

5 July 2007

Email: [bruce@gilsherp.co.nz](mailto:bruce@gilsherp.co.nz)

Bruce Sheppard  
Shareholders Association  
PO Box 6310  
Wellesley Street  
Auckland 1141



Dear Bruce

THL is in receipt of your letter to its shareholders dated 2<sup>nd</sup> July 2007, which makes a number of blatantly false accusations.

This letter is to respond to those accusations.

### **1. Payments to Senior Executives**

The company has previously stated publicly that the bonus payments are not payments to the executives for successful completion of the takeover. Your suggestion that the payments are equivalent to bribes is very misleading and is also defamatory.

To be clear, the takeover offer did not trigger the proposed bonus payments. The bonus payments were set as a short term incentive to increase the value of THL by disposing of the Tourism Leisure Group assets at a price that would have significantly increased shareholder wealth. The independent appraisal report noted this.

### **2. Break Fee**

The statement in your letter that the payment of a break fee is payable to MFS Living & Leisure in the event that the takeover is unsuccessful is also factually incorrect and completely misleading to shareholders. The takeover offer document details the terms of the break fee, which is payable both ways in defined circumstances.

Firstly, for a break fee of \$3.5m (or 3.5c per share) to be payable to MFS Living & Leisure by THL the following must happen...

Either:

- (i) The Directors do not recommend the offer  
or
- (ii) Another offer is received that causes the MFS offer to fail.

Level 2  
Citigroup Centre  
23 Customs Street East  
PO Box 4293  
Auckland, New Zealand

TELEPHONE  
(+64 9) 309 1974

FACSIMILE  
(+64 9) 309 9269

WEBSITE  
[www.thlonline.com](http://www.thlonline.com)

Australia  
New Zealand  
Fiji

The Directors have recommended the offer to shareholders so no break fee is payable. Secondly, to trigger the break fee in respect of some other offer, it follows that a more favourable offer must be received by Directors of THL. This has not happened. Clearly, a more favourable offer would be advantageous to THL Shareholders.

Your letter also fails to mention that a break fee of \$3.5m is payable by MFS Living & Leisure to THL if the takeover fails due to regulatory approvals not being obtained, such as the Overseas Investment office refusing clearance. Again, this is a benefit to THL shareholders.

The Board also points out that the Shareholders Association did not contact THL to check the accuracy of its assertions – nor, it appears, to read in any detail the offer document or other publicly available documents. The Association appears instead to have relied for its 'information' on newspaper articles – some of which were also published without contacting THL for clarification.

As a final point, any person can obtain a copy of the share register for any company, so to state that the Shareholders Association "requisitioned" the register is again misleading.

The Board of THL is very concerned about the misrepresentation running through your letter, and the potential for damage to the interests of the company and its shareholders. THL, its directors, and the executives concerned reserve all of their rights in respect of your letter. **Accordingly, THL requests that the Shareholders Association retract its letter by writing to all THL shareholders within three (3) working days.**

Yours sincerely  
**Tourism Holdings Limited**



**Keith Smith**  
**Chairman**



# NEW ZEALAND SHAREHOLDERS' ASSOCIATION INCORPORATED.

P.O. Box 42-139, Orakei, Auckland. 1745.

Phone 0800-6972747. Fax 09-3095260

<http://www.nzshareholders.co.nz>

2<sup>nd</sup> July 2007

## Tourism Holdings Limited – Takeover offer

We write to bring to your attention serious issues that have arisen between you as existing shareholders, and the Directors of Tourism Holdings Limited. We have taken the unusual step of requisitioning the company's share register in order to be in a position to discuss with you the affairs of the company.

Incidental to the takeover offer which you are now considering, two issues have been exposed by the New Zealand Herald which must concern all holders of shares in New Zealand Companies.

The first is the payment of incentives to senior executives for the successful completion of the takeover. In our view the effect of such payments is the equivalent of a bribe by the proposed purchaser of your shares, to motivate the company executives to assist the proposed purchaser into completing the deal - a clear conflict of duty those executives owe to existing shareholders. If you believe incentives like this (announced in advance of the takeover and built into the proposal) should be declared in detail, or outlawed completely, then you should join the Shareholders' Association.

The second is the negotiation of the break fee or penalty clause – a payment that the company must make to the proposed shareholder in the event that the purchase of your shares is not successful.

In any sale and purchase, both buyer and seller put in extra effort in good faith, to make the best use of the period of disclosure or due diligence, and are protected by law covering misrepresentation and fraud. But neither buyer nor seller obtain any reward if the proposed transaction does not proceed.

A break fee is a reward to the failed purchaser. This is contrary to the normal expectations as between buyer and seller. As you are a potential seller, would you have agreed to pay the purchaser, if you do not sell them your shares? In a break fee arrangement, the company has done this for you, in effect on your behalf.

It is our view that the company executives have no authority to pledge company assets against the failure of a proposed transaction for the purchase of your shares. It is simply not something the company itself has a direct interest in. You would not reward the proposed purchaser yourself for a failed bid. The company has no interest in doing so on your behalf. Nor, in our view, does it have any authority to do so. Accordingly, it is our view that such clauses should be outlawed by the Securities Commission. If you believe we are right in this, join with us in trying to improve company regulation and practice.

The decision whether to take the money in this case, or whether to retain ownership in your shares in Tourism Holdings, is entirely your decision to make. You will have the benefit of the advice of the independent directors. You will have to consider for yourself what effect the payment to executives by the proposed purchaser, and the break fee arrangements, have on your decision whether or not to sell. However behind this, and for the future, we feel that the rules should be cleaner. This and other correspondence of the NZSA are posted on our website [www.nzshareholders.co.nz](http://www.nzshareholders.co.nz).

We defend the rights of shareholders by challenging boards who do not act in the interests of all shareholders. If you would like to assist the NZSA in this please complete the attached membership form and send it back or join on line at [www.nzshareholders.co.nz](http://www.nzshareholders.co.nz).

Regards