



Takeovers Code (Botry-Zen Limited) Exemption Notice 2005

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 (Botry-Zen Limited) Exemption Notice 2005.

2 Application

This notice applies to acts or omissions occurring on or after 15 September 2005.

3 Interpretation

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

Act means the Takeovers Act 1993

Botry-Zen means Botry-Zen Limited

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

issue means the proposed issue by Botry-Zen of up to 76 666 666 voting securities to be offered to its ordinary shareholders under pro rata renounceable rights to subscribe for 1 voting security for every 1 existing voting security

notice of meeting means the notice of the shareholders' meeting that is to be sent to Botry-Zen's shareholders

relevant underwriting agreement, in relation to each underwriter, means the underwriting agreement between Botry-Zen and that underwriter that is dated,—

- (a) in the case of Aspiring Asset Management Limited, 29 September 2005;
- (b) in the case of David John Smallbone, 29 September 2005;
- (c) in the case of De Tourettes Holdings Limited, 29 September 2005;
- (d) in the case of John McDonald Paterson, 30 September 2005;
- (e) in the case of PKHB Holdings Limited, 29 September 2005;
- (f) in the case of Southern Viticulture Limited, 29 September 2005;
- (g) in the case of the T D Scott No 2 Family Trust, 4 October 2005

shareholders' meeting means the meeting of Botry-Zen's shareholders that is to be held on or about 21 October 2005 to consider, amongst other things, whether to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities in Botry-Zen to each underwriter under the issue and the relevant underwriting agreement

underwriter means each of the following:

- (a) Aspiring Asset Management Limited;
- (b) David John Smallbone;
- (c) De Tourettes Holdings Limited;
- (d) John McDonald Paterson;
- (e) PKHB Holdings Limited;
- (f) Southern Viticulture Limited;
- (g) Trevor Donald Scott, Christopher John Swann, and David Houghton Wale as trustees of the T D Scott No 2 Family Trust

voting security means an ordinary share in Botry-Zen.

- (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 7(d) of Code

Every underwriter is exempted from rule 7(d) of the Code in respect of any increase in the underwriter's voting rights in Botry-Zen that results from the allotment of voting securities to that underwriter under the issue and the relevant underwriting agreement to the extent that the notice of meeting does not comply with rule 16(b) of the Code.

5 Exemption from rule 16(b) of Code

Botry-Zen is exempted from rule 16(b) of the Code in respect of the notice of meeting.

6 Conditions of exemptions in clauses 4 and 5

- (1) The exemptions in clauses 4 and 5 are subject to the condition that the notice of meeting contains particulars of the voting securities that may be acquired by each underwriter under the issue and the relevant underwriting agreement, including—
- (a) the number of voting securities that would be allotted under the issue to an underwriter who is an existing shareholder of Botry-Zen (an **underwriting shareholder**), if that underwriting shareholder took up the underwriting shareholder's full entitlement;
 - (b) the total number of voting securities that would be allotted under the issue to all of the underwriting shareholders, if they took up their full entitlements;
 - (c) the maximum number of voting securities that would be allotted to an underwriter under the relevant underwriting agreement, if the underwriter had to meet the underwriter's full underwriting commitment;
 - (d) the maximum number of voting securities that would be allotted to all of the underwriters under all of the relevant underwriting agreements, if the underwriters had to meet their full underwriting commitments (the **maximum underwriter allotment**);
 - (e) the maximum number of voting securities that would be allotted to all of the underwriters under the issue and all of the relevant underwriting agreements;
 - (f) the maximum number of voting securities on issue after completion of the allotments under the issue and all of the relevant underwriting agreements (the **total voting securities on issue**):

- (g) a statement of the maximum underwriter allotment expressed as a percentage of the total voting securities on issue;
 - (h) the maximum percentage of the total voting securities on issue that an underwriter could hold or control after completion of the allotments under the issue and the relevant underwriting agreement;
 - (i) the maximum percentage of the total voting securities on issue that all of the underwriters could hold or control after completion of the allotments under the issue and all of the relevant underwriting agreements;
 - (j) the maximum aggregate percentage of the total voting securities on issue that an underwriter and that underwriter's associates could hold or control after completion of the allotments under the issue and the relevant underwriting agreement;
 - (k) full particulars of the issue.
- (2) The exemptions in clauses 4 and 5 are subject to the further conditions that—
- (a) the underwriters do not become the holders or controllers of any voting rights in Botry-Zen other than to the extent—
 - (i) permitted under their individual pro rata rights, if any, under the issue;
 - (ii) required as underwriters of the issue; and
 - (b) the notice of meeting contains a summary of the terms and conditions of the exemptions granted in this notice; and
 - (c) the form of the notice of meeting is approved by the Takeovers Panel.

Dated at Auckland this 7th day of October 2005.

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 15 September 2005.

The Takeovers Panel has granted exemptions—

- from rule 7(d) of the Takeovers Code (the **Code**) in respect of the requirements for a notice of meeting under rule 16(b) of the Code to each of the following (the **underwriters**):
 - Aspiring Asset Management Limited;
 - David John Smallbone;
 - De Tourettes Holdings Limited;
 - John McDonald Paterson;
 - PKHB Holdings Limited;
 - Southern Viticulture Limited;
 - Trevor Donald Scott, Christopher John Swann, and David Houghton Wale as trustees of the T D Scott No 2 Family Trust; and
- from rule 16(b) of the Code to Botry-Zen Limited (**Botry-Zen**).

Botry-Zen intends to make a renounceable pro rata 1 for 1 rights issue of 76 666 666 ordinary shares to its existing shareholders (the **issue**). It is proposed that the issue will be partially underwritten by each underwriter separately agreeing to underwrite a percentage of any of the shortfall resulting from the issue. Two of the underwriters (namely, Southern Viticulture Limited and PKHB Holdings Limited) are also current shareholders of Botry-Zen and they may, like all the other shareholders, participate in the issue.

If each underwriter were required to take up the maximum number of shares that that underwriter could be required to subscribe for under that underwriter's underwriting agreement, then in aggregate the underwriters would together be allotted more than 20% of the voting rights in Botry-Zen. Accordingly, Botry-Zen intends to obtain shareholder approval, in accordance with the Code, for the potential allotment of shares to the underwriters under the underwriting agreements. However, Botry-Zen cannot comply with rule 16(b) of the Code before completion of the issue because it cannot state in the notice of meeting—

- the exact number of shares that would be allotted to each underwriter and to all of the underwriters:

- the exact percentages of the aggregate of all existing voting securities and all voting securities being allotted that the number of shares represent:
- the exact percentages of voting securities in Botry-Zen that each underwriter and all of the underwriters may hold or control after the allotment.

These details would be known only after the issue had been completed and all the allotments made.

The Takeovers Panel considers that it is appropriate to grant the exemptions because—

- it is impossible for the actual number of shares to be allotted and the relevant percentages required by rule 16(b)(i), (ii), and (iii) to be stated in the notice of meeting, as these numbers and percentages are dependent on the level of participation by Botry-Zen's shareholders in the issue:
- if Botry-Zen's shareholders approve the allotment of shares to each underwriter under that underwriter's underwriting agreement and the maximum possible percentage of voting rights that may be held or controlled by each underwriter and by all of the underwriters, then by implication the shareholders also approve any lesser percentage of voting rights that may be held or controlled by each individual underwriter and by all of the underwriters following the allotment of the shares:
- pro rata rights issues and underwriting agreements are accepted means of raising equity capital in New Zealand, so the Takeovers Panel should facilitate these arrangements by granting appropriate exemptions where necessary.

The Takeovers Panel considers that the exemptions in this notice are consistent with the objectives of the Code because the non-associated shareholders of Botry-Zen will have an opportunity to vote on the allotment of voting securities to the underwriters.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 13 October 2005.
This notice is administered by the Takeovers Panel.
