



TAKEOVERS PANEL
TE PAE WHITIMANA

Takeovers Code (Ruapehu Alpine Lifts 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.

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Notice

1 Title

This notice is the Takeovers Code (Ruapehu Alpine Lifts Limited) Exemption Notice 2022.

2 Application

- (1) Clauses 5 and 7 apply to acts or omissions occurring on or after 28 June 2005.
- (2) Clause 9 applies to acts or omissions occurring on or after 19 January 2022.

3 Revocation

This notice is revoked on the close of 18 January 2032.

4 Interpretation

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

acquisition transactions means the acquisition by the RAL trustees (at the relevant time) of:

- (a) 40 voting securities on or about 6 April 2006;
- (b) 11 voting securities on or about 1 April 2011; and
- (c) 3 voting securities on or about 6 March 2015

Act means the Takeovers Act 1993

Code means the Takeovers Code under the Act

forfeiture means the forfeiture by RAL of 4,277 shares on 31 July 2019

historic increases means the increases in voting control in RAL by the RAL trustees (at the relevant time) resulting from:

- (d) the acquisition transactions; and
- (e) the forfeiture

historic trustee changes means the following changes in the composition of the RAL trustees:

- (a) the retirement of Sir Roy McKenzie on or about 29 June 2005;
- (b) the appointment of Tomas Huppert on or about 29 June 2005;
- (c) the appointment of John Suffield Parker on or about 23 April 2008;
- (d) the retirement of Sir John Ingram on or about 9 March 2009;
- (e) the retirement of William Smyth Fraser on or about 12 March 2013;
- (f) the appointment of Anne-Marie Josephine Bouchier on or about 20 December 2017;
- (g) the retirement of Roger Arthur Noel Manthel on or about 6 December 2018; and
- (h) the appointment of Phillip James Royal on or about 3 November 2020

Panel means the Takeovers Panel, a Crown entity established under section 5 of the Act

RAL means Ruapehu Alpine Lifts Limited

RAL trust means the trust established by the RAL trust deed

RAL trust deed means the deed establishing the RAL trust dated 22 September 1983

RAL trustee means a trustee of the RAL trust

voting security means a voting security in RAL.

- (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 RAL.
- (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 for the trustees of the RAL Trust in respect of the historic increases

Each RAL trustee who increased their voting control in RAL as a result of a historic increase is exempted from rule 6(1) of the Code in respect of such increase.

6 Conditions of the exemption in clause 5

The exemption in clause 5 is subject to the conditions that, –

- (a) each of the historic increases is approved on or before 31 May 2022 by a majority of the shareholders of RAL, excluding the RAL trustees and their associates; and
- (b) the notice of meeting in respect of the shareholder meeting referred to in clause 6(a) is approved in writing by the Panel.

7 Exemptions from rule 6(1) of the Code in respect of the historic trustee changes

- (1) Every person who was appointed as an RAL trustee in a historic trustee change is exempted from rule 6(1) of the Code in relation to any increase in that person's voting control in RAL resulting from that appointment.
- (2) Every person who remained a RAL trustee after a historic trustee change is exempted from rule 6(1) of the Code in relation to any increase in that person's voting control in RAL resulting from that historic trustee change.

8 Conditions of the exemption in clause 7

The exemption in clause 7 is subject to the conditions, that -

- (a) each of the historic trustee changes is approved on or before 31 May 2022 by a majority of the shareholders of RAL, excluding the RAL trustees and their associates; and
- (b) the notice of meeting in respect of the shareholder meeting referred to in clause 8(a) is approved by the Panel.

9 Exemptions from rule 6(1) of the Code in respect of future trustee changes

- (1) Every person appointed as a trustee of the RAL trust on or after the date of this exemption notice is exempted from rule 6(1) of the Code in relation to any increase in that person's voting control in RAL resulting from that appointment.
- (2) Every trustee of the RAL trust is exempted from rule 6(1) of the Code in relation to any increase in that person's voting control in RAL as a result of any person ceasing to be a trustee of the RAL trust on or after the date of this exemption notice.

10 Conditions of the exemption in clause 9

The exemption in clause 9 is subject to the conditions, that -

- (a) the relevant appointment of an RAL trustee, or a person ceasing to be an RAL trustee:
 - (i) is, or is part of, a bona fide reorganisation of the RAL trust; or
 - (ii) is the result of an event beyond the control of the trustees of the RAL trust; and
- (b) the relevant appointment of an RAL trustee, or a person ceasing to be an RAL trustee, does not have the collateral purpose of increasing the voting control in RAL of any RAL trustee; and

- (c) the relevant appointment of an RAL trustee, or a person ceasing to be an RAL trustee, occurs prior to the date of distribution provided for in the RAL trust deed.

Dated at Auckland this 19th day of January 2022

[signed]

R A Coupe
Chair

Statement of Reasons

Clauses 5 and 7 of this notice apply to certain acts or omissions occurring on or after 28 June 2005.

Clause 9 of this notice applies to certain acts or omissions occurring on or after 19 January 2022.

This notice expires on the close of 18 January 2032.

Introduction

Ruapehu Alpine Lifts (**RAL**) is an unlisted Code company.

The RAL Trust (the **Trust**) was constituted by the RAL trust deed (the **RAL Trust Deed**) in 1983 to protect the public benefit interests of RAL and its shareholders. The trustees of the RAL Trust (the **Trustees**) currently hold or control 55.16% of the voting rights in RAL.

RAL and the Trust are both charitable entities within the meaning of the Statute of Elizabeth 1605.

The Takeovers Panel (the **Panel**) has granted exemptions from rule 6(1) of the Takeovers Code (the **Code**) in respect of, -

- any increase in the Trustees' voting control that resulted from certain historic transfers of voting securities;
- any increase in the Trustees' voting control that resulted from a forfeiture of voting securities;
- any increase in in the Trustees' voting control that resulted from certain historic changes of the Trustees; and
- any future increase in a Trustee's voting control as a result of becoming a Trustee or a reduction in the number of Trustees.

Historic transactions

Between 2005 and 2020:

- a number of transfers of RAL shares took place that resulted in the Trustees increasing their voting control in breach of the Code (the **Historic Transfers**);
- a forfeiture of RAL shares occurred which resulted in the Trustees increasing their voting control in breach of the Code (the **Forfeiture Increase**); and
- a number of changes in the composition of the Trustees occurred that may have contravened the Code (the **Historic Trustee Changes**).

In the absence of an exemption, the relevant Trustees would remain in breach of the Code in respect

of the Historic Transfers, Forfeiture Increase and Historic Trustee Changes.

The Panel considered that it was appropriate and consistent with the objectives of the Code to grant the exemption in respect of the Historic Transfers, Forfeiture Increase and Historic Trustee Changes because, -

- there is precedent for the exemption;
- any contraventions of the Code that resulted from the Historic Transfers, Forfeiture Increase and Historic Trustee Changes were inadvertent;
- an exemption is the only mechanism to ratify historic transactions for Code compliance; and
- the non-associated shareholders of RAL will have the opportunity to vote on whether the Trust and the Trustees can rely on the exemption. This ensures that RAL shareholders are treated fairly and are given the right to decide for themselves whether the Trust may retain the increases in voting control resulting from the Historic Transfers, Forfeiture Action and Historic Trustee Changes in reliance on the exemption.

Future trustee changes

An appointment as a Trustee will cause a person to increase their voting control if they join other Trustees, in the holding or control of voting rights in RAL, as associates under rule 6(2)(b) of the Code. A reduction in the number of Trustees will cause the remaining Trustees to increase the extent to which they share in the voting control of RAL under rule 6(2)(c) of the Code.

The exemption from rule 6(1) of the Code exempts any person who increases their voting control in RAL as a result of their appointment as a Trustee or as a result of another person ceasing to be a Trustee.

The conditions of the exemption are designed to ensure that the underlying purpose of the Code is still fulfilled. Accordingly, the exemption applies only if -

- the change of trustees is, or is part of, a bona fide reorganisation of the Trust, or results from an event beyond the Trustees' control;
- the increase in voting control is not a collateral purpose of the change; and
- the appointment or reduction of trustees occurs prior to the date of distribution provided for in the RAL Trust Deed.

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

- the shareholders of RAL would not be disadvantaged by not having the opportunity to vote on the appointment of a trustee or a reduction in the number of trustees because changes in trustees do not increase the voting control of the trustees as a group, and would not have a real effect on those shareholders;
- every trustee of the Trust who exercises control over voting rights in a code company in their capacity as a trustee is subject to the duties and obligations arising under the trust deed or other rules governing that trust and at law;
- the exemption only applies if the appointment of a new trustee or a reduction in the number of trustees relates to a reorganisation of the trust, or an event outside the control of the trustees; and
- an exemption would encourage efficient allocation of resources. Absent an exemption, the costs of compliance are not proportionate to the benefits resulting from it.

Date of Notification in the *Gazette*: 27 January 2022
