

Takeovers Code (Burger Fuel Worldwide Limited) Exemption Notice 2014

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).

Contents

	Page
1 Title	1
2 Application	1
3 Revocation	1
4 Interpretation	1
5 Exemption from rule 7(c) of Code	3
6 Exemption from rule 15(b) of Code	3
7 Conditions of exemptions	3
8 Additional conditions relating to contents of notice of meeting	5
9 Additional condition relating to increase in voting control	7
10 Additional condition relating to change of control	7
Statement of reasons	9

Notice

1 Title

This notice is the Takeovers Code (Burger Fuel Worldwide Limited) Exemption Notice 2014.

2 Application

This notice applies to acts or omissions occurring on or after 11 February 2014.

3 Revocation

This notice is revoked on the close of 31 March 2023.

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 acquisition of voting securities by FBLLC under the sale and option agreement, and the allotment of voting securities to FBLLC under the subscription agreement, as approved by BFW's shareholders at the meeting

BFW means Burger Fuel Worldwide Limited

call option means the call option referred to in paragraph (b) of the definition of sale and option agreement

Code means the Takeovers Code under the Act

FBLLC means Franchise Brands, LLC

final completion date means the date on which the last acquisition of voting securities by FBLLC under the sale and option agreement occurs

initial completion date means the date on which completion of the following takes place—

- (a) the acquisition by FBLLC of the shares referred to in paragraph (a) of the definition of the sale and option agreement;
- (b) the allotment of the voting securities to FBLLC under the subscription agreement

meeting means the meeting of BFW's shareholders that is to be held on or about 26 February 2014 to consider, amongst other things, whether or not to approve—

- (a) for the purposes of rule 7(c) of the Code, the acquisition of voting securities by FBLLC under the sale and option agreement; and
- (b) for the purposes of rule 7(d) of the Code, the allotment of voting securities to FBLLC under the subscription agreement

MRHL means Mason Roberts Holdings Limited

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

sale and option agreement means the sale and option agreement entered into by FBLLC and MRHL, dated 14 January 2014, under which FBLLC has agreed to acquire, and MRHL has agreed to sell, —

- (a) 1,606,057 fully paid ordinary shares in BFW; and
- (b) a call option over 23,853,420 fully paid ordinary shares in BFW

subscription agreement means the subscription agreement entered into by FBLLC and BFW, dated 14 January 2014, under which FBLLC has agreed to subscribe for, and BFW has agreed to issue to FBLLC, 4,357,298 fully paid ordinary shares

voting securities means voting securities in BFW

- (2) In this notice, a reference to —
 - (a) a person increasing voting control is a reference to the person becoming the holder or controller of an increased percentage of the voting rights in BFW; and
 - (b) the acquisition of voting securities by FBLLC under the sale and option agreement includes a reference to the acquisition of voting securities by FBLLC under the call option.
- (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 from rule 7(c) of Code

FBLLC is exempted from rule 7(c) of the Code in respect of any increase in FBLLC's voting control that results from the acquisition of voting securities by FBLLC under the call option to the extent that the notice of meeting does not comply with rule 15(b) of the Code.

6 Exemption from rule 15(b) of Code

BFW is exempted from rule 15(b) of the Code in respect of the notice of meeting, to the extent that rule 15(b) requires the notice of meeting to contain, or be accompanied by, particulars of voting securities to be acquired under the call option.

7 Conditions of exemptions

- (1) The exemptions in clauses 5 and 6 are subject to the condition that the notice of meeting contains, or is accompanied by, the following particulars:
 - (a) the maximum number of voting securities that could be acquired by FBLLC under the call option; and
 - (b) the maximum number of voting securities that could be acquired by FBLLC under the call option expressed as a percentage of the total voting securities on issue after completion of the acquisition of voting

securities under the sale and option agreement and the allotment under the subscription agreement; and

- (c) the maximum percentage of the total voting securities on issue that could be held or controlled by FBLLC after completion of the acquisition of voting securities under the sale and option agreement and the allotment under the subscription agreement; and
 - (d) the maximum percentage of the total voting securities on issue that could be held or controlled, in aggregate, by FBLLC and its associates after completion of the acquisition of voting securities under the sale and option agreement and the allotment under the subscription agreement; 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 those required by clause 8(a).
- (2) The exemptions in clauses 5 and 6 are subject to the conditions that—
- (a) every annual report issued by BFW during the period commencing on the date of the meeting and ending on the final completion date, and in the first annual report after the final completion date, contains the following in a prominent position:
 - (i) a summary of the terms of the call option, as approved at the meeting [at which shareholder approval of the call option was given];
 - (ii) a summary of the terms and conditions of the exemptions granted under this notice;
 - (iii) particulars, as at the end of the financial year to which the report relates, of—
 - (A) the number of voting securities acquired by FBLLC under the call option; and
 - (B) the number of voting securities then on issue that are held or controlled by FBLLC, and the percentage of all voting securities on issue that that number represents; and
 - (C) the percentage of all voting securities then on issue that are held or controlled, in aggregate, by FBLLC and FBLLC's associates; and

- (D) the maximum percentage of all voting securities that could be held or controlled by FBLLC if it acquires the approved maximum number of voting securities under the call option; and
 - (E) the maximum percentage of all voting securities that could be held or controlled, in aggregate, by FBLLC and FBLLC's associates if it acquires the approved maximum number of voting securities under the call option; and
 - (F) a statement of the assumptions on which the particulars are calculated; and
- (b) from the date of the meeting until the final completion date, BFW must show the following information in a prominent position on its Internet site:
- (i) the information required by subclause (a) to be in BFW's latest annual report:
 - (ii) as soon as BFW is aware of it, or ought reasonably to be aware of it, any aggregate increase of 1% or more in the voting securities held or controlled by FBLLC.

8 Additional conditions relating to contents of notice of meeting

The exemptions in clauses 5 and 6 are subject to the additional conditions that—

- (a) the numbers and percentages referred to in clause 7(1) are calculated on the following assumptions:
 - (i) the number of voting securities on issue is the number of voting securities on issue as at the date of the notice of meeting:
 - (ii) 1,606,057 fully paid ordinary shares in BFW are acquired by FBLLC from MRHL under the sale and option agreement on the initial completion date:
 - (iii) 23,853,420 fully paid ordinary shares in BFW are acquired by FBLLC under the call option on the initial completion date:
 - (iv) 4,357,298 fully paid ordinary shares in BFW are allotted to FBLLC under the subscription agreement on the initial completion date:
 - (v) 600,000 fully paid ordinary shares in BFW are acquired by MRHL from T.E.A Custodians Limited on the initial completion date;

- (vi) 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 acquisition or an allotment referred to in paragraphs (ii) to (v)); and
 - (vii) any other assumptions that are reasonably necessary to ensure that shareholders in BFW are provided with the material information required for them to determine whether to approve the acquisition of voting securities by FBLCC under the sale and purchase agreement and the allotment of voting securities to FBLCC under the subscription agreement; and
- (b) the notice of meeting also contains, or is accompanied by,—
- (i) the information and matters required by rule 15 of the Code in respect of the acquisition by FBLCC of the voting securities referred to in paragraph (a) of the definition of sale and option agreement; and
 - (ii) full particulars of the acquisition of voting securities by FBLCC under the sale and option agreement and a summary of the sale and option agreement; and
 - (iii) the information and matters required by rule 16 of the Code in respect of the allotment of voting securities to FBLCC under the subscription agreement; and
 - (iv) full particulars of the allotment of voting securities to FBLCC under the subscription agreement and a summary of the subscription agreement; and
 - (v) a summary of the terms and conditions of the exemptions granted to BFW and FBLCC by this notice; and
- (c) the notice of meeting displays, in a prominent position, a disclaimer stating that by exempting FBLCC from rule 7(c) of the Code and BFW 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 acquisition of voting securities by FBLCC under the sale and option agreement or the allotment of voting securities to FBLCC under the subscription agreement.

9 Additional condition relating to increase in voting control

The exemptions in clause 5 and 6 are subject to the additional conditions that during the period in which this notice is in force, FBLLC must not increase its 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 FBLLC under the approved transactions; and
 - (B) the number of voting securities on issue that are held or controlled by FBLLC, 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 FBLLC and its associates; and
 - (D) the maximum percentage of all voting securities that could be held or controlled by FBLLC after the completion of 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 FBLLC and its associates after the completion of the approved transactions and the proposed increase; and
 - (F) the assumptions on which these particulars are calculated.

10 Additional condition relating to change of control

The exemptions in clause 5 and 6 are subject to the additional condition that during the period in which this notice is in force, there must be no change of control of FBLLC that results in another person becoming the holder or controller of an increased percentage of voting rights in BFW, except in accordance with —

- (a) an exemption from the Panel under section 45 of the Act; or

- (b) 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 FBLLC under the approved transactions; and
 - (B) the number of voting securities on issue that are held or controlled by FBLLC, 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 FBLLC and its associates; and
 - (D) the maximum percentage of all voting securities that could be held or controlled by the FBLLC on completion of the approved transactions; and
 - (E) the maximum percentage of all voting securities that could be held or controlled by the FBLLC and its associates on completion of the approved transactions; and
 - (F) the assumptions on which these particulars are calculated.

Dated at Auckland this 11th day of February 2014

[Seal]

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

[Signed under Seal]

D O Jones,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 11 February 2014 and expires on 31 March 2023.

Burger Fuel Worldwide Limited (**BFW**) is a code company. Mason Roberts Holdings Limited (**MRHL**) is the majority shareholder in BFW.

The Takeovers Panel (the **Panel**) has granted exemptions for—

- Franchise Brands, LLC (**FBLLC**) from rule 7(c) of the Takeovers Code (the **Code**) in respect of any increase in FBLLC's voting control that results from the acquisition of voting securities in BFW by FBLLC under the Call Options (as defined below); and
- BFW from rule 15(b) of the Code in respect of the notice of meeting, to the extent the rule requires the notice of meeting to contain, or be accompanied by, particulars of voting securities to be issued under the Call Options (as defined below).

BFW has entered into a subscription agreement with FBLLC, dated 14 January 2014, under which FBLLC has agreed to subscribe for, and BFW has agreed to issue, 4,357,298 voting securities in BFW (the **Subscription Agreement**).

MRHL has entered into a sale and option agreement (the **Sale and Option Agreement**) with FBLLC, dated 14 January 2014, under which FBLLC has agreed to purchase, and MRHL has agreed to sell—

- 1,606,057 voting securities in BFW, being fully paid ordinary shares in BFW; and
- up to 23,853,420 voting securities in BFW, being an option to acquire up to 23,853,420 fully paid ordinary shares in BFW (the **Call Options**).

The Call Options are exercisable in four tranches over eight years from the initial completion date. Each tranche can be exercised in full or in part. Call Options not exercised in one tranche will accumulate in the subsequent tranche.

BFW intends to obtain shareholder approval, in accordance with the Code, to the allotment of voting securities to FBLLC under the Subscription Agreement and to the acquisition of voting securities by FBLLC under the Sale and Option Agreement (with each transaction being interdependent and contingent on each other). However, the disclosures under rule 15(b) of the Code in respect of the acquisition of voting securities under the Sale and Option Agreement cannot be determined in advance because the actual number of voting securities to be acquired by FBLLC under the

Sale and Option Agreement will depend on whether FBLLC exercises the maximum number of Call Options.

BFW therefore cannot comply with rule 15(b) of the Code because it cannot state in the notice of meeting—

- the exact number of voting securities that would be acquired by FBLLC under the Call Options; and
- the exact percentage of voting rights in BFW that FBLLC would hold or control after completion of the acquisition contemplated by the Call Options; and
- the aggregate of the percentages of all voting securities that will be held or controlled by FBLLC and its associates after completion of the acquisition contemplated by the Call Options.

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 FBLLC 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 extent to which FBLLC exercises the Call Options; and
- all non-associated shareholders will have an opportunity to vote on the acquisition of voting securities by FBLLC under the Call Options; 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 FBLLC under the Call Options.