

**NZ RegCo**

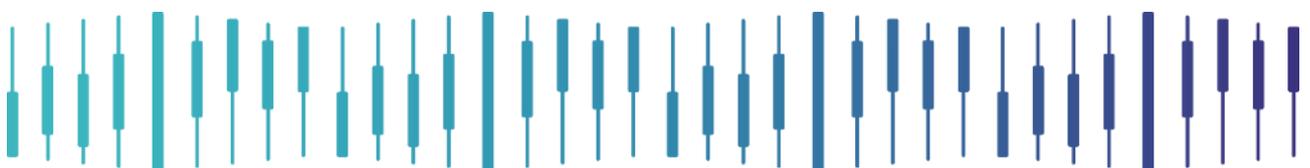
NZ'S LISTED  
MARKET REGULATOR

1/12/2021

# NZ RegCo Decision

Winton Land Limited (NS) ("WIN")

Application for approval under NZX Listing Rule 8.1.6 and  
waiver under NZX Listing Rule 8.1.5



## Background

1. 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.
2. The Rules to which this decision relates are set out in Appendix Two to this decision.
3. Capitalised terms that are not defined in Appendix One to this decision have the meanings given to them in the Rules.

## Approval under Rule 8.1.6

### Decision

4. Subject to the conditions set out in paragraph 6 below, and on the basis that the information provided by Winton Land Limited (NS) (**WIN**) is complete and accurate in all material respects, NZX Regulation Limited (**NZ RegCo**) grants WIN approval under Rule 8.1.6 to allow WIN to include provisions in its Constitution which allow the Board to restrict the transfer of WIN's securities to Overseas Persons and which allow the Board to require certain documentation and/or information in relation to a proposed transfer or transferee of WIN's securities, in the circumstances permitted under the proposed clause 13, and clauses 3 and 5 of the Fourth Schedule of the Constitution.

## Waiver under Rule 8.1.5

### Decision

5. Subject to the conditions set out in paragraph 6 below, and on the basis that the information provided by WIN is complete and accurate in all material respects, NZ RegCo grants WIN a waiver from Rule 8.1.5, to the extent that this Rule would otherwise prevent WIN from suspending the voting rights attaching to securities that the Board has determined, in accordance with the process set out in the Fourth Schedule of the Constitution, are Affected Shares.

### Conditions

6. The approval in paragraph 4 and waiver in paragraph 5 are provided on the following conditions:
  - a. WIN will be given a non-standard (NS) designation, in terms of its listing on the Main Board.
  - b. An outline and explanation of the provisions in the Constitution that restrict the transfer of securities, and of the circumstances in which voting rights may be suspended (**Outline And Explanation Of The Effects**) are appropriately disclosed in the product disclosure statement for WIN's initial public offering of ordinary shares (**Offer**), and the Constitution is disclosed on the Disclose register for the Offer offering documents for equity securities.

- c. WIN includes an Outline And Explanation Of The Effects on its website and includes reference to that disclosure in each annual report published by WIN.
- d. either (i) where the Affected Shares are held by the holder on the New Zealand share register, WIN instructs a trading participant (as defined in the NZX Participant Rules) to undertake any Compulsory Sale of Affected Shares on behalf of a shareholder, or by any other method as agreed by NZ RegCo; or (ii) where the Affected Shares are held by the holder on the CHES Subregister or WIN's Issuer Sponsored Subregister, WIN instructs a trading participant (as defined in the ASX Operating Rules) to undertake any Compulsory Sale of Affected Shares on behalf of a shareholder, or by any other method as agreed by ASX.
- e. The Outline And Explanation Of The Effects includes an explanation that:
  - i. should WIN become aware that a transfer of its securities will, if registered, cause WIN to exceed the Overseas Ownership Threshold, WIN has the ability to refuse to register that transfer of securities; and
  - ii. should WIN determine that certain of its securities are Affected Shares (whether due to the holder taking a transfer of those securities, a change in circumstances of the holder or otherwise), WIN has the power to suspend the voting rights attaching to those Affected Shares until those Affected Shares are disposed of to a non-overseas person (whether as a result of a sale by the relevant shareholder or by WIN exercising its power to require the Compulsory Sale of Affected Shares on behalf of the relevant shareholder).

## Reasons

- 7. In coming to the decision to provide the approval under Rule 8.1.6 set out in paragraph 4 above and the waiver under Rule 8.1.5 set out in paragraph 5 above, NZ RegCo has considered that:
  - a. The policy underlying Rule 8.1.5 reflects the fundamental principle that shareholders are entitled to exercise the rights attaching to the securities they hold (especially the right to vote) and only in very limited circumstances should these rights be removed. NZ RegCo is comfortable that the circumstances in which the voting rights of the Affected Securities are suspended, does not breach the policy of this Rule.
  - b. The provisions described in paragraph 6 of Appendix One only apply in limited circumstances. Specifically, the provision that suspends the voting rights of the Affected Shares is temporary and only applies once it is determined that the shares are in fact Affected Shares, and until the point that the Affected Shares are transferred to a non-overseas person.
  - c. Transfer restrictions can be approved to prevent the aggregation of the holding of Quoted Financial Products by a group of persons which could reasonably be expected to adversely affect a significant part of the business of an Issuer. NZ RegCo is comfortable that the granting of this approval is in line with the discretion contemplated by Rule 8.1.6.

- d. The conditions contained in paragraph 6 will ensure that persons trading ordinary shares on market have notice of the limit on aggregate overseas ownership of WIN's securities, the consequences of holding securities which cause WIN to breach the Overseas Ownership Threshold. Further, these investors will have notice of WIN's power to suspend voting rights on and require (or effect) a transfer of Affected Shares.
- e. There is precedent for this decision.

## Appendix One

1. Winton Land Limited (**WIN**) is a Listed Issuer with Equity Securities Quoted on the NZX Main Board.
2. The Company currently owns interests in land that is likely to be sensitive (including residential land) under the Overseas Investment Act 2005 (**OIA**).
3. Once listed, the Company will be considered an “overseas person” under the OIA if:
  - a. in aggregate, overseas persons own 50% or more of a class of Equity Securities; or
  - b. overseas persons that own (together with their associates) 10% or more of the class of Equity Securities hold, in aggregate, more than 25% of the class of Equity Securities,

### **(Legislative Limit).**

4. If an “overseas person” acquires Equity Securities in WIN and WIN consequently exceeds the Legislative Limit (which could occur via on-market transfers without WIN’s knowledge):
  - a. the acquisition of WIN’s Equity Securities that caused WIN to exceed the Legislative Limit will constitute an overseas investment in sensitive assets under the OIA and will require consent under the OIA; and
  - b. WIN will itself become an “overseas person” and will require consent for any subsequent acquisitions of sensitive assets, including sensitive land under the OIA.
5. WIN is a residential land developer and its business involves the acquisition and development of land. If WIN were to be an “overseas person” under the OIA, these acquisitions would require consent under the OIA, which would impose significant additional cost and uncertainty on WIN’s business. Ensuring that it is not an “overseas person” is integral to the WIN’s ongoing competitive advantage.
6. WIN proposes that its Constitution include the following provisions:
  - a. Require on request a current, or proposed new, shareholder to provide information concerning whether they are an Overseas Person under the OIA (clause 3 of the Fourth Schedule of the Constitution);
  - b. give the Board the ability to refuse to register a share transfer if:
    - i. the Board considers that it will, or is likely to, cause the extent of overseas ownership in WIN to exceed a specified percentage (currently set at 90%, however, the percentage can be increased by the Board) of the statutory level at which the number of securities in WIN held by “overseas persons” under the OIA makes WIN itself an “overseas person” (**Overseas Ownership Threshold**); or
    - ii. the transferee has not provided satisfactory documentary evidence on request, with respect to determining whether the registration of that transfer would cause the extent of overseas ownership in WIN to breach the Overseas Ownership Threshold,

(clause 15.4 and clause 5 to the Fourth Schedule of the Constitution);

- c. suspend the voting rights attaching to any of WIN's securities which the Board determines, after following the process in the Constitution, have caused the extent of overseas ownership in WIN exceed the Overseas Ownership Threshold (**Affected Shares**) (clause 9.1(a) of the Fourth Schedule to the Constitution); and
  - d. require the sale of Affected Shares, through a method previously approved by NZ RegCo, if the registered holder does not sell those securities to a person who is not an "overseas person: within 20 working days, with the proceeds of the sale (less any costs of sale) being paid to the registered holder (clause 9.1(b) of the Fourth Schedule to the Constitution).
- 7. The provisions outlined in paragraph 6 above enable WIN to prevent the aggregate holding of WIN's securities from breaching the Overseas Ownership Threshold which is a key aspect of WIN's ability to reduce the risk that WIN would become an "overseas person" under the OIA (something which WIN cannot otherwise prevent).
- 8. Clause 7 of the Fourth Schedule to the Constitution includes a requirement for the Board to give notice to the relevant registered holder before making a determination that certain securities held by that holder are Affected Shares. The notice must explain the consequence of the Board determining that those securities are Affected Shares. After a specified period has passed during which time the holder is able to make representation to the Board, the Board of WIN is then able to:
  - a. give notice to a holder with its final determination as to whether such securities are Affected Shares; and
  - b. in the event that the Board has determined that such securities are Affected Shares, exercise the powers outlined in paragraphs 9.c and 9.d above.

## Appendix Two

### **8.1 Transfer of Quoted Financial Products (common rules)**

- 8.1.1 Subject to the provisions of any legislation, and to Rule 8.1.4 and Rule 8.1.6(a), no Issuer may impose, in its Governing Document or otherwise, any restriction on the right of a holder of a Quoted Financial Product to transfer that Financial Product, or any restriction upon registration of a properly completed transfer of Quoted Financial Products.
- 8.1.3 Subject to the provisions of Rule 8.1.2 and Rule 8.1.6(a) and (b), and of any applicable legislation, no Issuer may:
- (a) require any documentation relating to transfers other than to establish an entitlement to transfer,
  - (b) require any information relating to the transferee (except for such information necessary to record the transfer), or
  - (c) impose any restriction on the acceptability of any common form of transfer.
- 8.1.5 Except as expressly permitted by the Rules, no benefit or right attaching to a Quoted Financial Product shall be cancelled or varied by reason only of a transfer of that Quoted Financial Product.
- 8.1.6 The Governing Document of an Issuer may:
- (a) restrict the transfer of Debt Securities by requiring that holders must hold those Debt Securities in a specified minimum nominal amount (of no more than \$10,000, or such higher amount as NZX may specify from time to time) and/or in integral multiples of a specified nominal amount (of no more than \$1,000, or such higher amount as NZX may specify from time to time),
  - (b) with the prior approval of NZX, incorporate any other provision restricting the transfer of Relevant Interests in Financial Products, or
  - (c) prescribe procedures entitling the Issuer to sell Quoted Financial Products held in less than Minimum Holdings and to account to the holders for the proceeds of sale after deduction of reasonable sale expenses. At least three months' prior notice must be given to the affected holders before such action.