



TAKEOVERS PANEL
TE PAE WHITIMANA

**Takeovers Code (Promisia Integrative Limited)
Exemption Notice 2018**

Pursuant to section 45 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 (Promisia Integrative Limited) Exemption Notice 2018.

2 Application

This notice applies to acts or omissions occurring on or after 16 November 2018.

3 Expiry

This notice expires on the close of 31 December 2020.

4 Interpretation

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

Act means the Takeovers Act 1993

annual report includes any concise annual report

approved transactions means the following transactions as approved by PIL's shareholders at the meeting:

- (a) the allotment of voting securities to the Brankin trustees under the underwriting agreement:
- (b) the acquisition of voting securities by the Brankin trustees under the put option deed

Brankin trustees means Thomas David Brankin and Michael John Kirwan Lay as trustees of the Brankin Family Interest Trust established by deed of trust dated 26 September 1997

Code means the Takeovers Code under the Act

final completion date means the date on which the last acquisition of voting securities by the Brankin trustees under the put option deed occurs

meeting means the meeting of PIL's shareholders that is to be held on or about 4 December 2018 to consider, among other things, whether or not to approve,—

- (a) for the purposes of rule 7(d) of the Code, the allotment of voting securities to the Brankin trustees under the underwriting agreement
- (b) for the purposes of rule 7(c) of the Code, the acquisition of voting securities by the Brankin trustees under the put option deed

notice of meeting means the notice of meeting (including explanatory materials) that is to be sent to PIL's shareholders in connection with the meeting

PIL means Promisia Integrative Limited

put option acquisition means an acquisition of voting securities by the Brankin trustees under the put option deed

put option deed means the put option deed between Thomas David Brankin, and Garrick Robert Wells and Wells Investments Limited (**Wells parties**), dated 1 October 2018, under which Thomas David Brankin may nominate the Brankin trustees to acquire 39,027,368 voting securities if the put option is exercised by the Wells parties

rights issue means a pro-rata, renounceable 3-for-1 rights issue to be undertaken by PIL in December 2018

underwriting agreement means the underwriting agreement entered into by PIL and the Brankin trustees, dated 21 November 2018, under which the Brankin trustees may subscribe for 1,300,000,000 shares in PIL in the rights issue

voting securities means voting securities in PIL.

- (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 PIL.
- (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.

Exemptions

5 Exemption from rule 7(c) of Code

- (1) To the extent that the notice of meeting does not comply with rule 15(b) of the Code, the Brankin trustees are exempted from rule 7(c) of the Code in respect of any increase in their voting control resulting from a put option acquisition.
- (2) The exemption is subject to the conditions in clauses 7 to 10.

6 Exemption from rule 15(b) of the Code

- (1) PIL is exempted from rule 15(b) of the Code, but only to the extent that the notice of meeting must contain, or be accompanied by, particulars of voting securities to be acquired under the put option deed.
- (2) The exemption is subject to the conditions in clauses 7 to 10.

Conditions of exemptions

7 Notice of meeting

- (1) The notice of meeting must contain, or be accompanied by,—
 - (a) the maximum number of voting securities that could be acquired by the Brankin trustees under the put option deed; and
 - (b) the maximum number of voting securities that could be acquired by the Brankin trustees under the put option deed expressed as a percentage of the total voting securities on issue after completion of the acquisition of voting securities under the approved transactions; and
 - (c) the maximum percentage of the total voting securities on issue that could be held or controlled by the Brankin trustees after completion of the acquisition of voting securities under the approved transactions; and
 - (d) the maximum percentage of the total voting securities on issue that could be held or controlled, in aggregate, by the Brankin trustees and their associates after completion of the acquisition of voting securities under the approved transactions; and
 - (e) a statement that the date used to determine the information referred to in this subclause is the date of the notice of meeting; and
 - (f) a statement of the assumptions on which the particulars in paragraphs (a) to (d) are calculated, which must include the assumptions in subclause (2); and
 - (g) a summary of the terms and conditions of the exemptions granted to the Brankin trustees and PIL by this notice; and
 - (h) a disclaimer, in a prominent position, stating that by exempting the Brankin trustees from rule 7(c) of the Code and PIL from rule 15(b) of the Code, the Takeovers 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 allotment of voting securities to the Brankin trustees under the underwriting agreement or their acquisition of voting securities under the put option deed.

- (2) The numbers and percentages referred to in subclause 1(a) to (d) must be calculated on the following assumptions:
- (a) the Brankin trustees subscribe for 1,300,000,000 shares under the underwriting agreement;
 - (b) no other shareholders participate in the rights issue;
 - (c) there is no change in the total number of voting securities on issue from the date of the notice of meeting until the final completion date (other than as a result of an approved transaction);
 - (d) any other assumptions that are reasonably necessary to ensure that shareholders in PIL are provided with the material information required for them to determine whether to approve the acquisition of voting securities by the Brankin trustees under the approved transactions.

8 Annual report requirements

Every annual report issued by PIL during the period in which this notice is in force until the issue of the first annual report after this notice expires must contain the following particulars in a prominent position:

- (a) a summary of the terms of the put option acquisition, as approved at the meeting; and
- (b) a summary of the terms and conditions of the exemptions granted under this notice; and
- (c) particulars, as at the end of the financial year to which the annual report relates, of—
- (d) the number of voting securities already acquired by the Brankin trustees under the put option deed; and
 - (i) the number of voting securities on issue that are held or controlled by the Brankin trustees, and the percentage of all voting securities on issue that that number represents; and
 - (ii) the aggregate of the percentages of all voting securities then on issue that are held or controlled by the Brankin trustees and their associates; and
 - (iii) the maximum percentage of all voting securities that could be held or controlled by the Brankin trustees if they acquire the approved maximum number of voting securities under the put option deed; and
 - (iv) the maximum aggregate of the percentages of all voting securities that could be held or controlled by the Brankin trustees and their associates if they acquire the approved maximum number of voting securities under the put option deed; and
 - (v) the assumptions on which these particulars are calculated.

9 Internet publication requirements

- (1) Following the issue of the first annual report after this notice comes into force until the issue of the first annual report after this notice expires, PIL must disclose the following information in a prominent position on its Internet site:
- (a) the information required by clause 8 to be in PIL's annual report;
 - (b) any aggregate increase of 1% or more in the voting securities held or controlled by the Brankin trustees since the date of the last disclosure under this paragraph:

- (c) if paragraph (b) does not apply, any aggregate increase of 1% or more in the voting securities held or controlled by the Brankin trustees since the date of the first aggregate increase of 1% or more in the voting securities held or controlled by the Brankin trustees.
- (2) PIL must maintain every announcement required by subclause (1) in a prominent position on its Internet site in each case as soon as PIL is aware, or ought reasonably to be aware, that the relevant increase has occurred.

10 Subsequent increases of voting control

During the period in which the exemption is in force, the Brankin trustees must not increase their voting control except in accordance with—

- (a) the approved transactions; or
- (b) an exemption from the Panel under section 45 of the Act; or
- (c) rule 7(c) or (d) of the Code, in which case the new notice of meeting containing the resolution to approve the proposed increase must contain or be accompanied by—
 - (i) a summary of the terms of the approved transactions; and
 - (ii) particulars, as at the date of the new notice of meeting, of—
 - (A) the number of voting securities already acquired by or allotted to the Brankin trustees under the approved transactions; and
 - (B) the number of voting securities on issue that are held or controlled by the Brankin trustees, and the percentage of all voting securities that that number represents; and
 - (C) the aggregate of the percentages of all voting securities that are held or controlled by the Brankin trustees and their associates; and
 - (D) the maximum percentage of all voting securities that could be held or controlled by the Brankin trustees after the completion of both the approved transactions and the proposed increase; and
 - (E) the maximum aggregate of the percentages of all voting securities that could be held or controlled by the Brankin trustees and their associates after the completion of both the approved transactions and the proposed increase; and
 - (F) the assumptions on which these particulars are calculated.

Dated at Auckland this 29th day of November 2018

[signed]

C Blanchard
Deputy Chairperson

Statement of Reasons

This notice applies to acts or omissions occurring on or after 16 November 2018 and expires on 31 December 2020.

Promisia Integrative Limited (**PIL**) is a NZX-listed Code company.

PIL has entered into an underwriting agreement dated 21 November 2018 with Thomas David Brankin and Michael John Kirwan Lay as trustees of the Brankin Family Interest Trust (**Brankin trustees**). Under the underwriting agreement, the Brankin trustees have agreed to support a 3-for-1 rights issue to be undertaken by PIL in December 2018 (**rights issue**) by committing to subscribe for \$1.05 million of shortfall shares from the rights issue and having the discretion to subscribe for up to \$0.250 million of shortfall shares from the rights issue.

Thomas David Brankin has entered into a put option deed dated 1 October 2018 with Garrick Robert Wells and Wells Investment Limited (**Wells parties**). Under the put option deed, Thomas David Brankin may nominate the Brankin trustees to acquire 39,027,368 shares on either of the following dates if the put option is exercised by the Wells parties:

- 30 January 2019 (or at any time for 20 business days after that date) at \$0.006 per share:
- 30 September 2020 (or at any time for 20 business days after that date) at \$0.009 per share.

PIL wishes to obtain non-associated shareholder approval to allow the put option to be exercised and the Brankin trustees' control percentage to increase accordingly. However, the details of allotment of voting securities under the underwriting agreement will not be known until after the notice of meeting has been prepared, and the put option may not be exercised in respect of all shares that are the subject of it. As PIL is unable to ascertain the required information to include in the notice of meeting for an approval under rule 15 of the Code, an exemption is therefore necessary if approval is to be obtained.

The Takeovers Panel has granted exemptions for—

- the Brankin trustees from rule 7(c) of the Code in respect of any increase in their voting control resulting from their acquisition of voting securities under the put option deed; and
- PIL from rule 15(b) of the Code, but only to the extent that the rule requires the notice of meeting to contain, or be accompanied by, particulars of voting securities to be issued under the put option deed.

The Takeovers Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions from the rules 7(c) and 15(b) of the Code because:

- it is impossible for the actual numbers of voting securities to be acquired by the Brankin trustees and relevant percentages required by rule 15(b) to be stated in the notice of meeting, as these numbers and percentages are dependent on the rights issue in late December; and
- the conditions to the exemptions require the notice of meeting to specify the maximum control percentage that the Brankin trustees may obtain through the combination of both the put option deed and the underwriting agreement; and
- if the non-associated shareholders approve the potential maximum acquisition of voting securities then, by implication, they also approve any lesser percentage of voting rights that may be acquired by the Brankin trustees under the put option deed and underwriting agreement.

Date of notification in *Gazette*: 4 December 2018
