



Takeovers Code (Rubicon Forests Limited) Exemption Notice 2004

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).

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Notice

1 Title

This notice is the Takeovers Code (Rubicon Forests Limited) Exemption Notice 2004.

2 Application

This notice applies to acts or omissions occurring on or after 27 April 2004.

3 Interpretation

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

Act means the Takeovers Act 1993

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

offer means the partial offer made by Rubicon for ordinary shares in Tenon and preference shares in Tenon in accordance with the takeover notice sent to Tenon on 8 April 2004

Rubicon means Rubicon Forests Limited

Tenon means Tenon Limited

United States shareholders means the persons who are shown as holders of securities in Tenon on the securities register of Tenon as at the record date and that are shown on that register at that date as having an address in the United States of America.

- (2) 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.

4 Exemption from rule 43(5) of Code

Rubicon is exempted from rule 43(5) of the Code to the extent that the rule requires Rubicon to send the offer to the United States shareholders.

5 Condition of exemption in clause 4

The exemption in clause 4 is subject to the condition that, if a target company statement has been given to Rubicon under rule 46(a)(i) of the Code, Rubicon must send a copy of the target company statement to all United States shareholders on the date that Rubicon sends the offer to the offerees other than the United States shareholders.

6 Exemption from rule 28(1)(a) of Code

- (1) Rubicon is exempted from rule 28(1)(a) of the Code to the extent that the rule requires Rubicon to send written notice of a variation of the offer to the United States shareholders.
- (2) The exemption in subclause (1) does not apply if Rubicon has made the offer without relying on the exemption in clause 4.

7 Exemption from rule 45(1) of Code

Rubicon is exempted from rule 45(1) of the Code in relation to the offer.

8 Condition of exemption in clause 7

- (1) The exemption in clause 7 is subject to the condition that, immediately after Rubicon sends the offer document to all offerees other than United States shareholders, Rubicon must—
- (a) send to Tenon—

- (i) a notice in writing stating that the offer document has been sent to all offerees other than the United States shareholders; and
 - (ii) a copy of the offer document; and
 - (b) send to the registered exchange on whose market the ordinary shares in Tenon and the preference shares in Tenon are quoted a copy of—
 - (i) the notice referred to in paragraph (a)(i); and
 - (ii) the offer document; and
 - (c) deliver to the Registrar of Companies for registration a copy of—
 - (i) the notice referred to in paragraph (a)(i); and
 - (ii) the offer document.
- (2) The notice referred to in subclause (1) must be treated as the despatch notice for the purposes of rule 46 of the Code.

Dated at Auckland this 4th day of May 2004.

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

[L.S.]

J. C. King,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 27 April 2004.

The Takeovers Panel has exempted Rubicon Forests Limited (**Rubicon**) from compliance with rules 43(5), 28(1)(a), and 45(1) of the Takeovers Code (the **Code**) to the extent that its partial takeover offer for Tenon Limited (**Tenon**) relates to shareholders whose addresses on the Tenon securities register are in the United States of America.

Under rule 43 of the Code, Rubicon is required to send the offer document, within a prescribed time frame, to every person who is registered as a holder of Tenon shares on the record date.

Approximately 140 people, together holding 0.11% of the total Tenon shares on issue, are shown on the Tenon securities register as having an address in the United States of America (**United States shareholders**). The Panel has been advised by Rubicon that if the offer document is sent to the United States shareholders, Rubicon will need to comply with certain requirements of United States law regarding takeover offers.

The exemption from rule 43(5) of the Code allows Rubicon not to send the offer document to the United States shareholders. However, United States shareholders will be sent a copy of the target company statement and accordingly will be aware of the offer and will be able to take steps to participate in the offer.

The exemptions from rules 28(1)(a) and 45(1) of the Code are necessary as a consequence of the exemption from rule 43(5) of the Code. Rule 28(1)(a) requires notification of variations of an offer to be sent to all offerees. The exemption allows Rubicon not to send a variation of the partial offer to the United States shareholders. Rule 45(1) of the Code requires confirmation that the offer has been sent to all offerees to be sent to the target company, the registered exchange, and the Registrar of Companies. The exemption instead requires Rubicon to send confirmation that the offer has been sent to all offerees other than United States shareholders.

The Takeovers Panel considers that it is appropriate to grant the exemptions from rules 43(5), 28(1)(a), and 45(1) of the Code for the following reasons:

- the number of shareholders with registered addresses in the United States of America, and the extent of their shareholding in Tenon, is minimal; and
- the cost of complying with United States law would be out of proportion to the number of shareholders affected and the extent of their shareholding; and
- shareholders with registered addresses in the United States of America will be aware of the offer and will be able to take steps to participate in the offer.

The Takeovers Panel considers that the exemptions are consistent with the objectives of the Code because it is important for the promotion of competition for the control of code companies that offerors are not required to incur significant costs of complying with the laws of an overseas jurisdiction in circumstances where that

requirement is caused by a minimal number of shareholders, holding a minimal number of shares, in that jurisdiction.

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

Date of notification in *Gazette*: 6 May 2004.

This notice is administered by the Takeovers Panel.
