



Takeovers Code (Force Corporation Limited) Exemption Notice 2001

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 (Force Corporation Limited) Exemption Notice 2001.
- 2 **Application**
This notice applies to acts or omissions occurring on or after 28 November 2001.
- 3 **Expiry**
This notice expires on the close of 31 January 2007.
- 4 **Interpretation**
 - (1) In this notice, unless the context otherwise requires,—
 - Act** means the Takeovers Act 1993
 - agreement** means the agreement between Force, SkyCity, and Sky City Entertainment Group Limited, dated 14 December 2001, under which SkyCity has agreed to underwrite the offer

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

Force means Force Corporation Limited

notes means the mandatory convertible notes to be issued by Force under the offer

notice of meeting means the notice of the meeting of Force's shareholders held on 14 December 2001 to consider whether or not to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities to SkyCity on the conversion of the notes

offer means the fully underwritten renounceable rights offer of the notes made by Force under a prospectus dated 14 December 2001 on the basis of 1 note for every 5 existing ordinary Force shares (subject to a minimum entitlement of 200 notes for each Force shareholder)

SkyCity means SkyCity Investments 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 7(d) of Code

SkyCity is exempted from rule 7(d) of the Code in connection with any increase in its percentage of the voting rights in Force that arises from the allotment of voting securities on the conversion of the notes acquired by it under the offer and the agreement to the extent that that provision requires the notice of meeting to be in accordance with rule 16(b) of the Code.

6 Exemption from rule 16(b) of Code

Force is exempted from rule 16(b) of the Code in connection with the notice of meeting.

7 Conditions

The exemptions in clauses 5 and 6 are subject to the conditions that—

- (a) the notice of meeting contains particulars of the voting securities to be allotted on the conversion of the notes, including—

- (i) the maximum number of voting securities that could be held or controlled by SkyCity after the allotment to it of voting securities on the conversion of the notes acquired by it under the offer and the agreement (applying a conversion ratio of 50:1); and
 - (ii) the percentage of the aggregate of all existing voting securities and the maximum number of voting securities that could be allotted on the conversion of the notes issued under the offer (applying a conversion ratio of 50:1) that that maximum number represents; and
 - (iii) a statement that the number of voting securities on issue after the conversion of the notes could exceed the number of voting securities obtained by applying the conversion ratio of 50:1, depending on the market value of Force's shares in the period leading up to the conversion as set out in the terms and conditions of the notes; and
- (b) there is no change in the effective control of SkyCity between 14 December 2001 and the date on which any allotment of securities is made on the conversion of the notes.

Dated at Wellington this 20th day of December 2001.

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

[L.S.]

K. J. O'Connor,
Member.

Statement of reasons of Takeovers Panel

This notice applies to acts or omissions occurring on or after 28 November 2001, and expires at the close of 31 January 2007.

The Takeovers Panel has granted exemptions to—

- SkyCity Investments Limited (**SkyCity**) in connection with rule 7(d) of the Takeovers Code (the **Code**); and
- Force Corporation Limited (**Force**) in connection with rule 16(b) of the Code.

The exemptions relate to a recapitalisation plan for Force that was considered by a meeting of shareholders of Force held on 14 December 2001. The plan involves a renounceable offer of mandatory convertible notes (**notes**) on the basis of 1 note for every 5 existing ordinary Force shares (subject to a minimum entitlement of 200 notes for each Force shareholder). The offer is underwritten by SkyCity. Because Force was unable to specify the number of voting securities that will ultimately be allotted to SkyCity or a potential maximum number of voting securities, it was unable to comply with rule 16(b) of the Code. SkyCity, accordingly, is unable to comply with rule 7(d) of the Code in connection with the increase in voting securities it will acquire through the ultimate conversion of the notes.

The exemptions are limited to any voting rights that SkyCity acquires by virtue of its entitlement to notes under the offer and pursuant to its underwriting obligations. The exemptions do not extend to the voting rights arising from the conversion of notes that SkyCity may acquire in any other way, for example, by purchases of notes in the market or by private treaty.

It is a condition of the exemptions that there is no change in the effective control of SkyCity between the date of the meeting and the ultimate conversion of the notes to voting securities.

The Panel's reasons for approving the granting of the exemptions are that—

- (a) it is appropriate to grant the exemptions because—
 - (i) the issuing of convertible securities is an accepted means of raising equity capital in New Zealand and the Panel should facilitate these arrangements by exemption; and
 - (ii) the exemptions are limited to those securities acquired by SkyCity as a result of its entitlement to notes under

- the offer and under the underwriting agreement whose allotment has been approved by the non-associated shareholders at the meeting of the company held on 14 December 2001; and
- (iii) if the shareholders of Force have approved the likely maximum percentage control of Force that may be obtained by SkyCity as a consequence of the initial allotment of the notes, then they have, by implication, approved any lesser percentage of voting rights that may follow from the conversion of the actual number of notes initially allotted to SkyCity under the offer and under the underwriting agreement; and
- (b) the Panel considered that the exemptions are consistent with the objectives of the Code because the non-associated shareholders of Force had an opportunity to vote on the potential allotment of voting securities to SkyCity.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 21 December 2001.
This notice is administered by the Takeovers Panel.
