



NZX Regulation Decision

Infratil Limited (“IFT”)

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

8 May 2017



Waiver from Rule 9.2.1

Decision

1. Subject to the conditions 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/Debt Market Listing Rule (**Rule**) 9.2.1 to the extent required to allow IFT to enter into Transactions with Co-Investors without obtaining shareholder approval.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - (a) the waiver would only apply to a Transaction where IFT is not otherwise required to obtain approval of its shareholders for the Transaction (or a specific waiver has been obtained);
 - (b) all Non-interested Directors of IFT certify to NZXR prior to announcing the Transaction to the market, that:
 - i. the Transaction has been entered into and negotiated on an arm's length commercial basis;
 - ii. in their opinion, entry into the Transaction 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 MCO-related Entity) or the Co-Investor; and
 - iii. none of MCO, the Director(s) of IFT who are Associated Persons of MCO (or any MCO-related Entity) or the Co-Investor have unduly influenced the promotion of, or decision to enter into, the Transaction, or voted on any resolution to approve the Transaction;
 - (c) IFT notifies NZXR, prior to entry into any Transaction in reliance on the waiver that it is intending to enter in to the Transaction and that IFT is not otherwise required to obtain approval of its shareholders for the Transaction or a specific waiver has been obtained;
 - (d) if IFT enters into any Transaction in reliance on the waiver it will announce to the market that the Transaction was entered into in reliance on the waiver and the reasons why reliance on the waiver was required;
 - (e) IFT may only enter into a Transaction in reliance on the waiver where any fees payable by IFT or any Co-Investor to MCO or any MCO-related Entity in connection with the Transaction are:
 - i. fees payable in accordance with existing management agreements with MCO or any MCO-related Entities; or
 - ii. any fee arrangements otherwise permitted or not prohibited by the Rules (due to a transaction specific waiver, shareholder approval or otherwise);
 - (f) IFT and the Co-Investor will each make their capital contributions towards the investment:

- i. on the same or materially alike terms and at the same price for the interests acquired, or for a price that has the same economic effect (in each case proportionate to the interests acquired); or
 - ii. to the extent that the terms or price do not meet these conditions, the Non-interested Directors shall certify that in their opinion the differences in the terms or the price (as applicable) are 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 MCO-related Entity) or the Co-Investor; and
- (g) the waiver, its conditions and its implications are disclosed in IFT's half-year reports and annual reports from when the waiver is announced to market, and any Transaction entered into in reliance on this waiver is disclosed in IFT's next half-year report and annual report following the Transaction being entered into.
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 influence the promotion of, or the decision to enter into, the Material 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 a Co-Investor is unlikely to influence entry into or the terms of a Transaction, as:
 - i. entry into, and the terms of, any Transaction is to be negotiated on an arm's length commercial basis;
 - ii. pursuant to the shareholders' agreement governing any joint venture or consortium arrangement, IFT and a Co-Investor will each make their capital contributions towards the Transaction on terms pursuant to the condition at paragraph 2(f); and
 - iii. decisions to enter into any Transaction which has the benefit of waiver relief will be made by IFT's Non-interested Directors and the MCO-related Directors, or their alternates, will not vote on the decision by IFT to enter into the Transaction;
 - (c) IFT has submitted, and NZXR has no reason not to accept, that it is often not practical to seek shareholder approval for a Transaction with a Co-Investor. IFT has further submitted that individual waiver applications or seeking shareholder approval creates transaction risk and that a standing waiver for a Co-Investor relationship will



increase the efficiency with which IFT can transact while the interests of shareholders can be protected with conditions outlined in the waiver;

- (d) the certifications that will be provided by IFT's Non-interested Directors as a condition of the waiver provide comfort that any Transaction 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 Transaction; and
- (e) NZXR has granted numerous transaction specific waivers in the past that are of the same or similar scope as this waiver.



Appendix One

1. IFT is a Listed Issuer with Securities Quoted on the NZX Main Board and the NZX Debt Market.
2. IFT receives investment management and advisory services from Morrison & Co Infrastructure Management Limited (**MCIM**), a MCO-related Entity. For the purposes of this decision:
 - a. **MCO** means H.R.L Morrison & Co Group LP;
 - b. **Related Entity** has the meaning given to “related company” in section 2(3) of the Companies Act 1993, except that “company” shall mean a company or other body corporate wherever incorporated; and
 - c. **MCO-related Entity** means a Related Entity of MCO.
3. IFT’s Board has always included one or more Directors associated with MCO (**MCO-related Directors**). Currently there is one MCO-related Director, namely Marko Bogoevski. Due to the relationship described at paragraph 2, it is expected that the IFT Board will continue to include MCO-related Directors. The Board composition is subject to:
 - a. potential MCO-related Directors being nominated for appointment;
 - b. Shareholders approving the appointment; and
 - c. the Independent Director requirements in the Rules.
4. IFT often invests through a consortium, with co-investors that have also engaged an MCO-related Entity for investment management or advisory services (**Co-Investor**).
5. For the purposes of Rule 9.2.1, IFT and a Co-Investor will be Related Parties under Rule 9.2.3 because:
 - a. IFT and the Co-Investor each receive investment management and advisory services from MCO-related Entities;
 - b. MCO-related Entities are members of the MCO group and may be staffed by the same personnel and share common directors;
 - c. an MCO-related Director is an Associated Person of the Co-Investor pursuant to Rule 1.8.2, as the MCO-related Director could be influenced in making a decision or exercising a power affecting IFT as a consequence of the investment management arrangements between MCO and the Co-Investor. Despite not necessarily being directly involved in the investment management activities, a MCO-related Director may be interested in the investment management activities given the MCO-related Director will hold a limited partnership interest in MCO (directly or indirectly), and/or be a director and/or officer of MCO, H.R.L Morrison & Co Group GP Limited and/or a MCO-related Entity; and
 - d. as an MCO-related Director is an Associated Person of the Co-Investor, under Rule 1.8.5, the Co-Investor is also an Associated Person of the MCO-related Director. Accordingly under Rule 9.2.3(c) the Co-Investor is a Related Party of IFT.

6. A co-investment transaction, or the broader related series of transactions that the co-investment transaction forms part of, may be a Material Transaction, as defined in Rule 9.2.2 and as amended by IFT's Constitution, for the purposes of Rule 9.2.1 (**Transaction**).
7. IFT's Constitution, lowers the threshold for a Material Transaction for the purpose of Rule 9.2.2 (a) – (d) to 5% of the Average Market Capitalisation of IFT.
8. This waiver provides relief for the relationship between IFT and any Co-Investor where in entering any Transaction, the relationship would be limited to:
 - a. a Related Party relationship between IFT and a Co-Investor arising solely due to management of the Co-Investor by MCO;
 - b. in relation to the Transaction, any advice being provided by MCO or any MCO-related Entity would be under the terms of IFT's and the Co-Investor's own investment management agreements existing prior to the Transaction;
 - c. any fees to be received by MCO or any MCO-related Entity in respect of the Transaction will be in accordance with existing agreements or as otherwise permitted or not prohibited by the Rules. The fees may include performance fees if the performance of the investment is successful and exceeds thresholds specified in those agreements;
 - d. outside each of those agreements, neither any consortium nor joint venture will be charged for advice from MCO-related Entities in relation to the Transaction unless otherwise permitted or not prohibited by the Rules; and
 - e. no success fees will be payable to MCO or an MCO-related Entity for entry into the Transaction.
9. IFT has submitted that IFT and any Co-Investor will each make capital contributions towards a Transaction. Those capital contributions will either:
 - a. be on the same or materially alike terms and at the same price for the interests acquired, or for a price that has the same economic effect (in each case proportionate to the interests acquired); or
 - b. to the extent that the terms or price are not those specified in paragraph 9(a), the differences in the terms or the price (as applicable) will be 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 MCO-related Entity) or the Co-Investor.
10. An MCO-related Director may participate in Board discussions about any Transaction, but will not vote on any resolution to enter into a Transaction. Only those IFT Directors who are not interested in the Transaction (**Non-Interested Directors**) would vote on entry into any Transaction.



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);

