

## Takeovers Code (Kathmandu Holdings Limited) Exemption Notice 2015

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel, being satisfied of the matters set out in section 45(6) of that Act, gives the following notice.

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### Notice

#### 1 Title

This notice is the Takeovers Code (Kathmandu Holdings Limited) Exemption Notice 2015.

#### 2 Application

This notice applies to acts or omissions occurring on or after 22 July 2015.

#### 3 Revocation

This notice is revoked on the close of 22 December 2015.

#### 4 Interpretation

(1) In this notice, unless the context requires, -

**acquisition notice** means the acquisition notice that is required by rule 54 of the Code for a compulsory sale

**Act** means the Takeovers Act 1993

**Briscoe** means Briscoe Group Limited

**Code** means the Takeovers Code under the Act

**compulsory sale** means a compulsory sale that occurs as a result of the offer

**directing small security holder** means a small security holder who, under the terms of the offer or the acquisition notice, as the case may be, directs Briscoe to allot to a nominee the scrip consideration that would otherwise be allotted to the small security holder

**Kathmandu** means Kathmandu Holdings Limited

**offer** means the proposed full offer to be made on or about 22 July 2015 by Briscoe for all the equity securities in Kathmandu that Briscoe does not hold at that date

**overseas shareholder** means a person who is registered as a shareholder in Kathmandu and whose address on Kathmandu's share register is not in New Zealand or Australia

**registered financial service provider** means a person that is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to provide the financial services contemplated by the conditions set out in this notice

**scrip consideration** means the ordinary shares in Briscoe that are offered as consideration under the offer, or to be allotted under a compulsory sale, as the case may be

**small security holder** means a person who, after the scrip consideration is allotted under the offer or a compulsory sale, as the case may be, would have 100 or less Briscoe shares (if the person does not direct Briscoe to allot the scrip consideration to a nominee)

- (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 20 of Code**

Briscoe is exempted from rule 20 of the Code to the extent that scrip consideration offered under the offer relates to –

- (a) overseas shareholders; and
- (b) directing small security holders.

## **6 Conditions of exemption in clause 5**

The exemption in clause 5 is subject to the conditions that –

- (a) Briscoe appoints:
  - (i) a person to act as nominee for the offer who is a registered financial service provider; and
  - (ii) an NZX Trading and Advising Firm; andneither person under subparagraph (i) and (ii) are, to the best of Briscoe's knowledge, under investigation by the Financial Markets Authority or NZX Limited; and
- (b) in a manner consistent with the terms of the offer, Briscoe procures the allotment to the nominee of the scrip consideration that would otherwise be allotted to overseas shareholders, and directing small security holders, under the offer; and

- (c) Briscoe uses its best endeavours to ensure that:
  - (i) the NZX Trading and Advising Firm, as soon as is reasonably practicable and in a manner consistent with the terms of the offer sells the scrip consideration that is allotted to the nominee under paragraph (b); and
  - (ii) the nominee pays each overseas shareholder, and each directing small security holder, the relevant share of the proceeds from the sale of the scrip consideration under subparagraph (i), net of any applicable brokerage costs and taxes, to which that shareholder, or that security holder, is entitled; and
- (d) Briscoe indemnifies each overseas shareholder, and each directing small security holder, against any costs or losses incurred by that shareholder, or that security holder, as a result of a failure by the nominee or the NZX Trading and Advising Firm to comply with their respective obligations.

## **7 Exemption from rule 56 of Code**

Briscoe is exempted from rule 56 of the Code to the extent that the scrip consideration allotted under a compulsory sale relates to –

- (a) overseas shareholders; and
- (b) directing small security holders.

## **8 Conditions of exemption in clause 7**

The exemption in clause 7 is subject to the conditions that –

- (a) Briscoe appoints:
  - (i) a person to act as nominee for the offer who is a registered financial service provider; and
  - (ii) an NZX Trading and Advising Firm; andneither person under subparagraph (i) and (ii) are, to the best of Briscoe's knowledge, under investigation by the Financial Markets Authority or NZX Limited; and
- (b) in a manner consistent with the terms of the offer, Briscoe procures the allotment to the nominee of the scrip consideration that would otherwise be allotted to overseas shareholders, and directing small security holders, under the offer; and
- (c) Briscoe uses its best endeavours to ensure that:
  - (i) the NZX Trading and Advising Firm, as soon as is reasonably practicable and in a manner consistent with the terms of the offer sells the scrip consideration that is allotted to the nominee under paragraph (b); and
  - (ii) the nominee pays each overseas shareholder, and each directing small security holder, the relevant share of the proceeds from the sale of the scrip consideration under subparagraph (i), net of any applicable brokerage costs and taxes, to which that shareholder, or that security holder, is entitled; and

- (d) Briscoe indemnifies each overseas shareholder, and each directing small security holder, against any costs or losses incurred by that shareholder, or that security holder, as a result of a failure by the nominee or the NZX Trading and Advising Firm to comply with their respective obligations.

Dated at Auckland this 21st day of July 2015

[signed]

D O Jones,  
Chairperson

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### Statement of reasons

This notice applies to acts or omissions occurring on or after 22 July 2015 and is revoked on 22 December 2015.

Briscoe Group Limited (**Briscoe**) is proposing to make an offer for all the equity securities in Kathmandu Holdings Limited (**Kathmandu**) that it does not already hold (the **offer**). Briscoe proposes to offer Kathmandu shareholders a combination of Briscoe shares (**scrip consideration**) and cash, as consideration under the offer.

The Takeovers Panel (the **Panel**) has granted exemptions for Briscoe, subject to conditions, in respect of shareholders in Kathmandu –

- whose addresses on the Kathmandu share register are not in New Zealand or Australia (**overseas shareholders**); or
- who would have 100 or less Briscoe shares after the scrip consideration is allotted under the offer or a compulsory sale but who have, under the terms of the offer or the acquisition notice, directed Briscoe to allot to a nominee that scrip consideration (**directing small security holders**).

The exemptions are from –

- rule 20 of the Takeovers Code (**Code**), to the extent that the scrip consideration allotted under the offer relates to overseas shareholders and directing small security holders; and
- rule 56 of the Code, to the extent that Briscoe must allot scrip consideration to overseas shareholders, and directing small security holders, under a compulsory sale that results from the offer.

The conditions of the exemptions provide that –

- the scrip consideration that would otherwise be allotted to overseas shareholders and directing small security holders under the offer, or under a compulsory sale, must be allotted to a person appointed by Briscoe to act as nominee for the offer or compulsory sale; and

- Briscoe must use its best endeavours to ensure that an NZX Trading and Advising Firm, as soon as is reasonably practicable and in a manner consistent with the terms of the offer or acquisition notice, sells the scrip consideration that is allotted to the nominee, and the nominee pays the net proceeds arising from the sales to the relevant overseas shareholders and small security holders.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions for overseas shareholders because –

- it is impractical and unreasonably expensive in the context of the offer for Briscoe to make an offer to all shareholders on the Kathmandu share register 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 in relation to the overseas shareholders; and
- the conditions of the exemptions require that the overseas shareholders that accept the scrip consideration under the offer will, in effect, receive equivalent cash consideration and, accordingly, are not disadvantaged by not being able to accept the scrip consideration under the offer; and
- the exemptions are consistent with the principle of providing equal consideration to all shareholders of the same class; 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; and
- the exemption from rule 56 of the Code is consequential to the exemption from rule 20 of the Code.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions for directing small security holders because –

- the granting of the exemptions are in the interests of market efficiency; and
- holders of small parcels of Kathmandu shares would be left holding parcels of Briscoe shares considered unmarketable by the NZX Listing Rules and therefore difficult for the shareholders to deal with; and
- the exemptions are consistent with the principle of providing equal consideration to all shareholders of the same class; and
- the exemption from rule 56 of the Code is consequential to the exemption from rule 20 of the Code.