

**NZ RegCo**

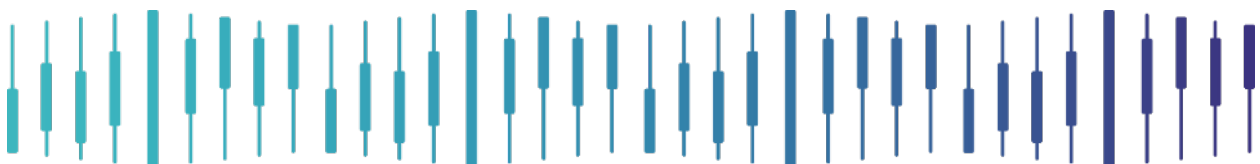
NZ'S LISTED  
MARKET REGULATOR

15 October 2024

# NZ RegCo Decision

Seeka Limited (“**SEK**”)

Waiver from NZX Listing Rule 5.2.1



## Background

1. The material information on which this decision is based is set out in Appendix One to this decision. These waivers will not apply if that information is not, or ceases to be, full and accurate in all material respects.
2. The NZX Listing Rules (**Rules**) to which these decisions relate are 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 NZX 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 SEK is complete and accurate in all material respects, NZX Regulation Limited (**NZ RegCo**) grants SEK a waiver from Rule 5.2.1 to the extent that this Rule would otherwise require SEK to obtain shareholder approval to enter into Future Post-Harvest Agreements with Related Party Growers.
5. The waiver in paragraph 4 above is provided on the conditions that:
  - (a) all Independent Directors of SEK certify (on behalf of the SEK Board) to NZX alongside this waiver decision, in relation to any Future Post-Harvest Agreement with Related Party Growers for all future seasons, that:
    - i. the granting of the waiver decision is in the best interests:
      - A. of SEK, and
      - B. SEK's shareholders who would not be precluded from voting under Rule 6.3; and
    - ii. entry into of the Future Post-Harvest Agreements with Related Party Growers is in the best interests of:
      - A. SEK,
      - B. all of SEK's shareholders, and
      - C. SEK's shareholders who would not be precluded from voting under Rule 6.3;
  - (b) the certificate in paragraph 5(a) include a summary of the core grounds for the certifications given under each limb of paragraphs 5(a)(i) and (ii) described above;
  - (c) the waiver, its conditions and implications being disclosed in all of SEK's future annual reports, including the disclosure of the following:
    - i. SEK Directors' interests in Related Party Growers;

- ii. Details of transactions entered into with related parties of SEK for post-harvest and orchard management services, including the annual aggregated transaction revenue received by SEK from sales of services;
- iii. That all related party transactions were made on normal commercial terms and conditions and at market rates; and
- iv. The terms of the Post-Harvest Agreements of that year were entered into and negotiated on an arm's length, commercial basis, following the process as set out in Appendix One

## Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZ RegCo has considered that:
- (a) The policy behind Rule 5.2.1 is to ensure that a Related Party does not 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 and that shareholders are given an opportunity to review transactions where the Board may have been subject to actual or perceived influence from a Related Party. Granting this waiver will not offend the policy behind Rule 5.2.1.
  - (b) The waiver does not offend the policy of Rule 5.2.1 as SEK has submitted, and NZ RegCo has no reason not to accept, that the Related Party Growers nor their associated Directors will not have the opportunity to exercise undue influence or use personal connections to reach a favourable outcome for, or transfer value to, themselves who will be party to the Post-Harvest Agreements because the form of these agreements is the same that applies to all growers, not just Related Party Growers. SEK management prepares the standard-form of Post-Harvest Agreement each year, and it is SEK management that enters into the Post-Harvest Agreements with individual growers (including Related Party Growers) under delegated authority.
  - (c) SEK has submitted, and NZ RegCo has no reason not to accept, that entry into of the Post-Harvest Agreements have been and will be in the ordinary course of SEK's business, and the terms of those agreements are, and will continue to be, negotiated on an arm's-length basis.
  - (d) The terms of the Post-Harvest Agreements are the same for all SEK kiwifruit growers, including the Related Party Growers.
  - (e) SEK's Annual Reports disclose, and will continue to disclose:
    - i. Directors' interests in Related Party Growers;
    - ii. details of transactions entered into with related parties of SEK for post-harvest and orchard management services, including the annual aggregated transaction revenue received by SEK from sales of services; and
    - iii. confirmation that all related party transactions were made on normal commercial terms and conditions and at market rates.

Accordingly, the market is aware that certain of SEK's Directors are Associated Persons of Related Party Growers, that SEK provides Related Party Growers with

post-harvest and orchard management services and the aggregate quantum of revenue derived from the sale of services.

- (f) Due to the future-looking nature of the waiver, it would be difficult to determine who among SEK's Directors are "non-interested" for the purposes of providing the Directors' Certificate as required by the NZX Guidance Note on Major and Related Party Transactions. NZ RegCo therefore considers the current Independent Directors who do not have Associated Persons relationships with kiwifruit growers are the appropriate group of SEK Directors to provide the Directors' Certificate to satisfy the conditions for this decision; and
- (g) There is precedent for this decision.

## Appendix One

1. Seeka Limited (**SEK**) is a Listed Issuer with securities Quoted on the NZX Main Board.
2. SEK is a produce supply chain services business, which grows, processes and supplies fruit (mainly kiwifruit) to domestic and international consumers. SEK operates along the supply chain from orchard to market, providing growers with a variety of services from orchard management, harvest, post-harvest and marketing services.
3. Each year SEK adopts a standard form of post-harvest kiwifruit services agreement for the provision by SEK of certain Picking, Packing, Rejects, Coolstorage and Ancillary services to kiwifruit growers for the next harvest season (**Post-Harvest Agreement**). Those kiwifruit growers include growers who are Associated Persons of SEK Directors (**Related Party Growers**). A summary of Seeka's approval process for Post-Harvest Agreements is included under the subheading "Summary of Seeka's approval process for Post-Harvest Agreements" below.
4. Rule 5.2.1(a) requires an Issuer to obtain shareholder approval to a Material Transaction if a Related Party is a direct party to the Material Transaction. A Material Transaction includes a transaction whereby an Issuer provides any services where the gross cost to the Issuer in any financial year is likely to exceed an amount equal to 1% of the Average Market Capitalisation of the Issuer. Accordingly, where the gross cost to SEK in any financial year of providing services to a Related Party Grower under a Post-Harvest Agreement exceeds an amount equal to 1% of SEK's Average Market Capitalisation, the provision of those services to the Related Party Grower requires SEK shareholder approval or must be conditional on SEK obtaining shareholder approval.
5. SEK expects that the gross cost to SEK of providing services to Related Party Growers under separate Post-Harvest Agreements in future financial years could in certain cases exceed an amount equal to 1% of SEK's then Average Market Capitalisation (**Future Post-Harvest Agreements**).
6. Each year SEK enters into approximately 530 separate Post-Harvest Agreements, around five of which are with Related Party Growers, and out of those, between one to three which trigger the 1% of Average Market Capitalisation threshold for a Material Transaction.
7. The process by which SEK prepares and approves the standard form of Post-Harvest Agreements is substantially the same each season. The terms of those agreements have been negotiated on an arm's-length basis and SEK is not influenced by the Related Party Growers into entering into those agreements, because the terms of those agreements are the same as for all other growers. The gross cost of the services for each Post-Harvest Agreement depends on the size of the orchard and related services and activities that each Related Party Grower undertakes.

### Summary of Seeka's approval process for Post-Harvest Agreements

8. Seeka's preparation and approval process for Post-Harvest Agreements is as follows:
  - (a) The SEK Board delegates authority to SEK management to prepare and approve the standard form of Post-Harvest Agreement each year and the standard form of Post-Harvest Agreement is not considered or approved by the SEK Board.
  - (b) The standard form of Post-Harvest Agreement sets out the terms on which SEK provides Picking, Packing, Rejects, Coolstorage and Ancillary services to kiwifruit

growers for the next harvest season. Not all kiwifruit growers require all the services contemplated by the Post-Harvest Agreement. Kiwifruit growers will, in consultation with their SEK client relationship manager, determine what post-harvest services the kiwifruit grower requires, and can opt for all or some services contemplated by the Post-Harvest Agreement as needed. No terms of the Post-Harvest Agreement can be negotiated or changed by kiwifruit growers (including Related Party Growers).

- (c) Each year, after preparing the forthcoming season's Post-Harvest Agreement, SEK management presents the Post-Harvest Agreement to the grower-controlled Seeka Grower Council (**Council**) for the next harvest season.
- (d) Membership to the Council is determined annually and comprises of persons appointed by SEK (which cannot appoint more than 49% of the Council), and persons elected by Seeka kiwifruit suppliers and their subsidiaries.
- (e) The Council does not approve, nor have a right to approve, the Post-Harvest Agreements. Rather, the presentation of the Post-Harvest Agreement to the Council is for the purpose of establishing a forum to discuss the Post-Harvest Agreement with it as the body representing Seeka kiwifruit growers. The ultimate determination of the terms of the Post-Harvest Agreement is made by SEK management.
- (f) SEK management has delegated authority to enter into the standard form Post-Harvest Agreements with all growers for the next season. Accordingly, the SEK Board does not vote on or approve the entry into of Post-Harvest Agreements with individual growers.

# Appendix Two

## Glossary, Part A - Definitions

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

- (a) A is able, directly or indirectly, to exert a substantial degree of influence over the activities of B (or vice versa),
- (b) B is a body corporate and A has the power, directly or indirectly, to exercise, or control the exercise of, more than 50% of the Votes attaching to the Financial Products of B (or vice versa),

[...]

- (e) A is a director or Senior Manager of B (or vice versa), or

[...]

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

[...]

- (e) provides or obtains any services (including the underwriting of Financial Products or services as an Employee) where the gross cost to the Issuer in any financial year is likely to exceed an amount equal to 1% of the Average Market Capitalisation of the Issuer, or

[...]

**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,

[...]

- (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

[...]

### Rule 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.