

IN THIS SECTION

TAKEOVERS CODE (PIKE RIVER COAL LIMITED) EXEMPTION NOTICE 2009

2009/150

Takeovers Code (Pike River Coal Limited) Exemption Notice 2009

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](#)
2. [Application](#)
3. [Expiry](#)
4. [Interpretation](#)
5. [Exemption from rule 7\(d\) of Code](#)
6. [Exemption from rule 16\(b\) of Code](#)
7. [Conditions of exemptions relating to notice of meeting](#)
8. [Condition of exemptions relating to Pike River's annual report](#)
9. [Application of exemption in clause 5](#)

Notice

- Title**
- 1** This notice is the Takeovers Code (Pike River Coal Limited) Exemption Notice 2009.
- 2 Application**
This notice applies to acts or omissions occurring on or after the date that it is signed under seal.
- 3 Expiry**
This notice expires on the close of 31 May 2011
- 4 Interpretation**
- (1) In this notice, unless the context otherwise requires,-
- 2009 option** means an option held by NZOG Services Limited-
- a. pursuant to equity subscription agreements dated 20 September 2005 and 12 June 2006; or
 - b. as a result of a subdivision of an option referred to in paragraph (a) before the IPO (within the meaning of those terms in the Takeovers Code (Pike River Coal Limited) Exemption Notice 2007)

2011 options means the options issued pursuant to the renounceable rights issue carried out by Pike River under a short form prospectus and investment statement dated 16 March 2009, which entitle the holder to subscribe for 1 new ordinary share in Pike River for \$1.25 at any time

- [Who we are](#)
- [What's new](#)
- [Takeovers Code](#)
- [Legislation](#)
- **Exemptions**
- [Publications](#)
- [Articles](#)
- [Sitemap](#)
- [Home](#)

Search

Disclaimer

until 5pm on 24 April 2011

Act means the Takeovers Act 1993

Code means the Takeovers Code under the Act

convertible bonds means the convertible bonds issued by Pike River to Liberty Harbor LLC on 12 March 2008, which entitle the holder of the bonds to be allotted ordinary shares in Pike River on the conversion of the bonds at any time during the 3-year term of the bonds

meeting means the meeting of the shareholders of Pike River that is to be held in or about May 2009 to consider whether to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities to NZOG on the exercise of its 2011 options

notice of meeting means the notice of meeting to be sent to the shareholders of Pike River in respect of the meeting

NZOG means New Zealand Oil & Gas Limited, and includes each of its wholly owned subsidiaries

Pike River means Pike River Coal Limited

voting security means an ordinary share in Pike River.

- (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 Pike River.
- (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 7(d) of Code

NZOG is exempted from rule 7(d) of the Code in respect of any increase in its voting control as a result of the allotment of voting securities to it on the exercise of its 2011 options, to the extent that rule 7(d) requires the notice of meeting to comply with rule 16(b) of the Code.

6 Exemption from rule 16(b) of Code

Pike River is exempted from rule 16(b) of the Code in respect of the notice of meeting.

7 Conditions of exemptions relating to notice of meeting

- (1) The exemptions in clauses 5 and 6 are subject to the condition that the notice of meeting contains, or is accompanied by, the following:
 - a. the maximum number of voting securities that could be allotted to NZOG on the exercise of all of its 2009 options and 2011 options; and
 - b. the maximum number of voting securities that could be allotted to NZOG on the exercise of all of its 2009 options and 2011 options, expressed as a percentage of the total voting securities on issue after that allotment of voting securities; and
 - c. the maximum percentage of the total voting securities on issue that could be held or controlled by NZOG after the allotment of voting securities on the exercise of all of its 2009 options and 2011 options; and
 - d. the maximum percentage of the total voting

- securities on issue that could be held or controlled by NZOG and its associates after the allotment of voting securities on the exercise of all of their 2009 options and 2011 options; and
 - e. full particulars of the terms and conditions of the 2009 options and the 2011 options; and
 - f. a summary of the terms and conditions of the exemptions granted to Pike river and NZOG by this notice.
- (2) The numbers and percentages referred to in subclause (1) must be calculated on the basis that NZOG exercises all of its 2009 options and 2011 options, but no other holders of 2009 options or 2011 options or convertible bonds exercise those options or convert those securities.
- (3) The exemptions in clauses 5 and 6 are subject to the conditions that-
- a. the notice of meeting displays, in a prominent position, a disclaimer stating that by exempting NZOG from rule 7(d) of the Code, and Pike River from rule 16(b) of the Code, the Takeovers Panel is-
 - i. neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting; and
 - ii. not implying that it has a view on the merits of the proposed issue of voting securities to NZOG on exercise of the 2009 options or 2011 options; and
 - b. the form of the notice of meeting is approved by the Takeovers Panel.

8 Condition of exemptions relating to Pike River's annual report

The exemptions in clauses 5 and 6 are subject to the condition that every annual report issued by Pike River until the expiry of the 2011 options discloses, in a form approved by the Panel,-

- a. a summary of the terms and conditions of the 2011 options; and
- b. a summary of the terms and conditions of the exemptions granted to Pike River and NZOG by this notice; and
- c. a statement, as at the end of the financial year to which the annual report relates, of the following:
 - i. the number of shares allotted NZOG on the exercise by NZOG of 2011 options; and
 - ii. the total percentage of the voting rights on issue held or controlled by NZOG and its associates (both individually and in aggregate); and
 - iii. the maximum percentage of voting rights that could be held or controlled by NZOG and its associates on the exercise of the 2011 options.

9 Application of exemption in clause 5

If any of the following events occurs before the last allotment of shares pursuant to the exercise of the 2011 options, the exemption in clause 5 does not apply after the occurrence of that event:

- a. there is an increase in NZOG's voting control, except as a result of the exercise of 2009 options or 2011 options or as a result of an increase in voting control in accordance with clause 10 of the Takeovers Code (Class Exemptions) Notice (No2) 2001; or
- b. there is a change in the effective control of NZOG; or
- c. the total percentage of voting securities held or controlled by NZOG and its associates is greater than the maximum percentage disclosed in the notice of meeting under clause 7(1)(d).

Dated at Auckland this 19th day of May 2009.

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

David Jones
Chairman

Statement of reasons

This notice applies to acts or omissions occurring on or after the date that it is signed under seal and expires on 31 May 2011.

The Takeovers Panel (the **Panel**) has granted exemptions for-

- New Zealand Oil & Gas Limited, and all of its wholly owned subsidiaries, (**NZOG**) from rule 7(d) of the Takeovers Code (the **Code**) to the extent that rule 7(d) requires the notice of meeting to be in accordance with rule 16(b) of the Code. The exemption from rule 7(d) is in respect of any increase in NZOG's voting control as a result of the allotment of voting securities to it under the exercise of 2011 options; and
- Pike River Coal Limited from rule 16(b) of the Code in respect of the notice of meeting.

The Panel considers that the granting of the exemptions from rules 7(d) and 16(b) of the Code is appropriate and consistent with the objectives of the Code for the following reasons:

- the details required by rule 16(b) cannot be specified in the notice of meeting because it is uncertain what number of options will ultimately be exercised by NZOG or whether there will be any change to Pike River Coal Limited's capital structure before the expiry date of the options;
- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to NZOG in respect of 2011 options;
- if the non-associated shareholders approve the potential maximum allotment of voting securities to NZOG, then, by implication, the shareholders also approve the allotment of a lesser number of voting securities to NZOG.

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

Date of notification in *Gazette*:

This notice is administered by the Takeovers Panel.

[BACK TO TOP](#)

[Home](#) | [Who we are](#) | [What's new](#) | [Takeovers Code](#) | [Legislation](#) | [Decisions](#) | [Exemptions](#)
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