

Takeovers Code (The Todd Corporation Limited) Exemption Notice 2022

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.

Contents

	Page
1 Title	1
2 Application	1
3 Expiry	1
4 Interpretation	1
5 Exemption from rule 6(1) of Code in respect of certain transfers under clause 14.1 of the constitution	2
6 Conditions of exemption in clause 5	3
7 Exemption from rule 6(1) of Code in respect of trustees in certain trusts	3
8 Conditions of exemption in clause 7	3
Takeovers Code (The Todd Corporation Limited) Exemption Notice 2021	4

Notice

1 Title

This notice is the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2022.

2 Application

This notice applies to acts or omissions occurring on or after the Effective Date.

3 Expiry

This notice expires on the close of 30 June 2027.

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, one or more persons with power to appoint or remove trustees of that trust

Approval means the approval of the New Constitution by special resolution of the shareholders of The Todd Corporation at the Meeting

clauses 13.1 and 13.2 of the New Constitution means clauses 13.1 and 13.2 of the New Constitution including as those clauses are renumbered (provided they otherwise remain identical)

Code means the Takeovers Code under the Act

Effective Date means the date of the Approval

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

Meeting means the annual meeting of The Todd Corporation expected to be held on or around 26 May 2022

New Constitution means the new constitution of The Todd Corporation in the form provided to the Panel prior to the Panel determining whether to grant the exemptions referred to in this notice, subject only to minor and inconsequential further amendments

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 clauses 13.1 and 13.2 of the New 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 clauses 13.1 and 13.2 of the New Constitution.

6 Conditions of exemption in clause 5

- (1) The exemption in clause 5 is subject to the conditions that,—
 - (a) Approval is provided in accordance with the requirements of the Companies Act 1993;

- (b) the number of voting securities transferred under clauses 13.1 and 13.2 of the New Constitution in any 12-month period does not exceed the number of voting securities that carry, in aggregate, 20% of the total voting rights in The Todd Corporation at the commencement of the 12-month period; and
 - (c) after Approval, neither clauses 13.1 and 13.2 of the New Constitution nor any other provision of the New Constitution which affects their interpretation or application is amended, varied or otherwise changed.
- (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)(b) 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) clause 7 of the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2021.

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 Approval is provided in accordance with the requirements of the Companies Act 1993; and
- (b) 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; and
- (c) 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
- (d) 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

- (e) 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
- (f) after Approval, neither clauses 13.1 and 13.2 of the New Constitution nor any other provision of the New Constitution which affects their interpretation or application is amended, varied or otherwise changed.

9 Takeovers Code (The Todd Corporation Limited) Exemption Notice 2021

- (1) If the Effective Date occurs on or before 30 June 2022, then the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2021 is revoked with effect on and from the Effective Date (with this notice becoming effective at that time).
- (2) If the Effective Date does not occur on or before 30 June 2022, then:
 - (a) the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2021 will remain in effect in accordance with its terms; and
 - (b) this notice will be revoked on 1 July 2022.

Dated at Auckland this 2nd day of May 2022.

[signed]

A G Pigou

Temporary Deputy Chair

Statement of reasons

This notice applies to acts or omissions occurring on or after the Effective Date and expires on the close of 30 June 2027.

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 clauses 13.1 and 13.2 of the New Constitution of that company (as in force on the Effective Date) (**clauses 13.1 and 13.2 of the New 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 being appointed as 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 clauses 13.1 and 13.2 of the New Constitution

The Todd Corporation is a code company.

All of the recipients of transfers under clauses 13.1 and 13.2 of the New Constitution will be 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.

Clauses 13.1 and 13.2 of the New Constitution allow 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
- made in accordance with clause 7 of the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2021.

The exemption is conditional on:

- Approval being provided in accordance with the requirements of the Companies Act 1993;
- the number of voting securities transferred under clauses 13.1 and 13.2 of the New Constitution in any 12-month period not exceeding the number of voting securities that carry, in aggregate, 20% of the total voting rights in The Todd Corporation at the commencement of the 12-month period; and
- after Approval, neither clauses 13.1 and 13.2 of the New Constitution nor any other provision of the New Constitution which affects their interpretation or application being amended, varied or otherwise changed.

Subject to the Approval being provided, this exemption replaces the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2021. If the Approval is not provided, then the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2021 will remain in effect and this notice will be revoked.

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 clauses 13.1 and 13.2 of the New 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 clauses 13.1 and 13.2 of the New Constitution, the principal purpose of which is to facilitate transfers of shares between family interests; and
- the exemption is conditional on clauses 13.1 and 13.2 and any other provision which affects their interpretation or application under the New Constitution remaining unchanged. If clauses 13.1 and 13.2 or any other provision which affects their interpretation or application under the New

Constitution are 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;

- 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;
- 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; and
- there is precedent for the exemption.

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 Approval is provided in accordance with the requirements of the Companies Act 1993; and
- it is a condition of this exemption that the wording in clauses 13.1 and 13.2 and any other provision which affects their interpretation or application under the New 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 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;
- the exemption is conditional on clauses 13.1 and 13.2 and any other provision which affects their interpretation or application under the New Constitution remaining unchanged. If clauses 13.1 and 13.2 or any other provision which affects their interpretation or application under the New Constitution are 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 is precedent for the exemption.

Date of Notification in the *Gazette*: 10 May 2022