



Takeovers Code (Facilitation of Capital Raising in Response to COVID-19) Exemption Amendment Notice 2020

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 (Facilitation of Capital Raising in Response to COVID-19) Exemption Amendment Notice 2020.

2 Commencement

This notice comes into force on 26 October 2020.

3 Principal notice

This notice amends the Takeovers Code (Facilitation of Capital Raising in Response to COVID-19) Exemption Notice 2020 (the **principal notice**).

- 4 Clause 3 amended (Revocation)**
In clause 3, replace “31 October 2022” with “31 December 2022”.
- 5 Clause 5 amended (General increase exemption)**
In clause 5(1), replace “31 October 2020” with “31 December 2020”.
- 6 Clause 7 amended (Exemption for allotments under pro rata offer)**
In clause 7(2), replace “31 October 2020” with “31 December 2020”.
- 7 Clause 8 amended (Exemption for allotments under offer with accelerated features but otherwise pro rata)**
In clause 8(2), replace “31 October 2020” with “31 December 2020”.
- 8 Clause 9 amended (Exemption for allotments under certain offers with excluded overseas shareholders)**
In clause 9(2), replace “31 October 2020” with “31 December 2020”.
- 9 Clause 12 amended (Pro rata underwriter exemption)**
In clause 12(2), replace “31 October 2020” with “31 December 2020”.
- 10 Clause 21 amended (Exemption for professional underwriters)**
In clause 21(1), replace “31 October 2020” with “31 December 2020”.

Dated at Auckland this 20th day of October 2020.

Richard Andrew Coupe,
Chairperson.

Statement of reasons

This notice, which comes into force on 26 October 2020, amends the Takeovers Code (Facilitation of Capital Raising in Response to COVID-19) Exemption Notice 2020 (the **principal notice**).

The principal notice granted exemptions for classes of persons, transactions, and offers from compliance with rule 6(1) of the Takeovers Code (the **Code**). The exemptions were granted in response to COVID-19 and the significant issues it had been causing for the economy and the pressure a number of companies were under (or were expected to come under) due to rapidly changing economic conditions. The terms and conditions of the exemptions were designed to ensure that the underlying purpose and intent of the Code were fulfilled while also allowing code companies to access sufficient equity capital urgently should the need arise.

Under the principal notice, generally speaking,—

- control of a code company can be increased without a sell down requirement:
- that increase in control is immediate, but is subject to a cap (generally of 10% more than the person would be entitled to under the Code):
- control can be increased beyond the cap, but it is subject to a requirement to reduce control and voting restrictions.

However, the exemptions in the principal notice apply only to increases in voting control that occur on or before 31 October 2020. This notice extends the application of the exemptions to increases in voting control occurring on or before 31 December 2020. It also extends the revocation date of the principal notice from 31 October 2022 to 31 December 2022. This is to ensure that the notice will remain in force for 2 years after the last date on which the exemptions can be relied on, in order to align with the exemption conditions in clauses 15 to 18.

The Takeovers Panel considers it appropriate to amend the principal notice in this way because COVID-19 continues to significantly disrupt the economy in an unprecedented manner and has placed a significant number of companies under significant and highly irregular strain. Further difficulties may also arise as government support programmes are phased out. The Panel considers the amendment to be consistent with the objectives of the Code because—

- the duration of the extension, being 2 months, is relatively short:
- the exemptions relate only to allotments of voting securities. They do not permit acquisitions that would exceed restrictions in the Code:
- the ability to increase effective voting control is generally capped at 10% (there is an ability to increase voting control beyond the cap, but *see* the following bullet point regarding such increases):
- to the extent that a person would increase voting control by more than the cap, the conditions provide that such voting control must not be exercised and such voting control must be eliminated within the 2-year period specified in the principal notice:
- the usual sell down and voting restriction periods of 6 months (for professional underwriters) and 12 months (for shareholders) are not appropriate at this time given the level of volatility that continues to exist in the market. As such, the conditions retain the existing substantive protections but have adapted those protections for current market circumstances:
- the exemptions maintain a proper balance between the costs of compliance with the Code and the benefits resulting from it:
- the exemptions are temporary and will encourage the efficient allocation of resources by helping to facilitate legitimate capital raising in what continues to be an extremely unusual situation:
- assisting companies to survive extreme economic pressures will help to maintain the competitiveness of New Zealand's capital markets.

**Takeovers Code (Facilitation of Capital Raising in
Response to COVID-19) Exemption Amendment Notice
2020**

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This notice is administered by the Takeovers Panel.

Wellington, New Zealand:

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