

**Reprint  
as at 1 January 2010**



**Takeovers Code (Wellington Drive  
Technologies Limited) Exemption  
Notice 2006**

(SR 2006/339)

Takeovers Code (Wellington Drive Technologies Limited) Exemption Notice  
2006: expired, on 1 January 2010, 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.**

## Notice

### 1 Title

This notice is the Takeovers Code (Wellington Drive Technologies Limited) Exemption Notice 2006.

### 2 Application

This notice applies to acts or omissions occurring on or after 31 October 2006.

### 3 Expiry

This notice expires on the close of 31 December 2009.

### 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 Wellington's shareholders that is to be held on or about 14 November 2006 to consider whether or not to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities to Source Vortex and Source Vortex II on the exercise of the warrants

**notice of meeting** means the notice of the meeting that is to be sent to Wellington's shareholders

**placement share allotment** means the allotment of 100 000 000 new voting securities to Source Vortex under a subscription agreement dated 4 October 2006

**Source Vortex** means Source Vortex, LLC, a company incorporated in the United States of America

**Source Vortex II** means Source Vortex II, LLC, a company incorporated in the United States of America

**voting security** means an ordinary share in Wellington

**warrants** means 35 000 000 warrants to subscribe for voting securities to be allotted by Wellington to Source Vortex under a subscription agreement dated 4 October 2006

**Wellington** means Wellington Drive Technologies Limited.

- (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 Wellington.
- (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**

Source Vortex and Source Vortex II are exempted from rule 7(d) of the Code in respect of any increase in their voting control resulting from the allotment of voting securities on the exercise of the warrants 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**

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

**7 Conditions of exemptions**

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

- (a) the notice of meeting contains particulars of the voting securities that may be allotted to Source Vortex and Source Vortex II following the placement share allotment and as a result of the exercise of the warrants by Source Vortex and Source Vortex II, including—
  - (i) the aggregate number of voting securities that would be allotted to Source Vortex and Source Vortex II as a result of the exercise of all of the warrants; and
  - (ii) the percentage of the aggregate of all existing voting securities (including the voting securities allotted under the placement share allotment) and all voting securities that would be allotted on the exercise of all of the warrants that the number referred to in subparagraph (i) represents; and
  - (iii) the aggregate percentage of all voting securities that would be held or controlled by Source Vortex and Source Vortex II after completion of the

- allotment of the number of voting securities referred to in subparagraph (i); and
- (iv) the aggregate percentage of all voting securities that would be held or controlled by Source Vortex, Source Vortex II, and their associates after completion of the allotment of the number of voting securities referred to in subparagraph (i); and
- (b) the numbers and percentages referred to in paragraph (a)(i) to (iv) must be calculated on the basis that there is no change in the total number of voting securities on issue between the date of the meeting and the final warrant exercise date, other than as a result of the placement share allotment and the exercise of the warrants; and
- (c) Source Vortex and Source Vortex II do not become the holder or controller of any warrants other than by way of the original allotment of 35 000 000 warrants to be approved by Wellington's shareholders or, in the case of Source Vortex II, by transfer from Source Vortex; and
- (d) there is no change in the effective control of Source Vortex and Source Vortex II between the date of the meeting and the final warrant exercise date; and
- (e) the notice of meeting contains a summary of the terms and conditions of the exemptions granted in this notice; and
- (f) the form of the notice of meeting is approved by the Panel.

**8 Exemptions do not apply if percentage of voting securities exceeds disclosed maximum**

The exemptions in clauses 5 and 6 do not apply to an increase in voting control resulting from the exercise of a particular warrant if, immediately after the completion of the resulting allotment of voting securities, the aggregate percentage of all voting securities held or controlled by Source Vortex and Source Vortex II is greater than the percentage disclosed under clause 7(a)(iii).

Dated at Wellington this 7th day of November 2006.

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

[Seal]

J C King,  
Chairperson.

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### **Statement of reasons**

This notice applies to acts or omissions occurring on or after 31 October 2006 and expires on 31 December 2009.

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

- Source Vortex, LLC (**Source Vortex**) and Source Vortex II, LLC (**Source Vortex II**) from rule 7(d) of the Takeovers Code (the **Code**) in respect of the requirements for the notice of meeting under rule 16(b) of the Code; and
- Wellington Drive Technologies Limited (**Wellington**) from rule 16(b) of the Code.

Wellington and Source Vortex have entered into a subscription agreement under which Wellington will allot voting securities and warrants to Source Vortex. Source Vortex intends to transfer a number of warrants to Source Vortex II within 12 months after the allotment.

Source Vortex and Source Vortex II do not currently hold or control any voting rights in Wellington. The share allotment would result in Source Vortex becoming the holder or controller of more than 20% of the voting rights in Wellington. Any subsequent allotment of voting securities on the exercise of the warrants by Source Vortex and Source Vortex II would result in them becoming the holder or controller of an increased percentage of the voting rights in Wellington and, as associates, they would hold or control in total more than 20% of the voting rights in Wellington.

Wellington intends to obtain shareholder approval, in accordance with rule 7(d) of the Code, for the initial allotment of voting securities to Source Vortex and the potential allotment of voting securities

on the exercise of the warrants by Source Vortex and Source Vortex II. However, Wellington cannot comply with rule 16(b) of the Code in respect of the potential allotment of voting securities on the exercise of the warrants by Source Vortex and Source Vortex II before the final exercise date for the warrants because it cannot state in the notice of meeting—

- the number of voting securities being allotted to each person that requires rule 7(d) approval; and
- the percentage of the aggregate of all existing voting securities and all voting securities being allotted that that number represents; and
- the percentage of all voting securities that will be held or controlled by the person to whom the voting securities are being allotted after completion of the allotment.

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

- the actual number of voting securities that may be allotted pursuant to the warrants, and the percentage of voting securities that will be held or controlled by the persons to whom the voting securities may be allotted, are uncertain and cannot be stated in the notice of meeting as required by rule 16(b);
- if the shareholders of Wellington approve the allotment of the maximum number of voting securities that could be allotted to Source Vortex and Source Vortex II pursuant to the warrants then, by implication, they can be taken to approve the allotment of a lesser number of voting securities to Source Vortex and Source Vortex II;
- the issue of warrants or similar instruments by a company to encourage further investment in that company is an acknowledged market practice and the Panel should facilitate this practice by the grant of appropriate exemptions where necessary.

The Panel considers that the exemptions are consistent with the objectives of the Code because shareholders of Wellington, other than Source Vortex, Source Vortex II, and their associates, are still re-

quired to approve at the shareholders' meeting the allotment of voting securities pursuant to the warrants.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 9 November 2006.

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**Notes****1 *General***

This is a reprint of the Takeovers Code (Wellington Drive Technologies Limited) Exemption Notice 2006. The reprint incorporates all the amendments to the notice as at 1 January 2010, 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/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 (Wellington Drive Technologies Limited) Exemption Notice 2006 (SR 2006/339): clause 3

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