



NZX Regulation Decision

Infratil Limited (“IFT”)

Application for a waiver from NZX Main Board Listing Rule
9.2.1

28 July 2016



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 IFT is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants IFT a waiver from Rule 9.2.1 to the extent required to allow IFT to enter into the Transactions without obtaining shareholder approval.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. All Non-Interested Directors of IFT certify to NZXR that:
 - i. the Transactions have been entered into and negotiated on an arm's length commercial basis;
 - ii. 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), the MCO Related Directors, or CSC; and
 - iii. none of MCO, the MCO Related Directors (or any of the MCO Related Entities), or CSC, have unduly influenced the promotion of, or decision to enter into, any of the Transactions or voted on any resolution to approve any of the Transactions.
 - b. the waiver, its conditions and the implications of this waiver are disclosed in IFT's next half-year report and annual report.
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. Capitalised terms that are not defined in the decision have the meanings given to them in the Rules.
5. The Rules to which this decision relates are set out in Appendix Two to this decision.

Reasons

6. 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 SHA, IFT and CSC will each make their capital contributions towards the investment 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 any decision by IFT to enter into any of the Transactions;
- c. the certifications provided by the Non-Interested Directors provide NZXR 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 IFT's Board when making its decisions to approve any of the Transactions; and
- d. there is precedent for this decision.

Confidentiality

7. IFT has requested that its application, and NZXR's decision, be kept confidential until the Transactions are signed and announced. IFT has also requested that certain transactional values be kept confidential indefinitely, due to their commercial sensitivity.
8. In accordance with Footnote 1 to Rule 1.10.2, NZXR grants IFT's requests.



Appendix One

1. IFT is a Listed Issuer with Securities Quoted on the NZX Main Board and the NZX Debt Market.
2. IFT is proposing to enter into a 50:50 consortium (the **Consortium**) with Commonwealth Superannuation Corporation (**CSC**), in relation to the potential grant by the Australian National University (**ANU**) of a 30 year licence to nine purpose built student accommodation (**PBSA**) residences (**PBSA Licence**). The PBSA Licence will entitle the Consortium to the rental stream from the PBSA residences (i.e. ANU is effectively monetising the future PBSA rental stream in exchange for concession fees payable to ANU by the Consortium). IFT and CSC intend to form joint venture holding and project entities (**JVcos**) to hold the PBSA Licence should their bid be successful.
3. The JVcos will consist of a parent trust (**Parent Trust**) and a project trust (**Project Trust**), each a unit trust. IFT and CSC will own a 50:50 share of the units in the Parent Trust, while the Project Trust will be wholly owned by the Parent Trust. The Parent Trust and Project Trust will each have a corporate trustee, the parent trustee (**Parent Trustee**) and project trustee (**Project Trustee**) respectively. IFT and CSC will own a 50:50 share of the equity in the Parent Trustee, while the Project Trustee will be wholly owned by the Parent Trustee. The Parent Trustee's Directors will be employees of H.R.L Morrison & Co (Australia) Pty Limited (**MCA**), while the Project Trustee's Directors will also be employees of MCA.
4. IFT and CSC will each make capital contributions to the Parent Trust of up to approximately AUD\$80 million mainly to fund the upfront portion of the concession fee. In addition, the other material transactions relating to the PBSA Licence, comprise the following (together, the **Transactions**):
 - a. IFT and CSC will enter into a shareholders' agreement (**SHA**) in respect of the Parent Trust. The SHA will give rise to IFT and CSC's obligations to make the initial capital contributions of approximately AUD\$80 million;
 - b. ANU will securitise ongoing concession fees payable by the Consortium. This will be achieved by a separate third party securitisation vehicle making a payment in exchange for the ongoing concession fees. This will be funded by bank debt borrowed by the securitisation vehicle;
 - c. under the PBSA Licence, the Project Trust will provide 'hard' facilities management (**FM**) services (i.e maintaining and managing the provision of utilities to the PBSA, and undertaking external building maintenance, etc) to ANU for a fee, and ANU will provide 'soft' FM services (i.e managing applications for accommodation and processing rental agreements, and providing day-to-day pastoral care for students, etc) to the Project Trust for a fee;
 - d. by entering into a management services agreement (**SPV Management Agreement**) with Morrison & Co Services (Australia) Pty Ltd (**MCO Services (Australia)**) - a wholly-owned entity of H.R.L Morrison & Co Group LP (**MCO**) - the Project Trust will receive SPV management services (i.e. accounting services, etc) from MCO Services (Australia) (**SPV Management Services**). In exchange for the SPV Management Services, MCO Services (Australia), and ultimately MCO, will receive an annual fee; and
 - e. the Project Trust will also pay IFT an origination fee in exchange for IFT originating the Transactions (**Origination Fee**).

5. IFT and CSC will enter into the Transactions on an equal basis, apart from the Origination Fee, as each entity will obtain an equal interest in the Parent Trust, for equal consideration, and on the same terms.
6. Both IFT and CSC are being advised on the Transactions by MCO-related entities, being Morrison & Co Infrastructure Management Limited (**MCIM**) and MCA, respectively (together, the **MCO Related Entities**).
7. This advice is being provided under the terms of IFT's existing investment management agreement with MCIM (**MCIM Management Agreement**), and CSC's existing investment management agreement with MCA, respectively. MCIM and MCA 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 of those agreements, neither the Consortium nor the JVCos will be charged for advice from the MCO Related Entities in relation to the Transactions. No success fee will be payable to MCO, MCIM or MCA, for IFT's entry into the Transactions.
8. Two Directors of IFT, Messrs Marko Bogoevski and Duncan Saville (**MCO Related Directors**), are also Directors of H.R.L. Morrison & Co Group GP Limited (**MCO GP**). Each also holds a limited partnership interest in MCO through their respective investment vehicles. Marko Bogoevski is also the Chief Executive of MCO. Anthony Muh, who is the alternate director to Duncan Saville on the IFT Board, is MCO Asia Region's Chief Executive. While the MCO Related Directors may participate in board discussions about the Transactions, they will not vote on any resolution in relation to the Transactions. Anthony Muh will also not vote on any resolution in relation to the Transactions. The remaining Directors of IFT, Mark Tume, Humphry Rolleston, Paul Gough and Alison Gerry (the **Non-Interested Directors**) are Independent Directors for the purposes of the NZX Main Board Listing Rules (**Rules**).
9. IFT and CSC have a Related Party relationship because:
 - a. IFT and CSC have each been receiving investment management and advisory services from the MCO Related Entities regarding the Transactions;
 - b. the MCO Related Entities are wholly-owned subsidiaries of MCO, which are staffed by the same personnel and share common Directors; and
 - c. the MCO Related Directors are Associated Persons of CSC pursuant to Rule 1.8.2, as they could be influenced in making a decision or exercising a power affecting IFT as a consequence of the investment management arrangements between MCA and CSC. Despite not being directly involved in the investment management activities, the MCO Related Directors may be interested in the investment management activities given they both indirectly hold limited partnership interests in MCO, and are either directors and/or officers of MCO/MCO GP. As the MCO Related Directors are Associated Persons of CSC, under Rule 1.8.5, CSC is also an Associated Person of the MCO Related Directors. Accordingly, under Rule 9.2.3(c), CSC is a Related Party of IFT.
10. There are varying possibilities that IFT has Related Party relationships with each of MCO, the MCO Related Entities, the Parent Trustee and the Project Trustee, as given IFT's 50% beneficial interest in the Parent Trust and the Project Trust, the SPV Management Agreement between the Project Trust and MCO Services (Australia), and the MCIM Management Agreement, IFT could be influenced when making a decision or exercising a power affecting it, for the purposes of Rules 1.8.2 and 9.2.3(c).

11. The Transactions may comprise a “related series of transactions” for the purposes of Rule 9.2.2. On that basis, as the aggregate value of the Transactions exceed the 5% threshold prescribed in IFT’s constitution (which reduces the 10% threshold set by Rule 9.2.2), the Transactions are a Material Transaction for the purposes of Rule 9.2.2.



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);

