

The Takeover Code in Guernsey

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Introduction

The Companies (Guernsey) Law, 2008 (the **Companies Law**) provides a statutory basis for the UK Panel on Takeovers and Mergers (the **Panel**) to regulate takeover and merger activity involving Guernsey companies to which the **City Code on Takeovers and Mergers** (the **Code**) applies.

Following consultation in early 2024, the Code has been amended to narrow the scope of companies to which it applies from **3 February 2025** (the **Implementation Date**). Essentially, the amendments seek to refocus the application of the Code to any company which has its registered office in the UK, the Channel Islands or the Isle of Man and whose securities are, or were recently, admitted to trading on a UK regulated market (**UK Regulated Market**), a UK multilateral trading facility (**UK MTF**) or a stock exchange in the Channel Islands or the Isle of Man.

This guide provides an overview of the changes and the principal elements of the Code.

Purpose and overview of the Code

The Code is designed to ensure that shareholders in target companies are treated fairly, that they are not denied an opportunity to decide on the merits of a takeover and that shareholders of the same class are afforded equivalent treatment by a bidder.

The Code also provides an orderly framework within which such takeovers are conducted. The offer timetable is strictly regulated by the Code which seeks to ensure that target shareholders are given sufficient information, time and advice to enable them to reach a properly informed decision, while preventing a target company from having a bid hanging over it indefinitely.

The EU Takeover Directive (2004/25/EU) (the **Takeovers Directive**) established the legal framework through which company takeovers were regulated in the European Economic Area (EEA). The Takeovers Directive required Member States of the EU to designate an authority to supervise takeover bids. In the UK, the Panel was designated for this purpose. Post-Brexit, Part 28 of the UK Companies Act 2006 (the **Companies Act**) was amended to effect the changes required to separate the UK domestic takeover regime from the European takeover regime. Schedule 1C to the Companies Act has equivalent provisions to those set out in the Takeovers Directive.

The Companies (Guernsey) Law, 2008

To align the Panel's functions and powers under Guernsey law with those under UK law, Guernsey enacted the Companies (Panel on Takeovers and Mergers) Ordinance, 2009, as amended (the **Ordinance**) with effect from 1 July 2009. The Ordinance, which closely mirrors Chapter 1 of Part 28 of the UK's Companies Act 2006, amended Guernsey's Companies Law.

The Companies Law empowers the relevant States of Guernsey (the **States**) department to appoint a body to oversee takeovers and mergers. The States has appointed the Panel as the appropriate overseer, with the ability to appoint another body should the need arise. The Companies Law requires the Panel to make

rules to give effect to the general principles in the Companies Act, giving the Code the same statutory basis in Guernsey as in the UK.

The Companies Law confers on the Panel the power to issue directions and give binding rulings on the application of its rules, the power to require the production of documents and information and the power to impose sanctions for the breach of its rules. The Panel can secure compliance with its rules through the Royal Court of Guernsey. The Panel can order those found to be in breach of its rules to pay compensation. The Panel can also impose fees or charges in connection with the discharge of its duties.

To what transactions does the Code apply?

The Code regulates, amongst other things:

- takeover bids and merger transactions of companies to which the Code applies, however effected, including by means of statutory merger or scheme of arrangement, and
- other transactions which have as their objective or potential effect (directly or indirectly) obtaining or consolidating control of companies to which the Code applies.

'Control' for these purposes means an interest(s) in shares carrying in aggregate 30 per cent or more of the voting rights of a company, irrespective of whether such interest(s) gives *de facto* control.

The Code did not and, after the Implementation Date, continues not to apply to offers for open-ended investment companies.

To which companies did the Code apply prior to the Implementation Date?

Prior to the Implementation Date, the Code applied to all offers for Guernsey companies:

- if any of their securities were admitted to trading on a UK Regulated Market, a UK MTF or any stock exchange in the Channel Islands or the Isle of Man (collectively referred to as **UK Quoted**), or
- which were considered by the Panel to have their place of central management and control in the UK, the Channel Islands or the Isle of Man (referred to as the **residency test** or being **UK resident**) when, amongst other things:
 - any of their securities had been admitted to trading on a UK Regulated Market, a UK MTF or on any stock exchange in the Channel Islands or the Isle of Man during the 10 years prior to the relevant date, or
 - they had filed a prospectus for the offer, admission to trading or issue of securities with the registrar of companies or any other relevant authority in the UK, the Channel Islands or the Isle of Man (but in the case of any other such authority, only if the filing is on a public record) at any time during the 10 years prior to the relevant date.

The 'relevant date' being the date on which an announcement is made of a proposed or possible offer for the company or the date on which some other event occurs in relation to the company which has significance under the Code.

Summary of the changes to the Code effective from the Implementation Date

From the Implementation Date, the amended Code applies to any Guernsey company, if:

- it is a UK Quoted company
- it was a UK Quoted company at any time during the **two years** prior to the relevant date, being the date on which an announcement is made of an offer or possible offer for the company or on which some other event occurs in relation to the company which has significance under the Code, or
- it is a transitional company (see below).

The amended Code continues to apply to a range of persons who participate in, or are connected with, or who in any way seek to influence, intervene in, or benefit from, takeovers or other matters to which the Code applies.

This means that, as the residency test has been removed, companies will no longer fall in or out of the Code's jurisdiction based on board composition and director residency.

Accordingly, subject to the transitional arrangements summarised below, the amended Code no longer applies to the following categories of company, provided that the company has not been UK Quoted at any time within the two years prior to the relevant date:

- a public or private company:
 - which ceased to be UK quoted more than two years prior to the relevant date
 - whose securities are, or were previously, admitted to trading solely on an overseas market
 - whose securities are, or were previously, traded using a 'matched bargain facility'
- any other public company which is not UK Quoted, and
- a private company which filed a prospectus at any time during the 10 years prior to the relevant date.

Where a company wishes to cancel the listing of its securities so that it ceases to be UK Quoted, it is required to make appropriate disclosures to its shareholders about the implications of the loss of the protections afforded by the Code and that, as a result, the company will enter into a two-year run-off period following which the Code will cease to apply. It is recommended that the company consult the Panel at an early stage so that the Panel can provide guidance on the appropriate disclosures.

The amended Code does not apply to a company with a sole beneficial owner and, as noted above, continues not to apply to an open-ended investment company.

The Panel may also, where it considers it appropriate, grant a waiver from the application or some or all of the Code provisions.

Transitional arrangements

The amended Code provides for a two-year transitional period ending on **2 February 2027** for companies that cease to be subject to the Code, as a result of the foregoing changes.

A Guernsey company is considered a transition company if on 2 February 2025:

- it was a UK resident company that was UK Quoted at any time in the 10 years before the Implementation Date (**listing 10-year run-off period**)
- it was a UK resident company that had filed a prospectus at any time in the 10 years before the Implementation Date (**prospectus 10-year run-off period**), or
- it was a company that would have fallen into any of the previous two categories but for the fact that it was not UK resident,

but excluding (i) a company that falls within the scope of the amended Code; (ii) an open-ended investment company or (iii) a company with a sole beneficial owner.

Whether or not the Code applies to a transition company in respect of a specific transaction during the transitional period depends on the circumstances at the relevant date as follows:

- the Code applies to a private company that was UK Quoted at any time in the 10 years before the Implementation Date until the earlier of the end of (i) the transitional period or (ii) the listing 10-year run-off period, provided that the company is UK resident on the relevant date.
- the Code applies to a private company that filed a prospectus at any time in the 10 years before the Implementation Date until the earlier of the end of (i) the transitional period or (ii) the prospectus 10-year run-off period, provided the company is UK resident on the relevant date.

A transition company will not, therefore, fall outside the scope of the Code on the Implementation Date as a result of the introduction of the new regime. The Code continues to apply to a transition company on the same basis until the end of the transitional period provided that, in the case of a private company only, it is UK resident and the listing 10-year run-off period or the prospectus 10-year run-off period has not expired. This is to provide transition companies an opportunity to put in place alternative arrangements such as making appropriate amendments to their articles of incorporation or enabling shareholders to exit their investment if they do not wish to be shareholders in the company without the protections afforded by the Code.

Conclusion

Consideration should be given to whether the amended Code, including the transitional arrangements, applies to a Guernsey company. Where a target company is subject to the Code, potential bidders must undertake their bid in accordance with the requirements of the Code.

Companies to which the Code applies will have to ensure, amongst other things, that any transactions involving their shares (eg a redemption or purchase of own shares) do not inadvertently result in a shareholder holding a controlling interest which would result in such shareholder being obliged to make a mandatory offer to acquire the other shares in issue.

Contacts

A full list of contacts specialising in corporate law can be found [here](#).

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