



NZX Regulation Decision

Infratil Limited

Application for waiver from NZSX Listing Rule 9.2.1

19 December 2013



Application for waiver from NZSX Listing Rule 9.2.1

Decision to grant waiver

1. On the basis that the information provided to NZX Regulation (“**NZXR**”) is full and accurate in all material respects, NZXR grants IFT a waiver from NZSX Listing Rule (“**Rule**”) 9.2.1 in relation to the Proposed Transaction (as defined in Appendix One), on the condition that the independent Directors of IFT certify to NZXR that:
 - (a) The negotiations in respect of the Proposed Transaction were completed on an arm’s length commercial basis;
 - (b) The Proposed Transaction was considered independently of MCo, MCo Investor, MCo Pty, and the ASIP Trusts, and the directors of IFT who are associated with MCo, MCo Investor, and MCo Pty, and the ASIP Trusts, did not unduly influence the promotion of, or decision to enter into, the Proposed Transaction, or vote on any resolution to approve the Proposed Transaction;
 - (c) The Proposed Transaction is in the best interests of, and fair to, IFT’s shareholders who are not related to, or associated with MCo, MCo Investor, MCo Pty or any other MCo related company; and
 - (d) The Proposed Transaction was entered into on an arm's length commercial basis.
2. The material information on which this decision is based is set out in Appendix One to this decision. This decision will not apply if that information is not, or ceases to be, full and accurate in all material respects.
3. The Rules applicable to this decision are set out in Appendix Two.

Reasons for granting waiver

4. In coming to the decision to grant IFT a waiver from Rule 9.2.1, contained in paragraph one above, NZXR has considered the following matters:
 - (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. NZX Regulation may waive the requirement to obtain approval of the 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 transaction;
 - (b) IFT (through a wholly-owned subsidiary) proposes to enter into the Proposed Transaction on the same terms as existing investors, in accordance with established documents. These documents were agreed in December 2012, and were negotiated by MCo with existing investors as terms for all potential participants. The Proposed Transaction involves IFT paying the same price per unit, and subscribing on the same terms, as every other investor in ASIP;
 - (c) Any decision to enter into the Proposed Transaction ultimately lies with IFT’s independent directors. Marko Bogoevski and Duncan Saville, who are associated

with other parties involved in the Proposed Transaction, will not unduly influence any decision by IFT to enter into the Proposed Transaction;

- (d) The certificates provided by the independent directors as a condition of the waiver provide comfort that the Proposed Transaction will be negotiated and entered into on an arm's length and commercial basis and that the MCo related directors have not exercised any undue influence over the board of IFT in its decision in respect of the Proposed Transaction;
- (e) The Proposed Transaction will not result in IFT paying any MCo-related Company any fees additional to those already agreed under the existing management arrangements in place between IFT and MCIM; and
- (f) There is precedent for this decision, including the waiver granted to IFT on 25 March 2010.



Appendix One – Background information

1. Infratil Limited (“**IFT**”) is a Listed Issuer with Securities Quoted on the NZX Main Board and NZX Debt Market.
2. IFT proposes to invest, through a wholly owned subsidiary,, A\$101.2 million (around \$NZ109 million) in an Australian funding platform called Australia Social Infrastructure Partners (“**ASIP**”) (the “**Proposed Transaction**”).
3. ASIP is itself comprised of two investment vehicles, Public Infrastructure Partners Australia Unit Trust (“**PIPA**”) and Leighton Contractors Infrastructure Partners Unit Trust (“**LCIP**”). ASIP’s investment mandate is to pursue "greenfield" public-private partnership transactions in Australia.
4. LCIP is a joint venture between investors in ASIP and Leighton Contractors Pty Limited (“**Leighton**”).
5. H.R.L. Morrison & Co Private Markets Pty Ltd (“**MCo Pty**”), a wholly-owned subsidiary of H.R.L. Morrison & Co Group LP (“**MCo**”), is the trustee and manager of the investment vehicles that make up ASIP (the “**ASIP Trusts**”).
6. ASIP has been operating since December 2012 with two investments already effected. There are three initial investors in ASIP (the “**Existing Investors**”) including an MCo-related company, Morrison & Co. Ventures Limited (“**MCo Investor**”).
7. For its investment commitment, IFT (through its subsidiary) will subscribe for 100 million units in each of the ASIP Trusts for an aggregate issue price of \$A100 million. The outstanding issue price of units in ASIP are called progressively from all relevant investors, pro rata, as required for investments and working capital in accordance with the terms of ASIP’s establishment documents. In accordance with the terms of the ASIP establishment documents, approximately A\$10.4m of the issue price of IFT’s units will be called on subscription in an amount that will ensure that IFT has paid up the same proportion of its commitment as the Existing Investors. This amount will be distributed to the Existing Investors pro rata in proportion to their unit holdings, and is able to be re-called in the future when required for investments and/or working capital.
8. In addition, IFT (through its subsidiary) will pay a premium of 12% per annum on this amount since it was invested in ASIP by the Existing Investors. This is also distributed to the Existing Investors pro rata to compensate them for returns generated by that capital since they invested it. The rate of 12% per annum is fixed in ASIP’s establishment documents and is payable by all investors joining ASIP after the initial round of investment.
9. Accordingly, if all of IFT's commitment is called the Proposed Transaction will cost IFT approximately A\$101.2 million.
10. MCo Pty, also a wholly-owned subsidiary of MCo, receives fees from ASIP in connection with all investors’ commitments in accordance with the ASIP establishment documents, and so will receive fees from ASIP in respect of the Proposed Transaction. As a condition of the Proposed Transaction, MCo Pty will promptly pass to IFT the benefit of all fees it receives from ASIP in connection with the Proposed Transaction.

11. Another wholly-owned subsidiary of MCo, Morrison & Co Infrastructure Management Limited (“**MCIM**”) is the manager of IFT. No additional management fees will be payable to MCIM as a result of the Proposed Transaction. IFT will only pay MCIM the fees set out in its existing management agreement in respect of its investment in ASIP.

Material Transaction with Related Party

12. Rule 9.2.1 provides IFT shall not enter into a Material Transaction if a Related Party is, or likely to become, a party to the Material Transaction. Rule 9.2.2(a) provides that a Material Transaction is a transaction whereby an Issuer purchases assets having an aggregate net value in excess of 10% of the Issuer’s AMC.
13. IFT’s constitution lowers the threshold for a Material Transaction to 5%.
14. Two directors of IFT, Marko Bogoevski and Duncan Saville (“**MCo-related Directors**”), are also directors and shareholders of MCo. Marko Bogoevski is also the Chief Executive of MCo.
15. The MCo-related Directors are Associated Persons of MCo, MCo Investor, MCo Pty, and the ASIP Trusts under Rule 1.8.2 as they could, in making a decision or exercising a power affecting IFT, be influenced as a consequence of the relationships between MCo, MCo Investor, MCo Pty or the ASIP Trusts. Therefore, under Rule 9.2.3(c), MCo, MCo Investor, MCo Pty and the ASIP Trusts are each deemed to be a Related Party of IFT.



Appendix Two

Rule 1.8 Associated Persons

- 1.8.1 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 1.8.2 to 1.8.6.
- 1.8.2 A person (the “first person”) is associated with another person (the “second person”) if, in making a decision or exercising a power affecting an 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.
- 1.8.5 If the first person is associated with the second person in terms of Rule 1.8.2 to 1.8.4, then the second person shall be deemed to be associated with the first person.

Rule 9.2 Transactions with Related Parties

- 9.2.1 An 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

...

unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.

- 9.2.2 For the purposes of Rule 9.2.1 “Material Transaction” means a transaction or a related series of transactions whereby an Issuer:

(a) purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Net Value in excess of 10% of the Average Market Capitalisation of the Issuer; or

...

(b) borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 10% of the Average Market Capitalisation of the Issuer; or ...”

- 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 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 Issuer carrying Votes; or

(a) an Associated Person of the 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); ...