reason not to accept, that CDL (as the Related Party) is unlikely to have had any influence over MCK's decision to enter into the Acquisition (other than in its capacity as an arms' length counter-party negotiating the terms) as respective decision-making processes are separate, and therefore does not give rise to a potential for undue influence or a transfer of value.
- (c) The terms on which MCK is entering into the Acquisition have been negotiated on an arm's length basis independently of CDL and, accordingly, CDL has not exercised any undue influence over the MCK Board in respect of the proposed entry into the Acquisition. In addition, the Transaction has been conducted by way of competitive sales process.
- (d) The decision to enter into the Acquisition will be made by MCK's Independent Directors.
- (e) The relevant Related Party under a Consortium Bid and MCK would be joint bidders/acquirers and therefore have aligned interests (in contrast, for instance, to a situation where one was purchaser and the other vendor).
- (f) The MCK Board considers the entry into the Acquisition to be in the best interests of MCK and MCK's shareholders.
- (g) MCK will have obtained, and had due regard to, third party expert advice in relation to the appropriateness of the purchase price for the Transaction and its Acquisition. CDL and MCK will have obtained advice from hotel valuation experts HVS. This advice will be for the benefit of both parties and each party will be able to rely on this advice. Each party to the Consortium Bid will assess the appropriateness of the purchase price for the Transaction separately based on that advice and make its own independent decision as to whether or not to pursue the Transaction.
- (h) MCK and the Related Party would enter into the Acquisition on substantially the same terms and conditions (adjusted on a pro rata basis for its proportional interest).
- (i) The condition at paragraph 5(a) provides comfort that any decision to enter into the Acquisition will be considered on an arms' length basis, that the Acquisition will be in the best interests of all MCK shareholders, and that the CDL (or another Related Party) has not influenced the MCK Board's decision to enter into the Acquisition.
- (j) There is precedent for this decision.

Confidentiality

7. MCK has requested this application be kept confidential until MCK releases an announcement relating to the Transaction.
8. In accordance with Rule 9.7.2, NZ RegCo granted MCK's request.

Appendix One

1. Millennium & Copthorne Hotels New Zealand Limited (**MCK**) is a Listed Issuer with Equity Securities Quoted on the NZX Main Board.
2. MCK is a hotel owner-operator headquartered in Auckland and currently has 18 owned, leased and franchised hotels across New Zealand under the Millennium, Grand Millennium, M Social, Copthorne and Kingsgate brands. MCK is also the owner of property in Sydney, Australia, with that property having originally been a hotel operation which was subsequently converted into residential apartments (MCK still owns a proportion of the apartments as well as managing the property).
3. MCK's largest shareholder is CDL Hotels Holdings New Zealand Limited (**CDLHHNZ**). CDLHHNZ holds approximately 71% of MCK's ordinary shares and approximately 86% of the preference shares. CDLHHNZ is ultimately owned by Singapore Exchange listed City Developments Limited (**CDL**).
4. A third-party vendor (the **Vendor**) is looking to sell a hotel (that hotel the **Hotel** and that sale the **Transaction**).
5. MCK is currently considering acquiring an interest in the Hotel as part of a consortium bid (a **Consortium Bid**). The party that MCK has been in discussions with in relation to a potential consortium bid is CDL.
6. CDL is a Related Party of MCK for the purposes of the Listing Rules. This is because it is a Related Body Corporate (and therefore Associated Person) of CDLHHNZ.
7. The purchase price of the Transaction has not yet been finalised, but MCK's interest in any Consortium Bid is likely to exceed 10% of its Average Market Capitalisation, meaning the Transaction would be a Material Transaction under the Rules.

Appendix Two

Rule 5.2 Transactions with Related Parties

5.2.1 An Issuer shall 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 a 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.

Definitions

Associated Person A person (**A**) is associated with, or an Associated Person of, another person (**B**) if: ...

- (c) A and B are Relatives or Related Body Corporate,...

"Material Transaction" means a transaction, or a related series of transactions, whereby an Issuer:

- (a) buys, acquires, gains, leases (as lessor or lessee), sells or otherwise disposes of, assets having an Average Net Value above 10% of the Issuer's Average Market Capitalisation

...

"Related Party" means a person who, at the time of a Material Transaction, or at any time within the previous six months, was:

...

- (b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes,
- (c) an Associated Person of the Issuer or any of the persons referred to is in (a) or (b), except where the person becomes an Associated Person as a consequence of the Material Transaction