



## **Takeovers Code (Pike River Coal Limited) Exemption Notice 2007**

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 (Pike River Coal Limited) Exemption Notice 2007.
- 2 Application**  
 This notice applies to acts or omissions occurring on or after 22 May 2007.
- 3 Expiry**  
 This notice expires on the close of 31 July 2009.

#### 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)

**control percentage** means the percentage of voting rights in Pike River that a person holds or controls

**Gujarat** means Gujarat NRE Coke Limited, a company incorporated in India

**investment statement** means the combined New Zealand investment statement and Australian prospectus relating to the IPO

**IPO** means the initial public offer of shares in Pike River

**New Zealand Oil & Gas** means New Zealand Oil & Gas Limited

**NZOG Services** means NZOG Services Limited

**option** means an option to subscribe for a share

**Pike River** means Pike River Coal Limited

**prospectus** means the New Zealand prospectus relating to the IPO that will be registered on or about 22 May 2007

**Saurashtra Fuels** means Saurashtra Fuels Private Limited, a company incorporated in India

**Saurashtra World Holdings** means Saurashtra World Holdings Private Limited, a company incorporated in Singapore

**share** means an ordinary share in Pike River

**subscription agreement option** means an option held by Gujarat, NZOG Services, or Saurashtra World Holdings—

(a) pursuant to equity subscription agreements dated 20 September 2005 and 12 June 2006; or

(b) as a result of a subdivision of an option referred to in paragraph (a) before the IPO

**underwrite commitment** means a commitment by Gujarat to sub-underwrite the issue of up to 5 000 000 shares at an issue price of \$1 per share in the IPO.

(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 Pike River.

- (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 Exemptions from rule 6(1) of Code**

- (1) Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings are exempted from rule 6(1) of the Code in respect of any increase in their respective voting control as a result of the allotment of shares on the exercise by Gujarat, NZOG Services, or Saurashtra World Holdings of any subscription agreement options.
- (2) Gujarat is exempted from rule 6(1) of the Code in respect of any increase in its voting control as a result of the allotment of shares under the underwrite commitment.

## **6 Conditions of exemptions in clause 5(1)**

The exemptions in clause 5(1) are subject to the following conditions:

- (a) a summary of the terms of the subscription agreement options, in a form approved by the Panel, must be included in the prospectus and the investment statement; and
- (b) the summary must clearly state—
- (i) the potential maximum control percentage of each of Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings as a result of the allotment of shares on the exercise of the subscription agreement options; and
  - (ii) the potential maximum aggregate control percentage of Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings as a result of the allotment of shares on the exercise of the subscription agreement options; and
- (c) Pike River's 2008 annual report must include—
- (i) a summary of the terms of the subscription agreement options, in a form approved by the Panel; and
  - (ii) a statement as at 30 June 2008 of—

- (A) the potential maximum control percentage of each of Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings as a result of the allotment of shares on the exercise of the subscription agreement options; and
  - (B) the potential maximum aggregate control percentage of Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings if the potential maximum control percentage of those shareholders is greater than 20%; and
- (d) the information provided under paragraph (b) must be based on the following working assumptions:
  - (i) that Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings maintain their control percentage in Pike River between the date of the IPO and the expiry of this notice; and
  - (ii) that no voting securities, other than those issued under the IPO, are issued by Pike River while the subscription agreement options remain exercisable; and
  - (iii) that Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings do not acquire additional voting rights under the IPO other than, in the case of Gujarat, under the underwrite commitment; and
- (e) the information provided under paragraph (c) must be based on the following working assumptions:
  - (i) that Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings maintain their control percentage in Pike River between 30 June 2008 and the expiry of this notice; and
  - (ii) that no voting securities are issued by Pike River after 30 June 2008 while the subscription agreement options remain exercisable; and
  - (iii) that Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings do not acquire additional voting rights

- during the period between 30 June 2008 and the expiry of this notice; and
- (f) the prospectus and the investment statement must each contain, in a prominent position, a disclaimer stating that by exempting Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings from rule 6(1) of the Code the Panel is—
    - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the prospectus or the investment statement;
    - (ii) not implying it has a view on the merits of either the IPO or the potential allotments to the holders of subscription agreement options, or to Gujarat pursuant to the underwrite commitment; and
  - (g) the form and position of the disclaimer referred to in paragraph (f) must be approved by the Panel; and
  - (h) the key terms and conditions of the subscription agreement options must not be altered following registration of the prospectus with the New Zealand Registrar of Companies; and
  - (i) the prospectus and the investment statement must each contain a summary, in a form approved by the Panel, of the terms and conditions of the exemption.

## **7 Conditions of exemption in clause 5(2)**

The exemption in clause 5(2) is subject to the following conditions:

- (a) a summary of the terms of the underwrite commitment, in a form approved by the Panel, must be included in the prospectus and the investment statement; and
- (b) the summary must clearly state—
  - (i) the potential maximum control percentage of Gujarat after the completion, and as a result, of allotments pursuant to the underwrite commitment; and
  - (ii) the potential maximum aggregate control percentage of Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings after the completion, and as a

- result, of allotments pursuant to the underwrite commitment; and
- (c) the prospectus and the investment statement must each contain, in a prominent position, a disclaimer stating that by exempting Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings from rule 6(1) of the Code the Panel is—
    - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the prospectus or the investment statement;
    - (ii) not implying it has a view on the merits of either the IPO or the potential allotments to the holders of subscription agreement options, or to Gujarat pursuant to the underwrite commitment; and
  - (d) the form and position of the disclaimer referred to in paragraph (c) must be approved by the Panel; and
  - (e) the key terms and conditions of the underwrite commitment must not be altered following registration of the prospectus with the New Zealand Registrar of Companies; and
  - (f) the prospectus and the investment statement must each contain a summary, in a form approved by the Panel, of the terms and conditions of the exemption; and
  - (g) there is no change in the effective control of Gujarat before the last allotment of shares pursuant to the underwrite commitment.

## **8 Exemption in clause 5(1) does not apply in certain circumstances**

- (1) If either of the following events occurs in relation to a specified company before the last allotment of shares pursuant to the exercise of the subscription agreement options, the exemption in clause 5(1) does not apply to that company after the occurrence of that event:
  - (a) the specified company becomes the holder or controller of an increased percentage of voting securities in Pike River, except as a result of the exercise of the subscription agreement options or, in the case of Gujarat, pursuant to the underwrite commitment:

- (b) there is a change in the effective control of the specified company.
- (2) In this clause **specified company** means—
- (a) Gujarat:
  - (b) New Zealand Oil & Gas:
  - (c) NZOG Services:
  - (d) Saurashtra Fuels:
  - (e) Saurashtra World Holdings.

Dated at Auckland this 23rd day of May 2007.

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

[Seal]

D O Jones,  
Chairperson.

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### Statement of reasons

This notice, which applies to acts or omissions occurring on or after 22 May 2007, expires on 31 July 2009.

Pike River Coal Limited (**Pike River**) is intending to make an initial public offer (**IPO**). Pike River will become a code company as a result of entering into a listing agreement with New Zealand Exchange Limited in connection with the IPO.

The Takeovers Panel (the **Panel**) has granted exemptions, subject to conditions, from rule 6(1) of the Takeovers Code (the **Code**) to—

- Gujarat NRE Coke Limited (**Gujarat**):
- New Zealand Oil & Gas Limited (**New Zealand Oil & Gas**):
- NZOG Services Limited (**NZOG Services**):
- Saurashtra Fuels Private Limited (**Saurashtra Fuels**):
- Saurashtra World Holdings Private Limited (**Saurashtra World Holdings**).

The exemptions have been granted in respect of any increase in their respective voting control in Pike River as a result of—

- the allotment of shares on the exercise by Gujarat, NZOG Services, or Saurashtra World Holdings of options to subscribe for ordinary shares in Pike River, held under equity subscription agreements with Pike River and held as a result of the subdivision of options held under the equity subscription agreements before the IPO (**subscription agreement options**); and
- the allotment to Gujarat of up to 5 000 000 shares in Pike River pursuant to a commitment (**underwrite commitment**) by Gujarat to sub-underwrite the IPO.

Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings may each be an associate of one or more of the others for the purposes of the Code.

*Exemption in relation to subscription agreement options*

Pursuant to equity subscription agreements entered into with Pike River, subscription agreement options, exercisable after the IPO, have been allotted to Gujarat, NZOG Services, and Saurashtra World Holdings. As the holders or controllers of more than 20% of the voting rights in Pike River (in each case individually or together with associates), Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings would need, in the absence of the exemption, to comply with the Code when shares were allotted as a result of the exercise of any of the subscription agreement options.

The Panel considered that the exemption is appropriate and consistent with the objectives of the Code because—

- as a condition of the exemption granted, Pike River is required to disclose certain details of the subscription agreement options in both the prospectus and the investment statement relating to the IPO. These include the potential maximum percentage of voting rights in Pike River held by Gujarat, New Zealand Oil & Gas, NZOG Services, Saurashtra Fuels, and Saurashtra World Holdings (both individually and as associates) as a result of the issue and allotment of shares on the exercise of the subscription agreement options. As a further condition of the exemption, Pike River is required to disclose similar information in its annual report each year



while the subscription agreement options remain exercisable; and

- potential investors will ultimately determine for themselves the merits of the potential allotments of shares on the exercise of the subscription agreement options, notified to them in the prospectus and the investment statement or in Pike River's annual report, when deciding whether to invest in the IPO or at a future time.

*Exemption in relation to underwrite commitment*

It is possible that Gujarat will be allotted up to 5 000 000 shares under the underwrite commitment. As a holder and controller, together with associates, of more than 20% of the voting rights in Pike River, Gujarat would need to comply with the Code when shares were allotted pursuant to the underwrite commitment.

The Panel considered that the exemption is appropriate and consistent with the objectives of the Code because—

- as a condition of the exemption granted, Pike River is required to disclose certain details of the underwrite commitment in both the prospectus and the investment statement relating to the IPO. These include the potential maximum percentage of voting rights in Pike River held by Gujarat after the completion, and as a result, of the allotments pursuant to the underwrite commitment; and
- potential investors in Pike River will ultimately determine for themselves the merits of the potential allotment of shares under the underwrite commitment, notified to them in the prospectus and the investment statement, when deciding whether to invest in the IPO or at a future time.

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

Date of notification in *Gazette*: 31 May 2007.

This notice is administered by the Takeovers Panel.

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