

**Reprint
as at 4 December 2009**



**Takeovers Code (Fulton Hogan
Limited) Exemption Notice (No 2)
2007**

(SR 2007/328)

Takeovers Code (Fulton Hogan Limited) Exemption Notice (No 2) 2007:
revoked (with effect on 27 November 2009), on 4 December 2009, by clause
21 of the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2009
(SR 2009/379).

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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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

The Takeovers Code (Fulton Hogan Limited) Exemption Notice (No 2) 2007 is administered by the Takeovers Panel.

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Notice

- 1 Title**
This notice is the Takeovers Code (Fulton Hogan Limited) Exemption Notice (No 2) 2007.
- 2 Application**
This notice applies to acts or omissions occurring on or after 27 October 2007.
- 3 Expiry**
This notice expires on the close of 31 October 2014.
Clause 3: amended, on 28 August 2009, by clause 4 of the Takeovers Code (Fulton Hogan Limited) Exemption Notice (No 2) Amendment Notice 2009 (SR 2009/223).
- 4 Interpretation**
(1) In this notice, unless the context otherwise requires,—

Act means the Takeovers Act 1993

buyback means any acquisition by Fulton Hogan, in accordance with its constitution, of voting securities under Fulton Hogan's buyback programme

Code means the Takeovers Code under the Act

combined Fulton family shareholders means the Fulton family shareholders taken together as a whole class as if all of the Fulton family shareholders were 1 person

constitution means the constitution of Fulton Hogan, as that constitution may be amended or replaced from time to time

control percentage means the percentage of voting securities that a person holds or controls

employee share scheme means the scheme operated and administered by Fulton Hogan under which selected employees of Fulton Hogan, and of its wholly owned subsidiary companies, are provided with the opportunity to be allotted voting securities, as that scheme may be amended or replaced from time to time

employee share scheme allotment means an allotment to a Fulton family shareholder by Fulton Hogan under the employee share scheme

Fulton family means all persons who are—

- (a) descendants, naturally or by virtue of any adoption order, of Julius Herbert Fulton and Dorothy May Fulton, or the spouse of any such person; or
- (b) beneficiaries in the estate of Morice Henderson Law

Fulton family shareholders means any person who—

- (a) is a member of the Fulton family; or
- (b) represents any interest or interests of any member of the Fulton family, including—
 - (i) the trustees of any trust; and
 - (ii) any company; and
 - (iii) any personal representative or representatives

Fulton Hogan means Fulton Hogan Limited

intra-family transfer means the transfer of voting securities from any of the Fulton family shareholders to any other Fulton family shareholder, as permitted under the exception to the pre-emptive rights on transfer provisions in the constitution

Panel means the Takeovers Panel

share bonus scheme means the scheme operated and administered by Fulton Hogan under which selected senior employees of Fulton Hogan, and of its wholly owned subsidiary companies, are provided with the opportunity to be allotted voting securities in lieu of part of their annual cash performance bonus, as that scheme may be amended or replaced from time to time

share bonus scheme allotment means an allotment to a Fulton family shareholder by Fulton Hogan under the share bonus scheme

Shell means Shell New Zealand Holding Company Limited

spouse means, in relation to a person,—

- (a) the husband or wife of the person;
- (b) a person who lived together with the person as a couple for more than 3 years;
- (c) a person who was formerly in a relationship referred to in paragraph (a) or (b);
- (d) a person who was cohabiting with that person at the date of death of that person

transfer, in relation to an intra-family transfer, means the transfer of a voting security or the transfer of the control of a voting security

voting security means a voting security in Fulton Hogan.

- (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 Fulton Hogan.
- (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.

Buybacks

5 Exemptions from rule 6(1) of Code in respect of buybacks *[Revoked]*

Clause 5: revoked, on 1 November 2009, by clause 5 of the Takeovers Code (Fulton Hogan Limited) Exemption Notice (No 2) Amendment Notice 2009 (SR 2009/223).

6 Conditions of exemptions in clause 5

[Revoked]

Clause 6: revoked, on 1 November 2009, by clause 5 of the Takeovers Code (Fulton Hogan Limited) Exemption Notice (No 2) Amendment Notice 2009 (SR 2009/223).

7 Extra condition of exemption in clause 5 for Shell

[Revoked]

Clause 7: revoked, on 1 November 2009, by clause 5 of the Takeovers Code (Fulton Hogan Limited) Exemption Notice (No 2) Amendment Notice 2009 (SR 2009/223).

Intra-family transfers

8 Exemptions from rule 6(1) of Code in respect of intra-family transfers

Each of the Fulton family shareholders is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from a transfer of voting securities to that person pursuant to an intra-family transfer.

9 Conditions of exemptions in clause 8

The exemptions in clause 8 are subject to the conditions that—

- (a) the maximum percentage of voting securities that can be transferred pursuant to the intra-family transfer is approved by an ordinary resolution of the shareholders of Fulton Hogan, and none of the Fulton family shareholders, nor any person who is or was at the time an associate of any of the Fulton family shareholders, may vote in favour of the resolution; and
- (b) the notice of meeting containing the proposed resolution contains, or is accompanied by, the following information:
 - (i) the reasons for the intra-family transfer;
 - (ii) a description of the person or persons whose increase in voting control is to be approved by the resolution;
 - (iii) particulars of the maximum percentage of total voting securities that can be transferred pursuant

- to all intra-family transfers in any 12-month period:
- (iv) a statement to the effect that the intra-family transfers, if approved, are permitted as an exception to rule 6 of the Code; and
 - (c) at the same time that the notice of meeting containing the proposed resolution is sent to shareholders, Fulton Hogan also sends to the Panel, in hard copy and in electronic form, a copy of the notice and any document accompanying it that relates to the meeting; and
 - (d) at the same time that a person (if any) publishes or sends to the shareholders, in respect of the meeting, a statement or information that is not required to be published or sent by the rules of the Code, or by this clause as a condition of the exemptions in clause 8, that person also sends to the Panel, in hard copy and in electronic form, a copy of that statement or information; and
 - (e) the maximum number of voting securities that may be transferred under the exemptions in clause 8 pursuant to all intra-family transfers in any 12-month period is voting securities that carry in the aggregate not more than 5% of the total voting rights in Fulton Hogan at the commencement of the 12-month period; and
 - (f) any transfer of voting securities that is effected under the provisions of any other exemption granted in respect of Fulton Hogan by the Panel is not taken into account for the purpose of the aggregate 5% limitation referred to in paragraph (e); and
 - (g) every annual report from the year after the resolution is passed until the expiry of this notice contains, or is accompanied by, information prominently setting out—
 - (i) a summary of the terms and the conditions of the exemptions in clause 8 and their effect; and
 - (ii) the maximum percentage of total voting securities that can be transferred pursuant to all intra-family transfers in any 12-month period.

*Employee share scheme and share bonus
scheme allotments*

10 Exemptions from rule 6(1) of Code in respect of employee share scheme allotment

Each of the Fulton family shareholders is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from that person being allotted voting securities under an employee share scheme allotment.

11 Exemptions from rule 6(1) of Code in respect of share bonus scheme allotment

Each of the Fulton family shareholders is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from that person being allotted voting securities under a share bonus scheme allotment.

12 Conditions of exemptions in clauses 10 and 11

- (1) In this clause, **transaction** means—
- (a) an allotment of voting securities to a Fulton family shareholder under an employee share scheme allotment, where the condition relates to the exemption in clause 10; or
 - (b) an allotment of voting securities to a Fulton family shareholder under a share bonus scheme allotment, where the condition relates to the exemption in clause 11.
- (2) The exemptions in clauses 10 and 11 are subject to the conditions that—
- (a) the increase in voting control of each Fulton family shareholder that results from the transaction is approved by an ordinary resolution of the shareholders of Fulton Hogan, and none of the Fulton family shareholders, nor any person who is or was at the time an associate of any of the Fulton family shareholders, may vote in favour of the resolution; and
 - (b) the notice of meeting containing the proposed resolution contains, or is accompanied by, the following information:

- (i) the consideration per share for the transaction, or the manner in which the consideration would be determined, and when the consideration would be payable:
- (ii) the reasons for the transaction:
- (iii) a description of the person or persons whose increase in voting control is to be approved by the resolution:
- (iv) particulars of the increase in the combined Fulton family shareholders' voting control that may result from the transaction, including—
 - (A) the maximum increase in the voting control of the combined Fulton family shareholders if the maximum number of voting securities were allotted under the transaction; and
 - (B) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders if the maximum number of voting securities were allotted under the transaction; and
 - (C) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders and the Fulton family shareholders' associates if the maximum number of voting securities were allotted under the transaction:
- (v) a statement to the effect that the increase in the combined Fulton family shareholders' voting control that would result only from the transaction, if approved, would be permitted as an exception to rule 6 of the Code:
- (vi) a report (or summary of a report) from an independent adviser in relation to the increase in the combined Fulton family shareholders' voting control that complies with rule 18 of the Code (as if the references in that rule to allotment under

- rule 7(d) of the Code and notice of meeting referred to in rule 16 of the Code were references to the transaction and the notice, respectively):
- (vii) a statement by the directors of Fulton Hogan in relation to the transaction that complies with rule 19 of the Code (as if the reference in that rule to allotment under rule 7(d) of the Code was a reference to the transaction); and
 - (c) the form of the notice of meeting is approved by the Panel; and
 - (d) at the same time that the notice of meeting containing the proposed resolution is sent to shareholders, Fulton Hogan also sends to the Panel, in hard copy and in electronic form, a copy of the notice and any document accompanying it that relates to the meeting; and
 - (e) at the same time that a person (if any) publishes or sends to the shareholders, in respect of the meeting, a statement or information that is not required to be published or sent by the rules of the Code, or by this clause as a condition of the exemptions in clause 10 or 11, that person also sends to the Panel, in hard copy and in electronic form, a copy of that statement or information; and
 - (f) the notice of meeting displays, in a prominent position, a disclaimer stating that, by exempting the increase in the voting securities held or controlled by the Fulton family shareholders, as a result of the transaction, from rule 6(1) of the Code, the Panel is—
 - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting; and
 - (ii) not implying it has a view on the merits of the proposed transaction; and
 - (g) every annual report from the year after the resolution is passed until the expiry of this notice contains, or is accompanied by, information prominently setting out—
 - (i) a summary of the terms and the conditions of the exemptions in clauses 10 and 11 and their effect; and

- (ii) the maximum increase in the voting control of the combined Fulton family shareholders if the maximum number of voting securities were allotted under the transaction; and
 - (iii) the maximum percentage of total voting securities on issue that could be held or controlled by the combined Fulton family shareholders if the maximum number of voting securities were allotted under the transaction; and
 - (iv) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders and the Fulton family shareholders' associates if the maximum number of voting securities were allotted under the transaction; and
- (h) the numbers and percentages referred to in paragraphs (b)(iv) and (g) are calculated on the basis that there is no change to the total number of voting securities on issue between the date of the notice of meeting and the date of expiry of this notice other than as a result of the employee share scheme allotment or the share bonus scheme allotment, as the case may be; and
- (i) the exemption does not apply to any increase in voting control that results from an employee share scheme allotment or a share bonus scheme allotment, as the case may be, if, immediately after the completion of that allotment, the total percentage of voting securities held or controlled by the combined Fulton family shareholders is greater than the maximum percentage of voting securities that could be held or controlled by the combined Fulton family shareholders as disclosed in the notice of meeting under paragraph (b)(iv)(B).

Extra conditions of exemptions for Fulton family shareholders in respect of buybacks, employee share scheme allotments, and share bonus scheme allotments

13 Extra conditions of exemptions for Fulton family shareholders in respect of buybacks, employee share scheme allotments, and share bonus scheme allotments

The exemptions in clauses 5, 10, and 11 for the Fulton family shareholders are subject to the conditions that—

- (a) all notices of meeting prepared under the conditions for the exemptions prominently disclose, or are accompanied by prominent disclosure of, the maximum percentage of voting securities that could be held or controlled by the combined Fulton family shareholders as a result of the combined effect of the buybacks, the employee share scheme allotments, and the share bonus scheme allotments; and
- (b) none of the exemptions apply to any increase in the voting control of any person who is a Fulton family shareholder if—
 - (i) immediately after the completion of any of the buybacks, the employee share scheme allotments, or the share bonus scheme allotments, the total percentage of voting securities held or controlled by the combined Fulton family shareholders is greater than the maximum percentage of voting securities that could be held or controlled by the combined Fulton family shareholders as disclosed under paragraph (a); or
 - (ii) the combined Fulton family shareholders increase their voting control except as a result of the buyback, the employee share scheme allotment, and the share bonus scheme allotment.

Dated at Wellington this 26th day of October 2007.

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

[Seal]

David J Quigg,
Member.

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 (Fulton Hogan Limited) Exemption Notice (No 2) Amendment Notice 2009.**

This notice applies to acts or omissions occurring on or after 27 October 2007 and expires on 31 October 2009.

The Takeovers Panel (the **Panel**) has granted exemptions to—

- Shell New Zealand Holding Company Limited (**Shell**) from rule 6(1) of the Code, subject to conditions, in relation to any increase in the percentage of voting securities which are held or controlled (**voting control**) by Shell that results from Fulton Hogan Limited (**Fulton Hogan**) acquiring its own voting securities:
- any person who is a Fulton family shareholder (as that term is defined in this notice) from rule 6(1) of the Code, subject to conditions, in relation to any increase in that person's voting control that results from—
 - Fulton Hogan acquiring its own voting securities:
 - allotments of voting securities under Fulton Hogan's employee share scheme:
 - allotments of voting securities under Fulton Hogan's share bonus scheme:
 - transfers of voting securities between persons who are Fulton family shareholders.

It is arguable that the Fulton family shareholders are associates for the purposes of the Code. The exemptions were considered on the basis that the Fulton family shareholders are associates for the purposes of the Code. The persons who comprise the Fulton family shareholders hold or control more than 20% of the voting securities in Fulton Hogan. Given this, if any person who is a Fulton family shareholder increases their voting control as a result of the transactions mentioned above, that person would breach rule 6(1) of the Code.

Shell currently holds or controls more than 20% of the voting securities in Fulton Hogan. If Fulton Hogan decides to acquire its own voting securities and Shell does not participate in the buyback, then Shell will increase its voting control in breach of rule 6(1) of the Code.

Buybacks

The Panel considers that the exemptions for Shell and the Fulton family shareholders from rule 6(1) of the Code in relation to any future increases in their voting control that results from Fulton Hogan acquiring its own voting securities is appropriate and consistent with the objectives of the Code for the reason that the conditions to the exemptions require that the possible increases in voting control resulting from the buyback of Fulton Hogan voting securities is approved by shareholders not associated with the party increasing their voting control.

Allotments of voting securities under Fulton Hogan's employee share scheme

The Panel considers that the exemptions for any person who is a Fulton family shareholder from rule 6(1) of the Code in relation to any increase in that person's voting control that results from that person being allotted voting securities under Fulton Hogan's employee share scheme is appropriate and consistent with the objectives of the Code for the following reasons:

- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to all members of the Fulton family shareholders in aggregate under that scheme:

- as the Fulton family shareholders are assumed to all be associates for the purposes of the Code and essentially one voting group, the conditions of the exemptions allow the notice of meeting to specify the maximum number of voting securities that will be allotted to all members of the Fulton family shareholders in aggregate:
- if the non-associated shareholders approve the potential maximum allotment of voting securities to the Fulton family shareholders, then, by implication, the shareholders also approve any lesser percentage of voting rights that may be acquired due to the allotment of voting securities under the employee share scheme.

Allotments of voting securities under Fulton Hogan's share bonus scheme

The Panel considers that the exemptions for any person who is a Fulton family shareholder from rule 6(1) of the Code in relation to any increase in that person's voting control that results from that person being allotted voting securities under Fulton Hogan's share bonus scheme is appropriate and consistent with the objectives of the Code for the following reasons:

- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to each Fulton family shareholder under the share bonus scheme:
- as the Fulton family shareholders are assumed to all be associates for the purposes of the Code and essentially one voting group, the conditions of the exemptions allow the notice of meeting to specify the maximum number of voting securities that will be allotted to all members of the Fulton family shareholders in aggregate:
- if the non-associated shareholders approve the potential maximum allotment of voting securities to the Fulton family shareholders, then, by implication, the shareholders also approve any lesser percentage of voting securities that may be acquired due to the allotment of voting securities under the share bonus scheme.

Transfers of voting securities between Fulton family shareholders

The Panel considers that the exemptions for any person who is a Fulton family shareholder from rule 6(1) of the Code in relation to any increase to that person's voting control that results from that person being transferred voting securities in Fulton Hogan from another person who is also a Fulton family shareholder is appropriate and consistent with the objectives of the Code for the following reasons:

- the transactions covered by the exemptions are confined to those that take place under Fulton Hogan's constitution, the principal purpose of which is to facilitate transfers of voting securities between family interests, not changes of control of voting rights;
- there are restrictions on the transfer of voting securities that may take place in any 12-month period to limit the possibility of a change of control occurring without using one of the mechanisms of the Code;
- intra-family transfers permitted by the exemption will not result in an effective change in the control of voting rights in Fulton Hogan.

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

- **Takeovers Code (Fulton Hogan Limited) Exemption Notice (No 2) Amendment Notice 2009.**

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 - 2 Status of reprints
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Notes

1 *General*

This is a reprint of the Takeovers Code (Fulton Hogan Limited) Exemption Notice (No 2) 2007. The reprint incorporates all the amendments to the notice as at 4 December 2009, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions,

see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)
- position of the date of assent (it now appears on the front page of each Act)

- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Takeovers Code (Fulton Hogan Limited) Exemption Notice 2009
(SR 2009/379): clause 21

Takeovers Code (Fulton Hogan Limited) Exemption Notice (No 2) Amendment
Notice 2009 (SR 2009/223)
