

## Takeovers Code (Trustpower Limited Demerger) Exemption Notice 2016

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 (Trustpower Limited Demerger) Exemption Notice 2016.

#### 2 Application

This notice applies to acts or omissions occurring on or after 1 July 2016.

#### 3 Expiry

This notice expires on the close of 31 March 2017.

#### 4 Interpretation

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

**Act** means the Takeovers Act 1993

**Bay Energy** means Bay Energy Limited (company number 565426)

**BEL shares** means shares in Bay Energy

**Code** means the Takeovers Code under the Act

**demerger** means the scheme of arrangement relating to Trustpower in relation to which an application will be made to the High Court of New Zealand under sections

236(1) and 237(1) of the Companies Act 1993 which includes the in specie distribution

**distribution** includes transfer

**Infratil parties** means Infratil Limited (company number 597366), Renew Nominees Limited (company number 1143115), Infratil Energy Limited (company number 1879416), Infratil Energy New Zealand Limited (company number 691537), Infratil Investments Limited (company number 604956), Infratil 1998 Limited (company number 914153), Morrison & Co Infrastructure Management Limited (company number 1067093) and H.R.L. Morrison & Co Group Limited Partnership (registration number 2593342)

**in specie distribution** means the in specie distribution of the BEL shares and TANZL shares held by Trustpower to the shareholders of Trustpower, as part of the demerger and as described in the scheme booklet

**KCEHL** means King Country Energy Holdings Limited (company number 5839738)

**KCEL** means King Country Energy Limited (company number 489614)

**scheme booklet** means the booklet to be sent to shareholders of Trustpower containing, among other things, information concerning the demerger and the notice of meeting of shareholders to approve the demerger

**TANZL** means Trustpower Australia (New Zealand) Limited (company number 1212113)

**TANZL shares** means shares in TANZL

**TECT** means the Tauranga Energy Consumer Trust established by deed of trust dated 21 December 1993

**TECT parties** means TECT Holdings Limited (company number 1893968) and the trustees from time to time of TECT

**Trustpower** means Trustpower Limited (company number 604040)

**upstream parties** means the TECT parties and the Infratil parties.

- (2) In this notice, a reference to a person increasing voting control of a company or companies is a reference to the person becoming the holder or controller of an increased percentage of voting rights in that company or those companies.
- (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 Exemption from rule 6(1) of the Code in respect of upstream parties**

Each of the upstream parties is exempted from rule 6(1) of the Code in respect of the increase of its voting control of Bay Energy and TANZL as a result of the in specie distribution.

## **6 Exemption from rule 6(1) of the Code in respect of Bay Energy**

Bay Energy is exempted from rule 6(1) of the Code in respect of the increase in its voting control of KCEL as a result of the transfer to Bay Energy of the shares in KCEHL as part of the demerger.

## 7 Condition

The exemptions in clauses 5 and 6 are subject to the condition that the High Court of New Zealand makes orders under sections 236(1) and 237(1) of the Companies Act 1993 making the demerger binding.

Dated at Auckland this 24th day of June 2016.

[signed]

R A Coupe,  
Deputy Chairperson.

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### Statement of reasons

This notice applies to acts or omissions occurring on or after 1 July 2016 and expires on 31 March 2017.

A scheme of arrangement (the **scheme**) has been proposed under which –

- Trustpower Limited (**Trustpower**) will be demerged into two of its existing wholly-owned subsidiaries (Bay Energy Limited (**Bay Energy**) and Trustpower Australia (New Zealand) Limited (**TANZL**)), and then liquidated; and
- the shareholders in Trustpower on the record date will receive 1 ordinary share in TANZL and 1 ordinary share in Bay Energy by way of an in specie distribution for each share they hold in Trustpower (**in specie distribution**); and
- TANZL and Bay Energy will be listed on the NZX Main Board as part of the demerger and prior to the in specie distribution (and will, therefore, be Code companies at the time of that distribution); and
- Infratil Limited, Renew Nominees Limited, Infratil Energy Limited, Infratil Energy New Zealand Limited, Infratil Investments Limited, Infratil 1998 Limited, Morrison & Co Infrastructure Management Limited, H.R.L Morrison & Co Group Limited Partnership (the **Infratil parties**), and TECT Holdings Limited and the trustees of the Tauranga Energy Consumer Trust (the **TECT parties**), will hold or control more than 20% of the voting rights in each of Bay Energy and TANZL as a result of the in specie distribution (as they currently hold or control more than 20% of the voting rights in Trustpower); and
- Trustpower's shareholding in King Country Energy Holdings Limited (**KCEHL**), which holds more than 20% of the voting rights in the Code

company King Country Energy Limited (**KCEL**), will be transferred to Bay Energy (the **acquisition**).

An application is to be made to the High Court of New Zealand under sections 236(1) and 237(1) of the Companies Act 1993 for an order making the scheme binding.

The Takeovers Panel (the **Panel**) has granted an exemption for the Infratil parties and the TECT parties from rule 6(1) of the Code in respect of any increase in voting control in Bay Energy and TANZL resulting from in specie distribution under the scheme.

The Panel considers it is appropriate and consistent with the objectives of the Code to grant this exemption from the Code because –

- acquiring voting rights in Bay Energy and TANZL is required to give effect to the scheme; and
- the exemption overcomes a technical difficulty that occurs due to the timing of Bay Energy and TANZL becoming Code companies, and no shareholder would be prejudiced by the exemption.

The Panel has also granted an exemption for Bay Energy from rule 6(1) of the Takeovers Code (the **Code**) in respect of any increase in its voting control in KCEL resulting from the acquisition by Bay Energy of KCEHL in accordance with the scheme.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant this exemption from the Code because –

- acquiring control of the voting rights in KCEL would not reasonably be regarded as a significant purpose of Bay Energy's acquisition of KCEHL; and
- complying with the Code in respect of the acquisition would be impracticable and impose significant compliance costs on KCEL; and
- the exemption is consistent with the Panel's policy for exemptions in respect of upstream acquisitions; and
- the exemption overcomes a technical difficulty related to the scheme that may, in any case, be covered by clause 25 of the *Takeovers Code (Class Exemption) Notice (No 2) 2001*.