Takeovers Code (ING Property Trust Holdings 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).

Contents

Notice

1 Title

This notice is the Takeovers Code (ING Property Trust Holdings Limited) Exemption Notice 2005.

2 Application

This notice applies to acts or omissions occurring on or after 11 April 2005.

3 Expiry

This notice expires on the close of 31 March 2010.

4 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)

convertible note—

(a) means a convertible note issued by Urbus; but

(b) does not include a mandatory convertible note

foreign security holder means a holder of—

(a) shares whose address in Urbus' share register is not within New Zealand; or

(b) convertible notes whose address in Urbus' convertible notes register is not within New Zealand; or

(c) mandatory convertible notes whose address in Urbus' mandatory convertible notes register is not within New Zealand

ING means ING Property Trust Holdings Limited, a wholly-owned subsidiary of the New Zealand Guardian Trust Company Limited (which is the trustee of the Property Trust)

mandatory convertible note means a mandatory convertible note issued by Urbus

offer means a full offer to be made by ING for all of the equity securities in Urbus

Property Trust means ING Property Trust, a unit trust established under the Unit Trusts Act 1960

relevant security holder means a foreign security holder who accepts the offer

shares means ordinary shares issued by Urbus

units means ordinary units in the Property Trust

Urbus means Urbus Properties Limited.

(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.

5 Exemption from rule 6(1)(b) of Code

ING is exempted from rule 6(1)(b) of the Code in respect of any increase in the percentage of voting rights in Urbus held or controlled by it as a result of the conversion of convertible notes and mandatory convertible notes, in accordance with the terms of those securities, acquired by it under the offer.

6 Exemption from rule 20 of Code

(1) ING is exempted from rule 20 of the Code to the extent that the offer relates to foreign security holders.

(2) The exemption in subclause (1) is subject to the conditions that—

(a) ING appoints, as a nominee for the relevant security holders, a person who—

(i) is designated as an NZX Firm by New Zealand Exchange Limited; and

(ii) is not, to the best of ING's knowledge, under investigation by the Securities Commission or New Zealand Exchange Limited; and

(b) in a manner consistent with the terms of the offer, ING ensures that the units that would otherwise be allotted to relevant security holders as consideration under the offer are allotted to the nominee; and

(c) ING uses its best endeavours to ensure that the nominee, as soon as is reasonably practicable and in a manner consistent with the terms of the offer relating to payment of consideration, sells the units allotted to the nominee; and

(d) ING uses its best endeavours to ensure that the nominee, as soon as is reasonably practicable and in a manner consistent with the terms of the offer relating to payment of consideration, pays to the relevant security holders the proceeds from the sale of the units under paragraph (c), net of any applicable brokerage costs and taxes; and

(e) ING indemnifies each relevant security holder against any costs or losses suffered as a result of any failure by the nominee to perform the nominee's obligations in a proper manner.

Dated at Auckland this 7th day of April 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 11 April 2005 and expires on 31 March 2010 (which is the final maturity date of mandatory convertible notes issued by Urbus Properties Limited (**Urbus**)).

The Takeovers Panel has exempted ING Property Trust Holdings Limited (**ING**) from compliance with rules 6(1)(b) and 20 of the Takeovers Code (the **Code**) in respect of a full offer by ING for all of the equity securities in Urbus.

ING proposes to offer units in ING Property Trust (the **Property Trust**), a unit trust established under the Unit Trusts Act 1960, as consideration to Urbus security holders for their Urbus securities. Units in the Property Trust would be allotted by the manager of that Trust.

Urbus has 3 types of equity securities on issue—ordinary shares (of which there are 2 separate classes), convertible notes, and mandatory convertible notes (**Urbus securities**). Urbus has 5 classes of mandatory convertible notes on issue, all of which are issued on identical terms, except for interest rates and maturity dates. Only the ordinary shares carry voting rights under the Code.

Exemption from rule 6(1)(b) of Code

Rule 6(1)(b) of the Code provides that a person who holds or controls 20% or more of the voting rights in a code company may not, except as provided in rule 7 of the Code, become the holder or controller of an increased percentage of the voting rights in the code company.

If ING holds more than 50% and less than 90% of the voting rights in Urbus following completion of the offer, ING is likely to hold convertible notes and mandatory convertible notes issued by Urbus (**convertible securities**). The conversion of the convertible securities into Urbus shares would be a breach of rule 6(1)(b) of the Code, unless one of the exceptions in rule 7 of the Code applies.

The Takeovers Panel considers that the exemption from rule 6(1)(b) of the Code permitting any increase in the percentage of the voting rights in Urbus held by ING that arises from the allotment of voting securities on the conversion of convertible securities acquired by ING under the offer is appropriate and consistent with the objectives of the Code for the following reasons:

- the increase will be the result of the exercise of rights attaching to securities obtained under the offer, for which ING was obliged under the Code to make an offer; and
- the resulting increase will be the same as if the holders of convertible securities had converted those securities into shares and then accepted the offer in respect of the resulting shares.

Exemption from rule 20 of Code

Rule 20 of the Code requires an offer to be made on the same terms and to provide the same consideration for all equity securities belonging to the same class.

The exemption from rule 20 of the Code applies to the extent that the takeover offer is made to Urbus security holders whose addresses on the Urbus share register, convertible notes register, or mandatory convertible notes register, as applicable, are outside of New Zealand (**foreign security holders**). It provides that any units in the Property Trust that would otherwise be transferred to foreign security holders who accept the offer (**relevant security holders**) will be transferred to a person appointed by ING to act as a nominee for the offer. The nominee is required, as soon as is reasonably practicable, to sell the units in the Property Trust and to pay the net proceeds arising from the sale to the relevant security holders.

The exemption imposes conditions to ensure that the nominee is of good standing and that relevant security holders are protected against the nominee's failure to perform the nominee's duties in a proper manner.

The Takeovers Panel considers that it is appropriate to grant the exemption from rule 20 of the Code for the following reasons:

- it is not practicable for ING to make an offer to all of the Urbus security holders within each class of securities on the same terms, as required by rule 20 of the Code, because of the costs of complying with the securities laws that apply in the various jurisdictions other than New Zealand; and
- the conditions of the exemption require that foreign security holders are in effect offered equivalent cash consideration and, accordingly, they are not disadvantaged by not being able to accept the units under the offer; and

- New Zealand security holders are not disadvantaged because they have the same opportunity to realise the consideration they receive.

The Takeovers Panel considers that the exemption from rule 20 of the Code is consistent with the objectives of the Code because—

- the exemption is consistent with the principle of providing equal consideration to all security holders of the same class, while recognising the unreasonable costs of having to comply with the securities laws that apply in various jurisdictions, in circumstances in which securities are offered as consideration and security holders have addresses outside New Zealand; and
- it is important for competition for the control of code companies that offerors are not precluded from offering securities as consideration in takeover transactions.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 21 April 2005.
This notice is administered by the Takeovers Panel.
