



5 May 2004

7 pages

Companies Announcements  
Australian Stock Exchange Limited  
20 Bridge Street  
SYDNEY NSW 2000

By e-mail

Dear Sir,

**FOR IMMEDIATE RELEASE**

**Opinion of Queen's Counsel**

Attached is the opinion of Mr Francis Douglas, Q.C., in relation to the service agreement of Mr John Ducker. This was referred to at the Company's Annual General Meeting yesterday and is released for the information of shareholders and the market.

Yours faithfully

A handwritten signature in black ink, appearing to read "FWE BUSH".

**FWE BUSH**  
Company Secretary

**ARISTOCRAT LEISURE LIMITED**

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# ARISTOCRAT LEISURE LIMITED and JOHN DUCKER

## OPINION

My instructing solicitors act for Aristocrat Leisure Limited ("Aristocrat").

I have been asked to advise Aristocrat in relation to the entitlement of Mr John Ducker, a non-executive director of Aristocrat to payment by Aristocrat under clause 7.3(b) of his Service Agreement with Aristocrat dated 17 April 2000 as amended on 24 November 2000 which are hereinafter referred to as ("the Service Agreement"). The specific question which has been put to me is whether Mr Ducker would be entitled to payment by Aristocrat under clause 7.3(b) of the Service Agreement if he were not re-elected by shareholders to the Aristocrat Board at the Aristocrat 2004 Annual General Meeting on 1 May 2004. I am asked to assume that in respect of Mr Ducker's service as a director of Aristocrat there has been no "non-performance or non-conformance with the accepted requirements of a non-executive director determined by reference to the guidelines issued by the Australian Investment Managers Association".

03/05 '04 MON 15:46 FAX

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2

Mr Ducker was appointed Chairman of the Board of Aristocrat on 21 September 2000 and the amending agreement of 24 November 2000 varied clause 4.1(a) of the Service Agreement relating to the amount of directors' fees payable to Mr Ducker.

I am instructed that shareholder approval was not sought in relation to the Service Agreement and that the limit in section 200G of the *Corporations Act* applies to limit any retirement payments to an amount equal to the last three years in emoluments. My opinion has not otherwise been sought on the application to Mr Ducker of the provisions of Part 2D.2 of the *Corporations Act*, relating to restrictions on termination payments, or any predecessor to those provisions.

I am also instructed that Aristocrat is to hold its 2004 Annual General Meeting on 4 May 2004. Mr Ducker is to stand for re-election to the Board by shareholders at that meeting. If he is not re-elected to the Board he will have served as a director of Aristocrat for approximately 4 years and 7 months. I have been instructed that Aristocrat's constitution requires Mr Ducker to retire by rotation every three years and offer himself for re-election, and that there is an additional requirement that one-third of the directors retire each year (Art. 12.3). I have also assumed that the constitution of Aristocrat also required this prior to 17 April 2000, the date of the Service Agreement.

The provision of the Service Agreement which is most relevant in this context is clause 7.3 which provides as follows:

7.3 In the event of the Director's resignation, termination or retirement under this agreement for any reason except under clause 7.1 and 7.2, and including expiry by effluxion of time, the Director is entitled, in addition to all statutory

03/05 '04 MON 15:47 FAX

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3

entitlements to receive a lump sum on the date of resignation, termination or retirement, in consideration of past services, equal to:

- (a) if the Director has been engaged as a director by the Company for five years or more, the total emoluments of the Director during the period of 3 years ending at the time of resignation, termination or retirement, less the value of all pensions and lump sums paid or payable in connection with the resignation, termination or retirement, ascertained in accordance with section 237 of the Corporations Law; or
- (b) if at any time preceding the five year period referred to in clause 7.3(a), the Director's appointment as a director of the Company is terminated for any reason other than the Director's non-performance or non-conformance with the accepted requirements of a non-executive director determined by reference to the guidelines issued by the Australian Investment Managers Association, the Director will be entitled to the full retirement or resignation benefits set out in clause 7.3(a) as if the Director had served as a director of the Company for an aggregate period of five years."

Clause 7.3(a) is not relevant because Mr Ducker has not "been engaged as a director of the company for five year or more". Neither clause 7.3(a) or 7.3(b) are engaged if the directors "resignation, termination or retirement" under the Service Agreement is under "clause 7.1 and 7.2". However, clauses 7.1 and 7.2 are related to circumstances under which a director is required to resign from the company and include, amongst other reasons, under clause 7.1, dishonesty, fraud or breach of duty which may detrimentally affect the company; or, under clause 7.2, notice received from a Gaming Authority requiring the Director to resign. I am instructed that neither of these circumstances are present in Mr Ducker's case.

Whilst clause 7.3 applies generally to "resignation, termination or retirement" clause 7.3(b) only applies if "the directors appointment as a Director of the Company is terminated for any reason other than the Director's non-performance or non-conformance with the accepted requirements of a non executive director determined by reference to the guidelines issued by the Australian Investment Managers Association". Because of the assumption which I have been asked to make in respect

03/05 '04 MON 15:47 FAX

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4

of Mr Ducker's service as a director of Aristocrat, the exception to clause 7.3(b) does not apply. Therefore, the question which arises for determination is whether if Mr Ducker were to stand for re-election to the board by shareholders at the Annual General Meeting on 4 May 2004 and were not to be re-elected, this would constitute a "termination" within the meaning of clause 7.3(b).

The provision of the Service Agreement which throws most light on this, in my opinion, is clause 3 which deals with the Term of the Service Agreement. This provides as follows:

3.1 The Director undertakes and agrees with the Company:

- (a) to retire as a director of the Company on the completion of 15 years service as a director of the Company; and
- (b) subject to clauses 3.2 and 7, until retirement or other termination as a director of the Company, to offer himself for re-election as a director of the Company when he retires by rotation in accordance with the Company's constitution from time to time.

3.2 Subject to clause 7, the Director undertakes and agrees not to resign as a director of the Company except:

- (a) upon reasonable and bona fide commercial grounds;
- (b) with the consent of the majority of the board of directors of the Company; or
- (c) if at any time during the term of the Director's the engagement as a director any person (other than Company or its related bodies corporate) not previously so entitled (within the meaning of section 609 of the Corporations Law) becomes entitled to more than 50% of the voting shares in the Company as a result of an acquisition of voting shares by the person or its associates (as defined in the Corporations Law).

In the current context it is not without importance to note that Mr Ducker has undertaken and agreed with Aristocrat to retire as a director on the completion of 15

03/05 '04 MON 15:47 FAX

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5

years service. He has also agreed, subject to clauses 3.2 and 7 "until retirement or other termination as a director of the company" to offer himself for re-election as a director of the company when he retires by rotation in accordance with the company's constitution from time to time. I understand, based on my instructions, that Aristocrat's constitution requires, and as at 17 April 2000 required, him to retire by rotation every three years and required one-third of the directors to retire each year. Therefore, notwithstanding that Mr Ducker's continuation in office as a director of Aristocrat depends upon him being re-elected as a director of the company every three years when he retires by rotation in accordance with its constitution, or each year when he retires, the Service Agreement which he has entered into contemplates 15 years service as a director of Aristocrat. In addition to this, he has undertaken and agreed not to resign as a director of Aristocrat except as provided in clause 3.2, which includes reasonable and bona fide commercial grounds; the consent of the majority of the board of directors of Aristocrat, or a change in control of the company.

There is no definition of "termination" in the Service Agreement. The provisions of clause 3 however, in my opinion, make it reasonably clear that "termination" within the meaning of the Service Agreement was intended to include circumstances in which a director of the Company offers himself for re-election as a director of a Company when he retires in accordance with the Company's constitution from time to time, and is not re-elected. The words "for any reason other (etc)" are quite all embracing in this regard. Whilst in another context "termination" may not bear this meaning, it is my opinion that the better view of this contract is that it was intended to apply in circumstances such as those which have been outlined in my instructions. As to the relevant principles of interpretation see *Magbury Pty Ltd v Hafele Australia*

03/05 '04 MON 15:48 FAX

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6

*Pty Ltd* (2001) 210 CLR 18 at 188 [para 11]; *Peppers Hotel Management Pty Ltd v Hotel Capital Partners Ltd* [2004] NSWCA 114 [paras 65-73].

In an agreement which has an anticipated duration of 15 years, entered into in circumstances where it must have been contemplated by both parties that Mr Ducker would have to retire by rotation every 3 years and may be included in the one-third of directors who from time to time retired on a yearly basis, it would in fact be a somewhat odd result if a failure of Mr Ducker to be re-elected was not to constitute a termination. Presumably those in control of Aristocrat as at 17 April 2000 considered that they could secure the support of a majority of shareholders to ensure the re-election of Mr Ducker each time he retired by rotation or otherwise so that he could have the benefit of a 15 year term.

If Mr Ducker is not re-elected on 4 May 2004 this will constitute a termination within the meaning of the Service Agreement, and in particular, clause 7.3(b), in which event Mr Ducker will become entitled to benefits calculated in accordance with that subsection, subject to the overriding constraint contained in section 200G of the *Corporation Act* and I so advise.

Chambers.

Dated 3 May, 2004

  
FM DOUGLAS OC