



## Securities Act (Matapo Limited) Exemption Notice 2005

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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### Notice

#### 1 Title

This notice is the Securities Act (Matapo Limited) Exemption Notice 2005.

#### 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 31 May 2010.

#### 4 Interpretation

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

**Act** means the Securities Act 1978

**body corporate** means a company limited by guarantee, incorporated in Fiji under the Companies Act (Cap 247) (Fiji) before the offer of the specified securities, that owns or will own the communal assets

**communal assets—**

- (a) means the land within the development designated by Matapo for use by the owners or occupiers of residential sections or by any invitees of those owners or occupiers (including access roads); and
- (b) includes chattels, fixtures, and fittings used, or intended, adopted, or designed for use, in connection with the use of the residential sections by those owners, occupiers, or invitees (including electricity, sewage, and waste water facilities)

**development** means the subdivision of the land known as the Momi Bay Resort located near Nadi, Fiji into, among other things, residential sections

**Matapo** means Matapo Limited, a company incorporated in Fiji under the Companies Act (Cap 247) (Fiji)

**purchaser** means a purchaser of a residential section in the development under a sale agreement

**Regulations** means the Securities Regulations 1983

**sale agreement** means an agreement for the sale of a residential section in the development entered into between Matapo as vendor and a subscriber of specified securities as purchaser

**specified securities** means a security in the form of—

- (a) a freehold estate or interest in a residential section, upon completion of the development, for which the purchaser is, or following completion of the allotment procedures will be, immediately entitled to a separate certificate of title or other instrument of title issued or registered under the Land Transfer Act (Cap 131) (Fiji); and
  - (b) membership of the body corporate that confers rights to participate in the use of all or part of the communal assets.
- (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 Exemptions

Matapo and every person acting on its behalf are exempted, in respect of specified securities, from sections 33(3), 37, 37A,

and 51 to 54B of the Act and from the Regulations (except regulation 8).

## **6 Conditions of exemptions**

The exemptions in clause 5 are subject to the following conditions:

- (a) Matapo has supplied to each purchaser, before execution of the relevant sale agreement, copies of the following documents:
  - (i) the memorandum and articles of association of the body corporate;
  - (ii) the management agreement for the body corporate;
  - (iii) the memorandum of encumbrance (providing for the purchaser to become a member of the body corporate and to comply with its memorandum and articles of association, including payment of levies) to be executed by the purchaser on settlement of the sale agreement;
  - (iv) the asset transfer deed that provides for the transfer from Matapo to the body corporate of the communal assets;
  - (v) the proposed sale agreement for the relevant residential section; and
- (b) Matapo ensures that each proposed sale agreement provides for the purchaser to acquire the relevant residential section and membership of the body corporate that confers rights to participate in the use of all or part of the communal assets; and
- (c) Matapo ensures that the deposit money paid by a purchaser is held in a trust account by the trustee (being a trust company under the Trustee Companies Act 1967) until the relevant sale agreement is settled; and
- (d) Matapo ensures that no settlement of a sale agreement is completed until—
  - (i) the communal assets are owned by the body corporate; and
  - (ii) the body corporate holds legal title under the Land Transfer Act (Cap 131) (Fiji) in respect of the land comprised in the communal assets; and

- (e) it is a term of the offer of the specified securities that Matapo provides to a prospective purchaser, within 5 business days after receiving a request, a copy of the most recent financial statements of the body corporate; and
- (f) it is a term of the offer of the specified securities that the financial statements of the body corporate are audited annually and distributed to the members of the body corporate as soon as is reasonably practicable after each audit is completed, and in any event no later than 5 months after the end of each accounting period of the body corporate; and
- (g) it is a term of each sale agreement, or a term of a document executed under a sale agreement, that membership of the body corporate can be obtained only on the purchase of a residential section and must be resigned on the resale of that section; and
- (h) the articles of association of the body corporate provide that all monies paid to the body corporate by its members under its articles of association are applied solely for the purposes of—
  - (i) owning, administering, and maintaining the communal assets; or
  - (ii) administering and enforcing a scheme for the regulation and control of matters relating to the use and enjoyment, maintenance, repair, decoration, and landscaping of, and provision of services to, residential sections in the development; and
- (i) the articles of association of the body corporate provide that—
  - (i) the members of the body corporate, and their invitees, have the right to use and enjoy the communal assets in accordance with the articles of association; and
  - (ii) the members of the body corporate have the right to vote at meetings of the members of the body corporate; and
  - (iii) on a winding up of the body corporate, any interest of the body corporate in the communal assets will vest in the members of the body corporate as tenants in common; and

- (iv) levies, fees, or subscriptions payable to the body corporate by its members are determined in accordance with a procedure as set out in the articles of association; and
- (j) the memorandum of association of the body corporate provides that the body corporate may levy its members for the purpose of providing funds for, and meeting the body corporate's costs and expenses with a view to, the body corporate being managed prudently but, subject to setting aside prudent reserves, neither earning a distributable profit nor incurring a loss at the end of each financial year.

Dated at Wellington this 3rd day of May 2005.

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

[L.S.]

M. Chen,  
Member.

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### Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 31 May 2010, exempts Matapo Limited from sections 33(3), 37, 37A, and 51 to 54B of the Securities Act 1978 and the Securities Regulations 1983 (except regulation 8), subject to conditions, in respect of the offer of certain securities offered by Matapo Limited.

The exemption will enable Matapo Limited to offer to members of the public in New Zealand interests in a residential subdivision in Fiji known as the Momi Bay Resort near Nadi, with accompanying membership rights in a body corporate, without the need for a registered prospectus and investment statement for the securities. Matapo Limited would also be exempted from the register, record keeping, certificate, and on-request information requirements of the Securities Act 1978.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- the exemptions are consistent with the policy of previous exemptions that the Commission has granted in relation to residential property developments, including 2 class notices, the Securities Act (Residential Property Developments) Exemption Notice 1999 and the Securities Act (Estates and Interests in Australian Land) Exemption Notice 2002; and
- the securities involved in these developments confer ownership rights in residential lots and rights to use the communal facilities in a residential development. The conditions of the exemptions require that the body corporate holding the communal facilities is not managed so as to earn distributable profits (subject to setting aside prudent reserves). Rather, the purpose of the issuers is to allow the owners of residential lots to participate in the control of the communal facilities.

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

Date of notification in *Gazette*: 5 May 2005.

This notice is administered by the Securities Commission.

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