



NZX Regulation Decision

Infratil Limited (“IFT”)

Application for a waiver from – NZX Main Board/Debt
Market Listing Rule 9.2.1

19 August 2019



Waiver from Rule 9.2.1

Decision

1. On the condition in paragraph 2 below, and on the basis that the information provided by IFT is complete and accurate in all material respects, NZXR grants IFT a waiver from NZX Main Board/Debt Market Listing Rule (**Rule**) 9.2.1 to the extent that this Rule would otherwise require IFT to seek shareholder approval in relation to payment of the MCO Success Fee.
2. The waiver in paragraph 1 above, is provided on the following conditions:
 - a. That the Independent Directors of IFT certify to NZXR that:
 - i. The MCO Success Fee represents a fair fee at or below market rates for the work undertaken by MCO in delivering a successful outcome for IFT through the Divestment; and
 - ii. the Directors of IFT who are associated with MCO did not unduly influence the promotion of, or decision to pay the MCO Success Fee, or vote on any resolution to approve the MCO Success Fee.
 - b. That this waiver only applies to the payment of the MCO Success Fee.
3. The material 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.

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 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. The granting of the waiver set out in paragraph 1, will not offend the policy behind Rule 9.2.1;
 - b. IFT submits, and NZXR has no reason not to accept, that MCO has not unduly influenced the promotion of, or the decision to pay the MCO Success Fee. IFT has advised that MCO related Directors did not vote on the decision by IFT to approve the MCO Success Fee;
 - c. IFT has submitted, and NZXR has no reason not to accept, that the Independent Directors of the Board of IFT consider MCO's understanding of the business and industry means it was best placed to act as one of IFT's financial advisors in respect of the Divestment and that the MCO Success Fee reflects market rates; and



- d. the certification to be provided by the Independent Directors as a condition of the waiver provide comfort that the MCO Success Fee has been agreed to by IFT's Independent Directors (subject to obtaining the waiver) on the basis that in their view it represents a fair fee at or below market rates for the work undertaken by MCO in delivering a successful outcome for IFT through the Divestment, and that the MCO related Directors have not exercised any undue influence over the board of IFT in its decisions in respect of the MCO Success Fee.

Confidentiality

6. IFT has requested that this application and any decision be kept confidential until either an announcement by IFT about the MCO Success Fee, or the granting of the waiver.
7. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants IFT's request.



Appendix One

8. Infratil Limited (**IFT**) is a Listed Issuer with Securities Quoted on the NZX Main Board and NZX Debt Market.
9. On 21 May 2019, IFT announced completion of the sale of its 50% interest in the Australian National University's purpose built student accommodation concession (the **Divestment**).
10. A co-investor, that held the other 50% interest in the ANU Portfolio, has also sold its interest on the same terms and conditions. Each of the co-investor and IFT were advised by H.R.L Morrison & Co Group LP, through one or more of its wholly owned subsidiaries (together, **MCO**).
11. A wholly-owned subsidiary of IFT entered into the conditional sale agreement for the Divestment on 29 March 2019. The Divestment transaction was entered into in reliance on a waiver from NZX Main Board Listing Rule 9.2.1 dated 8 May 2017 (the **2017 Waiver**). Reliance on the 2017 Waiver allowed IFT to undertake the Divestment of this co-investment transaction without the need to obtain shareholder approval (such approval only being required given the co-investment relationship between the parties making them Related Parties for the purposes of the Rules).
12. A director of IFT, Marko Bogoevski is also a director and beneficial owner of MCO. Mr Bogoevski is also the Chief Executive of both MCO and IFT. As a Director or executive officer of IFT, Mr Bogoevski is a Related Party of IFT in accordance with Rule 9.2.3(a).
13. Mr Bogoevski is also an Associated Person of MCO, under Rule 1.8.2. As a Director or executive officer of both IFT and MCO, Mr Bogoevski could, in making a decision or exercising a power affecting IFT, be influenced as a consequence of the proposed MCO Success Fee. Accordingly, the Associated Party relationship between Mr Bogoevski and MCO results in MCO being a Related Party of IFT in accordance with Rule 9.2.3(c).
14. The remaining directors of IFT (the **Independent Directors**) are Independent Directors for the purposes of the Rules.
15. Clause 2.12 of IFT's constitution effectively lowers the prescribed level for what constitutes a "Material Transaction" under Listing Rule 9.2.2 and provides that:
 - a. "... the percentage threshold at which a related party transaction requires shareholder approval or a waiver from seeking such approval (as the case may be) under NZX Rule 9.2.2, shall not exceed:
 - b. for the purpose of NZX Rule 9.2.2(a) to (d), 5% of the average market capitalisation of the Company; or
 - c. for the purpose of NZX Rule 9.2.2(e), 0.5% of the average market capitalisation of the Company."
16. IFT's current Average Market Capitalisation (**AMC**) as at the date of this waiver is approximately NZ\$3.12 billion. Five percent of this figure is approximately \$156 million and 0.5% of the AMC is approximately \$15.6 million.
17. The 2017 Waiver permits the payment of fees to MCO or any MCO-related entity in connection with the Divestment that are fees either payable in accordance with existing management agreements with MCO or any MCO-related entities, or fees otherwise permitted

or not prohibited by the Rules (due to a transaction specific waiver, shareholder approval or otherwise).

18. The Board of IFT has resolved to pay, following completion of the Divestment, a success fee of A\$300,000 (the **MCO Success Fee**). Payment of the MCO Success Fee is conditional on obtaining this waiver.
19. The MCO Success Fee was approved by the IFT Board prior to entry into the Divestment as part of the budget approval for that transaction. The MCO Success Fee is therefore one of a related series of transactions of which the Divestment forms part, and the Divestment is a Material Transaction for the purpose of Rule 9.2.1(a). As the MCO Success Fee was considered and entered into subject to certain conditions at the same time as the Divestment, the Rules apply, rather than the 1 January 2019 NZX Listing Rules that IFT has been subject to from 24 June 2019.
20. MCO, a Related Party of IFT, is a direct beneficiary of the MCO Success Fee. As MCO would receive a direct benefit from the MCO Success Fee, the payment of the MCO Success Fee in connection with the Divestment would otherwise require shareholder approval under Rule 9.2.1.
21. IFT is satisfied that the MCO Success Fee is consistent with, or below, market rates for transactions of this size and nature.



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
 - ...
 - (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); or ...

