

THE TAKEOVER PANEL

CODE COMMITTEE

Instrument 2016/2

Rules of Procedure of the Hearings Committee

Pursuant to sections 942, 943, 944 and 951 of the Companies Act 2006, Articles 2, 3, 4 and 12 of the Companies (Takeovers and Mergers Panel) (Jersey) Law 2009, and sections 340A, 340B, 340C and 340K of the Companies (Guernsey) Law, 2008, and in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee hereby makes this instrument containing rules.

In consultation with, and following the making of recommendations by, the Hearings Committee, the Code Committee hereby deletes the current Rules of Procedures of the Hearings Committee and adopts the Rules of Procedure of the Hearings Committee as set out in the Appendix to this instrument.

The Code Committee hereby adopts the Rules of Procedure of the Hearings Committee as set out in the Appendix to this instrument as a new Appendix 9 of the Takeover Code.

This instrument comes into force on 12 September 2016.

Guy Elliott

Chairman of the Code Committee

for and on behalf of the Code Committee

14 July 2016

APPENDIX

HEARINGS COMMITTEE

RULES OF PROCEDURE

These Rules of Procedure set out the procedures by which proceedings of the Hearings Committee (“hearings”) of the Panel on Takeovers and Mergers (the “Panel”) shall be conducted.

References to a “hearing” include a hearing to determine preliminary or procedural matters and references to the “chairman of a hearing” shall be construed accordingly.

References to “rulings” shall include any decision, direction, determination, order or other instruction made under the City Code on Takeovers and Mergers (the “Code”) or under these Rules of Procedure (as appropriate). Any ruling made by the chairman of any hearing held in accordance with these Rules of Procedure (including procedural directions) is a ruling of the Hearings Committee.

Any reference to a “member” of the Hearings Committee includes a reference to an alternate who is acting as a member of the Hearings Committee in the relevant member’s place.

1 Convening the Hearings Committee

1.1 The Hearings Committee may be convened in the following circumstances:

- (a) if a party to a takeover, or any other person affected by a ruling of the Panel Executive (the “Executive”) and with a sufficient interest in the matter, wishes to contest a ruling of the Executive, that party or other person is entitled to request that the Hearings Committee be convened in order to review the matter;
- (b) 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;
- (c) 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, the Hearings Committee and/or the Takeover Appeal Board (the “Board”); or
- (d) in other circumstances where the Executive or the Hearings Committee considers it appropriate for it to be convened.

1.2 Where 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 request that the Hearings Committee be convened in order to review the matter, the Executive and the Hearings Committee must be notified of the request as soon as possible and in any event:

- (a) within such reasonable time as has been stipulated by the Executive. Such time may, depending on the circumstances, range from a few hours to the one month period referred to in paragraph (b); or
 - (b) in the absence of such stipulation, within such time period as is reasonable in all the circumstances of the case, which period shall not be longer than one month from the event giving rise to the request for review, unless such period has been extended by the Executive.
- 1.3 Unless otherwise stipulated by the Executive, the Hearings Committee shall be deemed to be notified of a request under paragraph 1.2 above received by email at supportgroup@thetakeoverpanel.org.uk. After such notice is received, the Secretary appointed under paragraph 1.7 below shall notify all interested parties to the requested hearing of the contact details to be used for subsequent communications.
- 1.4 Any ruling of the Executive shall stand pending determination of the proceedings before the Hearings Committee, unless otherwise directed by the Hearings Committee or the chairman of the hearing.
- 1.5 A hearing shall be convened upon such notice as the chairman of the hearing decides at his or her discretion. A hearing may be convened upon short notice, where necessary, and no specific notice period is required.
- 1.6 Where the Chairman of the Hearings Committee is available, he or she shall act as chairman of the hearing. Where the Chairman of the Hearings Committee is unavailable, a Deputy Chairman shall act as chairman of the hearing. Where none of the Chairman or any Deputy Chairman is available, the Chairman (or, failing that, the other members of the Hearings Committee) shall appoint one of the members who is available to act as chairman of the hearing.
- 1.7 The chairman of the hearing shall appoint a third party, usually a partner in a law firm, to act as secretary to the hearing (the “Secretary”). The Secretary shall act as an officer of the Panel and shall perform such functions as the chairman of the hearing may direct. The Secretary must not have participated in any way in the matter at issue in the hearing and must be free from conflict of interest. Communications between the Hearings Committee and the parties shall usually be conducted through the Secretary. The Secretary will usually request one main contact person for each party (who may be an adviser) with whom the Secretary can communicate on that party’s and its advisers’ behalf.
- 1.8 The Hearings Committee may sit at such times and in such places as either it or the chairman of the hearing deems most convenient and appropriate in the circumstances.
- 1.9 The chairman of a hearing on a preliminary or procedural matter may be a different person from the person who subsequently acts as chairman of the hearing in relation to the main proceedings or in relation to a hearing on another preliminary or procedural matter.

2 Preliminary matters

- 2.1 The chairman of a hearing or prospective hearing may, without convening the Hearings Committee, reject a request that the Hearings Committee be convened on any matter if he or she considers:
- (a) that the person making the request is not affected by the ruling of the Executive;
 - (b) that the person making the request does not have a sufficient interest in the matter;
 - (c) that the request was not validly notified; or
 - (d) that the matter has no reasonable prospect of success.
- 2.2 In such cases, the chairman of the hearing may determine the application or request without an oral hearing.

3 Procedural directions

- 3.1 The Hearings Committee or the chairman of the hearing may give such procedural directions as either it or he or she considers appropriate for the fair and just conduct and determination of the case, including the extension or shortening of any specified time limits and the alteration or variation of the rules set out in sections 3 to 6 of these Rules of Procedure.
- 3.2 A party may apply, at any time during the proceedings, to the chairman of the hearing for procedural directions. The chairman of a hearing may deal with such applications without convening the Hearings Committee. In such cases, the chairman of the hearing may determine the application or request without an oral hearing.
- 3.3 Hearings shall be held in private, unless the chairman of the hearing, at his or her discretion, directs otherwise. Any party may request that the hearing be held in public and such a request shall be considered and ruled upon by the chairman of the hearing (or, at the discretion of the chairman of the hearing, 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 shall hear part or parts of the hearing in private.
- 3.4 The Hearings Committee or the chairman of the hearing may, upon the application of any party, and if satisfied that it is appropriate in the circumstances, direct that certain confidential or commercially sensitive evidence be heard in the absence of one or more of the parties to the hearing.
- 3.5 The Hearings Committee or the chairman of the hearing may impose such conditions in relation to the hearing as it or he or she considers necessary and appropriate (including in relation to the non-disclosure of information relating to the hearing).

- 3.6 Without prejudice to the generality of paragraph 3.1 above, the chairman of the hearing may direct any party to a hearing, at a time and place and in a manner as directed, to:
- (a) submit written statement(s) of case, setting out the party's position and the remedy requested (if any), and exhibiting any evidence upon which the party relies;
 - (b) produce to the Hearings Committee and/or to any other party any document or information or other item relevant to the hearing;
 - (c) call any person to attend, or to give evidence at, the hearing; and/or
 - (d) notify the Hearings Committee of any procedural issue which it wishes to raise in the hearing.
- 3.7 The Hearings Committee may draw such inferences as it deems proper from any failure of a party to a hearing to comply in full and on time with any procedural direction and may take such action as it considers appropriate in relation to such failure. In particular, it may, where it considers appropriate, treat such a party as no longer being interested in pursuing proceedings before the Hearings Committee (which may result in the dismissal of the proceedings) or refuse such a party any further participation in such proceedings.
- 3.8 A party affected by a procedural direction has a right of appeal against that direction as set out in section 7 below.

4 Conflicts of interest

- 4.1 Members of the Hearings Committee proposing to attend a hearing must raise with the chairman of the hearing any issues concerning possible conflicts of interest prior to the start of the hearing.
- 4.2 A party must raise with the chairman of the hearing any issues concerning possible conflicts of interest in relation to members of the Hearings Committee proposing to attend a hearing and any other objections in relation to the composition of the Hearings Committee for any hearing or the conduct of the hearing. Any such issues or objections must be raised at the earliest opportunity and shall be considered and ruled upon by the chairman of the hearing.

5 Conduct of hearings

- 5.1 The quorum for a hearing is five members.
- 5.2 Save for the circumstances set out in paragraph 2.1 above, proceedings before the Hearings Committee shall be by way of a complete hearing at first instance of all matters contested.
- 5.3 In any hearing, the Executive shall be treated in the same manner as any other party to the hearing.

- 5.4 Hearings shall be conducted on an informal basis. No formal rules of evidence shall apply.
- 5.5 Save as otherwise provided in these Rules of Procedure, or as otherwise directed by the Hearings Committee or the chairman of the hearing, all parties will be entitled to be present throughout the hearing and to see all papers submitted to the Hearings Committee.
- 5.6 The case shall be presented in person by the parties or their advisers. Parties may, if they so wish, be represented by legal advisers.
- 5.7 Any party may, subject to the consent of the chairman of the hearing, call witnesses at the hearing. If any party wishes to call a witness, it must inform the chairman of the hearing in advance and, if so directed by the chairman of the hearing, must produce an appropriate witness statement.
- 5.8 Failure by a party to attend a hearing or be represented at a hearing shall not prevent the Hearings Committee or the chairman of the hearing proceeding in the absence of that party. In particular, in disciplinary proceedings, the Hearings Committee may draw such inferences as it deems proper from any failure by a respondent to attend any hearing or from any choice by a respondent to remain silent at the hearing.
- 5.9 A recording of the hearing shall be made for administrative purposes, but will not usually be retained once the hearing and any related matters have come to an end.
- 5.10 A transcript of the hearing will be made. Any party to the hearing may request a copy of the transcript, and such a request shall be considered and ruled upon by the chairman of the hearing who may impose conditions as to its confidentiality and use.

6 Rulings of the Hearings Committee

- 6.1 Deliberations of the Hearings Committee shall be conducted in the absence of the parties. Rulings of the Hearings Committee shall be by majority vote with each member having one vote; where necessary, the chairman of the hearing shall have a casting vote. The chairman of the hearing shall sign the ruling of the Hearings Committee.
- 6.2 On determining the matter, the Hearings Committee may, in its ruling, grant such remedies, impose such sanctions and/or make such directions as appear to the Hearings Committee to be necessary and appropriate in the circumstances, in accordance with the Introduction to the Code.
- 6.3 Where appropriate, the Hearings Committee may give directions regarding the effects of the Executive's ruling (if any) and/or of its ruling pending the outcome of an appeal (if any) to the Board.
- 6.4 The Hearings Committee will provide a copy of its ruling in writing to the parties as soon as practicable following the hearing.

- 6.5 The Hearings Committee will usually publish its ruling and reasons by means of a Panel Statement on the Panel's website. The chairman of the hearing may, upon application by any party or at his or her own discretion, redact matters from the Panel Statement in order to protect confidential or commercially sensitive information.
- 6.6 Any Panel Statement will usually be 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.
- 6.7 The Hearings Committee may issue a Panel Statement of its ruling (without providing reasons at this stage) in advance of the publication of the full ruling.
- 6.8 The Hearings Committee or the chairman of the hearing may suspend publication of any Panel Statement if there is, or may be, an appeal to the Board against a ruling of the Hearings Committee, in which circumstances an interim announcement may be made where necessary and/or 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 Board or withheld altogether.

7 Right of appeal

- 7.1 Any party to a hearing or prospective hearing (or any person denied permission to be a party to a hearing) (an "Appellant") may appeal to the Board against any ruling of the Hearings Committee or of the chairman of the hearing (including in respect of preliminary matters and procedural directions) by lodging a Notice of Appeal as prescribed in paragraph 1.2 of the Rules of the Board.
- 7.2 The Hearings Committee or the chairman of the hearing may stipulate a reasonable time within which a Notice of Appeal must be lodged by the Appellant with the Board and simultaneously notified to the other parties to the hearing. If no such stipulation is made, a Notice of Appeal must be lodged with the Board by the Appellant and simultaneously notified to the other parties to the hearing in accordance with the Rules of the Board.
- 7.3 Any ruling of the Hearings Committee shall stand pending determination of any appeal, unless otherwise directed by the Hearings Committee, by the chairman of the hearing or, additionally, where a Notice of Appeal has been lodged or purported to be lodged, by the Board.

8 Matters remitted from the Board

- 8.1 On a matter being remitted to the Hearings Committee from the Board, the Hearings Committee shall itself take, or direct an officer or member of staff of the Panel to take, such steps as are appropriate, including, where necessary, the making of rulings or an application to court, to give effect to the decision and directions (if any) of the Board in a particular matter.