



NZX Regulation Decision

Infratil Limited (“IFT”)

Application for a waiver from – NZX Main Board Listing
Rule 9.1.1 and Rule 9.2.1

12 September 2014



Application One – Waiver from Listing Rule 9.1.1

Decision

1. On the condition 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”) 9.1.1 to the extent this Rule prohibits IFT entering into the Divestment (as defined in Appendix One) without shareholder approval.
2. The waiver in paragraph 1, above, is provided on the condition that the Independent Directors of IFT certify to NZXR that:
 - a. The Divestment does not change the essential nature of the business of IFT;
 - b. The Divestment is in the best interests of IFT and its shareholders; and
 - c. The Divestment is not a major transaction requiring shareholder approval for the purposes of the Companies Act 1993.
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 9.1.1 seeks to regulate transactions that are major decisions for an Issuer or which may change the essential nature of the business of an Issuer. The rule is not intended to regulate transactions which are entered into by an Issuer in the ordinary course of business. NZXR recognises that the Divestment is consistent with the nature of IFT’s business of investment in, and from time to time divestment of, infrastructure related assets and businesses;
 - b. NZXR recognises that an Issuer’s AMC is not always the most appropriate benchmark to assess which transaction should require approval of shareholders. Although the Divestment represents slightly more than 50% of the AMC of IFT (based on current assumptions regarding the AU\$/NZ\$ exchange rates and any working capital adjustments arising in respect of the Divestment), it represents a relatively smaller proportion of IFT’s total assets and wider business. IFT advised, and NZXR acknowledges, that the value of the Divestment will be approximately 28% of IFT’s total assets;
 - c. the major transaction provisions of the Companies Act 1993 provide that divestment transactions the value of which exceed 50% of the value of a company’s assets must be approved by a special resolution of shareholders, or be contingent upon such approval. This requirement cannot be waived. Accordingly, shareholders are afforded the protections of the Companies Act 1993 for transactions that are significant compared to

the value of a company's assets, and will have the opportunity to vote on these transactions. In this instance, the Divestment does not trigger this requirement and shareholder approval is not required by the Companies Act 1993. The conditions of the waiver require the Independent Directors of IFT to give a certification to this effect;

- d. IFT have submitted and NZXR accepts, that, in the circumstances of the transaction, it would be unduly onerous and may risk compromising value to the shareholders of IFT, if the Divestment was required to be contingent upon shareholder approval; and
- e. there is precedent for the decision.

Application Two – Waiver from Listing Rule 9.2.1

Decision

6. On the condition in paragraph 7 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 Rule 9.2.1 to the extent that this Rule prohibits entry into the Divestment due to the MCO Mandate (as defined in Appendix One), without shareholder approval.
7. The waiver in paragraph 6, above, is provided on the condition that the Independent Directors of IFT certify to NZXR that:
 - a. The MCO Mandate and the Divestment have been entered into, and negotiated on, an arm's length commercial basis;
 - b. The MCO Mandate and the Divestment have been considered independently of MCO, and the directors of IFT who are associated with MCO did not unduly influence the promotion of, or decision to enter into, the MCO Mandate and the Divestment, or vote on any resolution to approve the Divestment or enter into the MCO Mandate;
 - c. Undertaking the Divestment and entry into the MCO Mandate, is in the best interests of IFT and its shareholders who are not related to, or Associated Persons of, MCO; and

provided that any person who was not an Independent Director at the time of entry into the MCO Mandate only gives a certificate in respect of the Divestment and not the MCO Mandate.
8. 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.
9. The Rules to which this decision relates are set out in Appendix Two.

Reasons

10. In coming to the decision to provide the waiver set out in paragraph 6 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 6, will not offend the policy behind Rule 9.2.1;

- b. IFT submits, and NZXR agrees, that MCO has not unduly influenced the promotion of, or the decision to enter into, the Divestment or the MCO Mandate. The decision to enter into the Divestment and MCO Mandate had been made by IFT's Independent Directors. IFT has advised that those MCO related Directors will not vote on the decision by IFT to enter into the Divestment or the MCO Mandate;
- c. the certifications provided by the Independent Directors as a condition of the waiver provide comfort that the Divestment and MCO Mandate have been negotiated, and will be 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 Divestment or the MCO Mandate;
- d. IFT has submitted, and NZXR has no reason not to accept, that the fees payable to MCO as part of the MCO Mandate reflect market rates. IFT could undertake the Divestment by engaging alternative advisers to provide advice, however the Independent Directors of the Board of IFT consider MCO's understanding of the business and industry means it is best placed to provide this service; and
- e. there is precedent for this decision, including the waiver granted to IFT on 28 February 2014.

Confidentiality

- 11. IFT has requested that this application and any decision be kept confidential until IFT has made an announcement of the Divestment.
- 12. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants IFT's request.

ENDS



Appendix One

1. IFT is a Listed Issuer with Securities Quoted on the NZX Main Board and NZX Debt Market.
2. IFT intends to undertake a divestment of its National Electricity Market investments within the Infratil Energy Australia Group, being Lumo Energy Australia Pty Limited and Infratil Energy Australia Pty Limited and TFI Partners Pty Ltd (the “**Divestment**”).
3. H.R.L Morrison & Co Group LP (“**MCO**”) is IFT’s investment manager under a longstanding investment management agreement. MCO, through one or more of its wholly owned subsidiaries, is acting as IFT’s lead financial advisor in respect of the Divestment (“**MCO Mandate**”), with assistance from Aquasia Pty Limited (“**Aquasia**”). The MCO Mandate is in addition to MCO’s role as IFT’s investment manager.
4. Two directors of IFT, Marko Bogoevski and Duncan Saville (“**MCO related Directors**”), are also directors and shareholders of MCO. Marko Bogoevski is also the Chief Executive of MCO. The remaining directors of IFT (the “**Independent Directors**”) are Independent Directors for the purposes of the Rules.
5. IFT’s current Average Market Capitalisation (“**AMC**”) is approximately NZ\$1.38 billion. The expected value of the Divestment is in excess of 50% of IFT’s AMC based on current exchange rates and the expected level of working capital at completion.
6. The businesses which are the subject of the Divestment are not considered by IFT to be as significant a proportion of IFT’s total assets or total business as would be suggested by a calculation based solely on the proportion of IFT’s AMC. In particular:
 - a. The book value of the businesses subject of the Divestment is only approximately 10% of the book value of IFT’s total assets and approximately 20% of IFT’s AMC. These values are based on IFT’s financial statements as at the most recent balance date (for the financial year ending 31 March 2014); and
 - b. The EBITDA attributed to the assets subject of the Divestment is only approximately 12% of IFT’s consolidated EBITDA as at IFT’s most recent balance date.
7. The MCO Mandate is one of a series of transactions of which the Divestment forms part, and the Divestment is a Material Transaction for the purpose of Rule 9.2.1. MCO, a Related Party of IFT, is a direct beneficiary of the MCO Mandate. As MCO would receive a direct benefit from the MCO Mandate, the entry into the related Material Transaction, being the Divestment, would otherwise require shareholder approval under Rule 9.2.1.
8. The fees payable to MCO and Aquasia as a result of the Divestment comprise a success fee of up to 1% of the enterprise value realised from the Divestment. MCO’s share of this success fee is intended to be 0.5% of the enterprise value. IFT is satisfied that the 1% fee payable to MCO and Aquasia is consistent with 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 9.1 Disposal or Acquisition of Assets

- 9.1.1 An Issuer shall not (subject to Rule 9.1.3) enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the Issuer or assets to be held by the Issuer:
- (a) which would change the essential nature of the business of the Issuer; or
 - (b) in respect of which the gross value is in excess of 50% of the Average Market Capitalisation of the Issuer;

Except with the prior approval of an Ordinary Resolution of the Issuer or a special resolution if that Issuer must obtain approval of the transaction or transactions by a special resolution under section 129 of the Companies Act 1993.

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

...



(b) 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:

...

(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);

