



Securities Act (Apatha Limited) Exemption Notice 2006

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

Contents

		Page
1	Title	1
2	Commencement	1
3	Expiry	2
4	Interpretation	2
5	Exemption	2
6	Condition that financial statements must be attached to prospectus	2
7	Condition that information must be contained in annual report of company	3
8	Condition that directors' statement must be attached to investment statement	3
9	Condition about statement of shareholding in lieu of certificate evidencing securities	4
10	Revocation	4

Notice

- 1 Title**
This notice is the Securities Act (Apatha Limited) Exemption Notice 2006.
- 2 Commencement**
This notice comes into force on the day after the date of its notification in the *Gazette*.

3 Expiry

This notice expires on the close of 27 July 2011.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—

Act means the Securities Act 1978

company means Apatá Limited

Regulations means the Securities Regulations 1983

specified equity security means an equity security offered by the company to any person who is, or after allotment will be, a transacting shareholder

transacting shareholder means, in relation to the company, any person who would be a transacting shareholder under section 4 of the Co-operative Companies Act 1996 if the company was a co-operative company under that Act.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemption

The company and every person acting on its behalf are exempted in respect of any specified equity securities from—

- (a) section 37A(1)(c) of the Act;
- (b) section 54 of the Act;
- (c) clauses 4 to 9, 11 to 20, 22 to 38, and 40 to 42 of Schedule 1 of the Regulations.

6 Condition that financial statements must be attached to prospectus

The exemption in clause 5(a) is subject to the condition that a copy of the most recent audited financial statements or group financial statements of the company, being financial statements that comply with the Financial Reporting Act 1993, is attached to, or contained in, every copy of the registered prospectus sent to a person under section 54B of the Act.

7 Condition that information must be contained in annual report of company

- (1) The exemption in clause 5(c) is subject to the condition that the information required by clauses 4, 5A, 6, 7, 12 to 14, 17, 18, 20, and 42 of Schedule 1 of the Regulations is contained in every annual report of the company.
- (2) However, where any of the clauses referred to in subclause (1) define a date or period for which information must be provided by reference to the specified date (as defined in regulation 2(1) of the Regulations), the information must instead be provided by reference to the date that 2 directors of the company signed the annual report on behalf of the board.

8 Condition that directors' statement must be attached to investment statement

- (1) The exemptions in clause 5(a) and (c) are subject to the further condition that every copy of the investment statement that is sent or made available to any person more than 9 months after the date of the most recent statement of financial position of the company registered under the Financial Reporting Act 1993 has attached to it, or contained in it, a statement—
 - (a) that is dated 9 months after the date of that statement of financial position; and
 - (b) that is signed by each of the directors of the company (or his or her agent who has been authorised in writing).
- (2) The statement must contain the following matters:
 - (a) particulars of any material matters relating to the offer of securities other than—
 - (i) matters set out elsewhere in the investment statement, registered prospectus, or most recent financial statements; and
 - (ii) contracts entered into in the ordinary course of business; and
 - (b) a statement as to whether, after due inquiry by them in relation to the period between the date of the most recent statement of financial position and the date of the directors' statement referred to in this clause, there have, in their opinion, arisen any circumstances that materially adversely affect—
 - (i) the trading or profitability of the company; or
 - (ii) the value of the assets of the company; or

- (iii) the ability of the company to pay its liabilities due within the next 12 months.

9 Condition about statement of shareholding in lieu of certificate evidencing securities

- (1) The exemption in clause 5(b) is subject to the condition that the company sends to each transacting shareholder annually, and at any time on request, a written statement that sets out—
 - (a) the class or classes of securities held by that shareholder; and
 - (b) the number of securities of each class held by that shareholder.
- (2) However, this condition does not require the company to send an annual statement to a transacting shareholder if the total number of securities in each class held by the shareholder has not changed since the most recent of the following dates:
 - (a) the date on which this notice comes into force;
 - (b) the date on which a written statement was sent to the shareholder under this clause;
 - (c) the date on which a certificate was sent to the shareholder under section 54 of the Act.

10 Revocation

The Securities Act (Apata Centrepac Limited) Exemption Notice 2002 (SR 2002/14) is revoked.

Dated at Wellington this 25th day of July 2006.

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

[Seal]

J Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 27 July 2011, revokes and replaces the Securities Act (Apata Centrepac Limited) Exemption Notice 2002.

The notice exempts Apata Limited (**Apata**), in respect of equity securities offered by Apata to any person who would be a transacting shareholder under section 4 of the Co-operative Companies Act 1996 if Apata was a co-operative company under that Act. The exemptions are from sections 37A(1)(c) and 54 of the Securities Act 1978, and from clauses 4 to 9, 11 to 20, 22 to 38, and 40 to 42 of Schedule 1 of the Securities Regulations 1983.

The effect of the exemptions is—

- to allow Apata to use an evergreen short-form prospectus. Certain information that would normally be disclosed in the prospectus is to be disclosed in Apata's annual report. A copy of the most recent audited financial statements is to be attached to every prospectus sent under section 54B of the Securities Act 1978. Also, investment statements distributed more than 9 months after the date of the most recent statement of financial position must provide updated information on material matters relating to the offer of securities and circumstances materially adversely affecting the company's trading, profitability, asset value, or ability to pay its liabilities;
- to exempt Apata from sending share certificates when it allots shares, subject to conditions.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- Apata has chosen not to register as a co-operative company but operates in a similar manner to a co-operative company. It is substantially owned by those using its services and its principal business is the provision of services to its shareholders. Shareholders and prospective shareholders are participants in the industry and are familiar with the industry and the company. Shareholders have access to information on a regular basis and have routine opportunities to participate in the appointment of directors, the governance process, and policy development:

- the exemptions enable Apata to reduce compliance costs by registering an evergreen short-form prospectus. The conditions subject to which the exemptions are granted are intended to ensure that investors receive up-to-date material information about the securities, in a manner that does not unnecessarily increase compliance costs by requiring disclosure of less material matters or matters that are disclosed elsewhere.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 27 July 2006.

This notice is administered by the Securities Commission.
