



NZX Regulation Decision

Just Water International Limited (“JWI”)

Application for a waiver from NZAX Listing Rule 9.2.1

31 May 2018



Waiver from Rule 9.2.1

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by JWI is complete and accurate in all material respects, NZXR grants JWI a waiver from Rule 9.2.1 to the extent required to allow JWI to purchase the remaining 49% of the shares in HomeTech under the Second Agreement without seeking shareholder approval.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - (a) the Directors of JWI certify to NZXR that:
 - (i) the Second Agreement has been entered into and negotiated on an arms' length commercial basis;
 - (ii) in their opinion, the entry into the Second Agreement is fair and reasonable to, and in the best interests of, JWI and its shareholders who are not related to HomeTech;
 - (iii) that the Related Parties have had no influence on JWI's decision to enter into the Second Agreement; and
 - (b) this waiver, its conditions and implications are disclosed in JWI's next annual report.
3. The information on which this decision is based is set out in Appendix One to this decision. This waiver will not apply if the information provided to NZXR by JWI 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.
5. Capitalised terms that have not been defined in this decision have the meanings given to them in the Rules.

Reasons

6. In coming to the decision to grant the waiver set out in paragraph 1 above, NZXR has taken into consideration 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 a Material Transaction if it is satisfied that involvement of any Related Party has not unduly influenced the promotion of, or the decision to enter into, the transaction or its terms and conditions. NZXR is satisfied that the granting of this waiver will not offend the policy behind Rule 9.2.1;
 - (b) JWI has submitted, and NZXR has no reason not to accept, that both the Nielsen Trustees and Paul Nielsen, in his individual capacity as a Director of HomeTech and as a trustee of the Paul and Janet Nielsen Business Trust and its beneficiaries, will not receive favourable consideration because of the Related Party Relationships. The Related Party Relationships have not influenced and will not unduly influence the

decision to enter into, or the terms and conditions of, the Second Agreement because no action is required of Paul Nielsen or his associates at any JWI governance or shareholding level to enter into the Second Agreement as they are acting only in the capacity as vendor parties;

- (c) condition 2(a) provides comfort that the Second Agreement was negotiated and entered into on an arm's length commercial basis, and its terms are fair and reasonable to, and in the best interests of JWI and its shareholders that are not related to or associated with the Nielsen Trustees and Paul Nielsen; and
- (d) there is precedent for this decision.

Appendix One

- 1) Just Water International Limited (**JWI**) is a Listed Issuer with ordinary shares Quoted on the NZX Alternative Market (**NZAX**) and as such is subject to NZAX Listing Rules (**Rules**).
- 2) On 22 December 2017, JWI entered into an agreement for sale and purchase of shares with Paul Allen Nielsen and Janet Mary Nielsen (as trustees of the Paul and Janet Nielsen Business Trust) (**Nielsen Trustees**) and Paul Nielsen as guarantor to purchase 51% of the shares in HomeTech Limited (**HomeTech**) for a purchase price of approximately \$4.6 million (**First Agreement**).
- 3) As a result of the First Agreement:
 - a) JWI acquired 51% of the shares in HomeTech, and HomeTech became a subsidiary of JWI;
 - b) the Nielsen Trustees held the remaining 49% of the shares in HomeTech;
 - c) Tony Falkenstein was appointed as a director of HomeTech;
 - d) Paul Nielsen remained a director of HomeTech; and
 - e) JWI, the Nielsen Trustees and HomeTech entered into a shareholders' agreement in respect of HomeTech.
- 4) Following the completion of the First Agreement, JWI approached the Nielsen Trustees for another sale and purchase agreement as it determined that it was in the best interests of JWI to move to 100% ownership of HomeTech, in order to maximise its benefit and minimise the risk from this investment.
- 5) On 20 April 2018, JWI announced that it had entered into a conditional agreement for sale and purchase with the Nielsen Trustees, Paul Allen Nielsen and Janet Mary Nielsen (as trustees of the JP Property Trust), and Paul Nielsen to purchase the remaining 49% of the shares in HomeTech for \$4.075 million (**Second Agreement**). The purchase price under the Second Agreement on a per HomeTech share basis was no greater than that under the First Agreement. JWI submitted that it did not envisage at the time of entry into the First Agreement that it would acquire the remaining shares in HomeTech as contemplated by the Second Agreement.
- 6) As at the date of this waiver decision, JWI's Average Market Capitalisation is approximately NZ\$35.3 million.
- 7) The Second Agreement is a Material Transaction for the purposes of Rule 9.2.2(a) as the purchase price of the shares in HomeTech exceeds 10% of the Average Market Capitalisation value of JWI.
- 8) As HomeTech became a subsidiary of JWI following the First Agreement, Paul Nielsen, as a Director of HomeTech, also subsequently became a Related Party of JWI under Rule 9.2.3(a).
- 9) The Nielsen Trustees are also a Related Party of JWI pursuant to Rule 1.7.3(b) and 1.7.3(c) as Paul Nielsen is a trustee of the Paul and Janet Nielsen Business Trust, and a Director of HomeTech.

(together, the **Related Party Relationships**).

- 10) The Second Agreement is conditional on JWI seeking shareholder approval or a waiver from Rule 9.2.1.
- 11) All JWI directors are able to certify to the effect that the Second Agreement was negotiated and entered into on an arms' length commercial basis.

Appendix Two

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

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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

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- (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

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