

## **Takeovers Code (The Todd Corporation 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 (The Todd Corporation Limited) Exemption Notice 2021.

#### **2 Application**

This notice applies to acts or omissions occurring on or after 19 July 2021.

#### **3 Expiry**

This notice expires on the close of 18 July 2026.

#### **4 Interpretation**

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

**Act** means the Takeovers Act 1993

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

**clause 14.1 of the constitution** means clause 14.1 of the constitution of The Todd Corporation as in force on 19 July 2021 or any renumbered, but otherwise identical, clause in the constitution of The Todd Corporation after that date

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

**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) a relative of the settlor or appointer:
- (c) a person for whom the settlor or appointer has natural love and affection

**The Todd Corporation** means The Todd Corporation Limited

**transfer** means the transfer of a voting security or the transfer of the control of a voting security

**voting security** means a voting security in The Todd Corporation

- (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 The Todd Corporation.
- (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 in respect of certain transfers under clause 14.1 of the constitution**

Every person is exempted from rule 6(1) of the Code in relation to any increase in that person's voting control as a result of a transfer effected in accordance with clause 14.1 of the constitution.

## **6 Conditions of exemption in clause 5**

- (1) The exemption in clause 5 is subject to the conditions that,—
  - (a) the number of voting securities transferred under clause 14.1 of the constitution in any 12-month period must not exceed the number of voting securities that carry in the aggregate 20% of the total voting rights in The Todd Corporation at the commencement of the 12-month period; and
  - (b) the wording of clause 14.1 of the constitution remains unchanged.
- (2) A transfer is not to be taken into account in determining whether the maximum number of voting securities permitted to be transferred by clause 6(1)(a) has been exceeded, if the increase in the voting control resulting from, or that gives rise to, that transfer is exempt from rule 6(1) of the Code under any of the following:
  - (a) clause 7:
  - (b) clause 20, 21, or 22 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001:
  - (c) any other exemption granted in respect of The Todd Corporation by the Panel.

## **7 Exemption from rule 6(1) of Code in respect of trustees of certain trusts**

Every person who is or becomes a trustee of a family trust is exempted from rule 6(1) of the Code in relation to any increase in the person's voting control as a result of,—

- (a) being appointed as a trustee of that trust; or
- (b) a reduction in the number of trustees of that trust.

## **8 Conditions of exemption in clause 7**

The exemption in clause 7 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 trust;
  - (ii) a relative of the settlor or appointer;
  - (iii) a person for whom the settlor or appointer has natural love and affection.
- (b) if the trust deed establishing the family trust contains a power to amend the trust deed, the trustees are required to act unanimously when exercising the power to amend the trust deed; and
- (c) the appointment of a new 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 of The Todd Corporation, 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 percentage of voting rights in The Todd Corporation held or controlled by the trustees or the extent to which the trustees share in the voting control in The Todd Corporation; and
- (e) the wording in clause 14.1 of the constitution remains unchanged.

Dated at Auckland this 15<sup>th</sup> day of July 2021.

[signed]

R A Coupe  
Chair

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## Statement of Reasons

This notice applies to acts or omissions occurring on or after 19 July 2021 and expires on the close of 18 July 2026.

The Takeovers Panel (the **Panel**) has granted exemptions to:

- any person, subject to conditions, from rule 6(1) of the Takeovers Code (the **Code**) in respect of that person becoming the holder or controller of an increased percentage of voting rights in The Todd Corporation Limited (**The Todd Corporation**) as a result of a transfer of shares in The Todd Corporation (**shares**) effected under clause 14.1 of the constitution of that company (as in force on 19 July 2021) (**clause 14.1 of the constitution**); and
- any person, subject to conditions, from rule 6(1) of the Code in respect of that person becoming the holder or controller of an increased percentage of voting rights in The Todd Corporation as a result of—
  - that person becoming a trustee of a family trust (as defined in this notice); or
  - a reduction in the number of trustees of a family trust.

### Transfers under clause 14.1 of the constitution

The Todd Corporation is a code company.

All of the recipients of transfers under clause 14.1 of the constitution are members of a single extended family or represent interests associated with that single extended family (the **Todd family**). It is arguable that all shareholders of The Todd Corporation are associates as that term is defined in the Code.

Clause 14.1 of the constitution allows the transfer of shares to members of the Todd family but, without an exemption, such transfers would be impracticable.

The exemption notice imposes restrictions on the transfer of shares that may take place in any 12-month period to limit the possibility of a change of control occurring without using one of the mechanisms permitted by the Code. The exemption notice has excluded from that limit any transfers of shares—

- made in accordance with clause 7 of this exemption notice; or
- made in accordance with clause 20, 21, or 22 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001; or
- separately exempted by the Panel.

The exemption is conditional on clause 14.1 of the constitution remaining unchanged.

This exemption replaces the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2016.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemption because—

- the recipients of transfers under clause 14.1 of the constitution are members of a single extended family, or represent interests associated with that single extended family, undertaking transactions involving voting rights in the family's investment vehicle and therefore are all probably associates for the purposes of the Code. As such, the mechanisms provided in the Code for approval of increased shareholdings through transfers of shares are unworkable; and
- the transactions covered by the exemption are confined to those that take place under clause 14.1 of the constitution, the principal purpose of which is to facilitate transfers of shares between family interests; and
- the exemption is conditional on clause 14.1 of the constitution remaining unchanged. If clause 14.1 of the constitution is amended, transfers of The Todd Corporation's shares cannot occur in reliance on this exemption, and The Todd Corporation will need to seek a new exemption; and
- there are restrictions on the transfer of shares that may take place in any 12-month period to limit the possibility of a change of control occurring without using one of the mechanisms permitted by the Code; and
- to the extent that a transfer of shares has been excluded from the limit on transfer of shares that may take place in any 12-month period, those transfers are confined to transfers which the Panel considers the Code is not intended to inhibit and, in most cases, are made in reliance on certain existing exemptions granted by the Panel.

### Transfers to trustees of Todd family trusts

The Panel has granted a class exemption from rule 6(1) of the Code for persons who are or who become the trustees of a family trust in respect of any increase in their voting control in a code company as a result of changes to the trust's trustees (the Takeovers Code (Trustees of Family Trusts) Exemption Notice 2012 (the **2012 class exemption**)). Trustees of family trusts that hold or control voting rights in The Todd Corporation in accordance with the constitution of The Todd Corporation (**Todd family trusts**) may not rely on the 2012 class exemption because many Todd family trusts do not meet that exemption's conditions.

Consequently, the Panel has granted an exemption from rule 6(1) of the Code for persons who are or who become the trustees of a Todd family trust in respect of any increase in their voting control in The Todd Corporation as a result of changes to the trust's trustees. The exemption is subject to the same conditions as the 2012 class exemption (with any necessary consequential changes), except that—

- the condition that trustees be required by the relevant trust deed to act unanimously is replaced with a condition that, if the trust deed establishing the Todd family trust contains a power to amend the trust deed, the trustees are required to act unanimously when exercising the power to amend the trust deed; and
- the condition that the person appointed as a new trustee of the family trust did not hold or control voting rights in the code company immediately before their appointment as a trustee does not apply; and
- it is a condition of this exemption that the wording in clause 14.1 of the constitution remains unchanged.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemption because—

- the exemption only applies where the appointment of a new trustee or a reduction of the number of trustees relates to a reorganisation of a Todd family trust, or an event outside the control of the trustees, and the Code is not intended to inhibit restructuring of family trusts that has no real effect on the shareholders of The Todd Corporation; and
- in the case of a trustee exiting the trust, although the reduction in the number of trustees will result in the continuing trustees each being deemed to increase their holding or controlling of voting

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rights in The Todd Corporation, the Code is not intended to regulate these changes to the trustees of family trusts; and

- in the case of a person being appointed as a trustee, there would be no disadvantage to the shareholders of The Todd Corporation as it would not have any real effect on those shareholders; and
- any transfer made pursuant to the exemptions would still only relate to a change of trustees arising out of a bona fide reorganisation of a family trust.

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Date of Notification in the *Gazette*: 23 July 2021

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