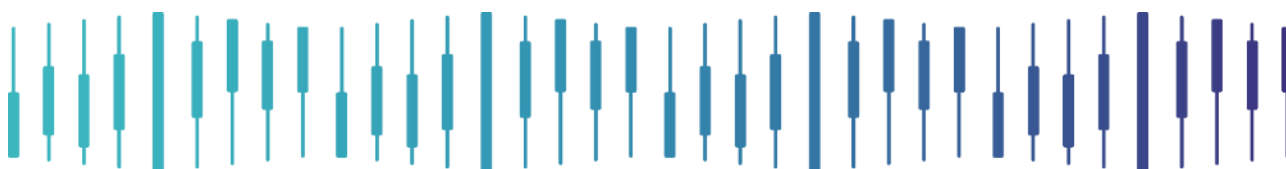


21 June 2023

# NZ RegCo Decision

Good Spirits Hospitality Limited (“GSH”)

Application for waiver from NZX Listing Rule 5.2.1



## 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 Rule to which this decision relates is set out in Appendix Two to this decision.
3. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

## Waiver from Listing 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 Good Spirits Hospitality Limited ("**GSH**") is complete and accurate in all material respects, NZ RegCo grants GSH a waiver from NZX Listing Rule ("**Rule**") 5.2.1 to the extent this rule prohibits entering into a variation to a financial facility with PDL ("**Transaction**") without shareholder approval.
5. The waiver in paragraph 4 above is provided on the conditions that the Directors of GSH certify to NZ RegCo that the Transaction:
  - (a) Is in the best interests of GSH and all of its shareholders;
  - (b) Has been negotiated and entered into on an arm's length commercial basis; and
  - (c) PDL did not unduly influence the decision of the directors of GSH to enter into the Transaction.

### Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZ RegCo has considered that:
  - (a) The relationship between PDL and GSH has already been approved by shareholders at a shareholders' meeting in June 2018, and there is no material change to that relationship. There is no change to the maximum loan amount, interest rate payable or the security for the loan, or fees.
  - (b) The need for the Transaction arose as a result of adverse external factors affecting GSH, namely COVID restrictions which had resulted in a prolonged closure of the venues operated by BBC and in other trading restrictions for hospitality venues and businesses. While recent short-term trading has improved, GSH submits, and NZ RegCo has no reason not to accept, that this recent improvement is not adequate to overcome the impact and long-lasting effects of COVID restrictions and other implications that have resulted in an increase of the debt facility level with PDL.

- (c) The policy of Rule 5.2.1 is to ensure that shareholders have an opportunity to consider, and vote on, Material Transactions where there is or may be a perception of, or the potential for, undue influence by a Related Party on an issuer's decision to enter into a transaction or agree to its terms. The granting of the waiver will not offend this policy because:
- i) GSH submits, and NZ RegCo has no reason not to accept, that the Transaction was negotiated on an arm's length basis and contains an amendment to defer upcoming interest payments and extensions to various milestone dates, which the directors of GSH consider to be in the best interests of GSH, regardless of whether PDL is a shareholder; and
  - ii) If a shareholder meeting was called and shareholders did not approve the amendments, GSH would be in default under the Facility Agreement meaning PDL would be entitled to enforce its security (e.g. appoint a receiver). GSH submits, and NZ RegCo has no reason not to accept, that there is a strong likelihood that GSH shareholders would approve a resolution to amend the Facility Agreement when all circumstances are considered. GSH shareholders will be required to approve the terms of the wider business or asset sale transaction when a bidder has been selected in due course.
- (d) PDL will in ordinary course need to release its security as part of completion of any asset sale transaction. This means that PDL has significant rights in terms of satisfaction with the purchaser and form of sale and purchase agreement as it could withhold the release of the security if not satisfied. GSH submits, and NZ RegCo has no reason not to accept, that no significant rights are being conferred to PDL as part of the Transaction as regardless of an Event of Default, PDL will in ordinary course need to release its security as part of completion of any asset sale process.

## Confidentiality

7. GSH has requested that this application and any decision be kept confidential until an update announcement about the Transaction is released to the market.
8. In accordance with Rule 9.7.2(a), NZ RegCo grants GSH's request.

## Appendix One

1. GSH is a Listed Issuer with Securities Quoted on the NZX Main Board.
2. The Better Bar Company Limited (now Good Spirits Hospitality No.1 Limited) ("**BBC**"), a wholly owned subsidiary of GSH, is party to a financial facility with Pacific Dawn Limited ("**PDL**") having a maximum amount of \$34.5 million ("**Facility**"). PDL is a wholly owned subsidiary of Nomura Asia Holding NV, a member of the Nomura Group. The entry into of the financial facility was approved by GSH shareholders at a meeting held on 25 June 2018. GSH is party to the Facility as guarantor.
3. GSH, BBC and PDL propose to enter into a further variation to the Facility, so that:
  - (a) the milestone date in respect of selecting a preferred purchaser/equity investor/operator is extended from 30 April 2023 to the date 30 business days after Stage 2 due diligence commences;
  - (b) further transaction milestones have been agreed, including PDL being satisfied with the terms of any sale and purchase agreement and the amount to be ultimately received by it;
  - (c) BBC will deliver to PDL a weekly cash flow forecast for 13 weeks ahead with a requirement for that weekly forecast to show a cash positive position in each week forecast.
  - (d) The interest amounts due and payable by BBC on 16 May 2023 under the Facility Agreement will be waived by PDL and will instead be capitalised and bear interest;
  - (e) The interest amounts due and payable by BBC on 28 June 2023 under the Facility Agreement will be paid in cash up to \$250,000, with the balance remaining to be waived by PDL, capitalised and to bear interest.
4. Failure to meet any transaction milestone is an "Event of Default" under the finance facility.
5. The impact of the COVID restrictions resulted in PDL requiring that the asset sale milestone process was undertaken as a condition to the extension of the maturity date of the Facility Agreement. The funding of the transaction costs for the sale milestone process have resulted in a decrease in available cash, and a need for PDL to waive (and capitalise to the loan) interest payments.
6. A waiver is required from Rule 5.2.1 as the Transaction is considered part of a related series of transactions that constitute a Material Transaction with a Related Party. The Facility is considered a Material Transaction under the Rules as GSH has incurred an obligation to PDL of an amount above 10% of GSH's Average Market Capitalisation (**AMC**) and GSH continues to be liable under a guarantee that could expose GSH with a liability above 10% of GSH's AMC. PDL is a Related Party of GSH because it currently holds 24.99% of the shares in GSH.

## Appendix Two

### Rule 5.2.1 Transaction with Related Parties

5.2.1 An Issuer must 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.

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

- (c) borrows, lends, pays or receives money, or incurs an obligation of an amount above 10% of the Average Market Capitalisation of the Issuer (except in the case of an issue of Debt Securities, in which case only the nominal amount of Debt Securities being issued to any Related Party or to any Employees of the Issuer are to be taken into account),
- (d) enters into any guarantee, indemnity, underwriting, or similar obligation, or gives any security, which could expose the Issuer to liability above 10% of the Average Market Capitalisation of the Issuer

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

- (a) a Director or Senior Manager of the Issuer or any of its Subsidiaries,
- (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 in (a) or (b), except where the person becomes an Associated Person as a consequence of the Material Transaction, or
- (d) a person in respect of whom there are arrangements which are intended to result in that person becoming, or expected to become, a person described in (a), (b), or (c) other than as a consequence of the Material Transaction,