

COVID-19 Exemption Relief for Capital Raising

Takeovers Panel announces temporary class exemptions to assist Code companies to raise capital

On 10 April 2020 a suite of temporary class exemptions granted by the Takeovers Panel will come into effect. The exemptions are set out in the Takeovers Code (Facilitation of Capital Raising in Response to COVID-19) Exemption Notice 2020 and have been granted to address the impact of COVID-19. The Takeovers Panel acknowledges that a number of Code companies are under financial pressure due to rapidly changing economic conditions, and the relief is intended to make it quick and easy for shareholders to provide additional capital to those companies.

While the exemptions will only apply to capital raisings that are completed by 31 October 2020, the Takeovers Panel has indicated that if the current unprecedented circumstances persist, extensions or alternative relief may be granted.

The COVID-19 Exemptions include three "10% Increase Exemptions" which allow shareholders to increase their holding into and within the 20% to 50% control zone. Provided the increases do not exceed an additional aggregate 10% above what would be permitted under the Code, the increases can be retained and voted.

The 10% Increase Exemptions comprise:

- General Increase Exemption which permits an aggregate increase of voting control of 10% in addition to that which is allowed under the Code;
- Rights Offer Exemptions (in relation to allotments of voting securities under pro rata offers) which grant relief in addition to relief offered under the Takeovers Code (Class Exemptions) Notice (No 2) 2001; and
- Pro Rata Underwriter Exemption for persons underwriting pro rata offers (this is not limited to

professional underwriters and allows shareholders to underwrite).

Any increases above the 10% cap are temporary only and are conditional on the excess control percentage being reduced within 24 months and the voting rights relating to the excess control percentage not being exercised.

In general, if a person increases their voting control in reliance on one of the 10% Increase Exemptions and that person's associate also increases their voting control, then those persons must, in aggregate, comply with the control reduction and voting restriction conditions.

While more than one 10% Increase Exemption can be relied on in respect of an offer, there is a maximum aggregate amount depending on the circumstances by which voting control can be increased before encountering control reduction requirements and voting restrictions.

The final COVID-19 Exemption is an exemption for professional underwriters which provides additional relief to that set out in the Takeovers Code (Professional Underwriters) Exemption Notice 2004. Professional underwriters may rely on this exemption if they and their associates hold or control 20% or less of the voting rights (as opposed to the usual 5%). They are permitted 24 months to reduce their control percentage (as opposed to the usual 6 months).

In addition to the control reduction and voting conditions, there are a number of other general conditions that apply to the COVID-19 Exemptions. Given applying the various conditions will be complex, the Takeovers Panel has released some examples to demonstrate how the conditions work (refer Appendix A of the Takeovers Code COVID-19 Exemptions Guidance Note).

Acknowledging that the COVID-19 Exemptions are unusual (but appropriate in the circumstances), the

COVID-19 Exemption Relief for Capital Raising (Continued)

Takeovers Panel has said that it will carefully monitor compliance.

The Panel will not tolerate investors looking to take inappropriate advantage of the COVID-19 Exemptions. Companies seeking to rely on the COVID-19 Exemptions should seek legal advice.

Want to know more?

If you have any questions about COVID-19 Exemption Relief, please contact our specialist [Corporate Law](#) Team.