



Securities Act (Kohinoor Series One Fund 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).

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Notice

- 1 **Title**
This notice is the Securities Act (Kohinoor Series One Fund 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 28 February 2012.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—
Act means the Securities Act 1978
issuer means Kohinoor Series One Fund Limited
Regulations means the Securities Regulations 1983
specified securities means redeemable preference shares in the issuer offered to the public by the issuer.
- (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 from clause 1(4) of Schedule 1 of Regulations

- (1) The issuer and every person acting on its behalf are exempted from clause 1(4) of Schedule 1 of the Regulations in respect of any offer of specified securities.
- (2) The exemption is subject to the conditions that—
- (a) the registered prospectus relating to the offer of the specified securities—
 - (i) describes the procedure for fixing the subscription price of the specified securities; and
 - (ii) states when the subscription price for the specified securities is expected to be fixed; and
 - (iii) states how an investor may ascertain the subscription price for the specified securities; and
 - (iv) describes how subscriptions for the specified securities must be paid by subscribers; and
 - (v) states how any overpayments of the subscription price will be treated, and describes the procedure for refunding overpayments; and
 - (vi) describes how subscriptions for the specified securities will be held by the issuer pending allotment of the specified securities; and
 - (b) if the registered prospectus or an investment statement or an advertisement relating to the offer of the specified securities refers to this notice or to the exemption granted by this clause, that prospectus, investment statement, or advertisement also states—
 - (i) that it is not the function of the Securities Commission to approve investments or the terms of offers of specified securities; and

- (ii) that the Securities Commission has not expressed a view about investment in the specified securities or the terms of the offer of the specified securities.

6 Exemption from clause 8(5) of Schedule 1 of Regulations

- (1) The issuer and every person acting on its behalf are exempted from clause 8(5) of Schedule 1 of the Regulations in respect of any offer of specified securities.
- (2) The exemption is subject to the condition that the registered prospectus relating to the offer of the specified securities contains a statement of the issuer's reasons for not providing the information required by clause 8(5), including—
 - (a) statements to the effect that—
 - (i) the issuer intends to issue the specified securities on the basis described in the prospectus; and
 - (ii) the subscription price of the specified securities is to be determined by reference to the net tangible asset backing per unit of specified securities; and
 - (iii) the net tangible asset backing per unit of specified securities will depend on the issuer's performance; and
 - (iv) a calculation of the net tangible asset backing per unit of specified securities that is based on the assumption that all the specified securities had been allotted cannot be specified in the prospectus because the number of specified securities that may be allotted cannot be determined with certainty; and
 - (b) a statement to the effect that the calculation of the net tangible asset backing per unit of specified securities will include all funds advanced by subscribers less any amounts deducted as management fees; and
 - (c) a statement of how the management fees referred to in paragraph (b) will be determined and levied.

7 Transitional provision

The issuer may offer specified securities under its registered prospectus that will expire on 31 March 2006 in accordance with the Securities Act (Kohinoor Series One Fund Limited) Exemption Notice 2002 as in force immediately before that

notice expired, as if that notice had not expired, until the earlier of—

- (a) 31 March 2006; or
- (b) the registration of a new prospectus for the specified securities.

Dated at Wellington this 24th day of January 2006.

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

[L.S.]

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 28 February 2012, exempts Kohinoor Series One Fund Limited (**Kohinoor**) and every person acting on its behalf, subject to conditions, from clauses 1(4) and 8(5) of Schedule 1 of the Securities Regulations 1983 in respect of any offer of specified securities.

The Securities Commission has decided to grant exemptions to Kohinoor and every person acting on its behalf from clauses 1(4) and 8(5) for the following reasons:

- the securities being offered are equity securities, but the investment appears closer in substance to a managed fund than an ordinary offer of equity securities;
- the price of the securities and net asset backing cannot be determined at the time they are offered due to the nature of the offer. Kohinoor therefore requires exemptions in order to make this offer. The conditions of the exemptions require that investors receive relevant information about the pricing mechanism and net tangible asset backing for the securities:

- Kohinoor has a current prospectus that expires on 31 March 2006. This exemption contains more conditions than the conditions in an expired exemption granted to Kohinoor in 2002. The Securities Commission has created a transitional arrangement in order to reduce compliance costs for Kohinoor by allowing it to continue to allot securities under its current prospectus under the terms and conditions of the expired exemption, until the earlier of—
 - 31 March 2006; or
 - the registration of a new prospectus.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 26 January 2006.

This notice is administered by the Securities Commission.

