

**Reprint  
as at 1 August 2013**



**Takeovers Code (Sealegs  
Corporation Limited) Exemption  
Notice 2007**

(SR 2007/187)

Takeovers Code (Sealegs Corporation Limited) Exemption Notice 2007:  
expired, on 1 August 2013, 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.

**This notice is administered by the Takeovers Panel.**

10 Application of exemption in clause 5 8

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## Notice

### 1 Title

This notice is the Takeovers Code (Sealegs Corporation Limited) Exemption Notice 2007.

### 2 Application

This notice applies to acts or omissions occurring on or after 5 July 2007.

### 3 Expiry

This notice expires on the close of 31 July 2013.

### 4 Interpretation

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

**Act** means the Takeovers Act 1993

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

**meeting** means the meeting of Sealegs' shareholders to be held on or about 31 July 2007 to consider, amongst other things, whether to approve, for the purposes of rule 7(d) of the Code, the possible allotment of voting securities to the option holders as a result of the exercise by them of all or some of the options

**notice of meeting** means the notice of the meeting to be sent to Sealegs' shareholders in respect of the meeting

**option holders** means—

(a) David McKee Wright; and

(b) Maurice Bryham

**options** means—

(a) 5 000 000 share options in Sealegs to be offered to David McKee Wright; and

(b) 5 000 000 share options in Sealegs to be offered to Maurice Bryham

**pro rata increase** means an allotment of voting securities by Sealegs under the pro rata rights issue

**pro rata rights issue** means the offer of voting securities, announced at the annual general meeting of Sealegs on 31 July 2007, that is to be made pro rata to all holders of a class of voting securities

**Sealegs** means Sealegs Corporation Limited

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

- (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 Sealegs.
- (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.

Clause 4(1) **pro rata increase**: inserted, on 17 August 2007 (applying to acts or omissions occurring on or after 9 August 2007), by clause 4 of the Takeovers Code (Sealegs Corporation Limited) Exemption Amendment Notice 2007 (SR 2007/222).

Clause 4(1) **pro rata rights issue**: inserted, on 17 August 2007 (applying to acts or omissions occurring on or after 9 August 2007), by clause 4 of the Takeovers Code (Sealegs Corporation Limited) Exemption Amendment Notice 2007 (SR 2007/222).

#### **4A Exemption from rule 6(1) of Code**

An option holder who increases his voting control as a result of a pro rata increase is exempted from rule 6(1) of the Code in respect of that increase.

Clause 4A: inserted, on 17 August 2007 (applying to acts or omissions occurring on or after 9 August 2007), by clause 5 of the Takeovers Code (Sealegs Corporation Limited) Exemption Amendment Notice 2007 (SR 2007/222).

#### **4B Conditions of exemption in clause 4A**

The exemption in clause 4A is subject to the following conditions:

- (a) that each option holder acquires, as a result of the pro rata rights issue, no more than the option holder's pro rata share of the voting securities offered:
- (b) that the increase in voting control of each option holder resulting from the pro rata increase is decreased within 6 months after that increase to, or below, the control per-

centage that the option holder held immediately before the increase in his voting control:

- (c) that the increased control acquired as a result of the pro rata increase is not exercised by either option holder before it is decreased to, or below, the control percentage that the option holder held immediately before the increase in his voting control.

Clause 4B: inserted, on 17 August 2007 (applying to acts or omissions occurring on or after 9 August 2007), by clause 5 of the Takeovers Code (Sealegs Corporation Limited) Exemption Amendment Notice 2007 (SR 2007/222).

## **5 Exemption from rule 7(d) of Code**

Each option holder is exempted from rule 7(d) of the Code in respect of any increase in that option holder's voting control that results from the allotment of voting securities to that option holder on the exercise by that option holder of any options to the extent that the notice of meeting does not comply with rule 16(b) or (d) of the Code.

## **6 Exemption from rule 16(b) and (d) of Code**

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

## **7 Conditions relating to particulars of voting securities to be contained in notice of meeting**

The exemptions in clauses 5 and 6 are subject to the following conditions:

- (a) that the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that may be allotted in respect of the options held by David McKee Wright:
  - (i) the maximum number of voting securities that could be allotted to David McKee Wright on the exercise of all the options held by him:
  - (ii) the maximum number of voting securities that could be allotted to David McKee Wright on the exercise of all the options held by him expressed as a percentage of the total voting securities on

- issue after the allotment of the voting securities on the exercise of all the options held by him:
- (iii) the maximum percentage of the total voting securities on issue that could be held or controlled by David McKee Wright after the allotment of the voting securities on the exercise of all the options held by him:
  - (iv) the maximum percentage of the total voting securities on issue that could be held or controlled by David McKee Wright and his associates after the allotment of the voting securities on the exercise of all the options held by David McKee Wright:
- (b) that the numbers and percentages referred to in paragraph (a) are calculated on the basis that—
- (i) no options held by persons other than David McKee Wright are exercised; and
  - (ii) there is no change to the total number of voting securities on issue between the date of the notice of meeting and the final option exercise date other than as a result of the exercise of the options held by David McKee Wright:
- (c) that the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that may be allotted in respect of the options held by Maurice Bryham:
- (i) the maximum number of voting securities that could be allotted to Maurice Bryham on the exercise of all the options held by him:
  - (ii) the maximum number of voting securities that could be allotted to Maurice Bryham on the exercise of all the options held by him expressed as a percentage of the total voting securities on issue after the allotment of the voting securities on the exercise of all the options held by him:
  - (iii) the maximum percentage of the total voting securities on issue that could be held or controlled by Maurice Bryham after the allotment of the

- voting securities on the exercise of all the options held by him:
- (iv) the maximum percentage of the total voting securities on issue that could be held or controlled by Maurice Bryham and his associates after the allotment of the voting securities on the exercise of all the options held by Maurice Bryham:
- (d) that the numbers and percentages referred to in paragraph (c) are calculated on the basis that—
- (i) no options held by persons other than Maurice Bryham are exercised; and
  - (ii) there is no change to the total number of voting securities on issue between the date of the notice of meeting and the final option exercise date other than as a result of the exercise of the options held by Maurice Bryham:
- (e) that the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that may be allotted in respect of the options held by the option holders:
- (i) the maximum aggregate number of voting securities that could be allotted to the option holders on the exercise of all the options held by them:
  - (ii) the maximum aggregate number of voting securities that could be allotted to the option holders on the exercise of all the options held by them expressed as a percentage of the total voting securities on issue after the allotment of the voting securities on the exercise of all the options held by them:
  - (iii) the maximum aggregate percentage of the total voting securities on issue that could be held or controlled by the option holders after the allotment of the voting securities on the exercise of all the options held by them:
  - (iv) the maximum aggregate percentage of the total voting securities on issue that could be held or controlled by the option holders and the associates of each of them after the allotment of the vot-

ing securities on the exercise of all the options held by the option holders:

- (f) that the numbers and percentages referred to in paragraph (e) are calculated on the basis that there is no change to the total number of voting securities on issue between the date of the notice of meeting and the final option exercise date other than as a result of the exercise of the options held by the option holders:
- (g) that the notice of meeting contains, or is accompanied by, the following particulars:
  - (i) the exercise periods in relation to each series of options; and
  - (ii) a statement to the effect that the price for the voting securities is payable to Sealegs at the same time that either of the option holders gives written notice to Sealegs of their intention to exercise any of the options.

## **8 Additional conditions relating to contents of notice of meeting**

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

- (a) the notice of meeting also contains, or is accompanied by,—
  - (i) full particulars of the issue of the voting securities on the exercise of the options; and
  - (ii) a summary of the terms and conditions of the exemptions granted to Sealegs and the option holders by this notice; and
- (b) the notice of meeting displays, in a prominent position, a disclaimer stating that by exempting the option holders from rule 7(d), and Sealegs from rule 16(b) and (d), 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 the option holders; and

- (c) the form of the notice of meeting is approved by the Takeovers Panel.

## **9 Additional condition relating to annual reports**

The exemptions in clauses 5 and 6 are subject to the additional condition that every annual report issued by Sealegs from the date of the granting of the options until the final exercise date of any of the options held by the option holders includes, in a prominent position and in a form approved by the Takeovers Panel,—

- (a) a summary of the terms of the options; and
- (b) a summary of the terms and conditions of the exemptions granted to Sealegs and the option holders by this notice; and
- (c) a statement, as at the date of the annual report, of—
  - (i) the number of voting securities allotted to each of the option holders on the exercise of any of their options; and
  - (ia) the number of voting securities allotted to each of the option holders under the pro rata rights issue, and the total percentage of voting rights on issue that this number represents; and
  - (ii) the total percentage of voting rights on issue held or controlled by each of the option holders and their associates; and
  - (iii) the maximum percentage of total voting rights that could be held or controlled by each of the option holders and their associates on the full exercise of all of the options held by the option holders.

Clause 9(c)(ia): inserted, on 17 August 2007 (applying to acts or omissions occurring on or after 9 August 2007), by clause 6 of the Takeovers Code (Sealegs Corporation Limited) Exemption Amendment Notice 2007 (SR 2007/222).

## **10 Application of exemption in clause 5**

The exemption in clause 5 does not apply—

- (a) to an option holder if that option holder increases his voting control (except as a result of the exercise of the options as approved by Sealegs' shareholders at the



meeting or as a result of the pro rata rights issue) before the earlier of—

- (i) the exercise of the last of the options held by that option holder; or
  - (ii) the final option exercise date; or
- (b) to any increase in voting control resulting from the exercise of a particular option if, immediately after the completion of the allotment resulting from the exercise of the option, the total percentage of voting securities held or controlled by the option holder is greater than the maximum percentage of voting securities that could be held or controlled by that person as disclosed in the notice of meeting,—
- (i) in respect of David McKee Wright, in accordance with clause 7(a)(iii):
  - (ii) in respect of Maurice Bryham, in accordance with clause 7(c)(iii).

Clause 10(a): substituted, on 17 August 2007 (applying to acts or omissions occurring on or after 9 August 2007), by clause 7 of the Takeovers Code (Sealegs Corporation Limited) Exemption Amendment Notice 2007 (SR 2007/222).

Dated at Auckland this 3rd day of July 2007.

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

[Seal]

D O Jones,  
Chairperson.

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### Statement of reasons

**Note: the following statement of reasons should be read in conjunction with the statement(s) of reasons appended to:**

- Takeovers Code (Sealegs Corporation Limited) Exemption Amendment Notice 2007

This notice applies to acts or omissions occurring on or after 5 July 2007 and expires on 31 July 2013.

The Takeovers Panel (the **Panel**) has granted exemptions, subject to conditions, to—

- David McKee Wright and Maurice Bryham from rule 7(d) of the Takeovers Code (the **Code**) to the extent that rule 7(d) requires the notice of meeting to be in accordance with rule 16(b) and (d) of the Code in respect of any increase in the percentage of voting rights held in Sealegs Corporation Limited (**Sealegs**) on the exercise of the options held by them:
- Sealegs from rule 16(b) and (d) of the Code in respect of the notice of meeting.

David McKee Wright is the managing director of Sealegs and currently has an interest in 6 100 000 Sealegs' securities.

Maurice Bryham is the research and development manager of Sealegs and currently has an interest in 6 100 000 Sealegs' securities.

At a meeting of shareholders to be held on or about 31 July 2007, Sealegs proposes to ask shareholders to approve the allotment of ordinary shares in Sealegs (**voting securities**) to David McKee Wright and Maurice Bryham (the **option holders**) as a result of the exercise of the options held by them. However, Sealegs is unable to comply with rule 16(b) or (d) of the Code because Sealegs is unable to specify—

- the exact number of voting securities that will be allotted pursuant to the exercise of options held by the option holders, because the number of options that will be exercised by each of those persons will not be known until the expiry date of the options. Additionally, the terms and conditions of the options provide for an adjustment to the number of voting securities issued on the exercise of an option where there is a change to the capital structure of Sealegs:
- the exact percentage of the aggregate of all existing voting securities and all voting securities being allotted to the option

holders as a result of the exercise of their options, because that will depend on unknown variables (including the number of options ultimately exercised by each of the option holders and the future capital structure of Sealegs):

- the exact percentage of all voting securities that will be held or controlled by the option holders and their associates after completion of the allotment of voting securities, because that will depend on unknown variables (including the number of options ultimately exercised by each of the option holders, the future capital structure of Sealegs, and whether the option holders have increased their voting control otherwise than as a result of the exercise of their options).

The Panel considered that it was appropriate to grant the exemptions, and that the exemptions are consistent with the objectives of the Code, for the following reasons:

- it is impossible for the actual number of voting securities to be allotted and the relevant percentages required by rule 16(b) of the Code to be stated in the notice of meeting, as these numbers and percentages are dependent on the extent to which the options are ultimately exercised by the option holders and whether there is a change to the capital structure of Sealegs before the expiry date of the options:
- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to the option holders as a result of the exercise of their options:
- if the non-associated shareholders approve the potential maximum allotment of voting securities to the option holders, then, by implication, the shareholders also approve any lesser percentage of voting rights that may be acquired due to the allotment of voting securities on the exercise by the option holders of their options:
- it is impossible for the notice of meeting to state when the price for the voting securities is payable, as required by rule 16(d) of the Code, as this will depend on the exact date that either David McKee Wright or Maurice Bryham decides to exercise any of their options.

**Note: the preceding statement of reasons should be read in conjunction with the statement(s) of reasons appended to:**

- Takeovers Code (Sealegs Corporation Limited) Exemption Amendment Notice 2007

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 5 July 2007.

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## Notes

### 1 *General*

This is a reprint of the Takeovers Code (Sealegs Corporation Limited) Exemption Notice 2007. The reprint incorporates all the amendments to the notice as at 1 August 2013, 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)***

Takeovers Code (Sealegs Corporation Limited) Exemption Amendment Notice 2007 (SR 2007/222)

Takeovers Code (Sealegs Corporation Limited) Exemption Notice 2007 (SR 2007/187): clause 3

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