



## Takeovers Code (IT Capital Limited) Exemption Notice 2002

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 (IT Capital Limited) Exemption Notice 2002.
- 2 Application**  
This notice applies to acts or omissions occurring on or after 21 June 2002.
- 3 Expiry**  
This notice expires on the close of 31 October 2005.
- 4 Interpretation**
  - (1) In this notice, unless the context otherwise requires,—  
**Act** means the Takeovers Act 1993  
**board** means the board of directors of IT Capital

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

**contract** means the contract to be entered into by IT Capital and Platinum for the provision of management services by Platinum

**explanatory notes** means the explanatory notes attached to the notice of meeting

**IT Capital** means IT Capital Limited

**meeting** means the meeting of IT Capital's shareholders to be held on or about 23 July 2002 to consider whether or not to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities to Platinum on the exercise of the options

**notice of meeting** means the notice of the meeting that has been sent to IT Capital's shareholders that contains proposed shareholder resolutions to the effect set out in the Schedule

**options** means the 50 000 000 share options to be issued by IT Capital to Platinum

**Platinum** means Platinum Management 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

Platinum is exempted from rule 7(d) of the Code in connection with any increase in its percentage of the voting rights in IT Capital arising from the allotment of voting securities on the exercise of the options to the extent that rule 7(d) requires the notice of meeting to be in accordance with rule 16(b) and (d) of the Code.

## 6 Exemption from rule 16(b) and (d) of Code

IT Capital is exempted from rule 16(b) and (d) 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 resolutions described in the Schedule are passed at the meeting by the shareholders of IT Capital who are entitled to vote on those resolutions (whether voting in person or by proxy); and
- (b) the notice of meeting contains particulars of the voting securities in IT Capital to be allotted on the exercise of the options, including—
  - (i) the maximum number of voting securities in IT Capital that could be allotted to Platinum on the exercise of all of the options;
  - (ii) the percentage of the aggregate of all existing securities in IT Capital (including the voting securities allotted under the resolutions described in clauses 2 to 4 of the Schedule) and the maximum number of voting securities that could be allotted to Platinum on the exercise of all of the options that that maximum number represents;
  - (iii) the maximum percentage of all voting securities in IT Capital that could be held or controlled by Platinum and any of Platinum's associates (including the voting securities allotted under the resolutions described in clauses 2 to 4 of the Schedule) after completion of the allotment of that maximum number of voting securities; and
- (c) the information to be provided under paragraph (b) is based on the following assumptions:
  - (i) that Platinum exercises all of its options on the terms and conditions described in the notice of meeting and the explanatory notes;
  - (ii) that all of the share issues contemplated by the resolutions described in clauses 1 to 4 of the Schedule are approved and allotted;
  - (iii) that Maurice Bryham and David McKee Wright maintain their shareholding in IT Capital between the date of the meeting and the expiry of this notice;
  - (iv) that no voting securities other than those referred to in this notice are issued by IT Capital between the date of the meeting and the expiry of this notice; and

- (d) there is no change in the effective control of Platinum between the date of the meeting and the last day for the exercise of any of the options; and
- (e) none of the shares in IT Capital that are issued in accordance with the following resolutions contained in the notice of meeting are issued to Platinum or any of Platinum's associates:
  - (i) the resolution described in clause 2 of the Schedule;
  - (ii) the resolution relating to the remuneration of IT Capital's directors commencing 1 April 2002;
  - (iii) the resolution relating to the issue of up to 2 000 000 share options to IT Capital's employees; and
- (f) the notice of meeting contains a summary of the terms and conditions of this notice.

## **8 No limit on rule 17(2) of Code**

Nothing in clause 7(a) limits rule 17(2) of the Code.

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### **Schedule Shareholder resolutions**

- 1 To authorise and approve the issue of the options by IT Capital and the allotment of shares in IT Capital on an exercise of the options on the terms and conditions described in the explanatory notes.
- 2 To authorise and approve the issue and allotment by IT Capital of 62 500 000 fully paid ordinary shares in IT Capital at 4 cents per share to certain habitual or institutional investors in the numbers determined by the board and otherwise on the terms and conditions described in the explanatory notes.
- 3 To authorise and approve the issue and allotment by IT Capital of 15 000 000 fully paid ordinary shares in IT Capital to each of Maurice Bryham and David McKee Wright for a consideration of 4 cents per share.

- 4 To authorise and approve the acquisition by IT Capital of the following shareholding interests from Maurice Bryham and David McKee Wright and to authorise and approve the issue and allotment of 137 500 000 fully paid ordinary shares in IT Capital as consideration for the acquisitions:
- (a) 40% of the share capital of Datasquirt Limited:
  - (b) 50% of the share capital of Conceptual Solutionz Limited:
  - (c) 70% of the share capital of Sealegs International Limited.
- 5 To authorise and approve the entry into the contract by IT Capital on the terms and conditions described in the explanatory notes.

Dated at Wellington this 5th day of July 2002.

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

[L.S.]

D. M. D. Rawstorne,  
Member.

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### Statement of reasons of Takeovers Panel

This notice applies to acts or omissions occurring on or after 21 June 2002, and expires on the close of 31 October 2005.

The Takeovers Panel has granted exemptions to—

- Platinum Management Limited (**Platinum**) in connection with rule 7(d) of the Takeovers Code (the **Code**); and
- IT Capital Limited (**IT Capital**) in connection with rule 16(b) and (d) of the Code.

The exemptions relate to a management service contract (the **contract**) that is to be considered at a meeting of IT Capital's shareholders to be held on or about 23 July 2002. The contract provides for the issue of 50 000 000 share options (the **options**) to Platinum to provide an incentive to it in relation to the management services to be provided under the contract.

Platinum is unable to comply with rule 7(d) of the Code in connection with the increase in voting securities on the exercise of the options because IT Capital is unable to specify—

- the number of voting securities that will or may be allotted to Platinum:
- the potential maximum number of voting securities that Platinum may hold or control after the completion of the allotment:
- the percentage of the aggregate of all existing voting securities and all voting securities being allotted that that number represents:
- the intended exercise date of the options.

The exemptions are limited to any voting rights in IT Capital that Platinum acquires by virtue of the exercise of the options.

It is a condition of the exemptions that there is no change in the effective control of Platinum until after the expiry of this notice.

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

- it is appropriate to grant the exemptions because—
  - the issuing of share options is an accepted means in New Zealand of providing incentives to management or employees and the Panel should facilitate these arrangements by exemption; and
  - the exemptions are limited to those securities acquired by Platinum as a result of its entitlement to options to be approved by the non-associated shareholders of IT Capital at the meeting of IT Capital to be held on or about 23 July 2002; and
  - if the shareholders of IT Capital approve the issue of the options and the future allotment of voting securities in connection with the options, with the knowledge of the maximum possible percentage control of IT Capital that may be obtained by Platinum and its associates, then, by implication, they can be taken to have also approved any lesser percentage of control that may be obtained following the actual exercise of the options and the associated allotment of voting securities; and

- the Panel considers that the exemption is consistent with the objectives of the Code because IT Capital shareholders not associated with Platinum will have an opportunity to vote on the issue of the options and the future potential allotment of voting securities to Platinum.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 11 July 2002.  
This notice is administered by the Takeovers Panel.

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