

**Reprint
as at 6 February 2015**



**Takeovers Code (Trustees of
Family Trusts) Exemption Notice
2012**

(SR 2012/226)

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 (Trustees of Family Trusts) Exemption Notice 2012.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Takeovers Panel.

2 Application

This notice applies to acts or omissions occurring on or after 21 August 2012.

3 Interpretation

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

Act means the Takeovers Act 1993

appointer means, in relation to a family trust, 1 or more persons with power to appoint or remove trustees

Code means the Takeovers Code under the Act

code company has the same meaning as in section 2(1) of the Act

family trust means a trust that is established for or mainly for the benefit of 1 or more of the following persons:

- (a) the settlor or appointer of that trust;
- (b) relatives of the settlor or appointer;
- (c) persons for whom the settlor or appointer has natural love and affection

relative has the same meaning as in section 2(1) of the Securities Act 1978

trustee means a person who is appointed as a trustee of a family trust under the trust deed establishing the family trust.

- (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 voting rights in a code company.
- (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.

4 Exemption from rule 6(1) of Code

- (1) Every person who becomes a trustee of a family trust is exempted from rule 6(1) of the Code in relation to any increase in the person's voting control as a result of being appointed as a trustee of that trust.
- (2) Every person who is a trustee of a family trust is exempted from rule 6(1) of the Code in relation to any increase in the person's voting control as a result of a reduction in the number of trustees of that trust.

5 Conditions of exemption

The exemption in clause 4 is subject to the conditions that—

- (a) the family trust continues for or mainly for the benefit of 1 or more of the following persons:
 - (i) the settlor or appointer of that trust;
 - (ii) relatives of the settlor or appointer;
 - (iii) persons for whom the settlor or appointer has natural love and affection; and
- (b) the trustees are required under the trust deed establishing the family trust to act unanimously; and
- (c) the appointment of a new trustee or reduction in the number of trustees in the family trust—
 - (i) reflects a bona fide reorganisation of the family trust or is the result of an event beyond the control of the trustees; and
 - (ii) does not have a collateral purpose of enabling a person to increase the person's voting control, or the extent to which that person shares in the voting control in a code company, otherwise than in compliance with the Code; and
- (d) but for rule 6(2) of the Code, the reorganisation would not result in any increase in the percentage of voting rights in the code company held or controlled by the trustees or the extent to which the trustees share in the voting control in the code company; and
- (e) the person appointed as a new trustee of the family trust did not hold or control voting rights in the code company immediately before their appointment as a trustee.

Clause 5(d): amended, on 6 February 2015, by clause 4(1) of the Takeovers Code (Trustees of Family Trusts) Exemption Amendment Notice 2015 (LI 2015/15).

Clause 5(e): inserted, on 6 February 2015, by clause 4(2) of the Takeovers Code (Trustees of Family Trusts) Exemption Amendment Notice 2015 (LI 2015/15).

Dated at Auckland this 21st day of August 2012.

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

[Seal]

D M Flacks,
Member.

Statement of reasons

Note: The following statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:

- **Takeovers Code (Trustees of Family Trusts) Exemption Amendment Notice 2015**

This notice applies to acts or omissions occurring on or after 21 August 2012.

The Takeovers Panel (the **Panel**) has granted a class exemption from rule 6(1) of the Takeovers Code (the **Code**) for persons who are or who become trustees of a private family trust (**family trust**). The exemption is available for persons who increase their voting control in a code company as a result of changes to the trust's trustees (**changes to trustees**).

The relevant changes to trustees relate to the appointment of a new trustee or the reduction in the number of trustees of the family trust where there is no increase in voting control in a code company on behalf of the trust resulting from the changes to trustees.

The exemption relates to a bona fide reorganisation of the family trust or an event outside the control of the trustees of the trust.

The conditions of exemption are designed to ensure that the underlying purpose and intent of the Code is fulfilled. Accordingly, the conditions of exemption require that—

- the family trust is established and remains mainly for the benefit of the settlor or appointers, their relatives, or persons for which they have natural love and affection; and

- under the trust deed, the trustees must act unanimously; and
- the changes to trustees must be a bona fide reorganisation of the family trust or be the result of an event beyond the control of the trustees; and
- there is no collateral purpose of enabling the trustees to increase voting control in a code company otherwise than in compliance with the Code; and
- the changes to trustees involve no increase in the trustees' voting control in the code company.

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

- the exemption only applies where the appointment of a new trustee or a reduction of the number of trustees relates to a reorganisation of the family trust, or an event outside the control of the trustees, and the Code is not intended to inhibit restructuring of family trusts that has no real effect on the shareholders of a code company; and
- in the case of a trustee exiting the trust, although the reduction in the number of trustees will result in the continuing trustees each being deemed to increase their holding or controlling of voting rights in a code company, the Code is not intended to regulate these changes to the trustees of family trusts; and
- in the case of a person being appointed as a trustee, there would be no disadvantage to the shareholders of a code company in not having the opportunity to vote on a trustee's appointment as trustee of the trust, as it would not have any real effect on those shareholders; and
- the exemption avoids unnecessary compliance costs that would be incurred if it were not granted.

Note: The preceding statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:

- **Takeovers Code (Trustees of Family Trusts) Exemption Amendment Notice 2015**

Reprints notes

1 *General*

This is a reprint of the Takeovers Code (Trustees of Family Trusts) Exemption Notice 2012 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Takeovers Code (Trustees of Family Trusts) Exemption Amendment Notice 2015 (LI 2015/15)
