



Takeovers Code (IT Capital Limited) Exemption Notice 2003

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel gives the following notice (to which is appended a statement of reasons of the Takeovers Panel).

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Notice

1 Title

This notice is the Takeovers Code (IT Capital Limited) Exemption Notice 2003.

2 Application

This notice applies to acts or omissions occurring on or after 11 September 2003.

3 Expiry

This notice expires on the close of 31 March 2004.

4 Interpretation

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

acquisition agreement means the proposed issue of 40 665 332 voting securities by IT Capital to the Bryham Family Trust as consideration for the acquisition by IT Capital from the Bryham Family Trust of 20 shares in Sealegs International Limited

Act means the Takeovers Act 1993

Bryham Family Trust means the Bryham Family Trust created by deed of trust dated 21 November 1994

Code means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210)

director's fee arrangement means the proposed issue of 750 000 voting securities by IT Capital to the McKee Wright Family Trust (as nominee of David Kenneth McKee Wright) in payment of the director's fee payable to David Kenneth McKee Wright for the period 26 September 2003 to 31 March 2004

IT Capital means IT Capital Limited

McKee Wright Family Trust means the McKee Wright Family Trust created by deed of trust dated 2 May 1998

management services agreement means a management services agreement for the day-to-day management of Sealegs International Limited entered into by Sealegs International Limited and Platinum Management Limited on or about 3 October 2003

meeting means the meeting of IT Capital's shareholders held on 25 September 2003 in which the shareholders approved, for the purposes of rule 7(d) of the Code, the allotment of voting securities to the Bryham Family Trust and the McKee Wright Family Trust under the rights issue, the underwriting agreement, the director's fee arrangement, and the acquisition agreement

notice of meeting means the notice of the meeting sent to IT Capital's shareholders on 11 September 2003

previous management services agreement means the management services agreement dated 6 August 2002 between IT Capital and Platinum Management Limited

rights issue means a pro rata renounceable rights issue of up to 302 699 760 voting securities by IT Capital to its ordinary shareholders on the basis of 1 voting security for every 1 existing ordinary share held in IT Capital

underwriting agreement means the underwriting agreement entered into by IT Capital, the Bryham Family Trust, and the McKee Wright Family Trust on or about 3 October 2003 under which the Bryham Family Trust and the McKee Wright

Family Trust must subscribe for specified voting securities that are not taken up under the rights issue

voting security means an ordinary share in IT Capital.

- (2) In this notice, a reference to a person increasing voting control is a reference to the person becoming the holder or controller of an increased percentage of the voting rights in IT Capital.
- (3) Any term or expression that is defined in the Act or the Code and used, but not defined, in this notice has the same meaning as in the Act or the Code.

5 Exemption from rule 7(d) of Code

- (1) Nada Daisy Bryham and Trustee Services Limited, in their capacity as trustees of the Bryham Family Trust, and Maurice John Bryham are exempted from rule 7(d) of the Code in respect of any increase in their voting control in IT Capital resulting from the allotment of voting securities to the Bryham Family Trust under the rights issue, the underwriting agreement, and the acquisition agreement and to the McKee Wright Family Trust under the rights issue, the underwriting agreement, and the director's fee arrangement to the extent that the notice of meeting did not comply with rule 16(b) of the Code.
- (2) Kenneth Edward McKee Wright and Christina Carole McKee Wright, in their capacity as trustees of the McKee Wright Family Trust, and David Kenneth McKee Wright are exempted from rule 7(d) of the Code in respect of any increase in their voting control in IT Capital resulting from the allotment of voting securities to the McKee Wright Family Trust under the rights issue, the underwriting agreement, and the director's fee arrangement and to the Bryham Family Trust under the rights issue, the underwriting agreement, and the acquisition agreement to the extent that the notice of meeting did not comply with rule 16(b) of the Code.

6 Exemption from rule 16(b) of Code

IT Capital is exempted from rule 16(b) of the Code in respect of the notice of meeting.

7 Conditions of exemptions

- (1) The exemptions in clauses 5 and 6 are subject to the condition that the notice of meeting contained particulars of the voting

securities that may be allotted to the Bryham Family Trust and the McKee Wright Family Trust under the rights issue, the underwriting agreement, the director's fee arrangement, and the acquisition agreement, including—

- (a) the maximum number of voting securities that may be allotted under the rights issue to each of the Bryham Family Trust and the McKee Wright Family Trust as shareholders of IT Capital; and
- (b) the number of voting securities that may be allotted to the Bryham Family Trust under the acquisition agreement; and
- (c) the number of voting securities that may be allotted to the McKee Wright Family Trust under the director's fee arrangement; and
- (d) the maximum number of voting securities that would be allotted to each of the Bryham Family Trust and the McKee Wright Family Trust under the underwriting agreement if each of the Bryham Family Trust and the McKee Wright Family Trust had to meet their full underwriting commitment; and
- (e) the maximum total number of voting securities that could be allotted to each of the Bryham Family Trust and the McKee Wright Family Trust under paragraphs (a), (b), (c), and (d) (referred to in this clause as the **maximum allotment**); and
- (f) the maximum total number of voting securities that could be on issue after completion of allotments under the rights issue, the underwriting agreement, the director's fee arrangement, and the acquisition agreement; and
- (g) a statement of the maximum allotment for each of the Bryham Family Trust and the McKee Wright Family Trust expressed as a percentage of the total number of voting securities referred to in paragraph (f); and
- (h) the maximum percentage of all voting securities that the Bryham Family Trust and the McKee Wright Family Trust could hold or control, both separately and in aggregate, after completion of allotments under the rights issue, the acquisition agreement, the director's fee arrangement, and the underwriting agreement; and

- (i) the maximum aggregate percentage of all voting securities that the Bryham Family Trust and the McKee Wright Family Trust and their associates could hold or control after completion of allotments under the rights issue, the acquisition agreement, the director's fee arrangement, and the underwriting agreement; and
 - (j) full particulars of the rights issue.
- (2) The exemptions in clauses 5 and 6 are subject to the further conditions that—
- (a) there is no change in the trustees of the Bryham Family Trust and the McKee Wright Family Trust between the date of the meeting and the last date on which voting securities are allotted under the latest to complete of the rights issue, the underwriting agreement, the director's fee arrangement, and the acquisition agreement; and
 - (b) Nada Daisy Bryham and Trustee Services Limited, in their capacity as trustees of the Bryham Family Trust, the Bryham Family Trust, Kenneth Edward McKee Wright and Christina Carole McKee Wright, in their capacities as trustees of the McKee Wright Family Trust, the McKee Wright Family Trust, David Kenneth McKee Wright, and Maurice John Bryham do not acquire any rights under the rights issue except rights acquired—
 - (i) as a shareholder of IT Capital under its pro rata entitlement in the rights issue; or
 - (ii) under the underwriting agreement; and
 - (c) the notice of meeting contained a summary of the terms and conditions of this notice; and
 - (d) the options over shares in IT Capital issued to Platinum Management Limited under the previous management services agreement are cancelled.

Dated at Auckland this 16th day of October 2003.

The Common Seal of the Takeovers Panel was affixed in the presence of:

[L.S.]

D. O. Jones,
Deputy Chairperson.

Statement of reasons of Takeovers Panel

This notice applies to acts or omissions occurring on or after 11 September 2003, and expires on 31 March 2004.

The Takeovers Panel has granted exemptions to—

- David Kenneth McKee Wright and Maurice John Bryham from rule 7(d) of the Takeovers Code (the **Code**); and
- Nada Daisy Bryham and Trustee Services Limited in their capacity as trustees of the Bryham Family Trust from rule 7(d) of the Code; and
- Kenneth Edward McKee Wright and Christina Carole McKee Wright in their capacity as trustees of the McKee Wright Family Trust from rule 7(d) of the Code; and
- IT Capital Limited (**IT Capital**) from rule 16(b) of the Code.

The exemptions relate to the proposed allotment of shares in IT Capital.

IT Capital proposes to make a pro rata renounceable rights issue of up to 302 699 760 shares to its existing shareholders. The issue of shares will be underwritten by the Bryham Family Trust and the McKee Wright Family Trust, which each currently hold approximately 11.77% of the voting rights in IT Capital.

IT Capital also proposes to issue and allot 40 665 332 ordinary shares to the Bryham Family Trust as consideration for the acquisition of 20 ordinary shares in Sealegs International Limited. Further, IT Capital proposes to issue and allot 750 000 ordinary shares to the McKee Wright Family Trust, being payment of director's fees due to David Kenneth McKee Wright.

If the Bryham Family Trust and the McKee Wright Family Trust were required to take up the maximum number of shares that they could be required to subscribe for under the underwriting agreement, then, together with the shares allotted as consideration for the acquisition of shares in Sealegs International Limited and as director's

fees, the percentage of voting rights held by the Trusts in IT Capital could increase to 33.86% and 27.92% respectively.

On 25 September 2003, IT Capital obtained shareholder approval for the potential allotment of shares to—

- the Bryham Family Trust and the McKee Wright Family Trust under the underwriting agreement; and
- the Bryham Family Trust as consideration for the acquisition of shares in Sealegs International Limited; and
- the McKee Wright Family Trust for the director's fees.

However, IT Capital could not comply with rule 16(b) of the Code because it could not state in the notice of meeting—

- the exact number of shares that may be allotted to the McKee Wright Family Trust and the Bryham Family Trust; and
- the exact percentage of voting rights in IT Capital that the Bryham Family Trust, the McKee Wright Family Trust, David Kenneth McKee Wright, and Maurice David Bryham may hold or control after allotment.

These details will be known only after the rights issue has been completed and all allotments made.

The Takeovers Panel considers that it is appropriate to grant the exemptions because—

- pro rata rights issues and shareholder underwriting agreements are accepted means of raising equity capital in New Zealand and the Takeovers Panel should facilitate these arrangements by exemption where necessary; and
- as the shareholders of IT Capital have approved the maximum possible increase in the percentage of voting rights held by the Bryham Family Trust and the McKee Wright Family Trust as a result of an allotment by IT Capital, then by implication they can be taken to also have approved any lesser percentage of control that may be obtained by the Trusts following the allotments.

The Takeovers Panel considers that the exemptions are consistent with the objectives of the Code because the non-associated shareholders of IT Capital have had an opportunity to vote on the allotment of voting securities to—

- the Bryham Family Trust and the McKee Wright Family Trust under the underwriting agreement; and
 - the Bryham Family Trust as consideration for the acquisition by IT Capital from the Bryham Family Trust of 20 ordinary shares in Sealegs International Limited; and
 - the McKee Wright Family Trust in payment for the director's fees that are due to David Kenneth McKee Wright.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 23 October 2003.

This notice is administered by the Takeovers Panel.
