



Takeovers Code (IT Capital Limited) Exemption Notice (No 2) 2002

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

1	Title	4	Interpretation
2	Application	5	Exemption from rule 6(1) of Code
3	Expiry		

Notice

1 Title

This notice is the Takeovers Code (IT Capital Limited) Exemption Notice (No 2) 2002.

2 Application

This notice applies to acts or omissions occurring on or after 2 August 2002.

3 Expiry

This notice expires on the close of 30 September 2002.

4 Interpretation

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

Act means the Takeovers Act 1993

Bryham Family Trust means the Bryham Family Trust created by deed of trust dated 21 November 1994

Code means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210)

IT Capital means IT Capital Limited

McKee Wright Family Trust means the McKee Wright Family Trust created by deed of trust dated 2 May 1998.

- (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 a code company.
- (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 6(1) of Code

David Kenneth McKee Wright and Maurice John Bryham are exempted from rule 6(1) of the Code in connection with any increase in their voting control in IT Capital as a result of the following allotments:

- (a) the allotment on 6 August 2002 of 6 250 000 shares in IT Capital at 4 cents per share to each of the McKee Wright Family Trust and the Bryham Family Trust:
- (b) the allotment on 6 August 2002 of 43 750 000 shares in IT Capital to each of the McKee Wright Family Trust and the Bryham Family Trust as consideration for the acquisition by IT Capital from David Kenneth McKee Wright and Maurice John Bryham of—
 - (i) 70% of the share capital of Sealegs International Limited; and
 - (ii) 50% of the share capital of Conceptual Solutionz Limited.

Dated at Auckland this 12th day of September 2002.

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

[L.S.]

J. C. King,
Chairperson.

Statement of reasons of Takeovers Panel

This notice applies to acts or omissions occurring on or after 2 August 2002 and expires at the close of 30 September 2002.

The Takeovers Panel (the **Panel**) has granted an exemption to David McKee Wright and Maurice Bryham in connection with rule 6(1) of the Takeovers Code (the **Code**).

The exemption relates to allotments of shares which were the subject of 2 shareholder resolutions at a meeting of the shareholders of IT Capital Limited (**IT Capital**) held on 23 July 2002 (the **meeting**). Both resolutions were passed by a majority of shareholders.

The first resolution (resolution 9) was to authorise and approve the issue and allotment by IT Capital of up to 15 000 000 fully paid ordinary shares in IT Capital to each of David McKee Wright and Maurice Bryham for a consideration of not less than 4 cents per share.

The second resolution (resolution 10) was to authorise and approve the acquisition by IT Capital of the following shareholding interests from David McKee Wright and Maurice Bryham, and to authorise and approve the issue and allotment of up to 137 500 000 fully paid ordinary shares in IT Capital as consideration for the following acquisitions:

- 40% of the share capital of Datasquirt Limited:
- 50% of the share capital of Conceptual Solutionz Limited:
- 70% of the share capital of Sealegs International Limited.

However, the board of directors of IT Capital (the **board**) were unable to raise the level of capital envisaged and at a board meeting on 5 August 2002 it decided not to acquire shares in Datasquirt Limited. Consequently the number of shares to be allotted to David McKee Wright and Maurice Bryham would be the consideration for the acquisition of shares in Conceptual Solutionz Limited and Sealegs International Limited only and would be reduced from 137 500 000 shares to 87 500 000 shares. In addition it was agreed that David McKee Wright and Maurice Bryham would subscribe for 6 250 000 shares each at 4 cents per share, rather than 15 000 000 shares each.

As the notice in respect of the meeting of 23 July 2002 specified a greater number of IT Capital shares to be allotted to David McKee Wright and Maurice Bryham, the notice did not comply with rule

7(d) of the Code to the extent that it did not contain the information required by rule 16(b) of the Code in respect of the actual number of shares to be allotted. IT Capital had to allot the shares by 6 August 2002 to comply with the Listing Rules of the New Zealand Stock Exchange. IT Capital needed to either call a further meeting of the company to vote on the amended proposals, or seek an exemption from rule 6(1) of the Code. The applicants applied to the Panel for an exemption to allow the allotment to occur without a further shareholder meeting.

The Panel considered that—

- it was appropriate to grant the exemption because IT Capital's shareholders recently approved, by a substantial majority, at a general meeting of IT Capital, and with the benefit of an independent adviser's report, a proposal for a greater increase in the percentage of voting rights held by David McKee Wright and Maurice Bryham than will arise as a result of the proposed allotment to the McKee Wright Family Trust and Bryham Family Trust. By implication, the shareholders can be taken to have also approved that David McKee Wright and Maurice Bryham may increase their percentage of voting rights by a lesser amount; and
- the exemption is consistent with the objectives of the Code because—
 - the cost to IT Capital and its shareholders of requiring compliance with the Code, which would involve the convening of a further meeting of IT Capital and a revised independent adviser's report, would be out of proportion with the benefits resulting from compliance; and
 - IT Capital shareholders have already been given an opportunity to decide the merits of a proposal for a greater increase in percentage of voting rights to be held by David McKee Wright and Maurice Bryham.

The exemption is limited to any increase in the voting control of David McKee Wright and Maurice Bryham of IT Capital acquired as a result of the allotments.

Takeovers Code (IT Capital Limited)
Exemption Notice (No 2) 2002

2002/281

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

Date of notification in *Gazette*: 19 September 2002.

This notice is administered by the Takeovers Panel.
