



# NZX Regulation Decision

Bethunes Investments Limited (“BIL”)

Application for a waiver from NZX Main Board Listing Rule  
5.2.3

17 November 2017



## Waiver from Rule 5.2.3

### Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by Bethunes Investments Limited (**BIL**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) is grants BIL a waiver from NZX Main Board Listing Rule (**Rule**) 5.2.3 in respect of its ordinary shares for a period of twelve months from completion of the Transactions, to the extent that this Rule requires BIL to have at least 25% of shares held by 500 Members of the Public holding at least a Minimum Holding.
2. The waiver in paragraph 1 above is provided on the conditions that:
  - (a) NZXR receives an undertaking from TIL that it will not increase its holding in BIL following completion of the Transactions during the term of the waiver, otherwise than as a result of an allotment pursuant to an offer or issue of shares that is made pro-rata to all BIL shareholders or acquisition pursuant to the Dominant Owner Process;
  - (b) following the completion of Dominant Owner Process under the Takeovers Code, and no later than 35 calendar days following completion of the Transactions, at least 9% of shares are held by more than 500 Members of the Public for the remaining duration of the waiver, with each Member of the Public holding at least a Minimum Holding;
  - (c) BIL notifies NZXR and the market of the outcome of the Dominant Owner Process, once it becomes aware that the Dominant Owner Process has been completed;
  - (d) BIL clearly and prominently discloses liquidity as a risk in the notice of meeting sent to BIL shareholders to approve the Transactions;
  - (e) BIL clearly and prominently discloses this waiver, its conditions, and its implications in the Profile document prepared in connection with the Transactions;
  - (f) BIL clearly and prominently discloses this waiver, its conditions, and its implications in BIL's half year and annual reports, and in any Offer Documents relating to any offer of shares undertaken by BIL, during the period of the waiver;
  - (g) BIL consistently monitors the total number of Members of the Public holding shares and the percentage of shares held by Members of the Public holding at least a Minimum Holding;
  - (h) BIL notifies NZXR as soon as practicable if there is any material reduction to the total number of Members of the Public holding at least a Minimum Holding of shares, and/or the percentage of shares held by Members of the Public holding at least a Minimum Holding; and
  - (i) BIL provides NZXR with a written quarterly update of the total number of Members of the Public holding shares holding at least a Minimum Holding and the percentage of shares held by Members of the Public holding at least a Minimum Holding. The quarterly updates are from the date the waiver is granted, for the period of the waiver. The updates are to be provided to NZXR within ten business days of the end of each quarter.
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 Rule to which this decision relates is set out in Appendix Two to this decision.
5. Capitalised terms that are not defined in the decision have the meanings given to them in the Rules.

## Reasons

6. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
  - (a) the purpose of Rule 5.2.3 is to promote a liquid market which is important to ensure efficient price setting and to enable shareholders to trade;
  - (b) BIL expects that on conclusion of the Employee/Director-Designate Transfers and Dominant Owner Process, approximately 12.53% of the shares will be held by Members of the Public, holding at least a Minimum Holding. BIL expects to meet the requirement that 500 Members of the Public hold at least a Minimum Holding upon completion of the Employee/Director-Designate Transfers. NZXR is satisfied that BIL will maintain a spread of Security holders which is sufficient to ensure a liquid market and that the granting of this waiver will not adversely affect holders of the shares;
  - (c) this waiver, and the implications of the waiver, are disclosed in the notice of meeting and Profile in respect of the Transactions. As such, current BIL shareholders have been fully informed as to the likely spread of shares following completion of the Transactions. Further, the condition at paragraph 2(c), will ensure that the market is fully informed of the completion of the Dominant Owner Process;
  - (d) BIL has submitted, and NZXR has no reason not to accept, that the spread of shares is likely to increase over time. While the Dominant Owner Process may initially reduce the number of shares held by Members of the Public, completion of the Employee/Director-Designate Transfers and TIL In-Specie Distribution will result in an increased number of shares being held by Members of the Public;
  - (e) the conditions in paragraphs 2 (c) – 2(f) above will provide access to information about this waiver and its implications for those wishing to trade in, or accept any offer of, shares during the period of this waiver;
  - (f) the conditions contained in paragraphs 2 (g), (h), and (i) above, require BIL to monitor the spread of shares and to provide information that will allow NZXR to monitor any material changes in BIL's spread of shares, over the period of the waiver;
  - (g) NZXR will have the opportunity to consider if a waiver is still required 12 months after the date of completion of the Transactions. Should the percentage of shares held by Members of the Public holding at least a Minimum Holding drop below 9%, NZXR will have the opportunity to reconsider this waiver; and
  - (h) there is precedent for this decision.

## Confidentiality

7. BIL has requested that the application for a waiver from Rule 5.2.3, and NZXR's decision, be kept confidential until the notice of meeting and Profile in relation to the Transactions have been released.
8. In accordance with footnote 1 to Rule 1.11.2, NZXR grants BIL's request.



## Appendix One

1. BIL is a Listed Issuer with shares Quoted on the NZX Main Board.
2. On 26 October 2017, BIL entered into an asset and share sale agreement (**Acquisition Agreement**) with Transport Investments Limited (**TIL**), Kern Group (Logistics) Pty Ltd and the CGJ Daly Investment Trust (together the **Kern Entities**) to acquire the transport and logistics business and assets of TIL and all of the shares in TIL Logistics Group Limited (formerly Global Logistics Group Limited) (**Global**) (the **Acquisition**).
3. The total purchase price for the Acquisition is \$200 million, subject to net debt and working capital adjustments, and will be satisfied by an issue of BIL shares (**Share Consideration**) and cash consideration (**Cash Consideration**).
  - (a) The Share Consideration will involve the issue of 66,869,664 shares to TIL and issue of 6,463,670 shares to the Kern Entities at an issue price of \$1.50 per share, pursuant to the Acquisition Agreement.
  - (b) To part fund the Cash Consideration, BIL intends to issue up to 9,046,674 BIL shares by way of a private placement over two tranches to wholesale investors at \$1.50 per share (the **Private Placement**), with the remaining Cash Consideration financed by banking facilities.

(together the Acquisition and Private Placement are the **Transactions**)
4. Subject to the Transactions being approved by shareholders, completion of the Transactions will be immediately preceded by a consolidation of BIL shares, using a consolidation factor equal to 115,060,279 divided by 254.1915 (subject to rounding of individual shareholdings up to a whole number of Shares) (**Share Consolidation**), whereby existing BIL shareholders will receive a reduced amount of shares in proportion to their current holdings.
5. Following the completion of the Acquisition and tranche one of the Private Placement, TIL intends to transfer approximately 620,000 shares to:
  - (a) certain Directors in consideration for services rendered in contemplation and completion of the Acquisition; and
  - (b) approximately 600 employees and owner drivers in TIL, as an ex-gratia bonus,

(together, **Employee/Director-Designate Transfers**).
6. For the purposes of the Takeovers Code, in completing the Transactions, TIL and the Kern Entities will be deemed persons acting jointly or in concert and as such TIL and the Kern Entities (who are expected to hold 7.94% of BIL shares on completion of the Transactions) will, together with any other persons acting jointly and in concert with them in connection with the Transactions, become the holders or controllers of 90% or more of BIL's shares (together the **Dominant Owner**). As the Dominant Owner they will be required to comply with the obligations on a dominant owner under Part 7 of the Takeovers Code.
7. To comply with those obligations, the Dominant Owner proposes to send an acquisition notice under Part 7 of the Takeovers Code to existing shareholders immediately following completion of the Acquisition, notifying them that they have the right to sell their shares to the Dominant Owner at a price of \$1.50 per Share (**Voluntary Acquisition Rights**).

Shareholders may exercise their Voluntary Acquisition Rights within 21 days after the date on which the acquisition notice is sent (**Dominant Owner Process**).

8. On completion of the Transactions, Share Consolidation, Employee/Director-Designate Transfers and Dominant Owner Process there will be at least 600 Members of the Public holding approximately 12.53% of BIL ordinary shares on issue, with TIL and TIL Principals holding approximately 87.47% (provided that no existing BIL shareholders exercise their Voluntary Acquisition Rights). BIL has sought a waiver from Rule 5.2.3 as it will not meet the requirement that 25% of its shares be held by Members of the Public.
9. TIL has advised BIL that following completion of the Transactions, TIL proposes to distribute to its shareholders, some or all of the shares that it will acquire under the Acquisition and the Voluntary Acquisition Rights (**TIL In-Specie Distribution**). TIL proposes to undertake this distribution during the 12 month period following completion of the Transactions.
10. BIL has submitted that following completion of the TIL In-Specie Distribution, it is expected that the spread of BIL shares held by Members of the Public holding at least a Minimum Holding will increase to approximately 21.48%.



## Appendix Two

### Rule 5.2 – Quotation of Securities

**5.2.3** A Class of Securities will generally not be considered for Quotation on the NZSX or NZDX unless those Securities are held by at least 500 Members of the Public holding at least 25% of the number of Securities of that Class issued, with each Member of the Public holding at least a Minimum Holding, and those requirements are maintained, or NZX is otherwise satisfied that the Issuer will maintain a spread of Security holders which is sufficient to ensure that there is a sufficiently liquid market in the Class of Securities.

