

**Reprint  
as at 1 January 2011**



**Securities Act (SKYCITY  
Entertainment Group Limited)  
Exemption Notice 2009**

(SR 2009/114)

Securities Act (SKYCITY Entertainment Group Limited) Exemption Notice  
2009: expired, on 1 January 2011, by clause 3.

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).

**Contents**

	Page
1 Title	2
2 Commencement	2
3 Expiry	2
4 Interpretation	2
5 Requirements for share purchase plan	3
6 Exemptions from sections 37 and 37A of Act and Regulations (except regulation 8)	5
7 Conditions of exemptions in clause 6	5

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This notice is administered by the Securities Commission.**

## Notice

### 1 Title

This notice is the Securities Act (SKYCITY Entertainment Group Limited) Exemption Notice 2009.

### 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 31 December 2010.

### 4 Interpretation

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

**Act** means the Securities Act 1978

**custodian** means a holder of SKYCITY ordinary shares—

(a) that—

(i) is a trustee corporation or a nominee company;  
and

(ii) holds those shares by reason only of acting for another person in the ordinary course of business of that trustee corporation or nominee company;  
or

(b) that holds those shares by reason only that the person is a bare trustee of a trust to which the shares are subject

**institutional placement** means the placement of SKYCITY ordinary shares announced to NZX on 21 April 2009 to—

(a) persons in New Zealand who are not members of the public in terms of section 3(2)(a) of the Act; and

(b) selected persons outside New Zealand

**NZSX** means the securities market (as defined in the Securities Markets Act 1988) operated by NZX known as the NZSX or the New Zealand Stock Market

**NZX** means NZX Limited

**Regulations** means the Securities Regulations 1983

**share purchase plan** means a share purchase plan that complies with clause 5

**SKYCITY** means SKYCITY Entertainment Group Limited

**SKYCITY ordinary shares** means ordinary shares in SKYCITY

**specified securities** means SKYCITY ordinary shares that are to be—

- (a) issued by SKYCITY under a share purchase plan to existing holders of SKYCITY ordinary shares; and
- (b) listed on the NZSX

**subscription price** means the subscription price for the specified securities.

- (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 Requirements for share purchase plan**

- (1) For the purposes of this notice, a share purchase plan must comply with the following requirements:
  - (a) the right to subscribe for the specified securities must be offered to all holders of SKYCITY ordinary shares, except a holder in a jurisdiction outside New Zealand who is excluded by SKYCITY to avoid a risk of breaching the law in that jurisdiction; and
  - (b) the right to subscribe for the specified securities must be offered on the same terms and conditions to all the holders of SKYCITY ordinary shares to whom the offer is made; and
  - (c) the right to subscribe for the specified securities must not be renounceable; and
  - (d) the specified securities issued under the share purchase plan to holders of SKYCITY ordinary shares must enjoy the same rights—
    - (i) as each other; and
    - (ii) as the SKYCITY ordinary shares that qualify the holder to subscribe for the specified securities; and
  - (e) the subscription price must be equal to or less than the lower of the following:
    - (i) the price paid in the institutional placement:

- (ii) the volume-weighted average price of SKYCITY ordinary shares on the NZSX over the 5 working days up to and including the day on which the offer under the share purchase plan closes; and
  - (f) the subscription price must be fixed before allotment of the specified securities; and
  - (g) the subscription price must be disclosed in accordance with clause 7(2) before allotment of the specified securities; and
  - (h) in any 12-month period, the total subscription price of the specified securities allotted to a holder of SKYCITY ordinary shares must not be more than \$12,500.
- (2) Despite subclause (1)(h), SKYCITY may allot to a custodian in any 12-month period specified securities the total subscription price of which is more than \$12,500 if—
  - (a) the custodian certifies the following in writing to SKYCITY:
    - (i) that the custodian holds SKYCITY ordinary shares directly or indirectly as a custodian for beneficial owners; and
    - (ii) the number of those beneficial owners; and
    - (iii) in respect of each of the beneficial owners, how many specified securities the beneficial owner, or its agent, has instructed the custodian to accept on behalf of that beneficial owner; and
    - (iv) that the custodian undertakes not to accept on behalf of any of those beneficial owners for which it acts directly or indirectly as a custodian, in any 12-month period, specified securities the total subscription price of which is more than \$12,500; and
  - (b) SKYCITY is reasonably satisfied that in any 12-month period the total subscription price of the specified securities allotted to any beneficial owner is not more than \$12,500, whether those specified securities are allotted—
    - (i) through the custodian; or
    - (ii) if the beneficial owner is also a security holder, in their own right as a security holder.

**6 Exemptions from sections 37 and 37A of Act and Regulations (except regulation 8)**

SKYCITY and every person acting on its behalf are exempted from sections 37 and 37A of the Act and the Regulations (except regulation 8) in respect of the specified securities.

**7 Conditions of exemptions in clause 6**

- (1) The exemptions in clause 6 are subject to the condition that a person who subscribes for specified securities under the share purchase plan must, before subscribing, have received a document that—
  - (a) is signed by each of the directors of SKYCITY or his or her agent authorised in writing; and
  - (b) contains the offer to subscribe for specified securities under the share purchase plan; and
  - (c) describes the procedure for fixing the subscription price; and
  - (d) states when the subscription price will be fixed; and
  - (e) describes when and how payment of subscription moneys is to be made; and
  - (f) describes the relationship between the subscription price and the market price of the specified securities; and
  - (g) warns that the market price of the specified securities may change between the date of the offer and the date when the specified securities are allotted, and describes the effect this would have on the price or value of the specified securities that a subscriber would receive; and
  - (h) states that a subscriber may obtain from SKYCITY, free of charge, SKYCITY's most recent annual report and financial statements.
- (2) The exemptions in clause 6 are subject to the condition that SKYCITY must, as soon as practicable after the subscription price has been fixed, supply to NZX a statement that complies with subclause (3) for the purpose of that statement being made available to participants in the NZSX.
- (3) For the purposes of subclause (2), the statement must—
  - (a) specify the subscription price; and

- (b) be signed by each of the directors of SKYCITY or his or her agent authorised in writing; and
  - (c) certify that when the subscription price was fixed SKYCITY had no information not publicly available that would, or would be likely to, have a material effect on the market price of the specified securities if the information were publicly available.
- (4) The exemptions in clause 6 are subject to the condition that SKYCITY must not allot the specified securities if, when the subscription price was fixed, SKYCITY had information not publicly available that would, or would be likely to, have a material effect on the market price of the specified securities if the information were publicly available.

Dated at Wellington this 1st day of May 2009.

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

[Seal]

C A N Beyer,  
Member.

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### **Statement of reasons**

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 31 December 2010.

This notice applies to the offer of ordinary shares in SKYCITY Entertainment Group Limited (**SKYCITY**) under a qualifying share purchase plan. It exempts SKYCITY, subject to conditions, from sections 37 and 37A of the Securities Act 1978 and from the Securities

Regulations 1983 (other than regulation 8). One of the conditions of the exemptions is that SKYCITY must provide investors with an offer document that contains details of the share purchase plan.

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

- the exemptions are on the same conditions as the Commission's class exemption for share purchase plans, with the following 2 points of difference:
  - first, this exemption permits participation to a limit of \$12,500 per shareholder, rather than the \$5,000 per shareholder allowed under the class exemption. The \$12,500 limit remains consistent with the policy objective of limiting the risk to individual shareholders by capping participation at a relatively modest amount:
  - secondly, the particular pricing to be used by SKYCITY in the offer. However, this pricing is consistent with the principles of the pricing requirements of the class exemption. The class exemption requires the price to be set by reference only to an average market price during a period before the offer or allotment of the shares. SKYCITY's share purchase plan will follow an institutional placement, and the subscription price will be set by reference to the lower of the price for which shares are sold in the placement and a market average over the 5 working days up to and including the day on which the offer under the share purchase plan closes. Since the shares offered in the placement were issued at a discount to market price, this pricing is consistent with that required under the class notice, and allows participants in the share purchase plan to receive the advantage of any drop in market price in the period following the placement:
- the exemptions give SKYCITY shareholders the opportunity to participate in a share purchase plan following an institutional placement, and thus limit the potential dilution caused by that placement, while reducing the cost for SKYCITY in making this offer:

- the exemptions allow SKYCITY to undertake limited fund-raising from shareholders. The exemptions will reduce compliance costs for SKYCITY and the offer will allow the shareholders to purchase shares at a discounted price:
- the conditions of the exemptions limit the offer to shareholders who already hold ordinary shares in SKYCITY, and require SKYCITY to provide investors with certain important information about the offer. At the time the price for the new shares is set, SKYCITY must not have any information that is not publicly available and that would, or would be likely to, have a material effect on the share price:
- SKYCITY is listed in both Australia and New Zealand, and this exemption is consistent with relief granted by the Australian Securities and Investments Commission for this offer. The exemption therefore maintains consistency in trans-Tasman rules for SKYCITY.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 4 May 2009.

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## **Contents**

- 1 General
  - 2 Status of reprints
  - 3 How reprints are prepared
  - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
  - 5 List of amendments incorporated in this reprint (most recent first)
- 

## **Notes**

### **1 *General***

This is a reprint of the Securities Act (SKYCITY Entertainment Group Limited) Exemption Notice 2009. The reprint incorporates all the amendments to the notice as at 1 January 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

### **2 *Status of reprints***

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

### **3 *How reprints are prepared***

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not

included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint  
(most recent first)***

Securities Act (SKYCITY Entertainment Group Limited) Exemption Notice 2009: clause 3

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