



NZX Regulation Decision

Mykris Limited (“MYK”)

Application for a waiver from NZAX Listing Rule 9.2.1

23 September 2014



Background

Decision

1. On the conditions set out in paragraph 2 below, and on the basis that the information provided by Mykris Limited (“**MYK**”) is complete and accurate in all material respects, NZX Regulation (“**NZXR**”) grants MYK a waiver from NZAX Listing Rule (“**Rule**”) 9.2.1 to the extent that Rule would otherwise prohibit MYK entering into the proposed Parent Guarantees without seeking shareholder approval.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. All Independent Directors of MYK certify to NZXR that:
 - i. they are not interested, in terms of Rule 3.3.3, in the Parent Guarantees, Individual Guarantees and Bank Facility;
 - ii. the Parent Guarantees and Bank Facility have been negotiated and will be entered into on an arm’s length and commercial basis;
 - iii. the terms of the Parent Guarantees and Bank Facility are fair and reasonable to MYK and its shareholders; and
 - iv. entry into the Parent Guarantees by MYK is in the best interests of MYK and its shareholders.
 - b. The Parent Guarantees and the Individual Guarantees will be entered into on terms and conditions that are the same in all material respects; and
 - c. Any variation to the Parent Guarantees or Individual Guarantees will have identical effect for all Guarantors.
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. The Rules to which this decision relates are set out in Appendix Two to this decision.

Reasons

5. 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 whereby 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 approval of a Material Transaction if it is satisfied that the involvement of any Related Parties is unlikely to influence the promotion of, or the decision to enter into, the Material Transaction. The granting of this waiver will not offend the policy behind Rule 9.2.1.
 - b. MYK has confirmed that the Individual Guarantors will not receive any direct benefit from entering into their guarantees. They will only receive indirect benefits arising



from their capacity as direct or indirect shareholders in MYK. In addition, MYK has confirmed that the Individual Guarantors did not vote on the resolution to allow MYK to enter into the Parent Guarantees. On this basis NZXR considers that the Individual Guarantors' personal involvement is unlikely to have influenced the promotion of, or the decision to enter into, the transaction.

- c. The certifications provided by the Independent Directors as a condition of the waiver provide comfort that the Bank Facility and Parent Guarantees have been negotiated on an arm's length and commercial basis, and that the Individual Guarantors have not unduly influenced MYK to enter into the Parent Guarantees.
- d. While Mykris Asia will receive the benefit of the Bank Facility being guaranteed by MYK, MYK considers that enabling its subsidiary to access bank funding on the best terms available is favourable to MYK. MYK has confirmed that the Parent Guarantees and Individual Guarantees are necessary to enable Mykris Asia to access bank funding on the best terms available.
- e. The conditions of the waiver require, and MYK has confirmed, that the terms and conditions of the Individual Guarantees and Parent Guarantees will be materially similar. MYK has submitted, and NZXR has no reason not to accept, that the terms and conditions of the Guarantees will not require the Bank to favour the Individual Guarantors over MYK in a default situation.
- f. There is precedent for this decision.

Confidentiality

6. MYK has requested that this application and any decision be kept confidential until MYK has announced the Bank Facility.
7. In accordance with Footnote 1 to Rule 1.10.2, NZXR grants MYK's request.

ENDS



Appendix One

1. Mykris Limited (“**MYK**”) is a listed Issuer on the NZAX Market and is subject to the NZAX Listing Rules (“**Rules**”).
2. Mykris Asia Sdn. Bhd. 513199-T (“**Mykris Asia**”) is directly and indirectly wholly owned by MYK. MYK owns 25% of the shares in Mykris Asia, and MYK’s wholly owned subsidiary, Mykris Net (MSC) Sdn. Bhd. 593230 (“**Mykris Net**”) owns 75% of the shares in Mykris Asia.
3. Maybank Islamic Berhad 787435-M (the “**Bank**”) will make a bank facility (“**Bank Facility**”) available to Mykris Asia. The Bank Facility to be provided to Mykris Asia:
 - a. will be for an aggregate amount of 7,904,048 Malaysia Ringit (“**RM**”).
 - b. will be divided into:
 - i. a term facility of RM7,404,048 having a term of 20 years (“**Term Facility**”); and
 - ii. a cash line facility of RM500,000 having a term of 5 years (“**Cash Line Facility**”).
 - c. will be reviewable by the Bank at any time.
4. The Bank Facility will be made available to Mykris Asia on the basis of the following security arrangements:
 - a. MYK will enter into guarantees in relation to both the Term Facility and Cash Line Facility (“**Parent Guarantees**”);
 - b. two Directors of MYK, being Chang Wai Hoong and Chew Choo Soon (“**Individual Guarantors**”) will enter into guarantees in relation to both the Term Facility and Cash Line Facility (“**Individual Guarantees**”); and
 - c. the Term Facility and Cash Line Facility will both be secured against assets of Mykris Asia (“**Mykris Asia Security**”).
5. The Parent Guarantees and Individual Guarantees will be all moneys guarantees. The Individual Guarantees are to be given by the Individual Guarantors on a joint and several basis. The terms and conditions of the Parent Guarantees and the Individual Guarantees do not require the bank to favour the Individual Guarantors in a default situation.
6. The Parent Guarantees are a Material Transaction under Rule 9.2.2 as MYK’s entry into the Parent Guarantees could expose MYK to liability in excess of 10% of MYK’s Average Market Capitalisation. MYK’s average market capitalisation as at the date of this decision is \$11,984,000.
7. The Individual Guarantors are direct parties to the Individual Guarantees which are part of a related series of transactions of which a Material Transaction is also one, as contemplated by Rule 9.2.1. The Individual Guarantors are directors of MYK and therefore are Related Parties of MYK for the purposes of Rule 9.2.3.
8. The remaining directors of MYK are not involved in any of the transactions forming the related series of transactions, other than in their capacity as directors of MYK (“**Independent Directors**”).

9. Mykris Asia is a direct party to the Bank Facility which is also part of the same related series of transactions. MYK and Mykris Asia are Associated Persons under Rule 1.7.2 as they are Related Companies. Therefore Mykris Asia is a Related Party of MYK for the purposes of Rule 9.2.3.
10. As there are Related Parties directly involved in related transactions, MYK would otherwise require shareholder approval to enter into the Material Transaction, under Rule 9.2.1.



Appendix Two

1.7 Associated Persons

- 1.7.1 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 1.7.2 to 1.7.6.
- 1.7.2 A person (the "first person") is associated with another person (the "second person") if, in making a decision or exercising a power affecting an NZAX 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.
- 1.7.3 Without limiting Rule 1.7.2, 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 1.7.2.

9.2 Transactions with Related Parties

- 9.2.1 An NZAX 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
 - b. in the case of a guarantee or other transaction of the nature referred to in paragraph (c) of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction, unless that Material Transaction is approved by an Ordinary Resolution of the NZAX Issuer.
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- 9.2.2 For the purposes of Rule 9.2.1, "Material Transaction" means a transaction or a related series of transactions whereby an NZAX Issuer:



- c. borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 10% of the Average Market Capitalisation of the NZAX Issuer;

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:

- a. a Director or executive officer of the NZAX Issuer or any of its Subsidiaries; or
- b. the holder of a Relevant Interest in 10% or more of a class of Equity Securities of the NZAX Issuer carrying Votes; or
- c. an Associated Person of the NZAX 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).

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