GUIDE

Squeeze-out rights: buying out minority shareholders in a Guernsey company

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The minority squeeze-out provisions in relation to a proposed takeover of a Guernsey company are set out under Part XVIII of the Companies (Guernsey) Law, 2008 (the **Companies Law**). In this Guide, we consider the application of these provisions and how they sit alongside the City Code on Takeovers and Mergers (the **Takeover Code**).

What is a minority squeeze-out and when can the right be utilised?

Following the launch of a takeover offer for a Guernsey company, the bidder has the right to acquire any dissenting shareholders' shares on a compulsory basis if it has acquired not less than 90 per cent. in value of the shares to which the takeover offer relates (the **Threshold**) within four months of making the takeover offer (the **Offer Period**). Notice of the bidder's desire to acquire such dissenting shareholders' shares may be given to any dissenting shareholders within two months immediately after the Threshold is reached (**Notice to Acquire**). On the expiration of one month from the date of the Notice to Acquire, the bidder shall send a copy of the notice to the company along with payment for the shares (which the company shall hold on trust for the dissenting shareholders), whereupon the company shall register the bidder as the holder of those shares.

Calculating the Threshold

The bidder is only entitled to acquire the shares of the dissenting shareholders where the offer relates to all of the shares in the company or, as the case may be, to all of the shares in the particular class to which the dissenting shareholders belong. Any shares held by the dissenting shareholders as treasury shares are excluded (unless the bidder elects that they should be included), as are any shares held by the bidder and shares which it has otherwise contracted to acquire.

When calculating the Threshold, the following shares will not be included:

- shares held as treasury shares
- shares held by the bidder, its nominees or other closely related entities at the date of the offer (this includes the bidder's holding company, subsidiaries and fellow subsidiaries and, where the bidder is an individual, certain family members) and
- shares acquired by the bidder during the Offer Period at a price higher than the offer price, save where the offer price is raised to match the higher price.

To whom can the squeeze-out notice be given?

As noted above, the bidder is required to give a dissenting shareholder a Notice to Acquire. This may be problematic for shareholders resident in a jurisdiction which prohibits or otherwise restricts the making of such an offer.

Where any shareholders are resident or otherwise present outside Guernsey in jurisdictions whose laws prohibit or restrict the making or acceptance of such offers or the giving of a Notice to Acquire, the Companies Law permits the offer to be made or the Notice to Acquire to be given (as the case may be) by notice in La Gazette Officielle or in any other manner permitted by the company's articles of incorporation (instead of being sent to the dissenting shareholder directly, which may breach the securities laws of that jurisdiction).

Is there an ability to prevent the compulsory acquisition of a dissenting shareholder's shares?

A dissenting shareholder may apply to the court within one month after the date of the Notice to Acquire to cancel that notice. If the circumstances warrant such an action, the court may cancel it or alternatively make such order as it thinks fit.

Can a bidder increase its shareholding during the bid period?

Once a takeover bid has been launched, due to the way in which the Threshold is calculated under the Companies Law (as noted above), the bidder is, in effect, unable to 'creep' its shareholding through side purchases (either on-market or otherwise) during the Offer Period without having those shares excluded from the Threshold calculation. This means that once the Offer Period is live, the bidder is unable to increase its stake in the target to reach the Threshold other than through acceptances under the bid, unless the shares have been acquired at a price lower than the offer price.

The Takeover Code

In addition to the requirements of the Companies Law, it is important to remember that the City Code on Takeovers and Mergers issued by the Panel on Takeovers and Mergers of the United Kingdom (the **Takeover Code**) (here) will, in principle, apply to all offers for Guernsey companies:

- whose securities are traded on a regulated market or a multilateral trading facility in the UK, or on any stock exchange in the Channel Islands or the Isle of Man or
- which are considered by the Takeover Panel to have their place of central management and control in the UK, the Channel Islands or the Isle of Man and satisfy any one of the other criteria set out in the applicable section of the Takeover Code (these include, companies whose securities have been admitted to trading on an aforementioned market at any time during the previous 10 years and companies whose dealings and/or prices of securities have been published on a regular basis for at least six months during the previous 10 years).

Accordingly, the application of the Takeover Code and its requirements around offer periods should be considered when launching a bid.

Schemes of arrangement

Schemes of arrangement (a **scheme**) may be used as an alternative to the takeover bid and statutory squeeze-out procedures. While a scheme requires court approval and is almost always implemented only with the support of the target company, it provides certainty around acquiring 100 per cent of the target company.

Under a scheme, the proposed acquisition of shares must be approved by a majority in number representing 75 per cent in value of the members or class of members (excluding any shares held as treasury shares) present and voting either in person or by proxy and sanctioned by the court. For these purposes, 'value' in relation to members means voting rights. This means that, if the requisite majority of members vote in favour and the court approves the scheme, the bidder will be able to acquire the entire issued share capital of the target company even if up to 25 per cent of the members oppose the scheme.

More information on schemes of arrangement can be found in our Guide 'Schemes of arrangement under Guernsey law' here.

Contacts

For further information, please get in touch with your usual Mourant contact or, alternatively, a list of contacts can be found here.