



TAKEOVERS PANEL
TE PAE WHITIMANA

Takeovers Code (Finzsoft Solutions Limited) Exemption Notice 2020

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 (Finzsoft Solutions Limited) Exemption Notice 2020.

2 Application

This notice applies to acts or omissions occurring on or after 23 December 2020.

3 Revocation

This notice is revoked on the close of 8 May 2021.

4 Interpretation

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

Act means the Takeovers Act 1993

Code means the Takeovers Code under the Act

company means Finzsoft Solutions Limited

control percentage means the percentage of voting rights in the company that a person holds or controls

relevant shareholder means each of,—

- (a) First Credit Union Incorporated; and
- (b) Police and Families Credit Union Incorporated; and
- (c) Timothy James Hurring; and
- (d) Susan Jane Hurring and Timothy James Hurring as trustees of the T.J. and S.J. Hurring Family Trust

relevant transaction means each of the following transactions:

- (a) the acquisition by First Credit Union Incorporated and Police and Families Credit Union Incorporated of the voting securities held by Andrew Alexander Holliday, CRX Investments Pty Limited, and Zinka Matulic; and
- (b) the acquisition by the company of the shares in the company held by each of Sulabh Sharma and Sheenu Chawla

shareholder means a holder of voting securities in the company

voting security means a voting security in the company.

- (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 company.
- (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 Exemptions from rule 6(1) of the Code

Every relevant shareholder is exempted from rule 6(1) of the Code in respect of any increase in that relevant shareholder's voting control as a result of a relevant transaction.

6 Exemptions from Part 7 of the Code

Each relevant shareholder who becomes a dominant owner in the company as a result of a relevant transaction is exempted from Part 7 of the Code.

7 Conditions of the exemptions

Each of the exemptions in clauses 5 and 6 is subject to the conditions that,—

- (a) the board of the company has previously resolved,—
 - (i) that the relevant transactions should proceed on the basis of exemptions from the requirements of the Takeovers Code; and
 - (ii) that in its opinion it is in the best interests of the company and the shareholders that the relevant transactions should proceed as described in subparagraph (i); and
- (b) before the expiry of 5 working days after the date of the board resolution, the company sends to each shareholder, and to the Takeovers Panel, a notice to shareholders comprising,—

- (i) a request for the unanimous approval of the shareholders to give effect to the relevant transactions; and
 - (ii) a disclosure document that complies with the provisions of clause 8; and
- (c) each relevant transaction,—
- (i) is approved unanimously by shareholders within 20 working days after the date of the notice to shareholders; and
 - (ii) is given effect to before the expiry of 30 working days after the date of the shareholder notice; and
- (d) after the board resolution is made and before each relevant transaction is given effect to,—
- (i) the board remains of the opinion referred to in clause 7(a)(i) and 7(a)(ii); and
 - (ii) no shareholder has increased their voting control in the company except by a relevant transaction.

8 Requirements for disclosure document

- (1) The disclosure document for the relevant transaction must,—
- (a) state the nature of the relevant transactions and give a brief description of them, including,—
 - (i) details of the cash and non-cash consideration for the voting securities under each of the relevant transactions; and
 - (ii) details of the control percentage of the shareholders immediately before each of the relevant transactions; and
 - (iii) details of the control percentage of the shareholders immediately after each of the relevant transactions; and
 - (iv) a brief description of,—
 - (A) the financial performance (net profit after tax) of the company for the year ended 30 June 2020 (against the forecast financial performance (net profit after tax) of the company as set out in the Target Company Statement dated 6 April 2020 (including the Independent Adviser's Report, prepared by Simmons Corporate Finance Limited for Finzsoft shareholders dated March 2020)).
 - (B) the financial position (total assets) of the company as at 30 November 2020; and
 - (b) contain statements to the effect that,—
 - (i) it is, in the board's opinion, in the best interests of the company and the shareholders that the relevant transactions proceed on the basis of exemptions from the requirements of the Code; and
 - (ii) the effect of shareholders giving their unanimous approval is that shareholders will not receive an independent adviser's report on the merits of the relevant transactions or other information required by the Code; and
 - (iii) holders of the voting rights have a period of 20 working days from the date of the disclosure document to approve the unanimous shareholder resolutions, and if they

- do not, the relevant transactions must proceed in accordance with the Code, or be abandoned; and
- (iv) the disclosure document is being sent to shareholders to comply with the conditions of the Takeovers Code (Finzsoft Solutions Limited) Exemption Notice 2020; and
- (c) contain a link to the Target Company Statement dated 6 April 2020 (including the Independent Adviser's Report, prepared by Simmons Corporate Finance Limited for Finzsoft shareholders dated March 2020); and
- (2) The disclosure document must not be longer than 4 A4 pages when printed by the company (excluding the form for shareholder approval).

Dated at Auckland this 23rd day of December 2020

[signed]

R A Coupe
Chair

Statement of Reasons

This notice applies to acts or omissions occurring on or after 23 December 2020 and expires on the close of 8 May 2021.

It is proposed that two transactions are undertaken in relation to Finzsoft Solutions Limited (the **Company**). The Takeovers Panel (the **Panel**) has granted exemptions from rule 6(1) and Part 7 of the Takeovers Code (the **Code**) in relation to the proposed transactions.

Under the first transaction, it is proposed that the voting securities held by Andrew Alexander Holliday, CRX Investments Pty Limited, and Zinka Matulic are acquired by First Credit Union Incorporated and Police and Families Credit Union Incorporated (the **Acquisition**).

Immediately following the first transaction, it is proposed that the Company enter into a second transaction. This transaction is a share for share exchange whereby the Company will exchange the shares that it holds in Sush Labs Limited for the shares held by each of Sulabh Sharma and Sheenu Chawla (together, the **Buyback Shareholders**) in the Company. This transaction will be undertaken by a non-pro-rata share buyback by the Company of the shares held by the Buyback Shareholders (the **Buyback**).

All of the shareholders in the Company have a close relationship with each other and are associates for the purposes of the Code. As such, no shareholder can vote to approve the relevant transactions in accordance with the Code.

Exemptions have been granted from rule 6(1) and Part 7 of the Code in relation to the Acquisition and Buyback.

The effect of the exemptions is,—

- to allow the Company to seek shareholder approval for the relevant transactions, in circumstances where it would be impossible to do so without these exemptions; and
- to permit the Company to facilitate the relevant transactions without having to obtain an independent adviser's report; and
- that the compulsory acquisition provisions under Part 7 of the Code will not apply (these provisions will technically be triggered as a consequence of the structure of the relevant

transactions despite the fact that the parties will have already agreed to alternative arrangements).

The Panel does not commonly grant an exemption from Part 7 of the Code, as this directly relates to the rights of minority shareholders. However, under the circumstances (and particularly given the condition requiring unanimous shareholder approval), the exemption from Part 7 of the Code is appropriate.

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

- all shareholders in the Company are, or are likely to be, associated for the purposes of the Code, and approval to the relevant transactions could not be sought under the Code without the exemptions. Accordingly, the exemptions are necessary to address an unintended consequence of the Code (being the inability of the shareholders to approve the relevant transactions); and
- the exemptions are intended to facilitate transactions between associated shareholders in a privately held unlisted company which is caught by the Code due to the 12-month look-back period (but otherwise would not fall within the definition of “Code company”). This maintains a proper relationship between the cost of compliance and the benefits resulting from it; and
- the conditions of the exemptions ensure that shareholders are treated fairly and have protections afforded to them by:
 - requiring the Company’s board to resolve (and remain of the view) that, in its opinion, it is in the best interests of the Company and its shareholders to proceed with the relevant transactions in accordance with these exemptions; and
 - requiring appropriate disclosure of the relevant transactions to the company’s shareholders; and
 - providing the Company’s shareholders with the opportunity to approve (or refuse to approve) the relevant transactions. A unanimous approval threshold means that each shareholder will effectively be given a right to veto the relevant transactions.

Date of Notification in the *Gazette*: 21 January 2021
