



Takeovers Code (Dorchester Pacific Limited) Exemption Notice 2010

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).

Contents

	Page
1 Title	2
2 Application	2
3 Expiry	2
4 Interpretation	2
<i>Exemptions</i>	
5 Exemption from rule 7(d) of Code	4
6 Exemption from rule 16(b) of Code	4
<i>Conditions of exemptions</i>	
7 Notice of meeting disclosures	4
8 Assumptions for purpose of notice of meeting	5
9 No increase above approved maximum percentage	6
10 Annual report disclosures for ongoing allotments	6
11 Internet disclosures for ongoing allotments	7
12 Other-means increases	7
13 Upstream change of control of exempted body corporate	8
14 Disclosure requirements for other-means increases and upstream changes of control	8
<i>Effect of breach of conditions</i>	
15 Application of exemption in event of breach of condition	9

Notice

1 Title

This notice is the Takeovers Code (Dorchester Pacific Limited) Exemption Notice 2010.

2 Application

This notice applies to acts or omissions occurring on or after 27 May 2010.

3 Expiry

This notice expires on the close of 15 July 2013.

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Takeovers Act 1993

allotment means the allotment of voting securities under a specified transaction and, where the specified transaction involves allotments that will occur over a period of time, all of those allotments

allotment period means the period starting on the date of the meeting that approves the specified transactions, and ending on the date of the last allotment under the specified transactions

allottee means Hugh Green or Business Bakery

approved maximum percentage means the maximum percentage of voting securities that each allottee may, in accordance with approval given at the meeting, hold or control as a result of allotments made under each specified transaction (and is the percentage required to be disclosed under clause 7(c)(iii))

Business Bakery means The Business Bakery LP

calculation date means the date on which the assumptions in respect of the disclosures in the notice of meeting are based

Code means the Takeovers Code under the Act

Dorchester means Dorchester Pacific Limited

entitlement offer means the offer of voting securities and options in Dorchester to be conducted by Dorchester under a prospectus to be registered on or about 11 June 2010

Hugh Green means Hugh Green Investments Limited

meeting means the meeting of the shareholders of Dorchester that is to be held on or about 30 June 2010 to consider whether to approve, for the purposes of rule 7(d) of the Code, the allotments of voting securities to Hugh Green and Business Bakery under the specified transactions

notice of meeting means the notice of meeting sent to the shareholders of Dorchester in respect of the meeting

option means an option issued under the entitlement offer

other-means increase means an increase in voting control by a means other than as a result of a specified transaction

specified transaction means either or both of the following:

- (a) the entitlement offer by Dorchester, and the related underwriting arrangements with Hugh Green and Business Bakery, that result in an allotment of voting securities and options to Hugh Green and Business Bakery (the **first transaction**);
- (b) the exercise of options issued to Hugh Green and Business Bakery under the entitlement offer and related underwriting arrangements (the **second transaction**)

underwriting arrangements means the arrangements between Dorchester and Hugh Green, and between Dorchester and Business Bakery, for underwriting the entitlement offer, as set out in an underwriting agreement executed on or about 11 June 2010

voting security means a voting security in Dorchester.

- (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 voting rights in Dorchester.
- (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.

*Exemptions***5 Exemption from rule 7(d) of Code**

Hugh Green and Business Bakery are exempted from rule 7(d) of the Code, to the extent that rule 7(d) requires the notice of meeting to comply with rule 16(b) of the Code, in respect of any increase in their voting control that results from the allotment, provided the conditions in clauses 7 to 14 are complied with.

6 Exemption from rule 16(b) of Code

Dorchester is exempted from rule 16(b) of the Code in respect of the notice of meeting, provided the conditions in clauses 7 to 14 are complied with.

*Conditions of exemptions***7 Notice of meeting disclosures**

The notice of meeting must contain, or be accompanied by, the following:

- (a) full particulars of the specified transactions:
- (b) 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 accordance with the exemptions in this notice:
- (c) with respect to each allottee, and in relation to each specified transaction, the following:
 - (i) the maximum number of voting securities that could be allotted to the allottee under the specified transaction:
 - (ii) that number expressed as a percentage of the total voting securities on issue after the allotment:
 - (iii) the potential maximum percentage of all voting securities on issue that could be held or controlled by the allottee after completion of the allotment under the specified transaction (which is the **approved maximum percentage**):
 - (iv) the potential maximum percentage of all voting securities on issue that could be held or controlled, in aggregate, by the allottee and the allot-

tee's associates (where the associates are taken to exclude the other allottee) after completion of the allotment:

- (d) the numbers and percentages referred to in paragraph (c)(i) to (iii) with respect to the allottees in aggregate, in relation to each specified transaction:
- (e) the potential maximum percentage of all voting securities on issue that could be held or controlled, in aggregate, by the allottees and all their associates after completion of all allotments under each specified transaction:
- (f) the calculation date.

8 Assumptions for purpose of notice of meeting

The numbers and percentages referred to in clause 7(c) to (e) and required to be disclosed in the notice of meeting must be calculated—

- (a) on the basis of the number of voting securities of Dorchester on issue at the calculation date; and
- (b) on the assumption that each allottee takes up the maximum possible number of voting rights under each specified transaction, and no other person exercises options, which means that—
 - (i) Hugh Green and Business Bakery both take up the maximum number of voting securities pursuant to their underwriting agreements, including any option to underwrite a further portion of the entitlement offer; and
 - (ii) Hugh Green exercises the maximum number of options that it receives under the entitlement offer, but Business Bakery does not; and
 - (iii) Business Bakery exercises the maximum number of options that it receives under the entitlement offer, but Hugh Green does not; and
- (c) on the assumption that the minimum number of voting securities that may be allotted to the holders of debentures and subordinated notes in Dorchester Finance Limited are issued, and that no options are exercised by those persons.

9 No increase above approved maximum percentage

- (1) Until the completion of the allotments under the first transaction, neither allottee may hold or control a percentage of the voting securities that exceeds the approved maximum percentage that applies to that allottee in relation to the first transaction, except as a result of an other-means increase that complies with clause 12.
- (2) Between the completion of the allotments under the first transaction and the end of the allotment period, neither allottee may hold or control a percentage of the voting securities that exceeds the approved maximum percentage that applies to that allottee in relation to the second transaction, except as a result of an other-means increase that complies with clause 12.

10 Annual report disclosures for ongoing allotments

Every annual report and concise annual report of Dorchester that is issued during the allotment period must include the following, in a prominent position:

- (a) a summary of the terms of the allotments (both made and yet to be made) under the specified transactions:
- (b) a statement, as at the date of the annual report or the concise annual report, of—
 - (i) the percentage of the voting securities on issue that are held or controlled by each allottee; and
 - (ii) the percentage of the voting securities on issue that are held or controlled by each allottee and its associates (where the associates are taken to exclude the other allottee):
- (c) statements, as at the date of the annual report or the concise annual report, of the following numbers and percentages with respect to each allottee and in relation to each specified transaction:
 - (i) the number of voting securities allotted to the allottee under the specified transaction:
 - (ii) the potential maximum percentage of all voting securities on issue that could be held or controlled by the allottee after completion of all allotments under the specified transaction:

- (iii) the potential maximum percentage of all voting securities on issue that could be held or controlled, in aggregate, by the allottee and the allottee's associates (where the associates are taken to exclude the other allottee) after completion of all allotments under the specified transaction:
- (d) the numbers and percentages referred to in paragraph (c)(i) and (ii) calculated with respect to both allottees in aggregate and in relation to each specified transaction:
- (e) the potential maximum percentage of all voting securities on issue that could be held or controlled, in aggregate, by the allottees and all their associates after completion of all allotments under each specified transaction:
- (f) the assumptions on which the calculations referred to in paragraphs (c) to (e) are based.

11 Internet disclosures for ongoing allotments

- (1) If Dorchester has an Internet site, it must, beginning from the date of the first annual report or concise annual report that contains the information specified in clause 10, and continuing until the end of the allotment period,—
 - (a) disclose on the Internet site the information required under clause 10 to be disclosed in an annual report and concise annual report; and
 - (b) announce on the Internet site any aggregate increase of 1% or more in the voting rights held or controlled by each allottee since the date of the last disclosure under this clause or, where no prior disclosure has been made, since the date of the first aggregate increase of 1% or more in the voting rights held or controlled by the allottee.
- (2) The announcement referred to in subclause (1)(b) must be made as soon as practicable after Dorchester is aware, or ought to be aware, that the relevant increase has occurred.

12 Other-means increases

During the allotment period, neither allottee may increase its voting control by an other-means increase unless—

- (a) the other-means increase is by an acquisition of voting securities approved in accordance with rule 7(c) of the Code, or an allotment of voting securities approved in accordance with rule 7(d) of the Code, or is permitted by another exemption granted by the Panel; and
- (b) if approval of the shareholders of Dorchester is required in connection with the other-means increase, any notice of meeting for the meeting to be held to approve the other-means increase contains or is accompanied by the information required to be disclosed under clause 14, stated as at the date of the notice of meeting that relates to the other-means increase.

13 Upstream change of control of exempted body corporate

During the allotment period, there must be no effective upstream change in control of either allottee unless—

- (a) the effective change in control of the allottee is by an acquisition of voting securities approved in accordance with rule 7(c) of the Code, or an allotment of voting securities approved in accordance with rule 7(d) of the Code, or is permitted under another exemption granted by the Panel; and
- (b) any notice of meeting required in connection with the change of control contains or is accompanied by the information required to be disclosed under clause 14, stated as at the date of the notice of meeting that relates to the effective change of control.

14 Disclosure requirements for other-means increases and upstream changes of control

- (1) Any notice of meeting referred to in clause 12(b) or 13(b) must contain or be accompanied by the following:
 - (a) a summary of the terms of the allotments under the specified transactions already approved by shareholders;
 - (b) a statement of the number of voting securities of Dorchester that each allottee holds or controls, and the percentages referred to in clause 10(b), as at the date of the notice of meeting relating to the other-means increase or upstream change of control:

- (c) a statement of the numbers and percentages referred to in clause 10(c) to (e), but calculated as at the date of the notice of meeting relating to the other-means increase or upstream change of control:
 - (d) a statement of the assumptions on which the particulars referred to in paragraph (c) are based.
- (2) In respect of an other-means increase, the numbers and percentages referred to in subclause (1)(c) must be calculated both on the basis that—
- (a) the relevant allottee's voting control will increase as a result of the other-means increase and will increase as a result of the specified transaction; and
 - (b) the relevant allottee's voting control will increase only as a result of both of the specified transactions.
- (3) If an other-means increase is approved by shareholders in accordance with clause 12, clauses 5 and 6 apply as if references in those clauses to the approved maximum percentage were references to the approved maximum percentage adjusted to take account of the other-means increase.

Effect of breach of conditions

15 Application of exemption in event of breach of condition

- (1) If an exemption ceases as a result of the breach of any condition described in subclause (2), the loss of the benefit of the exemption applies from the time of the breach, and does not apply to any previous increase in voting control that occurred while the condition was being complied with.
- (2) Subclause (1) applies if a condition of the exemptions in clauses 5 and 6 is breached—
- (a) by an allottee increasing its voting control in Dorchester other than as a result of an other-means increase that complies with clause 12; or
 - (b) by a failure to comply with the disclosure requirements relating to the annual report or concise annual report, as specified in clause 10; or
 - (c) by a failure to comply with the ongoing disclosure requirements in clause 11; or

- (d) by an upstream change of control that occurs in a manner that does not comply with clause 13.

Dated at Wellington this 14th day of June 2010.

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

[Seal]

D O Jones,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 27 May 2010 and expires on 15 July 2013.

Dorchester Pacific Limited (**Dorchester**) is undertaking an entitlement offer. That offer is to be underwritten by Dorchester's 2 largest shareholders, Hugh Green Investments Limited (**Hugh Green**) and The Business Bakery LP (**Business Bakery**). The increase to Hugh Green's and Business Bakery's voting control resulting from their underwriting of the entitlement offer could increase their voting control above 20%.

Under the entitlement offer, subscribers will be granted 1 option for each share subscribed for. Hugh Green and Business Bakery will be granted options pursuant to their participation in the entitlement offer. The exercise of those options could result in Hugh Green or Business Bakery increasing their voting control above 20%.

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

- Hugh Green and Business Bakery from rule 7(d) of the Code in respect of increases to those persons' voting control result-

ing from the allotment of Dorchester shares pursuant to their underwriting obligations in relation to the entitlement offer and pursuant to the exercise of options to be issued to them under the entitlement offer, to the extent that rule 7(d) requires the notice of meeting to comply with rule 16(b) of the Code; and

- Dorchester, in relation to rule 16(b) of the Code in respect of the notice of meeting.

Shareholder approval is to be sought under rule 7(d) of the Code for the potential increases to Hugh Green's and Business Bakery's voting control above 20%. However, some of the information required to be included in the notice of meeting pursuant to rule 16(b) of the Code will not be known at the time the approval is sought.

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

- the details required by rule 16(b) cannot be specified in the notice of meeting because it is uncertain when, and how many, voting securities will be allotted to Hugh Green and Business Bakery; and
- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to Hugh Green and Business Bakery; and
- if the non-associated shareholders approve the potential maximum allotment of voting securities to Hugh Green and Business Bakery then, by implication, the shareholders also approve the allotment of a lesser number of voting securities to the option holders.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 17 June 2010.

This notice is administered by the Takeovers Panel.
