



Securities Act (Mt Pisa Developments) Exemption Notice 2007

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).

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Notice

- 1 **Title**
This notice is the Securities Act (Mt Pisa Developments) Exemption Notice 2007.

- 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 30 September 2012.

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

Act means the Securities Act 1978

communal facilities—

- (a) means any land or any right over, or interest in, land within the development that is designated by the developer for use in connection with—
 - (i) the operation and maintenance of the water scheme for the development, as established by the constitution of the company, the water scheme easement, and the water scheme agreement; and
 - (ii) the landscaping services over the development as identified in the map in Schedule F of the constitution of the company; and
- (b) includes chattels, fixtures, and fittings used, or intended, adopted, or designed for use, in connection with either or both of the water scheme and the landscaping services referred to in paragraph (a)

company means Irrigation & Maintenance Limited

developer means Mt Pisa Custodians Limited as trustee of the Mt Pisa Trust, which was established on 1 October 2004, and includes any assignee or successor in title of Mt Pisa Custodians Limited (in whole or in part) that continues the promotion and carrying out of the development

development means the subdivision of the land located at Luggate, Cromwell Road, State Highway 6, Otago, currently comprised in certificate of title 180116 (Otago Registry)

memorandum of encumbrance means a registered encumbrance between the company and each purchaser of the subdivided lots that imposes obligations on a purchaser to comply with the constitution of the company, the water scheme easement, and the water scheme agreement

Regulations means the Securities Regulations 1983

sale agreement means an agreement for the sale of a subdivided lot entered into between the developer as vendor and a subscriber of specified securities as purchaser

specified securities means ordinary shares in the company

subdivided lot means a lot in the development for which a certificate of title has been or will be issued, or for which a

computer register has been or will be created, for an estate in fee simple under the Land Transfer Act 1952

water scheme agreement means the agreement between Pisa Irrigation Company Limited and each subscriber as purchaser in relation to the water scheme for the development

water scheme easement means the instrument of easement that creates rights over the subdivided lots to allow the water scheme for the development to operate, as attached to Schedule D of the constitution of the company.

- (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

The company, the developer, and every person acting on behalf of either or both of them are exempted from sections 37, 37A, 38A, and 54B(3) of the Act and from the Regulations (except regulation 8) in respect of specified securities.

6 Conditions of exemptions

The exemptions in clause 5 are subject to the following conditions:

- (a) the developer has supplied to each subscriber for specified securities, before subscription, a copy of each of the following documents:
- (i) the constitution of the company; and
 - (ii) the memorandum of encumbrance; and
 - (iii) the water scheme easement; and
 - (iv) the water scheme agreement; and
 - (v) the proposed sale agreement relating to that subscriber; and
- (b) the specified securities are subscribed for either—
- (i) by entering into a sale agreement for the purchase of a subdivided lot; or
 - (ii) by written agreement between the parties to a sale agreement for the purchase of a subdivided lot, in the case of a sale agreement that was entered into before the commencement of this notice but settlement was not completed before that date; and

- (c) deposit money paid by a subscriber for specified securities is held in any of the following trust accounts until the sale agreement becomes unconditional:
 - (i) a trust account operated by a solicitor under the Law Practitioners Act 1982; or
 - (ii) a trust account operated by a real estate agent under the Real Estate Agents Act 1976; or
 - (iii) a trust account operated by a trustee company under the Trustee Companies Act 1967; and
- (d) no settlement of a sale agreement is completed unless the water scheme easement is registered under the Land Transfer Act 1952 on the certificate of title, or computer register, for that land and the other subdivided lots; and
- (e) all money paid to the company by its shareholders under the constitution of the company is applied solely for the purposes of owning, administering, and maintaining the communal facilities and costs associated with administering the company; and
- (f) the constitution of the company provides that—
 - (i) the shareholders of the company have the right to use and enjoy the communal facilities in accordance with the constitution and the memorandum of encumbrance; and
 - (ii) the shareholders of the company have the right to vote at meetings of the shareholders of the company; and
 - (iii) levies, fees, or subscriptions payable to the company by its shareholders are determined by the shareholders at a shareholders' meeting of the company; and
 - (iv) the company cannot carry on trading activities or a business for profit; and
 - (v) the company cannot carry on activities other than those required for, or associated with, the provision of landscaping services, and the operation of the water scheme for the development; and
- (g) it is a term of the contract for the specified securities that the securities can be obtained only on the purchase of a subdivided lot and, on resale, must be sold with that subdivided lot; and

- (h) it is a term of the offer of the specified securities that the developer provides to a prospective purchaser of a subdivided lot, within 5 working days after receiving a request, a copy of the most recent audited financial statements of the company; and
- (i) it is a term of the offer of the specified securities that the financial statements of the company are audited annually and distributed to the shareholders of the company as soon as is reasonably practicable after each audit is completed, and in any event no later than 5 months after the end of each accounting period of the company.

Dated at Wellington this 18th day of September 2007.

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

[Seal]

J Diplock,
Chairperson.

Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 30 September 2012.

This notice exempts Irrigation & Maintenance Limited, Mt Pisa Custodians Limited (and any assignee or successor in title of that company), and any person acting on behalf of either or both of them, subject to conditions, from sections 37, 37A, 38A, and 54B(3) of the Securities Act 1978 and from the Securities Regulations 1983 (except regulation 8) in respect of the offer of ordinary shares in Irrigation & Maintenance Limited. The shares confer rights to use and enjoy the communal facilities in a development undertaken at Luggate, Cromwell Road, State Highway 6, Otago.

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

- (a) the shares involved are not intended for traditional purposes of investment, but rather to confer rights to use the communal facilities in a residential development. The conditions of the exemptions require that the constitution of the company offering the securities provides that the company cannot carry on trading activities or a business for profit. Rather, the purpose of the company is to allow the owners of residential lots to participate in the control of the communal facilities; and
 - (b) the exemption is consistent with the policy of previous exemptions that the Securities Commission has granted in relation to residential property developments including a class exemption notice, the Securities Act (Residential Property Developments) Exemption Notice 1999.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 20 September 2007.

This notice is administered by the Securities Commission.
