



NZX Regulation Decision

SkyCity Entertainment Group Limited (NS) (**SKC**)

Application for a waiver from NZX Listing Rule 8.1.5

17 September 2019



Waiver from NZX Listing Rule 8.1.5

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by SKC is complete and accurate in all material respects, NZXR grants SKC a waiver from Rule 8.1.5, to the extent that this Rule would otherwise prevent SKC from:
 - a. suspending voting rights attaching to securities where an Information Requirement Event is in effect in accordance with clause 2.8 of the Governing Document;
 - b. suspending voting rights attaching to, or requiring (or effecting) a transfer of, securities where a Shareholder Suitability Event has occurred in accordance with clauses 4.1 and 4.2 of the Governing Document; or
 - c. suspending voting rights attaching to, or requiring (or effecting) a transfer of, securities where a Surplus Shares Event has occurred in accordance with clause 6.3 of the Governing Document; or
 - d. suspending voting rights attaching to, or requiring (or effecting) a transfer of, securities where there has been an Affected Transfer in accordance with clauses 11.12 and 11.13 of the Governing Document,

(each such variation of rights in these circumstances being a **Variation of Rights**).

2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. SKC will have a Non-Standard (NS) designation, in terms of its NZX Listing;
 - b. an outline and explanation of the Variation of Rights is appropriately disclosed in any offering documents for equity securities, or securities convertible into equity securities, offered by SKC; and
 - c. SKC includes a summary of the Variation of Rights in each annual report.
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 Rule to which this decision relates is set out in Appendix Two to this decision.
5. Capitalised terms which have not been defined in this decision have the meanings given to them in the Rules.

Reasons

6. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. the policy underlying Rule 8.1.5 reflects the fundamental principle that shareholders are entitled to exercise the rights attaching to the securities they hold (especially the right to vote) and only in very limited circumstances should these rights be removed. NZXR is comfortable that the circumstances in which the voting rights of the shares may be suspended or transfers of securities may be required (or effected) under a Variation of Rights does not breach the policy of this Rule;



- b. the provisions described in Appendix One in respect of a Variation of Rights (in respect of each of the applicable events) only apply in limited circumstances and for such time as the relevant requirements imposed under the Governing Document in connection with casino regulatory requirements remain unfulfilled;
- c. the Variation of Rights have been included in SKC's Governing Document to reflect specific regulatory requirements which are applicable to SKC and its business operations;
- d. the conditions contained in paragraph 2 will ensure that persons trading ordinary shares on market have notice of the Variation of Rights. Further, any such person will have notice of SKC's power to suspend voting rights on and require (or effect) a transfer of securities; and
- e. there is precedent for this decision.



Appendix One

1. SkyCity Entertainment Group Limited (**SKC**) is a Listed Issuer with Ordinary Shares Quoted on the NZX Main Board, and Debt Securities which mature on 28 September 2022 (**SKC040**) Quoted on the NZX Debt Market.
2. SKC operates monopoly casinos in New Zealand (Auckland, Hamilton and Queenstown) and Australia (Adelaide), alongside a variety of restaurants and bars, hotels and convention centres.
3. SKC operates in a number of jurisdictions and must comply with a number of legislative requirements, including from:
 - a. Gambling Act 2003 (New Zealand); and
 - b. Casino Act 1997 (South Australia).
4. Due to these legislative requirements SKC must ensure when it participates in gaming activities that:
 - a. It has the power under its Governing Document to take such action as may be necessary to ensure that its suitability to do so in a particular jurisdiction is not affected by the identity or actions (including share dealings) of a shareholder; and
 - b. There are appropriate protections to ensure that persons do not gain positions of significant influence or control over SKC or its business activities without obtaining any necessary statutory or regulatory approval.
5. Accordingly, SKC's Governing Document contains provisions that restrict the acquisition of, the exercise of rights attaching to and who may hold, shares in SKC.

Affected Transfers

6. Clauses 11.12 and 11.13 of SKC's Governing Document provides that if a transfer of shares results in the transferee, and the persons associated with that transferee:
 - a. Holding more than 5% of the shares in SKC; or
 - b. Increasing their combined holding further beyond 5% if:
 - i. They already hold more than 5% of the shares in SKC; and
 - ii. The transferee has not been approved by the relevant regulatory authority as an associated casino person of any casino licence holder;

(Affected Transfer)

then the votes attaching to all shares held by the transferee and the persons associated with that transferee are suspended unless and until either:

- iii. Each regulatory authority advises that approval is not needed; or
- iv. Any regulatory authority which determines that its approval is required approves the transferee, together with the persons associated with that transferee, as an associated casino person of any applicable casino licence holder; or



- v. The transferee and the persons associated with that transferee dispose of such number of SKC shares as will result in their combined holding falling below 5% or, if the regulatory authorities approve in respect of the transferee and the persons associated with that transferee a higher percentage, the lowest such percentage approved by the regulatory authorities.
- c. If a regulatory authority does not grant its approval to the proposed transfer, SKC may sell such number of the shares held by the transferee and by any persons associated with that transferee, as may be necessary to reduce their combined shareholding to a level equal to 5% or such other level that will not result in the transferee and the persons associated with that transferee being an associated person of that casino licence holder.
- d. SKC may only exercise its power of sale if SKC has given one month's notice to the transferee of its intention to exercise that power and the transferee has not, during that one month period, transferred the requisite number of shares in SKC to a person who is not associated with the transferees.

Information Requirement Event

- 7. Clause 2.8 of SKC's Governing Document entitles SKC to suspend a shareholders' voting rights for such time as the shareholder has not complied with an information request (an **Information Requirement Event**) where SKC has been required by a casino regulatory authority to provide such information under relevant casino legislation.

Shareholder Suitability Event

- 8. Clauses 4.1 and 4.2 of SKC's Governing Document provide that where either:
 - a. SKC receives notice from a regulatory authority that a ground for the imposition of a pecuniary penalty on SKC, or the variation, revocation of a condition, suspension or cancellation of a casino licence, may have arisen and that ground relates to the identity, activities, conduct or default of a shareholder or any of its associates or otherwise relates to a shareholder or any of its associates; or
 - b. The board of SKC determines on reasonable grounds that the presence of a shareholder on the share register may result in such matters described in paragraph 8.a. above; or
 - c. A shareholder or any associate of a shareholder is disqualified from holding a licence, permit or consent in the nature of a casino venue licence, casino operator's licence or otherwise relating to gaming, wagering or bookmaking, or is refused or declined to be granted such licence, permit or consent on the grounds of the status or suitability of the shareholder or associate,

then the votes attaching to all shares held by the shareholder and the persons associated with that shareholder are suspended unless and until either:

- d. in the case of a notice given by a regulatory authority, that regulatory authority subsequently determines not to make an order imposing a pecuniary penalty on the holder of a casino licence or affecting any casino licence and notifies SKC that the right to cast votes in respect of the shares held by the relevant shareholder and its associates may be reinstated; or
- e. in the case of a determination made by the board of SKC as noted in 8.b. above, or where the matters in 8.c. apply, the board subsequently determines that the presence of



the relevant shareholder on the share register will not result in the imposition of a pecuniary penalty on the holder of a casino licence or the variation, revocation of a condition, suspension or cancellation of a casino licence and that the right to cast votes in respect of the shares held by the relevant shareholder and its associates may be reinstated.

(in each case a **Shareholder Suitability Event**).

- f. Following a Shareholder Suitability Event, if SKC has received a notice from a regulatory authority that a ground for imposing a pecuniary penalty on the holder of a casino licence, or for the variation, revocation of a condition, suspension or cancellation of a casino licence may have arisen and that ground relates to the identity, activities, conduct or any default of the relevant shareholder or any of its associates or otherwise relates to the relevant shareholder or any of its associates, the regulatory authority notifies SKC that it has determined to make an order affecting a casino licence or the casino licence holder unless the relevant shareholder's shares (or such number of those shares as the regulatory authority may specify) are sold, SKC may, sell the relevant shareholder's shares (or such number of those shares as the regulatory authority has specified).
- g. SKC may only exercise its power of sale if SKC has given one month's notice to the relevant shareholder of its intention to exercise that power and the relevant shareholder has not, during that one month period, transferred the requisite number of shares in SKC to a person who is not associated with the relevant shareholder.

Surplus Shares Event

- 9. SKC's Governing Document also requires certain approvals following acquisitions or redemptions of shares by SKC. Clause 6.3 of SKC's Governing Document provides that if an acquisition or redemption of equity securities by SKC results in a shareholder, and the persons associated with that shareholder:
 - a. Holding more than 5% of the shares in SKC; or
 - b. Increasing their combined holding further beyond 5% if:
 - i. They already hold more than 5% of the shares in SKC; and
 - ii. The shareholder has not been approved by the relevant regulatory authority as an associated casino person of any casino licence holder,

(Surplus Shares Event)

then the shareholder must provide certain information on request to SKC and the votes attaching to all shares held by the relevant shareholder and the persons associated with that shareholder are suspended unless and until either:

- c. Each regulatory authority advises that approval of the shareholder as an associated casino person of any applicable casino licence holder is not needed; or
- d. Any regulatory authority which determines that its approval is required approves the shareholder, together with the persons associated with that shareholder, as an associated casino person of any applicable casino licence holder; or
- e. The SKC board is satisfied that the increase in the percentage of votes able to be exercised by the shareholder and its associates will not prejudice any casino licence; or



- f. The shareholder and the persons associated with that shareholder dispose of such number of SKC shares as will result in their combined holding falling below 5% or, if the regulatory authorities approve in respect of the shareholder and the persons associated with that shareholder a higher percentage, the lowest such percentage approved by the regulatory authorities.
10. If a regulatory authority does not grant its approval of the shareholder as an associated casino person of any applicable casino licence holder, SKC may sell such number of the shares held by the transferee and by any persons associated with that transferee, as may be necessary to reduce their combined shareholding to a level equal to 5% or such other level that will not result in the transferee and the persons associated with that transferee being an associated person of that casino licence holder.
11. SKC may only exercise its power of sale if SKC has given one month's notice to the shareholder of its intention to exercise that power and the shareholder has not, during that one month period, transferred the requisite number of shares in SKC to a person who is not associated with the shareholder.
12. NZX has updated the NZX Listing Rules (**Rules**), effective from 1 January 2019. This waiver decision re-documents prior decisions of NZX Regulation (**NZXR**) that allowed for the Variation of Rights, and reflects the updated Rule references and language.
13. References to a clause of SKC's constitution are references to the proposed constitution to be adopted by SKC at its annual meeting to be held on 18 October 2019.



Appendix Two

Rule 8.1 Transfer of Quoted Financial Products (common rules)

8.1.5 Except as expressly permitted by the Rules, no benefit or right attaching to a Quoted Financial Product may be cancelled or varied by reason only of a transfer of that Quoted Financial Product.

