



# NZX Regulation Decision

Infratil Limited (“IFT”)

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

5 June 2018



# 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 Listing Rule (**Rule**) 9.2.1 to the extent that this Rule would otherwise require IFT to seek shareholder approval to enter into the Divestment due to the MCO Mandate.
2. The waiver in paragraph 1, above, is provided on the condition that the Independent Directors of IFT certify, once the Divestment has been entered into, 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; and
  - 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.
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, and will not unduly influence, the promotion of, or the decision to enter into, the Divestment or the MCO Mandate. The decisions to enter into the Divestment and MCO Mandate have been (or, in the case of the Divestment, will be) made by IFT's Independent Directors. IFT has advised that MCO related Directors did not vote on the decision by IFT to enter into the MCO Mandate, and will not vote on the decision by IFT to enter into the Divestment;
  - c. the certifications to be provided by the Independent Directors as a condition of the waiver provide comfort that the Divestment and MCO Mandate have been negotiated and entered into (or, in the case of the Divestment, will have been entered into at the time of the certifications) 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 decisions in respect of the Divestment and 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, 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 12 September 2014.

## Confidentiality

- 6. IFT has requested that this application and any decision be kept confidential until the Divestment is announced by IFT.
- 7. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants IFT's request.



## Appendix One

1. Infratil Limited (**IFT**) is a Listed Issuer with Securities Quoted on the NZX Main Board and NZX Debt Market.
2. IFT is considering whether to undertake a divestment of its investment in NZ Bus, which includes 100% of the shares held by IFT's subsidiary Swift Transport Limited in New Zealand Bus Finance Company Limited, New Zealand Bus Limited and Swift Transport No.1 Limited (the **Divestment**).
3. H.R.L Morrison & Co Group LP, through one or more of its wholly owned subsidiaries (together, **MCO**), is acting as one of IFT's financial advisors in respect of the Divestment (**MCO Mandate**), with assistance from UBS New Zealand Limited (**UBS**). The MCO Mandate is in addition to MCO's role as IFT's manager under a longstanding investment management agreement.
4. 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).
5. 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 MCO Mandate – namely that fees payable to MCO are based on the success of the Divestment. 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).
6. The remaining directors of IFT (the **Independent Directors**) are Independent Directors for the purposes of the Rules.
7. 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:

*"...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:*

*a. for the purpose of NZX Rule 9.2.2(a) to (d), 5% of the average market capitalisation of the Company; or*

*b. for the purpose of NZX Rule 9.2.2(e), 0.5% of the average market capitalisation of the Company."*
8. IFT's current Average Market Capitalisation as at the date of this waiver is approximately NZ\$1.84 billion. Five percent of this figure is approximately \$92 million and 0.5% of this figure is approximately \$9.2 million.
9. 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(a).
10. 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.

11. The fees payable to MCO under the MCO Mandate include a base fee and incentive fee (only applicable when the transaction value exceeds 7.5 times the EBITDA of NZ Bus (**Excess Transaction Value**)) of up to 2.5% of the Excess Transaction Value.
12. The fees payable to UBS for its services during the Divestment include a base fee, an incentive fee calculated on the same basis and subject to the same cap as the incentive fee payable to MCO, as well as a discretionary fee.
13. IFT is satisfied that the fees payable to MCO and UBS are 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 9.2 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 ...

