



# **Securities Act (Monaco Village Holdings 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 (Monaco Village Holdings 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 30 June 2010.

### **4 Interpretation**

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

**Act** means the Securities Act 1978

**certificate of title** means a certificate of title or a computer unit title register, as appropriate, issued under the Unit Titles Act 1972

**key event** means the providing of a registrable transfer instrument to a subscriber in accordance with clause 6(a)(i)

**Monaco** means Monaco Village Holdings Limited

**proportionate ownership scheme** means a contributory scheme offered by Monaco that involves the investment of money in circumstances where each subscriber for specified participatory securities—

- (a) will acquire a stratum estate in a unit on the unit plan; and
- (b) will be issued with a certificate of title in the subscriber's name for the relevant stratum estate

**registered valuer** means a person who is a registered valuer within the meaning of the Valuers Act 1948

**registrable transfer instrument** means a transfer instrument that may be used for the purpose of registering the transfer of any land or estate or interest in land in accordance with section 90 of the Land Transfer Act 1952

**Regulations** means the Securities Regulations 1983

**relevant units** has the meaning set out in clause 4 of Schedule 2

**specified participatory securities** means participatory securities issued by Monaco in respect of the proportionate ownership scheme at Monaco Hotel and Resort in Nelson (and otherwise known as Monaco Village)

**stratum estate** means a stratum estate in freehold

**subscription contract** means a contract entered into between each subscriber for specified participatory securities and Monaco for the subscription and allotment of specified participatory securities

**unit** has the same meaning as in section 2 of the Unit Titles Act 1972

**unit plan** means the plan that has been or is intended to be deposited under section 4 of the Unit Titles Act 1972 to subdivide the land comprised in Certificates of Title 140645, 175030, and 175031 (Nelson Land Registry) in accordance with that Act.

- (2) For the purposes of this notice, a registered valuer is not an independent registered valuer if—
- (a) that registered valuer and any director of Monaco are relatives, one being the spouse, civil union partner, or de facto partner of the other or being the parent, brother, sister, or child of the other or of the spouse, civil union partner, or de facto partner of the other; or
  - (b) that registered valuer or any person employed by that registered valuer is, or has been within 1 year of the preparation of the independent valuer's report,—
    - (i) a shareholder or director of Monaco; or
    - (ii) a shareholder or director of any company that is a holding company or subsidiary of Monaco or that is a partner or joint venturer with Monaco; or
  - (c) there is any other relationship or interest between the registered valuer and Monaco that is likely to influence the judgement of the registered valuer.
- (3) 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 for specified participatory securities**

Monaco and every person acting on its behalf are exempted from sections 33(3), 37, 37A, and 51 to 54 of the Act in respect of specified participatory securities.

## **6 Conditions**

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

- (a) that it is a term of each subscription contract that—
  - (i) each subscriber for specified participatory securities will be provided (on the settlement by the subscriber of the purchase of the unit on the unit plan) with a registrable transfer instrument that enables that subscriber to be registered as the proprietor of the stratum estate for that unit; and
  - (ii) each subscriber for specified participatory securities will receive a copy of audited annual financial statements in respect of the performance,

- financial position, and cash flows of the proportionate ownership scheme, being financial statements that comply with the Financial Reporting Act 1993, no later than 3 months after each balance date of the proportionate ownership scheme:
- (b) that no subscriptions for specified participatory securities will be received by, or on behalf of, Monaco unless a subscription contract with the terms referred to in paragraph (a) has been entered into with the relevant subscriber;
  - (c) that all subscriptions for specified participatory securities and any interest on those subscriptions are held in trust and must, immediately after each of them is received, be paid into a trust account (**the trust account**);
  - (d) that no subscription is paid out of the trust account unless it is paid—
    - (i) to Monaco after—
      - (A) the key event has occurred for the relevant subscriber; and
      - (B) all conditions relating to the receipt of subscriptions by Monaco contained in the relevant subscription contract have been satisfied; or
    - (ii) to—
      - (A) Monaco in satisfaction of Monaco's right to forfeit and retain the part of a subscription that forms a deposit in accordance with the relevant subscription contract; and
      - (B) the relevant subscriber, to the extent that any of the relevant subscription remains after the deposit referred to in subsub-paragraph (A) has been retained; or
    - (iii) to the relevant subscriber in accordance with paragraph (h); or
    - (iv) to the relevant subscriber in accordance with paragraph (i); or
    - (v) to the relevant subscriber in accordance with any other right to have the relevant subscription repaid;

- (e) that the trust account is maintained by a solicitor of the High Court of New Zealand and is subject to the Solicitors' Trust Account Regulations 1998, and the money held in the trust account is money to which section 169A(3)(c) of the Law Practitioners Act 1982 applies;
- (f) that every subscriber for specified participatory securities has, before entering into the subscription contract, received a copy of a written statement that—
  - (i) sets out the matters referred to in Schedule 1; and
  - (ii) is signed by the directors of Monaco; and
  - (iii) is dated not more than 2 months before the subscriber's receipt of the written statement;
- (g) that Monaco's written statement contains, or has attached, a copy of a report by an independent registered valuer that—
  - (i) sets out the matters referred to in Schedule 2; and
  - (ii) is signed by the registered valuer; and
  - (iii) is dated not more than 4 months before the date of Monaco's written statement;
- (h) that, if the key event has not occurred for a subscriber within 36 months of a subscription being received by, or on behalf of, Monaco (the **settlement period**), no specified participatory securities may be allotted to the relevant subscriber in relation to that subscription and that subscription must promptly be returned to the relevant subscriber, unless, before the end of the settlement period,—
  - (i) Monaco has given the relevant subscriber written notice that the key event will not occur before the end of the settlement period and that the subscriber is entitled to have that subscription returned at the end of the settlement period; and
  - (ii) the subscriber and Monaco have both signed a written agreement that clearly states that the settlement period is to be extended and specifies the period of time by which the settlement period is to be extended;
- (i) that, if a subscriber signs a written agreement in accordance with paragraph (h)(ii) and the key event has not occurred within the extended period of time specified in that agreement, no specified participatory securities

may be allotted to that subscriber in relation to his or her or its subscription and that subscription must promptly be returned to that subscriber.

## 7 **Transitional provision**

- (1) This clause applies to specified participatory securities that are subscribed for after the commencement of this notice by a person (a **subscriber**) who entered into a sale agreement for a stratum estate in a unit on the unit plan (whether settled or unsettled) before the commencement of this notice.
- (2) The exemptions in clause 5 apply to the specified participatory securities to which this clause applies, but the conditions specified in clause 6 do not apply to those securities.
- (3) The exemptions in clause 5 are instead subject to the following conditions in relation to the specified participatory securities to which this clause applies:
- (a) Monaco makes an offer of specified participatory securities to the subscriber after the commencement of this notice on the basis of the proportionate ownership scheme;
  - (b) if the subscriber accepts the offer, it is a term of the subscription contract entered into between the subscriber and Monaco that the subscriber will receive a copy of audited annual financial statements in respect of the performance, financial position, and cash flows of the proportionate ownership scheme, being financial statements that comply with the Financial Reporting Act 1993, no later than 3 months after each balance date of the proportionate ownership scheme;
  - (c) before entering into the contract referred to in paragraph (b), the subscriber has received a copy of a written statement that—
    - (i) sets out the matters referred to in Schedule 1; and
    - (ii) is signed by the directors of Monaco; and
    - (iii) is dated not more than 2 months before the subscriber's receipt of the written statement;
  - (d) that Monaco's written statement contains, or has attached, a copy of a report by an independent registered valuer that—
    - (i) sets out the matters referred to in Schedule 2; and
    - (ii) is signed by the registered valuer; and

- (iii) is dated not more than 4 months before the date of the written statement.
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## **Schedule 1** **Matters to be specified or contained in Monaco's statement**

cls 6(f), 7(3)(c)

### **1 Date of Monaco's statement**

In a prominent place, the date as at which Monaco's statement is prepared.

#### *Important information for investors*

### **2 Information at front of Monaco's statement**

A statement in the following form (to be set out at the front of Monaco's statement):

#### **“IMPORTANT INFORMATION”**

(The information in this section is required under the Securities Act (Monaco Village Holdings Limited) Exemption Notice 2005 (being a notice given under the Securities Act 1978).)

Investment decisions are very important. They often have long-term consequences. Read all documents carefully. Ask questions. Seek advice before committing yourself.

#### **Warning**

This offer is exempt under the Securities Act (Monaco Village Holdings Limited) Exemption Notice 2005 from the legal requirement to register a prospectus for this scheme and to appoint an independent supervisor to monitor the interests of subscribers. Your attention is drawn to the absence of these statutory protections.

#### **Choosing an investment**

When deciding whether to invest, consider carefully the answers to the following questions that can be found on the pages noted below:

*Page*

*What sort of investment is this?*

*Who is involved in providing it for me?*

*How much do I pay?*

*What are the charges?*

*What returns will I get?*

*What are my risks?*

*Can the investment be altered?*

*How do I cash in my investment?*

*Who do I contact with enquiries about my investment?*

*Is there anyone to whom I can complain if I have problems with the investment?*

*What other information can I obtain about this investment?*

### **Choosing an investment adviser**

You have the right to request from any investment adviser a written disclosure statement stating his or her experience and qualifications to give advice. That statement will tell you—

- (a) whether the adviser gives advice only about particular types of investments; and
- (b) whether the advice is limited to the investments offered by 1 or more particular financial organisations; and
- (c) whether the adviser will receive a commission or other benefit from advising you.

You are strongly encouraged to request that statement. An investment adviser commits an offence if he or she does not provide you with a written disclosure statement within 5 working days of your request. You must make the request at the time the advice is given or within 1 month of receiving the advice.

In addition,—

- (a) if an investment adviser has any conviction for dishonesty or has been adjudged bankrupt, he or she must tell you this in writing; and
- (b) if an investment adviser receives any money or assets on your behalf, he or she must tell you in writing the methods employed for this purpose.

Tell the adviser what the purpose of your investment is. This is important because different investments are suitable for different purposes.”

*What sort of investment is this?***3 Description of proportionate ownership scheme**

A description of the proportionate ownership scheme, the interests in the proportionate ownership scheme being offered, and how long the scheme has been in operation.

**4 Description of units on unit plan**

A description of the units on the unit plan to be purchased in accordance with the proportionate ownership scheme and a statement that other units shown on the unit plan may subsequently be included in the proportionate ownership scheme if the owners of those units wish to join the scheme.

**5 Material contracts relating to improvements in respect of units and common property on unit plan**

Material details of the contracts relating to the buildings or improvements proposed by Monaco in respect of the units on the unit plan and the common property shown on the unit plan.

**6 Covenants, etc, in respect of units and common property on unit plan**

A description of any covenants, conditions, restrictions, and easements in respect of the units on the unit plan (whether or not they are registered on the certificates of title for the units) and the common property shown on the unit plan.

**7 Options, etc, in respect of units on unit plan**

A description of any option, buyback, or similar arrangement, and of any rental guarantees in relation to the units on the unit plan.

**8 Land information memorandum relating to units on unit plan**

Any material matters referred to in a land information memorandum under section 44A of the Local Government Official Information and Meetings Act 1987 that have been referred to the independent registered valuer for the purposes of the valuation report referred to in clauses 6(g) and 7(3)(d) of this notice, and a description of those matters.

**9 Material details concerning rights of occupation of units on unit plan**

- (1) Material details concerning any rights of occupation to which the units on the unit plan are subject, whether by lease, licence, or otherwise, including—
- (a) the term of the agreement; and
  - (b) any rights of renewal; and
  - (c) any rent reviews; and
  - (d) the financial standing of tenants or occupiers; and
  - (e) any guarantees or other special provisions.
- (2) A statement—
- (a) of the place where copies of any agreement relating to those rights of occupation may be inspected free of charge; and
  - (b) indicating whether or not any existing occupant of a unit on the unit plan has failed to meet any material obligations under the terms of any agreement that confers a right of occupation.

*Who is involved in providing it for me?*

**10 Information about persons associated with proportionate ownership scheme**

The names and addresses of the following persons associated with the proportionate ownership scheme and a description of their role in the scheme:

- (a) Monaco and its directors; and
- (b) the manager of the scheme and, if that person was not the person first appointed as the manager of the scheme, the person first appointed as the manager of the scheme; and
- (c) the solicitor referred to in clause 6(e) of this notice; and
- (d) the sales organisation (if any) through which the offer of specified participatory securities is to be made to the subscribers; and
- (e) the names and addresses of any promoters.

**11 Qualifications and experience of manager of proportionate ownership scheme**

The qualifications and experience of the manager of the proportionate ownership scheme.

**12 Management agreements relating to units on unit plan**

- (1) Material details of any management agreement that has been, or is proposed to be, entered into for the management of the units on the unit plan, including—
- (a) the term of the agreement; and
  - (b) the management fee; and
  - (c) the procedures for making decisions that may affect the interests of subscribers for specified participatory securities.
- (2) A statement of the place where copies of the management agreement may be inspected free of charge.

**13 Interests of Monaco, manager, promoter, and others**

- (1) This clause applies if Monaco, the manager of the proportionate ownership scheme, any promoter of the proportionate ownership scheme, or any shareholder, director, or employee of Monaco or of the manager or of the promoter—
- (a) is a party to, or will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the units on the unit plan; or
  - (b) has a material financial interest in another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the units on the unit plan; or
  - (c) is a director, officer, or trustee of another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the units on the unit plan; or
  - (d) is the parent, child, spouse, civil union partner, or de facto partner of another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the units on the unit plan; or
  - (e) is otherwise directly or indirectly materially interested in any transaction relating to the proportionate ownership scheme or the units on the unit plan.
- (2) The following information if this clause applies:
- (a) the names of the parties to the transaction and the date of the transaction; and
  - (b) a brief description of the material terms of the transaction; and

- (c) the nature of the interest in the transaction.

*How much do I pay?*

**14 Purchase price**

The purchase price to be paid by a subscriber for his or her or its unit on the unit plan.

*What are the charges?*

**15 Types of charges**

- (1) A statement as to which of the following types of charges are or may be payable to Monaco or a promoter, to an associated person of Monaco or of a promoter, or to the proportionate ownership scheme by a subscriber (whether directly or indirectly, including by deduction):
- (a) entry charges;
  - (b) trustee, administration, or management charges;
  - (c) expenses or overhead charges;
  - (d) charges or expenses relating to goods or services that the subscriber is required to obtain;
  - (e) early termination charges;
  - (f) switching or sale charges (including the difference between any buying and selling prices for the securities);
  - (g) alteration charges;
  - (h) other charges.
- (2) A statement as to which of the types of charges specified in subclause (1) are or may be payable by Monaco, or from the proportionate ownership scheme, to a promoter or administration manager or investment manager, or to an associated person of Monaco or of the promoter or of the administration manager or of the investment manager, being charges that will or may affect the amount of the returns to subscribers.
- (3) A brief description of any practices of Monaco or any associated person of Monaco in relation to charges that will or may affect the amount of the returns to subscribers.
- (4) A brief description of the rights of Monaco or any other person to alter any of the charges applicable to the specified participatory securities.

**16 Amount of charges**

- (1) If a charge, or the minimum or maximum amount of a charge, referred to in clause 15(1) can, at the date of Monaco's statement, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement of the dollar amount (or of the percentage and a description of the other dollar amount).
- (2) If a charge, or the minimum or maximum amount of a charge, referred to in clause 15(1) cannot, at the date of Monaco's statement, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement describing how the charge will be calculated and what procedure is available to the subscriber to ascertain the amount at the time of, and following, the subscription.

**17 Remuneration of Monaco relating to proportionate ownership scheme**

The remuneration and other benefits Monaco or any associated person of Monaco will receive in connection with the proportionate ownership scheme and the manner in which this remuneration and other benefits are to be paid or provided.

*What returns will I get?*

**18 Income and expenses relating to proportionate ownership scheme**

Material details concerning the manner in which all income and expenses relating to the proportionate ownership scheme are to be accounted for and the basis upon which profits are to be distributed.

*What are my risks?*

**19 Liabilities relating to proportionate ownership scheme**

A description and, if practicable, quantification of all liabilities (including contingent liabilities) that a subscriber for specified participatory securities will or may incur as a holder of specified participatory securities.

*Can the investment be altered?***20 Alteration of securities**

A brief description of any right of a subscriber, Monaco, or any other person to alter the terms of a subscriber's interest in the proportionate ownership scheme.

*How do I cash in my investment?***21 Early termination**

A brief description of any right of Monaco, a subscriber, or any other person to terminate a subscriber's interest in the proportionate ownership scheme.

**22 Right to sell security**

- (1) A statement as to whether or not a subscriber is entitled to sell his or her or its interest in the proportionate ownership scheme to another person and, if so, whether in the opinion of Monaco there is an established market for those sales.
- (2) If any charges are payable by a subscriber on a sale, a brief description of those charges.

*Who do I contact with enquiries about my investment?***23 Enquiries about the proportionate ownership scheme**

The names or descriptions of officers, employees, or agents of Monaco to whom enquiries about the proportionate ownership scheme can be made, and the addresses and business telephone numbers of those people.

*Is there anyone to whom I can complain if I have problems with the investment?***24 Complaints about the proportionate ownership scheme**

- (1) The names or descriptions of officers, employees, or agents of Monaco to whom complaints about the proportionate ownership scheme can be made, and the addresses and business telephone numbers of those people.
- (2) If complaints about the proportionate ownership scheme can be made to a trustee or an industry body, a statement to this effect and the addresses and business telephone numbers of those people.

- (3) A statement as to whether or not complaints about the proportionate ownership scheme can be made to an ombudsman and, if so, the address and business telephone number of the ombudsman.

*What other information can I obtain about this investment?*

**25 Annual information**

A statement of the type of information (if any) that is required to be, or otherwise will be, given annually to subscribers by Monaco.

**26 On request information**

A statement—

- (a) describing the type of information that is required to be, or otherwise will be, available on request from Monaco; and
- (b) explaining how the request should be made; and
- (c) of whether any charge may be made for that information and the amount of the charge.

*Other information*

**27 Other material information**

Any other information that would be material to a prospective subscriber's decision to invest in the proportionate ownership scheme.

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cls 6(g), 7(3)(d)

## **Schedule 2**

### **Matters to be specified in independent registered valuer's report**

#### **1 Name and address of registered valuer**

The name and address of the registered valuer and a brief description of that registered valuer's qualifications.

#### **2 Statement by registered valuer**

A statement that the valuation report is made by the registered valuer as an independent registered valuer.

#### **3 Purpose of report**

A statement that the registered valuer is making the valuation report for the purposes of the proportionate ownership scheme and for use by prospective subscribers for specified participatory securities.

#### **4 Description of relevant units**

A description of the units on the unit plan that form part of the proportionate ownership scheme at the date of the registered valuer's report (the **relevant units**), including where they are situated on the unit plan, and confirmation that the registered valuer has inspected—

- (a) the buildings and improvements on the relevant units; and
- (b) the plans and specifications of the new buildings and improvements that are proposed by Monaco in respect of the relevant units.

#### **5 Covenants, etc, in respect of relevant units**

A list of any covenants, conditions, restrictions, easements, and any other estates or interests that appear on the certificates of title in respect of the relevant units as at the date of the registered valuer's report.

#### **6 Present use of relevant units**

The present use of the relevant units.

**7 Compliance with regional or district plan rules**

- (1) The nature of any regional or district plan rules, existing use rights, resource consents, or other statutory requirements relating to the relevant units.
- (2) Whether or not the intended use of the relevant units for the purposes of the proportionate ownership scheme complies with the rules, rights, consents, or other statutory requirements referred to in subclause (1).

**8 Rateable value of relevant units**

The rateable value of each of the relevant units.

**9 Leasehold interests or tenancy arrangements in respect of relevant units**

- (1) Current rental payable for each relevant unit, and a statement as to whether or not that rental is being paid in each case, in respect of any existing leasehold interest in the relevant units or any existing tenancy arrangement relating to the relevant units.
- (2) Other material matters concerning any leasehold interests or tenancy arrangements.

**10 Registered valuer's opinion as to capital value of relevant units**

The opinion of the registered valuer as to the capital value of each of the relevant units, free of charges, and the date of, and basis for, that capital value.

**11 Basis of valuation**

The basis upon which the registered valuer's valuation of the relevant units is made and any assumptions used in making the valuation, including any matters referred to the valuer under clause 8 of Schedule 1.

**12 Income from relevant units**

The amount of income that each of the relevant units can reasonably be expected to produce on an annual basis under the conditions prevailing at the date of the registered valuer's report.

**13 Other material matters relating to relevant units**

Any other matters concerning the relevant units that the registered valuer considers to be material according to the standards usually applied by registered valuers in conducting valuations of real property.

**14 Consent to distribution of report**

A statement that the registered valuer has consented to the distribution of the registered valuer's report to prospective subscribers for specified participatory securities and that, as at the date of the report, the registered valuer has not withdrawn that consent.

Dated at Wellington this 4th day of July 2005.

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

[L.S.]

J. Diplock,  
Chairperson.

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**Statement of reasons**

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 30 June 2010.

This notice applies to offers by Monaco Village Holdings Limited of participatory securities in a contributory scheme for ownership interests in real property in Nelson.

The notice exempts those offers, subject to conditions, from the prospectus and investment statement requirements and various other requirements of the Securities Act 1978.

These conditions include a requirement for investors to be supplied with a written statement containing the information specified in Schedule 1 and with a report by a registered valuer that contains the information specified in Schedule 2.

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

- the detailed disclosure provisions of the Securities Act 1978 and Securities Regulations 1983 are not ideally suited to offers of real property; and
  - the exemptions recognise the protection afforded to investors by the receipt of a certificate of title for each unit under the Unit Titles Act 1972 and provide extended valuation information which provides the most relevant information for investors; and
  - the exemptions are consistent with the policy of the Commission's previous exemptions for similar offers of securities relating to interests in real property.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 7 July 2005.

This notice is administered by the Securities Commission.

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