



Takeovers Code (The Todd Corporation Limited) Exemption Notice (No 2) 2004

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 (The Todd Corporation Limited) Exemption Notice (No 2) 2004.

2 Application

This notice applies to acts or omissions occurring on or after 15 April 2004.

3 Expiry

This notice expires on 30 June 2007.

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)

constitution means the constitution of The Todd Corporation as in force on 15 April 2004

control percentage means the percentage of voting rights in The Todd Corporation that a person holds or controls

The Todd Corporation means The Todd Corporation Limited.

- (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

Every person is exempted from rule 6(1) of the Code in respect of any increase in that person's control percentage in The Todd Corporation that arises from a transfer of shares in The Todd Corporation effected under clause 14.1 of the constitution.

6 Conditions to exemption

The exemption in clause 5 is subject to the conditions that—

- (a) the maximum number of voting securities that may be transferred under clause 14.1 of the constitution and the provisions of this exemption in any 12-month period is voting securities that carry in the aggregate not more than 10% of the total voting rights in The Todd Corporation at the commencement of the 12-month period; and
- (b) any transfer of voting securities in the Todd Corporation that is effected under clause 14.1 of the constitution and the provisions of any other exemption granted in respect of The Todd Corporation by the Takeovers Panel is not taken into account for the purposes of the aggregate 10% limitation referred to in paragraph (a).

Dated at Auckland this 16th day of April 2004.

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

[L.S.]

J. C. King,
Chairperson.

Statement of reasons

This notice, which comes into force on 15 April 2004 and expires on 30 June 2007, exempts any person, subject to certain conditions, from complying with rule 6(1) of the Takeovers Code (the **Code**) in respect of any increase in that person's control percentage of The Todd Corporation Limited that arises as a result of a transfer of shares effected under clause 14.1 of the constitution of The Todd Corporation (as that constitution was on 15 April 2004).

All the recipients of transfers under clause 14.1 of the constitution of The Todd Corporation are members of a single extended family or represent interests associated with that single extended family (**inter-family transfers**). Owing to the family relationship, it is arguable that all shareholders of The Todd Corporation of that single extended family are associates as that term is used in the Code. Without this exemption, inter-family transfers would be impracticable.

Inter-family transfers are not intended to involve transfers that impact on control, but allow the transfer of shares between family interests.

The Takeovers Panel has put in place restrictions on the transfer of shares that may take place in any 12-month period to limit the possibility of a change of control occurring without using 1 of the mechanisms of the Code. However, the Panel has excluded from that limit, any transactions separately exempted by the Panel. This includes transactions covered by the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2004.

This notice effectively replaces the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2002, which had been approved by the shareholders of The Todd Corporation. The 2002 exemption notice required shareholders' approval before it came into force. The Panel considers that it is not necessary to have a similar condition in this exemption notice as in effect it simply extends the earlier exemption for 3 more years.

The Panel considers that the granting of this exemption is appropriate because—

- all of the recipients of transfers under clause 14.1 of The Todd Corporation's constitution are members of a single extended family, or represent interests associated with that single extended family, and therefore are all probably associates for

the purposes of the Code. As such, the mechanisms provided in the Code for approval of increased shareholdings through transfers of shares are unworkable:

- the transactions covered by the exemption are confined to those that take place under clause 14.1 of The Todd Corporation's constitution, the principal purpose of which is to facilitate transfers of shares between family interests:
- there are restrictions on the transfer of shares that may take place in any 12-month period to limit the possibility of a change of control occurring without using 1 of the mechanisms of the Code:
- the exemption effectively replaces the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2002, which had been approved by the shareholders of The Todd Corporation.

The Panel considers that the granting of this exemption is consistent with the objectives of the Code for the following reasons:

- it retains all the requirements of the Code except in relation to inter-family transfers in limited circumstances:
- it avoids unnecessary compliance costs that would be incurred if the exemption were not granted.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 22 April 2004.
This notice is administered by the Takeovers Panel.
