



CORPORATE FINANCE

# Sealegs Corporation Limited

Short Form Independent Appraisal  
Report with respect to the issue  
of Share Options to Directors of  
Sealegs Corporation Limited

29 May 2009

ADVISORY



KPMG Centre  
18 Viaduct Harbour Avenue  
P.O. Box 1584  
Auckland  
New Zealand

Telephone +64 (9) 367 5800  
Fax +64 (9) 367 5875  
Internet www.kpmg.co.nz

The Independent Directors  
Sealegs Corporation Limited  
233 Bush Road  
Albany

Our ref L024a Short Form Independent  
Appraisal Report.doc

10 June 2009

Dear Sirs

### **Summary of Appraisal Report with respect to the issue of Share Options to Directors of Sealegs Corporation Limited**

*This is a summary of our full Appraisal Report (hereafter “Appraisal Report” or “Report”) provided under NZSX Listing Rule 1.7.3. Readers are recommended to view our full Appraisal Report which contains our detailed overview of the proposed transaction, our detailed findings and full statement of independence, declarations, use of our report and disclaimer<sup>1</sup>. KPMG confirm that this summary of our full Appraisal Report is accurate and not misleading to the shareholders of Sealegs Corporation Limited.*

The Directors of Sealegs Corporation Limited (“Sealegs” or “the Company”) propose to seek shareholders’ approval, by way of an ordinary resolution to be passed at the Annual Meeting to be held on 17 July 2009, to issue share options to certain Directors of the Company.

Resolution 1 requests shareholders to authorise and approve the issue by the Company of 4,000,000 share options in the Company to Mr McKee Wright, 4,000,000 share options in the Company to Mr Bryham, and 1,000,000 share options in the Company to Mr Burrell (collectively the “Options”), and the allotment of shares in the Company upon an exercise of these Options.

Key terms of the Option Plan are:

- an exercise price of \$0.10 per Option; and
- the Options are exercisable in four tranches over the next five years, provided the Company’s share price reaches certain price trigger points, or performance hurdles (hereafter “Trigger Price”).

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<sup>1</sup> Our full Appraisal Report can be viewed on the Sealegs Corporation Limited website at: [www.sealegs.com](http://www.sealegs.com)



Mr McKee Wright is the Managing Director of the Company and interests associated with him currently own 9.3% of the shares in Sealegs. Mr Bryham is currently the Company's Development Manager and a Director of the Company. Interests associated with Mr Bryham currently own 7.1% of the shares in Sealegs. Mr Burrell is the Company's Director of Operations in Australia. Interests associated with Mr Burrell currently own 7.8% of the shares in Sealegs. The other two Directors of Sealegs, Messrs Christopher Dickson and James Hill may be considered independent for the purposes of this proposed transaction.

### ***Implications of the NZSX Listing Rules for the proposed transaction***

The following are the implications of the New Zealand Exchange ("NZSX") Listing Rules for the proposed transaction.

Under section 7.3.1 of the NZSX Listing Rules, no issuer shall issue any Equity Securities (including issue on Conversion of any other Security) unless the precise terms and conditions of the specific proposal to issue those Equity Securities have been approved by separate resolutions (passed by a simple majority of votes) of holders of each Class of Quoted Equity Securities of the Issuer whose rights or entitlements could be affected by that issue.

Furthermore, under section 9.2.1 of the NZSX Listing Rules, an Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become a direct or indirect party to the Material Transaction, unless that Material Transaction is approved by an Ordinary Resolution of the Issuer. We are advised that the issue of Options represents a Material Transaction.

The requirement for an Ordinary Resolution arises in this instance, as Directors of the Issuer, Mr McKee Wright, Mr Bryham and Mr Burrell are Related Parties and the proposed issue of Options is a Material Transaction.

Under Listing Rule 9.2.5, the text of any resolution to be put to a meeting for the purposes of Rule 9.2.1 shall be set out in the notice of the relevant meeting. The notice shall be accompanied by an Appraisal Report.

Listing Rule 1.7.1 requires that an independent appropriately qualified person, approved as such by the NZSX, prepare such a Report. KPMG Corporate Finance ("KPMG") has obtained the requisite approval from the NZSX on 24 April 2009.

Under Listing Rule 1.7.2, the Report must inter-alia:

- a) Be addressed to the Directors of the Company not associated with any relevant Associated Persons or if there are no such Directors, to the NZSX.
- b) Be expressed to be for the benefit of shareholders of Sealegs not associated with any relevant Associated Persons;
- c) State, providing reasons, whether or not in the opinion of KPMG the consideration and terms and conditions of the proposed transaction are fair to shareholders, other than those associated with the relevant Associated Persons;



- d) State, providing reasons, whether or not in the opinion of KPMG the information to be provided by Sealegs to shareholders is sufficient for shareholders to understand all the relevant factors and reach an informed decision as to the fairness of the proposed transaction;
- e) State whether KPMG, in preparing the Report, has obtained all information it believes desirable for the purposes of preparing the Report, including all material information which is known or should have been known to any Director of the Company and has been made available to the Directors;
- f) State any material assumptions on which KPMG's opinion is based;
- g) State any terms of reference that may have materially restricted the scope of the Report; and
- h) If it contains a disclaimer of liability, not purport to absolve the reporter from liability for an opinion expressed recklessly or in bad faith.

### ***Purpose of the report***

The purpose of the KPMG Independent Appraisal Report (the "Report") is to satisfy the requirements of the NZSX Listing Rules, and to assist the Non-associated Shareholders of Sealegs to evaluate the proposed transaction. For the purposes of this report, the Non-associated Shareholders relate to all shareholders of Sealegs other than Mr McKee Wright, Mr Bryham and Mr Burrell.

Our Report considers whether or not the proposed transaction is fair to the Non-associated Shareholders of Sealegs. There is no statutory definition of "fair" in New Zealand law or in the Listing Rules. The New Zealand Institute of Chartered Accountants state in Guidance Note 10 "Guideline on Independent Chartered Accountants Reporting as Experts to Shareholders" that:

*"the expression of an opinion as to fairness will generally involve an assessment as to whether a proposal is just, impartial and equitable"*

### ***Our approach***

To assess if the proposed transaction is fair to the shareholders of Sealegs (other than those associated with the relevant Associated Persons) we have considered:

- The rationale for the proposed transaction, the terms and conditions of the Option Agreements and the positive and negative features of the proposal;
- The implications of the resolution not being approved; and
- The value of the Options to be issued to Mr McKee Wright, Mr Bryham and Mr Burrell, and the reasonableness of their remuneration having regard to the value of these Options.

## ***Evaluation of the Fairness of the issue of the Options for the purposes of Listing Rule 9.2.1***

In our opinion, after having regard to all relevant factors, the consideration and the terms and conditions of the Options are fair to the shareholders not associated with any relevant Associated Persons.

In summary, the key factors leading to our opinion are:

- the rationale for issuing the Options is sound;
- the escalating Trigger Price performance hurdle seeks to ensure that a tranche of Options can only be exercised if Sealegs' shareholders have received a positive return on their investment. The use of a performance hurdle is consistent with the approaches adopted by other listed companies on the NZSX;
- the benefits to be derived by Messrs McKee Wright, Bryham and Burrell (hereafter also referred to as "Senior Executives") will potentially be spread over five years up to 29 June 2014, thus providing a long term incentive which aligns the interests of these Senior Executives with Non-associated Shareholders;
- while the cancellation of the options issued in August 2007 and the issue of the Options at a lower price could be considered a potential negative feature of the proposed transaction, in our view this should be viewed in the context of the decline in financial markets globally and consideration of whether the previous options were still effective in motivating the Senior Executives;
- the allotment of shares upon the exercise of the Options will have a dilutionary impact on existing shareholders' interests in the Company;
- there is no adjustment to the Trigger Price in the event that Sealegs share price is significantly above \$0.10 at the issue date of the Options which is a negative feature of the Option Plan. At the date the Option Plan was formulated, the share price of Sealegs was circa \$0.10. However, at the date of our Valuation, 29 May 2009, the volume weighted average share price was \$0.111. Subject to no material change in the share price we consider the positive features of the Option Plan outweigh the negative feature of no adjustment to the Trigger Price;
- the allotment of shares upon the exercise of the Options may have a small positive impact on the liquidity of Sealegs' shares;
- Mr McKee Wright's total remuneration, including the value of the Options, is within, albeit at the higher end of the remuneration range advised by Peter Ross Consulting;

- Mr Bryham's total remuneration, including the value of the Options, is higher than the remuneration range advised by Peter Ross Consulting for a Development Manager. However, we recognise the Independent Directors' view that Mr Bryham's significant leadership role and contribution to the Sealegs business is not adequately reflected in the title of Development Manager. This assessment of Mr Bryham's remuneration ignores the current voluntary reduction in Mr Bryham's salary, discussed further below;
- Mr Burrell's remuneration has not been benchmarked as he is not paid a salary. However, having regard to his role in developing the Australian market and the value of the Options issued, we are of the view that it is likely to be fair having regard to the nature of the services that he provides to Sealegs;
- Mr McKee Wright and Mr Bryham have voluntarily reduced their salary by \$50,000 per annum in recognition of the poor economic conditions. If the Option Plan were not approved, it may increase the likelihood that they would claim their full contractual salary as detailed in this report. The annualised reduction in the salary broadly equates to the annualised value of the Options in each year. If they required payment of their full salary this would represent a cash drain on the Company; and
- the allotment of shares on the exercise of the Options will not significantly increase Mr McKee Wright's and Mr Bryham's ability to exert shareholder control over Sealegs owing to the restriction in the Option Agreement which prevents the allotment of the shares if it meant that Messrs McKee Wright and Bryham held 20% or more of the voting shares, giving rise to a breach of the Takeovers Code.

Overall, we consider that the positive features of the Option Plan outweigh the negative features, and that the Option Plan is fair to Non-associated Shareholders.

In our opinion the information to be provided to shareholders by Sealegs, together with the Report, is sufficient for shareholders to understand all relevant factors and reach an informed decision as to the fairness of the issue of the Options. Shareholders in Sealegs may obtain a copy of the full Appraisal Report from the Company's website.

### ***Information relied upon***

In completing the Report we have received and relied upon the following information:

- Un-audited financial accounts for Sealegs for the financial year ending 31 March 2009;
- Un-audited financial accounts for Sealegs for the six months to 30 September 2008;
- Audited financial statements for Sealegs for the financial years ending 31 March 2008 and 31 March 2007;
- A draft of the *Notice of Annual Meeting* for July 2009;



- An opinion on Executive remuneration from Peter Ross Consulting;
- A draft Option Agreement between Sealegs and Mr McKee Wright, which we are advised will be representative of the Option Agreement for Mr Bryham and Mr Burrell;
- Share price data for Sealegs, sourced from the NZSX; and
- Shareholder data provided by Sealegs.

### ***Disclaimer and Declarations***

#### *Qualifications*

This Report has been prepared by KPMG Corporate Finance. KPMG Corporate Finance provides advisory services in relation to mergers and acquisitions, independent appraisal reports, valuations and other corporate advisory services.

The people responsible for preparing the Report were Justin Ensor, Director (CA, PGDip Applied Finance & Investment, Securities Institute of Australia, BCom University of Auckland) and Russell Florence, Partner (CA, MCom University of Auckland). Messrs Ensor and Florence have significant experience in valuations, preparing independent appraisal reports and advising on mergers and acquisitions.

#### *Independence*

KPMG does not have at the date of this report, and has not had, any shareholding in or other relationship with Sealegs that could reasonably be regarded as capable of affecting our ability to provide an unbiased opinion in relation to this transaction.

KPMG has not had any part in the formulation of the Options Plan or any aspects thereof. Our sole involvement has been the preparation of this report.

KPMG will receive a fixed fee for the preparation of this report. This fee is not contingent on the conclusions of this report or the outcome of the voting in respect of the Options. We will receive no other benefit from the preparation of this report.

#### *Declarations*

KPMG has prepared the Report at the request of the Independent Directors of Sealegs. The Report meets the NZSX Listing Rules 9.2.5 and Rule 9.2.1 in relation to the proposed issue of Options to Mr McKee Wright, Mr Bryham and Mr Burrell.

It is not intended for the Report to be used for any other purpose.

The Report has been provided for the benefit of the Non-associated Shareholders of Sealegs.

KPMG consents to the issuing of this Report to the shareholders of Sealegs.



KPMG provided drafts of this Report to the Independent Directors of Sealegs to confirm the factual accuracy of the Report. There was no alteration to the valuation methodology, valuation of the Options or conclusion as a result of issuing the draft Report.

In KPMG's view, the contents of this report in its entirety are enough for the Non-associated Shareholders Sealegs to determine whether the proposed transaction is fair.

KPMG consider that they have had access to all relevant information.

The assumptions we have relied on to form our opinion are clearly indicated within the body of the Report.

The terms of reference for completing this report were agreed with the Independent Directors of Sealegs and in no way restricted our ability to act.

KPMG is independent in terms of the NZSX Listing Rules. KPMG's appointment was approved by the NZSX.

#### *Consents*

We consent to the issuing of this report in the form and context in which it is to be included in the notice of meeting to be sent to Sealegs' shareholders. Neither the whole nor any part of this report, nor any reference thereto may be included in any other document without our prior written consent as to the form and context in which it appears.

#### *Indemnity*

Sealegs has agreed to indemnify KPMG to the maximum extent permitted by law, against any and all costs, expenses or liabilities we incur to any person:

- In relation to any claim against us by a third party arising from or connected with any breach of Sealegs obligations to us;
- By relying on any information provided to KPMG by Sealegs or on Sealegs' behalf and which is false, misleading or incomplete.

Yours sincerely

Russell Florence  
Partner

Justin Ensor  
Director