



NZX Regulation Decision

Meridian Energy Limited (“MEL”)

Application for waivers from NZX Listing Rules 5.2.1 and 8.1.5.

31 January 2020



Background

1. NZX has updated the NZX Listing Rules, effective from 1 January 2019 (**Rules**). This waiver decision re-documents a prior waiver decision granted by NZX Regulation (**NZXR**) for Meridian Energy Limited (**MEL**) dated 18 September 2013.

Application One - Waiver from Rule 5.2.1

Decision

2. Subject to the conditions in paragraph 3 below, and on the basis that the information provided to NZXR by MEL is complete and accurate in all material respects, NZXR grants MEL a waiver from Rule 5.2.1 so that MEL may enter into Benchmark Agreements with Transpower in order to comply with the Electricity Industry Participation Code (**Code**) without obtaining shareholder approval.
3. The waiver contained in paragraph 2 is granted on the following conditions:
 - a. Amounts payable under the Benchmark Agreements are determined in accordance with the Transmission Pricing Methodology Guidelines administered by the Electricity Authority and the Transmission Pricing Methodology administered by Transpower (subject to the Electricity Authority's approval of the methodology), and regulated under the Code and Part 4 of the Commerce Act 1986;
 - b. Any Benchmark Agreement entered into between MEL and Transpower that constitutes a Material Transaction is in the form specified by the Code or, if the form specified by the Code is not used, the directors of MEL certify that the Benchmark Agreement is entered into on an arms' length, commercial basis without regard to the Crown's common ownership of MEL and Transpower; and
 - c. The waiver, its conditions and effects, and the total amount of fees payable by MEL to Transpower under the Benchmark Agreements each financial year are disclosed in MEL's annual reports that relate to the periods during which MEL relies on this waiver.
4. The decision is based on the facts 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.
5. The Rules to which this decision relates are set out in Appendix Two to this decision.
6. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Reasons

7. In coming to the decision to provide the waiver set out in paragraph 7 above, NZXR has considered that:
 - a. The policy behind Rule 5.2.1 is to ensure that Related Parties do 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;
 - b. Given that the terms of the Benchmark Agreements are regulated by the Code, and the fees payable under those agreements are determined under the Transmission Pricing

Methodology and regulated by the Electricity Authority and the Commerce Commission, no party is in a position to exercise undue influence on MEL in relation to the entry into Benchmark Agreements, or during negotiation of the terms and conditions of Benchmark Agreements; and

- c. The Crown has publicly stated in the Crown Ownership Monitoring Unit Owner's Expectations Manual that Crown subsidiaries are required to operate at arm's length from the Government, and be governed by independent boards.

Application Two - Waiver from Rule 8.1.5

Decision

8. Subject to the conditions in paragraph 9 below, and on the basis that the information provided to NZXR is full and accurate in all material respects, NZXR hereby grants MEL a waiver from 8.1.5 to allow the inclusion of the provisions in MEL's constitution that allow for the suspension of dividend and voting rights attached to MEL ordinary shares where the 10% Limit (as defined in Appendix One) is breached.
9. The waiver in paragraph 8 above is granted on the following conditions:
 - a. MEL bears a non-standard designation;
 - b. A copy of MEL's constitution is published on the company's website; and
 - c. Details of the provisions in the constitution that restrict the issue, acquisition or transfer of ordinary shares and of circumstances in which dividend and voting rights may be suspended (as per the provisions in the Constitution), are appropriately disclosed in the fact sheet about MEL shares published on the company's website.
10. The Rules to which this decision relates are set out in Appendix Two to this decision.
11. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Reasons

12. In coming to the decision to provide the waiver set out in paragraph 8 above, NZXR has considered that:
 - a. The provisions described in Appendix One enable MEL to enforce the 10% Limit, which is a key aspect of the ownership restrictions under the Government's MOM Programme;
 - b. The conditions contained in paragraph 9 and the public availability of MEL's constitution for review will ensure that persons applying for and trading ordinary shares on market have notice of the ownership restrictions, the consequences of breaching the 10% Limit and the Crown's power of cancellation;
 - c. The policy underlying Rule 8.1.5 reflects the fundamental principle that shareholders are entitled to exercise the rights attaching to securities (especially the right to vote and receive dividends) and only in very limited circumstances should these rights be removed;
 - d. The provisions described in paragraphs 11 to 13 of Appendix One apply in limited circumstances and it is desirable that MEL has the ability to ensure the 10% Limit is adhered to and that there is an appropriate disincentive to breaching the statutory requirements in Part 5A of the PFA. The provisions are necessary to help achieve the

policy objectives in Part 5A of the PFA. The PFA expressly anticipates that a company's constitution can add to the consequences set out in the PFA; and

- e. MEL's constitution sets out a process whereby holders of a relevant interest in Excess Shares (as defined in Appendix One) are notified that they may have breached the 10% Limit, and of the consequences of this breach, including, in particular, where a breach is found not to be inadvertent. Holders of a relevant interest in Excess Shares are also able to make representations to MEL in respect of an alleged breach. This procedure will give holders of a relevant interest in Excess Shares an opportunity to respond to and rectify the breach of the 10% Limit prior to MEL suspending the dividend or voting rights attached to the MEL ordinary shares in which they have a relevant interest.



Appendix One

1. Meridian Energy Limited (**MEL**) is a New Zealand incorporated mixed ownership model (**MOM**) company within the meaning of section 45P of the Public Finance Act 1989 (**PFA**).
2. MEL is currently Listed on the NZX Main Board and also has three series of bonds Quoted on the NZX Debt Market.
3. As MEL is a MOM company, under section 45R of the PFA, the Crown must hold at least 51% of MEL's ordinary shares and is prohibited from reducing its holding below that level. The Crown must also hold at least 51% of any other class of shares (voting or non-voting) and any other class of securities in MEL that confer voting rights (together the **51% Holding Restriction**). Under section 45S of the PFA, no person, other than the Crown, may have a relevant interest in more than 10% of any class of shares in MEL (including the MEL ordinary shares), or of any other class of securities in MEL that confer voting rights (the **10% Limit**).
4. If a person has a relevant interest in the ordinary shares in breach of the 10% Limit, then under sections 45T(1)(c) and 45T(2) of the PFA that person will lose the right to be paid a dividend in respect of the ordinary shares in which a relevant interest is held in excess of the 10% Limit (**Excess Shares**) and will lose the voting rights attaching to the Excess Shares.
5. In addition, section 45T(5) of the PFA provides that the Constitution may provide for the 10% Limit and the consequences of a person exceeding it, including provisions for the implementation of those consequences or which add to the consequences set out in section 45T.
6. In the decision dated 18 September 2013 NZXR approved MEL to incorporate provisions into its Constitution restricting the transfer of MEL Ordinary Shares (including the issue, acquisition, or transfer of Ordinary Shares) (the **Transfer Restriction Approval**). For the avoidance of doubt, this approval shall continue to apply. These restrictions include:
 - a. That any further issues of ordinary shares or classes of shares must be made in accordance with Part 5A of the PFA;
 - b. The MEL Board may refuse to register a transfer of ordinary shares where it has actual knowledge, or believes, that the transfer of those shares would, or would be likely to, contravene Part 5A of the PFA;
 - c. The MEL Board may refuse to register a transfer:
 - i. for so long as the Board or MEL are in the process of exercising powers under the Fourth Schedule of the MEL Constitution; or
 - ii. for certain other customary reasons for refusing share transfers;
 - d. That restrict MEL from issuing, acquiring or redeeming any ordinary shares where it would breach either the 51% Holding or the 10% Limit;
 - e. That the Board may refuse to register a transfer of ordinary shares where:
 - i. the holder has not provided satisfactory documentary evidence where required; or



- ii. the Board has actual knowledge, or believes, that the transfer of those shares will result in a contravention of the 10% Limit; and
 - f. That provide that the Crown may cancel the sale of ordinary shares to a person if that person is found to have misrepresented his or her or its status as a “New Zealand Applicant” as defined in the Offer Document. In order to exercise this power of cancellation, the Crown must issue a cancellation notice. Following the issue of that notice, the relevant holder will cease to have the right to sell, transfer, or otherwise dispose of the affected ordinary shares and MEL will arrange the sale of those shares.
7. For completeness, the Transfer Restriction Approval is subject to the same condition at paragraph 9(c) (being that details of the provisions in the constitution that restrict the issue, acquisition or transfer of ordinary shares and of circumstances in which dividend and voting rights may be suspended (as per the provisions in the Constitution), are appropriately disclosed in the fact sheet about MEL shares published on the company’s website).

Application One – Further Background

8. Transpower New Zealand Limited (**Transpower**) is a state-owned enterprise that owns and operates the National Grid and provides transmission services to MEL. Transpower and all parties that are physically connected to the transmission grid, including MEL, are required to enter into transmission agreements. This may be an individual transmission agreement or the default transmission agreement (**Benchmark Agreements**) provided by the Electricity Authority, a Crown entity responsible for overseeing the operation of New Zealand’s electricity market.
9. Under the Rules, Transpower is a Related Party of MEL for the following reason:
- a. Part (c) of the definition of Related Party in the Rules provides that an entity will be a Related Party if it is an Associated Person of the Issuer;
 - b. Part (c) of the definition of Associated Person in the Rules provides that a person (A) will be an Associated Person of another person (B) if A and B are Related Bodies Corporate;
 - c. Related Body Corporate is defined in the Rules as having the same meaning as section 12(2) of the Financial Markets Conduct Act 2013 (the **FMC Act**). Section 12(2)(e) provides that A will be a related body corporate of B if there is another body corporate to which A and B are both related;
 - d. The Crown holds more than half of the voting rights in both Transpower and MEL, so is related to both Transpower and MEL; and accordingly
 - e. Due to the shared relationship with the Crown, Transpower and MEL are Related Bodies Corporate, Associated Persons, and Related Parties.
10. Transmission charges under the Benchmark Agreement are determined annually using the Transmission Pricing Methodology provided for in Part 12 of the Code and regulated by the Electricity Authority and the Commerce Commission.



11. Accordingly, the level of fees varies from year to year depending on the Transmission Pricing Methodology. MEL anticipates that it may need to amend the terms of the Benchmark Agreement in a material way or enter into a new Benchmark Agreement such that shareholder approval would be required under Rule 5.2.1.

Application Two – Further Background

12. MEL has the following provisions in its constitution (known as a Governing Document under the Rules) that restrict the issue, acquisition or transfer of MEL ordinary shares:
 - a. any issue of equity securities in MEL must be made in accordance with Part 5A of the PFA;
 - b. the Board of MEL must refuse or delay the registration of a transfer of any shares in MEL where it has actual knowledge, or believes, that the transfer of those shares would, or would be likely to, contravene Part 5A of the PFA;
 - c. restriction on MEL from issuing, acquiring or redeeming any shares where the issue, acquisition or redemption would result in a breach of the 51% Holding Restriction or where MEL has actual knowledge that the issue, acquisition or redemption would result in a breach of the 10% Limit; and
 - d. permits the Board of MEL to refuse to register a transfer of shares in MEL where:
 - i. The transferee has not provided any, or satisfactory documentary evidence when requested with respect to determining whether there has been a contravention of the 10% Limit; or
 - ii. The Board of MEL has actual knowledge, or believes, that the transfer of those shares will result in a contravention of the 10% Limit.
13. MEL's constitution contains the consequences in relation to benefits and rights attaching to MEL ordinary shares in excess of the 10% Limit including:
 - a. A provision which provides for the automatic suspension of voting rights and the entitlement to dividends or other distributions in respect of Excess Shares; and
 - b. A provision which provides for a holder of Excess Shares to have no voting rights and no entitlement to dividends or other distributions:
 - i. if a breach of the 10% Limit is determined by the Board of MEL to be inadvertent, in respect of those Excess Shares; and
 - ii. if a breach of the 10% Limit is determined by the Board of MEL to not be inadvertent or there is insufficient information to determine if the breach was inadvertent, in respect of all MEL shares (including MEL ordinary shares) held by that registered holder,and provide for the sale of MEL shares (including ordinary shares) so as to ensure that there is no longer a breach of the 10% Limit.
14. There is a provision which includes the requirement for the Board of MEL to give notice to the relevant registered holder before making a determination in relation to a contravention

of the 10% Limit and to explain the consequences of being in breach of the 10% Limit. The Board of MEL would then have the power to require the sale of Excess Shares if the registered holder did not remedy the breach within the period specified in section 45T(1)(b) of the PFA and the proceeds of the sale (less any costs of sale) would be paid to the registered holder. An exception applies if the registered holder is an "Approved Nominee" for the purposes of section 45U of the PFA, in which case certain provisions in the constitution only apply in respect of those ordinary shares held by the Approved Nominee on behalf of a person who has a relevant interest in ordinary shares in contravention of the 10% Limit.



Appendix Two

Rule 5.2 Transactions 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

Rule 8.1 Transfer of Quoted Financial Products (common rules)

Rule 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.

