

Takeovers Code (The Todd Corporation Limited) Exemption Notice 2024

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 2024.

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 2029.

4 Interpretation

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

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

Code means the Takeovers Code under the Takeovers Act

Companies Act means the Companies Act 1993

current constitution means the constitution of The Todd Corporation as in force and effect as at the date of this notice

effective date means the date on which the new constitution is adopted and the 25% maximum is approved, satisfying the conditions in clauses 6(1)(a) and (c)

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

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

Takeovers Act means the Takeovers Act 1993

The Todd Corporation means The Todd Corporation Limited

Todd family means the persons who are descendants natural or adopted of Charles Todd, late of Wellington, Merchant who died on 21 August 1942, and his wife Mary Todd who died on 21 February 1962, determined as if the Status of Children Act 1969 had not been passed

Todd family company means a company:

- (a) which is controlled by one or more Todd family members; and
- (b) in which all of the voting rights are controlled by Todd family members or trustees of a Todd family trust

Todd family trust means a trust which is exclusively or principally for the benefit of one or more Todd family members

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 Takeovers Act or the Code and used, but not defined, in this notice has the same meaning as in the Takeovers Act or the Code.

5 Exemption from rule 6(1) of Code in respect of certain transfers under clauses 13.1, 13.2, 14 and 15 of the new constitution

Every Todd family member, Todd family company and trustee of a Todd family trust 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, 13.2, 14 and 15 of the new constitution.

6 Conditions of exemption in clause 5

- (1) The exemption in clause 5 is subject to the conditions that,—
 - (a) the new constitution is adopted as the constitution of The Todd Corporation in accordance with the requirements of the Companies Act and the current constitution; and
 - (b) the number of voting securities transferred under clauses 13.1, 13.2, 14 and 15 of the new constitution (and clauses 13.1 and 13.2 of the current constitution) in any 12-month period, except voting securities excluded under clause 6(2), does not exceed the number of voting securities that carry, in aggregate, 25% of the total voting rights in The Todd Corporation at the commencement of the 12-month period; and
 - (c) the shareholders of The Todd Corporation approve the transfer of voting securities up to the 25% maximum referred to in clause 6(1)(b) as a special resolution in accordance with the requirements of the Companies Act and the current constitution; and
 - (d) after the new constitution is adopted, none of clauses 13.1, 13.2, 14 and 15 of the new constitution nor any other provision of the new constitution which affects their interpretation or application is amended, varied or otherwise changed; and
 - (e) any person who, as at 1 April 2024:
 - (i) holds or controls less than 20% of the voting securities does not become the holder or controller of more than 20% of the voting securities; and
 - (ii) holds or controls 20% or more of the voting securities does not become the holder or controller of an increased the percentage of voting securities.
- (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 other exemption from the Code granted in respect of The Todd

Corporation (including the exemption granted in clause 7 of this exemption notice), or clause 20, 21, or 22 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001.

7 Exemptions from rule 6(1) of Code in respect of trustees of certain trusts

Every person who is or becomes a trustee of a Todd 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 new constitution is adopted as the constitution of The Todd Corporation in accordance with the requirements of the Companies Act and the current constitution; and
- (b) the Todd 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 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
- (d) the appointment of a new trustee, or reduction in the number of trustees in the Todd family trust,—
 - (i) reflects a bona fide reorganisation of the Todd 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 adoption of the new constitution, none of clauses 13.1, 13.2, 14 and 15 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 2022

- (1) If the effective date occurs on or before 30 June 2024, then the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2022 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 2024, then:
 - (a) the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2022 will remain in effect in accordance with its terms; and
 - (b) this notice will be revoked on 1 July 2024.

Dated at Auckland this 24th day of April 2024.

[signed]

M W Stearne
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 2029.

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, 13.2, 14 and 15 of the constitution of that company as in force on the effective date (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, 13.2, 14 and 15 of the New Constitution

The Todd Corporation is a Code company.

All of the recipients of transfers under clauses 13.1, 13.2, 14 and 15 of the New Constitution are, or are very likely to 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, 13.2, 14 and 15 of the New Constitution allow the transfer of shares to members of the Todd family or interests associated with them 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 any other exemption from the Code granted in respect of The Todd Corporation, including the exemption granted in clause 7 of this exemption notice or clause 20, 21, or 22 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001.

The exemption is conditional on:

- the New Constitution being adopted in accordance with the requirements of the Companies Act 1993 (the **Companies Act**) and The Todd Corporation's current constitution (the **Current Constitution**); and
- the number of voting securities transferred under clauses 13.1, 13.2, 14 and 15 of the New Constitution (and clauses 13.1 and 13.2 of the constitution immediately preceding the New Constitution) in any 12-month period not exceeding the number of voting securities that carry, in aggregate, 25% of the total voting rights in The Todd Corporation at the commencement of the 12-month period; and
- the shareholders of The Todd Corporation approve the transfer of voting securities up to the 25% maximum referred to above as a special resolution in accordance with the requirements of the Companies Act and the Current Constitution; and
- after adoption of the New Constitution, none of clauses 13.1, 13.2, 14 and 15 of the New Constitution nor any other provision of the New Constitution which affects their interpretation or application being amended, varied or otherwise changed; and
- a shareholder who holds or controls less than 20% of the voting securities not becoming the holder or controller of more than 20% of the voting securities, and a shareholder who holds or controls 20% or more of the voting securities not increasing the percentage of voting securities they hold or control.

Subject to adoption of the New Constitution and approval of the 25% maximum, this exemption replaces the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2022. If the relevant resolutions are not passed, the Takeovers Code (The Todd Corporation Limited) Exemption Notice 2022 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, 13.2, 14 and 15 of the New Constitution are, or are very likely to be, members of a single extended family, or represent interests associated with that single extended family, and therefore all potentially associated 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, 13.2, 14 and 15 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, 13.2, 14 and 15 and any other provision which affects their interpretation or application under the New Constitution remaining unchanged. If clauses 13.1, 13.2, 14 and 15 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 would likely 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; and
- there is precedent for the exemption; and
- given the above reasons, the Panel considers that granting an exemption would encourage the efficient allocation of resources and maintenance of a proper relation between the costs of compliance with the Code and the benefits resulting from it. Absent an exemption, the costs of compliance with the Code are not proportionate to the benefits resulting from it.

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 Todd 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 New Constitution is adopted in accordance with the requirements of the Companies Act and the Current Constitution; and

- it is a condition of this exemption that the wording in clauses 13.1, 13.2, 14 and 15 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 Todd 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 Todd family trusts; and
- in the case of a person being appointed as a trustee, there would be no disadvantage to the other 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 Todd family trust; and
- the exemption is conditional on clauses 13.1, 13.2, 14 and 15 and any other provision which affects their interpretation or application under the New Constitution remaining unchanged. If clauses 13.1, 13.2, 14 or 15 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; and
- given the above reasons, the Panel considers that granting an exemption would encourage the efficient allocation of resources and maintenance of a proper relation between the costs of compliance with the code and the benefits resulting from it. Absent an exemption, the costs of compliance with the Code are not proportionate to the benefits resulting from it.

Date of notification in *Gazette*: 3 May 2024.