GUIDE

The Takeover Code in Jersey

Last reviewed: February 2023

Introduction

The City Code on Takeovers and Mergers (the **Code**) is designed to ensure that shareholders in target companies are treated fairly and 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 EEA. The Takeovers Directive required Member States of the EU to designate an authority to supervise takeover bids. In the UK the UK Panel on Takeovers and Mergers (the **Panel**) was designated for this purpose. Before Brexit, the Takeovers Directive was implemented in the UK by the enactment of Chapter 1 of Part 28 of the Companies Act 2006 (the **Companies Act**).

Post-Brexit, the UK is under no legal obligation to transpose the Takeovers Directive. As such, Part 28 of the Companies Act has been amended to effect the changes required to separate the UK domestic takeover regime from the European takeover regime. In particular, all references to the Takeovers Directive have been replaced in Part 28 of the Companies Act with references to a new Schedule 1C to the Companies Act, which has equivalent provisions to those set out in the Takeovers Directive. In addition to this, it was considered appropriate for the applicable Jersey legislation to be amended to reflect the principles that are in Schedule 1C to the Companies Act instead of those in the Takeovers Directive.

The Companies (Takeovers and Mergers Panel) (Jersey) Law 2009

The Companies (Takeovers and Mergers Panel) (Jersey) Law 2009 (the **Law**) has been in force since 1 July 2009. The Law is similar to Chapter 1 of Part 28 of the Companies Act.

The Law empowers the relevant Minister in Jersey to appoint a body to oversee takeovers and mergers. The Minister has appointed the Panel as the appropriate overseer, but the Minister does have the power to appoint another body should the need arise. The Law requires the Panel to make rules to give effect to the general principles in Part 1 of Schedule 1C to the Companies Act. The Code has been adopted for these purposes, giving it the same statutory basis in Jersey as in the UK.

The 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 impose sanctions for the breach of its rules. The Panel can secure compliance with its rules through the Royal Court of Jersey. The Panel can impose sanctions for breach of its rules and 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 under the Law.

It should also be noted that the Law states that it shall not affect the operation of any provision of the Companies (Jersey) Law 1991 (the **Companies Law**) or the Competition (Jersey) Law 2005 (the **Competition Law**). Should a bidder making a takeover offer wish to avail itself of the statutory mechanism to squeeze out minority shareholders, its bid will need to comply with the requirements of the Companies Law relative to takeovers. Similarly, a takeover effected by way of a scheme of arrangement will have to comply with the Companies Law requirements relative to schemes of arrangement if it is to bind all shareholders. Early consideration will also need to be given by bidders as to whether a competition clearance will be required in Jersey. Failure to obtain such a clearance where required would prevent title to shares in a Jersey target company or property in Jersey passing in accordance with the terms of the bid.

To what companies does the Code apply?

The Code applies to all offers for:

- Jersey companies if any of their securities are admitted to trading on a regulated market or a multilateral trading facility in the UK or any stock exchange in the Channel Islands or the Isle of Man; and
- Jersey public and private companies which are considered by the Panel to have their place of central management and control in the UK, the Channel Islands or the Isle of Man, but in relation to private companies when:
  - any of their securities have been admitted to trading 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 in the last 10 years; or
  - they have filed a prospectus for the issue of securities with the registrar of companies in Jersey or any other relevant authority in the UK in the last 10 years.

The Code does not apply to:

- offers for open-ended investment companies;
- limited liability companies registered in Jersey under the Limited Liability Companies (Jersey) Law 2018.

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 in shares carrying in aggregate 30 per cent or more of the voting rights of a company.

Conclusion

Consideration should be given to whether the Code applies to a Jersey company where this analysis has not been undertaken already. 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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