



Securities Act (Barkworth Olive Groves Limited) Exemption Notice 2001

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

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Notice

1 Title

This notice is the Securities Act (Barkworth Olive Groves Limited) Exemption Notice 2001.

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 6 November 2002.

4 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 by BOGL of debt securities issued by BOGL; and

- (b) that is identical to a document that is lodged or registered under Australian law and that is signed by, or on behalf of, the persons (if any) that are required by that law to sign that document; and
- (c) by means of which it is lawful under Australian law to make an offer of those debt securities to the public in Australia

BFPL means Barkworth Finance Pty Limited

BOGL means Barkworth Olive Groves Limited

lodged means lodged under Australian law

registered means registered under Australian law

Regulations means the Securities Regulations 1983

trustee means Australian Rural Group Limited.

- (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 Exemptions

- (1) BOGL, BFPL, the trustee, and every person acting on behalf of all or any of them are exempted from the following provisions in respect of any debt securities issued by BOGL:
 - (a) sections 33(2) and 37 of the Act;
 - (b) section 38A of the Act and regulations 11 to 18, 21, and 22 of the Regulations;
 - (c) sections 51 to 54 of the Act.
- (2) Subclause (1)(b) applies in respect of an Australian prospectus only, and not in respect of any investment statement or other advertisement.
- (3) BOGL, BFPL, the trustee, and every person acting on behalf of all or any of them are exempted from section 38(a) of the Act to the extent that that provision requires an Australian prospectus to refer to an investment statement.

6 Australian prospectus

The exemptions granted by clause 5(1)(a), (b), and (3) are subject to the conditions that—

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

- (b) the offer of debt securities in New Zealand is made in an Australian prospectus or in an advertisement (including an investment statement) that refers to the Australian prospectus and to the investment statement for the debt securities; and
- (c) it is a term of each offer of the debt securities made in New Zealand that BOGL will, within 5 working days of receiving a request of an offeree for a copy of the Australian prospectus relating to the debt 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 Australian law, must accompany any copy of the Australian prospectus sent to any person to whom an offer of the debt securities is made in Australia.

7 Documents to be deposited in Wellington

The exemptions granted by clause 5(1)(a), (b), and (3) 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 debt securities, together with a certificate signed by the solicitor to BOGL to the effect that the Australian prospectus complies with paragraphs (a) to (c) of the definition of that term in clause 4(1);
- (b) a copy of any material contract that has been lodged or registered with the Australian prospectus, or—
 - (i) if the contract is not in writing, a copy of any memorandum that has been lodged or registered with the Australian prospectus and that contains particulars of the contract; or
 - (ii) if an exemption or declaration has been granted by the Australian Securities and Investments Commission in respect of the disclosure of any material contract, a copy of any memorandum that has been lodged or registered and that contains particulars of the material contract as required by the terms of that exemption or declaration:

- (c) any certificate or other document evidencing lodgement or registration of the Australian prospectus;
- (d) the certificates of incorporation of BOGL and BFPL;
- (e) the certificate of incorporation of the trustee, together with evidence of its approval by the Australian Securities and Investments Commission to act as trustee in relation to those debt securities;
- (f) the memorandum and articles of association or other documents, statutes, or instruments constituting or defining the constitution of BOGL;
- (g) the trust deed for the debt securities.

8 Investment statements

The exemptions granted by clause 5(1)(a), (b), and (3) are subject to the further condition that any investment statement that relates to the debt securities concerned—

- (a) includes, to the extent appropriate, statements to the following effect:
 - (i) that allotments of the securities will be made in the manner specified in the Australian prospectus and in the manner prescribed under Australian law; and
 - (ii) that investors should satisfy themselves as to the tax implications of investing in the debt securities; and
 - (iii) that investing in the securities of an Australian issuer may carry with it a currency exchange risk; and
 - (iv) that the financial reporting requirements applying in New Zealand and those applying to BOGL may be different, and that the financial statements of BOGL may not be compatible in all respects with financial statements prepared in accordance with New Zealand law; and
 - (v) that BOGL may not be subject in all respects to New Zealand law; and
 - (vi) that the contract in respect of the debt securities may not be enforceable in New Zealand courts; and
 - (vii) 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 registered prospectus is required to contain; and
- (viii) 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 debt securities; and
 - (ix) that it is not a condition of this notice that BOGL be listed on the New Zealand Stock Exchange and that, if BOGL is not listed on the New Zealand Stock Exchange, New Zealand resident investors may not have access to information concerning BOGL in the same way as investors have in relation to an issuer listed on the New Zealand Stock Exchange; and
- (b) complies with the provisions of 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.

9 Offers to be made in Australia at same time

The exemptions granted by clause 5(1)(a), (b), and (3) are subject to the further condition that, at the same time as offers of the debt securities are made or are open for acceptance in New Zealand, offers of the debt securities are also made or are open for acceptance in Australia in accordance with Australian law.

Dated at Wellington this 17th day of October 2001.

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

[L.S.]

J. Diplock,
Chairperson.

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 the close of 6 November 2002.

This notice exempts Barkworth Olive Groves Limited, Barkworth Finance Pty Limited, and Australian Rural Group Limited, subject to conditions, from sections 33(2), 37, 38(a), 38A, and 51 to 54 of the Securities Act 1978 and regulations 11 to 18, 21, and 22 of the Securities Regulations 1983 in respect of debt securities issued by Barkworth Olive Groves Limited.

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

Date of notification in *Gazette*: 18 October 2001.

This notice is administered in the Securities Commission.
