



NZX Regulation Decision

Investore Property Limited (NS) (“IPL”)

Application for Waivers from NZX Listing Rules 2.2.1
to 2.8.1 and 2.10.1

20 March 2020



Background

1. The approval from NZX Regulation (**NZXR**) for the waivers set out in the decisions below will not apply if the information provided by IPL is not, or ceases to be, full and accurate in all material respects.
2. This decision relates to a prior waiver decision granted by NZXR to SML on 10 June 2016 and amended on 8 September 2017.
3. Capitalised terms which have not been defined in this decision have the meaning given to them in the NZX Listing Rules (**Rules**).
4. The information on which this decision is based is set out in Appendix One to this decision. This decision will not apply if that information is not or ceases to be full and accurate in all material respects.
5. The Rules to which these decisions relate are set out in Appendix Two to this decision.

Waiver from Listing Rules 2.2 to 2.8

Decision

6. Subject to the conditions in paragraph 7 and on the basis that the information provided by Investore Property Limited (**IPL**) is complete and accurate in all material respects, NZXR grants IPL a waiver from Rules 2.2 to 2.8 to the extent required to allow SIML to exercise, and to reflect the exercise of, the Appointment Powers.
7. The waiver in paragraph 6 above is subject to conditions that:
 - 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 in IPL's 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 continue to be identified by a Non-Standard Designation (**NS Designation**); and
 - f. the NS Designation is disclosed in IPL's Offer Documents and its Annual Reports.

Reasons

8. In coming to the decision to provide the waiver set out in paragraph 6 above, NZXR has considered that:
 - a. the conditions on which these waivers were initially granted have ensured that the market and the shareholders of IPL are aware of these waivers – IPL clearly and fully disclosed the effect of the waivers in the prospectus at the time of its IPO, IPL bears a NS designation, and IPL discloses its reliance on these waivers in each Annual Report;

- b. the proposed conditions provide comfort to NZXR that:
 - i IPL will continue to disclose the effect of the waivers to shareholders of IPL, and the wider market; and
 - ii if the Management Agreement ceases to apply, Directors appointed by SIML will be removed as Directors;
- c. the Appointment Powers have been in place prior to IPL's listing - NZXR notes that it is reasonable to consider that all current shareholders of IPL have either acquired shares in the IPL IPO, or acquired IPL shares on-market, with the knowledge of SIML's Appointment Powers, and that this knowledge has been incorporated into investor expectations and the pricing of IPL's shares;
- d. IPL's constitution requires that there must be at least two SIML Independent Directors on the IPL Board (where the Board comprises four Directors) or three SIML Independent Directors (where the Board comprises five Directors). In each case, one of the SIML Independent Directors must be the chairperson, and will hold a casting vote in the event of any deadlock. This structure provides independent representation on the IPL Board; and
- e. to require fundamental changes to IPL governance arrangements could potentially cause disruption in the market of IPL shares, and uncertainty for IPL shareholders.

Waiver from Listing Rule 2.10.1

Decision

- 9. Subject to the conditions in paragraph 10 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 2.10.1 to the extent that IPL Directors are restricted from voting on a resolution on the grounds that they are "interested" (as defined in Rule 2.10.1) in the matter, solely due to being Directors of SIML but for no other reason.
- 10. The waiver in paragraph 9 above 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. 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); and
 - c. this waiver is disclosed in IPL's Annual Reports; and
 - d. any Directors appointed by SIML shall be identified in IPL's Offer Documents, and its Annual Reports.

Reasons

- 11. In coming to the decision to provide the waiver set out in paragraph 6 above, NZXR has considered that:
 - a. IPL has submitted, and NZXR has no reason not to agree, that the purpose of the Appointment Powers is to align the day to day management of IPL by SIML and IPL's

strategic direction as determined by the IPL Board as much as possible by ensuring that the SIML Board is as fully informed as practicable about the IPL Board's views. This is important given IPL's narrow investment mandate, requiring that SIML has line of sight over transactions that are proposed in order for SIML to comply with its obligations under the Management Agreement;

- b. due to the nature of the arrangement between SIML and IPL, the interest that is created by the SIML appointed Directors being Directors of SIML would, but for this waiver, prevent the SIML appointed Directors voting on Board resolutions in relation to the governance of IPL. If not for this waiver, the purpose of having Directors appointed by SIML on the IPL Board would be frustrated;
- c. NZXR takes comfort that under the Management Agreement there are sufficient safeguards against potential conflicts, including the Conflicts Policy. Further, 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 at 10(b) above, to certify that they will vote in what they believe to be the best interests of IPL; and
- d. 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 (where the Board comprises four Directors) or three SIML Independent Directors (where the Board comprises five Directors), in each case where 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 Directors are voting on matters in which they may be interested, if SIML has exercised its Appointment Powers.

Appendix One

Background

1. Investore Property Limited (**IPL**) is a Listed Issuer with ordinary shares quoted on the NZX Main Board, and initially listed on the NZX Main Board on 12 July 2016.
2. Stride Property Group (**SPG**) is a stapled group, comprising Stride Property Limited (**Stride**) and Stride Investment Management Limited (**SIML**), with the shares of Stride and SIML stapled and quoted together as a stapled security on the NZX Main Board. Stride is a listed portfolio investment entity that invests in New Zealand office, retail, and industrial property. SIML is a real estate investment manager.
3. Stride and SIML have an identical set of Directors.
4. In November 2015, IPL (a wholly-owned subsidiary of Stride at the time) acquired nineteen large format retail properties (**LFR Properties**) from Antipodean Supermarkets Limited and Antipodean Properties Limited on an arm's length and commercial basis.
5. IPL acts in a narrow investment mandate, investing in LFR Properties, and has no employees. IPL is managed by SIML via a management agreement dated 10 June 2016 (as amended on or around 8 September 2017) (the **Management Agreement**) under which SIML manages IPL's entire property portfolio.
6. Upon IPL's Listing and Quotation, Stride held approximately 19.9% of IPL's ordinary shares on issue and as at the date of this waiver holds approximately 19.4% of IPL's ordinary shares on issue. SIML does not hold any of IPL's ordinary shares on issue.

Waiver from Rules 2.2 to 2.8 – Further Background

7. Under the terms of IPL's constitution:
 - a. the IPL Board must not at any time be more than five or less than 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 (the **Appointment Powers**);
 - c. at any time SIML has exercised the Appointment Powers, two Directors (where the Board is to comprise four Directors) or three Directors (where the Board is to comprise five Directors), who are independent of SIML (the **SIML Independent Directors**), are to be elected and removed by IPL's shareholders by ordinary resolution. IPL will likely also deem the SIML Independent Directors to be Independent Directors under the Rules (**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 to fill any casual vacancy (subject to the maximum number of Directors specified at 7a above). 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 2.7.1);
 - iii any Director appointed by SIML shall not be required to:
 - 1 be elected by IPL's shareholders for the purposes of Rules 2.3.1 and 2.3.2;
 - 2 be required to retire from office at IPL's next annual meeting for the purposes of Rule 2.7.1;
 - 3 obtain the consent of a majority of the IPL Board before appointing any other person to act as an alternate Director for the purposes of Rule 2.5.1;
 - 4 be removed from office, for the purposes of Rule 2.8.1; and
 - 5 retire, for the purposes of Rule 2.7.1;
 - 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 any possible SIML Independent Directors;
 - v IPL's Board must have at least two SIML Independent Directors (where the IPL Board comprises four Directors) or three SIML Independent Directors (where the IPL Board comprises five Directors); and
 - vi IPL's shareholders can elect up to three directors who must be SIML Independent Directors for election.
8. The quorum for IPL Board meetings will be three Directors.
9. 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). Waiver from Rule 2.10.1 – Further Background
10. 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 party to, or will or may derive a material financial benefit from, the transaction...”.

11. Where a Director is “interested” for the purposes of Rule 2.10.1, 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.
12. 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

NZX Listing Rules

Rule 2.2 Appointment of Directors

- 2.2.1 A person may be appointed as a Director of the Issuer by:
- (a) appointment by the Board, if permitted by the Governing Document of the Issuer,
 - (b) nomination and appointment at an Issuer's annual or special meeting of Equity Security holders in accordance with Rule 2.3,
 - (c) appointment by an Equity Security holder, as contemplated in Rule 2.4, or
 - (d) appointment as an alternate Director under Rule 2.5.

Rule 2.3 Director Nominations and Appointment

- 2.3.1 No person (other than a Director retiring at the meeting) may be elected as a Director at a meeting of an Issuer's Equity Security holders unless that person has been nominated by an Equity Security holder who will be entitled to attend and Vote at the meeting if he, she or it continues to hold Equity Securities on the date on which the entitlement to attend and Vote at the meeting is determined.
- 2.3.2 An Issuer must comply with the following Director nomination process:
- (a) the closing date for nominations must be no more than two months before the date of the relevant meeting at which the election is to take place,
 - (b) the closing date for nominations must be announced to the market at least 10 Business Days prior to such closing date,
 - (c) there must be no restriction on who may be nominated as a Director, unless:
 - (i) the Governing Document requires Directors to hold certain Financial Products to qualify as a Director, or
 - (ii) applicable legislation restricts who may be a Director of the Issuer,
 - (d) subject to (c) above, there must be no precondition to the nomination of a Director other than compliance with the time limits in this Rule, and
 - (e) details of all nominations received prior to the closing date (and not later withdrawn) must be included in the notice of the relevant meeting.

Rule 2.3.3 Each resolution of the holders of Equity Securities to appoint, elect or re-elect a Director must be for the appointment, election or re-election of one Director only.

Rule 2.4 Equity Holder appointment rights

2.4.1 The Governing Document may give an Equity Security holder the right to appoint one or more Directors (and to remove any Director so appointed), provided:

- (a) the appointment does not result in the proportion of such Directors to the total number of Directors (excluding alternate Directors) exceeding the proportion of total Votes attaching to the Equity Securities in the Issuer held by the appointer, and
- (b) if the appointer exercises its right to appoint one or more Directors with such Director remaining in office at the time of the election of other Directors, the appointer must not also Vote upon the election of other Directors.

Rule 2.5 Alternate Directors

2.5.1 No Director may appoint an alternate Director to act for him or her except with the consent of a majority of his or her co-Directors. The alternate appointment may be revoked by the appointing Director or by a majority of the Board. A Director may not act as alternate for another Director. No Director may appoint a deputy or agent otherwise than as an alternate Director.

Rule 2.6 Independence of Directors

2.6.1 The Board must identify which Directors it has determined to be Independent Directors, having regard to the non-exhaustive factors described in the NZX Corporate Governance Code that may impact director independence.

2.6.2 The determination under Rule 2.6.1 as to whether a Director is an Independent Director must be made and released through MAP no later than 10 Business Days after any Director's initial appointment.

2.6.3 If, at any time, the Board makes a determination regarding a Director's independence that differs from the position most recently released through MAP (for example, that an Independent Director is no longer independent), such determination must be promptly and without delay released through MAP.

2.6.4 The Issuer is responsible for ensuring that Directors provide sufficient information to the Board to make a determination under Rule 2.6.1.

Rule 2.7 Rotation of Directors

2.7.1 A Director of an Issuer must not hold office (without re-election) past the third annual meeting following the Director's appointment or 3 years, whichever is longer. However, a Director appointed by the Board must

not hold office (without re-election) past the next annual meeting following the Director's appointment.

2.7.2 Rule 2.7.1 does not apply to Directors appointed by an Equity Security holder under Rule 2.4.

Rule 2.8 Removal of Directors

2.8.1 All Directors (other than a Director appointed by an Equity Security holder under Rule 2.4) must be subject to removal from office by Ordinary Resolution.

Rule 2.10 Interested Directors

2.10.1 A Director must not vote on a Board resolution for, or be counted in a quorum for the consideration of, any matter in which that Director is interested. For this purpose, the term "interested" bears the meaning assigned in section 139 of the Companies Act 1993. If the Issuer is not a company registered under that Act, the reference to the "company" in that section will be read as a reference to the Issuer.

2.10.2 Notwithstanding Rule 2.10.1, a Director of an Issuer incorporated under the Companies Act 1993 may vote on a Board resolution for, and be counted in a quorum for the consideration of, a matter in which that Director has an interest, if the matter:

- (a) is one in respect of which Directors are expressly required under that Act to sign a certificate, or
- (b) relates to the grant of indemnity under section 162 of that Act.