

**Reprint
as at 2 March 2009**



**Takeovers Code (ICP
Biotechnology Limited) Exemption
Notice 2007**

(SR 2007/307)

Takeovers Code (ICP Biotechnology Limited) Exemption Notice 2007: expired, on 2 March 2009, by clause 3.

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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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.

The Takeovers Code (ICP Biotechnology Limited) Exemption Notice 2007 is administered by the Takeovers Panel.

9 Application of exemption in clause 5 6

Notice

1 Title

This notice is the Takeovers Code (ICP Biotechnology Limited) Exemption Notice 2007.

2 Application

This notice applies to acts or omissions occurring on or after 13 September 2007.

3 Expiry

This notice expires on the close of 1 March 2009.

4 Interpretation

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

Act means the Takeovers Act 1993

BIO means ICP Biotechnology Limited

Code means the Takeovers Code under the Act

debt capitalisation means the capitalisation by BIO of all or part of its debt due, or to become due, to Viking (up to an aggregate maximum amount of \$5,000,000) by the issue of new voting securities to Viking, together with one series 1 warrant and one series 2 warrant for every 2 new voting securities issued to Viking, on the same terms and conditions and at the same issue price as voting securities and warrants are issued under the issue

issue means the renounceable rights issue of voting securities offered under a combined investment statement and prospectus dated 9 July 2007 by BIO to its ordinary and preference shareholders on the basis of 1 right for every 1 existing voting security held, together with one series 1 warrant and one series 2 warrant for every 2 new voting securities subscribed for under the issue

meeting means the meeting of BIO shareholders held on 28 September 2007 to consider, amongst other things,

whether or not to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities to Viking under the transactions

notice of meeting means the notice of meeting that is to be sent to BIO shareholders in respect of the meeting

shortfall participation means participation by Viking, by way of cash subscription or debt capitalisation, in the placement of any shortfall voting securities by the issue of voting securities and series 1 warrants and series 2 warrants on terms and conditions and at a price that are not materially more favourable than the terms of the issue

shortfall voting securities means the voting securities that are offered under the issue but are not placed by the closing date of the issue

transactions means the debt capitalisation, the shortfall participation, and the warrant conversion

Viking means Viking Capital Limited

voting security means an ordinary share in BIO

warrant conversion means the issue of voting securities resulting from the exercise of any warrants granted to Viking under the issue or as a result of the shortfall participation or the debt capitalisation

warrants means series 1 warrants and series 2 warrants granted by BIO.

- (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 BIO.
- (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

Viking is exempted from rule 7(d) of the Code in respect of any increase in Viking's voting control resulting from the allotment of voting securities to Viking under the transactions to the extent that the notice of meeting does not comply with rule 16(b) of the Code.

6 Exemption from rule 16(b) of Code

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

7 Conditions of exemptions in clauses 5 and 6

The exemptions in clauses 5 and 6 are subject to the conditions that—

- (a) the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that may be allotted to Viking:
 - (i) the maximum number of voting securities that could be allotted to Viking as a result of the transactions; and
 - (ii) the maximum number of voting securities that could be allotted to Viking as a result of the transactions expressed as a percentage of the total voting securities on issue after the allotment of the voting securities to Viking resulting from the transactions; and
 - (iii) the maximum percentage of the total voting securities on issue that could be held or controlled by Viking after the allotment of the voting securities to Viking resulting from the transactions; and
 - (iv) the maximum percentage of the total voting securities on issue that could be held or controlled by Viking and its associates after the allotment of the voting securities to Viking resulting from the transactions:
- (b) the numbers and percentages referred to in paragraph (a) are calculated on the basis that—
 - (i) no option, warrant, convertible security, or other right to be allotted a voting security in the future is exercised by any person other than Viking; and
 - (ii) there is no change in the total number of voting securities on issue between the date of the notice of meeting and the date of the final allotment of voting securities under the transactions other

- than as a result of the allotment of voting securities resulting from the transactions:
- (c) the notice of meeting also contains, or is accompanied by,—
 - (i) full particulars of the voting securities to be allotted to Viking as a result of the transactions; and
 - (ii) a summary of the terms and conditions of the exemptions granted to Viking and BIO by this notice:
 - (d) the notice of meeting displays, in a prominent position, a disclaimer stating that by exempting Viking from rule 7(d) of the Code, and BIO from rule 16(b) of the Code, the Takeovers Panel is—
 - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting;
 - (ii) not implying it has a view on the merits of the proposed issue of voting securities to Viking:
 - (e) the form of the notice of meeting is approved by the Takeovers Panel:
 - (f) every annual report issued by BIO between 27 August 2007 and the date of the final allotment of voting securities to Viking under the transactions includes, in a prominent position and in a form approved by the Takeovers Panel,—
 - (i) a summary of the terms of the transactions; and
 - (ii) a summary of the terms and conditions of the exemptions granted to Viking and BIO by this notice; and
 - (iii) a statement, as at the date of the annual report, of—
 - (A) the number of voting securities allotted to Viking as a result of the transactions; and
 - (B) the total percentage of voting securities on issue held or controlled by Viking and its associates; and
 - (C) the maximum percentage of total voting securities that could be held or controlled by Viking and its associates after the final

allotment of voting securities to Viking resulting from the transactions.

8 Further condition of exemption in clause 5

The exemption in clause 5 is subject to the further condition that Viking does not become the holder or controller of an increased percentage of voting securities, except as a result of the allotment of voting securities to it under the transactions as approved by shareholders at the meeting, until the final allotment to Viking resulting from the transactions.

9 Application of exemption in clause 5

The exemption in clause 5 does not apply to any increase in voting control resulting from the allotment of voting securities under the transactions if, immediately after an allotment of voting securities to Viking under the transactions, the total percentage of voting securities held or controlled by Viking is greater than the maximum percentage of voting securities that could be held or controlled by Viking as disclosed in the notice of meeting in accordance with clause 7(a)(iii).

Dated at Wellington this 10th day of October 2007.

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

[Seal]

K J O'Connor,
Member.

Statement of reasons

This notice applies to acts or omissions occurring on or after 13 September 2007 and expires on the close of 1 March 2009. The Takeovers Panel has granted exemptions to—

- Viking Capital Limited (**Viking**) in respect of rule 7(d) of the Takeovers Code (the **Code**); and
- ICP Biotechnology Limited (**BIO**) in respect of rule 16(b) of the Code.

BIO has made a renounceable rights issue to its existing shareholders (the **issue**). It is proposed that Viking may participate in the shortfall under the issue (either in cash or by way of capitalisation of debt due by BIO to Viking). It is also proposed that Viking may capitalise debt due to it by BIO under the debt capitalisation. Following the allotment and issue of voting securities and warrants under the shortfall participation and the debt capitalisation (if approved by BIO's shareholders), Viking may exercise some or all of the warrants; of which some are exercisable in February 2008 and some are exercisable in February 2009 (the shortfall participation, debt capitalisation, and warrant conversion are together referred to as the **transactions**). As at 27 August 2007, Viking held 19.02% of the voting rights in BIO. It is likely, therefore, that the percentage of BIO voting rights held by Viking will increase under the transactions to in excess of 20%.

BIO intends to obtain shareholder approval, in accordance with the Code, of the potential allotment of voting securities to Viking under the transactions, subject to the resultant aggregate holding by Viking of voting securities in BIO not exceeding 35%.

BIO is, however, unable to comply with the requirements of rule 16(b) of the Code prior to the completion of the transactions, as BIO is not able to state in its notice of meeting—

- the precise number of voting securities that will be allotted to Viking; and
- the exact percentage of BIO voting rights that will be held or controlled by Viking after the allotments; and
- the total number of voting securities that will be on issue following the allotments.

These details can only be determined after the transactions have been completed and all allotments of voting securities pursuant to the transactions have been made.

The Takeovers Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions from rules 7(d) and 16(b) of the Code because—

- it is impossible for the actual number of voting securities to be allotted and the relevant percentages required by rule 16(b) to be stated in the notice of meeting, as these numbers and percentages are dependent on the extent to which the voting securities are issued to Viking and the extent to which the warrants are ultimately exercised by Viking;
- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to Viking under the transactions;
- if the non-associated shareholders approve the potential maximum allotment of voting securities to Viking, then, by implication, the shareholders also approve any lesser percentage of voting rights that may be allotted under the transactions.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 18 October 2007.

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Notes

1 *General*

This is a reprint of the Takeovers Code (ICP Biotechnology Limited) Exemption Notice 2007. The reprint incorporates all the amendments to the notice as at 2 March 2009, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

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/legislation/reprints.shtml>
or Part 8 of the *Tables of 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)***

Takeovers Code (ICP Biotechnology Limited) Exemption Notice 2007 (SR 2007/307): clause 3
