



## Securities Act (Dominion Income Property Fund Limited) Exemption Notice 2002

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice.

### Contents

1	Title	10	Further condition relating to current financial statements
2	Commencement	11	Further condition relating to forecast financial statements
3	Expiry	12	Further conditions relating to directors' statements
4	Interpretation	13	Further condition relating to date of allotment
5	Exemption from regulation 3(1) of Regulations	14	Exemptions from clause 1(1) and 5 of Schedule 3D of Regulations
6	Condition of exemption in clause 5	15	Conditions of exemption in clause 14
7	Exemption from regulation 3(2) of Regulations		
8	Condition of exemption in clause 7		
9	Further condition of exemptions in clauses 5 and 7		

### Notice

- 1 Title**  
This notice is the Securities Act (Dominion Income Property Fund Limited) Exemption Notice 2002.
- 2 Commencement**  
This notice comes into force on the day after the date of its notification in the *Gazette*.
- 3 Expiry**  
This notice expires on the close of 30 April 2003.
- 4 Interpretation**  
(1) In this notice, unless the context otherwise requires,—  
**Act** means the Securities Act 1978

**amalgamated company** means Dominion Income Property Fund Limited

**amalgamating company** means any company that is specified as an amalgamating company in the information memorandum

**amalgamation** means the proposed amalgamation between the amalgamating companies by means of a scheme of arrangement to be approved in accordance with section 236 of the Companies Act 1993

**designated date** means a date that is not more than 21 days before the date on which the information memorandum is sent to the investors

**information memorandum** means a document to be sent to the investors in each amalgamating company that explains the effect of the amalgamation and contains an investment statement and prospectus for the specified equity securities and the specified debt securities

**investors** means shareholders and debentureholders in 1 or more of the amalgamating companies

**Regulations** means the Securities Regulations 1983

**specified debt securities** means debt securities issued by the amalgamated company that are to be offered under the amalgamation

**specified equity securities** means equity securities issued by the amalgamated company that are to be offered under the amalgamation.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

## 5 Exemption from regulation 3(1) of Regulations

The amalgamated company, the amalgamating companies, and every person acting on behalf of all or any of them are exempted from regulation 3(1) of the Regulations in the case of specified equity securities.

**6 Condition of exemption in clause 5**

The exemption in clause 5 is subject to the condition that the registered prospectus for the offer of the specified equity securities—

- (a) contains, or is accompanied by, the information, statements, certificates, and other matters that would be required to be sent to the shareholders of the amalgamating companies under section 221(3) of the Companies Act 1993 (except for the statement referred to in section 221(3)(e) of that Act) if that section applied to the amalgamating companies; and
- (b) contains the information, statements, certificates, and other matters specified in clauses 2, 4 to 7, 16, 17, 21, 39, and 40 of the First Schedule of the Regulations.

**7 Exemption from regulation 3(2) of Regulations**

The amalgamated company, the amalgamating companies, and every person acting on behalf of all or any of them are exempted from regulation 3(2) of the Regulations in the case of specified debt securities.

**8 Condition of exemption in clause 7**

The exemption in clause 7 is subject to the condition that the registered prospectus for the offer of the specified debt securities—

- (a) contains, or is accompanied by, the information, statements, certificates, and other matters that would be required to be sent to the shareholders of the amalgamating companies under section 221(3) of the Companies Act 1993 (except for the statement referred to in section 221(3)(e) of that Act) if that section applied to the amalgamating companies; and
- (b) contains the information, statements, certificates, and other matters specified in clauses 2, 4 to 6, 9, 12 to 14, 33, and 34 of the Second Schedule of the Regulations.

**9 Further condition of exemptions in clauses 5 and 7**

The exemptions in clauses 5 and 7 are subject to the further condition that the registered prospectus relating to the offer of the specified equity securities or the specified debt securities (as the case may be)—

- (a) contains a statement to the effect that dissenting investors do not have the right of repurchase that dissenting shareholders would have if the amalgamation were effected under Part XIII of the Companies Act 1993; and
- (b) contains any further matters required to be disclosed by the High Court following its consideration of the amalgamation proposal.

## **10 Further condition relating to current financial statements**

- (1) For the purpose of this clause, an amalgamating company is an amalgamating company for which financial statements are required if it has commenced business and—
  - (a) it has acquired an asset; or
  - (b) it has incurred a debt.
- (2) The exemptions in clauses 5 and 7 are subject to the further condition that the registered prospectus for the offer of the specified equity securities or the specified debt securities (as the case may be) contains, or is accompanied by,—
  - (a) in relation to an amalgamating company for which financial statements are required, a copy of the most recent audited consolidated financial statements of the amalgamating companies for which financial statements are required that comply with subclause (3); and
  - (b) in relation to an amalgamating company for which financial statements are required, if the date of allotment of the specified equity securities or the specified debt securities would be more than 9 months after the balance date of the financial statements of an amalgamating company referred to in paragraph (a), a copy of the interim consolidated financial statements of that amalgamating company that comply with subclause (3) (except that they need not be audited) for a period beginning on the day after that balance date and ending on a date that is not more than 9 months later.
- (3) Financial statements comply with this clause if—
  - (a) the statements comply with, and have been registered under, the Financial Reporting Act 1993; or
  - (b) in the case of interim consolidated financial statements, the statements have been prepared to comply with the

Financial Reporting Act 1993 as if they required registration under that Act.

## **11 Further condition relating to forecast financial statements**

The exemptions in clauses 5 and 7 are subject to the further condition that the registered prospectus for the offer of specified equity securities or specified debt securities (as the case may be) contains, or is accompanied by,—

- (a) a forecast consolidated statement of financial position for the amalgamated company as at the date on which the amalgamation is proposed to take effect; and
- (b) forecast consolidated financial statements for the 3-month period ending on 31 March 2003, the 12-month period ending on 31 March 2004, and the 12-month period ending on 31 March 2005, in each case prepared as if the amalgamation had already been effected.

## **12 Further conditions relating to directors' statements**

The exemptions in clauses 5 and 7 are subject to the further condition that the registered prospectus for the offer of the specified equity securities or the specified debt securities (as the case may be) contains, or is accompanied by,—

- (a) in relation to an amalgamating company for which financial statements are required under clause 10, a statement by directors of that company as to whether, after due inquiry by them in relation to the period between the balance date of the interim financial statements referred to in clause 10(2)(b) and the designated date, there have, in their opinion, arisen any circumstances that materially adversely affect—
  - (i) the trading or profitability of the amalgamating company; or
  - (ii) the value of its assets; or
  - (iii) the ability of the amalgamating company to pay its liabilities due within the next 12 months; and
- (b) in relation to an amalgamating company for which financial statements are required under clause 10, a statement by the directors of that company that, between the balance date of the financial statements

referred to in clause 10(2)(b) and the designated date, there have been no material changes in the nature of the business of the amalgamating company.

### **13 Further condition relating to date of allotment**

- (1) This clause applies if 1 or more of the amalgamating companies is a company for which financial statements are required under clause 10.
- (2) The exemptions in clauses 5 and 7 are subject to the further condition that the date of allotment of any specified equity securities or specified debt securities is not more than 9 months after the balance date of the interim financial statements referred to in clause 10(2)(b).

### **14 Exemptions from clause 1(1) and 5 of Schedule 3D of Regulations**

- (1) The amalgamated company, the amalgamating companies, and every person acting on behalf of all or any of them are exempted, in the case of specified equity securities and specified debt securities, from the requirement to include in an investment statement, in the list of questions referred to in clause 1(1) of Schedule 3D of the Regulations, the question "*How much do I pay?*"
- (2) The amalgamated company, the amalgamating companies, and every person acting on behalf of all or any of them are exempted, in the case of specified equity securities and specified debt securities, from clause 5 of Schedule 3D of the Regulations and the italicised question immediately above that clause.

### **15 Conditions of exemption in clause 14**

- (1) The exemption in clause 14(1) is subject to the condition that, in place of the question "*How much do I pay?*", the investment statement includes the question "*What will this cost me?*"
- (2) The exemption in clause 14(2) is subject to the condition that the investment statement contains a brief description of the terms of exchange of the securities of the amalgamating companies for the securities of the amalgamated company.

Dated at Wellington this 10th day of October 2002.

The Common Seal of the Securities Commission was affixed in the presence of:

[L.S.]

F. R. S. Clouston,  
Member.

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### Explanatory note

*This note is not part of the notice, but is intended to indicate its general effect.*

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 30 April 2003, exempts Dominion Income Property Fund Limited and the companies specified as amalgamating companies in the information memorandum (which is a document to be sent to investors in each amalgamating company), subject to conditions, from regulation 3(1) and (2) and clauses 1(1) and 5 of Schedule 3D of the Securities Regulations 1983.

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

Date of notification in *Gazette*: 11 October 2002.

This notice is administered in the Securities Commission.

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