



## Takeovers Code (Charitable Trusts) Exemption Notice 2019

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 (Charitable Trusts) Exemption Notice 2019.

#### 2 Application

This notice applies to acts or omissions occurring on or after 23 August 2019.

#### 3 Interpretation

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

**Act** means the Takeovers Act 1993

**Code** means the Takeovers Code under the Act

**registered charitable trust** means a trust whose trustees are registered as a charitable entity under the Charities Act 2005.

- (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 appointed as a trustee of a registered charitable trust is exempted from rule 6(1) of the Code in relation to any increase in the person's voting control in a code company as a result of the appointment.
- (2) Every trustee of a registered charitable trust is exempted from rule 6(1) of the Code in relation to any increase in the trustee's voting control in a code company as a result of a reduction in the number of trustees of the trust.

#### **5 Conditions of exemption**

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

- (a) the appointment of a trustee or reduction in the number of trustees—
  - (i) is, or is part of, a bona fide reorganisation of the trust; or
  - (ii) is the result of an event beyond the control of the trustees of the trust; and
- (b) the appointment or reduction does not have the increase in voting control as a collateral purpose; and
- (c) in the case of an appointment, the person appointed did not hold or control voting rights in the code company immediately before the appointment.

Dated at Auckland this 13th day of August 2019.

R A Coupe,  
Chairperson.

#### **Statement of reasons**

This notice, which applies to acts or omissions occurring on or after 23 August 2019, grants a class exemption from rule 6(1) of the Takeovers Code (the **Code**) for persons who are or become trustees of a charitable 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. The relevant changes are the appointment of a new trustee and a reduction in the number of trustees.

An appointment as a trustee will cause a person to increase their voting control if they join other trustees who together hold or control voting rights in a code company as associates, under rule 6(2)(b) of the Code. A reduction in the number of trustees may cause the remaining trustees to increase the extent to which they share in the voting control of a code company. If it does, each remaining trustee is deemed to have increased their voting control, under rule 6(2)(c) of the Code.

The conditions of the exemption are designed to ensure that the underlying purpose of the Code is still fulfilled. Accordingly, the exemption applies only if—

- the change of trustees is, or is part of, a bone fide reorganisation of the trust, or results from an event beyond the trustees' control; and
- the increase in voting control is not a collateral purpose of the change; and
- the new trustee (in the case of an appointment) did not hold or control voting rights in the code company immediately before the appointment.

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

- every trustee of a registered charitable trust who exercises control over voting rights in a code company in their capacity as a trustee is subject to the duties and obligations arising under the trust deed or other rules governing that trust and at law; and
- the exemption only applies if the appointment of a new trustee or a reduction in the number of trustees relates to a reorganisation of the trust, or an event outside the control of the trustees, and the Code is not intended to inhibit changes in the governance arrangements of charitable trusts; and
- in the case of an appointment of a trustee, there would be no disadvantage to the shareholders of a code company in not having the opportunity to vote on the appointment, as it would have no real effect on those shareholders; and
- the exemption avoids unnecessary compliance costs that would be incurred if it were not granted.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 20 August 2019.

This notice is administered by the Takeovers Panel.