

GUIDE TO APPLYING FOR EXEMPTIONS FROM TAKEOVERS CODE

Overview

1. Under section 45 of the Takeovers Act, the Panel may exempt any person, or any class of persons, transactions, or offers, from compliance with any provision of the Code. This guide provides information about the Panel's exemption powers and the practical aspects of making an application for an exemption.

What can the Panel give an exemption from?

2. You can apply for an exemption from compliance with any provision of the Takeovers Code. The Panel cannot grant exemptions from the Takeovers Act, or from definitions or provisions of the Code that do not include a compliance element to them. The Panel is able to grant individual and class exemptions.
3. The Panel's policy is that exemptions will be granted only where the Code's provisions do not apply appropriately to a particular transaction, or where the strict application of the Code may have unintended consequences. A full explanation of the Panel's exemption policy is here.
4. In summary, the Panel's policy is that exemptions will not be granted to modify the provisions of the Code for mere commercial convenience. The Panel will consider whether compliance with the Code is possible and whether compliance would create an inappropriate or unintended result. If compliance with the Code is possible and appropriate, the Panel is unlikely to grant an exemption.

Applying for an exemption

How do I make an application for an exemption?

5. You apply for an exemption by sending an application in writing addressed to the Chief Executive of the Takeovers Panel. Our contact details are here.
6. We recommend that you follow the guide for an exemption application set out below to ensure that you have provided all the necessary information in support of your application. Consideration of your application will be delayed if you have not provided all the necessary information.

How much will it cost?

7. We will charge the rates prescribed by the Takeovers (Fees) Regulations for the work undertaken on the application. You will be sent a monthly account for our fees incurred until the work is complete. You will be charged regardless of whether the exemption is granted or declined by the Panel. The first invoice we send you will include the \$100 (plus GST) application fee.
8. Exemption notices for individual exemptions are prepared by the Panel executive and are reviewed by external legal counsel. If your application for an individual exemption is granted, part of our invoice to you will be made up of the external legal counsel's fees for reviewing the exemption notice.
9. We may also seek reimbursement of the costs incurred for publication of exemptions in the Statutory Regulations series and for notification in the Gazette.

How long will it take?

10. The time to process your exemption application will depend on the nature and quality of your application, and the resources available within the Panel. Applications that involve difficult questions of policy will take longer to process than applications which fall squarely within the policy of previous exemptions. It would be unusual for an exemption to be processed, signed and notified in the Gazette in less than four weeks and you should usually allow for up to six weeks (or more for complex exemptions).

11. When making your application, please specify the latest date by which the Panel's decision is required. If the application needs to be considered urgently, please provide reasons for the urgency. We will do our best to meet reasonable timeframes.

Overview of the exemption process

The Panel executive processes your application

12. Your application will be assigned to a member of the Panel executive to process and to prepare a report for the Panel to consider. At this stage, the Panel executive may ask you to provide further information. This stage of the process can move quickly if you provide quality information with your application and respond to queries promptly.
13. The Panel executive will keep you informed as to the executive's likely approach to your exemption application, including whether the executive is likely to recommend to the Panel that it grant the exemption sought.

The Panel considers your application

14. A division of the Panel will consider the executive's analysis and recommendation and then will make its decision. The Panel executive will advise you of the Panel's decision. You should be aware that the Panel does not necessarily follow the executive's recommendation.

The Panel executive usually drafts the exemption notice

15. If your exemption application is approved, the Panel executive will draft the exemption notice, using your draft as a base. External legal counsel will peer review the draft notice. Where an application for a class exemption of general application is approved, the Panel executive instructs the Parliamentary Counsel Office to draft the exemption notice.
16. A minimum of two weeks should be allowed for the drafting process, but complex notices and class notices may take longer. You will be invited to comment on a draft notice before the final form of the notice is settled.

Signature and publication

17. Once the exemption notice is finalised, it is signed by the Chairman or another Member of the Panel. The exemption is effective once the notice is signed. The Panel executive will send you a copy of the signed exemption notice.

Gazette and website

18. The Panel must give notice of the exemption in the Gazette, which is published each Thursday. The exemption will be notified as soon as practicable unless the Panel has agreed to defer notifying an exemption on the ground of commercial confidentiality. If you consider that the notification of an exemption granted by the Panel should be deferred on the ground of commercial confidentiality, please advise the Panel executive of this in your exemption application and provide reasons.
19. The exemption will be published on the Panel's website as soon as practicable after it has been signed, unless the Panel has decided that it would be proper to defer it.

AN APPLICATION FOR EXEMPTION SHOULD INCLUDE THE FOLLOWING INFORMATION

Who is applying?

1. Give the full name, address, and corporate status of the person(s) seeking to be exempted from compliance with provisions of the Code.

What transaction is involved?

2. Describe the transaction for which the exemption is being sought. You should provide all relevant details to the transaction proposed, including a full description of the transaction, the parties to the transaction, the matter in respect of the exemption being sought and any previous Panel involvement that is relevant.

What do you want an exemption from?

3. Identify the provisions of the Code from which an exemption is sought and any conditions of exemption you consider appropriate.

Why are you seeking this exemption?

4. Explain, for each provision of the Code from which the exemption is sought, why the exemption is needed and give full reasons identifying why it is appropriate that the exemption should be granted and how an exemption would be consistent with the objectives of the Code.

Are there any precedents?

5. Identify any existing exemption notices which are similar to the exemption sought and which may provide a precedent for your application. State how the notices are similar to and different from the exemption you are seeking. Note that the Panel will not be bound by previous decisions, but they are an aid.

What effects will there be on the holders or controllers of voting securities in the Code company concerned?

6. Describe how your proposed exemption may affect the holders or controllers of securities in the Code company concerned and the relative costs and benefits to you or them of:
 - the exemption being granted; and
 - the exemption not being granted.

Supporting documents

7. You need to supply any relevant documents to support your application. These could include the following documents or most recent drafts:
 - offer document;
 - trust deeds;
 - relevant contracts or agreements;
 - any other relevant documents.

Draft exemption notice

8. You should provide a draft exemption notice and draft statement of reasons that states why it would be appropriate that the exemption is granted and how the exemption is consistent with the objectives of the Code.

Time frame

9. You should specify the latest date by which the Panel's decision is needed. If your application needs urgent consideration, give reasons for the urgency.

Conflicts of Interest

10. If there are any Panel Members you think may be conflicted from considering your application, please state their names, and potential conflict of interest.

Commercial Confidentiality

11. If you would like the Panel to consider deferring notification of the exemption in the Gazette and publication on its website, you must satisfy the Panel that it is proper to do so on the grounds of commercial confidentiality. You must include sufficient information for the Panel to make a decision, and specify the length of time for which you would like notification and publication of the exemption to be deferred.