



NZX Regulation Decision

Tegel Group Holdings Limited (TGH)

Application for a waiver from NZX Main Board Listing Rule
3.1.1

31 March 2016



Waiver from NZX Main Board Listing Rule 3.1.1

Decision

1. On the basis that the information provided by Tegel Group Holdings Limited (**TGH**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants TGH a waiver from NZX Main Board Listing Rule (**Rule**) 3.1.1, for a period of two Business Days from the Quotation Date, to the extent that this Rule requires the Old Constitution to contain the content requirements set out in that Rule.
2. The waiver in paragraph 1 is provided on the following conditions:
 - a. TGH discloses this waiver, its conditions, and its implications in the Disclose Register;
 - b. the Transfer Restrictions do not apply to any Shares offered and allotted under the Offer;
 - c. the New Constitution is approved by the current holders of the Shares in accordance with the relevant provisions of the Companies Act 1993 prior to Listing, before it is adopted by TGH;
 - d. TGH's Board provides NZXR with a written undertaking which states that until the New Constitution is adopted, TGH will comply with the Rules as if the content requirements of Rule 3.1.1 were contained in the Old Constitution (**Directors' Undertaking Condition**);
 - e. the Old Constitution will be revoked immediately after the Redemption;
 - f. the New Constitution will be adopted immediately after the Old Constitution is revoked;
 - g. the Shareholders' Deed terminates immediately following completion of the Settlement; and
 - h. TGH confirms to NZXR immediately after the Settlement, that the Shares, and any management incentive plan disclosed in the PDS, are the only Equity Securities that TGH has on issue.
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. Capitalised terms which have not been defined in this decision have the meanings given to them in the Rules.
5. The Rule to which this decision relates is set out in Appendix Two to this decision.

Reasons

6. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. the policy behind Rule 3.1.1 is to ensure that Constitutions are consistent with the Rules. This consistency helps to reinforce the protections that the Rules provide shareholders, and it ensures that Issuers are not conflicted in complying with both the Rules and their Constitution;
 - b. the Directors' Undertaking Condition provides NZXR comfort that shareholders will not be disadvantaged by the Old Constitution not including the requirements set out in Rule

- 3.1.1, and its protections will resemble the requirement for a constitution to be consistent with the Rules;
- c. TGH will enter into, and be bound by, a Listing agreement with NZX. In accordance with this Listing agreement, TGH will be required to comply with all of its obligations under the Rules, upon its Quotation;
 - d. in accordance with Rule 2.2.2, NZX will receive acknowledgements from all of TGH's Directors, that they are aware that TGH is contractually bound to observe its obligations under the Listing Agreement and the Rules, and that they will use their best endeavours to procure TGH's compliance with the Rules; and
 - e. the waiver will only apply for a period of two Business Days from the date of Quotation. The Old Constitution and the Shareholders' Deed will only apply to the Shares on issue before Settlement is completed, and it will not apply to any Shares offered and allotted under the Offer. The New Constitution to be adopted will be compliant with the Rules, and it will be in effect immediately after Redemption.



Appendix One

1. Tegel Group Holdings Limited (**TGH**) will offer its ordinary shares to various investor groups (**Offer**), as set out in its product disclosure statement dated 31 March 2016 (**PDS**). The Offer will formally close on 29 April 2016. TGH will then List, and have its ordinary shares Quoted (**Shares**), on the NZX Main Board on 3 May 2016 (**Quotation Date**).
2. Trading of the Shares will be conditional on the settlement and allotment of the Shares under the Offer (**Settlement**), which is expected to occur on 4 May 2016. Settlement is expected to occur two Business Days from the Quotation Date (**Settlement Date**).
3. TGH adopted its current constitution on 16 May 2011 (**Old Constitution**). The Old Constitution, in accordance with a shareholders' deed (**Shareholders' Deed**) which was entered into by some of the holders of the Shares, sets out among other things, the rights, privileges, terms and conditions of TGH's redeemable preference shares (**Redeemable Shares**) and Shares. TGH currently has 272,157,915 Redeemable Shares on issue, as at 11 March 2016. The Redeemable Shares are held by various holders of Shares, including some of TGH's management team (**TGH Management**).
4. The Old Constitution is not compliant with the NZX Main Board Listing Rules (**Rules**). The Constitution, through the Shareholders' Deed, allows various transfer restrictions on TGH Management's ability to deal with their Shares (**Transfer Restrictions**). In particular, TGH Management will be required to hold their Shares and reinvest their share of the Redemption's proceeds by subscribing for Shares.
5. TGH's shareholders will approve a new constitution on or about 31 March 2016, which is subject to, and not effective until Settlement (**New Constitution**). The New Constitution was submitted to NZX Regulation (**NZXR**) for approval, and Tegel has submitted a solicitor's opinion which states that the New Constitution is compliant with the Rules.
6. On or about 31 March 2016, TGH's shareholders will resolve to redeem all of the Redeemable Shares on issue (**Redemption**). One of the purposes of the Offer, is to raise the funds necessary to meet the costs of the Redemption.
7. TGH expects the following to occur contemporaneously, but effectively in the following order, on the Settlement Date:
 - a. the Redeemable Shares will be redeemed, with the redemption amount to paid in part out of the proceeds of the Offer;
 - b. immediately following the Redemption's completion, the Old Constitution will be revoked and the Shareholders' Deed will be terminated, and the New Constitution will be adopted; and
 - c. immediately after the New Constitution is adopted, Settlement will occur.
8. The various parts to Rule 3.1.1 require an Issuer's constitution to be compliant with the Rules. The Old Constitution in its current form is needed to preserve the rights, privileges, terms and conditions of the Redeemable Shares until the Redemption.



Appendix Two

Rule 3.1 Contents of Constitution

Rule 3.1.1 The Constitution of each Issuer shall:

- (a) either incorporate by reference or contain provisions consistent with, and having the same effect as, the provisions listed in Appendix 6, as such provisions apply from time to time and as modified by any Ruling relevant to the Issuer; and
- (b) in the case of any Issuer which is not a Code Company, either incorporate by reference or contain the provisions required by Section 4; and
- (c) contain a provision to the effect that, for so long as the Issuer is Listed, the Issuer shall comply with the Rules; and
- (d) contain a provision to the effect that if NZX has granted a Ruling in relation to that Issuer authorising any act or omission which in the absence of that Ruling would be in contravention of the Rules or the Constitution that act or omission shall, unless a contrary intention appears in the Constitution, be deemed to be authorised by the Rules and by the Constitution; and
- (e) not contain any provision inconsistent with the Rules as modified by any Ruling relevant to the Issuer and shall in any event include a provision that provides that if a provision in the Constitution is inconsistent with the Rules, the Rules shall prevail.

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