

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

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Introduction

Currently, the City Code on Takeovers and Mergers (the “Code”), which is issued by the Panel on Takeovers and Mergers of the UK (the “Panel”), applies to offers made for public companies incorporated in Jersey if either their shares are listed on a regulated market in the UK or on any stock exchange in the Channel Islands or the Isle of Man or if they 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 (and application to private companies is also possible in limited circumstances).

Since the creation of the Panel in 1968, it has acted in a non-statutory capacity and has developed the Code to reflect the collective opinion of those professionally involved in the field of takeovers and mergers as to appropriate business standards and how to achieve fairness for shareholders and an orderly framework for takeovers and mergers.

The European Union’s Directive on Takeover Bids (2004/25/EC)

Following the implementation in the UK of the European Union’s Directive on Takeover Bids (2004/25/EC) (the “Directive”) by the enactment of Chapter 1 of Part 28 of the UK’s Companies Act 2006 on 6 April 2007, the rules set out in the Code, which are derived from the Directive, now have a statutory basis in the UK.

From 6 April 2007, therefore, the Panel was granted statutory powers of enforcement in relation to all

offers and other statutory mergers to which the Code applies, apart from those relating to Channel Islands and Isle of Man companies.

Jersey's approach to the Directive

The States of Jersey decided that it was necessary, in order for Jersey companies and shareholders in such companies to continue to benefit from the protections provided by the Panel, to enact a law that closely follows Chapter 1 of Part 28 of the UK's Companies Act 2006. It was envisaged that this would have the effect of formalising the existing arrangement that the Panel has for applying the Code to Jersey companies and would also allow Jersey to show compatibility with the Directive and thus to show compliance with international standards.

Furthermore, since the Panel was placed within a statutory framework in the UK, the Panel did not consider it appropriate to continue to administer takeovers in Jersey unless an equivalent framework existed in Jersey. The UK legislation made provision for Chapter 1 of Part 28 of the UK's Companies Act 2006 to be extended to Jersey by Order-in-Council. However, Jersey decided, following consultation, to introduce its own legislation to give the Panel statutory power in Jersey.

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To ensure the Panel's functions and powers under Jersey law are equivalent to those under UK law, the States of Jersey adopted the Companies (Takeovers and Mergers Panel) (Jersey) Law 2009 (the "Takeovers Law") which came into force on 1 July 2009. The Takeovers Law closely follows Chapter 1 of Part 28 of the UK's Companies Act 2006.

The Takeovers Law empowers the Minister for Economic Development in Jersey to appoint a body to oversee takeovers and mergers. On 17 June 2009, the Minister made the Companies (Appointment of Takeovers and Mergers Panel) (Jersey) Order 2009 (the "Order") which appointed the Panel as that body from 1 July 2009, the date the Order came into force. Under the Takeovers Law, it is possible for the Minister to appoint another body should the need ever arise.

The Takeovers Law requires the Panel to make rules giving effect to the relevant articles of the Directive and the Code was adopted which constitutes such rules. The Takeovers Law also gives the Panel power to give rulings on the interpretation of the rules, provide directions and require disclosure of information.

Furthermore, the States of Jersey are given the power to amend the schedule to the Takeovers Law (the "Schedule") which sets out specific permitted disclosures of information by the Panel, which should be treated in confidence unless disclosed in accordance with the Schedule. Following the introduction in Guernsey of the Companies (Panel on Takeovers and Mergers) Ordinance, 2009 which amended the Companies (Guernsey) Law, 2008 so that the Panel could be appointed in Guernsey (the appointment

itself was made by Guernsey's Companies (Appointment of Panel on Takeovers and Mergers) Regulations, 2009, which commenced on 1 July 2009), the Schedule needed to be amended in order to help ensure consistency across jurisdictions where the Panel operates by having the same disclosure gateways. The Companies (Takeovers and Mergers Panel) (Amendment of Law) (Jersey) Regulations 2009 (the "Regulations") have been passed to update the Schedule to include the disclosures permitted under Guernsey Law. For the same reason, the UK recently passed the Companies Act 2006 (Amendment of Schedule 2) (No 2) Order 2009 amending the UK's schedule of permitted disclosures to include Jersey, Guernsey and Isle of Man disclosures. The Isle of Man has approached the Directive differently by having the provisions of Chapter 1 Part 28 of the UK's Companies Act 2006 extended to cover the Isle of Man and therefore the Schedule should not need amending because it includes disclosures permitted under schedule 2 of the UK's Companies Act 2006 (which, as mentioned above, includes Isle of Man disclosures).

The Jersey Financial Services Commission and the Panel have mutual duties of cooperation under the Takeovers Law which also requires the Panel to cooperate with equivalent overseas authorities.

Provision is also made in the Takeovers Law for review and appeals of the Panel's decisions, sanctions for non-compliance with the rules, compensation and enforcement by the Royal Court in Jersey.

Summary

The Takeovers Law puts the Panel's authority in Jersey on a statutory footing, equivalent to its powers in the UK. Whilst acquirers of public Jersey companies which have their shares listed on a regulated market or which are managed and controlled in Jersey or the UK will no doubt continue to observe the Code as before, they should be aware of the now statutory powers of the Panel, and application of the Code, in Jersey.

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