

**Reprint  
as at 13 January 2020**



**Takeovers Code (Small Code Companies) Exemption  
Notice 2016  
(LI 2016/298)**

Takeovers Code (Small Code Companies) Exemption Notice 2016: revoked, on 13 January 2020, by section 120 of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Pursuant to sections 45 and 45A 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 (Small Code Companies) Exemption Notice 2016.

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This notice is administered by the Takeovers Panel.**

## 2 Application

This notice applies to acts or omissions occurring on or after 1 December 2016.

## 3 Interpretation

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

**accounting period** has the meaning set out in section 5(1) of the Financial Reporting Act 2013

**Act** means the Takeovers Act 1993

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

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

**exempt person**, in respect of a relevant transaction, means a person who is increasing voting control as a result of the relevant transaction in reliance on the exemption under this notice

**relevant time** means—

- (a) the end of the most recently completed accounting period of the company before the date of the board resolution referred to in clause 5; or
- (b) if the company has not completed its first accounting period, the end of the most recently completed calendar month before the date of the board resolution referred to in clause 5

**relevant transaction** means—

- (a) an acquisition of voting securities in the small code company; or
- (b) an allotment of voting securities in the small code company; or
- (c) a buyback of voting securities in the small code company

**small code company** means a code company that—

- (a) is not within paragraph (a) of the definition of code company in section 2A(1) of the Act (which relates to listed issuers); and
  - (b) as at the relevant time, has, together with its subsidiaries, total assets that do not exceed \$20 million.
- (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 small 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)

A person (A) is exempted from rule 6(1) of the Code in relation to any increase in A's voting control in a small code company as a result of a relevant transaction.

## 5 Conditions for exemption in clause 4

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

- (a) the board of the small code company has previously resolved—
  - (i) to opt out of the Code in respect of the relevant transaction; and
  - (ii) that, in its opinion, it is in the best interests of the company to do so; and
- (b) before the expiry of 20 working days after the date of the board resolution, the company has sent to each holder of voting securities in the company, and to the Panel, a disclosure document for the relevant transaction that complies with clause 6; and
- (c) the company has not, during the objection period stated in the disclosure document, received written notices objecting to the opt out from the Code from holders of 5% or more of the voting rights in the company that are not held or controlled by an exempt person or an exempt person's associates; and
- (d) the relevant transaction is made—
  - (i) after the end of the objection period; but
  - (ii) before the expiry of 60 working days after the date of the board resolution; and
- (e) after the board resolution is made and before the relevant transaction is made,—
  - (i) the board has not ceased to have the opinion referred to in paragraph (a)(ii); and
  - (ii) A has not increased A's voting control in the company by a means other than the relevant transaction.

Clause 5(b): amended, on 29 October 2018, by clause 14(2) of the Takeovers Code (Class Exemptions) Amendment Notice 2018 (LI 2018/210).

Clause 5(d)(ii): amended, on 29 October 2018, by clause 14(3) of the Takeovers Code (Class Exemptions) Amendment Notice 2018 (LI 2018/210).

## 6 Requirements for disclosure document

- (1) The disclosure document for the relevant transaction must—
  - (a) state the type of transaction and give a brief description of the transaction; and
  - (b) contain statements to the effect that—
    - (i) it is, in the board's opinion, in the best interests of the company to opt out of compliance with the Code for the transaction; and
    - (ii) the effect of the opt out is that shareholders will not receive an independent adviser's report on the merits of the transaction or

- other information required by the Code and that shareholders will not have the opportunity to vote for or against the transaction; and
- (iii) holders of voting securities in the company may, however, object to the board's opt out; and
  - (iv) if the company receives written notices of objection from holders of 5% or more of the voting rights in the company that are not held or controlled by persons identified under paragraph (h)(i), or their associates, within the stated objection period, the transaction must proceed in accordance with the Code or be abandoned; and
  - (v) the disclosure document is being sent to holders of voting securities in the company to comply with the conditions of the Takeovers Code (Small Code Companies) Exemption Notice 2016; and
- (c) state the consideration for the voting securities in the transaction; and
  - (d) set out the reasons for the transaction; and
  - (e) set out the board's reasons for the opinion referred to in paragraph (b)(i); and
  - (f) identify any directors who did not vote in favour of the resolution and set out those directors' reasons for not doing so; and
  - (g) identify any director who is or may be an exempt person; and
  - (h) set out the following information in respect of each exempt person:
    - (i) the identity of the person;
    - (ii) the control percentage of the person immediately before the transaction;
    - (iii) the control percentage of the person as a result of the transaction or, if the control percentage is not known, the maximum control percentage;
    - (iv) the aggregate control percentage of the person and the person's associates as a result of the transaction or, if the aggregate control percentage is not known, the maximum aggregate control percentage; and
  - (i) provide a form of written notice of objection, clear instructions for submitting the form, and reasonable means to facilitate submissions of those forms (including a prepaid reply envelope if sent by post).
- (2) The objection period stated under subclause (1)(b)(iv) must be a period of at least 15 working days after the date on which the disclosure document is sent to holders.
  - (3) The disclosure document must not be longer than 2 A4 pages when printed by the company (excluding the form of notice of objection).

Clause 6(2): amended, on 29 October 2018, by clause 14(4) of the Takeovers Code (Class Exemptions) Amendment Notice 2018 (LI 2018/210).

**7 Takeovers Code (Small Code Companies) Exemption Notice 2015 revoked**

The Takeovers Code (Small Code Companies) Exemption Notice 2015 (LI 2015/178) is revoked on the close of 30 November 2016.

**8 Transitional provisions**

- (1) In relation to an allotment of voting securities in a small code company that takes place on or after 1 December 2016, any step carried out by the board or the company under clause 5(a) or (b) of the Takeovers Code (Small Code Companies) Exemption Notice 2015 is deemed to have been carried out under clause 5(a) or (b) of this notice.
- (2) Clauses 5 and 6, as in force immediately before the commencement of the Takeovers Code (Class Exemptions) Amendment Notice 2018, continue to apply as if that notice had not been made to a relevant transaction in respect of which a resolution under clause 5(a) is made before that commencement.

Clause 8 heading: amended, on 29 October 2018, by clause 14(5) of the Takeovers Code (Class Exemptions) Amendment Notice 2018 (LI 2018/210).

Clause 8(2): inserted, on 29 October 2018, by clause 14(6) of the Takeovers Code (Class Exemptions) Amendment Notice 2018 (LI 2018/210).

Dated at Auckland this 30th day of November 2016.

Richard Andrew Coupe,  
Chairperson.

**Statement of reasons**

**Note: The following statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:**

• **Takeovers Code (Class Exemptions) Amendment Notice 2018**

This notice applies to acts or omissions occurring on or after 1 December 2016.

The Takeovers Panel has granted a class exemption from rule 6(1) of the Takeovers Code (the **Code**) for allotments, acquisitions, and buybacks relating to small unlisted companies. The purpose is to lower disproportionate cost barriers to capital raising by these companies. These costs include the costs of holding a shareholders' meeting to approve an acquisition under rule 7(c) of the Code or an allotment under rule 7(d) of the Code, obtaining an independent adviser's report, and obtaining legal advice to facilitate the process.

The effect of the exemption is to allow unlisted companies with total assets of \$20 million or less to opt out of Code compliance. The exemption applies to share allotments, share acquisitions, and share buybacks. The exemption applies only if the

company meets 2 main requirements. First, the company's board must resolve that, in its opinion, opting out is in the best interests of the company. Secondly, the company must have given shareholders a disclosure document and an opportunity to object to the opt out and require full Code compliance. If holders of 5% or more of the voting rights in the company that are not held or controlled by persons who are increasing voting control as a result of the transaction in reliance on the exemption under this notice (or associates of those persons) object to the opt out, the transaction can proceed only if it is done in full compliance with the Code.

This notice is part of the same series as the Takeovers Code (Small Code Companies) Exemption Notice 2015 (which is revoked by this notice). This notice extends the scope of the exemption to include share acquisitions and share buybacks (in addition to share allotments).

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

- the exemption reduces compliance costs for some Code-regulated transactions for small unlisted companies:
- the conditions of the exemption ensure that shareholders are treated fairly in the transaction and are provided with sufficient information so that they can decide for themselves whether to opt back into full Code compliance:
- by ensuring that shareholders are treated fairly, but at lower cost to the company, the exemption maintains a proper relationship between the costs of compliance with the Code and the benefits resulting from it.

**Note: The preceding statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:**

- **Takeovers Code (Class Exemptions) Amendment Notice 2018**

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 8 December 2016.

## **Reprints notes**

### **1    *General***

This is a reprint of the Takeovers Code (Small Code Companies) Exemption Notice 2016 that incorporates all the amendments to that notice as at the date of the last amendment to it.

### **2    *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3    *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4    *Amendments incorporated in this reprint***

Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62): section 120  
Takeovers Code (Class Exemptions) Amendment Notice 2018 (LI 2018/210): clause 14