



NZX Regulation Decision

Investore Property Limited (IPL)

Application for waivers from NZX Main Board Listing Rules
3.3.5 to 3.3.15 and 3.4.3

10 June 2016



Waivers from NZX Main Board Listing Rules 3.3.5 to 3.3.15

Decision

1. Subject to the conditions in paragraph 2 below, and on the basis that the information provided by Investore Property Limited (**IPL**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants IPL waivers from NZX Main Board Listing Rules (**Rule**) 3.3.5 to 3.3.15, to the extent required to allow SIML to exercise, and to reflect the exercise of, the Appointment Powers.
2. The waiver in paragraph 1 is provided on the following conditions:
 - a. at any time that SIML has exercised the Appointment Powers, there must be an independent chairperson of the IPL Board who shall have a casting vote on any Board resolutions;
 - b. the Management Agreement is in force;
 - c. this waiver is disclosed as a Disclose Register Entry, as well as in IPL's Offer Documents, and its half-year and annual reports;
 - d. at any time that SIML has exercised the Appointment Powers, IPL should not count any votes cast by Stride and its Associated Persons (other than any Director in respect of Equity Securities owned or held on its behalf in the Director's personal capacity) on any resolution to appoint or remove any possible SIML Independent Director;
 - e. IPL will be given a Non-Standard Designation (**NS Designation**) upon its Listing and the quotation of its ordinary shares; and
 - f. the NS Designation is disclosed in the PDS, as well as in IPL's Offer Documents, and its half-year and annual reports.
3. The information on which this decision is based is set out in Appendix One to this decision. These waivers will not apply if that information is not or ceases to be full and accurate in all material respects.
4. Capitalised terms which have not been defined in this decision have the meanings given to them in the Rules.
5. The Rules to which this decision relates is set out in Appendix Two to this decision.

Reasons

6. In coming to the decision to grant the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. as a property holding company with an external investment manager, IPL will be managed on a day to day basis by its external manager, SIML. IPL will have an investment mandate and any change to this mandate will be required to be approved by SIML. Given this structure and the investment mandate, IPL's Board will have a more limited strategic role than in an operating company. IPL has therefore submitted, and NZX has no reason not to agree, that it is appropriate for SIML to have influence over the strategic direction of IPL, by being able to appoint Directors through the Appointment Powers;

- b. shareholders' interests will be represented through the requirement that if SIML has exercised its Appointment Powers there must be at least two SIML Independent Directors and one of whom must be the chairperson who will hold a casting vote. This structure will provide independent representation on the IPL Board;
- c. the condition in paragraph 2(c) to this waiver requires upfront disclosure of IPL's Board structure in the PDS, as well as ongoing disclosure of its Board structure in IPL's Offer Documents and principal reports to shareholders. IPL shareholders and potential investors will therefore be able to access and assess information about the Board structure in advance of their investment decision; and
- d. the waivers are granted only to the extent required to allow SIML to exercise, or reflect the exercise of, the Appointment Powers. If at any time SIML has not exercised the Appointment Powers, the requirements of Rules 3.3.5 to 3.3.15 will, in effect, apply to IPL as though NZXR had not granted IPL waivers from these Rules.



Waiver from NZX Main Board Listing Rule 3.4.3

Decision

7. Subject to the conditions in paragraph 8 below and on the basis that the information provided by IPL is complete and accurate in all material respects, NZXR grants IPL a waiver from Rule 3.4.3, to the extent that IPL Directors are restricted from voting on a resolution on the grounds that they are “interested” (as defined in Rule 3.4.3) in the matter, solely due to being Directors of SIML but for no other reason.
8. The waiver in paragraph 7 is provided on the following conditions:
 - a. at any time that SIML has exercised the Appointment Powers, there must be an independent chairperson on the IPL Board who shall have a casting vote on any Board resolutions;
 - b. before listing on the NZX Main Board, and at any time that a new person is appointed to the IPL Board, each of IPL’s Directors shall certify to NZXR that any Board resolution that they approve will, in their opinion, be in what the Director believes to be the best interests of IPL (if they have not done so yet);
 - c. this waiver is disclosed as a Disclose Register Entry, as well as in IPL’s Offer Documents, and its half-year and annual reports; and
 - d. any Directors appointed by SIML shall be identified in the PDS, as well as in IPL’s Offer Documents, and its half year and annual reports.
9. 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.
10. Capitalised terms which have not been defined in this decision have the meanings given to them in the Rules.
11. The Rule to which this decision relates is set out in Appendix Two to this decision.

Reasons

12. In coming to the decision to grant the waiver set out in paragraph 7 above, NZXR has considered that:
 - a. under the Management Agreement there are sufficient safeguards against potential conflicts, including the Conflicts Policy. Furthermore, any Directors appointed by SIML will be required to meet their fiduciary duties to IPL when voting on resolutions. All IPL Directors will also be required, under the condition described in paragraph 8(b) above, to certify that they will vote in what they believe to be the best interests of IPL;
 - b. shareholders’ interests will be protected through the requirement that, if SIML has exercised its Appointment Powers, there must be at least two SIML Independent Directors, one of whom must be the chairperson, who will hold a casting vote. This structure will provide independent representation on the IPL Board, and protection for investors in the situation where the SIML Director’s are voting on matters in which they may be interested, if SIML has exercised its Appointment Powers;



- c. due to the nature of the arrangement between SIML and IPL, the interest that is created by the SIML Director's being directors of SIML would, but for this waiver, prevent the SIML Director's voting on Board resolutions in relation to governance of IPL. If not for this waiver, the purpose of having Directors appointed by SIML on the IPL Board would be frustrated; and
- d. the conditions to this waiver require upfront disclosure of the Board structure in the PDS, as well as ongoing disclosure of the Board structure in IPL's Offer Documents and principal reports to shareholders. IPL shareholders and potential investors will therefore be able to access and assess information about the Board structure in advance of their investment decision.



Appendix One

1. Stride Property Limited (**Stride**) is a Listed Issuer with its ordinary shares Quoted on the NZX Main Board.
2. On or about 29 April 2016, Stride transferred its real estate investment management business into its wholly-owned subsidiary, Stride Investment Management Limited (**SIML**), with Stride retaining its property portfolio.
3. Since incorporation of SIML on 16 February 2016, Stride and SIML have an identical set of Directors.
4. In November 2015, Investore Property Limited (**IPL**), a wholly-owned subsidiary of Stride, acquired nineteen “large format retail” properties (**LFR Properties**) – single-storey or low level properties comprising retail shops and outlets and car parking areas with more than 50% of the property, generally occupied by, and more than 50% of the rental generally provided by, a single major tenant or a limited number of major tenants under net leases - from Antipodean Supermarkets Limited and Antipodean Properties Limited on an arm’s length and commercial basis.
5. Between 29 April 2016 and 9 June 2016, Stride and its subsidiary Stride Holdings Limited will have sold six LFR Properties (**LFR Divestment**) to IPL.
6. On 9 June 2016, IPL entered into a sale and purchase agreement with Shopping Centres Australasia Property Group Trustee NZ Limited (**SCA**), for the acquisition of fourteen LFR Properties in total (**SCA Acquisition**). The SCA Acquisition was entered into on an arm’s length and commercial basis.
7. On or about 10 June 2016, Investore and SIML will enter into a management agreement, under which SIML will manage IPL’s entire property portfolio (**Management Agreement**).
8. On or about 11 July 2016, Stride intends to demerge from IPL by distributing its holding of shares in IPL to Stride shareholders (**IPL Distribution**). Stride shareholders will receive 1 ordinary share in IPL for every 4 ordinary shares held in Stride.
9. Stride intends for IPL to conduct an initial public offering of its ordinary shares (**Offer**) as set out in its product disclosure statement, dated 10 June 2016 (**PDS**). IPL will then List, and have its ordinary shares Quoted, on the NZX Main Board on 12 July 2016. Upon IPL’s Listing and Quotation, Stride will hold approximately 19.9% of IPL’s ordinary shares on issue. SIML will not hold any of IPL’s ordinary shares on issue.

Waivers from Rules 3.3.5 to 3.3.15 – Further Background

10. Under the terms of IPL’s constitution:
 - a. the IPL Board will consist of four Directors;
 - b. SIML shall have the right to appoint two (but not less than two) Directors and to remove any such Director and appoint another person as a Director in his or her place (**Appointment Powers**);
 - c. at any time SIML has exercised the Appointment Powers, two Directors, who are independent of SIML (**SIML Independent Directors**), are to be elected and removed by IPL’s shareholders by ordinary resolution; IPL would likely also deem the SIML



Independent Directors to be Independent Directors, for the purposes of Rule 3.3.2 (**Independent IPL Directors**);

d. a SIML Independent Director will mean that:

- i. the Director is not an Associated Person (as defined in the Rules) of any of the following:
 - 1. SIML; or
 - 2. a person who holds or controls more than 25% of the ordinary shares of SIML; or
 - 3. a related company of a person who holds or controls more than 25% of the ordinary shares of SIML; or
- ii. the Director was not appointed by SIML under the Appointment Powers;
- iii. the Director is not an executive officer of SIML and has no Disqualifying Relationship with SIML; or
- iv. pursuant to any Ruling or other written consent of NZX, the Director is to be treated as being independent of SIML (a "SIML Independent Director").

e. at any time that SIML has exercised the Appointment Powers, one of the Independent IPL Directors shall be the chairperson of the IPL Board (**Independent Chairperson**);

f. at any time that SIML has exercised the Appointment Powers:

- i. the Independent Chairperson shall have a casting vote on any Board resolutions;
- ii. the IPL Board may appoint additional Directors in order to ensure that the Board has four Directors. Any Board appointed Director would be required to retire from office at the next annual meeting of IPL's shareholders (which is also in accordance with Rule 3.3.6);
- iii. any Director appointed by SIML shall not be required to:
 - 1. be elected by IPL's shareholders for the purposes of Rule 3.3.5;
 - 2. be required to retire from office at IPL's next annual meeting for the purposes of Rule 3.3.6;
 - 3. obtain the consent of a majority of the IPL Board before appointing any other person to act as alternative Director for the purposes of Rule 3.3.7;
 - 4. be removed from office, for the purposes of Rule 3.3.10;
 - 5. retire, for the purposes of Rules 3.3.11, 3.3.12;
- iv. SIML and its Associated Persons (other than any Director in respect of Equity Securities owned or held on its behalf in the Director's personal capacity) will not be able to vote on any shareholder resolutions for the election or removal of the any possible SIML Independent Directors;
- v. IPL's Board must have at least two SIML Independent Directors; and



- vi. IPL's shareholders can elect up to two directors who must be SIML Independent Directors for election.
11. The quorum for IPL Board meetings will be two Directors.
 12. The Appointment Powers shall be preserved (unless and until the Appointment Powers have been removed in IPL's constitution by a special resolution of IPL's shareholders).
 13. Immediately prior to IPL's lodgement of the PDS, SIML intends to exercise the Appointment Powers. The two Directors to be appointed by SIML will also be Directors of SIML.

Waiver from Rule 3.4.3 – Further Background

14. As SIML may receive fees, or increase fees under the Management Agreement, an IPL Director who is also a SIML Director, may be "interested" in any matter involving SIML, as he or she would be a "...a director...of another part to, or person who will or may derive a material financial benefit from, the transaction...".
15. Where a Director is "interested" for the purposes of Rule 3.4.3, the Director shall not vote on a Board resolution, and it shall not be counted in the quorum for the purposes of consideration of that matter.
16. The Management Agreement contains safeguards against potential conflicts which SIML may face. In particular, SIML has adopted a conflicts policy and acquisition and leasing protocols (**Conflicts Policy**) which sets out SIML's procedures for managing conflicts which may arise by virtue of its role as manager for IPL, Stride, Diversified NZ Property Trust, and potentially other property investment vehicles. The Management Agreement sets out that:
 - a. SIML is to act in accordance with the Conflicts Policy; and
 - b. SIML may not amend the Conflicts Policy without the prior written consent of IPL (which consent cannot be unreasonably withheld or delayed) unless it considers (acting reasonably and in good faith) that the interests of IPL will not be materially prejudiced by the amendment.



Appendix Two

Rule 3.3 Appointment and Rotation of Directors

[...]

- Rule 3.3.5 No person (other than a Director retiring at the meeting) shall be elected as a Director at an annual meeting of Security holders of an Issuer unless that person has been nominated by a Security holder entitled to attend and vote at the meeting. There shall be no restriction on the persons who may be nominated as Directors (other than the holding of qualification shares, if the Constitution so requires) nor shall there be any precondition to the nomination of a Director other than compliance with time limits in accordance with this Rule 3.3.5. The closing date for nominations shall not be more than two months before the date of the annual meeting at which the election is to take place. An Issuer shall make an announcement to the market of the closing date for Director nominations and contact details for making nominations no less than 10 Business Days prior to the closing date for Director nominations. Notice of every nomination received by the Issuer before the closing date for nominations shall be given by the Issuer to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting and the Issuer shall specify in such notice the Board's view on whether or not the nominee would qualify as an Independent Director. 3.3.6 Any person who is appointed as a Director by the Directors shall retire from office at the next annual meeting of the Issuer, but shall be eligible for election at that meeting.
- Rule 3.3.6 Any person who is appointed as a Director by the Directors shall retire from office at the next annual meeting of the Issuer, but shall be eligible for election at that meeting.
- Rule 3.3.7 No Director may appoint another person to act as alternate Director for him or her, except with the consent of a majority of his or her co-Directors. That appointment may be revoked by a majority of his or her co-Directors or by the Director who appointed the alternate. A Director may not be appointed to act as alternate for another Director. No Director shall appoint a deputy or agent otherwise than by way of appointment of an alternate.
- Rule 3.3.8 The Constitution may give a Security holder the right to appoint Directors, so long as:
- (a) the proportion which the number of such Directors bears to the total number of Directors expected to hold office immediately after such appointment does not exceed the proportion of the total Votes of the Issuer attaching to Securities held by the appointer; and
 - (b) if the appointer exercises its rights to appoint Directors, then the appointer has no right to Vote upon the election of other Directors.
- Rule 3.3.9 No term of appointment of an Executive Director of an Issuer or any of its Subsidiaries, shall exceed five years. This provision shall not preclude reappointment of an Executive Director upon expiry of a term of appointment, and shall not affect the terms of the engagement of that Executive Director as an employee.



- Rule 3.3.10 All Directors (other than a Director appointed pursuant to Rule 3.3.8) shall be subject to removal from office as Director by Ordinary Resolution of the Issuer.
- Rule 3.3.11 Subject to Rule 3.3.12, at least one third of the Directors or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office at the annual meeting each year, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected or deemed elected.
- Rule 3.3.12 The following Directors shall be exempt from the obligation to retire pursuant to Rule 3.3.11:
- (a) Directors appointed pursuant to Rule 3.3.8; and
 - (b) Directors appointed by the Directors, who are offered for re-election pursuant to Rule 3.3.6; and
 - (c) one Executive Director (if the Constitution so provides). The Directors referred to in (a) and (c) shall be included in the number of Directors upon which the calculation for the purposes of Rule 3.3.11 is based. The Directors referred to in (b) shall be excluded from that number.
- Rule 3.3.13 No resolution to appoint or elect a Director (including a resolution to re-elect any Director under Rule 3.3.6) shall be put to holders of Securities unless:
- (a) the resolution is for the appointment of one Director; or
 - (b) the resolution is a single resolution for the appointment of two or more Directors, and a separate resolution that it be so voted on has first been approved without a Vote being cast against it.
- Nothing in this Rule 3.3.13 prevents the election of two or more Directors by ballot or poll.
- Rule 3.3.14 An Issuer may, with the prior approval of NZX, provide in its Constitution for the appointment of a person to a special office such as "Founder President". If the person holding that office is a Director, then (subject to Rule 3.3.15) all of the provisions of the Rules as to Directors shall apply to that person.
- Rule 3.3.15 A holder of a special office in terms of Rule 3.3.14 who is also a Director shall not be subject to retirement by rotation under Rule 3.3.11, provided that:
- (a) the holder of a special office shall retire every fifth year following appointment to the special office, as if Rule 3.3.11 applied to him or her in that year; and
 - (b) the holder of the special office shall in each year be included in the number of Directors upon which the calculation for the purposes of Rule 3.3.11 is based; and
 - (c) if an Executive Director holds office and is exempted from retirement by rotation under Rule 3.3.12, this Rule shall not apply, and the holder of the special office shall be subject to retirement by rotation under Rule 3.3.11



Rule 3.4 Proceeding and Powers of Directors

[...]

Rule 3.4.3 Subject to Rule 3.4.4, a Director shall not vote on a Board resolution in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum for the purposes of consideration of that matter. For this purpose, the term “interested” bears the meaning assigned to that term in section 139 of the Companies Act 1993, on the basis that if an Issuer is not a company registered under that Act, the reference to the “company” in that section shall be read as a reference to the Issuer.

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