

## Takeovers Code (Rangatira Limited) Exemption Notice (No 2) 2014

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.

### Contents

1	Title	1
2	Application	1
3	Expiry	1
4	Interpretation	1
5	Exemption for buyback approved by shareholders	3
6	Exemption for reorganisation of family trusts	3
7	Exemption for recipient beneficiaries	3
8	Exemption for executors, trustees, and administrators	4
	Schedule - Conditions of buyback exemption	5
	Statement of reasons	13

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### Notice

#### 1 Title

This notice is the Takeovers Code (Rangatira Limited) Exemption Notice (No 2) 2014.

#### 2 Application

This notice applies to acts or omissions occurring on or after 4 August 2014.

#### 3 Expiry

This notice expires on the close of 4 August 2017.

#### 4 Interpretation

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

**A Shares** means the class of shares called A Shares provided for in clause 3 of the constitution

**Act** means the Takeovers Act 1993

**B Shares** means the class of shares called B Shares provided for in clause 3 of the constitution

**buyback** means the acquisition by Rangatira of up to an aggregate of 600,000 A Shares and 600,000 B Shares during the buyback period, whether the buyback is achieved by a single acquisition or a number of acquisitions

**buyback exemption** means the exemption granted by clause 5 of this notice

**buyback period** means the period starting on the date of the meeting that approves the buyback, and ending on the date three years after the date of the meeting

**calculation date** means the date, identified in the notice of meeting referred to in clause 3 of the Schedule

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

**constitution** means the constitution of Rangatira

**executor** has the meaning it is given by clause 8 of this notice

**family trust** means a trust that is established for or mainly for the benefit of 1 or more of the following persons:

- (a) the settlor or appointer of that trust;
- (b) relatives of the settlor or appointer;
- (c) persons for whom the settlor or appointer has natural love and affection

**meeting** means the meeting of shareholders of Rangatira that is to be held on or about 4 August 2014 to consider whether or not to approve the buyback

**person P** means a person who, for the time being, -

- (a) holds or controls voting securities; and
- (b) is relying on the buyback exemption including under any of clauses 6 to 8 of this notice

**Rangatira** means Rangatira Limited

**recipient beneficiary** has the meaning it is given by clause 7 of this notice

**shareholder** means a holder of voting securities

**trustee** means a person who is appointed as a trustee of a family trust under the trust deed establishing the family trust

**voting security** means a voting security in Rangatira

- (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 Rangatira.
- (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.

## **5 Exemption for buyback approved by shareholders**

- (1) Every person who increases voting control as a result of the buyback is exempted from rule 6(1) of the Code in respect of that increase in voting control.
- (2) The exemption is subject to the conditions in the Schedule.

## **6 Exemption for reorganisation of family trusts**

- (1) If, at the calculation date, person P is a trustee of a family trust -
  - (a) every person who, after the calculation date, becomes a trustee of that trust may, from the date that person is registered as a shareholder, rely on the buyback exemption; and
  - (b) person P, and any person that, after the calculation date, becomes a trustee of that family trust, may rely on the buyback exemption, despite any increase in person P's or that person's voting control as a result of a reduction in the number of trustees of that trust during the buyback period.
- (2) The exemption is subject to the conditions in the Schedule.

## **7 Exemption for recipient beneficiaries**

- (1) If, at the calculation date, person P is, or is an upstream party of, an executor, trustee, or administrator of the estate of a deceased person, every person (a **recipient beneficiary**) to whom person P after the calculation date transfers voting securities in accordance with the terms of the will, or any applicable law on intestacy, may, from the date the recipient beneficiary is registered as a shareholder, rely on the buyback exemption.
- (2) The exemption is subject to the conditions in the Schedule.

**8 Exemption for executors, trustees, and administrators**

- (1) Every person who after the calculation date becomes, or becomes an upstream party of, an executor, trustee, or administrator (an **executor**) of the estate of a deceased person P may, from the date that person is registered as a shareholder, rely on the buyback exemption.
- (2) The exemption is subject to the conditions in the Schedule.

Dated at Auckland this 23<sup>rd</sup> day of May 2014.

[Seal]

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

[Signed]

D. O. Jones,  
Chairman

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**Schedule**  
**Conditions of buyback exemption**

**Contents**

1	Interpretation	5
2	Shareholder resolution to approve buyback	6
3	Notice of meeting to approve buyback	6
4	Assumptions	8
5	Restriction on increase above approved maximum percentage	8
6	Standard provisions consistent with rule 19A of Code	8
7	Annual report disclosures	9
8	Internet site disclosures	10
9	Other-means increases	10
10	Change of control in person P	11
11	Exemption for reorganisation of family trusts	12
12	Exemption for recipient beneficiaries	12
13	Exemption for executors, trustees, and administrators	13

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**1 Interpretation**

In this schedule, unless the context otherwise requires,—

**annual report** means the annual report to shareholders by Rangatira

**appointer** means, in relation to a family trust, 1 or more persons with power to appoint or remove trustees

**approved maximum number** means the maximum number of voting securities that could be acquired under the buyback, and is the number required to be disclosed under clause 3(c)(i)

**approved maximum percentage** means the maximum percentage of voting securities on issue that person P could hold or control after the buyback, and is the percentage required to be disclosed under clause 3(c)(iii)

**buyback exemption** means the exemption granted by clause 5 of this notice

**calculation date** means the date, identified in the notice of meeting referred to in clause 3, used for determining the matters referred to in clause 4

**executor** has the meaning it is given by clause 8 of this notice

**family trust** means a trust that is established for or mainly for the benefit of 1 or more of the following persons:

- (a) the settlor or appointer of that trust;
- (b) relatives of the settlor or appointer;
- (c) persons for whom the settlor or appointer has natural love and affection

**other-means increase** means an increase in voting control in Rangatira that is effected by a means other than the buyback

**person P** means a person who, for the time being, -

- (a) holds or controls voting securities; and
- (b) is relying on the buyback exemption including under any of clauses 6 – 8 of this notice

**person P's exempt associates** means the class of persons who are associates of person P and who are also relying on the buyback exemption in relation to the buyback

**recipient beneficiary** has the meaning it is given by clause 7 of this notice

**relative** has the same meaning as in section 2(1) of the Securities Act 1978

**shareholder** means a holder of voting securities

**trustee** means a person who is appointed as a trustee of a family trust under the trust deed establishing the family trust

**upstream party**, in relation to a person, means any other person who directly or indirectly has effective control over the person

**voting security** means a voting security in Rangatira.

## **2 Shareholder resolution to approve buyback**

- (1) The buyback must be approved by ordinary resolution of the shareholders.
- (2) Neither person P nor any associate of person P may vote in favour of any resolution concerning the buyback that relates to person P's increase in voting control.

## **3 Notice of meeting to approve buyback**

The notice of meeting containing the proposed resolution to approve the buyback must contain, or be accompanied by, the following:

- (a) full particulars of the buyback:

- (b) a statement of the name of person P:
- (c) the following particulars of the voting securities that may, if the resolution is approved, be acquired under the buyback:
  - (i) the maximum number (the **approved maximum number**) of voting securities that could be acquired under the buyback:
  - (ii) the percentage of all voting securities on issue that the approved maximum number represents:
  - (iii) the maximum percentage (the **approved maximum percentage**) of all voting securities on issue that person P could hold or control if Rangatira acquired the approved maximum number of voting securities:
  - (iv) the maximum percentage of all voting securities on issue that person P and person P's associates, excluding person P's exempt associates, could hold or control, in aggregate, if Rangatira acquired the approved maximum number of voting securities:
  - (v) the maximum percentage of all voting securities on issue that person P and all person P's associates could hold or control, in aggregate, if Rangatira acquired the approved maximum number of voting securities:
- (d) the consideration for the buyback, or the manner in which the consideration will be determined, and when it will be payable:
- (e) the reasons for the buyback:
- (f) a statement to the effect that the increase in person P's voting control that would result from the buyback would, if approved, be permitted as an exception to rule 6(1) of the Code in reliance on the buyback exemption in clause 5 of the Takeovers Code (Rangatira Limited) Exemption Notice No 2 2014:
- (g) a report from an independent adviser, in relation to the buyback, that complies with rule 18 of the Code as if—
  - (i) references in that rule to an acquisition under rule 7(c) of the Code were references to the buyback made in accordance with the buyback exemption; and
  - (ii) the references to a notice of meeting were references to the notice of meeting referred to in this clause:
- (h) a statement by the directors of Rangatira, in relation to the buyback, that complies with rule 19 of the Code as if the reference in that rule to

an acquisition under rule 7(c) of the Code were a reference to the buyback by Rangatira made in accordance with the buyback exemption:

- (i) the assumptions on which the particulars referred to in paragraph (c) are based, which must include the assumptions referred to in clause 4:
- (j) the calculation date.

#### **4 Assumptions**

The following assumptions must be applied for the purposes of providing the particulars of voting securities, as specified in clause 3(c):

- (a) that the number of voting securities is the number of voting securities on issue on the calculation date:
- (b) that there is no change in the total number of voting securities on issue between the calculation date and the end of the buyback period, other than as a result of the buyback:
- (c) that person P does not participate in the buyback:
- (d) that Rangatira acquires the approved maximum number of voting securities:
- (e) any other assumptions that are reasonably necessary to ensure that shareholders are provided with the material information required for them to be able to determine whether to approve the resolution.

#### **5 Restriction on increase above approved maximum percentage**

During the buyback period, person P must not hold or control a percentage of the voting securities that exceeds the approved maximum percentage of voting securities, except as a result of an other-means increase that complies with clause 9.

#### **6 Standard provisions consistent with rule 19A of Code**

- (1) At the same time that the notice of meeting containing the proposed resolution is sent to shareholders, Rangatira must send to the Panel, in hard copy and (if possible) in electronic form, a copy of the notice and any documents accompanying it that relate to the meeting.
- (2) If, before the meeting, a person publishes or sends to shareholders a statement or information that relates to the meeting but that was not required by the



Code to be published or sent, the person must send to the Panel, in hard copy and (if possible) in electronic form, a copy of that statement or information.

## **7 Annual report disclosures**

Every annual report issued during the buyback period must include the following matters, in a prominent position:

- (a) a summary of the terms of the buyback, as approved at the meeting:
- (b) a statement, as at the end of the financial year to which the report relates, of—
  - (i) the number of voting securities on issue acquired under the buyback; and
  - (ii) the number of voting securities on issue that are held or controlled by person P, and the percentage of all voting securities on issue that that number represents; and
  - (iii) the percentage of all voting securities on issue that are held or controlled, in aggregate, by person P and person P's associates; and
  - (iv) the maximum percentage of all voting securities on issue that could be held or controlled by person P if Rangatira acquires the approved maximum number of voting securities; and
  - (v) the maximum percentage of all voting securities on issue that would be held or controlled, in aggregate, by person P and person P's associates if Rangatira acquires the approved maximum number of voting securities:
  - (vi) in relation to each of the matters referred to in sub-paragraphs (i) to (v), any change, since the notice of meeting containing the proposed resolution to approve the buyback or the last annual report, as the case may be, to –
    - (A) person P under any of clauses 6 to 8 of this notice; and
    - (B) the number, percentage, or maximum percentage, as the case may be, of voting securities held or controlled as a result of that change of person P; and
- (c) a statement of the assumptions on which the particulars referred to in paragraph (b) are based.

## **8 Internet site disclosures**

- (1) Following the issue of the first annual report during the buyback period and up to the issue of the first annual report after the end of the buyback period, Rangatira must disclose on its Internet site the information required under clause 7 to be disclosed in an annual report.
- (2) During the buyback period and up to the issue of the first annual report after the end of the buyback period, Rangatira must—
  - (a) announce on its Internet site –
    - (i) any aggregate increase of 1% or more in the voting securities held or controlled by person P since the date of the last disclosure under this paragraph or, where no prior disclosure has been made, since the date of the first aggregate increase of 1% or more in the voting securities held or controlled by person P; and
    - (ii) any change in person P under any of clauses 6 to 8 of this notice and to the number and percentage of voting securities held or controlled as a result of that change; and
  - (b) maintain every such announcement on its Internet site in a prominent position.
- (3) An announcement referred to in subclause (2)(a) must be made as soon as Rangatira is aware, or ought to be aware, that the relevant increase in voting securities held or controlled, or the change in person P, has occurred.

## **9 Other-means increases**

- (1) During the buyback period, person P must not increase its voting control in Rangatira by way of an other-means increase unless the other-means increase—
  - (a) is by an acquisition of voting securities approved in accordance with rule 7(c) of the Code; or
  - (b) is by an allotment of voting securities approved in accordance with rule 7(d) of the Code; or
  - (c) is permitted by another exemption granted by the Panel.
- (2) If approval of shareholders is required under subclause (1)(a) or (b), the notice of meeting containing the resolution to approve the other-means increase must contain or be accompanied by the following:
  - (a) a summary of the terms of the buyback, as approved at the meeting:

- (b) a statement, as at the date of the notice of meeting containing the resolution to approve the other-means increase, of the following particulars:
    - (i) the numbers and percentages of voting securities referred to in clause 7(b), if applicable:
    - (ii) the maximum percentage of all voting securities on issue that could be held or controlled by person P after the other-means increase and completion of the buyback:
    - (iii) the maximum percentage of all voting securities on issue that could be held or controlled by person P and person P's associates after the other means increase and completion of the buyback:
  - (c) a statement of the assumptions on which the particulars referred to in paragraph (b) are based.
- (3) If an other-means increase is approved by shareholders in accordance with this clause, the reference in clause 5 to the approved maximum percentage must be taken to be a reference to the approved maximum percentage adjusted to take account of the other-means increase.

## **10 Change of control in person P**

- (1) During the buyback period, there must be no change of control in person P that results in another person increasing their voting control unless the change of control in person P—
- (a) is by an acquisition of voting securities in person P approved by an ordinary resolution of the shareholders in accordance with rule 7(c) of the Code; or
  - (b) is by an allotment of voting securities in person P approved by an ordinary resolution of the shareholders in accordance with rule 7(d) of the Code; or
  - (c) is permitted under another exemption granted by the Panel.
- (2) If approval of Rangatira's shareholders is required under subclause (1)(a) or (b), the notice of meeting containing the resolution to approve the change of control must contain or be accompanied by the following information:
- (a) a summary of the terms of the buyback, as approved at the meeting:

- (b) a statement, as at the date of the notice of meeting containing the resolution to approve the change of control, of the numbers and percentages of voting securities referred to in clause 7(b):
- (c) a statement of the assumptions on which the particulars referred to in paragraph (b) are based.

## **11 Exemption for reorganisation of family trusts**

Clause 6 of this notice is subject to the conditions that -

- (a) the family trust continues for or mainly for the benefit of 1 or more of the following persons:
  - (i) the settlor or appointer of that family trust;
  - (ii) relatives of the settlor or appointer;
  - (iii) persons for whom the settlor or appointer has natural love and affection; and
- (b) the trustees are required under the trust deed establishing the family trust to act unanimously; and
- (c) the appointment of the trustee or reduction in the number of trustees in the family trust:
  - (i) reflects a bona fide reorganisation of the family trust or is the result of an event beyond the control of the trustees; and
  - (ii) does not have a collateral purpose of enabling a person to increase the person's voting control, or the extent to which that person shares in the voting control, otherwise than in compliance with the Code; and
- (d) but for rule 6(2) of the Code, the reorganisation would not result in any increase in the voting control of the trustees or the extent to which the trustees share in the voting control.

## **12 Exemption for recipient beneficiaries**

Clause 7 of this notice is subject to the conditions that the transfer of voting securities to the recipient beneficiary -

- (a) reflects a bona fide transfer of voting securities under the terms of the will, under which the recipient beneficiary is named, either directly or by reference to a class of persons, as a beneficiary in the will, or any applicable law on intestacy; and
- (b) does not have a collateral purpose of enabling a person to increase the person's voting control, or the extent to which that person shares in the voting control, otherwise than in compliance with the Code.

### 13 Exemption for executors, trustees, and administrators

Clause 8 of this notice is subject to the conditions that the transfer of voting securities to the Executor -

- (a) reflects a bona fide transfer of voting securities from the estate of a deceased person P; and
- (b) does not have a collateral purpose of enabling a person to increase the person's voting control, or the extent to which that person shares in the voting control, otherwise than in compliance with the Code.

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#### Statement of Reasons

This notice applies to acts or omissions occurring on or after 4 August 2014 and expires on 4 August 2017.

The Takeovers Panel (the **Panel**) has granted an exemption from rule 6(1) of the Code for every person who increases their voting control in Rangatira Limited (**Rangatira**) as a result of the acquisition by Rangatira of its own voting securities.

Rangatira wishes to seek approval from its shareholders to acquire its own shares (**Shares**) under a proposed buyback (**Buyback**).

The buyback period is to commence on the date of shareholder approval and will expire three years after that date (**Buyback period**).

Various members of the McKenzie family and of the Gibson family hold Shares in Rangatira (**McKenzie/Gibson Shareholders**). The McKenzie family and the Gibson family have a close relationship with each other. On that basis, the McKenzie family and the Gibson family have agreed for the purposes of the Buyback that each member of the McKenzie family will be treated as an associate of the Gibson family. Together, the McKenzie/Gibson Shareholders hold more than 20% of the voting rights in Rangatira.

The Takeovers Code (Class Exemptions) Notice (No 2) 2001 (**2001 Exemption**) contains an exemption from rule 6 of the Code for every person who increases voting control as a result of the acquisition by a Code company of its own voting securities, on the condition that shareholders approve that acquisition on the basis of a notice of meeting that contains the disclosures outlined in Schedule 1 of the 2001 Exemption.

Schedule 1 of the 2001 Exemption requires that the person increasing their voting control be identified in the notice of meeting for shareholder approval.

During the Buyback period, a number of transfers of voting securities amongst McKenzie/Gibson Shareholders may occur:

- (a) A number of McKenzie/Gibson Shareholders hold Shares in their capacity as trustees of various family trusts (**Trustees**). During the Buyback period, there may be a change of Trustees as a result of a bona fide reorganisation of a trust.
- (b) It is also possible that a McKenzie/Gibson Shareholder could pass away during the Buyback period. In such a case, the deceased person's voting securities would be transferred to executors, trustees or administrators (**Executors**) and then subsequently to the beneficiary of the estate, which could include a McKenzie/Gibson Shareholder (**Beneficiary**).

(each a **Transfer**).

Although each of the Transfers would be individually exempted from the Code, any increase to the voting control of the Trustees, the Beneficiary and/or the Executors as a result of a Buyback will not be covered by the shareholder approval previously obtained under the 2001 Exemption because the 2001 Exemption requires the persons relying on the exemption to be named in the meeting documents.

The conditions of the exemption enable the Trustees, the Beneficiary and/or the Executors to rely on the exemption as if they were a person who held or controlled voting securities in Rangatira at the date of shareholder approval of the Buyback.

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

- (a) the exemption mirrors Part 1 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 (which deals with share buybacks), including the shareholder approval mechanism and the conditions set out in Schedule 1 of that notice:
- (b) the exemption allows, during the buyback period -
  - (i) the appointment of a new trustee or the reduction in the number of trustees for a bona fide reorganisation of a family trust related to a McKenzie or Gibson Shareholder, or that is the result of an event beyond the control of the trustees, where there is no increase in voting control in Rangatira on behalf of that McKenzie/Gibson family trust. The Code is not intended to inhibit the governance arrangements of such family trusts if those arrangements have no effect on the other shareholders of Rangatira. An analogous exemption exists in the Takeovers Code (Trustees of Family Trusts) Exemption Notice 2012; and
  - (ii) the transfer of voting securities to a Beneficiary. The Code is not intended to inhibit the inheriting of property under a will. An analogous exemption exists in clause 22 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001; and

- (iii) the transmission of property to Executors. This is consistent with the objectives of the Code because the person or persons to whom the property is transmitted are, in effect, only holding the shares in place of the deceased person. Any person, the associate of whom is an Executor is also exempt, and this is consistent with the objectives of the Code because it is consequential to the exemption in respect of the Executor. Analogous exemptions exist in clauses 20 and 21 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001:
- (c) the shareholders of Rangatira are not disadvantaged as any change to the Trustees or the transfer of shares to a Beneficiary or the Executor has no effect on the beneficial or effective control of the share parcel:
- (d) the exemption would avoid unnecessary compliance costs that would otherwise be incurred by Rangatira each time there is a change of Trustees or the transfer of property to a Beneficiary or the Executor.

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Date of notification in the *Gazette*: 29 May 2014

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