

THE TAKEOVER PANEL

Instrument 2016/4

Amendments to the Introduction to the Takeover Code

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, Articles 2, 3 and 4 of the Companies (Takeovers and Mergers Panel) (Jersey) Law 2009 and sections 340A, 340B and 340C of the Companies (Guernsey) Law, 2008, the Panel hereby makes this instrument.

The Introduction to the Takeover Code is amended, with effect from 12 September 2016, in accordance with the Appendix to this instrument.

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

Sir Gordon Langley
Chairman of the Panel
for and on behalf of the Panel

14 July 2016

APPENDIX

4 THE PANEL AND ITS COMMITTEES

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(a) The Panel

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The Panel comprises up to ~~35~~36 members:

- (i) the Chairman, who is appointed by the Panel;
- (ii) up to three Deputy Chairmen, who are appointed by the Panel;
- (iii) up to twenty other members, who are appointed by the Panel; and
- (iv) individuals appointed by each of the following bodies:

...

The Chairman and ~~the at least one Deputy Chairmen~~ Chairman are designated as members of the Hearings Committee. Each other Panel member appointed by the Panel under paragraphs (ii) and (iii) above is designated upon appointment to act as a member of either the Panel's Code Committee or its Hearings Committee. Appointments of members who are appointed by the Panel shall be for a period of up to three years extendable by no more than an additional two periods. In exceptional circumstances the Panel may grant further extensions at the request of the Nomination Committee.

Up to twelve Panel members appointed by the Panel under paragraph (iii) above are designated as members of the Code Committee. ~~The Panel may appoint designated alternates for such members of the Code Committee. One designated alternate may act as a member of the Panel (or the Code Committee) in a relevant member's place when he is unavailable.~~

Up to eight Panel members appointed by the Panel under paragraph (iii) above are designated as members of the Hearings Committee. The Panel may appoint designated alternates for such members of the Hearings Committee. One designated alternate may act as a member of the Panel (or the Hearings Committee) in a relevant member's place when he or she is unavailable.

The Panel members appointed by the bodies under paragraph (iv) above become members of the Panel's Hearings Committee without further designation by the Panel. Each of these bodies may appoint designated alternates for its appointees. One designated alternate may act as a member of the Panel (or the Hearings Committee) in the relevant member's place when he or she is unavailable. In performing their functions on the Hearings Committee, these members (and their alternates) act

independently of the body which has appointed them (and not as that body's agent or delegate) and exercise their own judgment as to how to perform their functions and how to vote.

The Chairman and the Deputy Chairmen do not have alternates.

Details of the Panel and its Committees, and the names of members of the Panel and the designated alternates, are available on the Panel's website.

(b) The Code Committee

~~The Code Committee represents~~ is drawn from a spread of shareholder, corporate, practitioner and other interests within the Panel's regulated community. ~~Up to twelve members of the Panel are designated by the Panel as members of the Code Committee. Its membership from time to time, and its Terms of Reference and the Procedures for Amending the Takeover Code are available on the Panel's website.~~

The Code Committee carries out the rule-making functions of the Panel and is solely responsible for keeping the Code (other than ~~those the~~ matters set out in sections 1, 2(a) and (b), 4(a), (b) and (c), 5, 7, 8, 13, 14, 15 and 16 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. The Code Committee is also responsible, in consultation with the Hearings Committee, for proposing, consulting on and adopting the Rules of Procedure of the Hearings Committee. The Code Committee's consultation procedures are set out in its Procedures for Amending the Takeover Code Terms of Reference. Amendments to ~~those the~~ matters set out in sections 1, 2(a) and (b), 4(a), (b) and (c), 5, 7, 13, 14, 15 and 16 of the Introduction are the responsibility of and will usually be issued made by the Panel. Amendments to ~~those the~~ matters set out in section 8 of the Introduction will be agreed by the Takeover Appeal Board and will be issued made by the Panel ~~with immediate effect~~.

~~Matters leading to possible amendment to the Code might arise from a number of sources, including specific cases which the Panel has considered, market developments or particular concerns of those operating within the markets.~~

~~Once it has agreed that a particular matter is to be pursued, the Code Committee will prepare and publish a Public Consultation Paper ("PCP") seeking the views of interested parties on the proposals and setting out the background to, reasons for and (where available) full text of the proposed amendment. Consultation periods in relation to PCPs vary depending on the complexity of the subject, but will usually be between one and two months.~~

~~Following the end of the consultation period, the Code Committee will publish its conclusions on the proposed amendment, taking account of the responses to the PCP received, together with the final Code amendments in a Response Statement ("RS"). It is the Code Committee's policy to make copies of all non-confidential responses it receives to a PCP available on request.~~

~~In certain exceptional cases, the Code Committee might consider it necessary to amend the Code on an expedited basis, for example because a particular market~~

~~development appears to the Code Committee to require that the proposed amendment be made more quickly than the usual public consultation process would permit. In such cases, the Code Committee will publish the amendment with immediate effect and without prior formal consultation, followed in due course by a PCP seeking views on the amendment, which might be later modified, or removed altogether, depending on the Code Committee's conclusions following the consultation process.~~

~~Where, in the opinion of the Code Committee, any proposed amendment to the Code either does not materially alter the effect of the provision in question or is a consequence of changes to relevant legislation or regulatory requirements, the Code Committee may publish the text of the amendment without any formal consultation process.~~

~~PCPs and RSs are available on the Panel's website.~~

(c) The Hearings Committee

~~The Hearings Committee of the Panel comprises the Chairman, up to three Deputy Chairmen, up to eight other members designated by the Panel and the individuals appointed by the bodies listed at paragraph (a)(iv) above. Its membership from time to time, Terms of Reference and Rules of Procedure are available on the Panel's website.~~

The principal function of the Hearings Committee is to review rulings of the Executive. The Hearings Committee also hears disciplinary proceedings instituted by the Executive when the Executive considers that there has been a breach of the Code (see section 11 below). The Hearings Committee may also be convened for hearings in certain other circumstances. The operations of the Hearings Committee are described in more detail in section 7 below. Its membership from time to time and Terms of Reference are available on the Panel's website. The Rules of Procedure of the Hearings Committee are set out in Appendix 9.

~~The Hearings Committee is assisted in its proceedings by a secretary to the Hearings Committee, usually a partner in a law firm, acting as an officer of the Panel.~~

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7 RULES OF PROCEDURE OF THE HEARINGS COMMITTEE

The Rules of Procedure of the Hearings Committee are set out in Appendix 9.

~~This section gives an overview of the procedural rules which apply to the commencement of proceedings before the Hearings Committee and the procedures followed by the Hearings Committee in connection with hearings before it. The full Rules of Procedure of the Hearings Committee are available on the Panel's website.~~

(a) — Hearings before the Hearings Committee

~~The Hearings Committee can be convened in the following circumstances:~~

- ~~(i) — if a party to a takeover or any other person affected by a ruling of the Executive and with a sufficient interest in the matter, wishes to contest a ruling of the Executive, that party or person is entitled to request that the matter be reviewed by the Hearings Committee; or~~
- ~~(ii) — the Executive may refer a matter for review by the Hearings Committee without itself giving a ruling where it considers that there is a particularly unusual, important or difficult point at issue; or~~
- ~~(iii) — the Executive may institute disciplinary proceedings before the Hearings Committee when it considers that there has been a breach of the Code or of a ruling of the Executive or the Panel; or~~
- ~~(iv) — in other circumstances where the Executive or the Hearings Committee considers it appropriate to do so.~~

~~The Hearings Committee can be convened at short notice, where appropriate.~~

~~**(b) — Time limits for applications for review by the Hearings Committee; applications with no reasonable prospect of success**~~

~~Where a party to a takeover or any other person affected by a ruling of the Executive and with sufficient interest in the matter wishes a matter to be reviewed by the Hearings Committee, the Panel must be notified as soon as possible and, in any event (subject to the following paragraph), within such period as is reasonable in all the circumstances of the case (which shall not be longer than one month from the event giving rise to the application for review).~~

~~Where it considers necessary, the Executive may stipulate a reasonable time within which the Panel must be notified. Such time may, depending on the facts of the case, range from a few hours to the one month period referred to above. The Executive may also extend the usual one month period within which the Panel must be notified.~~

~~The Chairman (or, failing that, the chairman of the hearing as specified below) may, on behalf of the Hearings Committee, deal with applications for procedural directions, and may reject requests that the Hearings Committee be convened on any matter which he considers has no reasonable prospect of success, without convening the Hearings Committee and without holding a hearing.~~

~~**(c) — Conduct of hearings before the Hearings Committee**~~

~~The quorum for Hearings Committee proceedings is five. The Chairman or, where he is unavailable, one of the Deputy Chairmen will usually preside as chairman of the proceedings in question (“chairman of the hearing”), although if the Chairman and all of the Deputy Chairmen are unavailable, another member of the Hearings Committee will be appointed by the Chairman (or, failing that, by the other members of the Hearings Committee) to act as chairman of the hearing.~~

~~The Hearings Committee usually conducts its hearings using the procedure set out in its Rules of Procedure, but it (or the chairman of the hearing) may vary such~~

~~procedure in such manner as it (or he) considers appropriate for the fair and just conduct and determination of the case.~~

~~At hearings before the Hearings Committee, the case is usually presented in person by the parties, which include the Executive, or their advisers. Although not usual, parties may, if they so wish, be represented by legal advisers. Usually, the parties are required to set out their case briefly in writing beforehand. The parties are permitted to call such witnesses as they consider necessary, with the consent of the chairman of the hearing.~~

~~Proceedings before the Hearings Committee are usually in private, although the chairman of the hearing may, at his discretion, direct otherwise. Parties may request that the hearing be held in public. Any such request is considered and ruled upon by the chairman of the hearing (or, at the discretion of the chairman, by the Hearings Committee itself). In the event of a public hearing, the Hearings Committee or the chairman of the hearing may direct that the Hearings Committee should hear part or parts of the proceedings in private and may impose such other conditions relating to the non-disclosure of information relating to the proceedings as it or he considers necessary and appropriate.~~

~~In general, all parties are entitled to be present throughout the hearing and to see all papers submitted to the Hearings Committee. Occasionally, however, a party may wish to present evidence to the Hearings Committee which is of a confidential or commercially sensitive nature. In such exceptional cases, the Hearings Committee or the chairman of the hearing may, if satisfied that such course is justified, direct that the evidence in question be heard in the absence of some, or all, of the other parties involved.~~

~~The parties must at the earliest opportunity raise with the chairman of the hearing issues concerning possible conflicts of interest for members of the Hearings Committee and any other objections in relation to the proceedings. Any such issues will be resolved by a ruling of the chairman of the hearing.~~

~~Proceedings before the Hearings Committee are informal. There are no rules of evidence. A recording is taken for the Hearings Committee's own administrative purposes, but will not be retained once the proceedings are at an end. In addition, a transcript of the hearing is usually made. A party to the hearing may request a copy of the transcript, which may be provided subject to conditions, including conditions as to its confidentiality and use.~~

~~The Hearings Committee provides a copy of its ruling to the parties in writing as soon as practicable following the hearing. As part of the ruling, the Hearings Committee may give directions regarding the effects of the Executive's ruling (if any) and/or its ruling pending the outcome of an appeal (if any).~~

~~It is the usual policy of the Hearings Committee to publish its rulings by means of a Panel Statement issued as promptly as possible, having regard to all the circumstances of the case, after the ruling has been provided in writing to the parties. In certain circumstances, the Hearings Committee may issue a Panel Statement of its ruling (without providing supporting reasons) in advance of the publication of its full ruling.~~

~~The chairman of the hearing may, upon application by any party, redact matters from any Panel Statement in order to protect confidential or commercially sensitive information.~~

~~If there is, or may be, an appeal to the Takeover Appeal Board against a ruling of the Hearings Committee (see section 8 below), the Hearings Committee (or the chairman of the hearing) may suspend publication of any Panel Statement, although an interim announcement may be made in these circumstances where appropriate. If there is an appeal, publication may, at the discretion of the chairman of the hearing, be suspended until after the decision of the Takeover Appeal Board or, in particular if the appeal is upheld, withheld altogether.~~

~~Panel Statements are available on the Panel's website.~~

~~Rulings of the Hearings Committee are binding on the parties to the proceedings and on those invited to participate in those proceedings, unless and until overturned by the Takeover Appeal Board.~~

~~**(d) — Procedural rulings**~~

~~The chairman of the hearing may give such procedural rulings as he considers appropriate for the conduct and determination of the case. This includes, for the avoidance of doubt, the ability to extend or shorten any specified time limits.~~

~~**(e) — Right of appeal**~~

~~Any party to the hearing before the Hearings Committee (or any person denied permission to be a party to the hearing before the Hearings Committee) may appeal to the Takeover Appeal Board against any ruling of the Hearings Committee or the chairman of the hearing (including in respect of procedural directions).~~

~~Notice of appeal, including a summary of the grounds of appeal and the remedy requested, must be given within such time as is stipulated by the Hearings Committee or the chairman of the hearing (or, at the discretion of the chairman, by the Hearings Committee itself) or, in the absence of such stipulation, within two business days of the receipt in writing of the ruling of the Hearings Committee or the chairman of the hearing in question.~~

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