

**Reprint  
as at 1 June 2012**



**Takeovers Code (BLIS  
Technologies Limited) Exemption  
Notice 2009**

(SR 2009/48)

Takeovers Code (BLIS Technologies Limited) Exemption Notice 2009:  
expired, on 1 June 2012, by clause 3.

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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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This notice is administered by the Takeovers Panel.**

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## Notice

### 1 Title

This notice is the Takeovers Code (BLIS Technologies Limited) Exemption Notice 2009.

### 2 Application

This notice applies to acts or omissions occurring on or after 13 March 2009.

### 3 Expiry

This notice expires on the close of 31 May 2012.

### 4 Interpretation

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

**Act** means the Takeovers Act 1993

**BLIS** means BLIS Technologies Limited

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

**Edinburgh** means Edinburgh Equity Nominee Limited

**meeting** means the meeting of the shareholders of BLIS that is to be held on or about 30 March 2009 to consider whether to approve, for the purposes of rule 7(d) of the Code, the allotments of voting securities to Edinburgh on conversion of the preference shares allotted to Edinburgh under the rights issue, underwriting arrangements, and option

**notice of meeting** means the notice of meeting to be sent to the shareholders of BLIS in respect of the meeting

**option** means the option granted to Edinburgh in the underwriting arrangements for Edinburgh to subscribe for 1 million preference shares, in addition to those taken up by Edinburgh pursuant to the underwriting arrangements

**preference share** means a mandatory cumulative preference share in BLIS issued under the rights issue or the option that

will be converted into a voting security automatically in the future

**rights issue** means the rights issue to be conducted by BLIS under a prospectus to be registered following the meeting

**underwriting arrangements** means the arrangements in the underwriting agreement between BLIS and Edinburgh executed on or about 5 February 2009

**voting security** means a voting security in BLIS.

- (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 the voting rights in BLIS.
- (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 7(d) of Code**

Edinburgh is exempted from rule 7(d) of the Code in respect of any increase in its voting control as a result of the allotment of voting securities to it on conversion of the preference shares allotted to it under the rights issue, underwriting arrangements, and option to the extent that rule 7(d) requires the notice of meeting to comply with rule 16(b) of the Code.

#### **6 Exemption from rule 16(b) of Code**

BLIS is exempted from rule 16(b) of the Code in respect of the notice of meeting.

#### **7 Condition of exemptions in clauses 5 and 6 relating to notice of meeting**

- (1) The exemptions in clauses 5 and 6 are subject to the condition that the notice of meeting contains, or is accompanied by, the following particulars:
  - (a) the maximum number of voting securities that could be allotted to Edinburgh on conversion of the maximum number of preference shares that could be allotted to it under the rights issue, underwriting arrangements, and option:

- (b) the maximum number of voting securities that could be allotted to Edinburgh on conversion of the maximum number of preference shares that could be allotted to it under the rights issue, underwriting arrangements, and option, expressed as a percentage of the total voting securities on issue after that allotment of the voting securities:
  - (c) the maximum percentage of the total voting securities on issue that could be held or controlled by Edinburgh after the allotment of voting securities to it on conversion of the maximum number of preference shares that could be allotted to it under the rights issue, underwriting arrangements, and option:
  - (d) the maximum percentage of the total voting securities on issue that could be held or controlled by Edinburgh and its associates after the allotment of voting securities to it on conversion of the maximum number of preference shares that could be allotted to it under the rights issue, underwriting arrangements, and option.
- (2) The percentages required to be disclosed in subclause (1) must be calculated in relation to all of the following scenarios:
- Scenario 1*
- (a) no voting securities are allotted to Edinburgh on conversion of unpaid dividends on preference shares and Edinburgh does not increase its voting control prior to the conversion of the preference shares:
- Scenario 2*
- (b) no voting securities are allotted to Edinburgh on conversion of unpaid dividends on preference shares and Edinburgh increases its voting control (when taken with the voting control of its associates) to 20% prior to the conversion of the preference shares:
- Scenario 3*
- (c) the maximum number of voting securities that could be allotted to Edinburgh on conversion of unpaid dividends on preference shares are allotted to Edinburgh and Edinburgh does not increase its voting control prior to the conversion of the preference shares:

*Scenario 4*

- (d) the maximum number of voting securities that could be allotted to Edinburgh on conversion of unpaid dividends on preference shares are allotted to Edinburgh and Edinburgh increases its voting control (when taken with the voting control of its associates) to 20% prior to the conversion of the preference shares.

**8 Further conditions of exemptions in clauses 5 and 6 relating to notice of meeting**

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

- (a) the notice of meeting contains, or is accompanied by,—
  - (i) full particulars of the preference shares, rights issue, underwriting arrangements, and option; and
  - (ii) a summary of the terms and conditions of the exemptions granted under this notice; and
- (b) the notice of meeting displays, in a prominent position, a disclaimer stating that by exempting Edinburgh from rule 7(d) of the Code, and BLIS from rule 16(b) of the Code, the Takeovers Panel is—
  - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting; and
  - (ii) not implying that it has a view on the merits of the proposed issue of voting securities to Edinburgh on conversion of the preference shares to be allotted to Edinburgh; and
- (c) the form of the notice of meeting is approved by the Takeovers Panel.

**9 Condition of exemptions in clauses 5 and 6 relating to BLIS's annual report**

The exemptions in clauses 5 and 6 are subject to the condition that every annual report issued by BLIS during the period in which this notice is in force contains the following in a prominent position and in a form approved by the Takeovers Panel:

- (a) a summary of the terms of the preference shares, rights issue, underwriting arrangements, and option; and
- (b) a summary of the terms and conditions of the exemptions contained in this notice; and
- (c) a statement, as at the end of the financial year to which the annual report relates, of the following:
  - (i) the number of preference shares allotted to Edinburgh under the rights issue, underwriting arrangements, and option:
  - (ii) the total percentage of voting rights on issue held or controlled by Edinburgh and its associates (both individually and in aggregate):
  - (iii) the maximum percentage of voting rights that could be held or controlled by Edinburgh and its associates on the exercise of the option (if still alive) and subsequent conversion of the preference shares.

#### **10 Application of exemption in clause 5**

The exemption in clause 5 does not apply—

- (a) if there is an increase in the aggregate of the voting control of Edinburgh and its associates to above 20%, except as a result of an allotment of voting securities to Edinburgh on conversion of the preference shares, before the conversion of the last of the preference shares held by Edinburgh:
- (b) to an increase in Edinburgh's voting control as a result of the allotment of voting securities to Edinburgh on conversion of the preference shares if, immediately after the completion of the allotment of the voting securities, the total percentage of voting securities held or controlled by Edinburgh is greater than the maximum percentage of voting securities that could be held or controlled by Edinburgh as disclosed in the notice of meeting in accordance with clause 7(1)(c).

**11 Condition of exemption in clause 5 relating to change in control of Edinburgh**

The exemption in clause 5 is subject to the condition that there is no change in control of Edinburgh before the completion of the allotment of voting securities to Edinburgh on the conversion of the preference shares.

Dated at Auckland this 12th day of March 2009.

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

[Seal]

D O Jones,  
Chairperson.

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**Statement of reasons**

This notice applies to acts or omissions occurring on or after 13 March 2009 and expires on 31 May 2012.

The Takeovers Panel (the **Panel**) has granted exemptions for—

- Edinburgh Equity Nominee Limited (**Edinburgh**) from rule 7(d) of the Takeovers Code (the **Code**) to the extent that rule 7(d) requires the notice of meeting to be in accordance with rule 16(b) of the Code. The exemption from rule 7(d) is in respect of any increase of voting rights held by Edinburgh in BLIS Technologies Limited (**BLIS**) as a result of the allotment of voting securities to Edinburgh on conversion of mandatory cumulative preference shares (**preference shares**) to be allotted to it under a rights issue, some associated underwriting arrangements, and an associated option; and

- BLIS from rule 16(b) of the Code in respect of the notice of meeting.

BLIS proposes to undertake a pro rata renounceable rights issue. Every shareholder will receive a right to subscribe for 1 preference share for every 45 ordinary shares held. The preference shares will automatically convert to ordinary shares on their third anniversary. The conversion ratio will be calculated by reference to the BLIS share price in the period immediately prior to conversion. The rights issue is to be fully underwritten by Edinburgh (the **underwriting arrangements**). Edinburgh will also hold an option to subscribe for a further 1 million preference shares in certain circumstances (the **option**).

The allotment of ordinary shares to Edinburgh on conversion of the preference shares allotted to it under the rights issue, underwriting arrangements, and option may result in it increasing its voting control above the 20% threshold in the fundamental rule of the Code. Accordingly, shareholder approval for that allotment is to be sought under rule 7(d) of the Code at a meeting of shareholders to be held on or about 30 March 2009. Rule 7(d) of the Code requires, among other things, that the notice of meeting contains the information specified by rule 16(b) of the Code. The rule 16(b) information will not be known at the time the notice of meeting is prepared because of uncertainties in the level of participation in the rights issue, the extent to which Edinburgh will exercise its option, and the BLIS ordinary share price in the period immediately prior to conversion.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions because—

- it is impossible for the actual number of voting securities to be allotted and the relevant percentages required by rule 16(b) to be stated in the notice of meeting, since these numbers and percentages are dependent on the extent to which shareholders of BLIS participate in the rights issue, the extent to which Edinburgh exercises its option, and the future price of BLIS ordinary shares:
- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to Edinburgh under the various arrangements:
- if the non-associated shareholders approve the potential maximum allotment of voting securities to Edinburgh, then, by im-

plication, the shareholders also approve any lesser percentage of voting rights that may be acquired as a result of the conversion of the preference shares to be allotted to Edinburgh:

- the rights issue will be pursuant to a registered prospectus. The ability for a shareholder to subscribe for securities under a rights issue and thus provide adequate funding to ensure a company's survival and growth is an acknowledged method of raising capital in New Zealand, and the Panel should facilitate these arrangements by granting appropriate exemptions where necessary.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 19 March 2009.

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**Notes****1 General**

This is a reprint of the Takeovers Code (BLIS Technologies Limited) Exemption Notice 2009. The reprint incorporates all the amendments to the notice as at 1 June 2012, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

**2 Status of reprints**

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

**3 How reprints are prepared**

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989***

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5** *List of amendments incorporated in this reprint  
(most recent first)*

Takeovers Code (BLIS Technologies Limited) Exemption Notice 2009  
(SR 2009/48): clause 3

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