



# NZX Regulation Decision

Infratil Limited (IFT)

Application for a waiver from NZX Main Board Listing Rule 9.2.1

23 December 2014



# Waiver from NZX Main Board Listing Rule 9.2.1

## Decision

1. Subject to the condition set out in paragraph 2 below, and on the basis that the information provided by Infratil Limited (“IFT”) is complete and accurate in all material respects, NZX Regulation (“NZXR”) grants IFT a waiver from NZX Main Board Listing Rule (“Rule”) 9.2.1 to the extent required to allow IFT to enter into the Transactions (described in Appendix One) without first obtaining shareholder approval in relation to the Related Party relationship with GNZS.
2. The waiver in paragraph 1 above is provided on the condition that all Non-interested Directors of IFT certify to NZXR that:
  - (a) the Transactions have been entered into and negotiated on an arm's length commercial basis;
  - (b) in their opinion, entry into the Transactions is fair and reasonable to, and in the best interests of, IFT and its shareholders who are not related to, or Associated Persons of, MCo (or any of the MCo-related entities) or GNZS; and
  - (c) none of MCo, the directors of IFT who are Associated Persons of MCo (or any of the MCo-related entities) or GNZS have unduly influenced the promotion of, or decision to enter into, the Transactions or voted on any resolution to approve the Transactions.
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 Rules to which this decision relates are set out in Appendix Two to this decision.

## Reasons

5. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
  - (a) Rule 9.2.1 seeks to regulate transactions where a Related Party to a Material Transaction may gain favourable consideration due to their relationship with the Issuer. NZXR may waive the requirement to obtain approval of a Material Transaction if it is satisfied that the involvement of any Related Party is plainly unlikely to have influenced the promotion of, or the decision to enter into, the transaction. The granting of this waiver will not offend the policy behind Rule 9.2.1;
  - (b) IFT has submitted, and NZXR has no reason not to accept, that the Related Parties are plainly unlikely to have influenced entry into or the terms of the Transactions, as:
    - i. entry into, and the terms of, the Transactions have been negotiated on an arm's length commercial basis;



- ii. pursuant to the securityholders' agreement governing the JVco, IFT and GNZS will each make their capital contributions towards the acquisition on identical terms and at equal prices for the interests acquired; and
  - iii. the decision to enter into the Transactions has been made by IFT's Non-interested Directors and the MCo-related Directors will not vote on the decision by IFT to enter into the Transactions;
- (c) the certifications provided by IFT's Non-interested Directors as a condition of the waiver provide comfort that the Transactions will be negotiated, and entered into, on an arm's length 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 Transactions; and
- (d) there is precedent for this decision, including waivers granted to IFT on 25 March 2010, 28 February 2014, and 12 September 2014.

### **Confidentiality**

- 6. IFT has requested that its application, and NZXR's decision, be kept confidential until the Transactions are signed and announced.
- 7. In accordance with Footnote 1 to Rule 1.10.2, NZXR grants IFT's request.



## Appendix One

1. IFT is a Listed Issuer with Securities Quoted on the NZX Main Board and the NZX Debt Market.
2. IFT has entered into a 50:50 consortium (the “**Consortium**”) with Guardians of New Zealand Superannuation (“**GNZS**”), to make a bid to acquire the subsidiaries of Retire Australia Holding Trust (“**Retire Australia**”). IFT and GNZS intend to form a joint venture company (“**JVco**”) to acquire Retire Australia should their bid be successful.
3. The acquisition of Retire Australia and the arrangements relating to the Consortium and the JVco all form part of a related series of transactions (the “**Transactions**”).
4. Upon a successful bid for Retire Australia, IFT and GNZS will form the JVco. IFT and GNZS will each make capital contributions of approximately A\$215 million towards the purchase price of Retire Australia. The balance of the purchase price will be funded by assuming existing senior bank lending within the Retire Australia Group.
5. IFT and GNZS will enter into the acquisition on an equal basis, as each entity, through its participation in the JVco, will obtain a 50% interest in Retire Australia for equal consideration, and on the same terms.
6. Both IFT and GNZS are being advised on the Transactions by H.R.L Morrison & Co Group LP (“**MCo**”) related entities, being Morrison & Co infrastructure Management Limited (“**MCIM**”) and Morrison & Co Funds Management Limited (“**MCFM**”) respectively (together the “**MCo-related entities**”).
7. This advice is being provided under the terms of IFT’s and GNZS’ own existing investment management agreements. MCIM and MCFM will receive fees in respect of the investment in accordance with those existing agreements, which may include performance fees if the performance of the investment is successful and exceeds thresholds specified in those agreements. Outside those agreements, neither the Consortium nor the JVco will be charged for advice from MCo-related entities in relation to the Transactions. No success fee will be payable for entry into the Transactions.
8. Two directors of IFT, Marko Bogoevski and Duncan Saville, are also directors of, and have ownership stakes in MCo (“**MCo-related Directors**”). Marko Bogoevski is also the Chief Executive of MCo.
9. For the purposes of Rule 9.2.1, there is Related Party relationship because:
  - (a) MCo is a Related Party of IFT, as MCo and IFT share the MCo-related Directors;
  - (b) IFT and GNZS have been receiving investment management and advisory services from the MCo-related entities regarding the Transactions;
  - (c) the MCo-related entities are wholly owned subsidiaries of MCo, which are staffed by the same personnel and share common directors; and
  - (d) the MCo-related Directors are Associated Persons of GNZS pursuant to Rule 1.8.2 as they could be influenced in making a decision or exercising a power affecting GNZS as a consequence of the investment management arrangements between MCo and GNZS. Despite not being directly involved in the investment management

activities, the MCo-related Directors may be interested in the investment management activities given they are both directors and/or officers of MCo. As the MCo-related Directors are Associated Persons of GNZS, GNZS is also an Associated Person of those Directors. Accordingly, GNZS is a Related Party of IFT.

10. Although GNZS is a Related Party of IFT, Mark Tume who is also a member of the board of GNZS, is not a Related Party by virtue of that status due to the exception in Rule 9.2.3(e). However, Mark Tume will not vote on any resolution at GNZS or IFT in relation to the Transactions. Anthony Muh (Duncan Saville's alternate director on the IFT board) will also not vote on any resolution on the Transactions at IFT. The remaining directors of IFT, Humphry Rolleston, Paul Gough and Alison Gerry (the "**Non-interested Directors**") are Independent Directors for the purposes of the Rules.
11. In entering into the acquisition of Retire Australia, IFT will be entering into a Material Transaction where a Related Party will be a party to a transaction in the series of transactions that Material Transaction forms part because:
  - (a) at the date of this waiver decision, IFT's Average Market Capitalisation is NZD \$1,631,639,930 , and the capital contributions that IFT will make if the bid is successful will equate to approximately 13% of its Average Market Capitalisation, in excess of the 10% prescribed by Rule 9.2.1(a) (and 5% as prescribed in IFT's constitution); and
  - (b) in addition to this, the aggregate net value of the Transactions to which the acquisition forms a part of also breaches the 10% prescribed by Rule 9.2.1(a) (and 5% as prescribed in IFT's constitution).



## 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
- ...
- 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:
- ...
- (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);

