

Takeovers Code (Bethunes Investments Limited)

Exemption Notice 2017

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel, being satisfied of the matters in section 45(6) of that Act, gives the following notice.

Contents

	Page
1 Title	1
2 Application	1
3 Expiry	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: notice of meeting	4
8 Assumptions	4
9 Additional condition relating to increase in voting control	5
10 Additional condition relating to change of control	6
Statement of reasons	8

Notice

1 Title

This notice is the Takeovers Code (Bethunes Investments Limited) Exemption Notice 2017.

2 Application

This notice applies to acts or omissions occurring on or after 17 November 2017.

3 Expiry

This notice expires on the close of 31 December 2018.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—
Act means the Takeovers Act 1993

allotment date means the date of the allotment of 73,333,334 fully paid ordinary shares in Bethunes to TIL and the Kern entities under the asset and share sale agreement

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

- (a) the allotment of voting securities under the asset and share sale agreement;
- (b) the allotment of voting securities under the private placement

asset and share sale agreement means the asset and share sale agreement entered into by Bethunes, TIL and the Kern entities dated 26 October 2017, under which, among other things, Bethunes has agreed to acquire (in consideration for the payment of cash and the allotment of voting securities)—

- (a) TIL's transport and logistics business and assets; and
- (b) all of the Kern entities' shares in TIL Logistics Group Limited

Bethunes means Bethunes Investments Limited

Code means the Takeovers Code under the Act

final distribution date means the date on which the last distribution of the voting securities held by TIL under the TIL in-specie distribution occurs

Hooker Bros. entities means:

- (a) Hooker Bros. Investments Limited;
- (b) Hooker Bros. (1989) Limited

Kern entities means:

- (a) Kern Group (Logistics) Pty Ltd, a company incorporated in Australia;
- (b) Catrina Gabrielle Jane Daly, as sole trustee of the CGJ Daly Investment Trust established by deed of trust dated 16 December 2016.

meeting means the meeting of Bethunes' shareholders that is to be held on or about 5 December 2017 to consider, among other things, whether or not to approve—

- (a) entry into, and performance of the transactions contemplated by, the asset and share sale agreement; and
- (b) for the purposes of rule 7(d) of the Code, the allotment of voting securities to TIL and the Kern entities under the asset and share sale agreement; and
- (c) for the purposes of rule 7(d) of the Code, the allotment of voting securities to the Ramsay parties under the private placement; and
- (d) for the purposes of rule 7(c) of the Code, the acquisition of voting securities by the Ramsay/Hooker persons under the TIL in-specie distribution

minority buy-out rights means the rights of each of Bethunes' shareholders to require Bethunes to acquire their shares in Bethunes in accordance with sections 110 to 115 of the Companies Act 1993 in relation to the shareholders' approval of the asset and share sale agreement and the private placement

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

private placement means the allotment of voting securities by Bethunes under a private placement to be undertaken by Bethunes concurrently with the transactions contemplated by the asset and share sale agreement

Ramsay parties means James Ramsay, Nerida Joy Ramsay, and RMY Trustees (2010), as trustees of either or both of the following trusts:

- (a) the James Ramsay Family Trust established by deed of trust dated 13 September 1991; and
- (b) the Nerida Joy Ramsay Family Trust established by deed of trust dated 13 September 1991

Ramsay/Hooker persons means:

- (a) the Ramsay parties;
- (b) the Hooker Bros. entities

share consolidation means a share consolidation of Bethunes' ordinary share capital using a consolidation factor equal to 115,060,279 divided by 254.1915 (subject to rounding of individual shareholdings up to the nearest whole number of shares) to be undertaken before the allotment date

TIL means Transport Investments Limited

TIL in-specie distribution means an in-specie distribution to TIL's shareholders of some or all of voting securities to be held by TIL following completion of the approved transactions, the minority buy-out rights, and the voluntary sale

voluntary sale means the rights of Bethunes' shareholders to sell their shares in Bethunes under Part 7 of the Code arising as a result of the completion of the approved transactions

voting securities means voting securities in Bethunes.

- (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 the voting rights in Bethunes.
- (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

Each of the Ramsay/Hooker persons who increases voting control as a result of the TIL in-specie distribution is exempted from rule 7(c) of the Code 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

Bethunes is exempted from rule 15(b) of the Code in respect of the notice of meeting.

7 Conditions of exemptions: notice of meeting

The exemptions in clauses 5 and 6 are subject to the conditions that the notice of meeting contains, or is accompanied by—

- (a) the maximum number of voting securities that could be acquired by each of the Ramsay/Hooker persons under the TIL in-specie distribution; and
- (b) the maximum number of voting securities that could be acquired by each of the Ramsay/Hooker persons under the TIL in-specie distribution expressed as a percentage of the total voting securities on issue after completion of the approved transactions and the acquisition of voting securities by the Ramsay/Hooker persons under the TIL in-specie distribution; and
- (c) the maximum percentage of the total voting securities on issue that could be held or controlled by each of the Ramsay/Hooker persons after completion of the approved transactions and the acquisition of voting securities by the Ramsay/Hooker persons under the TIL in-specie distribution; and
- (d) the maximum percentage of the total voting securities on issue that could be held or controlled, in aggregate, by each of the Ramsay/Hooker persons and their associates after completion of the approved transactions and the acquisition of voting securities by the Ramsay/Hooker persons under the TIL in-specie distribution; 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 and that must include the assumptions referred to in clause 8.
- (g) a summary of the terms and conditions of the exemptions granted to Bethunes, and the Ramsay/Hooker persons by this notice; and
- (h) a disclaimer (displayed in a prominent position) stating that by exempting the Ramsay/Hooker persons from rule 7(c) of the Code and Bethunes 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 the Ramsay/Hooker persons under the TIL in-specie distribution.

8 Assumptions

The following assumptions must be applied for the purposes of providing the particulars of voting securities, as specified in clause 7(a) to (d):

- (a) the number of voting securities on issue is the number of voting securities on issue as at the date of the notice of meeting as adjusted under the share consolidation, being 452,652 fully paid ordinary shares in Bethunes:

- (b) 66,869,664 fully paid ordinary shares in Bethunes are allotted to TIL under the asset and share sale agreement:
- (c) 6,463,670 fully paid ordinary shares in Bethunes are allotted to the Kern entities under the asset and share sale agreement:
- (d) no less than 5,766,667 fully paid ordinary shares in Bethunes are allotted to persons under the private placement, of which no more than 1,333,334 fully paid ordinary shares in Bethunes are allotted to the Ramsay parties:
- (e) no minority buy-out rights are exercised:
- (f) all eligible shareholders in Bethunes with rights under the voluntary acquisition to sell their shares in Bethunes to TIL, exercise those rights:
- (g) neither the Ramsay parties nor TIL dispose of any voting securities before the TIL in-specie distribution:
- (h) TIL distributes in the TIL in-specie distribution all of the Bethunes shares that it holds:
- (i) there is no change in the total number of voting securities on issue from the date of the notice of meeting until the final distribution date (other than in accordance with the share consolidation and the transactions contemplated by the asset and share sale agreement and the private placement):
- (j) any other assumptions that are reasonably necessary to ensure that shareholders in Bethunes are provided with the material information required for them to determine whether to approve the acquisition of voting securities by the Ramsay/Hooker persons under the TIL in-specie distribution.

9 Additional conditions relating to increase in voting control

- (1) The exemptions in clauses 5 and 6 are subject to the additional condition that, during the period in which this exemption notice is in force, none of the Ramsay/Hooker persons may increase the person's voting control, except in accordance with—
 - (a) the approved transactions; or
 - (b) the TIL in-specie distribution; or
 - (c) an exemption from the Takeovers Panel under section 45 of the Act; or
 - (d) rule 7(c) or 7(d) of the Code.
- (2) If subclause (1)(d) applies, the new notice of meeting containing the resolution to approve the proposed increase must contain, or be accompanied by,—
 - (a) a summary of the terms of the approved transactions and the TIL in-specie distribution; and
 - (b) particulars, as at the date of the new notice of meeting, of—
 - (i) the number of voting securities already acquired by, or allotted to, the Ramsay/Hooker person under the approved transactions and the TIL in-specie distribution; and

- (ii) the number of voting securities on issue that are held or controlled by the Ramsay/Hooker person, and the percentage of all voting securities that that number represents; and
- (iii) the aggregate of the percentages of all voting securities that are held or controlled by the Ramsay/Hooker person and the Ramsay/Hooker person's associates; and
- (iv) the maximum percentage of all voting securities that could be held or controlled by the Ramsay/Hooker person after the completion of the approved transactions, the TIL in-specie distribution and the proposed increase; and
- (v) the maximum aggregate of the percentages of all voting securities that could be held or controlled by the Ramsay/Hooker person and the Ramsay/Hooker person's associates after the completion of the approved transactions, the TIL in-specie distribution and the proposed increase; and
- (vi) the assumptions on which these particulars are calculated.

10 Additional condition relating to change of control

- (1) The exemptions in clauses 5 and 6 are subject to the additional condition that, during the period in which this exemption notice is in force, there must be no change of control of any of the Ramsay/Hooker persons that results in another person becoming the holder or controller of an increased percentage of voting rights in Bethunes, except in accordance with—
 - (a) the approved transactions; or
 - (b) the TIL in-specie distribution; or
 - (c) an exemption from the Takeovers Panel under section 45 of the Act; or
 - (d) rule 7(c) or 7(d) of the Code.
- (2) If subclause (1)(d) applies, the new notice of meeting containing the resolution to approve the proposed increase must contain, or be accompanied by,—
 - (a) a summary of the terms of the approved transactions and the TIL in-specie distribution; and
 - (b) particulars, as at the date of the new notice of meeting, of—
 - (i) the number of voting securities already acquired by or allotted to the Ramsay/Hooker person under the approved transactions and the TIL in-specie distribution; and
 - (ii) the number of voting securities on issue that are held or controlled by the Ramsay/Hooker person, and the percentage of all voting securities that that number represents; and
 - (iii) the aggregate of the percentages of all voting securities that are held or controlled by the Ramsay/Hooker person and the Ramsay/Hooker person's associates; and

- (iv) the maximum percentage of all voting securities that could be held or controlled by the Ramsay/Hooker person after the completion of the approved transactions, the TIL in-specie distribution and the proposed increase; and
- (v) the maximum percentage of all voting securities that could be held or controlled by the Ramsay/Hooker person and the Ramsay/Hooker person's associates after the completion of the approved transactions, the TIL in-specie distribution and the proposed increase; and
- (vi) the assumptions on which these particulars are calculated.

Dated at Auckland this **16th** day of **November** 2017

[Signed]

A Coupe,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 17 November 2017 and is revoked on 31 December 2018.

Bethunes Investments Limited (**Bethunes**) is an NZX-listed code company that operates as an investment company.

Transport Investments Limited (**TIL**) is a transport and logistics company.

Bethunes, TIL, and certain other parties, have entered into an asset and share sale agreement under which, among other things, Bethunes has agreed to acquire the following (the **acquisition**):

- TIL's transport and logistics business and assets:
- all of the shares held in TIL Logistics Group Limited by Kern Group (Logistics) Pty Ltd and Catrina Gabrielle Jane Daly, as the sole trustee of the CGJ Daly Investment Trust, (the **Kern entities**).

The consideration for the acquisition is cash and voting securities in Bethunes.

To partly fund the cash component of the consideration for the acquisition, Bethunes proposes to issue additional voting securities to subscribers under a private placement (the **private placement**), The subscribers under the private placement will include associates of TIL and/or the Kern entities.

The acquisition and private placement require approval by Bethunes shareholders under—

- rule 7(d) of the Takeovers Code (the **Code**), because TIL, the Kern entities and their associates will, as a result of the allotments under those transactions, hold or control more than 20% of the voting rights in Bethunes; and
- section 129 of the Companies Act 1993, to which minority buy-out rights under sections 110 to 115 of the Companies Act 1993 will apply (**minority buy-out rights**).

Before the completion of the acquisition and private placement (but after approval of those transactions by Bethunes and TIL shareholders), Bethunes will undertake a share consolidation.

As a result of the acquisition and private placement, TIL, the Kern entities and/or the associates of TIL and the Kern entities participating in the private placement, acting jointly and in concert (the **dominant owner**) will become the holders or controllers of 90% or more of the voting rights in Bethunes.

Under Part 7 of the Code, the dominant owner is required to send a notice of dominant ownership along with an option for outstanding shareholders in Bethunes to sell their shares to the dominant owner under rule 55 of the Code (the **voluntary sale**).

Following the acquisition, private placement, and voluntary sale, TIL intends to distribute some or all of the fully paid ordinary shares in Bethunes then held by TIL to TIL's shareholders (the **TIL in-specie distribution**).

Hooker Bros. Investments Limited and Hooker Bros. (1989) Limited (the **Hooker Bros. entities**) are majority shareholders in TIL and, following the TIL in-specie distribution, will hold or control more than 20% of the voting securities in Bethunes then on issue. The

acquisition by the Hooker Bros. entities under the TIL in-specie distribution will require shareholder approval under rule 7(c).

James Ramsay, Nerida Joy Ramsay, and RMY Trustees (2010) Limited (the **Ramsay parties**) are shareholders in, and are also associated with, TIL and the Hooker Bros. entities.

Bethunes intends to obtain shareholder approval, in accordance with the Code, for the acquisition of voting securities by each of the Ramsay parties and the Hooker Bros. entities (**Ramsay/Hooker persons**) under the TIL in-specie distribution. However, the disclosures under rule 15(b) of the Code in respect of the acquisition of voting securities by the Ramsay/Hooker persons under the TIL in-specie distribution cannot be determined in advance because—

- the actual number of voting securities on issue in Bethunes will depend on the number of voting securities bought back by Bethunes under the minority buy-out rights; and
- the actual number of Bethunes shares that are transferred under the TIL in-specie distribution will depend on whether—
 - TIL has acquired any Bethunes shares under the compulsory acquisition; and
 - TIL has sold down any Bethunes shares before the TIL In-specie distribution; and
 - TIL elects to retain any Bethunes shares.

Bethunes therefore cannot comply with rule 15(b) of the Code, and the Ramsay/Hooker persons cannot comply with rule 7(c), because the notice of meeting cannot state—

- the exact number and percentage of voting securities in Bethunes that the Ramsay/Hooker persons would hold or control after completion of the TIL in-specie distribution; and
- the aggregate of the percentages of all voting securities that will be held or controlled by the Ramsay/Hooker persons and their associates after completion of the TIL in-specie distribution.

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

- it is impossible for the actual numbers of voting securities and relevant percentages of required by rule 15(b) to be stated in the notice of meeting, as these numbers and percentages are dependent on matters set out above, which will not be known until after the Bethunes shareholder meeting; and
- all Bethunes shareholders who are not associated with the Ramsay/Hooker persons will have the opportunity to vote on the potential acquisition of shares under the TIL in-specie distribution; and
- all Bethunes shareholders who are not associated with the Ramsay/Hooker persons will be given sufficient information about the acquisitions to enable them to decide for themselves the merits of the proposal; and

- if all Bethunes shareholders who are not associated with the Ramsay/Hooker persons approve the potential maximum acquisitions of shares to those persons then, by implication, they can be taken to approve any less number and percentage of shares that are actually acquired under the TIL in-specie distribution.

Date of notification in *Gazette*: 17 November 2017