

NZX Regulation Decision
Lombard Group Limited
Application for Waiver from Listing Rules 3.3.1(b) and 5.5.1(b)

Background

1. Lombard Group Limited (“LOM”) is Listed on the NZSX market.
2. Australian Consolidated Insurance Limited (“ACIL”), a private Australian company, intends to complete a proposal that will result in the reverse listing of ACIL on the NZSX market (“Proposal”).
3. The Proposal relies on a number of interdependent transactions that are to be considered, and voted on, by the existing shareholders of LOM (“Existing LOM Shareholders”), at a shareholder meeting to be held on 10 March 2010.
4. The overall effect of the Proposal for Existing LOM Shareholders, if all approvals required to complete the Proposal are given, will be that:
 - (a) they will receive an interest in an unlisted vehicle, equal to their current interest in LOM, that contains LOM’s residual assets;
 - (b) they will continue to hold their existing LOM shares (“Existing LOM Shares”);
 - (c) LOM will then have as its primary asset full ownership of ACIL, and Existing LOM Shareholders will have a buy back offer made for their LOM Shares at NZ\$0.01196 per Existing LOM Share.
4. Following completion of the Proposal LOM will be named Insured Group Limited (“Insured”), which will be a company registered in Australia, but with a primary listing on the NZSX market.
5. The proposed process for the completion of the Proposal is:
 - (a) LOM will make a takeover offer to the shareholders of ACIL (“ACIL Shareholders”) for all of the ACIL Shares, being 42,334,287 ordinary shares in ACIL (“Takeover Offer”).
 - (b) LOM will migrate its place of incorporation from New Zealand to Australia (“Migration”).
 - (c) If LOM receives acceptances from the shareholders of ACIL (“ACIL Shareholders”) under the Takeover Offer holding 90% or more (by number) of the ACIL’s ordinary shares (“ACIL Shares”):
 - (i) LOM will transfer LOM’s business, assets and liabilities (other than a series of existing liabilities valued at approximately \$220,000) to a subsidiary, First One Holdings Limited (“FOL”), which has been incorporated for the purpose of receiving and holding LOM’s business, assets and liabilities, and in return LOM will receive 23,406,435 FOL shares (“Divestment”). FOL currently has no assets or liabilities and does not conduct any business activities;

- (ii) each Existing LOM Shareholder will receive from LOM a distribution of the FOL Shares in proportion to its current shareholding in LOM. At this point LOM will have no assets other than its NZSX listing and will continue to have \$220,000 of liabilities; and
 - (iii) LOM will acquire all ACIL Shares under the Takeover Offer and, as consideration for the acquisition of all the ACIL Shares, will issue a total of 1,480,246,656 new ordinary shares in LOM (“New LOM Shares”) to the ACIL Shareholders (“Share Issue”).
 - (c) If approved by the required majority of holders of New LOM Shares, at a special meeting of those shareholders to be held to approve the buy back (“Special Meeting”), LOM will make a buy back offer in cash for all of the Existing LOM Shares held by the Existing LOM Shareholders on the entitlement date for the buyback offer (“Entitlement Date”), and that continue to be held by Existing LOM Shareholders on the offer date for the buyback (“Buy Back Offer Date”), at a price per Existing LOM Share which is equal to the price at which the New LOM Shares will be issued under the Takeover Offer (“Buy Back”). As recipients of the Buy Back offer, existing LOM Shareholders will not be entitled to vote to approve the offer at the Special Meeting, in accordance with the provisions of the Australian Corporations Act. Existing LOM Shareholders will have no obligation to accept the Buy Back. The dates for the Buy Back are not yet confirmed, but the Buy Back Offer Date will be on or around 28 April 2010.
6. The Proposal is explained in further detail in the profile, the notice of meeting to consider the Proposal (“Notice of Meeting”), and the Independent Appraisal Report commissioned to evaluate the Proposal, as required by the NZX Reverse and Backdoor Listing Guidance Note (“Guidance Note”) and the NZSX Listing Rules (“Rules”). These documents will be provided to all Existing LOM Shareholders prior to the meeting to vote on the Proposal.
7. Rule 3.3.1(b) requires that the Board of Directors of an Issuer shall include at least two Directors that are ordinarily resident in New Zealand. It is proposed that the Directors of Insured following the completion of the proposal will be Trevor Jacobs, William Jeffries, Wayne Miller, Mark Shelton and Anne-Marie Symes. Only Mr Jeffries is ordinarily resident in New Zealand for the purpose of Rule 3.3.1(b).
8. Following the Share Issue, LOM will hold a meeting of the holders of the New LOM Shares in order to vote as to whether to approve the Buy Back. LOM wishes to hold this meeting in Australia, where the majority of ACIL Shareholders are resident. Rule 5.5.1(b) requires that an Issuer hold all meetings of shareholders of that Issuer in New Zealand.

Application 1

9. LOM has approached NZX Regulation (“NZXR”) for a waiver from the Rule 3.3.1(b), to allow LOM to operate temporarily following completion of the Proposal with only one Director who is ordinarily resident in New Zealand.
10. LOM makes the following submissions in support of its application:
- (a) It is in the best interests of shareholders in ACIL that the appointment of Directors is carefully considered and results from a recruitment process which ensures a best fit with LOM’s needs going forward as a listed company. New directors are necessary as LOM’s strategic business direction is expected to be significantly different from LOM’s current business.

- (b) The appointment of directors is a matter of significant strategic importance for the future growth of LOM. Strict compliance with Rule 3.3.1(b) would require ACIL to fast-track this process. ACIL has had limited business dealings in New Zealand and therefore sourcing possible candidates and advancing this process will necessarily take some time. The Board of ACIL has started this process, but it is not expected to be completed prior to the completion of the Proposal.
- (c) The interests of current LOM and ACIL shareholders will not be disadvantaged by a short period of non-compliance with this Rule as:
 - (i) The proposed directors are the current directors of ACIL and William Jeffries who is a current director of LOM and ordinarily resident in New Zealand. Immediately following the completion of the Proposal, the ACIL Shareholders will hold the vast majority of shares in LOM; and
 - (ii) Existing LOM shareholders will have the opportunity to sell their shares in the Buy Back. Therefore, on completion of the Proposal, if a large number of Existing LOM Shareholders elect to accept the Buy Back, the percentage of shares held by the Existing LOM shareholders will be even further reduced. Thus, following completion of the Proposal only a small minority of LOM shareholders will be resident in New Zealand.
- (d) ACIL is currently in discussions with a candidate who, if appointed, would result in immediate compliance with Rule 3.3.1(b). If this appointment is not finalised the Board of Directors of Insured will ensure compliance with Rule 3.3.1(b) within 3 months of the date of the meeting of Existing LOM Shareholders. If necessary, the Board has undertaken that Trevor Jacobs will become resident in New Zealand prior to expiry of the waiver.

Rule 3.3.1(b)

11. Rule 3.3.1(b) provides:

3.3 Appointment and Rotation of Directors

3.3.1 The composition of the Board shall include the following:

...

(b) at least two Directors shall be ordinarily resident in New Zealand; and

Decision - Application 1

12. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants LOM a temporary waiver from the requirements of Rule 3.3.1(b), to allow the Board of LOM to have only one Director that is ordinarily resident in New Zealand, for a period beginning at the date which Existing LOM Shareholders approve the Proposal and expiring three months from that date.

Reasons - Application 1

13. In coming to the decision to grant LOM a temporary waiver from Rule 3.3.1(b), NZXR has considered that:

- (a) The purpose underlying Rule 3.3.1(b) is to ensure that Issuers who have a primary listing on the NZSX market have Directors who are available to be responsible for the actions of the Issuer to both

the local shareholder base and the New Zealand regulatory authorities. Granting a temporary waiver in this instance whilst LOM is in transition to full compliance does not undermine the policy underlying this Rule.

- (b) Until a capital raising is undertaken by LOM, the vast majority of LOM shares (approximately 98.5%) will be held by shareholders who are resident in Australia. As the initial shareholding base will predominantly not be New Zealand-based, a short period of non-compliance with Rule 3.3.1(b) will not prejudice shareholders of LOM.
- (c) The waiver is only for a period of three months and so will require LOM to be in compliance with Rule 3.3.1(b) within a short timeframe. With regard to this, LOM has undertaken that, if no suitable New Zealand-based Director can be found within three months, Trevor Jacobs will move to New Zealand prior to the expiry of this waiver.
- (d) Although there is no direct precedent for a waiver from Rule 3.3.1(b), NZXR has previously granted temporary waivers from the requirements of Rule 3.3.1(c) in relation to the minimum number of Independent Directors required to be on a Board. For example see: WID (27 December 2008), SCY (16 February 2005) and INL (15 November 2004).

Application 2

- 14. LOM has approached NZX Regulation (“NZXR”) for a temporary waiver from the Rule 5.5.1(b) to allow LOM to hold the Special Meeting to consider the Buy Back in Australia.
- 15. LOM makes the following submissions in support of its application:
 - (a) LOM and ACIL Shareholders would not be prejudiced by the holding of the Special Meeting outside New Zealand for the following reasons:
 - (i) In respect of the meeting required to approve the Buy Back, the Corporations Act 2001 (Cth.) requires “a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by any person whose shares are proposed to be bought back.” The only shareholders whose shares are not proposed to be bought back are the ACIL Shareholders (none of whom are resident in New Zealand). It would cause significant inconvenience for the ACIL Shareholders if the meeting was required to be held in New Zealand; and
 - (ii) Existing LOM Shareholders will not have the ability to vote at the meeting, and therefore will not be prejudiced by it taking place in Australia.
 - (c) There is precedent for this waiver, for example: the NZXR decisions of 28 June 2008, in respect of Tenon Limited, and of 19 June 2008, in respect of Rubicon Limited
 - (d) It is suggested that this waiver be granted with the condition that, should LOM have New Zealand registered shareholders on its register at the time of holding the Special Meeting:
 - (i) The chairman’s address and presentation must be released to NZX at the same time as the rest of the meeting; and
 - (ii) Questions are required to be submitted in advance of any meeting and their answers must be transcribed and released to NZX within 24 hours of the meeting concluding.

This will ensure that Existing LOM Shareholders are not prejudiced by not being able to physically attend the meeting.

Rule 5.5.1(b)

16. Rule 5.5.1(b) provides:

5.5 General Obligations While Listed

5.5.1 An Issuer which has NZX as its Home Exchange shall at all times while it is Listed:

...

(b) hold all meetings of holders of Quoted Securities of that Issuer in New Zealand.

Decision - Application 2

17. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants LOM a waiver from Rule 5.5.1(b) to allow LOM to hold the special meeting of ACIL Shareholders to approve the Buy Back in Australia if Existing LOM Shareholders approve the Proposal. This waiver is granted on the following conditions:

- (a) That waiver from Rule 5.5.1(b) shall be limited to allow only the Special Meeting to be held in Australia. All subsequent meetings of LOM shareholders will, in the absence of a subsequent waiver, be required to be held in compliance with Rule 5.5.1(b);
- (b) The chairman's address and presentation must be released to NZX at the time of the Special Meeting; and
- (c) Questions for the Special Meeting must be submitted in advance of the meeting and any answers must be transcribed and released to NZX within 24 hours of the conclusion of the Special Meeting.

Reasons - Application 2

18. In coming to the decision to grant LOM a waiver from Rule 5.5.1(b), NZXR has considered:

- (a) The purpose underlying Rule 5.5.1(b) is to ensure that shareholders are presented with a fair opportunity to participate in shareholder meetings. As no Existing LOM Shareholders will be entitled to vote at the Special Meeting, and no holders of New LOM Shares reside in New Zealand, the granting of the waiver in this instance does not undermine the policy underlying the Rule.
- (b) Existing LOM Shareholders will not be entitled to vote at the Special Meeting, and therefore are not prejudiced by being unable to attend the meeting due to its location in Australia. The conditions in paragraphs 17(b) and (c) will ensure that New Zealand-resident shareholders will be entitled to participate by submitting questions to be answered at the Special Meeting, and will be able to review the proceedings of the Special Meeting through the transcription of the meeting that will be released to the market.
- (c) None of the ACIL Shareholders are resident in New Zealand. It would be unduly inconvenient and expensive for the ACIL Shareholders to be required to travel to New Zealand to attend the Special Meeting.

- (d) There is precedent for this decision, and the conditions attaching to the decision, for example: RBC (19 June 2008) and TEN (28 June 2008).
- (e) All subsequent shareholder meetings of LOM will be held in New Zealand in compliance with Rule 5.5.1(b).

Confidentiality

- 19. LOM has requested that this waiver and its contents remain confidential until the Proposal is announced to the market.
- 20. NZXR grants LOM's request as it accords with Rules 1.11.2 and 1.11.4 and the footnotes to those Rules.

ENDS.