



Takeovers Code (Richmond Limited) Exemption Notice 2003

The Takeovers Panel gives the following notice (to which is appended a statement of reasons of the Takeovers Panel) of an exemption granted on 29 May 2003 under section 45 of the Takeovers Act 1993.

Contents

1	Title	4	Interpretation
2	Application	5	Exemption
3	Expiry		

Notice

1 Title

This notice is the Takeovers Code (Richmond Limited) Exemption Notice 2003.

2 Application

This notice applies to acts or omissions occurring on or after 29 May 2003.

3 Expiry

This notice expires on the close of 1 December 2003.

4 Interpretation

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

Act means the Takeovers Act 1993

Code means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210)

Court orders means the orders of the High Court in the proceedings *Richmond Limited v PPCS Limited* (No 2) (High

Court, Dunedin, Young J, CP 10/02, 22 November 2002); and includes any extension made by the High Court concerning the time at which those orders take or have effect in relation to the forfeiture or suspension of voting rights attaching to shares in Richmond Limited held or controlled by PPCS Limited.

- (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.

5 Exemption

Every person who increases voting control in Richmond Limited as a result of the forfeiture or suspension of voting rights in Richmond Limited under the Court orders is exempted from rule 6(1) of the Code in respect of that increase in voting control.

The Common Seal of the Takeovers Panel was affixed this 3rd day of June 2003 in the presence of:

[L.S.]

J. C. King,
Chairperson.

Statement of reasons of Takeovers Panel

This notice applies to acts or omissions occurring on or after 29 May 2003, and expires on 1 December 2003.

The Takeovers Panel has granted an exemption from rule 6(1) of the Takeovers Code (the **Code**) to every person who becomes the holder of more than 20% of the voting rights in Richmond Limited (**Richmond**) as a result of Court orders (**Court orders**) suspending or forfeiting certain voting rights in Richmond held by PPCS Limited (**PPCS**) made in the judgment of the High Court in *Richmond*

Limited v PPCS Limited (No 2) (High Court, Dunedin, Young J, CP 10/02, 22 November 2002).

The Court orders are not due to come into effect until after the Court of Appeal releases its decision in relation to an appeal of the Court orders.

While the loss of voting rights through forfeiture will be permanent, the suspension of voting rights attaching to Richmond shares held or controlled by PPCS pursuant to the Court orders will cease if and when the underlying Richmond shares are transferred to an unrelated third party.

The effect of the forfeiture or suspension of voting rights attaching to Richmond shares held or controlled by PPCS pursuant to the Court orders is that those voting rights will not be “currently exercisable” and will therefore not constitute voting rights for the purposes of the Code. As a result, the percentage of voting rights held by the remaining Richmond shareholders will increase in proportion to the number of voting rights forfeited or suspended. If the suspension of voting rights attaching to Richmond shares held or controlled by PPCS results in any remaining Richmond shareholder becoming the holder or controller of more than 20% of the voting rights in Richmond, that shareholder would, in the absence of an exemption, breach rule 6(1) of the Code by increasing the shareholder’s voting rights in Richmond without utilising one of the exceptions in rule 7 of the Code.

The exemption only affects shareholders whose voting control increases above 20% at the time that the Court orders take effect. Normal Code rules would apply to any transactions occurring after that time.

The Takeovers Panel considers that the granting of the exemption is appropriate because—

- where the voting rights held by the Richmond shareholders prior to the Court orders coming into effect have been acquired in compliance with the Code, the increase in the number of voting rights held by Richmond shareholders if the exemption did not apply would be the result of the effects of a Court order; and
- the suspension of voting rights attaching to certain Richmond shares held by or controlled by PPCS, although indefinite, will cease upon the sale of those shares by PPCS; and

- the granting of the exemption is consistent with the evident intention of the High Court to encourage PPCS to sell the relevant parcel of Richmond shares and prevents any other shareholders being required to sell down shares in Richmond which would strength the voting position of PPCS despite the Court orders.

The Takeovers Panel considers that the granting of the exemption is consistent with the objectives of the Code because it encourages competition for control of Richmond.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 5 June 2003.

This notice is administered by the Takeovers Panel.
