

**Version
as at 8 November 2021**



**Takeovers Code (Voting Agreements for Schemes of
Arrangement) Exemption Notice 2020**

(LI 2020/252)

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel, being satisfied of the matters set out in section 45(6) of that Act, gives the following notice.

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Notice

1 Title

This notice is the Takeovers Code (Voting Agreements for Schemes of Arrangement) Exemption Notice 2020.

2 Application

This notice applies to acts or omissions occurring on or after 21 September 2020.

3 Interpretation

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

Act means the Takeovers Act 1993

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This notice is administered by the Takeovers Panel.

Code means the Takeovers Code under the Act

committed person means a person that has given a voting commitment under a voting agreement

material information, in relation to a voting agreement, means—

- (a) the name of—
 - (i) the code company; and
 - (ii) each committed person; and
 - (iii) each specified person; and
 - (iv) each upstream party of each specified person; and
- (b) a summary of the material terms of the voting agreement, including particulars of—
 - (i) whether the voting commitment is an obligation to vote, or to procure a vote, for a proposed scheme or to vote, or to procure a vote, against a proposed scheme; and
 - (ii) the consideration that must be offered under the proposed scheme (if it is specified in the voting agreement); and
 - (iii) the consideration (if any) that has been or will be provided to each committed person under the voting agreement; and
 - (iv) any no-sell obligation; and
 - (v) any time constraints after which any parties to the voting agreement will cease to be bound by a voting commitment; and
 - (vi) any limitations on the voting commitment (for example, that the voting commitment ceases to apply if another person proposes a scheme of arrangement that is more favourable to the shareholders); and
- (c) the number and percentage of all voting securities on issue to which the voting agreement relates that are held or controlled by each committed person; and
- (d) the number and percentage of all voting securities on issue that are held or controlled by each specified person

no-sell obligation means an obligation under a voting agreement on a person not to sell, transfer, or otherwise dispose of any interest in voting securities before the meeting to vote on the proposed scheme

proposed scheme means a scheme of arrangement that is proposed under a scheme implementation agreement

scheme of arrangement means a scheme of arrangement to be effected under Part 15 of the Companies Act 1993

specified person means a person that is given, and may enforce, a voting commitment under a voting agreement

upstream party, in relation to a person, means any other person who directly or indirectly has effective control over the person

voting agreement means a contract or deed entered into by 1 or more holders or controllers of voting rights in a code company that creates voting commitments for those persons (whether or not it also includes a no-sell obligation)

voting commitment means an enforceable obligation on a holder or controller of voting rights in a code company to vote, or to procure a vote, for or against a proposed scheme (whether the obligation is conditional or unconditional).

- (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 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 relating to voting agreements

Every person who is, or is an upstream party of, a specified person is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control in a code company that is the result of the specified person being entitled to enforce a voting commitment under a voting agreement.

5 Conditions of exemption

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

- (a) the voting agreement must expressly provide that the specified person does not, under the agreement, become the controller of the voting rights attaching to the voting securities that are the subject of the voting agreement in any way other than in respect of the voting commitment; and
- (aa) the voting commitment must relate to a scheme of arrangement that is proposed under a scheme implementation agreement that is duly executed by all parties to the agreement and is in force; and
- (b) the specified person must, as soon as is reasonably practicable but, in any event, within 1 working day after the voting agreement is entered into, send the material information about the agreement to—
 - (i) the Panel in accordance with the requirements set out in rule 5A of the Code; and
 - (ii) the code company in accordance with the requirements set out in rule 5C(2) of the Code; and
- (c) if the specified person becomes aware that any material information sent under this clause has changed, the specified person must, as soon as is reasonably practicable but, in any event, within 1 working day after becoming aware of the change, send a notice of the change to—

- (i) the Panel in accordance with the requirements set out in rule 5A of the Code; and
- (ii) the code company in accordance with the requirements set out in rule 5C(2) of the Code.

Clause 5(aa): inserted, on 8 November 2021, by clause 4 of the Takeovers Code (Voting Agreements for Schemes of Arrangement) Exemption Amendment Notice 2021 (SL 2021/348).

Dated at Auckland this 11th day of September 2020.

R A Coupe,
Chairperson.

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 (Voting Agreements for Schemes of Arrangement) Exemption Amendment Notice 2021**

This notice applies to acts or omissions occurring on or after 21 September 2020.

This notice exempts a person from rule 6(1) of the Takeovers Code (the **Code**) in respect of any increase in the person's voting control in a code company that results from a voting agreement.

A voting agreement is a contract or deed entered into by a holder or controller of voting rights in a code company that creates a commitment for that person to vote, or to procure a vote, for or against a proposed scheme of arrangement under Part 15 of the Companies Act 1993. A person who may enforce the commitment (and any upstream party of that person) will increase their voting control in the code company because the voting agreement allows them to indirectly control the exercise of voting rights.

The exemption is subject to terms and conditions, including requiring—

- material information relating to the voting agreement to be disclosed to the Takeovers Panel (the **Panel**) and the code company. This is intended to facilitate disclosure of this information to the shareholders of the code company; and
- a voting agreement to relate to a specific scheme of arrangement.

Under section 236A of the Companies Act 1993, an applicant for an order under Part 15 of that Act may file a statement from the Panel indicating that the Panel has no objection to an order (a **no-objection statement**). The Panel may require a code company to disclose material information to its shareholders before it issues a no-objection statement.

The Takeovers Panel considers it appropriate to grant the exemption, and considers the exemption to be consistent with the objectives of the Code, because—

- the disclosure to the Panel and the code company required by the conditions of the exemption, the Panel's requirement that the code company promptly disclose material information to its shareholders in order for the Panel to issue a no-objection statement, and, where applicable, the disclosure required by sub-part 5 of Part 5 of the Financial Markets Conduct Act 2013 ensure that shareholders of the code company who are not party to a voting agreement may decide on the merits of the scheme on an informed basis. This provision of information to shareholders assists in ensuring that shareholders are treated fairly, and recognises that shareholders must ultimately decide for themselves the merits of a scheme; and
- the effect of the exemption is to enable scheme participants to enter into enforceable obligations that provide certainty about the success or otherwise of the scheme equivalent to the certainty that may be provided by lock-up agreements in respect of takeover offers, and the ability to obtain certainty about the success or otherwise of a scheme encourages competition for the control of code companies; and
- permitting persons to enter into voting agreements in respect of schemes would not disadvantage the shareholders of the code company as all shareholders will have an opportunity to vote on the scheme. This assists in ensuring that shareholders are treated fairly; and
- the exemption avoids unnecessary compliance costs that would be incurred if it were not granted. This encourages the efficient allocation of resources, and assists in maintaining a proper relation between the costs of compliance with the Code and the benefits resulting from it.

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

- **Takeovers Code (Voting Agreements for Schemes of Arrangement) Exemption Amendment Notice 2021**

Notes

1 *General*

This is a consolidation of the Takeovers Code (Voting Agreements for Schemes of Arrangement) Exemption Notice 2020 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Takeovers Code (Voting Agreements for Schemes of Arrangement) Exemption Amendment Notice 2021 (SL 2021/348)