



## Takeovers Code (Guinness Peat Group plc) 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 (Guinness Peat Group plc) Exemption Notice 2003.

#### 2 Application

This notice applies to acts or omissions occurring on or after 17 July 2003.

#### 3 Expiry

This notice expires on the close of 31 January 2004.

#### 4 Interpretation

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

**Act** means the Takeovers Act 1993

**agreement** means the underwriting agreement between TOWER and GPG dated on or about 4 July 2003 under which GPG, through its wholly owned subsidiary Ithaca, must subscribe for the voting securities that are not taken up by the

other shareholders of TOWER under the rights issue, by purchasers of rights under the rights issue, or by appointed sub-underwriters under the rights issue

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

**control percentage** means the percentage of voting rights in TOWER that a person holds or controls

**GPG** means Guinness Peat Group plc, a company incorporated in England and Wales

**Ithaca** means Ithaca (Custodians) Limited

**rights issue** means the 4 for 3 pro rata renounceable rights offer to all shareholders of TOWER

**TOWER** means TOWER Limited

**voting security** means an ordinary share in TOWER.

- (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 a code company.
- (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

GPG and Ithaca are exempted from rule 6(1) of the Code in respect of GPG and Ithaca increasing their voting control in TOWER as a result of the allotment of voting securities under the agreement.

## 6 Conditions

The exemption in clause 5 is subject to the conditions that—

- (a) the aggregate control percentage of GPG and Ithaca is decreased to, or below, 20% within the period that ends with the earlier of—
  - (i) the day that is 30 days from the date on which GPG and Ithaca increase their voting control under the agreement; and
  - (ii) the day that TOWER holds its next general meeting; and

- (b) the voting rights attaching to the voting securities that must be disposed of to give effect to paragraph (a) are not exercised by GPG or Ithaca.

Dated at Wellington this 18th day of July 2003.

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

[L.S.]

J. C. King,  
Chairperson.

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### Statement of reasons

This notice applies to acts or omissions occurring on or after 17 July 2003, and expires on 31 January 2004.

The Takeovers Panel (the **Panel**) has granted an exemption to Guinness Peat Group plc (**GPG**) and Ithaca (Custodians) Limited (**Ithaca**) from rule 6(1) of the Takeovers Code (the **Code**).

The Panel's reasons for granting the exemption are as follows:

- TOWER Limited (**TOWER**) requires funds urgently to meet its banking and other financial commitments:
- TOWER is raising the funds by a 4 for 3 pro rata renounceable rights issue made to existing shareholders on normal commercial terms:
- GPG has agreed to provide an underwriting facility which is a normal part of a renounceable rights issue:
- the terms of the underwriting agreement place greater restrictions on GPG than would be required if GPG were an underwriter relying on clause 19 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 (the **class exemptions**):
- the Market Surveillance Panel of New Zealand Exchange Limited has granted a waiver to TOWER from Listing Rule 9.2 which would otherwise require shareholder approval to any material transaction (the underwriting agreement) to which a related party (GPG) is a party:

- although the sub-underwriting arrangements entered into make it unlikely that GPG will ultimately acquire in excess of 20% of the voting securities in TOWER, it is nevertheless possible for this to occur:
- the Panel is not satisfied that GPG is an underwriter for the purposes of clause 19 of the class exemptions.

In light of the reasons referred to above, the Panel has decided that it is appropriate to grant an exemption to GPG and Ithaca exempting them from rule 6(1) of the Code so as to enable GPG to fulfil its obligations under the underwriting agreement.

The Panel's exemption is subject to the following conditions:

- the aggregate control percentage of GPG and Ithaca is decreased to, or below, 20% within the period that ends with the earlier of—
  - the day that is 30 days from the date on which GPG and Ithaca increase their voting control under the agreement; and
  - the day that TOWER holds its next general meeting; and
- the voting rights attaching to the voting securities that must be disposed of to give effect to the above paragraph are not exercised by GPG or Ithaca.

These conditions are consistent with the conditions contained in the class exemption, except in relation to the period during which GPG and Ithaca are required to sell-down any shares they acquire in excess of 20%.

The Takeovers Panel considers that the exemption is consistent with the objectives of the Code because:

- the conditions require that any increase in voting control above 20% is eliminated within the period that ends with the earlier of the day that is 30 days after GPG or Ithaca takes up any shares pursuant to their underwriting obligations, and the day that TOWER holds its next general meeting; and
- the additional voting rights are not exercised before that elimination.

**Takeovers Code (Guinness Peat Group  
plc) Exemption Notice 2003**

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Date of notification in *Gazette*: 24 July 2003.

This notice is administered by the Takeovers Panel.

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