



Takeovers Code (Designer Textiles (NZ) 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 (Designer Textiles (NZ) Limited) Exemption Notice 2002.
- 2 Application**

This notice applies to acts or omissions occurring on or after 9 August 2002.
- 3 Expiry**

This notice expires on the close of 8 April 2003.
- 4 Interpretation**

(1) In this notice, unless the context otherwise requires,—
Act means the Takeovers Act 1993

Avonbank Trust means George Arthur Churchill Gould and Perpetual Trustees Limited as the trustees of the Avonbank Trust under a Deed of Settlement dated 18 July 1988

Belvoir Trust means George Arthur Churchill Gould, Susannah Scott Gould, and Benjamin William McAlpine Gould as the trustees of the Belvoir Trust under a Deed of Settlement dated 14 December 1976

buy-back means the buy-back by DTL (during the period of 12 months commencing on 8 April 2002 and in accordance with a notice issued to the New Zealand Stock Exchange dated 2 April 2002) of up to 1,787,075 shares that it previously issued

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

DTL means Designer Textiles (NZ) Limited

GHL means Gould Holdings Limited

meeting means the meeting of DTL's shareholders that was held on 29 August 2002 to consider whether or not to approve the proposed resolutions

notice of meeting means the notice of meeting that was sent to DTL's shareholders that describes the proposed resolutions

proposed resolutions means the resolutions in respect of—

- (a) the increase in the percentage of GHL's and the Trusts' voting rights in DTL that arises from the buy-back; and
- (b) the acquisition by GHL of all the voting securities in DTL that are held or controlled by the Trusts

Trusts means the Avonbank Trust and the Belvoir Trust.

- (2) In clauses 6, 7, and 9, a reference to the notice of meeting is a reference to the notice of meeting as it applies to the acquisition by GHL of all the voting securities in DTL that are held or controlled by the Trusts.
- (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 Exemption from rule 6(1)(b) of Code

The Trusts and GHL are exempted from rule 6(1)(b) of the Code in respect of any increase in the percentage of their voting rights in DTL that arises from the buy-back.

6 Exemption from rule 7(c) of Code

GHL is exempted from rule 7(c) of the Code in respect of the notice of meeting to the extent that rule 7(c) requires the notice of meeting to be in accordance with rule 15(b) of the Code.

7 Exemption from rule 15(b) of Code

DTL is exempted from rule 15(b) of the Code in respect of the notice of meeting.

8 Conditions for exemption under clause 5

The exemption under clause 5 is subject to the conditions that—

- (a) the increase in the percentage of GHL's and the Trusts' voting rights in DTL that arises from the buy-back is approved by an ordinary resolution of DTL; and
- (b) the notice of meeting must contain, or be accompanied by, the matters set out in the Schedule; and
- (c) there is no change in the control of GHL or the Trusts between the date of the meeting and the date of the completion of the buy-back; and
- (d) the Trusts, GHL, and their associates must not vote on the proposed resolution in respect of the increase in the percentage of GHL's and the Trusts' voting rights in DTL that arises from the buy-back.

9 Conditions for exemptions under clauses 6 and 7

The exemptions under clauses 6 and 7 are subject to the conditions that—

- (a) the notice of meeting required by rule 15 of the Code must state particulars of the voting securities to be acquired by GHL from the Trusts, including—
 - (i) the number being acquired; and
 - (ii) the maximum possible percentage of all voting rights that the shares being acquired by GHL from the Trusts would represent after the completion of the buy-back (on the basis that the buy-back is fully implemented); and
 - (iii) the maximum possible percentage of all voting rights that will be held or controlled by GHL after the completion of the acquisition and the buy-

- back (on the basis that the buy-back is fully implemented); and
- (b) there is no change in the control of GHL between the date of the meeting and the date of the completion of the acquisition and the buy-back.
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cl 8(b)

Schedule

Matters that must be included in notice of meeting

The notice of meeting must contain, or be accompanied by,—

- (a) particulars of the percentage of all voting securities held or controlled by the Trusts and GHL before the commencement of the buy-back; and
- (b) particulars of the maximum possible percentage of all voting securities held or controlled by the Trusts and GHL after the completion of the buy-back (on the basis that the buy-back is fully implemented); and
- (c) the consideration for the increase in voting rights or the manner in which the consideration will be determined and when the consideration is payable; and
- (d) a statement that explains how the increased voting rights have arisen; and
- (e) a statement to the effect that the increased voting rights, if approved, will be permitted as an exception to rule 6 of the Code; and
- (f) a statement by GHL setting out particulars of any agreement or arrangement (whether or not legally enforceable) that has been, or is intended to be, entered into between GHL and any other person (other than between GHL and the Trusts in respect of the matters referred to in paragraphs (a) to (e)) relating to the acquisition, holding, or control of the increased voting rights or the exercise of those rights in DTL; and
- (g) a report from an independent adviser on the merits of the proposed increase in GHL's or the Trusts' voting rights in DTL that complies with rule 18 of the Code (which report must have regard to the interests of those persons who may vote to approve the increase in voting rights); and

- (h) a statement by the directors of DTL as to whether they recommend the approval or disapproval of the proposed increase in GHL's and the Trusts' voting rights in DTL (which statement must be provided in accordance with rule 19 of the Code); and
- (i) a summary of the terms and conditions of the exemption under clause 5.

Dated at Wellington this 30th day of August 2002.

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

[L.S.]

D. O. Jones,
Deputy Chairperson.

Statement of reasons of Takeovers Panel

This notice applies to acts or omissions occurring on or after 9 August 2002 and expires on 8 April 2003.

The Takeovers Panel has granted exemptions to—

- Avonbank Trust and Belvoir Trust (the **Trusts**) and Gould Holdings Limited (**GHL**) in respect of rule 6(1)(b) of the Takeovers Code (the **Code**); and
- GHL in respect of rule 7(c) of the Code; and
- Designer Textiles (NZ) Limited (**DTL**) in respect of rule 15(b) of the Code.

The Takeovers Panel considers that it is appropriate to grant the exemption to the Trusts and GHL from rule 6(1)(b) of the Code because,—

- although a buy-back is an accepted method of reducing capital, a buy-back is not able to be excepted from the fundamental rule under rule 7(c) of the Code as the increase in voting control is not due to an acquisition. Accordingly, an exemption from rule 6(1) of the Code is necessary. However, the exemption is subject to the condition that all the matters that are required to be satisfied for a rule 7(c) exception must be met; and

- if the shareholders of DTL approve the maximum possible increase in the percentage of GHL's and the Trusts' voting rights in DTL, then it can be taken, by implication, that those shareholders have approved that GHL and/or the Trusts may increase the percentage of their voting rights by a lesser amount.

The Takeovers Panel considers that it is appropriate to grant the exemption to DTL from rule 15(b) of the Code, and to GHL from rule 7(c) of the Code to the extent that rule 7(c) requires the notice of meeting to be in accordance with rule 15(b) of the Code, because—

- it is impossible for the actual percentage figures to be stated at the time the notice of meeting is sent to shareholders of DTL; and
- if the shareholders of DTL approve the maximum possible percentage of voting rights that may be acquired by GHL from the Trusts, then it can be taken, by implication, that those shareholders have also approved the acquisition by GHL of a lesser percentage of voting rights from the Trusts.

The Takeovers Panel considers that the exemptions are consistent with the objectives of the Code because the non-associated shareholders of DTL will have an opportunity to vote on—

- the immediate and potential increase of the voting rights of the Trusts and GHL as a result of the buy-back; and
- the potential acquisition of voting rights by GHL from the Trusts.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 5 September 2002.
This notice is administered by the Takeovers Panel.
