

THE TAKEOVER PANEL

CODE COMMITTEE

Instrument 2019/1

Asset valuations and other matters

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, 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.

The Takeover Code is amended, with effect from 1 April 2019, in accordance with the Appendix to this instrument.

In the Appendix, except as otherwise stated, underlining indicates new text and striking-through indicates deleted text.

Richard Murley
Chairman of the Code Committee
for and on behalf of the Code Committee

6 March 2019

APPENDIX

Rule 8

RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS

...

NOTES ON RULE 8

...

3. *Method of disclosure*

(a) *Public disclosures*

Public disclosures under Rule 8 must be made to a RIS in typed format by ~~fax or~~ electronic delivery and may be made by the person concerned or by an agent acting on its behalf.

Rule 23.2

23.2 CONSENT TO INCLUSION OF ADVICE, OPINIONS AND REPORTS

If any document or announcement published in connection with an offer includes:

...

(c) ~~an opinion on value~~ a valuation report given by an independent valuer in accordance with Rule 29,

the document or announcement must include a statement that each of the financial adviser(s), the reporting accountants and/or the ~~independent valuer~~ (as appropriate) has given and not withdrawn its consent to the inclusion of its advice, or report or opinion (as the case may be) in the relevant document in the form and context in which it is included.

Rule 26.3

26.3 DOCUMENTS TO BE PUBLISHED ON A WEBSITE FOLLOWING THE MAKING OF AN OFFER

The following documents must be published on a website from the time the offer document or offeree board circular, as appropriate, is published (or, if later, the date of the relevant document):

...

(f) where an asset valuation has been published:

~~(i) the valuation certificate and associated report or schedule containing details of the aggregate valuation (Rule 29.5(c)) valuation report (Rule 29.4(d)); and~~

~~(ii) the written consent of the independent valuer to the inclusion of its opinion on value valuation report in the relevant document in the form and context in which it is included (Rule 23.2(c)); and,~~

~~(iii) if appropriate, the confirmation by the valuer that its report continues to apply an updated valuation would not be materially different (Rules 29.5(a) and 27.2(d));~~

Rule 27.2

27.2 SUBSEQUENT DOCUMENTS

...

(d) If any document or announcement published by the offeror or the offeree company included a profit forecast, a quantified financial benefits statement or an asset valuation, any document subsequently published by that party in connection with the offer must, unless superseded by information included in the new document, include a statement by the directors of that party confirming:

...

~~(iii) where an opinion on value a valuation report was obtained on an asset valuation, that the independent valuer has confirmed that its opinion continues to apply an updated valuation would not be materially different.~~

Rule 29

[the current Rule 29 is not shown and is to be deleted in its entirety; the new Rule 29 set out below is not shown in underlined text]

RULE 29

NB The requirements of Rule 29 do not apply to a valuation published by a cash offeror in respect of assets of that cash offeror.

29.1 APPLICABLE VALUATIONS

(a) Rule 29 applies to a valuation published by the offeree company or a securities exchange offeror:

(i) during the offer period;

(ii) in the 12 months prior to the commencement of the offer period;
or

(iii) more than 12 months prior to the commencement of the offer period if attention is drawn to the valuation in the context of the offer by the offeree company or a securities exchange offeror (as applicable),

unless the Panel considers that the valuation is not material to offeree company shareholders in making a properly informed decision as to the merits or demerits of the offer.

(b) Rule 29 applies to a valuation of:

- (i) land, buildings, plant or equipment;
- (ii) mineral, oil or gas reserves; and
- (iii) unquoted investments representing in aggregate 10% or more of the gross asset value of the party to the offer which published the valuation.

(c) The Panel may also apply Rule 29 to a valuation of other assets or, if appropriate, liabilities falling within Rule 29.1(a). The Panel should be consulted at the earliest opportunity if such a valuation has been or is proposed to be published.

(d) If the offeree company or a securities exchange offeror publishes, or has published, a net asset value or an adjusted net asset value in circumstances where Rule 29.1(a) would apply if a valuation had been published in respect of the underlying assets:

- (i) a valuation of the underlying assets falling within the scope of Rules 29.1(b) or (c) must be published; and
- (ii) any document or announcement published by the offeree company or the securities exchange offeror which includes that net asset value or adjusted net asset value must clearly set out any adjustments which have been made to the valuation of the underlying assets in order to calculate that net asset value or adjusted net asset value.

NOTE ON RULE 29.1

Valuations solely in financial statements

Rule 29.1 is not intended to apply to a valuation which is set out in a company's financial statements only as a result of accounting practice and which is not otherwise referred to by the relevant party in the arguments as to the merits or demerits of the offer.

29.2 REQUIREMENT FOR VALUATION REPORT

(a) Except with the consent of the Panel, a valuation falling within Rule 29.1(a)(i) must be in the form of, or accompanied by, a valuation report.

(b) Except with the consent of the Panel, a valuation falling within Rule 29.1(a)(ii) or (iii) must be confirmed in, or updated by, a valuation report. The valuation report must be included in the offer document or the offeree board circular (as appropriate) or, if earlier, in the first announcement or document published during the offer period by the offeree company or the securities exchange offeror (as the case may be) which refers to that valuation.

(c) Any valuation report must be prepared by a valuer who satisfies the requirements of Rule 29.3.

NOTE ON RULE 29.2**Where it is not possible to obtain a valuation report within the required timeframe**

An offeree company or a securities exchange offeror which has published a valuation prior to the commencement of the offer period may not be able to obtain a valuation report within the timeframe set out in Rule 29.2(b). In such cases, the Panel may consent to a delay in the publication of a valuation report but will only consent to a delay beyond the date of the offer document or offeree board circular (as the case may be) in exceptional circumstances.

29.3 THE VALUER**(a) A valuer must:**

- (i) be considered by the Panel to be independent of the parties to the offer;**
- (ii) be appropriately qualified to give a valuation report on the valuation; and**
- (iii) have sufficient current knowledge of each relevant market and the necessary skills and understanding to prepare the valuation report.**

(b) The Panel must be consulted in advance if there is any doubt as to whether a valuer satisfies the requirements of Rule 29.3(a).**29.4 THE VALUATION REPORT****(a) A valuation report must include:**

- (i) the name, address and professional qualifications of the valuer;**
- (ii) the date as at which the assets were valued;**
- (iii) details of the assets which are the subject of the valuation report;**
- (iv) separate valuations of each category of assets, and/or individual significant assets, consistent with any previously published valuations of those assets or with normal valuation reporting practice for such assets;**
- (v) details of the valuation standards to which the valuation report has been prepared (see Note 1); and**
- (vi) the basis of valuation (see Note 2).**

(b) A valuation report must not be:

- (i) qualified; or**
- (ii) subject to special assumptions (e.g. an assumption that assumes facts that differ from the actual facts existing at the date of the valuation or which would not be made by a typical market participant in a transaction on the date of the valuation),**

except as required by Note 3(a), or otherwise with the consent of the Panel, in which case any qualifications or special assumptions must be fully explained.

(c) In preparing a valuation report in respect of a portfolio of assets, the valuer must normally value all of the assets in the portfolio. In the case of a portfolio with a large number of similar assets, the Panel may consent to the valuer valuing only a representative sample of the portfolio (see Note 4).

(d) Any valuation report must be published on a website in accordance with Rule 26.3.

NOTES ON RULE 29.4

1. Valuation standards

A valuation report must be prepared in accordance with:

(a) *valuation standards published by the Royal Institution of Chartered Surveyors or the International Valuation Standards Council; or*

(b) *other appropriate professional standards approved by the Panel,*

and on a basis which is consistent with past practice in relation to the assets concerned.

2. Basis of valuation

The basis of valuation should normally be market value. See also Note 3.

3. Development land

In the case of land being developed or with immediate development potential, in addition to the market value of the land at the date of valuation, the valuation report must include:

(a) *the value on the assumption that the development has been completed and, if applicable, let;*

(b) *the estimated total cost, including carrying charges, of completing the development;*

(c) *the expected dates of completion and, if applicable, of letting or occupation; and*

(d) *a statement as to whether planning consent has been obtained and, if so, the date of the planning consent and any conditions attaching to the consent which may affect the value.*

4. Representative sample of a portfolio of assets

The Panel will normally only grant its consent under Rule 29.4(c) where the valuer is familiar with the portfolio as a whole. In such cases:

(a) *the valuer must report on the representative sample and certify the representative nature of the sample; and*

(b) *the directors must take sole responsibility for estimates, based on the sample, to cover the remaining properties. The directors' estimates and a comparison of the estimates with book values must be included in any document or*

announcement in which the valuation report on the representative sample is published.

29.5 NO MATERIAL DIFFERENCE STATEMENT

(a) If the date as at which the assets were valued is not the same as the date of the document or announcement in which the valuation report is published, the document or announcement must include a statement by the directors of the offeree company or the securities exchange offeror that the valuer has confirmed that an updated valuation would not be materially different.

(b) If such a statement cannot be made, the offeree company or the securities exchange offeror (as the case may be) must publish an updated valuation.

29.6 POTENTIAL TAX LIABILITY

(b) Except with the consent of the Panel, any document or announcement in which a valuation report is published must (if it is not already included in the valuation report) include an estimate by the directors of the offeree company or the securities exchange offeror of the amount of any potential tax liability which would arise if the assets were to be sold at the amount of the valuation and a comment as to the likelihood of any such liability crystallizing.

(b) Where the Panel has given its consent under Rule 29.6(a), the document or announcement must:

- (i) explain why an estimate cannot be given; and
- (ii) describe the tax consequences of a sale of the assets.

29.7 PROFIT FORECASTS

If the publication of information contained in a valuation report could constitute a profit forecast, the Panel must be consulted in advance.

29.8 VALUATION OF ANOTHER PARTY'S ASSETS

A party to an offer will not normally be permitted to publish a valuation of assets of another party to an offer unless the valuation is the subject of an unqualified valuation report prepared in accordance with the requirements of this Rule 29 by a valuer who has had access to sufficient information to prepare such a report.