



Takeovers Code (Pacific Print Group Limited) Exemption Notice 2005

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel gives the following notice (to which is appended a statement of reasons of the Takeovers Panel).

Contents

1	Title	6	Conditions of exemptions in clause 5
2	Application	7	Exemptions from rule 6(1) of Code
3	Expiry	8	Conditions of exemptions in clause 7
4	Interpretation		
5	Retrospective exemptions from rule 6(1) of Code		

Notice

- 1 Title**
This notice is the Takeovers Code (Pacific Print Group Limited) Exemption Notice 2005.
- 2 Application**
This notice applies to acts or omissions occurring on or after 31 March 2005.
- 3 Expiry**
This notice expires on the close of 30 October 2005.
- 4 Interpretation**
 - (1) In this notice, unless the context otherwise requires,—
Act means the Takeovers Act 1993
Class A shares means Class A shares in PPG

Code means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210)

ordinary shares means ordinary shares in PPG

PPG means Pacific Print Group Limited

trustee of the Jamy Trust means Stephen Peter Lunn as trustee of the Jamy Trust (a trust established by deed of trust dated 20 October 1999)

trustees of the Belgrave Trust means Geoffrey Wilding and Richard Taylor as trustees of the Belgrave Trust (a trust established by deed of trust dated 30 June 2003)

trustees of the Durrans Family Trust means Kay Dorothy Durrans and Andrew James Durrans as trustees of the Durrans Family Trust (a trust established by deed of trust dated 15 October 2004)

trustees of the Fresnaye Trust means Rodney Martin and David Gandar as trustees of the Fresnaye Trust (a trust established by deed of trust dated 16 April 1999)

trustees of the Mark Brebner Childrens Trust means Margaret Anne Le Grys, Lawrence William Willis, and Peter William West as trustees of the Mark Brebner Childrens Trust (a trust established by deed of trust dated 26 June 2001)

trustees of the Neville Smith Family Trust means David Bruce Compton, Simon Robert Bednareck, and Graham Laurie Lang as trustees of the Neville Smith Family Trust (a trust established by deed of trust dated 20 November 1991)

trustees of the Printers Trust means Mark Brebner, Andrew James Durrans, Peter William West, and Neville Smith as trustees of the Printers Trust (a trust established by deed of trust dated 21 October 2004).

- (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 the voting rights in a code 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 Retrospective exemptions from rule 6(1) of Code

The following persons are exempted from rule 6(1) of the Code in respect of any increase in their voting control in PPG as a result of the following transactions that occurred on 31 March 2005:

- (a) the trustees of the Mark Brebner Childrens Trust in respect of the acquisition of 796 776 ordinary shares from the trustees of the Printers Trust and the acquisition of 404 195 ordinary shares from ANZ National Bank Limited;
- (b) the trustees of the Neville Smith Family Trust in respect of the acquisition of 556 824 ordinary shares from the trustees of the Printers Trust and the acquisition of 347 169 ordinary shares from ANZ National Bank Limited;
- (c) the trustees of the Durrans Family Trust in respect of the acquisition of 150 400 ordinary shares from the trustees of the Printers Trust and the acquisition of 93 771 ordinary shares from ANZ National Bank Limited;
- (d) the trustee of the Jamy Trust in respect of the acquisition of 96 000 ordinary shares from the trustees of the Printers Trust and the acquisition of 59 854 ordinary shares from ANZ National Bank Limited;
- (e) Andrew James Durrans in respect of the acquisition of 92 579 ordinary shares from ANZ National Bank Limited.

6 Conditions of exemptions in clause 5

- (1) The exemptions in clause 5 are subject to the conditions that—
 - (a) the acquisitions referred to in clause 5 are approved by 1 or more ordinary resolutions of PPG; and
 - (b) the parties to the acquisitions referred to in clause 5 and the trustees of the Belgrave Trust do not vote on the resolution or resolutions referred to in paragraph (a); and
 - (c) the notice of meeting containing the proposed resolution or resolutions referred to in paragraph (a) is in a form approved by the Panel and is provided to all PPG shareholders.

- (2) The exemptions in clause 5 are subject to the condition that the notice of meeting containing the proposed resolution or resolutions referred to in subclause (1)(a) contains, or is accompanied by,—
- (a) the identity of the persons who acquired and disposed of the ordinary shares; and
 - (b) particulars of the ordinary shares that were acquired, including the following information (in tabular form showing the outcome of each transaction):
 - (i) the number of ordinary shares acquired; and
 - (ii) the percentage of total voting rights in PPG that those numbers represent; and
 - (iii) the percentage of total voting rights held or controlled by the person acquiring the ordinary shares after the acquisition; and
 - (c) the consideration for each acquisition and when it was paid; and
 - (d) the reasons for each of the transactions; and
 - (e) a statement to the effect that the acquisitions, if approved, will be permitted under an exemption from rule 6(1) of the Code; and
 - (f) a statement by each of the parties who acquired ordinary shares as a result of the transactions referred to in clause 5 setting out particulars of any agreement or arrangement (whether or not legally enforceable) that has been, or is intended to be, entered into between them and any other person relating to the acquisition, holding, or control of the ordinary shares acquired, or to the exercise of voting rights in PPG; and
 - (g) either—
 - (i) a statement by the directors of PPG as to whether they recommend approval or disapproval of the acquisitions and the reasons for their decision; or
 - (ii) a statement by the directors of PPG stating that they are unable to make or are not making a recommendation and the reasons for their decision, and if any of the directors dissent from a recommendation, or abstain from making a recommendation, their names and their reasons for dissenting or abstaining.

7 Exemptions from rule 6(1) of Code

The following persons are exempted from rule 6(1) of the Code in respect of any increase in their voting control in PPG as a result of the following transactions:

- (a) the trustees of the Mark Brebner Childrens Trust in respect of the acquisition of 92 579 ordinary shares from Andrew James Durrans;
- (b) Samford Lee Maier in respect of the acquisition of 71 537 ordinary shares from the trustees of the Belgrave Trust;
- (c) the trustees of the Fresnaye Trust in respect of the acquisition of 321 053 ordinary shares from the trustees of the Belgrave Trust;
- (d) Mark Godfrey in respect of the acquisition of 2 000 ordinary shares from the trustees of the Belgrave Trust;
- (e) Annette Christina McKenzie in respect of the acquisition of 100 000 ordinary shares from the trustees of the Belgrave Trust;
- (f) the trustees of the Belgrave Trust in respect of the conversion of 1 881 916 Class A shares into ordinary shares;
- (g) Samford Lee Maier in respect of the conversion of 113 221 Class A shares into ordinary shares.

8 Conditions of exemptions in clause 7

- (1) The exemptions in clause 7 are subject to the conditions that—
 - (a) the acquisitions and allotments of ordinary shares referred to in clause 7 are approved by 1 or more ordinary resolutions of PPG; and
 - (b) the parties referred to in clause 7 do not vote on the resolution or resolutions in respect of the transaction or transactions to which they are a party; and
 - (c) the notice of meeting containing the proposed resolution or resolutions referred to in paragraph (a) is in a form approved by the Panel and is provided to all PPG shareholders.
- (2) The exemptions in clause 7 are subject to the condition that the notice of meeting containing the proposed resolution or resolutions referred to in subclause (1)(a) must contain, or be accompanied by,—

- (a) the identity of the persons acquiring, disposing of, and being allotted ordinary shares; and
- (b) particulars of the ordinary shares proposed to be acquired, including the following information (in tabular form showing the outcome of each transaction):
 - (i) the number of ordinary shares proposed to be acquired by each person as a result of each transaction; and
 - (ii) the number of ordinary shares proposed to be allotted to each person as a result of the conversion of Class A shares into ordinary shares; and
 - (iii) the total number of ordinary shares that will be held by each person acquiring or being allotted ordinary shares (calculated on the basis that the resolution or resolutions in respect of every transaction referred to in clause 7 is or are passed, and that every transaction referred to in clause 7 is completed); and
 - (iv) the maximum percentage of total voting rights in PPG that could be held by each person acquiring or being allotted ordinary shares; and
 - (v) an explanation as to how each maximum percentage referred to in subparagraph (iv) is calculated; and
- (c) the consideration for each acquisition and allotment, or the manner in which the consideration will be determined, and when it is payable; and
- (d) the reasons for each of the transactions; and
- (e) a statement to the effect that the acquisitions and allotments of ordinary shares, if approved, will be permitted under an exemption from rule 6(1) of the Code; and
- (f) a statement by each of the parties to the transactions setting out particulars of any agreement or arrangement (whether or not legally enforceable) that has been, or is intended to be, entered into between them and any other person relating to the acquisitions, allotments, holding, or control of the ordinary shares to be acquired or allotted, or to the exercise of voting rights in PPG; and
- (g) either—
 - (i) a statement by the directors of PPG as to whether they recommend approval or disapproval of the

- acquisitions and allotments and the reasons for their decision; or
- (ii) a statement by the directors of PPG stating that they are unable to make, or are not making, a recommendation and the reasons for their decision, and if any of the directors dissent from a recommendation, or abstain from making a recommendation, their names and their reasons for dissenting or abstaining.
- (3) The maximum percentage of total voting rights in PPG referred to in subclause (2)(b)(iv) must,—
- (a) in the case of Samford Lee Maier, be calculated on the basis that—
 - (i) the resolution or resolutions in respect of the transactions referred to in clause 7(a) to (e) and (g) is or are passed, and that the transactions referred to in clause 7(a) to (e) and (g) are completed; but
 - (ii) the resolution in respect of the transaction referred to in clause 7(f) is not passed:
 - (b) in the case of the trustees of the Belgrave Trust, be calculated on the basis that—
 - (i) the resolution or resolutions in respect of the transactions referred to in clause 7(a) to (f) is or are passed, and that the transactions referred to in clause 7(a) to (f) are completed; but
 - (ii) the resolution in respect of the transaction referred to in clause 7(g) is not passed:
 - (c) in the case of any other person referred to in clause 7, be calculated on the basis that—
 - (i) the resolution or resolutions in respect of the transactions referred to in clause 7(a) to (e) is or are passed, and that the transactions referred to in clause 7(a) to (e) are completed; but
 - (ii) the resolution or resolutions in respect of the transactions referred to in clause 7(f) and (g) is not or are not passed.

Dated at Auckland this 29th day of July 2005.

The Common Seal of the Takeovers Panel was affixed in the presence of:

[L.S.]

J. C. King,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 31 March 2005.

Pacific Print Group Limited (**PPG**) has approximately 20 shareholders, all of whom are currently associates for the purposes of the Takeovers Code (the **Code**). All current shareholders are either current or former employees of PPG who have sold a business to the company or are close business associates. All shareholders are also parties to some form of shareholders' agreement. As all current PPG shareholders are associates, at the present time no shareholder would be permitted to vote on a resolution for approval of the acquisition or allotment of shares under rule 7(c) of the Code by virtue of the operation of rule 17 of the Code.

The Takeovers Panel (the **Panel**) has granted—

- retrospective exemptions to 5 shareholders of PPG in respect of apparent breaches of the Code; and
- exemptions to a number of parties who propose to increase their percentage of voting rights in PPG, either by the acquisition of ordinary shares or the conversion of Class A shares into ordinary shares.

The 2 types of exemptions granted are discussed separately below.

Retrospective exemptions

On or about 31 March 2005, 5 separate parties acquired parcels of shares in PPG from ANZ National Bank Limited and the trustees of a trust known as the Printers Trust. At the conclusion of the transactions the 5 purchasers in aggregate held 43.25% of the voting rights in PPG but no one shareholder held more than 20%. The 5 purchasers and their advisers apparently believed that the transactions would not breach the Code because each individual shareholder would hold

no more than 20% of the voting rights in PPG. However, the 5 purchasers are associates for the purposes of the Code.

PPG asked the Panel to grant exemptions in respect of the apparent breaches by the 5 purchasers rather than taking enforcement action.

The Panel decided that before it would consider whether retrospective exemptions would be appropriate, it needed to gauge the views of PPG shareholders who were not involved with the transactions involving the 5 purchasers. Accordingly, the Panel appointed a barrister who prepared a report for those uninvolved shareholders. The barrister obtained the views of each shareholder on the transactions and reported back to the Panel. The uninvolved shareholders were supportive of some form of exemption for the 5 purchasers.

After considering the views of uninvolved shareholders, the Panel decided to grant exemptions to the 5 purchasers from rule 6(1) of the Code in respect of the recent acquisitions, subject to the condition that the acquisitions are approved by an ordinary resolution of PPG shareholders and PPG shareholders are provided with a notice of meeting in respect of that proposed resolution containing all of the information that would be required in respect of an acquisition under rule 7(c) of the Code with the exception of an independent adviser's report.

The Panel considers that the exemptions from rule 6(1) of the Code in respect of the recent acquisitions by the 5 purchasers are appropriate and consistent with the objectives of the Code because—

- the conditions of the exemptions require that shareholders of PPG not involved in the transactions involving the 5 purchasers approve the transactions in the same manner that shareholders approve transactions for the purposes of rule 7(c) of the Code:
- shareholders of PPG not involved in the transactions involving the 5 purchasers expressed their support to an independent legal adviser appointed by the Panel for the grant of exemptions by the Panel:
- if a sell-down or reversal of the transactions not carried out in compliance with the Code was required, it would be likely that a meeting under rule 7(c) of the Code and some form of exemption would be required in respect of the purchase of those shares by another party or the repurchase of those shares by the 5 purchasers.

Exemptions in respect of proposed transactions

A number of parties propose to enter into transactions that would involve the allotment or acquisition of PPG ordinary shares.

The Panel considers that exemptions from rule 6(1) of the Code in respect of these proposed transactions are appropriate because all current shareholders of PPG are associates for the purposes of the Code and, as such, the mechanisms provided in the Code for approval of increased shareholdings through the transfer or allotment of shares are unworkable in respect of the proposed acquisition.

The Panel considers that the exemptions from rule 6(1) of the Code are consistent with the objectives of the Code because—

- shareholders of PPG not involved in the proposed acquisitions or allotments will have the opportunity to approve the proposed transactions; and
- the exemptions maintain a proper relation between the costs of complying with the Code and the benefits resulting from it.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 4 August 2005.

This notice is administered by the Takeovers Panel.
