

Fact Sheet

Takeovers Code changes for widely held unlisted companies

February 2020

Following changes to the Takeovers Code in January 2020, the Code no longer applies to widely held unlisted companies unless they are at least "medium sized". As a result of the changes, most SMEs will **not** be subject to the Code – regardless of how many shareholders they have.

The new test and the implications for you and your company are summarised below.

WHAT IS THE CHANGE?

An additional income/asset test has been added to the existing shareholder test under the Takeovers Code. In summary, the new two-step test for unlisted companies is:

1. does the company have 50 or more shareholders (with voting rights) and 50 or more share parcels; and
2. is the company at least *medium-sized*?

WHAT IS "MEDIUM SIZED"?

The threshold for being *medium sized* is that the company (and its subsidiaries) have one or both of the following at the end of the company's last accounting period:

1. at least \$30 million of total assets; and/or
2. at least \$15 million of revenue for the period.

For companies yet to complete their first accounting period, a company is medium-sized if the total asset test is satisfied at the end of the last month.

The term *medium sized* does not reflect the usual (much lower) definition of a medium sized NZ business. As a result, most medium sized NZ businesses will not meet the threshold in the Code – and not be subject to the Code.

WHAT IS THE CHANGE INTENDED TO ACHIEVE?

The Takeovers Panel recommended the change because it felt the costs of compliance under the previous test were disproportionate to the benefits that shareholders of small unlisted companies received under the Takeovers Code.

WHAT DOES IT MEAN FOR YOU?

For affected companies, the change to the Code will:

1. reduce compliance costs and inadvertent breaches of the Code where the costs of compliance are perceived to outweigh the benefits;
2. allow companies to move more quickly and freely when raising capital or entering into transactions funded by share issues;
3. free shareholders of the Code's restrictions on shareholders acquiring more than 20% of a company's voting rights or increasing their shareholding above 20% without complying with the Code; and
4. allow an exit involving a takeover offer without requiring compliance with the Code.

While the changes are positive, the shareholder protection given by the Code will no longer apply. It is important that shareholders and investors take care when investing. This will include undertaking proper due diligence, and entering into a shareholders or investment agreement that sets out the rules for such things as share issues and transfers, governance and exit.

Other laws continue to apply to unlisted companies, including the laws applying to the issue of shares and other financial products. In particular, when issuing financial products it is important to ensure either compliance with, or the application of an exclusion to, the Financial Markets Conduct Act 2013.

FURTHER INFORMATION

- The Takeovers Panel Guidance Note, *Unlisted Code Companies*, can be found [here](#).
- The amendment legislation, *Regulatory Systems (Economic Development) Amendment Act (No 2) 2018* can be found [here](#).

Alternatively, please call or email one of the Jackson Russell lawyers listed if you would like further information.

KEY JACKSON RUSSELL CONTACTS

Darryl King PARTNER
BUSINESS LAW TEAM

DDI +64 9 300 6935 | M +64 021 326 087

E Darryl.King@jacksonrussell.co.nz

David Alizade PARTNER
BUSINESS LAW TEAM

DDI +64 9 300 6937 | M +64 021 224 8055

E David.Alizade@jacksonrussell.co.nz

Claire Godber SENIOR ASSOCIATE
BUSINESS LAW TEAM

DDI +64 9 300 6916 | M +64 021 425 953

E Claire.Godber@jacksonrussell.co.nz



Disclaimer: The information contained in this document is a general overview and is not legal advice. It is important that you seek legal advice that is specific to your circumstances.