

**Reprint  
as at 1 February 2009**



**Takeovers Code (Phitek Systems  
Limited) Exemption Notice (No 2)  
2008**

(SR 2008/446)

Takeovers Code (Phitek Systems Limited) Exemption Notice (No 2) 2008 : expired, on 1 February 2009, 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.**

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## Notice

### 1 Title

This notice is the Takeovers Code (Phitek Systems Limited) Exemption Notice (No 2) 2008.

### 2 Application

This notice applies to acts or omissions occurring on or after 24 November 2008.

### 3 Expiry

This notice expires on the close of 31 January 2009.

### 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

**K One W One** means K One W One Limited

**meeting** means the meeting of the shareholders of Phitek that is to be held on or about 15 December 2008 to consider whether to approve,—

(a) for the purposes of rule 7(c) of the Code, the TMT acquisitions; and

(b) for the purposes of rule 7(d) of the Code, the allotments of voting securities to K One W One, TMT, and VIF/TMT resulting from the rights issue

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

**Phitek** means Phitek Systems Limited

**rights issue** means the rights issue to be conducted by Phitek under a prospectus registered on or about 4 December 2008

**TMT** means TMT Ventures Limited

**TMT acquisitions** means the proposed acquisitions under which TMT, VIF/TMT, and Direct Management Investments Limited will each acquire a part of a parcel of 1 199 684 voting securities from Custodial Services Limited

**VIF/TMT** means VIF/TMT Ventures Limited

**voting security** means a voting security in Phitek.

- (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 Phitek.
- (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 in respect of rights issue**  
Each of K One W One, TMT, and VIF/TMT is exempted from rule 7(d) of the Code in respect of any increase in that person's voting control as a result of the allotment of voting securities to that person under the rights issue to the extent that rule 7(d) requires the notice of meeting to comply with rule 16(b) of the Code.

**6 Exemption from rule 16(b) of Code in respect of notice of meeting**  
Phitek is exempted from rule 16(b) of the Code in respect of the notice of meeting.

- 7 Conditions relating to rights issue disclosures**
- (1) The exemptions in clauses 5 and 6 are subject to the condition that the notice of meeting contains, or is accompanied by, the following particulars:
    - (a) the maximum number of voting securities that could be allotted to each of K One W One, TMT, and VIF/TMT under the rights issue:
    - (b) the maximum number of voting securities that could be allotted to each of K One W One, TMT, and VIF/TMT

- under the rights issue, expressed as a percentage of the total voting securities on issue after that allotment:
- (c) the maximum percentage of the total voting securities on issue that could be held or controlled by each of K One W One, TMT, and VIF/TMT after the allotment of voting securities under the rights issue:
  - (d) the maximum percentage of the total voting securities on issue that could be held or controlled by each of the following after the allotment of voting securities under the rights issue:
    - (i) K One W One and its associates:
    - (ii) TMT and its associates:
    - (iii) VIF/TMT and its associates.
- (2) The exemptions in clauses 5 and 6 are subject to the condition that the notice of meeting contains, or is accompanied by, the following particulars:
- (a) the maximum number of voting securities that could be allotted to K One W One, TMT, and VIF/TMT, in aggregate, under the rights issue:
  - (b) the maximum number of voting securities that could be allotted to K One W One, TMT, and VIF/TMT, in aggregate, under the rights issue, expressed as a percentage of the total voting securities on issue after that allotment:
  - (c) the maximum percentage of the total voting securities on issue that could be held or controlled by K One W One, TMT, and VIF/TMT, in aggregate, after the allotment of voting securities under the rights issue:
  - (d) the maximum percentage of the total voting securities on issue that could be held or controlled by K One W One, TMT, and VIF/TMT and their associates, in aggregate, after the allotment of voting securities under the rights issue.
- (3) The percentages required to be disclosed in subclauses (1) and (2) must be calculated on the basis that—
- (a) there is no change to the total number of voting securities on issue between the date of the notice of meeting and the expiry of this notice other than under the rights issue; and

- (b) in the case of subclause (1)(d) (and without limiting paragraph (a) of this subclause), K One W One, TMT, and VIF/TMT are not associates of each other.
- (4) The disclosure of percentages required in subclauses (1) and (2) must be made separately on both of the following bases:
  - (a) that the TMT acquisitions are approved and completed before the allotments under the rights issue:
  - (b) that the TMT acquisitions are not approved or completed before the allotments under the rights issue.

## **8 Further conditions that apply to exemptions in clauses 5 and 6**

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

- (a) the notice of meeting contains, or is accompanied by,—
  - (i) full particulars of the rights issue; and
  - (ii) a summary of the terms and conditions of the exemptions granted under this notice; and
- (b) the notice of meeting displays, in a prominent position, a disclaimer stating that by exempting K One W One, TMT, and VIF/TMT from rule 7(d) of the Code, and Phitek from rule 16(b) of the Code, the Takeovers Panel is—
  - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting; and
  - (ii) not implying it has a view on the merits of the proposed issue of voting securities to K One W One, TMT, and VIF/TMT under the rights issue; and
- (c) the form of the notice of meeting is approved by the Takeovers Panel.

## **9 Restrictions on other acquisitions, on increases in control greater than disclosed maximum, and on changes in control**

- (1) The exemption in clause 5 does not apply—
  - (a) to K One W One, TMT, or VIF/TMT if there is an increase in that person's voting control before the allot-

- ment under the rights issue except as a result of the TMT acquisitions; and
- (b) to an increase in the voting control of K One W One, TMT, or VIF/TMT as a result of the allotment of voting securities under the rights issue if, immediately after the completion of the allotment, the total percentage of voting securities held or controlled by that person 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 in accordance with clause 7(1)(c) (being the disclosure that is made on the basis under clause 7(4) that is appropriate depending on whether or not the TMT acquisitions have been approved and completed).
- (2) The exemption in clause 5 for—
- (a) K One W One is subject to the condition that there is no change in control of K One W One before the allotment under the rights issue; and
  - (b) TMT is subject to the condition that there is no change in control of TMT before the allotment under the rights issue; and
  - (c) VIF/TMT is subject to the condition that there is no change in control of VIF/TMT before the allotment under the rights issue.

**10 Takeovers Code (Phitek Systems Limited) Exemption  
Notice 2008 revoked**

The Takeovers Code (Phitek Systems Limited) Exemption Notice 2008 (SR 2008/422) is revoked.

Dated at Wellington this 7th day of December 2008.

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

[Seal]

Colin Glenn Giffney,  
Chairperson.

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### Statement of reasons

This notice applies to acts or omissions occurring on or after 24 November 2008 and expires on 31 January 2009. Because of changes in the transactions to which the notices apply, this notice revokes and replaces the Takeovers Code (Phitek Systems Limited) Exemption Notice 2008 that was gazetted on 30 October 2008.

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

- K One W One Limited (**K One W One**), TMT Ventures Limited (**TMT**), and VIF/TMT Ventures Limited (**VIF/TMT**) 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) of the Code in respect of any increase in the percentage of voting rights held in Phitek Systems Limited (**Phitek**) under a proposed rights issue; and
- Phitek from rule 16(b) of the Code in respect of the notice of meeting.

K One W One holds shares representing more than 20% of the voting rights in Phitek. TMT and VIF/TMT are both wholly owned subsidiaries of TMT Management Limited and hold, in aggregate, more than 20% of the voting rights in Phitek. Direct Management Investments Limited is an associate of TMT and VIF/TMT. Custodial Services Limited holds shares in Phitek representing approximately 3% of the voting rights in Phitek.

TMT, VIF/TMT, and Direct Management Investments Limited propose to acquire Phitek shares held by Custodial Services Limited. These acquisitions would increase the voting control of TMT, VIF/TMT, and Direct Management Investments Limited and are caught by rule 6(1) of the Code. Shareholder approval under rule

7(c) of the Code is to be sought for the acquisitions at a meeting of shareholders.

Phitek proposes to undertake a pro-rata non-renounceable rights issue. Under the rights issue, Phitek shareholders may apply to the company to take up more than their pro-rata entitlement. Phitek may accept such applications in its discretion. K One W One, TMT, and VIF/TMT have expressed their intention to take up at least their pro-rata entitlements. The allotments to K One W One, TMT, and VIF/TMT under the rights issue may result in 1 or more of those persons increasing their voting control and being caught by rule 6(1) of the Code. Shareholder approval under rule 7(d) of the Code is to be sought for the allotments to K One W One, TMT, and VIF/TMT under the rights issue. Rule 7(d) requires that the notice of meeting makes the disclosures specified by rule 16(b) of the Code. However, the rule 16(b) disclosures cannot be made because of uncertainties in the level of participation in the rights issue by Phitek shareholders.

The Panel has granted these exemptions on the condition that the maximum percentage to which any of K One W One, TMT, and TMT/VIF could increase their voting control is disclosed in the notice of meeting.

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

- 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 since these numbers and percentages are dependent on a number of factors that will not be known with certainty until after the notice of meeting is prepared:
- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to K One W One, TMT, and VIF/TMT as a result of the rights issue:
- if the non-associated shareholders approve the potential maximum allotment of voting securities to K One W One, TMT, and VIF/TMT, then, by implication, the shareholders also approve any lesser percentage of voting rights that may be allotted to K One W One, TMT, and VIF/TMT under the rights issue:



- the rights issue will be conducted pursuant to a registered prospectus. The ability for shareholders to subscribe for securities that others cannot take up and thus provide adequate funding to ensure a company's growth is an acknowledged method of raising capital in New Zealand, and the Panel should facilitate these arrangements by granting appropriate exemptions where necessary.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 18 December 2008.

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**Notes****1 General**

This is a reprint of the Takeovers Code (Phitek Systems Limited) Exemption Notice (No 2) 2008 . The reprint incorporates all the amendments to the notice as at 1 February 2009, 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/legislation/reprints.shtml>  
or Part 8 of the *Tables of 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 (Phitek Systems Limited) Exemption Notice (No 2) 2008 (SR 2008/446): clause 3

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