

# WINTON

## OUTLINE AND EXPLANATION OF EFFECTS OF APPROVAL AND WAIVER GRANTED TO WINTON LAND LIMITED

### Introduction

Under the Overseas Investment Act, 'overseas persons' require consent for investments in sensitive New Zealand assets. A company will be considered an 'overseas person' if:

- in aggregate, overseas persons own 50% or more of the securities in that company, or
- more than 25% of the securities of that company are held, in aggregate, by overseas persons that individually own (together with their associates) 10% or more of the securities.

Without the approval and waiver granted and described below, if an 'overseas person' acquired securities and Winton consequently exceeded either of the above limits (which could occur via on-market transfers without Winton's knowledge):

- that acquisition would constitute an overseas investment in sensitive assets under the Overseas Investment Act and will require consent under that Act; and
- Winton will itself become an 'overseas person' and will require consent for any subsequent acquisitions of sensitive assets, including sensitive land under the Overseas Investment Act.

As a residential land developer whose business involves the acquisition and development of land, becoming an 'overseas person' would impose significant additional cost and uncertainty on Winton's business.

Accordingly, Winton sought an approval under NZX Listing Rule 8.1.6 and a waiver under NZX Listing Rule 8.1.5 from NZX Regulation Limited (**NZ RegCo**) as set out in more detail below.

### Approval and waiver from NZ RegCo regarding Winton's Constitution

In November 2021, NZ RegCo granted Winton:

<b>Approval – NZX LR 8.1.6</b>	<b>Waiver – NZX LR 8.1.5</b>
Approval under NZX Listing Rule 8.1.6 to include provisions in its Constitution which allow the Board to restrict the transfer of Winton's securities to 'overseas persons' and to require certain documentation and/or information in relation to a proposed transfer or transferee of Winton's securities	Waiver from NZX Listing Rule 8.1.5, to the extent that rule would otherwise prevent Winton from suspending the voting rights attaching to securities in accordance with the process set out in the Constitution

The conditions to the Approval and Waiver are that:

- Winton will be given a non-standard (NS) designation, in terms of its listing on the NZX Main Board.
- Winton must include an outline and explanation of the relevant provisions in the Constitution on Winton's website and referred to the same in each annual report published by Winton.

- Winton must obtain approval from NZ RegCo in relation to the method of sale prior to exercising its power to require any compulsory sale of affected securities on behalf of a shareholder.

A copy of the relevant NZ RegCo Decision setting out the Approval and the Waiver is available here available on NZX at <https://www.nzx.com/companies/WIN/documents>.

#### **Powers of Board under Constitution**

To manage the risks of Winton becoming an 'overseas person', Winton's Constitution includes the following specific provisions:

- Under clause 3 of the Fourth Schedule, the Board may require on request a current, or proposed new, shareholder to provide information concerning whether they are an 'overseas person' under the Overseas Investment Act.
- Under clause 5 of the Fourth Schedule, the Board may refuse to register a share transfer if:
  - the Board considers that it will, or is likely to, cause the extent of overseas ownership in Winton 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 Winton held by 'overseas persons' under the Overseas Investment Act makes Winton itself an 'overseas person', or
  - 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 Winton to breach the relevant thresholds.
- Clause 9.1(a) of the Fourth Schedule allows the Board to suspend the voting rights attaching to any of Winton's securities which the Board determines, after following the process in the Constitution, have caused the extent of overseas ownership in Winton to exceed the relevant threshold under the Overseas Investment Act.
- Clause 9.1(b) of the Fourth Schedule allows the Board to require the sale of those affected securities, 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 in accordance with the provisions of the Constitution.