



TAKEOVERS PANEL
TE PAE WHITIMANA

Takeovers Code (Fulton Hogan Limited) Exemption Notice 2023

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 (Fulton Hogan Limited) Exemption Notice 2023.

2 Application

This notice applies to acts or omissions occurring on or after 1 October 2023.

3 Expiry

This notice expires on the close of 31 October 2028.

4 Interpretation

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

Act means the Takeovers Act 1993

annual report includes any concise annual report

approved maximum buyback number, in relation to a buyback, means the maximum number of voting securities that the Company could acquire under the buyback

buyback means an acquisition by the Company, in accordance with its constitution, of its own voting securities under the Company's buyback programme or under the terms of the employee share scheme

buyback period, in relation to a buyback, means the period—

- (a) starting on the date of the meeting that approves the buyback; and
- (b) ending on the close of 31 October 2028

calculation date means, in relation to -

- (a) a buyback, the date referred to in clause 6(b)(vii) and identified in, or in information accompanying, the notice of meeting containing the proposed resolution to approve the buyback; and
- (b) an employee share scheme allotment, the date referred to in clause 9(c)(viii) and identified in, or in the information accompanying, the notice of meeting containing the proposed resolution to approve that allotment

as the context requires

Code means the Takeovers Code under the Act

Company means Fulton Hogan Limited

constitution means the constitution of the Company, as that constitution may be amended or replaced from time to time

employee share scheme allotment means an allotment of voting securities under the employee share scheme

employee share scheme means the scheme operated and administered by the Company under which selected employees or officers of the Company, and of its subsidiary companies, may from time to time be provided with an opportunity to be allotted voting securities, whether or not in lieu of all or part of their annual cash performance bonus, as that scheme may be amended or replaced from time to time

Fulton family means all persons who are—

- (a) descendants, naturally or by virtue of any adoption order, of Julius Herbert Fulton and Dorothy May Fulton, or the spouse of any of those persons; or
- (b) beneficiaries in the estate of Morice Henderson Law

Fulton family shareholders means every person who—

- (a) is a member of the Fulton family; or
- (b) represents an interest of a member of the Fulton family, including—
 - (i) the trustees of a trust; and
 - (ii) any company; and
 - (iii) a personal representative

which represents such interest

Fulton/Hogan family shareholders' group, family shareholders' group and group means each of the following:

- (a) the Fulton family shareholders;
- (b) the Hogan family shareholders

Hogan family means all persons who are descendants, naturally or by virtue of any adoption order, of Robert Hogan and Margaret Catherine Hogan, or the spouse of any of those persons

Hogan family shareholders means every person who—

- (a) is a member of the Hogan family; or
- (b) represents an interest of a member of the Hogan family, including—
 - (i) the trustees of a trust; and
 - (ii) any company; and
 - (iii) a personal representative

which represents such interest

intra-family transfer means the transfer of voting securities from a person in a Fulton/Hogan family shareholders' group to another person in that family shareholders' group, as permitted under the exception to the pre-emptive rights on transfer provisions in the constitution

other-means increase means an increase in voting control in the Company that is not made in reliance on this notice

Panel means the Takeovers Panel

spouse, in relation to a person (**A**), means-

- (a) A's husband or wife:
- (b) a person who lived together with A as a couple for more than 3 years:
- (c) a person who was formerly in a relationship with A of the type referred to in paragraph (a) or (b) immediately above:
- (d) a person who was cohabitating with A at the time of A's death

transfer, in relation to an intra-family 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 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 the 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.
- (4) Terms defined in other provisions of this notice have the meanings given unless the context otherwise requires.

Buybacks

5 Exemption from rule 6(1) of Code in respect of buybacks increasing voting control of Fulton/Hogan family shareholders

Each person in a Fulton/Hogan family shareholders' group is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from a buyback.

6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the conditions that—

- (a) a buyback effected in reliance on this notice must be approved by an ordinary resolution of the shareholders of the Company in respect of each family shareholders' group; and
- (b) the notice of meeting containing the proposed resolutions to approve the buyback to be effected in reliance on this notice must contain, or be accompanied by, the following:
 - (i) full particulars of the buyback:
 - (ii) the following particulars of the voting securities that may, if the resolution is carried, be acquired by the Company under the buyback:

- (A) the approved maximum buyback number:
- (B) the percentage of all voting securities on issue that the approved maximum buyback number represents:
- (iii) the consideration for the buyback, or the manner in which the consideration would be determined, and when it would be payable:
- (iv) a statement of the reasons for the buyback:
- (v) a statement by the directors of the Company, in relation to the buyback, that complies with rule 19 of the Code as if the reference in that rule to an acquisition under rule 7(c) of the Code were a reference to the buyback:
- (vi) the assumptions on which the particulars referred to in clause 6(b)(ii) are based, which must include the assumptions referred to in clause 6(c):
- (vii) the calculation date:
- (viii) a summary of the terms and conditions of the exemption in clause 5; and
- (c) the following assumptions must be applied for the purposes of providing the particulars of voting securities, as specified in clause 6(b)(ii):
 - (i) that the number of voting securities on issue is the number of voting securities on issue on the calculation date:
 - (ii) that there is no change in the total number of voting securities on issue between the calculation date and the end of the buyback period, other than as a result of the buyback:
 - (iii) that the Company acquires the approved maximum buyback number of its voting securities:
 - (iv) any other assumptions that are reasonably necessary to ensure that shareholders in the Company are provided with the material information required for them to be able to determine whether to approve the resolutions; and
- (d) the notice of meeting, or the accompanying information, displays, in a prominent position, a disclaimer stating that, by granting the exemptions contained in this notice, the Panel is -
 - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting or the accompanying information; and
 - (ii) not implying it has a view on the merits of the proposed buyback; and
- (e) the form of the notice of meeting is approved by the Panel; and
- (f) at the same time that the notice of meeting is sent to shareholders of the Company, the Company must send to the Panel a copy of the notice and any documents accompanying it that relate to the meeting; and
- (g) every annual report of the Company issued during the buyback period must include the following matters, in a prominent position:

- (i) a summary of the terms and conditions of the exemption in clause 5 and its effect;
 - (ii) a summary of the terms of the buyback, as approved at the meeting at which shareholder approval of the buyback was given; and
 - (iii) a statement, as at the end of the financial year to which the report relates, of the number of voting securities acquired by the Company under the buyback; and
- (h) following the issue of the first annual report during the buyback period and up to the issue of the first annual report after the end of the buyback period, the Company must disclose on its Internet site the information required under clauses 6(g)(ii) and (iii) to be disclosed in an annual report.

7 Further conditions of exemption in clause 5 in relation to each Fulton/Hogan family shareholders' group

The exemption in clause 5 is subject to the further conditions that—

- (a) no person in a Fulton/Hogan family shareholders' group, nor any associate of a person in a Fulton/Hogan family shareholders' group, may vote in favour of a resolution concerning a buyback that relates to an increase in the voting control of the persons in either family shareholders' group; and
- (b) the notice of meeting containing the proposed resolution to approve the buyback must contain, or be accompanied by, the following:
 - (i) a description of the persons in that family shareholders' group whose increase in voting control would result, or could result, from the buyback;
 - (ii) the maximum percentage (the **approved maximum percentage**) of all voting securities on issue that the persons in that family shareholders' group could hold or control, in aggregate, if the Company acquired the approved maximum buyback number of voting securities;
 - (iii) the maximum percentage (the **approved maximum percentage with associates**) of all voting securities on issue that the persons in that family shareholders' group, and the associates of those persons, could hold or control, in aggregate, if the Company acquired the approved maximum buyback number of voting securities;
 - (iv) a statement that the increase in the voting control of the persons in that family shareholders' group that could result from the buyback, if approved, would be permitted as an exception to rule 6(1) of the Code in reliance on the exemption in clause 5 of the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2023;
 - (v) a report from an independent adviser, in relation to the increase in the voting control of the persons in that family shareholders' group that could result from the buyback, that complies with rule 18 of the Code as if references in that rule to -
 - (A) an acquisition under rule 7(c) of the Code were references to the buyback from the persons in that group; and

- (B) a notice of meeting were references to the notice of meeting referred to in this clause 7(b):
- (vi) the assumptions on which the particulars referred to in clauses 7(b)(ii) and (iii) are based, including –
 - (A) that none of the persons in that family shareholders' group participate in the buyback; and
 - (B) the assumptions referred to in clause 6(c); and
- (c) if the Company, or a person in that family shareholders' group, publishes, or sends to shareholders of the Company, a statement or information that relates to the meeting but that was not required by the Code, or by this notice, to be published or sent, that person must, at the same time, send to the Panel a copy of that statement or information; and
- (d) every annual report of the Company issued during the buyback period must include the following matters, in a prominent position:
 - (i) a statement, as at the end of the financial year to which the report relates, of -
 - (A) the number of voting securities on issue that are held or controlled, in aggregate, by the persons in that family shareholders' group, and the percentage of all voting securities on issue that that number represents:
 - (B) the percentage of all voting securities on issue that are held or controlled, in aggregate, by the persons in that family shareholders' group and the associates of those persons:
 - (C) the maximum percentage of all voting securities on issue that the persons in that family shareholders' group could hold or control, in aggregate, if the Company acquires the approved maximum buyback number of voting securities:
 - (D) the maximum percentage of all voting securities on issue that the persons in that family shareholders' group, and the associates of those persons, could hold or control, in aggregate, if the Company acquires the approved maximum buyback number of voting securities:
 - (ii) a statement of the assumptions on which the particulars referred to in clause 7(d)(i) are based; and
- (e) following the issue of the first annual report during the buyback period and up to the issue of the first annual report after the end of the buyback period, the Company must disclose on its Internet site the information required under clause 7(d) to be disclosed in an annual report; and
- (f) during the buyback period and up to the issue of the first annual report after the end of the buyback period, the Company must -
 - (i) announce on its Internet site any aggregate increase of 1% or more in the voting securities held or controlled, in aggregate, by the persons in that

- family shareholders' group since the date of the last disclosure under this clause 7(f)(i) (or clause 7(f)(i) of the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2018) or, where no prior disclosure has been made, since the date of the first aggregate increase of 1% or more in the voting securities held or controlled, in aggregate, by the persons in that group; and
- (ii) maintain every such announcement on its Internet site in a prominent position; and
- (g) an announcement referred to in clause 7(f)(i) must be made as soon as the Company is aware, or ought to be aware, that the relevant increase has occurred; and
 - (h) during the buyback period, the persons in that family shareholders' group must not increase the aggregate voting control of the group, or the voting control of any person in the group, by way of an other-means increase unless the other-means increase is -
 - (i) by an acquisition of voting securities approved in accordance with rule 7(c) of the Code; or
 - (ii) by an allotment of voting securities approved in accordance with rule 7(d) of the Code; or
 - (iii) permitted by another exemption granted by the Panel; and
 - (i) if the approval of the shareholders of the Company is required to an other-means increase under clause 7(h)(i) or (ii), the notice of meeting containing the resolution to approve the other-means increase must contain or be accompanied by the following:
 - (i) a summary of the terms of the buyback, as approved at the meeting at which shareholder approval of the buyback was given:
 - (ii) a statement, as at the date of the notice of meeting, of the following particulars:
 - (A) the number of voting securities acquired by the Company under the buyback:
 - (B) the number and percentages referred to in clause 7(d)(i):
 - (C) the maximum percentage of all voting securities on issue that the persons in that family shareholders' group could hold or control, in aggregate, after the other-means increase and the completion of the acquisition by the Company under the buyback of the approved maximum buyback number of voting securities:
 - (D) the maximum percentage of all voting securities on issue that the persons in that family shareholders' group, and the associates of those persons, could hold or control, in aggregate, after the other-means increase and the completion of the acquisition by the Company under the buyback of the approved maximum buyback number of voting securities:

- (iii) a statement of the assumptions on which the particulars referred to in clause 7(i)(ii) are based; and
- (j) if an other-means increase is approved in accordance with clause 7(h)(i) or (ii):
 - (i) the reference in clause 7(b)(ii) to the approved maximum percentage for that family shareholders' group must be taken to be a reference to the approved maximum percentage adjusted to take account of the other-means increase; and
 - (ii) the reference in clause 7(b)(iii) to the approved maximum percentage with associates for that family shareholders' group must be taken to be a reference to the approved maximum percentage with associates adjusted to take account of the other-means increase.

Employee share scheme allotments

8 Exemption from rule 6(1) of Code in respect of allotments to Fulton/Hogan family shareholders under employee share scheme

Each person in a Fulton/Hogan family shareholders' group is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from that person being allotted voting securities under the employee share scheme.

9 Conditions of exemption in clause 8 in relation to each Fulton/Hogan family shareholders' group

The exemption in clause 8 is subject to the conditions that—

- (a) the allotment under the employee share scheme to be effected in reliance on this notice (the **allotment**) must be approved by an ordinary resolution of the shareholders of the Company in respect of each family shareholders' group; and
- (b) no person in a Fulton/Hogan family shareholders' group, nor any associate of a person in a Fulton/Hogan family shareholders' group, may vote in favour of a resolution concerning the allotment; and
- (c) the notice of meeting containing the proposed resolutions to approve the allotment must contain, or be accompanied by, the following:
 - (i) the consideration per voting security for the allotment, or the manner in which the consideration would be determined, and when it would be payable;
 - (ii) a statement of the reasons for the allotment;
 - (iii) a description of the persons in that family shareholders' group whose increase in voting control would result, or could result, from the allotment;
 - (iv) the following particulars of the voting securities that may, if the resolution is carried, be allotted under the allotment:
 - (A) the maximum number of voting securities that could be allotted:

- (B) the maximum number of voting securities that could be allotted, expressed as a percentage of all voting securities on issue after the allotment:
 - (C) the maximum percentage (the **approved maximum allotment percentage**) of all voting securities on issue that the persons in that family shareholders' group could hold or control, in aggregate, if the maximum number of voting securities were allotted under the allotment:
 - (D) the maximum percentage (the **approved maximum allotment percentage with associates**) of all voting securities on issue that the persons in that family shareholders' group, and the associates of those persons, could hold or control, in aggregate, if the maximum number of voting securities were allotted under the allotment:
- (v) a statement that the increase in the voting control of the persons in that family shareholders' group that could result from the allotment, if approved, would be permitted as an exception to rule 6(1) of the Code under clause 8 of the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2023:
 - (vi) a report from an independent adviser, in relation to the increase in the voting control of the persons in that family shareholders' group that could result from the allotment, that complies with rule 18 of the Code as if references in that rule to -
 - (A) an allotment under rule 7(d) of the Code were references to the allotment; and
 - (B) a notice of meeting were references to the notice of meeting referred to in this clause 9(c):
 - (vii) a statement by the directors of the Company, in relation to the allotment, that complies with rule 19 of the Code as if the reference in that rule to an allotment under rule 7(d) of the Code were a reference to the allotment:
 - (viii) the calculation date:
 - (ix) the assumptions on which the particulars referred to in clause 9(c)(iv) are based, including that there is no change in the total number of voting securities on issue between the calculation date and the expiry of this notice, other than as a result of the allotment:
 - (x) a summary of the terms and conditions of the exemption in clause 8; and
- (d) the notice of meeting, or the accompanying information, displays, in a prominent position, a disclaimer stating that, by granting the exemptions contained in this notice, the Panel is -
 - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting or the accompanying information; and
 - (ii) not implying it has a view on the merits of the proposed allotment; and

- (e) the form of the notice of meeting is approved by the Panel; and
- (f) at the same time that the notice of meeting is sent to shareholders of the Company, the Company also sends to the Panel a copy of the notice and any documents accompanying it that relate to the meeting; and
- (g) if, the Company, or a person in that family shareholders' group, publishes, or sends to shareholders of the Company, a statement or information that relates to the meeting but is not required by the Code, or by this notice, to be published or sent, that person must, at the same time, send to the Panel a copy of that statement or information; and
- (h) every annual report of the Company issued from the year after the resolutions are passed until the expiry of this notice must include the following matters, in a prominent position:
 - (i) a summary of the terms and conditions of the exemption in clause 8 and its effect:
 - (ii) a general description of the allotment:
 - (iii) a statement, as at the end of the financial year to which the report relates, of -
 - (A) the number of voting securities already allotted under the allotment, in aggregate, to the persons in that family shareholders' group:
 - (B) the number of voting securities on issue that are held or controlled, in aggregate, by the persons in that family shareholders' group, and the percentage of all voting securities on issue that that number represents:
 - (C) the aggregate of the percentages of all voting securities on issue that are held or controlled by the persons in that family shareholder's group and the associates of those persons:
 - (D) the maximum percentage of all voting securities on issue that could be held or controlled, in aggregate, by persons in that family shareholders' group if the maximum number of voting securities were allotted under the allotment:
 - (E) the maximum aggregate of the percentages of all voting securities on issue that could be held or controlled by persons in that family shareholders' group and the associates of those persons if the maximum number of voting securities were allotted under the allotment:
 - (F) the assumptions on which these particulars are calculated; and
- (i) following the issue of the first annual report after the date of the meeting that approves the allotment and up to the issue of the first annual report after the expiry of this notice, the Company must disclose on its Internet site the information required under clauses 9(h)(ii) and (iii) to be disclosed in an annual report; and

- (j) from the date of the meeting that approves the allotment and up to the issue of the first annual report after the expiry of this notice, the Company must –
 - (i) announce on its Internet site any aggregate increase of 1% or more in the voting securities held or controlled, in aggregate, by the persons in that family shareholders' group since the date of the last disclosure under this clause 9(j)(i) (or clause 9(j)(i) of the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2018) or, where no prior disclosure has been made, since the date of the first aggregate increase of 1% or more in the voting securities held or controlled, in aggregate, by the persons in that group; and
 - (ii) maintain every such announcement on its Internet site in a prominent position; and
- (k) an announcement referred to in clause 9(j)(i) must be made as soon as the Company is aware, or ought to be aware, that the relevant increase has occurred; and
- (l) from the date of the meeting that approves the allotment until the expiry of this notice, the persons in that family shareholders' group must not increase the aggregate voting control of the group, or the voting control of any person in the group, by way of an other-means increase unless the other-means increase is –
 - (i) by an acquisition of voting securities approved in accordance with rule 7(c) of the Code; or
 - (ii) by an allotment of voting securities approved in accordance with rule 7(d) of the Code; or
 - (iii) permitted by another exemption granted by the Panel; and
- (m) if the approval of the shareholders of the Company is required to an other-means increase under clause 9(l)(i) or (ii), the notice of meeting containing the resolution to approve the other-means increase must contain or be accompanied by the following:
 - (i) a general description of the allotment, as approved at the meeting at which shareholders' approval of the allotment was given:
 - (ii) a statement, as at the date of the notice of meeting, of the following particulars:
 - (A) the number and percentages referred to in clause 9(h)(iii):
 - (B) the maximum percentage of all voting securities on issue that the persons in that family shareholders' group could hold or control, in aggregate, after the other-means increase and the allotment:
 - (C) the maximum percentage of all voting securities on issue that the persons in that family shareholders' group, and the associates of those persons, could hold or control, in aggregate, after the other-means increase and the allotment:

- (iii) a statement of the assumptions on which the particulars referred to in clause 9(m)(ii) are based; and
- (n) if an other-means increase is approved in accordance with clause 9(l)(i) or (ii):
 - (i) the reference in clause 9(c)(iv)(C) to the approved maximum allotment percentage for that family shareholders' group must be taken to be a reference to the approved maximum allotment percentage adjusted to take account of the other-means increase; and
 - (ii) the reference in clause 9(c)(iv)(D) to the approved maximum allotment percentage with associates for that family shareholders' group must be taken to be a reference to the approved maximum allotment percentage with associates adjusted to take account of the other-means increase.

Further condition of exemptions in clauses 5 and 8 for persons in Fulton/Hogan family shareholders' group

10 Further condition of exemptions in clauses 5 and 8 for persons in Fulton/Hogan family shareholders' group

The exemptions in clauses 5 and 8 are subject to the further condition that each notice of meeting prepared under the conditions for the exemptions prominently discloses, or is accompanied by prominent disclosure of, the following, calculated as at the applicable calculation date:

- (a) the maximum percentage of voting securities that could be held or controlled by each family shareholders' group as a result of the combined effect of the buyback, and employee share scheme allotment which are proposed to be approved at the relevant shareholders' meeting; and
- (b) the maximum percentage of voting securities that could be held or controlled by each family shareholders' group, and the associates of any person or persons in that family shareholders' group, as a result of the combined effect of the buyback, and employee share scheme allotment which are proposed to be approved at the relevant shareholders' meeting.

Intra-family transfers

11 Exemption from rule 6(1) of Code in respect of intra-family transfers

Each person in a Fulton/Hogan family shareholders' group is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from a transfer of voting securities to that person under an intra-family transfer.

12 Conditions of exemption in clause 11

The exemption in clause 11 is subject to the conditions that—

- (a) the maximum percentage of voting securities that may be transferred to persons in that family shareholders' group in any 12-month period under intra-family transfers is approved by an ordinary resolution of the shareholders of the Company in respect of that family shareholders' group and before any intra-family transfer to persons in that group; and

- (b) no person in a Fulton/Hogan family shareholders' group, nor any associate of a person in a Fulton/Hogan family shareholders' group, may vote in favour of a resolution approving a maximum percentage of voting securities that may be transferred to persons in either family shareholders' group under intra-family transfers; and
- (c) the notice of meeting containing the proposed resolution to approve a maximum percentage of voting securities that may be transferred to persons in that family shareholders' group under intra-family transfers must contain, or be accompanied by, the following:
 - (i) a statement of the reasons for the intra-family transfers:
 - (ii) a description of the persons in that family shareholders' group whose increase in voting control would result, or could result, from the transfer of securities, under an intra-family transfer that is to be approved by the proposed resolution:
 - (iii) particulars of the maximum percentage of voting securities that may be transferred under intra-family transfers to persons in that group in any 12-month period:
 - (iv) a statement that the increases in the voting control of the persons in that group that could result from intra-family transfers, if approved, would be permitted as an exception to rule 6(1) of the Code under clause 11 of the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2023:
 - (v) a summary of the terms and conditions of the exemption in clause 11; and
- (d) at the same time that the notice of meeting is sent to shareholders of the Company, the Company also sends to the Panel a copy of the notice and any document accompanying it that relates to the meeting; and
- (e) if the Company, or a person in that family shareholders' group, publishes, or sends to shareholders of the Company, a statement or information that relates to the meeting but is not required by the Code, or by this notice, to be published or sent, that person must, at the same time, send to the Panel a copy of that statement or information; and
- (f) the maximum percentage of voting securities that may be transferred under intra-family transfers to persons in that family shareholders' group in any 12-month period is the percentage of voting securities that carry in aggregate not more than 15% of the total voting rights in the Company at the commencement of the 12-month period; and
- (g) a transfer of voting securities that increases the voting control of a person in that family shareholders' group is not to be taken into account in determining whether the maximum percentage of voting securities permitted to be transferred by clause 12(f) has been exceeded, if the increase in voting control resulting from that transfer is exempt from rule 6(1) of the Code under any of the following:
 - (i) the Takeovers Code (Trustees of Family Trusts) Exemption Notice 2012:
 - (ii) clauses 20, 21 or 22 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001:

- (iii) any other exemption granted in respect of the Company by the Panel;
and
- (h) every annual report of the Company issued from the year after a resolution referred to in clause 12(a) is passed until the expiry of this notice contains, or is accompanied by, information prominently setting out—
 - (i) a general description of the intra-family transfers to persons in that family shareholders' group; and
 - (ii) a summary of the terms and the conditions of the exemption in clause 11 and its effect; and
 - (iii) the maximum percentage of voting securities that can be transferred under intra-family transfers to persons in that family shareholders' group in any 12-month period.

Dated at Auckland this 12th day of June 2023:

[signed]

A E Buchly
Deputy Chair

Statement of reasons

This notice applies to acts or omissions occurring on or after 1 October 2023 and expires on the close of 31 October 2028.

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

- (a) any person who is a Fulton family shareholder (as that term is defined in this notice) from rule 6(1) of the Code, subject to certain conditions, in relation to any increase in the percentage of voting securities that are held or controlled (**voting control**) by that person that results from—
 - (i) Fulton Hogan Limited (**Company**) acquiring its own voting securities under the Company's buyback programme or the terms of the Company's employee share scheme (**the buyback**);
 - (ii) allotments of voting securities under the Company's employee share scheme; and
 - (iii) transfers of voting securities between persons who are Fulton family shareholders;
- (b) any person who is a Hogan family shareholder (as that term is defined in this notice) from rule 6(1) of the Code, subject to certain conditions, in relation to any increase in that person's voting control that results from—
 - (i) the Company acquiring its own voting securities under the buyback (together with the exemptions in paragraph (a)(i), **the buyback exemptions**);

- (ii) allotments of voting securities under the Company's employee share scheme (together with the exemptions in paragraph (a)(ii), the **employee share scheme exemptions**); and
- (iii) transfers of voting securities between persons who are Hogan family shareholders (together with the exemptions in paragraph (a)(iii), the **intra-family transfer exemptions**)

(together, the **exemptions**).

The Fulton family shareholders and the Hogan family shareholders (respectively) each hold or control more than 20% of the voting securities in the Company in aggregate. It is arguable that all of the Fulton family shareholders and all of the Hogan family shareholders (respectively) are associates for the purposes of the Code. Accordingly, the exemptions were considered on the basis that all of the Fulton family shareholders and all of the Hogan family shareholders (respectively) are associates for the purposes of the Code.

Given these arguable associations, if any person who is a Fulton family shareholder or a Hogan family shareholder increases their voting control, that person would breach rule 6(1) of the Code.

The Fulton family shareholders are not associated with any of the Hogan family shareholders, and the Hogan family shareholders are not associated with any of the Fulton family shareholders. However, the conditions of the exemptions restrict each family group from voting to approve resolutions in favour of the other group in order to ensure that fully informed disinterested shareholders determine the outcome of the resolutions.

Panel's reasoning as to why the exemptions are appropriate and consistent with the Code

The Panel considers that the exemptions are appropriate and consistent with the objectives of the Code for the following reasons (in summary):

- The conditions to the exemptions require that:
 - each of:
 - the buyback;
 - the allotments under the employee share scheme to be effected in reliance on the employee share scheme exemptions; and
 - the maximum percentage of voting securities that may be transferred to persons in each shareholders' group in any 12-month period under the intra-family transfer exemptions,

is approved by shareholders other than Fulton family shareholders or Hogan family shareholders (**independent shareholders**); and

- disclosure which is broadly equivalent to what would be required if approval was sought under the Code or the Takeovers Code (Class Exemptions) Notice (No 2) 2001 (the **Class Exemptions Notice**) is provided to shareholders when the approval referred to above is sought; and
- in relation to the buyback and employee share scheme exemptions, there will be restrictions on other increases, equivalent to those which would apply to buybacks under the Class Exemptions Notice; and

- in the case of the intra-family transfer exemptions, there will be limits on the percentage of voting rights which may be transferred, setting reasonable parameters around the extent to which the exemptions may be relied on.
- The alternative to the exemptions would be identifying any associates in relation to each particular increase in voting control and seeking shareholder approval in relation to that increase. This would be a time consuming and difficult exercise. This would not be consistent with the objectives of the Code, whereas the approach facilitated by the buyback and employee share scheme exemptions would. This is because:
 - In light of the factors below, the buyback and employee share scheme exemptions would avoid significant costs and difficulties of complying with the Code or Class Exemptions Notice (as applicable) without adversely affecting shareholders' interests. Accordingly, the exemptions maintain a proper relation between the costs of compliance with the Code and the benefits resulting from it.
 - The approach facilitated by the exemptions ensures that shareholders decide for themselves the merits of the approach by independent shareholders voting on it.
 - In addition, the accompanying disclosure will ensure independent shareholders have adequate information to make an informed decision and the restrictions on further increases in voting control will mitigate against risks which might otherwise arise.
 - The net effect is that the exemptions facilitate what is, in effect, an alternative means of seeking shareholder approval than that which would apply under Code or Class Exemptions Notice (as applicable), and therefore be better suited to the specific circumstances relevant to the Company and its shareholders.

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