

**Reprint
as at 1 June 2011**



**Takeovers Code (Kidicorp Group
Limited) Exemption Notice 2007**

(SR 2007/188)

Takeovers Code (Kidicorp Group Limited) Exemption Notice 2007: revoked, on 1 June 2011, by clause 3 of the Takeovers Code (Revocation of Exemptions) Notice 2011 (SR 2011/191).

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 (Kidicorp Group Limited) Exemption Notice 2007.

2 Application

This notice applies to acts or omissions occurring on or after 28 June 2007.

3 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)

Kidicorp means Kidicorp Group Limited

Mitchell Trustees means Wayne Wright, Chloe Angela Wright, and Graeme Richard Holmes, being the trustees of the Mitchell Investment Trust constituted by a deed of trust dated 28 January 1994

Positive Educare means Positive Educare Limited

Positive Educare offer means a takeover offer made or to be made by Positive Educare for all of the voting securities in Kidicorp as described in the notice of intention to make a takeover offer dated 31 May 2007.

(2) 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.

4 Exemption from rule 35 of Code

The Mitchell Trustees are exempted from rule 35 of the Code in respect of the Positive Educare offer.

5 Condition of exemption in clause 4

The exemption in clause 4 is subject to the condition that neither the Mitchell Trustees nor any other person acting jointly or in concert with the Mitchell Trustees disposes of any equity securities in Kidicorp during the offer period, other than to—

- (a) Positive Educare under the Positive Educare offer; or
- (b) an offeror under another offer that is made in accordance with the Code.

6 Exemption from rule 56 of Code

Positive Educare and the Mitchell Trustees are exempted from rule 56 of the Code in respect of the Positive Educare offer to the extent that rule 56(2) requires the following to be included in calculating the percentage of acceptances of the offer or the equity securities that were the subject of the offer:

- (a) the acceptances of the Positive Educare offer by the Mitchell Trustees; and
- (b) the voting securities in Kidicorp held or controlled by the Mitchell Trustees.

7 Condition of exemptions in clauses 4 and 6

The exemptions in clauses 4 and 6 are subject to the condition that a summary of the terms and conditions of these exemptions, in a form approved by the Panel, are included in the Positive Educare offer.

Dated at Auckland this 3rd day of July 2007.

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

[Seal]

A Lawrence,
Member.

Statement of reasons

This notice applies to acts or omissions occurring on or after 28 June 2007.

The trustees of the Mitchell Investment Trust (the **Mitchell Trustees**), a trust constituted by a deed of trust dated 28 January 1994, hold or control 54.5% of the shares in Kidicorp Group Limited (**Kidicorp**).

On or about 31 May 2007, the Mitchell Trustees entered into an undocumented arrangement with Positive Educare Limited (**Positive Educare**) to accept a takeover offer to be made by Positive Educare to acquire all of the voting securities in Kidicorp, in respect of all of the voting securities that the Mitchell Trustees held in Kidicorp.

The Mitchell Trustees hold 100% of the issued voting securities in Positive Educare.

The Takeovers Panel (the **Panel**) has exempted the Mitchell Trustees from compliance with rule 35 of the Takeovers Code (the **Code**).

Rule 35 prevents the offeror, and persons acting jointly or in concert with the offeror, from disposing of any target company securities during the offer period other than to a competing bidder. The exemption granted by the Panel enables the Mitchell Trustees to accept the offer that is to be made by Positive Educare.

Should Positive Educare's offer reach the threshold for compulsory acquisition, in order to ensure that the Code's compulsory acquisition price determination process in rules 56 and 57 works as intended, the Panel has exempted Positive Educare and the Mitchell Trustees from rule 56 to the extent that, for the purposes of determining the consideration payable under compulsory acquisition, the shares held or controlled and the acceptances given by the Mitchell Trustees for the offer by Positive Educare would otherwise be included in—

- the acceptances of the offer; and
- the voting securities that were the subject of the offer.

As a result of this exemption, rule 57 of the Code may apply to the compulsory acquisition, depending on the level of acceptances of the takeover offer by the minority shareholders in Kidicorp.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions from rules 35 and 56 of the Code because the exemptions—

- would avoid an unintended consequence of the Code; and

- would not disadvantage other shareholders or prevent them from deciding the merits of the proposed offer for themselves; and
- facilitate the utilisation of a special purpose company for making the proposed offer and for compulsorily acquiring the outstanding securities, and the use of such companies is accepted market practice; and
- preserve the integrity of the compulsory acquisition price determination process encapsulated in rules 56 and 57 of the Code.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 12 July 2007.

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Notes**1 General**

This is a reprint of the Takeovers Code (Kidicorp Group Limited) Exemption Notice 2007. The reprint incorporates all the amendments to the notice as at 1 June 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 (Revocation of Exemptions) Notice 2011 (SR 2011/191):
clause 3
