

OVERSEAS ISSUERS - NEW ISSUES - PROPOSED

EXEMPTION NOTICE 1995

A DISCUSSION PAPER

Securities Commission
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Introduction

Statutory Power to Exempt

Pursuant to section 5(5) of the Securities Act 1978 (the "Act") the Securities Commission may in its discretion exempt any person or class of persons from compliance with Part II of the Act and any regulations made under the Act. In granting an exemption under section 5(5) of the Act the Commission may impose such terms and conditions as it thinks fit.

Exemption Requested in respect of certain Overseas Issuers

The Commission has received an application for an exemption in respect of the offering of new issues of equity securities by certain overseas issuers. The offer of such securities without an exemption would be in contravention of the Act and the Securities Regulations 1983 (the "Regulations").

Given the important impact of the proposed exemption the Commission now seeks comments from the public.

Effect of the Exemption Notice

Essentially the draft exemption notice (the "Draft Notice") will facilitate the offering of new issues of equity securities by overseas issuers to the New Zealand public. It does this by exempting the overseas issuers from the requirement to prepare and register a prospectus which complies with New Zealand law. A copy of the Draft Notice is attached.

The Draft Notice will only apply to overseas issuers where the overseas issuer has been incorporated in a specified country and the offer documents for the equity securities have already met the regulatory requirements of an overseas jurisdiction (the "Specified Jurisdiction"). Further the Draft Notice will only apply where the overseas issuer has been, or is to be, listed on an approved overseas exchange (the "Recognised Exchange").

In addition the Commission proposes that the exemption will only apply if, at the time of the offer

the overseas issuer is or has applied to be listed on the New Zealand Stock Exchange. The aim of this requirement is to ensure that the New Zealand market is informed fairly and promptly of important matters affecting the overseas issuer.

In approving a Specified Jurisdiction for the purposes of the Draft Notice the Securities Commission will wish to be satisfied that the regulatory requirements in the Specified Jurisdiction are sufficiently analogous to New Zealand's regime.

It is intended that the exemption would be granted subject to various conditions including the condition that the overseas issuer appoints an agent for service of documents in New Zealand.

Scope and Limitations

Under the Draft Notice any offer of equity securities in New Zealand by an overseas issuer must be accompanied by documentation which meets the regulatory and exchange requirements of a Specified Jurisdiction.

For the purposes of the Draft Notice as presently drafted the jurisdictions and exchanges to which the exemption would apply in the first instance are respectively Canada and The Toronto Stock Exchange, Hong Kong and The Hong Kong Stock Exchange, England and Wales and the London Stock Exchange, and the United States of America and the New York Stock Exchange. The Draft Notice does not apply in respect of Australia. Commission exemptions are already in place in respect of Australia.

In relation to advertising material distributed in New Zealand, the existing requirements of the Act and Regulations in respect of advertisements will continue to apply, as is the case for Australian Issuers under the Securities Act (Australian Issuers) Exemption Notice 1994.

The Draft Notice will require deposit with the New Zealand Registrar of Companies of:

- a copy of the offering document which has been lodged or registered with the appropriate body in the overseas issuer's home jurisdiction and which is signed by every person required by the governing law of the offer to sign such document;
- a copy of the overseas issuer's constitutive documents;
- a copy of each material contract referred to in the offering document;
- a copy of all documents evidencing registration or lodgment of the offering document and any exemptions which may have been granted in respect of the offering document; and
- a certificate of a solicitor of the High Court of New Zealand that all the terms of the Draft Notice have been complied with.

In addition any offer of securities must be made in, or accompanied by, the offering document, or it must be in an advertisement which complies with the Draft Notice and all remaining applicable provisions of the Act and Regulations relating to advertisements.

In either case the Draft Notice requires either the offering document to contain, or be accompanied by, a prominent statement that encourages investors to note the following matters:

- investors should satisfy themselves as to the tax implications of the investment;
- investing in the securities of overseas issuers carries with it a currency exchange risk;
- the contract of security may not be enforceable in the New Zealand courts;
- the overseas prospectus has not been registered in New Zealand and may not contain all the information or safeguards for a New Zealand investor which a New Zealand registered prospectus is required to contain;
- the allotment of securities is governed by the law of the jurisdiction in which that offering document has been registered or by which the offer is expressly governed not by New Zealand law;
- there will be little if any regulatory oversight of the operations of the overseas issuer by any New Zealand regulator; and
- the overseas issuer undertakes to ensure that it continues to have an agent for service in New Zealand for so long as New Zealand resident persons hold the overseas issuers equity securities and will continue to be listed on the New Zealand Stock Exchange for so long as it is listed on the Recognised exchange.

The Draft Notice also requires the overseas issuer to describe the general nature of any exemptions granted in respect of the offer of equity securities in the Specified Jurisdiction.

Purpose of the Draft Notice

The general purpose of the proposed exemption is to provide increased opportunity for New Zealand investors to take part in overseas issues, while substantially lowering compliance and transaction costs. Further the Draft Notice will also remove the present inconsistency whereby New Zealand investors may purchase shares on overseas secondary markets but may not participate in initial capital raisings.

Public Comment sought by the Commission

Given the wide ranging effect of the Draft Notice the Commission seeks comments from the public on the Draft Notice in general. The Commission would also like to receive specific comments on the following points:

- whether it should be a condition of exemption that the overseas issuer must be listed on the New Zealand Stock Exchange as well as the Recognised Exchange; and
- whether an additional condition of exemption be included in the Draft Notice whereby the

overseas issuer submits to the jurisdiction of the New Zealand courts.

We request that all comments be received by the Commission before 30 January 1995. Please address all submissions to:

David Tapsell
Securities Commission
P.O. Box 1179
WELLINGTON

(ovsedis.pap)

**The Securities Act (Overseas Issuers)
Exemption Notice 1995**

PURSUANT to the Securities Act 1978 the Commission gives the following notice.

Notice

1. **Title and commencement** - (1) This notice may be cited as the Securities Act (Overseas Issuers) Exemption Notice 1995.

(2) This notice shall come into force on the day after the date of its notification in the Gazette.

2. **Interpretation** - (1) In this notice, unless the context otherwise requires -

"The Act" means the Securities Act 1978:

"Competent authority" means such statutory or regulatory authority, or governing body of any recognised exchange, as may be entitled, in respect of any overseas prospectus, to grant or make exemptions, orders or declarations from or with respect to the law of that specified country or the listing requirements of that recognised exchange as the case may be:

"Lodged" means lodged under the law of a specified country and "lodgment" has a corresponding meaning:

"Overseas issuer" means a company incorporated under the laws of a specified country, or the laws of any state or province of a specified country:

"Recognised exchange" means a stock exchange listed in the First Schedule:

"Registered" means registered under the law of a specified country and "registration" has a corresponding meaning:

"Specified country" means a country listed in the Second Schedule:

"The Regulations" means the Securities Regulations 1983.

(2) Any term or expression that is not defined in this notice, but that is defined in the Act or the Regulations, has the meaning given to it by the Act or the Regulations.

3. **Meaning of "Overseas prospectus"** - For the purposes of this notice, the term "overseas prospectus", in relation to an overseas issuer, means a document -

- (a) that contains an offer of equity securities in, or by that overseas issuer; and
- (b) that is identical to a document that is lodged or registered under the law of a specified country or any state, territory or province thereof and which is signed by such persons (if any) as are required by such law to sign that document; and
- (c) by means of which it is lawful under the law of that specified country or state, territory or province thereof to make an offer of those equity securities; and
- (d) that contains no statement referring to a listing or intended listing on the New Zealand Stock Exchange other than a statement that has been approved by the New Zealand Stock Exchange; and
- (e) a copy of which has been deposited with the Registrar of Companies at Wellington together with a copy of -

- (i) the certificate of incorporation of the overseas issuer;
- (ii) the memorandum and articles of association or other documents, statutes or instruments constituting or defining the constitution of the overseas issuer;
- (iii) every document to which Clause 4(2)(c)(i) - (iii) applies;
- (iv) any certificate or other document evidencing lodgment or registration of the document;
- (v) a certificate signed by a solicitor of the High Court of New Zealand that all the terms and conditions of this notice have been complied with.

4. **Overseas issuers exempt from compliance with certain provisions of the Securities Act 1978 and the Securities Regulations 1983** - (1) Subject to sub-clauses (2) and (3) of this clause, every overseas issuer and every person acting on its behalf is exempted from compliance with the provisions of Sections 33(1), 38 and 38A of the Act and Regulation 23 of the Regulations in respect of any offer of equity securities of which it is the issuer.

(2) The exemption granted by sub-clause (1) of this clause is subject to the conditions that -

- (a) the offer is made in, or accompanied by, an overseas prospectus; or
- (b) the offer is made in an advertisement that -
 - (i) refers to an overseas prospectus that relates to all the securities referred to in the advertisement and states the date and place

of lodgment or registration thereof; and

- (ii) states that allotments of the securities shall be made in the manner specified in the overseas prospectus and in the manner prescribed under the law of the specified country in accordance with which the overseas prospectus is lodged or registered; and
 - (iii) specifies the place or places at which an overseas prospectus may be obtained, or contains a coupon or coupons to be completed by any person who wishes to be sent an overseas prospectus, or both; and
 - (iv) complies with the provisions of the Act and all regulations made under the Act relating to advertisements other than Regulation 23 of the Regulations and any provisions compliance with which is exempted pursuant to this notice.
- (c) every overseas prospectus contains, or is accompanied by a document which contains, a statement that -
- (i) a copy of any material contract referred to in the document; or
 - (ii) if any material contract is not in writing, a copy of any memorandum containing particulars of the contract; or
 - (iii) if an exemption, order or declaration has been granted by any competent authority in respect of that offer of equity securities a copy of that exemption, order or declaration

may be inspected at the office of the Registrar of Companies at Wellington.

- (d) every overseas prospectus contains, or is accompanied by a document which contains, a prominent statement that -
- (i) investors should satisfy themselves as to the tax implications of investing in the equity securities of the overseas issuer;
 - (ii) investing in the securities of overseas issuers carries with it a currency exchange risk;
 - (iii) the offer and allotment of the equity securities will be governed by the overseas prospectus and the law of the jurisdiction in which the overseas prospectus has been issued or by which the offer of equity securities pursuant to the overseas prospectus is expressed to be governed;
 - (iv) the contract in respect of the equity security may not be enforceable in New Zealand courts;
 - (v) the overseas prospectus has not been registered in New Zealand under and in accordance with New Zealand law and may not contain all the information or the safeguards for a New Zealand investor which a New Zealand registered prospectus is required to contain;
 - (vi) describes the general nature and effect of any exemption, order or declaration which may have been granted by any competent authority in respect of that offer of equity securities;
 - (vii) there will be little if any regulatory oversight of the operations of the Overseas issuer by any New Zealand regulator; and

- (viii) at all times while New Zealand resident investors hold such equity securities the overseas issuer undertakes to ensure that it has an agent in New Zealand for the purpose of receiving documents as described in clause 4(4) of this notice and it will continue to be listed on the New Zealand Stock Exchange for so long as it remains listed on the Recognised exchange once such listing has been granted by the relevant exchange.

(3) The exemption granted by sub-clause (1) of this clause is subject to the further conditions that at the same time as offers of the equity securities are made in New Zealand:

- (a) offers of the equity securities are also made in the particular specified country by means of an overseas prospectus; and
- (b) either:
 - (i) the overseas issuer has been admitted or approved for admission for listing on the principal official list of a recognised exchange; or
 - (ii) application has been made to a recognised exchange to list the overseas issuer on its principal official list and all the requirements of the relevant recognised exchange relating thereto that can be complied with by the overseas issuer on or before the date of the offer have been duly complied with.
- (c) application has been made to the New Zealand Stock Exchange for permission to list the overseas issuer and all the requirements of the Exchange relating thereto that can be complied with by the overseas issuer on or before the date of the offer have been duly complied with.

(4) The exemption granted by sub-clause (1) of this clause is subject to the further condition that before the overseas issuer or other person acting on their behalf as the case may be offers in New Zealand equity securities of which it is the issuer, the overseas issuer or person acting on their behalf appoints an agent in New Zealand for the purpose of receiving documents in the manner prescribed by sections 389 and 390 of the Companies Act 1993 as if the agent had been named as being authorised to accept service in New Zealand on behalf of the overseas issuer.

(5) Every overseas issuer, and every person acting on its behalf, is exempted from compliance with the provisions of Sections 37 and 37A of the Act in respect of any offer of equity securities of which it is the issuer made in an overseas prospectus.

(6) Every overseas issuer that is a company incorporated under the law of a specified country or any corresponding previous law, and every person acting on its behalf, is exempted from compliance with the provisions of Sections 51 to 54 of the Act in respect of any equity securities of which it is the issuer offered to the public for subscription by means of an overseas prospectus.

First Schedule

Toronto Stock Exchange

Hong Kong Stock Exchange

London Stock Exchange

New York Stock Exchange

Second Schedule

Canada

England and Wales

Hong Kong

United States of America