

Takeovers Code (SeaDragon Limited) Exemption Notice 2021

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.

Contents

	Page
1 Title	1
2 Application	1
3 Expiry	1
4 Interpretation	1
5 Exemptions from rule 6(1) of Code	2
6 Conditions of exemptions	2
Statement of reasons	3

Notice

1 Title

This notice is the Takeovers Code (SeaDragon Limited) Exemption Notice 2021.

2 Application

This notice applies to acts or omissions occurring on or after 11 January 2021.

3 Expiry

This notice expires on the close of 30 June 2021.

4 Interpretation

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

Act means the Takeovers Act 1993

Code means the Takeovers Code under the Act

convertible loan note agreement means the convertible loan note agreement entered into between SeaDragon and Pescado on 1 April 2019

Ellen Trust means the Ellen Trust established under a deed of trust dated 17 March 2003

Masthead JV means the unincorporated joint venture between, at the time of this notice, the trustees of the Ellen Trust, the trustees of the RHS Family Trust and Masthead Limited

Masthead Trust means the Masthead Trust established under a deed of trust dated 8 January 2021

Pescado means Pescado Holdings Limited

restructure means the restructuring of the Masthead JV as part of the winding down of the RHS Family Trust, whereby either Mark James Stewart or Todd Huntly Stewart or both of them—

- (a) will first assume the interest of the RHS Family Trust in the Masthead JV; and
- (b) will then immediately transfer that interest to the Masthead Trust

RHS Family Trust means the Sir Robertson Stewart Family Trust established under a deed of trust dated 22 January 1981

SeaDragon means SeaDragon Limited

specified person means the following persons:

- (a) Mark James Stewart:
 - (b) Todd Huntly Stewart:
 - (c) any person from time to time appointed as a trustee of the Masthead Trust in addition to, or in substitution for, Mark James Stewart or Todd Huntly Stewart or both of them.
- (2) In this notice, a reference to a person increasing voting control is a reference to the person becoming the holder or controller of an increased percentage of voting rights in SeaDragon.
- (3) 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 Exemptions from rule 6(1) of Code

Each specified person is exempted from rule 6(1) of the Code in respect of any increase in their voting control resulting from—

- (a) the restructure; and
- (b) the issue of ordinary shares in SeaDragon under the convertible loan note agreement.

6 Conditions of exemptions

The exemptions in clause 5 are subject to the conditions that—

- (a) the increase in voting control is limited to the aggregate of—
 - (i) the voting rights conferred by the 100,978,581 ordinary shares in SeaDragon currently held by Pescado; and
 - (ii) the voting rights conferred by 20,000,000 ordinary shares in SeaDragon which may be issued to Pescado under the convertible loan note agreement; and

- (b) any person appointed as a trustee of the Masthead Trust in addition to, or in substitution for, Mark James Stewart or Todd Huntly Stewart, or both of them, did not hold or control voting rights in SeaDragon immediately before their appointment as a trustee (other than voting rights which are held or controlled (whether directly or indirectly) by the parties to the Masthead JV).

Dated at Auckland this 12th day of January 2021

[signed]

R A Coupe
Chair

Statement of Reasons

This notice applies to acts or omissions occurring on or after 11 January 2021 and expires on the close of 30 June 2021.

References to voting control in this statement of reasons are references to the holding or controlling of voting rights in SeaDragon Limited (**SeaDragon**).

The Takeovers Panel (the **Panel**) has granted exemptions from rule 6(1) of the Takeovers Code (the **Code**) for the following persons (the **specified persons**):

- Mark Stewart:
- Todd Stewart:
- any person from time to time appointed as trustee of the Masthead Trust in addition to, or in substitution for, Mark James Stewart or Todd Huntly Stewart or both of them.

The trustees of the Ellen Trust and the trustees of the RHS Family Trust together indirectly control voting rights in SeaDragon (as at 23 November 2020, 51.14%), held by Pescado Holdings Limited (**Pescado**). Control is effected through an unincorporated joint venture between the trustees of the Ellen Trust, the trustees of the RHS Family Trust and Masthead Limited (the **Masthead JV**).

Pescado and SeaDragon are parties to a convertible loan note agreement. If the loan notes convert into ordinary shares under that agreement, the percentage of voting rights held by Pescado in SeaDragon (and indirectly controlled through the Masthead JV) will increase (the percentage of voting rights held by Pescado after conversion will depend on the number of voting securities in SeaDragon on issue at that time). The issue of ordinary shares to Pescado under the convertible loan note agreement was approved by the shareholders of SeaDragon, in accordance with rule 7(d) of the Code, on 17 May 2019.

Under the terms of its trust deed the RHS Family Trust is being wound down and, as part of that winding down, its interest in the Masthead JV will be transferred—

- first to either Mark Stewart or Todd Huntly Stewart or both of them; and
- then to the trustees of the Masthead Trust.

As a result of this restructure, the specified persons (as applicable) will become parties to the Masthead JV. Consequently, they will (together with the trustees of the Ellen Trust) indirectly control the voting rights in SeaDragon held by Pescado. This control may increase as a result of any conversion of loan notes under the convertible loan note agreement.

The specified persons have each been granted an exemption from rule 6(1) of the Code in respect of any increase in their voting control resulting from the restructure and conversion of the loan notes.

The conditions of the exemptions are designed to ensure that the underlying purpose of the Code is still fulfilled. Accordingly, the exemptions apply only if—

- the increase in voting control is limited to the aggregate of—
 - the voting rights conferred by the ordinary shares in SeaDragon currently held by Pescado; and
 - the voting rights conferred by the ordinary shares which may be issued to Pescado under the convertible loan note agreement; and
- any person appointed as a trustee to the Masthead Trust in addition to, or in substitution for, Mark James Stewart or Todd Huntly Stewart, or both of them did not hold or control voting rights in SeaDragon immediately before their appointment as a trustee (other than voting rights which are held or controlled (whether directly or indirectly) by the parties to the Masthead JV).

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions for the following reasons:

- the exemptions are of a limited scope in order to allow the restructuring of family interests in connection with the winding down of the RHS Family Trust under the terms of its trust deed:
- the costs of compliance with the Code for that restructure are not proportionate to the benefits resulting from it:
- the restructure (or any subsequent change in trustees) is not being conducted with a purpose of facilitating a change of control in SeaDragon. Further, the relevant voting control in SeaDragon forms only a small part of the assets to which the restructure relates:
- every trustee of the Masthead Trust who exercises control over the voting rights in SeaDragon does so in their capacity as a trustee and is subject to the duties and obligations arising under the trust deed and at law:
- the shareholders of SeaDragon will not be disadvantaged by not having the opportunity to vote on the restructure or appointment of the trustees of the Masthead Trust. This is because neither the restructure nor the appointment increases the voting control of the parties to the Masthead JV as a group beyond what has already been approved under the convertible loan note agreement. This ensures that shareholders are treated fairly and their right to decide for themselves the merits of any increase in voting control of the parties to the Masthead JV as a group is not affected.

Date of Notification in the *Gazette*: 18 January 2021
