



**TAKEOVERS PANEL**  
TE PAE WHITIMANA

## **Takeovers Code (Southern Hospitality Limited) Exemption Notice 2021**

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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 (Southern Hospitality Limited) Exemption Notice 2021.

#### **2 Application**

This notice applies to acts or omissions occurring on or after 3 May 2018 to and including 18 December 2018.

#### **3 Expiry**

This notice expires on the close of 10 August 2021.

#### **4 Interpretation**

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

**Act** means the Takeovers Act 1993

**associate** has the meaning in rule 4 of the Code

**buybacks** means the acquisitions by SHL of its own voting securities from and including 3 May 2018 to and including 10 August 2018

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

**Comcater** means Andrew Kenneth Rayneau and Bridget Gordan (in their capacity as trustees of the Comcater Trust)

**exempted persons** has the meaning in clause 7(b)(i)

**Hospo** means Hospo Limited

**relevant holders or controllers** means the persons listed in Schedule 1

**relevant Hospo associates** means the persons listed in Schedule 2

**Panel** means the Takeovers Panel

**share transfers** means the transfers by Hospo of certain of its voting securities to the relevant Hospo associates on 18 December 2018

**SHL** means Southern Hospitality Limited

**voting security** means a voting security in Southern Hospitality Limited.

- (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 SHL.
- (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 6(1) of Code for certain persons in respect of historic buybacks and share transfers**

- (1) Each of the relevant holders or controllers is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control resulting from the buybacks.
- (2) Each of the relevant Hospo associates is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control resulting from the share transfers.

## **6 Non-associated shareholder approval conditions**

- (1) The exemption in clause 5(1) is subject to the conditions that—
  - (a) the increases in voting control obtained by the relevant holders or controllers due to the buybacks are approved by an ordinary resolution of shareholders of SHL; and
  - (b) none of:
    - (i) Hospo;
    - (ii) the relevant holders or controllers;
    - (iii) the relevant Hospo associates; or
    - (iv) any person who is or was at the time of the transaction an associate of any of the persons referred to in clause 6(1)(b)(i) – (iii),votes on such resolution.

- (2) The exemption in clause 5(2) is subject to the conditions that–
- (a) the increases in voting control obtained by the relevant Hospo associates due to the share transfers are approved by ordinary resolution of shareholders of SHL; and
  - (b) none of:
    - (i) Hospo;
    - (ii) the relevant Hospo associates; or
    - (iii) any person who is or was at the time of the transaction an associate of any of the persons referred to in clause 6(2)(b)(i) – (ii),votes on such resolution.

## 7 Conditions in relation to obtaining shareholder approval

Each of the exemptions in clause 5 is subject to the conditions that:

- (a) the resolutions referred to in clause 6(1) and clause 6(2) are put to shareholders as separate and independent resolutions; and
- (b) the notice of meeting containing the proposed resolutions contains or is accompanied by:
  - (i) the identities of the persons whose increase in voting control is to be approved by each of the resolutions (the **exempted persons**); and
  - (ii) particulars of the transactions that resulted in the exempted persons increasing their voting control in breach of rule 6(1) of the Code and the reasons for each such transaction; and
  - (iii) particulars of the voting control of the exempted persons, including:
    - (A) the voting control of each of the exempted persons prior to each of the transactions, expressed as a percentage of the total number of voting securities on issue at that time; and
    - (B) the maximum voting control that was held or controlled by each of the exempted persons, expressed as a percentage of the total voting securities on issue, as a result of each of the transactions (and all of the transactions in aggregate); and
    - (C) the maximum voting control that was held or controlled by each of the exempted persons and their associates, expressed as a percentage of the total voting securities on issue, as a result of the transactions (and all of the transactions in aggregate); and
  - (iv) the consideration paid for, or attributed to, the voting securities in respect of each of the transactions; and
  - (v) a statement to the effect that the increase in each exempted person's voting control, if approved, would be permitted as an exception to rule 6(1) of the Code; and
- (c) the form of the notice of meeting is approved by the Panel; and
- (d) at the same time that the notice of meeting containing the proposed resolutions is sent to shareholders, SHL also sends to the Panel in electronic form, a copy of the notice of meeting, and any document accompanying it that relates to the meeting; and

- (e) at the same time that a person (if any) publishes or sends to shareholders, in respect of the meeting in respect of the proposed resolutions, a statement or information that was not required to be published or sent by the rules of the Code, or by this clause as a condition of this exemption, that person also sends to the Panel, in electronic form, a copy of that statement or information; and
- (f) the notice of meeting displays, in a prominent position, a disclaimer stating that by exempting the increase in the voting securities held or controlled by the exempted persons from rule 6(1) of the Code, the 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 transactions that resulted in the exempted persons increasing their voting control.

Dated at Auckland this 17<sup>th</sup> day of June 2021

[Signed]

R A Coupe  
Chair

## **Schedule 1**

### **Relevant holders or controllers**

Hospo Limited  
Derryn Fewtrell  
Christopher Fewtrell  
Kerryn Goodsir  
George Goodsir  
Charlie Goodsir  
Nathan Houston  
Portia Houston  
Lizzie Houston  
Sienna Houston  
Hayley Jones  
Ella Jones  
Flynn Jones  
Chris McDowell  
Andrew Kenneth Rayneau and Bridget Gordon (in their capacity as trustees of the Comcater Trust)

## **Schedule 2**

### **Relevant Hospo associates**

Michelle Chapman  
Derryn Fewtrell  
Christopher Fewtrell  
Nathan Houston  
Kerryn Goodsir  
George Goodsir  
Charlie Goodsir  
Hayley Jones  
Ella Jones

Flynn Jones  
Chris McDowell

## Statement of Reasons

This notice applies to acts or omissions on or after 3 May 2018 to and including 18 December 2018 and expires on 10 August 2021.

Southern Hospitality Limited (**SHL**) is an unlisted Code company.

The notice exempts each of the holders or controllers of voting rights in SHL, named in Schedule 1 (the **Relevant Holders or Controllers**), and Schedule 2 (the **Relevant Hospo Associates**) from rule 6(1) of the Takeovers Code (the **Code**) in relation to increases in their voting control that resulted from certain share buybacks undertaken by SHL (the **Share Buybacks**), and a certain transfer of shares in SHL (the **Share Transfers**).

In accordance with clause 4 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 (the **Class Exemption**) an approval from shareholders was obtained to authorise SHL to acquire up to 1.5 million shares in the SHL under its share buyback programme over a period of three years from 22 March 2018.

SHL acquired 761,087 shares under the buyback programme through the Share Buybacks, with all of those shares being purchased at the value of \$3.00 per share. The Share Buybacks resulted in the following increases in voting control:

- For Hospo Limited (**Hospo**) and its associates - from 49.92% to 53.45% (being a 3.53% increase), and
- For Comcater Trust (**Comcater**) - from 19.81% to 21.22% (being a 1.41% increase).

Following the Share Buybacks, SHL failed to comply with conditions 7 and 8 of Schedule 1 to the Class Exemption. SHL did not disclose the correct information relating to the Share Buybacks in its annual reports and did not disclose any of the required information on its internet site. Accordingly, the terms of the Class Exemption were not met. As a result, the Relevant Holders or Controllers increased their voting control in SHL in breach of rule 6(1) of the Code.

In addition to the Share Buybacks, on 18 December 2018 there was a transfer of shares from Hospo to the Relevant Hospo Associates which reduced the number of shares held by Hospo and increased the number of shares held by the Relevant Hospo Associates.

In the absence of an exemption, the Relevant Holders or Controllers and the Relevant Hospo Associates would remain in breach of the Code in respect of the Share Buybacks and the Share Transfers (as applicable).

The conditions of the exemption are designed to ensure that the underlying purpose of the Code is fulfilled, including that shareholder approval is sought by the non-associated / non-interested SHL shareholders.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions from rule 6(1) of the Code in relation to increases in voting control that resulted from the Share Buybacks and the Share Transfers because,—

- there is precedent for the exemption;
- any breaches of the Code that resulted from the Share Buybacks and Share Transfers were inadvertent and SHL, Hospo and Comcater took steps to remedy the issue;
- an exemption is the only mechanism available to ratify historic transactions for Code compliance;

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- the non-associated shareholders of SHL will have the opportunity to vote on whether the Relevant Holders or Controllers and the Relevant Hospo Associates can rely on the exemptions. This ensures that SHL shareholders are treated fairly and are afforded the right to decide for themselves whether the increased voting control resulting from the Share Buybacks and Share Transfers, can be retained in reliance on the exemption;
  - the exemption in relation to the Share Buybacks applies only to increases that became problematic at the point SHL failed to comply with the conditions of the Class Exemption and the exemption in relation to the Share Transfers applies only to increases that became problematic at the point in which Hospo transferred shares under the Share Transfers. Accordingly:
    - absent an exemption, the costs of compliance are not proportionate to the benefits resulting from it; and
    - the exemption would encourage the efficient allocation of resources.
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Date of Notification in the *Gazette*: 28 June 2021

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