



**SECURITIES ACT (OM-IP COMPANIES) EXEMPTION NOTICE  
1999**

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PURSUANT to the Securities Act 1978, the Securities Commission gives the following notice.

ANALYSIS

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NOTICE

**1. Title, commencement, and expiry**—(1) This notice may be cited as the Securities Act (OM-IP Companies) Exemption Notice 1999.

(2) This notice comes into force on the day after the date of its notification in the *Gazette*.

(3) This notice expires on the close of 16 December 2004.

**2. Interpretation**—(1) In this notice, unless the context otherwise requires,—

“Act” means the Securities Act 1978:

“Australian prospectus” means a document—

- (a) That contains an offer of specified equity securities; and
- (b) That is identical to a document that is lodged or registered under the law of a specified State and that is signed by or on behalf of such persons (if any) as are required by that law to sign that document; and
- (c) By means of which it is lawful under the law of that specified State to make an offer of specified equity securities to the public in that specified State; and

(d) That contains no statement referring to listing or intended listing on the New Zealand Stock Exchange other than a statement that has been approved by the New Zealand Stock Exchange or a statement to the effect that listing of the securities is not being sought:

“Lodged” means lodged under the law of a specified State:

“OM-IP company” means a company—

(a) That is incorporated in the Cook Islands as an international company under the International Companies Act 1981–82; and

(b) In respect of which the only registered holder of equity securities at the time the offer of specified equity securities is made is Bermuda Trust (Cook Islands) Limited (registration number 1080/91, registered at the Ministry of Justice—Companies Section (Domestic Companies)); and

(c) In respect of which the ultimate beneficial owner of the equity securities is ED&F Man International Limited (Company number 1600658, Registrar of Companies, England); and

(d) That is registered in Australia as a foreign company under the Corporations Law of a specified State:

“Registered” means registered under the law of a specified State:

“Regulations” means the Securities Regulations 1983:

“Specified equity securities” means redeemable shares in an OM-IP company:

“Specified State” means a State or Territory of the Commonwealth of Australia.

(2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the meaning given to it by the Act or the Regulations.

**3. Exemptions—**(1) Every OM-IP company and every person acting on its behalf are exempted, in respect of any specified equity securities, from—

(a) Section 37 of the Act; and

(b) Section 38A of the Act and regulations 11 to 18 and 21 to 23 of the Regulations; and

(c) Sections 51 to 54 of the Act.

(2) Subclause (1) (b) applies only to an Australian prospectus, and not to an investment statement or other advertisement.

(3) Every OM-IP company and every person acting on its behalf are exempted from section 38 (a) of the Act to the extent that it requires an Australian prospectus to refer to an investment statement.

**4. Australian prospectus—**The exemptions granted by clause 3 (1) (a) and (b) are subject to the conditions that—

(a) There is an Australian prospectus relating to the specified equity securities at the time that offers of the securities are made or are open for acceptance in New Zealand; and

(b) It is a term of each offer of the specified equity securities made in New Zealand that the OM-IP company will, within 5 working days of receiving a request of an offeree for a copy of the Australian prospectus relating to the specified equity securities, without fee, send, or cause to be sent, to that offeree—

(i) A copy of the Australian prospectus; and

(ii) Copies of any documents that, under the law of the specified State concerned, must accompany any copy of the Australian prospectus sent to any person to whom an offer of the specified equity securities is made in that specified State.

**5. Documents to be deposited in Wellington**—The exemptions granted by clause 3 (1) (a) and (b) are subject to the further condition that a copy of each of the following documents has been deposited with the Registrar of Companies at Wellington:

- (a) The Australian prospectus relating to the specified equity securities, together with a certificate signed by the solicitor to the OM-IP company to the effect that the Australian prospectus complies with paragraphs (a) to (d) of the definition of that term in clause 2 (1):
- (b) A copy of—
  - (i) Any material contract that has been lodged or registered with the Australian prospectus; or
  - (ii) If the contract is not in writing, a copy of any memorandum that has been so lodged or registered and that contains particulars of the contract; or
  - (iii) If an exemption or declaration has been granted by the Australian Securities and Investments Commission under section 1084 of the Corporations Law of the Commonwealth of Australia, a copy of any memorandum that has been so lodged or registered and that contains particulars of the material contract prepared pursuant to that exemption or declaration:
- (c) Any certificate or other document evidencing lodgement or registration of the Australian prospectus:
- (d) The certificate of incorporation of the OM-IP company:
- (e) The memorandum and articles of association or other documents, statutes, or instruments constituting or defining the constitution of the OM-IP company.

**6. Investment statements**—The exemptions granted by clause 3 (1) (a) and (b) are subject to the further condition that any investment statement that relates to the specified equity securities concerned—

- (a) Includes, to the extent appropriate, statements to the following effect:
  - (i) That allotments of the specified equity securities will be made in the manner specified in the Australian prospectus and in the manner prescribed under the law of the specified State concerned; and
  - (ii) That investors should satisfy themselves as to the tax implications of investing in the specified equity securities; and
  - (iii) That investing in the securities of the OM-IP company may carry with it a currency exchange risk; and
  - (iv) That the financial reporting requirements applying in New Zealand and those applying to the OM-IP company may be different and the financial statements of the OM-IP company may not be compatible in all respects with financial statements prepared in accordance with New Zealand law; and
  - (v) That the OM-IP company may not be subject in all respects to New Zealand law; and
  - (vi) That the incorporation of the OM-IP company in the Cook Islands may materially affect the availability of information about the company and its directors; and

(vii) That the contract in respect of the specified equity securities may not be enforceable in New Zealand courts; and

(viii) That the Australian prospectus has not been registered in New Zealand under New Zealand law and may not contain all the information that a New Zealand prospectus is required to contain; and

(ix) The general nature and effect of any exemption, order, or declaration that may have been granted by the Australian Securities and Investments Commission in respect of the offer of the specified equity securities; and

- (b) Contains no statement referring to listing or intended listing of the securities on the New Zealand Stock Exchange other than a statement that has been approved by the New Zealand Stock Exchange or a statement to the effect that listing of the securities is not being sought; and
- (c) Complies with the Act and the Regulations relating to investment statements as if references in the Act or the Regulations to a registered prospectus were references to the Australian prospectus.

**7. Offers to be made in Australia at same time**—The exemptions granted by clause 3 (1) (a) and (b) are subject to the further condition that, at the same time as offers of the specified equity securities are made or are open for acceptance in New Zealand, offers of the specified equity securities are also made or are open for acceptance in the specified State concerned in accordance with the law of that specified State.

**8. Further conditions**—The exemptions granted by clause 3 are subject to the further conditions that—

- (a) The Australian prospectus and every investment statement that contains an offer of specified equity securities by an OM-IP company or a document that accompanies each of them and is referred to in them contains a statement that the OM-IP company will make available or provide to the company's shareholders in New Zealand:
- (i) Every annual report of the company, containing audited annual accounts and any quarterly reports provided to the company's shareholders in Australia; and
  - (ii) Copies of every material contract entered into by the company in each 12-month period; and
  - (iii) All the information required under Australian law to be disclosed in Australia to the company's shareholders; and
  - (iv) The annual Westpac Banking Corporation guarantee notices, stating the current amount of the guarantee provided by Westpac Banking Corporation; and
  - (v) All other documents required under Australian law to be lodged with the Australian Securities and Investments Commission and made available to Australian shareholders by companies registered in Australia as overseas companies; and
  - (vi) Monthly information regarding the net asset value of the specified equity securities; and

- (vii) A facility enabling shareholders to obtain information regarding the net asset value of the specified equity securities and the funds investment strategy of the company; and
- (viii) Access to a copy of a register of shareholders of each OM-IP company for inspection during normal office hours; and
- (b) The Australian prospectus within which an offer of the specified equity securities is made in New Zealand contains, or is accompanied by a document that contains—
  - (i) The incorporation details of the OM-IP company;
  - (ii) A report containing a summary of the implications under New Zealand tax law of investing in the specified equity securities;
  - (iii) The address of the office in New Zealand at which a copy of the share register of the company may be inspected; and
- (c) Each OM-IP company deposits the following with the Registrar of Companies in Wellington:
  - (i) A copy of the memorandum of appointment of its Australian agent;
  - (ii) Information about the officers of the OM-IP company, including their names and addresses.

Dated at Wellington this 14th day of December 1999.

The Common Seal of the Securities Commission was affixed in the presence of:

[L.S.]

E. H. ABERNETHY,  
Chairman.

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EXPLANATORY NOTE

*This note is not part of the notice, but is intended to indicate its general effect.*

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 16 December 2004.

The notice relates to equity securities in certain companies incorporated in the Cook Islands and registered in Australia as overseas companies. Offers of the securities will be made in prospectuses that comply with Australian law.

The exemptions and the conditions on which they are granted are similar to those contained in the Securities Act (Australian Issuers) Exemption Notice 1997 (S.R. 1997/260).

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 16 December 1999.

This notice is administered in the Securities Commission.