



Takeovers Code (Air New Zealand Limited) Exemption Notice 2001

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 (Air New Zealand Limited) Exemption Notice 2001.

2 Commencement

This notice comes into force on 3 October 2001.

3 Expiry

This notice expires on the close of 31 January 2002.

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)

Crown means Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance

principal shareholders means—

- (a) BIL NZ Assets Limited and its subsidiaries; and
- (b) Anafi Investments Limited; and
- (c) Isa Investments Limited; and
- (d) Singapore Airlines Limited and its subsidiaries

shareholder support agreement means the agreement dated 4 October 2001 between the Crown and Air New Zealand Limited, Brierley Investments Limited, BIL NZ Assets Limited, Anafi Investments Limited, Isa Investments Limited, and Singapore Airlines Limited under which the parties (other than the Crown and Air New Zealand Limited) have undertaken to procure that the principal shareholders exercise all of their voting rights in Air New Zealand Limited in favour of, amongst other things, resolutions for the approval of the allotment to the Crown of any—

- (a) convertible preference shares in Air New Zealand Limited; and
- (b) ordinary shares in Air New Zealand Limited that arise from the conversion of the shares referred to in paragraph (a); and
- (c) additional ordinary shares in Air New Zealand Limited—

pursuant to, and in accordance with, the terms of a heads of agreement between the Crown and Air New Zealand dated 4 October 2001.

- (2) 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 from rule 6(1) of Code

The Crown is exempted from rule 6(1) of the Code in respect of any increase in the Crown's control of voting rights in Air New Zealand Limited that results only from the entering into, or the performance by the principal shareholders, of the shareholder support agreement.

6 Exemption from rule 7(d) of Code

The Crown is exempted from rule 7(d) of the Code to the extent that that provision requires rule 17(2) of the Code to apply to an ordinary resolution of Air New Zealand Limited

for the approval of any increase in the Crown's control of voting rights in Air New Zealand Limited—

- (a) that arises pursuant to the shareholder support agreement; and
- (b) that results from any allotment to the Crown of voting securities in that company.

7 Exemption from rule 17(2) of Code

Air New Zealand Limited and every principal shareholder are exempted from rule 17(2) of the Code in respect of any ordinary resolution of Air New Zealand Limited to approve any proposed increase in the Crown's control of voting rights in Air New Zealand Limited if that increase arises pursuant to the shareholder support agreement.

8 Condition

The exemptions in clauses 5 to 7 are subject to the condition that if any party to the shareholder support agreement reserves, under clause 2 of that agreement, the right to review its support of the implementation of the capital raising transactions, that party must immediately give notice to the Panel of its reservation of that right.

Dated at Wellington this 3rd day of October 2001.

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

[L.S.]

D. J. Quigg,
Member.

Statement of reasons of Takeovers Panel

The Takeovers Panel has exempted the Crown from compliance with rule 6(1) (fundamental rule) of the Takeovers Code (the **Code**) in respect of the Crown's increased control of voting rights in Air New Zealand Limited that results only from the entering into, or the performance by the principal shareholders, of the shareholder support agreement.

Under the shareholder support agreement, Brierley Investments Limited, BIL NZ Assets Limited, Anafi Investments Limited, Isa Investments Limited, and Singapore Airlines Limited have undertaken to procure that the principal shareholders exercise all of their voting rights in Air New Zealand Limited in favour of, amongst other things, resolutions for the approval of the allotment to the Crown of certain shares.

The Takeovers Panel has also exempted the Crown from rule 7(d) to the extent that that provision requires rule 17(2) of the Code to apply to an ordinary resolution of Air New Zealand Limited for the approval of any increase in the Crown's control of voting rights in Air New Zealand Limited—

- that arises pursuant to the shareholder support agreement; and
- that results from any allotment to the Crown of voting securities in that company.

The Takeovers Panel has also exempted Air New Zealand Limited and the principal shareholders from compliance with rule 17(2) (voting restrictions) of the Code in respect of any ordinary resolution of Air New Zealand Limited to approve any proposed increase in the Crown's control of voting rights in Air New Zealand Limited if that increase arises pursuant to the shareholder support agreement. Rule 17(2) of the Code provides that the allottee and its associates must not vote on a resolution for the approval of the allotment referred to in rule 7(d) of the Code. That exemption will effectively permit those principal shareholders to vote in favour of the allotment to the Crown of certain shares in Air New Zealand Limited.

The Takeovers Panel considers that (on the basis of the information provided to it) it is appropriate to grant the exemption for the following reasons:

- the current financial position of Air New Zealand Limited;
- the importance to the viability of Air New Zealand Limited as a going concern to have early certainty about the financial support being provided to the company by the Crown;
- the need for that financial support to be provided to the company ahead of the shareholders' meeting that is required for the purposes of rule 7(d) of the Code.

The Takeovers Panel considers that the exemption is consistent with the objectives of the Code because—

- the costs of complying with the Code would outweigh the benefits of complying with the Code because the delays attendant on compliance with the Code would have perpetuated such uncertainty about Air New Zealand's funding and governance as to immediately jeopardise the survival of the company as a going concern:
- there would be no detriment to competition for control of the company, on the basis of Air New Zealand Limited's view, conveyed to the Panel, that there was no source of capital available to it (including for an immediate injection of funds) other than the Crown that could provide the required amount of funding to recapitalise the company:
- if time and circumstances had allowed, the arrangements could have been made conditional on a shareholder meeting conforming with the Code. Both Brierley Investments Limited and Singapore Airlines Limited (or their nominees) would have been able to vote. The company's urgent need for funding should not deny Brierley Investments Limited and Singapore Airlines Limited and their nominees the ability, along with that of the other shareholders, to vote in the shareholders' resolution for the approval of the allocation of securities to the Crown.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 5 October 2001.
This notice is administered by the Takeovers Panel.
