

Reprint
as at 8 December 2016



**Takeovers Code (Small Code Companies) Exemption
Notice 2015**
(LI 2015/178)

Takeovers Code (Small Code Companies) Exemption Notice 2015: revoked (with effect on the close of 30 November 2016), on 8 December 2016, by clause 7 of the Takeovers Code (Small Code Companies) Exemption Notice 2016 (LI 2016/298).

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 (Small Code Companies) Exemption Notice 2015.

2 Application

This notice applies to acts or omissions occurring on or after 14 July 2015.

3 Interpretation

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

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.

Act means the Takeovers Act 1993

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

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 allottee, in respect of an allotment, means a person who is increasing voting control as a result of the allotment in reliance on the exemption under this notice

free float means the total percentage of voting rights in the company that are not held or controlled by an exempt allottee or an exempt allottee's associates

relevant time means—

- (a) the end of the most recently completed accounting period of the code company before the date of the board resolution referred to in clause 5; or
- (b) if the code 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

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 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)

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

5 Conditions for exemption in clause 4

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

- (a) the board has previously resolved—
 - (i) to opt out of the Code in respect of the relevant allotment; and
 - (ii) that, in its opinion, it is in the best interests of the company to do so; and

- (b) before the expiry of 28 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 allotment 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 free float; and
- (d) the relevant allotment is made—
 - (i) after the end of the objection period; but
 - (ii) before the expiry of 90 days after the date of the board resolution; and
- (e) after the board resolution is made and before the relevant allotment 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 allotment.

6 Requirements for disclosure document

- (1) The disclosure document for the relevant allotment must—
 - (a) give a brief description of the allotment; 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 allotment; and
 - (ii) the effect of the opt out is that shareholders will not receive an independent adviser's report on the merits of the allotment or other information required by the Code and that shareholders will not have the opportunity to vote for or against the allotment; 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 not held or controlled by persons identified under paragraph (h), or their associates, within the stated objection period, the allotment 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 2015; and
 - (c) state the issue price for the voting securities to be allotted; and
 - (d) set out the reasons for the allotment; and

- (e) set out the board's reasons for the opinion referred to in subclause (1)(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 allottee; and
- (h) set out the following information in respect of each exempt allottee:
 - (i) the identity of the person;
 - (ii) the control percentage of the person immediately before the allotment;
 - (iii) the control percentage of the person as a result of the allotment 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 allotment 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 pre-paid reply envelope if sent by post).

(2) The objection period stated under subclause (1)(b)(iv) must be a period of at least 21 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 small code company (excluding the form of notice of objection).

Dated at Auckland this 13th day of July 2015.

David Jones,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 14 July 2015.

The Takeovers Panel has granted a class exemption from rule 6(1) of the Takeovers Code (the **Code**) for allotments by 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 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 only to share issues and only if the company first 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 free float (which excludes the voting rights of those who will rely on the exemption to increase their holdings in the company, together with their associates) object to the opt out, the issue can proceed only if it is done in full compliance with the Code.

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 capital raisings for small unlisted Code companies;
- the conditions of the exemption ensure that shareholders are treated fairly in the allotment and are provided with sufficient information so that they can decide for themselves whether to opt back into full Code compliance;
- by ensuring 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.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 23 July 2015.

Reprints notes**1 General**

This is a reprint of the Takeovers Code (Small Code Companies) Exemption Notice 2015 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

Takeovers Code (Small Code Companies) Exemption Notice 2016 (LI 2016/298): clause 7