



NZX Regulation Decision

Infratil Limited

Application for waiver from NZX Main Board Listing Rule
9.2.1

28 February 2014



Application for waiver from NZX Main Board Listing Rule 9.2.1

Decision

1. On the basis that the information provided to NZX Regulation (“**NZXR**”) is full and accurate in all material respects, NZXR grants Infratil Limited (“**IFT**”) a waiver from NZX Main Board Listing Rule (“**Rule**”) 9.2.1 in relation to the Holding Split (as defined in Appendix One), on the condition that the independent Directors of IFT certify to NZXR that:
 - (a) The effect of the Holding Split will be to provide IFT with direct control over no more and no less than its half share of the assets of the joint venture, determined on an arms' length commercial basis.
 - (b) The Holding Split is in the best interests of, and fair to, IFT's shareholders who are not related to, or associated with MCo or the Guardians of New Zealand Superannuation (“**GNZS**”).
 - (c) The directors of IFT who are Associated with MCo or GNZS did not unduly influence the promotion of, or decision to enter into, the Holding Split or vote on any resolution to approve the Holding Split.
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

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 has submitted, and NZXR has no reason not to accept, that in effecting the Holding Split, all transactions will reflect market values of the assets subject to the relevant transactions. Consequently, IFT will both provide market value in the transactions in which IFT is required to pay any amount or incur any debt, and will receive market value in the transactions in which it receives any amount or any loan. Each of IFT and GNZS will ultimately receive effectively no more, and no less, than the value of their respective existing interest in the ZEL Shares and AEHL shares under the current holding structure, namely half each of the assets of the joint

venture.

- (c) The certificates provided by the independent directors as a condition of the waiver provide comfort that the Holding Split was negotiated and will be entered into on an arm's length and commercial basis and that the directors of IFT who are Associated with MCo or GNZS have not exercised any undue influence over the board of IFT in its decision in respect of the Holding Split.
- (d) While MCo is advising the IFT board in connection with the Holding Split, the services are provided under MCO's normal investment management arrangements with IFT and no additional fees are payable to MCO in relation to the Holding Split.
- (e) There is precedent for this decision, including the waiver granted to IFT on 25 March 2010.

Confidentiality

- 5. IFT has requested this application and any decision be kept confidential until IFT has made an announcement of the Holding Split.
- 6. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants IFT's request.



Appendix One – Background information

1. IFT is a Listed Issuer with Securities Quoted on the NZX Main Board and NZX Debt Market.
2. IFT intends to undertake a series of transactions (“**Holding Split**”) to restructure its investment in Z Energy Limited (“**ZEL**”), which is currently jointly held by IFT and GNZS through a number of intermediary companies.
3. The result of the Holding Split will be that half of the shares in ZEL currently jointly held indirectly by IFT and GNZS (“**ZEL Shares**”) will be held or controlled by a wholly-owned subsidiary of IFT, Infratil Gas (“**IGL**”) and half of the ZEL Shares will be controlled by the wholly-owned subsidiary of GNZS, NZSF Aotea Limited (“**NZSFA**”).
4. The Holding Split is designed to give effect to the intended termination of the joint holding of the ZEL Shares which has been contemplated since the initial public offering of ZEL Shares. The Holding Split represents the practical implementation of that intent and reflects that the current holding structure is no longer commercially necessary.
5. Each of IFT and GNZS has been independently advised on the Holding Split and the negotiations between those parties were at arms’ length.
6. In effecting the Holding Split, all transactions will reflect market values of the assets subject to the relevant transactions. Consequently, IFT will both provide market value in the transactions in which IFT (whether directly or indirectly) is required to pay any amount or incur any debt, and will receive market value in the transactions in which it receives any amount or any loan. Each of IFT and GNZS will ultimately receive effectively no more, and no less, than the value of their respective interests in the ZEL Shares and Aotea Energy Holding Limited (“**AEHL**”) shares under the current holding structure, namely half each of the assets of the joint venture (subject to an adjustment for their half of any pre-settlement liabilities)
7. IFT’s average market capitalisation is approximately NZ\$1.23 billion. The value of the Transaction is in excess of 10% of IFT’s average market capitalisation.
8. GNZS is a Related Party of IFT for the following reasons:
 - (a) GNZS is an Associated Person of IFT under Rule 1.8.3(c) as a result of the Shell acquisition and their ongoing joint investment in ZEL. Accordingly, GNZS is also a Related Party of IFT under Rule 9.2.3(c);
 - (b) GNZS is also a Related Party of IFT as both GNZS and IFT receive investment management and advisory services from wholly owned subsidiaries of MCo; and
 - (c) Two directors of IFT, Marko Bogoevski and Duncan Saville, are also directors and shareholders of MCo. Marko Bogoevski is also the Chief Executive of MCo. Mr Bogoevski and Mr Saville are therefore Associated Persons of GNZS 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 investment management arrangements between MCo and GNZS. As the MCo-related Directors are Associated Persons of GNZS, under Rule 1.8.5, GNZS

is also an Associated Person of those IFT directors. Therefore, under Rule 9.2.3(c), GNZS is 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

...

(c) 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

(c) 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); ...