

THE TAKEOVER PANEL

CODE COMMITTEE

Instrument 2009/1

Legislative changes relating to the Isle of Man

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, the Panel, and in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee, hereby make this instrument containing rules.

The Takeover Code is amended, with effect from 1 March 2009, in accordance with the Appendix to this instrument.

In the Appendix, underlining indicates new text and striking through indicates deleted text.

Made by Peter Scott, Chairman acting on behalf of the Panel and by Lindsay Tomlinson, Chairman acting on behalf of the Code Committee.

27 February 2009

APPENDIX

THE CITY CODE ON TAKEOVERS AND MERGERS

INTRODUCTION

1 OVERVIEW

The Panel on Takeovers and Mergers (the “Panel”) is an independent body, established in 1968, whose main functions are to issue and administer the City Code on Takeovers and Mergers (the “Code”) and to supervise and regulate takeovers and other matters to which the Code applies in accordance with the rules set out in the Code. It has been designated as the supervisory authority to carry out certain regulatory functions in relation to takeovers pursuant to the Directive on Takeover Bids (2004/25/EC) (the “Directive”). Its statutory functions are set out in and under Chapter 1 of Part 28 of the Companies Act 2006 (the “Act”). Rules are set out in the Code (including this Introduction, the General Principles, the Definitions and the Rules (and the related Notes and Appendices)) and the Rules of Procedure of the Hearings Committee. These rules may be changed from time to time, and rules may also be set out in other documents as specified by the Panel. Statutory rules also apply to the Isle of Man: see section 14 for more details. Statutory rules will not apply to the Channel Islands ~~or the Isle of Man~~ until the provisions of Chapter 1 of Part 28 of the Act are extended to them pursuant to the Act or equivalent statutory provision is made in those jurisdictions.

Further information relating to the Panel and the Code can be found on the Panel’s website at www.thetakeoverpanel.org.uk. The Code is also available on the Panel’s website.

2 THE CODE

Save for sections 2(c) and (d) (which each set out a rule), this section gives an overview of the nature and purpose of the Code.

(a) Nature and purpose of the Code

The Code is designed principally to ensure that shareholders 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 an offeror. The Code also provides an orderly framework within which takeovers are conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets.

The Code is not concerned with the financial or commercial advantages or disadvantages of a takeover. These are matters for the company and its shareholders. Nor is the Code concerned with those issues, such as competition policy, which are the responsibility of government and other bodies.

The Code has been developed since 1968 to reflect the collective opinion of those professionally involved in the field of takeovers as to appropriate business standards and as to how fairness to shareholders and an orderly framework for takeovers can be achieved. Following the implementation of the Directive by means of the Act, the rules set out in the Code have a statutory basis in relation to the United Kingdom and comply with the relevant requirements of the Directive. The rules set out in the Code also have a statutory basis in relation to the Isle of Man: see section 14. The rules set out in the Code will also have a statutory basis in relation to the Channel Islands ~~and the Isle of Man~~ when the provisions of Chapter 1 of Part 28 are extended to them pursuant to the Act or equivalent statutory provision is made in those jurisdictions.

... ..

(d) Transitional provisions for offers which are not takeover bids under the Directive

In relation to any offer which is not a “takeover bid” within the meaning given in the Directive, anything done (or not done) with respect to a rule set out in the Code as in force before 6 April 2007 shall have effect from 6 April 2007 as done (or not done) with respect to that rule of the Code as in force from 6 April 2007 and any reference in the Code to a rule of the Code shall be construed as including a reference to that rule as in force before 6 April 2007.

These transitional provisions do not apply to the Channel Islands or the Isle of Man.

3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE

This section (except for section 3(d) and (e)) sets out the rules as to the companies, transactions and persons to which the Code applies.

(a) Companies

(i) UK, Channel Islands and Isle of Man registered and traded companies

The Code applies to all offers (not falling within paragraph (iii) below) for companies and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices* in the United Kingdom, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a regulated market in the United Kingdom or on any stock exchange in the Channel Islands or the Isle of Man.

(ii) Other companies

* In the case of a UK unregistered company, the reference to “registered office” shall be read as a reference to the company’s principal office in the UK.

The Code also applies to all offers (not falling within paragraph (i) above or paragraph (iii) below) for public and private companies[†] and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices* in the United Kingdom, the Channel Islands or the Isle of Man and which are considered by the Panel to have their place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man, but in relation to private companies only when:-

- (A) any of their securities have been admitted to the Official List at any time during the 10 years prior to the relevant date; or
- (B) dealings and/or prices at which persons were willing to deal in any of their securities have been published on a regular basis for a continuous period of at least six months in the 10 years prior to the relevant date, whether via a newspaper, electronic price quotation system or otherwise; or
- (C) any of their securities have been subject to a marketing arrangement as described in section 163(2)(b) of the Companies Act 1985 at any time during the 10 years prior to the relevant date; or
- (D) they were required to file a prospectus for the issue of securities with the registrar of companies or any other relevant authority in the United Kingdom, the Channel Islands or the Isle of Man or to have a prospectus approved by the UKLA at any time during the 10 years prior to the relevant date.

... ..

4. THE PANEL AND ITS COMMITTEES

... ..

(b) The Code Committee

... ..

The Code Committee carries out the rule-making functions of the Panel and is solely responsible for keeping the Code (other than matters set out in sections 1, 2(a) and (b), 4(a), (b) and (c), 5, 7, 8, ~~and 13~~ and 14 of the Introduction, which are the responsibility of the Panel) under review and for proposing, consulting on, making and issuing amendments to those parts of the Code.

... ..

12 CO-OPERATION AND INFORMATION SHARING

[†] With respect to a company having its registered office in the Isle of Man and which is incorporated there under the Companies Act 2006 (an Act of Tynwald), the company will be treated as being subject to the Code only when any of the criteria in (A) to (D) of paragraph (ii) apply.

*In the case of a UK unregistered company, the reference to “registered office” shall be read as a reference to the company’s principal office in the UK.

... ..

Under section 948 of the Act, information received by the Panel in connection with the exercise of its statutory functions may not be disclosed without the consent of the individual (where it concerns a person's private affairs) or business to which it relates except as permitted by the Act. Schedule 2 of the Act (as amended by The Companies Act 2006 (Amendment of Schedule 2) Order 2009) includes gateways to allow the Panel to pass information it receives to United Kingdom and overseas regulatory authorities and other persons in accordance with the conditions laid down in that Schedule. The circumstances in which this may occur include, but are not limited to, the circumstances falling within paragraph 11(b)(iv) above.

... ..

14 ISLE OF MAN

Chapter 1 of Part 28 of the Act has been extended to the Isle of Man with certain modifications by The Companies Act 2006 (Extension of Takeover Panel Provisions) (Isle of Man) Order 2008 (the "Isle of Man Order"). Schedule 2 to the Act was amended in consequence of the Isle of Man Order by The Companies Act 2006 (Amendment of Schedule 2) Order 2009. The rules set out in the Code have statutory effect in the Isle of Man by virtue of the Isle of Man Order.