

**Reprint
as at 2 July 2011**



**Takeovers Code (Mascot Finance
Limited) Exemption Notice 2008**

(SR 2008/257)

Takeovers Code (Mascot Finance Limited) Exemption Notice 2008: expired,
on 2 July 2011, 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.

Schedule 2
Specified shareholders

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Notice

- 1 Title**
This notice is the Takeovers Code (Mascot Finance Limited) Exemption Notice 2008.
- 2 Application**
- (1) Clauses 7 and 8 apply to acts or omissions occurring on or after 14 August 2008.
 - (2) The rest of this notice applies to acts or omissions occurring on or after 30 September 2002.
- 3 Expiry**
This notice expires on the close of 1 July 2011.
- 4 Interpretation**
- (1) In this notice, unless the context otherwise requires,—
Act means the Takeovers Act 1993
Code means the Takeovers Code under the Act
historical transactions means the transactions described in Schedule 1
Mascot means Mascot Finance Limited
redeemable preference shares means the 3 858 000 Class A redeemable preference shares issued by Mascot in March 2002
specified shareholders means the persons specified in Schedule 2
voting securities means voting securities in Mascot.
 - (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 Mascot.
 - (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 6(1) of Code in respect of historical transactions

Each of the persons specified in Schedule 1 is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control as a result of the historical transactions.

6 Condition of exemption in respect of historical transactions

The exemption in clause 5 is subject to the condition that the specified shareholders unanimously consent in writing, on or before 31 August 2008, to all increases in voting control as a result of the historical transactions.

7 Exemption from rule 6(1) of Code in respect of future transactions

- (1) Each of the specified shareholders is exempted from rule 6(1) of the Code in respect of any increase in the specified shareholder's voting control as a result of—
 - (a) any acquisition of voting securities by Mascot that occurs on or after 14 August 2008; or
 - (b) any acquisition by a specified shareholder of voting rights in Mascot that are held or controlled by another specified shareholder that occurs on or after 14 August 2008.
- (2) Subclause (1) does not apply to an acquisition that occurs after the date on which Mascot converts any redeemable preference shares into ordinary shares (being a conversion that occurs on or after 14 August 2008).

8 Conditions of exemption in respect of future transactions

The exemption in clause 7 in respect of a particular acquisition is subject to the conditions that,—

- (a) before the acquisition occurs, the specified shareholders who, immediately before the acquisition, hold or control voting securities unanimously consent in writing to any proposed increase in the voting control of a specified shareholder as a result of the acquisition;
- (b) a valuation of Mascot as at, or as at about, the time that an offer is made in respect of the acquisition is under-

taken by an independent valuer appointed by the board of Mascot, and a copy of that valuation is given to each of the persons who are required to give their consent under paragraph (a) before that consent is given.

Schedule 1

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Historical transactions

Transaction	Shareholders increasing voting control	Increase in control (%)
<i>Company buyback 30 September 2002</i>	Judith Elizabeth Lane	0.10
	Kenneth Alexander Lane	3.06
	Ken Lane Holdings International Limited	0.22
	Colin George Beauchamp Ussher	0.07
	Michael Edward Ussher	0.22
	Lynne Helen Whittington	0.02
	John Alfred Laird	0.11
	Keith Roger Shaw	0.11
	Graeme Raymond Wilkins	0.11
	Brian Patrick Kreft and Norma Grace Kreft	0.11
David John Stock and Hilary Anne Stock	0.11	
<i>Redeemable preference share conversion 31 March 2003</i>	Judith Elizabeth Lane	0.04
	Ken Lane Holdings International Limited	13.52
	Volker Erich Rademacher	0.01
	Colin George Beauchamp Ussher	0.03
	Peter Rex Taylor	0.08
	Brian Patrick Kreft and Norma Grace Kreft	0.07
	David John Stock and Hilary Anne Stock	0.41
<i>Transfer to family trust 27 June 2006</i>	Michael Edward Ussher, Shirley Joy Ussher, and Alan Roderick Munro	4.21
	<i>Share trade 19 August 2004</i>	Judith Elizabeth Lane
Kenneth Alexander Lane		0.22
Ken Lane Holdings International Limited		0.07
Colin George Beauchamp Ussher		0.01
Frances Ella Marie Ussher		0.01
Michael Edward Ussher, Shirley Joy Ussher, and Alan Roderick Munro		0.02
John Alfred Laird	0.01	

Transaction	Shareholders increasing voting control	Increase in control (%)
	Brian Patrick Kreft and Norma Grace Kreft	0.01
	David John Stock and Hilary Anne Stock	0.01
<i>Company buyback 8 September 2006</i>	Judith Elizabeth Lane	0.01
	Kenneth Alexander Lane	0.25
	Ken Lane Holdings International Limited	0.08
	Colin George Beauchamp Ussher	0.01
	Frances Ella Marie Ussher	0.01
	Michael Edward Ussher, Shirley Joy Ussher, and Alan Roderick Munro	0.02
	John Alfred Laird	0.01
	Graeme Raymond Wilkins	0.01
	Brian Patrick Kreft and Norma Grace Kreft	0.01
	David John Stock and Hilary Anne Stock	0.01
<i>Company buyback 9 February 2007</i>	Judith Elizabeth Lane	0.06
	Kenneth Alexander Lane	1.51
	Ken Lane Holdings International Limited	0.49
	Colin George Beauchamp Ussher	0.04
	Frances Ella Marie Ussher	0.05
	Michael Edward Ussher, Shirley Joy Ussher, and Alan Roderick Munro	0.11
	Lynne Helen Whittington	0.01
	Keith Roger Shaw	0.05
	Graeme Raymond Wilkins	0.05
	Brian Patrick Kreft and Norma Grace Kreft	0.07
	David John Stock and Hilary Anne Stock	0.08
<i>Lane restructure 7 March 2007</i>	Ken Lane Holdings International Limited	60.15
<i>Transfers to family trusts 31 March 2007</i>	Graeme Raymond Wilkins, Gina Catherine Wilkins, and PMC Trust Management Limited	2.13
	Keith Roger Shaw, Kathleen Rachael Shaw, and Ross Sinclair Wells	2.13

Schedule 2
Specified shareholders

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Ken Lane Holdings International Limited
Volker Erich Rademacher
Anne Lilian Mary Ussher
Frances Ella Marie Ussher
Michael Edward Ussher
Shirley Joy Ussher
Alan Roderick Munro
Lynne Helen Whittington
Peter Rex Taylor
Graeme Raymond Wilkins
Gina Catherine Wilkins
PMC Trust Management Limited
Brian Patrick Kreft
Norma Grace Kreft
David John Stock
Hilary Anne Stock
Keith Roger Shaw
Kathleen Rachael Shaw
Ross Sinclair Wells

Dated at Wellington this 12th day of August 2008.

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

[Seal]

K J O'Connor,
Member.

Statement of reasons

This notice (apart from *clauses 7 and 8*) applies to acts or omissions occurring on or after 30 September 2002. *Clauses 7 and 8* apply to acts or omissions occurring on or after 14 August 2008. The notice expires on the close of 1 July 2011.

The Takeovers Panel (the **Panel**) has granted to certain specified persons a retrospective exemption from rule 6(1) of the Takeovers Code (the **Code**) in respect of any increase in those persons' voting control in Mascot Finance Limited (**Mascot**) as a result of certain specified historical transactions. The exemption is subject to a condition that requires all of the current Mascot ordinary shareholders to unanimously consent in writing to the increases in voting control.

Mascot is a Code company by virtue of having 50 or more shareholders.

Mascot has issued redeemable preference shares to members of the public (the **redeemable preference shares**). Although the redeemable preference shares are not voting securities for the purposes of the Code, the holders of those redeemable preference shares are considered to be shareholders for the purposes of the Code. The total number of redeemable preference shareholders together with voting security holders (ordinary shareholders) is greater than 50.

Mascot has 19 ordinary shareholders (the **current Mascot ordinary shareholders**, all named in *Schedule 2*), all of whom are considered associates for the purposes of the Code. Some of those persons are directors and senior employees of Mascot. The largest shareholder holds or controls about 82% of the voting rights in Mascot. The

current Mascot ordinary shareholders are all party to shareholders' agreements.

Between September 2002 and March 2007 a number of transactions were undertaken that resulted in the current Mascot ordinary shareholders increasing their respective control percentages in Mascot. These increases in voting control appear to have resulted in inadvertent breaches of the Code. These transactions include buybacks by Mascot of its own voting securities, bonus issues of voting securities, trading in voting securities amongst ordinary shareholders, and transfers of voting securities by certain shareholders to family trusts or holding companies controlled by those shareholders. Some of the persons involved in the breaches of the Code have since exited the company.

The Panel considers it appropriate to grant the exemption and that the exemption is consistent with the objectives of the Code because—

- Mascot is a Code company only by virtue of having issued the redeemable preference shares; and
- the historical breaches of the Code by Mascot's ordinary shareholders appear to have been inadvertent; and
- the usual Code procedure for approving increases in a person's voting control is unworkable in Mascot's circumstances because all of the ordinary shareholders are considered to be associates for the purposes of the Code; and
- all affected shareholders have an opportunity to unanimously approve in writing all increases in voting control that occurred in breach of the Code. The affected shareholders will not be disadvantaged by not having all of the information and certifications required by the Code because of the proximity of the current Mascot ordinary shareholders to the business of the company and the availability of information from other sources.

The Panel has also, in *clause 7*, granted to the current Mascot ordinary shareholders an exemption from rule 6(1) of the Code in respect of any increase in any one of those person's voting control in Mascot as a result of—

- any future acquisition by Mascot of its own voting securities;
or

- any future acquisition by the person of voting rights held or controlled by any other current Mascot ordinary shareholder.

The exemption is subject to the conditions that—

- the current Mascot ordinary shareholders unanimously consent in writing to any proposed increase in the voting control of a current Mascot ordinary shareholder as a result of the future acquisition; and
- a valuation of the company is undertaken by an independent valuer appointed by the board of Mascot, and a copy of that valuation is provided to each of the current Mascot ordinary shareholders in advance of the written consent given in accordance with the above condition.

The current Mascot ordinary shareholders wish to be able in the future to have the company buy back their voting securities and also to be able to acquire more voting securities from any other of the current Mascot ordinary shareholders. In the absence of an exemption, such transactions would be impossible because the Mascot ordinary shareholders cannot comply with the relevant provisions of the Code. The Panel considers it appropriate to grant the exemption and that the exemption is consistent with the objectives of the Code because—

- Mascot is a Code company only by virtue of having issued the redeemable preference shares; and
 - the usual Code procedure for approving increases in a person's voting control is unworkable in Mascot's circumstances because all of the ordinary shareholders are considered to be associates for the purposes of the Code; and
 - all affected shareholders have an opportunity to unanimously approve in writing all increases in voting control as a result of the acquisition by Mascot of its own voting securities or by a current Mascot ordinary shareholder acquiring more voting securities from any other of the current Mascot ordinary shareholders. The affected shareholders will not be disadvantaged by not having all of the information and certifications required by the Code because of the proximity of the current Mascot ordinary shareholders to the business of the company and the availability of information from other sources.
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Reprinted as at **Takeovers Code (Mascot Finance Limited)**
2 July 2011 **Exemption Notice 2008**

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 14 August 2008.

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Notes**1 General**

This is a reprint of the Takeovers Code (Mascot Finance Limited) Exemption Notice 2008. The reprint incorporates all the amendments to the notice as at 2 July 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)*

Takeovers Code (Mascot Finance Limited) Exemption Notice 2008
(SR 2008/257): clause 3
