



NZX Regulation Decision

Infratil Limited (“IFT”)

Application for a Ruling on NZX Listing Rule 2.11.3

21 August 2019



Background

1. The material information on which this decision is based is set out in Appendix One to this decision. This ruling will not apply if that information is not, or ceases to be, full and accurate in all material respects.
2. The Rules to which this decision relates are set out in Appendix Two.
3. Capitalised terms which have not been defined in this decision have the meanings given to them in the Rules.

Ruling on Rule 2.11.3

Decision

4. On the basis that the information provided by IFT is complete and accurate in all material respects, NZXR rules that for the purposes of the application of Rule 2.11.3, to Resolution 4 of IFT's 2019 Notice of Meeting, the phrase "... *the number when the remuneration was approved by an Ordinary Resolution,...*" in the first sentence of Rule 2.11.3 means seven Directors.

Reasons

5. In coming to the decision to grant the ruling set out in paragraph 4 above, NZXR has considered that:
 - a. IFT has submitted, and NZXR has no reason not to accept, that without clarification, there could be ambiguity for both IFT and its shareholders as to either the need, or ability for the Directors' remuneration pool to be adjusted following the retirement of the eighth Director at the end of its 2019 Meeting. It is in the interests of both IFT and its shareholders that the application of the Rules does not result in ambiguity.
 - b. IFT has submitted that in the event that IFT were to increase the number of Directors on its board, IFT would want to be able to adjust the aggregate Directors' remuneration pool in line with what 2.11.3 allows – read as if the number of Directors when the remuneration was approved by shareholder resolution was seven rather than eight.
 - c. IFT shareholders will have oversight of the Directors' remuneration pool in a manner consistent with the requirements of Rule 2.11; and
 - d. IFT has disclosed information relevant to shareholders' consideration of the ordinary resolution to increase Directors' remuneration in the notice of meeting for the 2019 Meeting.

Appendix One

1. Infratil Limited (**IFT**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board bonds quoted on the NZX Debt Market and as such is subject to the NZX Listing Rules (**Rules**).
2. IFT will hold its annual shareholders meeting on 22 August 2019 (**2019 Meeting**). At this meeting IFT proposes to seek shareholder approval to increase the aggregate pool of Directors' remuneration (**Resolution 4**) in accordance with the requirements of Rule 2.11.
3. Rule 2.11.3 provides that where Directors' remuneration is expressed as an amount payable to all Directors in aggregate, then if there is an increase in the number of Directors from when the remuneration was approved by an ordinary resolution, the Board may, without an ordinary resolution, increase the remuneration payable to all Directors of the Issuer in aggregate by an amount necessary to pay an additional Director remuneration not exceeding the average amount then being paid to each of the other non-executive Directors.
4. IFT will seek shareholder approval to increase the pool of Directors' remuneration on the basis that its board of Directors will comprise seven Directors immediately following the meeting. However, at the time the resolution is put to shareholders IFT will temporarily have eight Directors, as one of the Directors intends to retire at the end rather than the beginning of the 2019 Meeting, and it is the aggregate remuneration for seven Directors that IFT wishes its shareholders to approve, given that is the number of Directors shareholders expect to be in office immediately following the 2019 Meeting.
5. IFT has sought a ruling from NZX Regulation (**NZXR**) that for the purposes of the application of Rule 2.11.3 to Resolution 4 of the 2019 Meeting the phrase "*...the number when the remuneration was approved by an Ordinary Resolution,...*" in the first sentence of Rule 2.11.3 means "seven".
6. The effect of such a ruling means that if IFT increases the number of its Directors in the future beyond seven, then for the purposes of Rule 2.11.3, the aggregate remuneration approved by an ordinary resolution at IFT's 2019 Meeting is deemed to be for seven Directors, and it will be able to increase Directors' remuneration for additional Directors beyond seven in accordance with Rule 2.11.3.

Appendix Two

Rule 2.11 Directors' Remuneration

2.11.1 No remuneration may be paid by an Issuer, or its Subsidiaries (unless such Subsidiary is Listed), to a Director in his or her capacity as a Director without prior authorisation by an Ordinary Resolution. Such resolution must express Directors' remuneration as either a monetary sum per annum payable to:

(a) all Directors of the Issuer in aggregate, or

(b) any person who from time to time holds office as a Director of the Issuer.

2.11.3 If remuneration is expressed in accordance with Rule 2.11.1(a) and there is an increase in the number of Directors from the number when the remuneration was approved by an Ordinary Resolution, the Board may, without an Ordinary Resolution, increase the remuneration payable to all Directors of the Issuer in aggregate. The amount of the increase per additional Director may not exceed the amount necessary to enable the additional Director or Directors to be paid the average amount then being paid to each non-Executive Director (other than the chairperson) of the Issuer.