

**Reprint  
as at 1 September 2014**



**Takeovers Code (Claridge Capital  
Limited) Exemption Notice 2012**

(SR 2012/275)

Takeovers Code (Claridge Capital Limited) Exemption Notice 2012: expired,  
on 1 September 2014, 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 subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

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## Notice

- 1 Title**  
This notice is the Takeovers Code (Claridge Capital Limited) Exemption Notice 2012.
- 2 Application**  
This notice applies to acts or omissions occurring on or after 15 September 2012.
- 3 Expiry**  
This notice expires on the close of 31 August 2014.
- 4 Interpretation**
  - (1) In this notice, unless the context otherwise requires,—
    - Act** means the Takeovers Act 1993
    - allotment period** means the period commencing on the allotment of consideration shares under the sale and purchase agreement and ending on 31 August 2014
    - buyback deed** means the undated deed between Claridge and Four Thorns relating to Claridge’s buyback of its voting securities from Four Thorns
    - Claridge** means Claridge Capital Limited
    - Code** means the Takeovers Code under the Act
    - consideration shares** means the 600 million voting securities to be allotted to SDMO under the sale and purchase agreement
    - convertible notes** means the convertible notes issued by SDMO that, on the allotment of consideration shares under the sale and purchase agreement, will convert into 12.5 million voting securities, subject to the approval of the shareholders of Claridge
    - earnout shares** means the voting securities to be allotted to each earnout shareholder under the sale and purchase agreement

**earnout shareholder** means each of SDMO and Octa Phillip  
**executive options** means up to 20 million options to acquire voting securities to be issued to selected directors and senior officers of Claridge pursuant to certain option allocation deeds to be entered into between Claridge and the recipients of the executive options on the allotment of consideration shares under the sale and purchase agreement

**Four Thorns** means Four Thorns Trust Limited

**Four Thorns buyback** means the buyback and cancellation by Claridge, pursuant to the buyback deed, of the 5.5 million voting securities held or controlled by Four Thorns

**notice of meeting** means the notice of meeting of the shareholders of Claridge that contains the proposed resolution to approve the allotment of earnout shares in accordance with the sale and purchase agreement

**Octa Phillip** means Octa Phillip Asset Management Limited (a company incorporated in Australia) as trustee for the IB Australian Bioscience Fund I (a unit trust established under the laws of Australia)

**Octa Phillip placement shares** means the 312.5 million voting securities to be allotted to Octa Phillip under the share subscription agreement

**sale and purchase agreement** means the agreement between Claridge and SDMO for the acquisition of SDMO's business by Claridge dated 13 January 2012

**SDMO** means SeaDragon Marine Oils Limited

**SDMO business** means the business assets being acquired by Claridge from SDMO under the sale and purchase agreement

**share subscription agreement** means the share subscription agreement between Claridge and Octa Phillip dated 19 July 2012

**voting security** means a voting security in Claridge.

- (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 Claridge.

- (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 Exemptions from rule 7(d) of Code for earnout shareholders in respect of notice of meeting**

In relation to an increase in voting control resulting from an allotment of earnout shares, each earnout shareholder is exempted from rule 7(d) of the Code to the extent that that rule requires the notice of meeting to comply with rule 16(b) of the Code.

**6 Exemption from rule 16(b) of Code for Claridge in respect of notice of meeting**

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

**7 Conditions relating to notice of meeting**

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

- (a) the notice of meeting must contain, or be accompanied by, the following particulars:
- (i) the maximum number of earnout shares that could be allotted to each earnout shareholder during the allotment period; and
  - (ii) the particulars required under subparagraph (i) expressed as a percentage of all voting securities on issue; and
  - (iii) the maximum percentage of all voting securities on issue that could be held or controlled at the end of the allotment period by each earnout shareholder; and
  - (iv) the maximum percentage of all voting securities on issue that could be held or controlled at the end of the allotment period by each earnout shareholder and its associates; and
- (b) the following assumptions must be applied for the purpose of providing the particulars required under paragraph (a):

- (i) the consideration shares are allotted in accordance with the sale and purchase agreement;
  - (ii) the Octa Phillip placement shares are allotted in accordance with the share subscription agreement;
  - (iii) the convertible notes do not convert into voting securities;
  - (iv) none of the executive options are exercised;
  - (v) the Four Thorns buyback is completed in accordance with the buyback deed;
  - (vi) there is no change (except as provided for under this paragraph) in the total number of voting securities on issue between the date of the notice of meeting and the completion of the allotment of all earnout shares;
  - (vii) any other assumptions that are reasonably necessary to ensure that the shareholders of Claridge are provided with the material information required for them to be able to determine whether to approve the proposed resolution (that is, to approve the allotment of earnout shares in accordance with the sale and purchase agreement) in the notice of meeting; and
- (c) the notice of meeting must contain, or be accompanied by,—
- (i) a statement, in addition to the statement required by rule 16(f) of the Code, that the disclosures made in the notice of meeting have been modified in reliance on this exemption; and
  - (ii) a statement of the assumptions on which the particulars required under paragraph (a) are based; and
  - (iii) full particulars of the transaction under which the earnout shareholders are entitled to be allotted earnout shares; and
  - (iv) a summary of the terms and conditions of this exemption; and
- (d) the notice of meeting must display, in a prominent place, a disclaimer stating that, by exempting the

earnout shareholders from rule 7(d) of the Code and Claridge from rule 16(b) of the Code, the Panel—

- (i) is neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting; and
  - (ii) is not implying that it has a view on the merits of the proposed allotment of earnout shares to the earnout shareholders; and
- (e) the form of the notice of meeting must be approved by the Panel before the notice of meeting is sent to shareholders of Claridge.

## **8 Condition relating to annual report**

The exemptions in clauses 5 and 6 are subject to the condition that each annual report of Claridge issued during the allotment period must provide, in a prominent position,—

- (a) a summary of the terms under which the earnout shareholders may be entitled to be allotted earnout shares; and
- (b) a statement specifying, in respect of the accounting period to which the report relates, the following:
  - (i) the number of earnout shares (if any) that each earnout shareholder has been or will be allotted as a result of the financial performance of the SDMO business during that year:
  - (ii) the maximum number of earnout shares that could be allotted to each earnout shareholder as a result of the financial performance of the SDMO business:
  - (iii) the percentage of the aggregate of all existing voting securities and all voting securities that have been allotted that each number of earnout shares specified under paragraph (b)(i) represents:
  - (iv) the maximum percentage of all voting securities that could be held or controlled, after the allotment of all earnout shares under the sale and purchase agreement, by each earnout shareholder:

- (v) the maximum percentage of all voting securities that could be held or controlled, after the allotment of all earnout shares under the sale and purchase agreement, by each earnout shareholder and its associates; and
- (c) a statement of the assumptions on which the particulars specified under paragraph (b) are based.

**9 Condition relating to Claridge's Internet site**

The exemptions in clauses 5 and 6 are subject to the condition that, during the allotment period, Claridge must—

- (a) disclose on its Internet site the information required under clause 8 to be disclosed in its latest annual report; and
- (b) announce on its Internet site any aggregate increase of 1% or more in the voting securities held or controlled by each earnout shareholder since—
  - (i) the date of the last disclosure made under this paragraph in relation to that shareholder; or
  - (ii) where no prior disclosure has been made, since the date of the first aggregate increase of 1% or more in the voting securities held by that shareholder; and
- (c) maintain every such announcement on its Internet site in a prominent position.

**10 Conditions relating to other increases in voting control by earnout shareholders**

- (1) The exemptions in clause 5 and 6 are subject to the condition that an earnout shareholder must not increase its voting control during the allotment period, except in accordance with—
  - (a) the sale and purchase agreement; or
  - (b) the share subscription agreement; or
  - (c) the Code; or
  - (d) another exemption granted by the Panel under section 45 of the Act.
- (2) Any notice of meeting that is required for the purposes of enabling an earnout shareholder to increase voting control in ac-

cordance with subclause (1)(c) or (d) must contain, or be accompanied by,—

- (a) a summary of the terms under which the earnout shareholder may be entitled to be allotted earnout shares; and
  - (b) a current statement of the particulars of earnout shares that could be allotted to the earnout shareholder in accordance with the sale and purchase agreement, together with a statement of the assumptions on which the particulars are based.
- (3) The exemptions in clauses 5 and 6 are subject to the condition that an earnout shareholder must not hold or control a percentage of voting securities that exceeds the maximum specified in clause 7(1)(a)(iii), except as a result of an increase that complies with subclauses (1) and (2).

#### **11 Conditions relating to changes in control of earnout shareholders**

- (1) The exemptions in clauses 5 and 6 are subject to the condition that there is no change of control of an earnout shareholder during the allotment period that results in another person becoming the holder or controller of an increased percentage of voting rights in Claridge, unless the change of control of the earnout shareholder is in accordance with—
- (a) the Code; or
  - (b) another exemption granted by the Panel under section 45 of the Act.
- (2) Any notice of meeting that is required for the purpose of enabling a change of control of an earnout shareholder in accordance with subclause (1) must contain, or be accompanied by,—
- (a) a summary of the transaction under which the earnout shareholder is entitled to be allotted earnout shares; and
  - (b) a current statement of the particulars of earnout shares that could be allotted to the earnout shareholder in accordance with the sale and purchase agreement, together with a statement of the assumptions on which the particulars are based.



Dated at Auckland this 10th day of September 2012.

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

[Seal]

Simon Mark Horner,  
Member.

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### **Statement of reasons**

This notice applies to acts or omissions occurring on or after 15 September 2012.

The Takeovers Panel (the **Panel**) has granted—

- an exemption from rule 7(d) of the Code to SeaDragon Marine Oils Limited (**SDMO**) and Octa Phillip Asset Management Limited (**Octa Phillip**). The exemption applies only to the extent that rule 7(d) requires the notice of meeting containing the proposed resolution to approve the allotment of certain voting securities to SDMO and Octa Phillips to comply with rule 16(b) of the Code; and
- an exemption from rule 16(b) of the Code to Claridge Capital Limited (**Claridge**) in respect of that notice of meeting.

In November 2011, Claridge announced that it had entered into a conditional sale and purchase agreement with SDMO to acquire the business assets of SDMO (the **sale and purchase agreement**).

The purchase price under the sale and purchase agreement is as follows:

- the initial base purchase price for the SDMO business will be satisfied by the allotment of 600 million ordinary shares in Claridge to SDMO (the **consideration shares**); and

- if the SDMO business achieves certain financial performance targets, the base purchase price will increase. This additional consideration will be satisfied by the allotment of up to a maximum of 500 million ordinary shares in Claridge to SDMO (the **earnout shares**). The number of earnout shares to be issued depends on the extent to which the various performance targets are met by SDMO.

The acquisition of the SDMO business and the allotments of the consideration shares and the earnout shares are subject to the approval of the shareholders of Claridge.

On 19 July 2012, Claridge announced that it had entered into a conditional share subscription agreement with Octa Phillip (the **share subscription agreement**). Under that agreement, Octa Phillip will invest in Claridge and Claridge will allot 312.5 million ordinary shares to Octa Phillip.

In addition to the share subscription agreement, Octa Phillip and Claridge have arranged for Octa Phillip to receive 25% of any allotments of the earnout shares that SDMO is entitled to be allotted under the sale and purchase agreement.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions to Claridge, SDMO, and Octa Phillip because—

- it would be impossible for the actual number of voting securities to be allotted as earnout shares and the relevant percentages required by rule 16(b) of the Code to be stated in the notice of meeting, because those numbers and percentages are dependent on factors outside the control of Claridge and will not be known at the time that the notice of meeting is prepared; and
- all shareholders of Claridge not associated with SDMO or Octa Phillip will have an opportunity to vote on the potential allotment of voting securities; and
- if those shareholders approve a potential maximum voting control that could be held by SDMO and Octa Phillip, then, by implication, approval would also be granted for any lesser level of voting control.

Reprinted as at **Takeovers Code (Claridge Capital Limited)**  
1 September 2014 **Exemption Notice 2012**

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Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 20 September 2012.

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## Reprints notes

### **1** *General*

This is a reprint of the Takeovers Code (Claridge Capital Limited) Exemption Notice 2012 that incorporates all the amendments to that notice as at the date of the last amendment to it.

### **2** *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3** *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4** *Amendments incorporated in this reprint*

Takeovers Code (Claridge Capital Limited) Exemption Notice 2012 (SR 2012/275): clause 3

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