



Takeovers Code Approval Order 2000

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 16th day of October 2000

Present:

His Excellency the Governor-General in Council

Pursuant to section 28(3) of the Takeovers Act 1993, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the advice of the Minister makes the following order.

Contents

1	Title		Schedule
2	Approval of takeovers code		Takeovers code

Order

- 1 Title**
This order is the Takeovers Code Approval Order 2000.
 - 2 Approval of takeovers code**
The takeovers code recommended to the Minister by the Takeovers Panel and set out in the Schedule is approved.
-

cl 2

Schedule Takeovers code

Contents

<p>1 Title</p> <p>2 Commencement</p> <p style="text-align: center;">Part 1 Preliminary provisions</p> <p style="text-align: center;"><i>Interpretation</i></p> <p>3 Interpretation</p> <p>4 Meaning of associate</p> <p style="text-align: center;"><i>No contracting out of code</i></p> <p>5 No contracting out of code</p> <p style="text-align: center;">Part 2 Fundamental rule and exceptions</p> <p>6 Fundamental rule</p> <p>7 Exceptions to fundamental rule</p> <p style="text-align: center;">Part 3 Specific requirements for exceptions to fundamental rule</p> <p style="text-align: center;">Subpart 1—Full offers</p> <p>8 Full offer</p> <p style="text-align: center;">Subpart 2—Partial offers</p> <p style="text-align: center;"><i>General provisions</i></p> <p>9 Partial offer</p> <p>10 When offeror does not hold or control more than 50% of voting rights</p> <p style="text-align: center;"><i>Excess acceptance</i></p> <p>11 Excess acceptances: application</p> <p>12 Excess acceptances: 1 class of voting securities</p> <p>13 Excess acceptances: more than 1 class of voting securities</p> <p>14 Voting securities subject to disposition</p> <p style="text-align: center;">Subpart 3—Acquisitions and allotments</p> <p style="text-align: center;"><i>Notice of meeting</i></p> <p>15 Notice of meeting: acquisition of voting securities</p> <p>16 Notice of meeting: allotment of voting securities</p> <p style="text-align: center;"><i>Voting restrictions</i></p> <p>17 Voting restrictions</p> <p style="text-align: center;"><i>Independent adviser's report</i></p> <p>18 Independent adviser's report</p>	<p style="text-align: center;"><i>Directors' statement</i></p> <p>19 Directors' statement</p> <p style="text-align: center;">Part 4 Code offers</p> <p style="text-align: center;"><i>General provisions</i></p> <p>20 Same terms and consideration</p> <p>21 Independent adviser's report</p> <p>22 Independent adviser's report on fairness between classes</p> <p>23 Minimum acceptance condition</p> <p>24 Offer period</p> <p>25 Conditions</p> <p>26 Withdrawal or lapse of offer</p> <p style="text-align: center;"><i>Variation of offer</i></p> <p>27 Permissible variations</p> <p>28 Variation notice</p> <p>29 Timing of variation</p> <p>30 Further reports required for certain variations</p> <p>31 Increases in consideration available to all accepting parties</p> <p>32 Additional consideration relating to variation</p> <p style="text-align: center;"><i>Consideration</i></p> <p>33 Offer to specify date for payment of consideration</p> <p>34 Withdrawal of acceptance for non-payment of consideration</p> <p style="text-align: center;">Part 5 Dealings and defensive tactics</p> <p style="text-align: center;"><i>Certain dispositions and acquisitions</i></p> <p>35 Dispositions</p> <p>36 Acquisitions</p> <p>37 Position if consideration exceeds consideration specified in offer</p> <p style="text-align: center;"><i>Defensive tactics</i></p> <p>38 Defensive tactics restricted</p> <p>39 When action permitted</p> <p>40 Notice of meeting</p> <p style="text-align: center;">Part 6 Offer procedure</p> <p>41 Takeover notice</p>
--	---

42	Notification obligations of target company	56	<i>Determination of consideration</i> Dominant owner through acceptances of offer
43	Identifying offerees and sending of offer	57	Determination of consideration in other cases
44	Offer document	58	Expert determination
45	Despatch notice	<i>Payment of consideration and transfer of outstanding securities</i>	
46	Target company statement	59	Return of instrument of transfer
47	Documents for Panel	60	Payment of consideration to outstanding security holder
48	Notification of altered offer document	61	Delivery of consideration to code company
49	Reimbursement of directors and target company	62	Position if consideration fixed by expert determination
Part 7		63	Registration of dominant owner as holder of outstanding securities
Compulsory acquisitions		—————	
50	Interpretation	Schedule 1	
	<i>Rights and obligations</i>	Information required in takeover notice	
51	Notification of dominant ownership	Schedule 2	
52	Dominant owner's right	Information required in target company statement	
53	Outstanding security holder's right		
	<i>Acquisition notice</i>		
54	Acquisition notice		
55	Contents of acquisition notice		

1 Title

This code is the Takeovers Code.

2 Commencement

This code comes into force on 1 July 2001.

Part 1 Preliminary provisions

Interpretation

3 Interpretation

(1) In this code, unless the context otherwise requires,—
acquisition notice has the meaning set out in rule 50

Act means the Takeovers Act 1993

code company means a company that—

- (a) is a party to a listing agreement with the Stock Exchange;
- (b) is not a party to a listing agreement with the Stock Exchange but that was a party to a listing agreement with the Stock Exchange at any time during the period

of 12 months before any date or the occurrence of any event referred to in this code:

- (c) has 50 or more shareholders and \$20,000,000 or more of assets

company has the same meaning as in section 2(1) of the Companies Act 1993

compulsory sale has the meaning set out in rule 50

control, in relation to a voting right, means having, directly or indirectly, effective control of the voting right; and **controller** has a corresponding meaning

despatch notice means the notice referred to in rule 45

director,—

- (a) in relation to a company, means a person occupying the position of a director of the company, by whatever name called; and
- (b) in relation to a partnership (other than a special partnership), means a partner; and
- (c) in relation to a special partnership, means a general partner; and
- (d) in relation to a body corporate, or unincorporate, other than a company, partnership, or special partnership, means a person occupying a position in the body that is comparable with that of a director of a company; and
- (e) in relation to any other person, means that person; and
- (f) includes a person in accordance with whose directions or instructions a person referred to in paragraphs (a) to (d) may be required or is accustomed to act in respect of the exercise of duties or powers as, or comparable to those of, a director

dominant owner has the meaning set out in rule 50

equity security—

- (a) means any interest in or right to a share in, or in the share capital of, a company (whether carrying voting rights or not); and
- (b) includes an option or right to acquire any such interest or right unless that option or right is exercisable only with the agreement of the issuer; but
- (c) does not include redeemable securities that are redeemable only for cash

full offer means an offer under rule 8

further required voting securities has the meaning set out in rule 12(3)

independent adviser means an adviser whom the Panel considers is independent and who is approved by the Panel for the purposes of this code

offer means an offer to which this code applies for voting securities and any other securities to which the offer is required to extend under this code

offer document means the offer and all accompanying information referred to in rule 44

offer period means the period referred to in rule 24

offeree means a person to whom an offer is made

offeror means a person who makes an offer

ordinary resolution, in relation to a code company, means a resolution that is passed at a meeting of the holders of voting securities of the code company by a simple majority of the votes of those holders who voted on the resolution

outstanding securities has the meaning set out in rule 50

outstanding security holders has the meaning set out in rule 50

Panel means the Takeovers Panel established under Part I of the Act

partial offer means an offer under rule 9

record date, in relation to an offer, means the date specified by an offeror under rule 43(3)

related company has the same meaning as in section 2(3) of the Companies Act 1993

specified percentage means the percentage referred to in rule 9

Stock Exchange—

- (a) means the New Zealand Stock Exchange; and
- (b) includes a stock exchange registered under the Sharebrokers Act 1908

subsidiary has the same meaning as in sections 5 to 8 of the Companies Act 1993

surplus acceptance voting securities has the meaning set out in rule 12(3)

takeover notice means the notice referred to in rule 41

target company means a code company—

- (a) whose voting securities are the subject of an offer; or
- (b) that has received a takeover notice

target company statement means the statement referred to in rule 46

variation notice means the notice referred to in rule 28

voluntary sale has the meaning set out in rule 50

voting right means a currently exercisable right to cast a vote at meetings of shareholders of a company, not being a right to vote that is exercisable only in 1 or more of the following circumstances:

- (a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the security that confers the voting right is in arrears or some other default exists;
- (b) on a proposal that affects rights attached to the security that confers the voting right;
- (c) on a proposal to put the company into liquidation;
- (d) on a proposal for the disposal of the whole, or a material part, of the property, business, and undertaking of the company;
- (e) during the liquidation of the company;
- (f) in respect of a special, immaterial, or remote matter that is inconsequential to control of the company

voting security means an equity security that confers a voting right.

- (2) If, under this code, the time within which or the day on which any thing is to be done expires or falls on a day other than a working day as defined in section 2 of the Companies Act 1993, the time so limited is extended to, and such thing may be done, on the next day that is a working day as so defined.

4 Meaning of associate

- (1) For the purposes of this code, a person is an **associate** of another person if—
 - (a) the persons are acting jointly or in concert; or
 - (b) the first person acts, or is accustomed to act, in accordance with the wishes of the other person; or
 - (c) the persons are related companies; or

- (d) the persons have a business relationship, personal relationship, or an ownership relationship such that they should, under the circumstances, be regarded as associates; or
 - (e) the first person is an associate of a third person who is an associate of the other person (in both cases under any of paragraphs (a) to (d)) and the nature of the relationships between the first person, the third person, and the other person (or any of them) is such that, under the circumstances, the first person should be regarded as an associate of the other person.
- (2) A director of a company or other body corporate is not an associate of that company or body corporate merely because he or she is a director of that company or body corporate.

No contracting out of code

5 No contracting out of code

This code has effect despite any provision to the contrary in any agreement, constitution of a company or similar document relating to another body corporate, resolution of the security holders of a company or of any other body corporate, deed, or otherwise.

Part 2 Fundamental rule and exceptions

6 Fundamental rule

- (1) Except as provided in rule 7, a person who holds or controls—
- (a) no voting rights, or less than 20% of the voting rights, in a code company may not become the holder or controller of an increased percentage of the voting rights in the code company unless, after that event, that person and that person's associates hold or control in total not more than 20% of the voting rights in the code company;
 - (b) 20% or more of the voting rights in a code company may not become the holder or controller of an increased percentage of the voting rights in the code company.
- (2) For the purposes of subclause (1), if—
- (a) a person and any other person or persons acting jointly or in concert together become the holders or controllers

of voting rights, that person is deemed to have become the holder or controller of those voting rights:

- (b) a person or persons together hold or control voting rights and another person joins that person or all or any of those persons in the holding or controlling of those voting rights as associates, the other person is deemed to have become the holder or controller of those voting rights:
- (c) voting rights are held or controlled by a person together with associates, any increase in the extent to which that person shares in the holding or controlling of those voting rights with associates is deemed to be an increase in the percentage of the voting rights held or controlled by that person.

7 **Exceptions to fundamental rule**

A person may become the holder or controller of an increased percentage of the voting rights in a code company—

- (a) by an acquisition under a full offer (the main provisions are contained in rule 8, Parts 4 to 6, and Schedules 1 and 2):
- (b) by an acquisition under a partial offer (the main provisions are contained in rules 9 to 14, Parts 4 to 6, and Schedules 1 and 2):
- (c) by an acquisition by the person of voting securities in the code company or in any other body corporate from 1 or more other persons if the acquisition has been approved by an ordinary resolution of the code company in accordance with this code (the main provisions are contained in rules 15 and 17 to 19):
- (d) by an allotment to the person of voting securities in the code company or in any other body corporate if the allotment has been approved by an ordinary resolution of the code company in accordance with this code (the main provisions are contained in rules 16 to 19):
- (e) if—
 - (i) the person holds or controls more than 50%, but less than 90%, of the voting rights in the code company; and
 - (ii) the resulting percentage held by the person does not exceed by more than 5 the lowest percentage of the total voting rights in the code company

held or controlled by the person in the 12-month period ending on, and inclusive of, the date of the increase:

- (f) if the person already holds or controls 90% or more of the voting rights in the code company.

Part 3

Specific requirements for exceptions to fundamental rule

Subpart 1—Full offers

8 Full offer

- (1) An offer may be made under this code for all the voting securities of the target company not already held by the offeror.
- (2) A full offer must include offers in respect of all the securities in each class of equity securities, whether voting or non-voting, of the target company (other than those that are already held by the offeror).
- (3) If there is more than 1 class of voting securities included in a full offer, the consideration and terms offered for each class of voting securities must be fair and reasonable as between the classes of voting securities.
- (4) If non-voting securities are included in a full offer, the consideration and terms offered for non-voting securities must be fair and reasonable in comparison with the consideration and terms offered for voting securities and as between classes of non-voting securities.

Subpart 2—Partial offers

General provisions

9 Partial offer

- (1) An offer may be made under this code for less than all the voting securities of a target company.
- (2) A partial offer must be extended to all holders of voting securities of the target company other than the offeror.
- (3) If there is only 1 class of voting securities of the target company, a partial offer must be made for a specified percentage

of the voting securities of the target company not already held or controlled by the offeror.

- (4) If there is more than 1 class of voting securities of the target company, a partial offer must be made for a specified percentage of the voting securities of each class not already held or controlled by the offeror, and such specified percentage must be the same percentage in respect of each class.
- (5) The consideration and terms offered for each class of voting securities of the target company must be fair and reasonable as between the classes of voting securities.

10 When offeror does not hold or control more than 50% of voting rights

- (1) If, on the date of a partial offer, the offeror does not hold or control more than 50% of the voting rights in the target company, the partial offer must be for voting securities that, when taken together with voting securities already held or controlled by the offeror, confer—
 - (a) more than 50% of the voting rights in the target company; or
 - (b) a lesser percentage of the voting rights in the target company if approval is obtained in accordance with the following provisions:
 - (i) the takeover notice and the offer must include a statement that approval is sought under rule 10 of the Takeovers Code and that the offer is conditional on approval being obtained;
 - (ii) the offer must be accompanied by a separate approval document providing for the offeree to approve or object to the offeror making an offer for the lesser percentage;
 - (iii) approval under this rule is obtained if the offerees so approving hold more voting rights in the target company than are held by offerees so objecting;
 - (iv) for the purposes of subparagraph (iii), voting rights held by the offeror and its associates must be disregarded;
 - (v) for an approval or objection to be valid for the purposes of this rule, the completed approval

document must be received by the target company or its agent before the expiration of the offer period.

- (2) A target company, or its agent, that receives an approval or objection before the expiration of the offer period must, if requested by the offeror, send a copy of the approval or objection to the offeror within 2 days of its receipt.

Excess acceptances

11 Excess acceptances: application

If a partial offer is accepted in respect of more securities than those sought by the offeror, rules 12 and 13 apply.

12 Excess acceptances: 1 class of voting securities

- (1) If there is only 1 class of voting securities included in the partial offer, the offeror must take up from each offeree the lesser of—

- (a) the number of the offeree's securities that represents the specified percentage of the voting securities held by the offeree; or
- (b) the number of securities in respect of which the offeree has accepted the offer.

- (2) If the number of voting securities that the offeror takes up under subclause (1) is less than the number of voting securities sought by the offeror under the offer, the offeror must acquire the further required voting securities by taking up, from each offeree with surplus acceptance voting securities, voting securities bearing the same proportion to the offeree's surplus acceptance voting securities as the further required voting securities bear to the total surplus acceptance voting securities.

- (3) For the purposes of this rule and rule 13,—

further required voting securities means the balance of voting securities required by an offeror

surplus acceptance voting securities means the voting securities in respect of which an offer has been accepted, but that have not been taken up under subclause (1).

13 Excess acceptances: more than 1 class of voting securities

If there is more than 1 class of voting securities included in the partial offer,—

- (a) rule 12 applies in respect of each class of voting securities separately; and
- (b) if the application of paragraph (a) does not provide the offeror with the voting securities sought by the offeror under the partial offer, rule 12(2) and (3) applies (with any necessary modifications) in relation to the—
 - (i) total remaining surplus acceptance voting securities of all classes; and
 - (ii) total remaining further required voting securities of all classes needed to bring the voting rights acquired under the partial offer up to the total voting rights conferred by the voting securities sought under the partial offer; and
- (c) if the voting securities confer different voting rights as between classes, the number of surplus acceptance voting securities taken up from each offeree under paragraph (b) must be calculated by reference to the—
 - (i) voting rights conferred by each remaining surplus acceptance voting security; and
 - (ii) voting rights conferred by the total remaining surplus acceptance voting securities; and
 - (iii) remaining voting rights sought under the partial offer.

14 Voting securities subject to disposition

The number of voting securities that may be disposed of by an offeree under a partial offer in accordance with the terms of the offer and this code must be determined by reference to the number of voting securities of each class under offer held by the offeree at the expiration of the offer period, as recorded in the securities register of the target company.

Subpart 3—Acquisitions and allotments

Notice of meeting

15 Notice of meeting: acquisition of voting securities

The notice of meeting containing the proposed resolution in respect of an acquisition of voting securities referred to in rule 7(c) must contain, or be accompanied by,—

- (a) the identity of the persons acquiring and disposing of the voting securities; and
- (b) particulars of the voting securities to be acquired, including—
 - (i) the number being acquired; and
 - (ii) the percentage of all voting securities that that number represents; and
 - (iii) the percentage of all voting securities that will be held or controlled by the person acquiring the voting securities after completion of the acquisition; and
- (c) if the voting securities being acquired are voting securities of a body corporate other than the code company,—
 - (i) the number of voting securities in the code company that are held or controlled by that body corporate; and
 - (ii) the percentage of the total voting securities of the code company that that number represents; and
- (d) the consideration for the acquisition or the manner in which the consideration will be determined and when the consideration is payable; and
- (e) the reasons for the transaction; and
- (f) a statement to the effect that the acquisition, if approved, will be permitted under rule 7(c) of the Takeovers Code as an exception to rule 6 of the Takeovers Code; and
- (g) a statement by the person acquiring the voting securities setting out particulars of any agreement or arrangement (whether or not legally enforceable) that has been, or is intended to be, entered into between the person and any other person (other than between that person and the person disposing of the voting securities in respect of the matters referred to in paragraphs (a) to (e)) relating to the acquisition, holding, or control of the voting

- securities to be acquired, or to the exercise of voting rights in the code company; and
- (h) the report from an independent adviser that complies with rule 18; and
 - (i) the statement by the directors of the code company referred to in rule 19.

16 Notice of meeting: allotment of voting securities

The notice of meeting containing the proposed resolution in respect of an allotment of voting securities referred to in rule 7(d) must contain, or be accompanied by,—

- (a) the identity of the allottee; and
- (b) particulars of the voting securities to be allotted, including—
 - (i) the number being allotted; and
 - (ii) the percentage of the aggregate of all existing voting securities and all voting securities being allotted that that number represents; and
 - (iii) the percentage of all voting securities that will be held or controlled by the person to whom the voting securities are being allotted after completion of the allotment; and
- (c) if the voting securities being allotted are voting securities of a body corporate other than the code company—
 - (i) the number of voting securities in the code company that are held or controlled by that body corporate; and
 - (ii) the percentage of the total voting securities of the code company that that number represents; and
- (d) the issue price for the voting securities to be allotted and when it is payable; and
- (e) the reasons for the allotment; and
- (f) a statement to the effect that the allotment, if approved, will be permitted under rule 7(d) of the Takeovers Code as an exception to rule 6 of the Takeovers Code; and
- (g) a statement by the allottee setting out particulars of any agreement or arrangement (whether legally enforceable or not) that has been, or is intended to be, entered into between the allottee and any other person (other than between the allottee and the code company in respect of the matters referred to in paragraphs (a) to (e)) relating

- to the allotment, holding, or control of the voting securities to be allotted, or to the exercise of voting rights in the code company; and
- (h) the report from an independent adviser that complies with rule 18; and
 - (i) the statement by the directors of the code company referred to in rule 19.

Voting restrictions

17 Voting restrictions

- (1) The persons acquiring and disposing of the securities and their associates must not vote on a resolution for the approval of the acquisition referred to in rule 7(c).
- (2) The allottee and its associates must not vote on a resolution for the approval of the allotment referred to in rule 7(d).

Independent adviser's report

18 Independent adviser's report

- (1) The directors of the code company must obtain a report from an independent adviser on the merits of any proposed acquisition under rule 7(c) or allotment under rule 7(d) having regard to the interests of those persons who may vote to approve the acquisition or allotment.
- (2) The report that is to be contained in, or to accompany, the notice of meeting referred to in rule 15 or rule 16 (as the case may be) may be either the full report given by the independent adviser or a summary report prepared by the adviser.
- (3) If only a summary of the independent adviser's full report is contained in, or accompanies, the notice of meeting,—
 - (a) the full report must be available for inspection at the registered office of the code company on and after the date of the notice of meeting; and
 - (b) a copy of the full report must be provided to any person entitled to attend the meeting on request.
- (4) The full report and any summary report of an independent adviser must include—
 - (a) a statement of the qualifications and expertise of the adviser; and

- (b) a statement that the adviser has no conflict of interest that could affect the adviser's ability to provide an unbiased report; and
- (c) if the report is a summary report, a statement that—
 - (i) the summary report is a fair summary and not misleading; and
 - (ii) the full report is available for inspection at the registered office of the code company on and after the date of the notice of meeting; and
 - (iii) a copy of the full report will be sent to any person entitled to attend the meeting on request.

Directors' statement

19 Directors' statement

- (1) The directors of the code company must—
 - (a) provide a written statement as to whether they recommend approval or disapproval of any proposed acquisition under rule 7(c) or allotment under rule 7(d) and give their reasons; or
 - (b) provide a written statement that the directors of the code company are unable to make, or are not making, a recommendation and give their reasons.
- (2) If any of the directors dissent from a recommendation or from any statement under subclause (1)(b) made by the directors or abstain from making a recommendation or any statement under subclause (1)(b), their names and their reasons for dissenting or abstaining must be stated.

Part 4 Code offers

General provisions

20 Same terms and consideration

An offer must be made on the same terms and provide the same consideration for all securities belonging to the same class of equity securities under offer.

21 Independent adviser's report

The directors of a target company must obtain a report from an independent adviser on the merits of an offer.

22 Independent adviser's report on fairness between classes

- (1) An offeror must obtain a report from an independent adviser, if any of rules 8(3) and (4) and 9(5) apply.
- (2) In the report, the independent adviser must certify that, in the adviser's opinion, the offer complies with the relevant rule specified in subclause (1).
- (3) If an independent adviser's report is obtained, the offer is deemed to comply with the relevant rule specified in subclause (1).

23 Minimum acceptance condition

- (1) If, on the date of an offer, the offeror does not hold or control more than 50% of the voting rights in the target company, the offer must be conditional on the offeror receiving acceptances in respect of voting securities that, when taken together with voting securities already held or controlled by the offeror, confer—
 - (a) more than 50% of the voting rights in the target company; or
 - (b) in the case of a partial offer, any lesser percentage approved under rule 10(1)(b).
- (2) The offeror must not take up any equity securities under the offer unless the condition referred to in subclause (1) is satisfied by the end of the offer period.

24 Offer period

- (1) An offer must specify the period for which it will remain open and, subject to rules 25(4) and 26(1), must remain open for that period.
- (2) The offer period must—
 - (a) commence with the date of the offer; and
 - (b) be not shorter than 30 days, and not longer than 90 days.
- (3) If the offer is a full offer, and there are no conditions in the offer requiring a minimum level of acceptances, or any such conditions have been satisfied, then the offer period may be extended beyond the maximum period otherwise permitted under subclause (2) by up to a further 60 days (and the additional period is deemed to be included in the offer period for the purposes of this code unless otherwise expressly provided).

25 Conditions

- (1) An offer may be subject to any conditions, except those that depend on the judgement of the offeror or any associate of the offeror, or the fulfilment of which is in the power, or under the control, of the offeror or any associate of the offeror.
- (2) An offer that is subject to any conditions must specify a date by which the offer is to become unconditional.
- (3) The specified date referred to in subclause (2) must not be later than 14 days, or, if the acquisition requires statutory approval, 30 days, after the end of the offer period (excluding any part of the offer period that is extended under rule 24(3) beyond the maximum period otherwise permitted under rule 24(2)).
- (4) No condition contained in the offer has effect beyond the specified date referred to in subclause (3), and the offer lapses if it does not become unconditional by that specified date.
- (5) If an offer has become unconditional, both in respect of any minimum acceptance condition referred to in rule 23 and in respect of any conditions referred to in this rule, the offeror must immediately send a written notice to that effect to—
 - (a) the target company; and
 - (b) the Panel; and
 - (c) the Stock Exchange (if any voting securities of the target company are quoted on the Stock Exchange).

26 Withdrawal or lapse of offer

- (1) An offer may be withdrawn only with the consent of the Panel.
- (2) An offeror must immediately send a written notice that the offer is withdrawn or has lapsed in accordance with the terms of the offer to—
 - (a) the target company; and
 - (b) the Panel; and
 - (c) the Stock Exchange (if any voting securities of the target company are quoted on the Stock Exchange).

*Variation of offer***27 Permissible variations**

The offeror may vary the offeror's offer only if the variation is to do any of the following things:

- (a) to increase an existing component or components of the consideration:
- (b) to add a cash component to the consideration:
- (c) to include in the offer a cash alternative (if the directors of the target company have given their prior written approval):
- (d) to extend the offer period, but not beyond the maximum period permitted under rule 24.

28 Variation notice

- (1) Subject to subclause (2), an offeror must immediately send a written notice of any variation of the offeror's offer to—
 - (a) every offeree; and
 - (b) the target company; and
 - (c) the Panel; and
 - (d) the Stock Exchange (if any voting securities of the target company are quoted on the Stock Exchange).
- (2) If the offer is unconditional and the variation only extends the offer period, the notice referred to in subclause (1) need not be sent to offerees who have already accepted the offer.

29 Timing of variation

- (1) An offer may not be varied, and a variation notice may not be sent, later than 14 days before the end of the offer period.
- (2) The offer must remain open for at least 14 days after a variation notice has been sent.
- (3) Subclause (1) does not apply if, before the end of the offer period, the offer period is extended under rule 24(3).

30 Further reports required for certain variations

If any of rules 8(3) and (4) and 9(5) apply to an offer and the offer is to be varied under any of rule 27(a) to (c),—

- (a) a further report must be obtained by the offeror under rule 22 in relation to the offer as proposed to be varied; and
- (b) the variation notice must contain, or be accompanied by, the information set out in clause 17 of Schedule 1 in relation to the further report.

31 Increases in consideration available to all accepting parties

- (1) If a variation to an offer increases the consideration offered, the offeror must provide the increased consideration to each person whose securities are taken up, whether or not the person accepted the offer before or after the variation was made.
- (2) If a variation to an offer includes a cash alternative in the offer, the offeror must give all acceptors, including those who have accepted the offer before the variation is made, the opportunity to take the cash alternative as consideration.

32 Additional consideration relating to variation

If an offer is varied under rule 27(a) or (b) after the consideration has been sent to persons who have accepted the offer, the additional consideration to be provided as a consequence of the variation must be sent to those persons no later than 7 days after the date on which the offer is varied.

*Consideration***33 Offer to specify date for payment of consideration**

- (1) The offer must specify a date by which the consideration for the offer must be sent to the persons whose securities are taken up under the offer.
- (2) The date referred to in subclause (1) must not be later than 7 days after the later of—
 - (a) the date on which the offer becomes unconditional; or
 - (b) the date on which an acceptance is received; or
 - (c) the end of the offer period first specified in the offer under rule 24(2).

34 Withdrawal of acceptance for non-payment of consideration

- (1) If the consideration is not sent within the period specified in the offer to any person whose securities are taken up under the offer, the person may withdraw acceptance of the offer—
 - (a) by notice in writing to the offeror; but only
 - (b) after the expiration of 7 days' written notice to the offeror of the person's intention to do so.

- (2) However, the right to withdraw acceptance of the offer does not apply if the person receives the consideration during the 7-day period referred to in subclause (1)(b).

Part 5

Dealings and defensive tactics

Certain dispositions and acquisitions

35 Dispositions

During the offer period, neither the offeror nor any person acting jointly or in concert with the offeror may dispose of any equity securities in the target company other than to an offeror under another offer that is made under this code.

36 Acquisitions

During the offer period, the offeror, any related company of the offeror, any person acting jointly or in concert with the offeror, or any of the directors of any of them, must not acquire any equity securities in the target company otherwise than under the offer unless—

- (a) the offeror has made a full offer for cash, or a full offer with a cash alternative; and
- (b) the possibility of an acquisition as permitted by this rule is disclosed in the offer document; and
- (c) the acquisition is made no later than 14 days before the expiration of the offer period; and
- (d) the acquisition is made only for cash; and
- (e) the acquisition of any equity securities will not result in the offeror's and the offeror's associates' holding or controlling in total more than 20% of the voting rights in the target company (excluding any equity securities in respect of which the offeror has received acceptances of the offeror's offer) unless the offer has become unconditional; and
- (f) the acquisition is notified to the Panel immediately.

37 Position if consideration exceeds consideration specified in offer

If the consideration paid in any acquisition under rule 36 exceeds the cash consideration or cash alternative consideration specified in the offer,—

- (a) the offer is deemed to be varied under rule 27 as from the date of the acquisition so that the cash consideration or cash alternative consideration under the offer is equal to the consideration paid for the acquisition; and
- (b) the provisions of this code relating to variation of an offer apply (with any necessary modifications).

Defensive tactics

38 Defensive tactics restricted

- (1) If a code company has received a takeover notice or has reason to believe that a bona fide offer is imminent, the directors of the company must not take or permit any action, in relation to the affairs of the code company, that could effectively result in—
 - (a) an offer being frustrated; or
 - (b) the holders of equity securities of the code company being denied an opportunity to decide on the merits of an offer.
- (2) Subclause (1) does not prevent the directors of a code company taking steps to encourage competing bona fide offers from other persons.
- (3) Subclause (1) is subject to rule 39.

39 When action permitted

The directors of a code company may take or permit the kind of action referred to in rule 38(1) if—

- (a) the action has been approved by an ordinary resolution of the code company; or
- (b) the action is taken or permitted under a contractual obligation entered into by the code company, or in the implementation of proposals approved by the directors of the code company, and the obligations were entered into, or the proposals were approved, before the code company received the takeover notice or became aware that the offer was imminent; or
- (c) if paragraphs (a) and (b) do not apply, the action is taken or permitted for reasons unrelated to the offer with the prior approval of the Panel.

40 Notice of meeting

The notice of meeting containing the proposed resolution for the approval of the action referred to in rule 39(a) must contain, or be accompanied by,—

- (a) full particulars of the proposed action; and
- (b) the reasons for it; and
- (c) a statement explaining the significance of the resolution under this code.

Part 6

Offer procedure

41 Takeover notice

- (1) The offeror must send to the prospective target company a notice in writing that—
 - (a) states the offeror's intention to make an offer under this code; and
 - (b) contains, or is accompanied by, the information specified in Schedule 1 (except clauses 1 and 4) stated as at the date of the notice.
- (2) The notice may contain, or be accompanied by, any additional information that the directors of the offeror determine could affect the decision of the offerees to accept or reject the offer.

42 Notification obligations of target company

- (1) Immediately on receipt of a takeover notice, the target company must,—
 - (a) if its voting securities are quoted on the Stock Exchange, inform the Stock Exchange in writing that a takeover notice has been received; or
 - (b) if its voting securities are not quoted on the Stock Exchange, do all that is reasonably practicable to ensure that all persons who will be offerees under the offer are informed in writing that the takeover notice has been received.
- (2) No later than 2 days after the record date, the target company must provide to the offeror a copy of the target company's securities register relating to the securities to which the offer relates as at the record date in electronic form (or in such other form as the target company and the offeror agree).

43 Identifying offerees and sending of offer

- (1) The offerees in respect of an offer are the persons shown as the holders of securities in the target company to which the offer relates on the securities register of the target company as at the record date.
- (2) The record date must be not more than 10 days before the date of the offer.
- (3) The offeror must send to the target company a notice in writing that specifies the record date for the purposes of the offer.
- (4) The notice referred to in subclause (3) must be given no later than 2 days before the record date.
- (5) The offeror must send the offer to the offerees on a date that is—
 - (a) no later than 3 days after the date of the offer specified under rule 44(1)(c); and
 - (b) during the period beginning 14 days, and ending 30 days, after the takeover notice relating to the offer has been sent to the target company.
- (6) Nothing in subclause (1) prevents the offeror from sending the offer to persons who acquire securities in the target company to which the offer relates after the record date.

44 Offer document

- (1) The offer must—
 - (a) be in writing; and
 - (b) be on the same terms and conditions as those set out in the takeover notice except for—
 - (i) conditions that have been satisfied or waived; and
 - (ii) consequential amendments; and
 - (iii) any variations to which the directors of the target company have given their prior written approval; and
 - (c) be dated; and
 - (d) contain, or be accompanied by,—
 - (i) the information specified in Schedule 1 stated as at the date of the offer; and
 - (ii) any additional information contained in, or that accompanied, the takeover notice under rule 41(2); and

- (iii) a copy of the target company statement (if the target company statement has been given to the offeror under rule 46(a)).
- (2) The offer may contain, or be accompanied by, additional information of the kind described in rule 41(2).

45 Despatch notice

- (1) Immediately on sending the offer document to the offerees, the offeror must—
- (a) send to the target company—
 - (i) a notice in writing stating that the offer document has been sent to the offerees; and
 - (ii) a copy of the offer document; and
 - (b) send to the Stock Exchange a copy of—
 - (i) the notice referred to in paragraph (a)(i); and
 - (ii) the offer document; and
 - (c) deliver to the Registrar of Companies for registration a copy of—
 - (i) the notice referred to in paragraph (a)(i); and
 - (ii) the offer document.
- (2) Subclause (1)(b) applies only if the offeror's or the target company's voting securities are quoted on the Stock Exchange.

46 Target company statement

The target company must—

- (a) either,—
 - (i) within 14 days after it receives the takeover notice (or any longer period as the offeror may allow), send to the offeror a statement containing, or accompanied by, the information specified in Schedule 2 to accompany the offer; or
 - (ii) within 14 days after it receives the despatch notice, send the statement referred to in subparagraph (i) to—
 - (A) every offeree; and
 - (B) the offeror; and
 - (C) the Stock Exchange (if the voting securities of the target company or the offeror are quoted on the Stock Exchange); and

- (b) deliver a copy of the statement referred to in paragraph (a)(i) to the Registrar of Companies for registration—
 - (i) immediately on receipt of the despatch notice (if the target company has sent the statement referred to in paragraph (a)(i) to the offeror under paragraph (a)(i)); or
 - (ii) immediately on sending the statement referred to in paragraph (a)(i) to the persons referred to in paragraph (a)(ii) (if subparagraph (i) does not apply).

47 Documents for Panel

At the time that a person sends any of the documents referred to in rules 41 to 46, the person must also send a copy of the document to the Panel.

48 Notification of altered offer document

The offeror must notify the target company, as soon as practicable before it sends the offer document to the offerees, of all information to be included in the offer document that is altered from, or additional to, the information that was contained in, or accompanied, the takeover notice.

49 Reimbursement of directors and target company

- (1) Despite anything in the constitution of the target company, each director of the target company is entitled to have refunded to the director by the target company any expenses properly incurred by the director on behalf, and in the interests, of holders of equity securities of the target company in relation to an offer or a takeover notice.
- (2) The target company may recover from the offeror, as a debt due to the target company, any expenses properly incurred by the target company in relation to an offer or a takeover notice, whether as a result of refunds made under subclause (1) or otherwise.

Part 7

Compulsory acquisitions

50 Interpretation

In this Part, unless the context otherwise requires,—

acquisition notice means the notice referred to in rule 54

compulsory sale, in relation to a code company, means that the outstanding security holders must sell their equity securities in the code company to the dominant owner

dominant owner, in relation to a code company, means a person who, after this code comes into force, becomes the holder or controller, or 2 or more persons acting jointly or in concert who, after this code comes into force, become the holders or controllers, of 90% or more of the voting rights in the code company (whether by reason of acceptances of an offer or otherwise)

outstanding securities, in relation to a code company, means all the equity securities in the code company that the dominant owner does not already hold or control

outstanding security holders, in relation to a code company, means the holders of the outstanding securities

voluntary sale, in relation to a code company, means that the outstanding security holders have the right to sell their equity securities in the code company to the dominant owner.

Rights and obligations

51 Notification of dominant ownership

If a person becomes a dominant owner in a code company, that person must immediately send a written notice of that fact to the code company, the Panel, and the Stock Exchange (if any voting securities of the code company are quoted on the Stock Exchange).

52 Dominant owner's right

The dominant owner has the right to acquire all the outstanding securities in the code company in accordance with this Part.

53 Outstanding security holder's right

The outstanding security holders have the right to sell their outstanding securities in the code company to the dominant owner in accordance with this Part.

*Acquisition notice***54 Acquisition notice**

- (1) The dominant owner must, not later than 30 days after becoming the dominant owner, send a notice in writing to the outstanding security holders that complies with rule 55.
- (2) A copy of the notice referred to in subclause (1) must be—
 - (a) sent immediately to the code company, the Panel, and to the Stock Exchange (if any voting securities of the code company are quoted on the Stock Exchange); and
 - (b) delivered immediately to the Registrar of Companies for registration.

55 Contents of acquisition notice

An acquisition notice must—

- (a) state that the dominant owner holds or controls 90% or more of the voting rights in the code company; and
- (b) state either—
 - (i) that the outstanding security holders must sell their equity securities in the code company to the dominant owner; or
 - (ii) that the outstanding security holders have the right to sell their equity securities in the code company to the dominant owner; and
- (c) specify the consideration to be provided for the outstanding securities; and
- (d) set out the outstanding security holders' rights under this Part; and
- (e) specify the date on which the acquisition notice is sent to the outstanding security holders; and
- (f) be accompanied by an instrument of transfer for the outstanding securities held by the outstanding security holder to whom the acquisition notice is sent; and
- (g) specify the return address for the instrument referred to in paragraph (f).

*Determination of consideration***56 Dominant owner through acceptances of offer**

- (1) If a person becomes the dominant owner by reason of acceptances of an offer (whether or not the dominant owner has also acquired equity securities under rule 36), the consideration payable in respect of equity securities in any class must be the same as the consideration provided under the offer for equity securities in the same class.
- (2) Subclause (1) applies only if acceptances of the offer were received in respect of more than 50% of the equity securities that were the subject of the offer in the class in respect of which the consideration is to be determined.
- (3) If the offer provided for alternative considerations, then the consideration payable under subclause (1) is the consideration payable under the offer if an accepting offeree failed to choose an alternative or, if no provision to that effect was included in the offer, is the alternative consideration containing the greatest cash component.

57 Determination of consideration in other cases

- (1) If the consideration cannot be established under rule 56, the consideration specified in the acquisition notice—
 - (a) must be a cash sum certified as fair and reasonable by an independent adviser; and
 - (b) is the consideration payable for the outstanding securities.
- (2) Subclause (1)(b) does not apply if, within 14 days after sending the acquisition notice, the dominant owner receives written objections to the specified consideration from outstanding security holders who hold the lesser of—
 - (a) 2% or more of a class of equity securities; or
 - (b) 10% or more of the outstanding securities of a class.
- (3) If the dominant owner receives objections that together comply in all respects with subclause (2), the dominant owner must immediately refer to expert determination the amount of the consideration to be provided for the securities of the relevant class that must be a cash sum equal to the fair and reasonable value of those securities.
- (4) For the purposes of this rule, the fair and reasonable value of an equity security must be calculated by—

- (a) first assessing the value of all the equity securities in the class of equity securities of which the equity security forms part; and
 - (b) then allocating that value pro rata among all the securities of that class.
- (5) Immediately on receipt of the expert determination, the dominant owner must send a copy of the expert determination to the Panel and to the Stock Exchange (if any voting securities of the target company are quoted on the Stock Exchange).

58 Expert determination

- (1) A reference to expert determination under rule 57(3) is a reference to an independent person appointed by the Panel.
- (2) The independent person acts as an expert and not as an arbitrator in making the determination.
- (3) The dominant owner must pay the costs of the expert determination.
- (4) The independent person must make the expert determination within 28 days after the date of his or her appointment to make the expert determination.

Payment of consideration and transfer of outstanding securities

59 Return of instrument of transfer

- (1) An outstanding security holder who receives an acquisition notice accompanied by an instrument of transfer may, within 21 days after the date on which the acquisition notice is sent, return to the dominant owner, at the address specified in the acquisition notice, the duly executed instrument of transfer along with any other documents that are necessary to enable the dominant owner to be registered as the holder of the securities belonging to the outstanding security holder.
- (2) Subclause (1) applies whether or not the outstanding security holder has objected to the specified consideration under rule 57(2).

60 Payment of consideration to outstanding security holder

- (1) If an outstanding security holder returns to the dominant owner the documents referred to in rule 59, the dominant owner must send the consideration specified in the acquisition

notice to the outstanding security holder within 7 days after the dominant owner receives the documents referred to in that rule.

- (2) Subclause (1) applies whether or not there has been a reference to expert determination under rule 57(3).

61 Delivery of consideration to code company

- (1) If an outstanding security holder does not return to the dominant owner the documents referred to in rule 59, then, in the case of a compulsory sale, the dominant owner must, within 7 days after the expiration of the 21-day period referred to in rule 59,—
 - (a) deliver to the code company the consideration specified in the acquisition notice for the outstanding securities in respect of which the documents referred to in rule 59 have not been returned to the dominant owner; and
 - (b) send to the code company an instrument of transfer for those outstanding securities, executed on behalf of the outstanding security holder by the dominant owner or its agent.
- (2) Any consideration received by the code company under subclause (1)(a) must be held in trust for the outstanding security holders until it is claimed.
- (3) If the consideration is in cash, the cash must be deposited by the code company in an interest bearing trust account with a registered bank.
- (4) Subclause (1) applies whether or not there has been a reference to expert determination under rule 57(3).

62 Position if consideration fixed by expert determination

- (1) If the consideration fixed by expert determination under rule 57(3) exceeds the consideration specified in the acquisition notice, the dominant owner must immediately pay, in the same manner as the consideration specified in the acquisition notice is to be paid, the balance owing to—
 - (a) the outstanding security holders; or
 - (b) the code company.
- (2) If the consideration fixed by expert determination is less than the consideration specified in the acquisition notice, the dominant owner may recover the excess paid from—

- (a) the outstanding security holder; or
- (b) the code company (if the consideration is held by the code company).

63 Registration of dominant owner as holder of outstanding securities

- (1) In the case of a compulsory sale, the directors of the code company must register the dominant owner or its nominee as the holder of the outstanding securities on receipt by the code company of—
 - (a) the executed instruments of transfer and related documents received by the dominant owner in accordance with rule 59; and
 - (b) evidence to the reasonable satisfaction of the code company that the consideration has been sent to the outstanding security holders in accordance with rule 60; and
 - (c) the executed instrument or instruments of transfer and the consideration in accordance with rule 61.
 - (2) In the case of a voluntary sale, the directors of the code company must register the dominant owner or its nominee as the holder of the outstanding securities on receipt by the code company of—
 - (a) the executed instruments of transfer and related documents received by the dominant owner in accordance with rule 59; and
 - (b) evidence to the reasonable satisfaction of the code company that the consideration has been sent to the outstanding security holders in accordance with rule 60.
-

Schedule 1

Information required in takeover notice

r 41

Contents

<p>1 Date</p> <p>2 Offeror and its directors</p> <p>3 Target company</p> <p>4 Advice statement</p> <p>5 Offer terms</p> <p>6 Ownership of equity securities of target company</p> <p>7 Trading in target company equity securities</p> <p>8 Agreements to accept offer</p> <p>9 Arrangements to pay consideration</p> <p>10 Arrangements between offeror and target company</p>	<p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p>	<p>Arrangements between offeror, and directors and officers of target company</p> <p>Financial assistance</p> <p>Market acquisitions of securities</p> <p>Likelihood of changes in target company</p> <p>Pre-emption clauses in target company's constitution</p> <p>Escalation clauses</p> <p>Independent adviser's report</p> <p>Additional disclosures required if consideration includes securities</p> <p>Certificate</p>
---	---	--

1 Date

The date of the offer.

2 Offeror and its directors

- (1) The name and address of the offeror.
- (2) The names of every director of the offeror (if the offeror is not an individual).

3 Target company

The name of the target company.

4 Advice statement

A statement in the following form, to be set out in a prominent position at the front of the offer document:

“IMPORTANT

If you are in doubt as to any aspect of this offer, you should consult a member of the New Zealand Stock Exchange or a financial or legal adviser.

If you have sold all your shares in [*name of target company*], you should immediately hand this offer document and the accompanying acceptance form to the purchaser, or to the member of the New Zealand Stock Exchange or other agent through whom the sale was made, to be passed to the purchaser.”

Schedule 1—*continued***5 Offer terms**

All the terms and conditions of the offer.

6 Ownership of equity securities of target company

- (1) The number, designation, and percentage of equity securities of any class of the target company held or controlled by—
 - (a) the offeror; and
 - (b) any related company of the offeror; and
 - (c) any person acting jointly or in concert with the offeror; and
 - (d) any director of any of the persons described in paragraphs (a) to (c); and
 - (e) any other person holding or controlling more than 5% of the class, if within the knowledge of the offeror.
- (2) If any of the persons referred to in subclause (1) do not hold or control equity securities of the target company, a statement to that effect.

7 Trading in target company equity securities

- (1) If any of the persons referred to in clause 6(1) have, during the 6-month period before the date of the offer, acquired or disposed of any equity securities of the target company,—
 - (a) the number and designation of the equity securities; and
 - (b) the consideration for, and the date of, every transaction to which this subclause applies.
- (2) If no such equity securities were acquired or disposed of, a statement to that effect.

8 Agreements to accept offer

The names of any person who has agreed conditionally or unconditionally to accept the offer and the material terms of the agreement.

9 Arrangements to pay consideration

- (1) Confirmation by the offeror that resources will be available to the offeror sufficient to meet the consideration to be provided on full acceptance of the offer and to pay any debts incurred in connection with the offer (including the debts arising under rule 49).

Schedule 1—*continued*

- (2) A statement setting out the rights of the offeree under rule 34.

10 Arrangements between offeror and target company

Particulars of any agreement or arrangement (whether legally enforceable or not) made, or proposed to be made, between the offeror or any associates of the offeror, and the target company or any related company of the target company, in connection with, in anticipation of, or in response to, the offer.

11 Arrangements between offeror, and directors and officers of target company

Particulars of any agreement or arrangement (whether legally enforceable or not) made, or proposed to be made, between the offeror or any associates of the offeror, and any of the directors or senior officers of the target company or of any related company of the target company (including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office, or as to their remaining in or retiring from office) in connection with, in anticipation of, or in response to, the offer.

12 Financial assistance

Particulars of any agreement or arrangement made, or proposed to be made, under which the target company or any related company of the target company will give (directly or indirectly) financial assistance for the purpose of, or in connection with, the offer.

13 Market acquisitions of securities

If the offer is a full offer for cash or with a cash alternative, a statement as to whether or not any person intends to acquire equity securities in the target company under rule 36.

14 Likelihood of changes in target company

- (1) A statement as to the general nature of any material changes likely to be made by the offeror in respect of the business activities of the target company and its subsidiaries.
- (2) Subclause (1) does not apply if—

Schedule 1—*continued*

- (a) the offer is a full offer conditional on the offeror receiving acceptances that will result in the offeror being required to give an acquisition notice under rule 54; and
- (b) the condition cannot be waived or varied.

15 Pre-emption clauses in target company's constitution

- (1) Particulars of any restriction on the right to transfer equity securities to which the offer relates that—
 - (a) is contained in the constitution of the target company; and
 - (b) has the effect of requiring the holders of the securities to offer the securities for purchase to members of the target company or to any other person before transferring the securities.
- (2) If there is any such restriction, the arrangements (if any) being made to enable the securities to be transferred.

16 Escalation clauses

- Particulars of any agreement or arrangement (whether legally enforceable or not) under which—
- (a) any existing holder of equity securities in the target company will or may receive in relation to, or as a consequence of, the offer any additional consideration or other benefit over and above the consideration set out in the offer; or
 - (b) any prior holder of equity securities in the target company will or may receive any consideration or other benefit as a consequence of the offer.

17 Independent adviser's report

- (1) If an independent adviser's report is required under rule 22,—
 - (a) the identity of the independent adviser; and
 - (b) a copy of the adviser's full report or a summary of the full report prepared by the adviser; and
 - (c) if only a summary of the full report is provided under paragraph (b),—
 - (i) a statement that the full report is available for inspection in New Zealand at the registered office or principal place of business of the offeror; and

Schedule 1—*continued*

- (ii) a statement that a copy of the full report will be sent to any offeree on request; and
 - (iii) a statement that the summary report is a fair summary and not misleading.
- (2) The full report and summary report must include—
 - (a) a statement of the qualifications and expertise of the adviser; and
 - (b) a statement that the adviser has no conflict of interest that could affect the adviser's ability to provide an unbiased report.

18 Additional disclosures required if consideration includes securities

- (1) If the consideration offered under the offer includes securities (within the meaning of the Securities Act 1978), the issuer of which is a public issuer that has a class of equity securities that has been quoted on the Stock Exchange for at least 12 months before the date of the offer, the offeror must—
 - (a) make available to offerees (on request) the most recent annual report of the issuer of the securities; and
 - (b) disclose in the offer document or send with the offer document—
 - (i) the name of the issuer of the securities offered as consideration and its relationship to the offeror; and
 - (ii) the material terms and conditions of the securities; and
 - (iii) a copy of the most recent half-yearly report of the issuer relating to a period after the annual report referred to in paragraph (a), if any; and
 - (iv) a copy of the most recent interim report of the issuer relating to a period after the annual report referred to in paragraph (a), if any, or, if a copy of a half-yearly report has been disclosed under subparagraph (iii), a copy of any interim report of the issuer relating to a period after that half-yearly report, if any; and

Schedule 1—*continued*

- (v) any other information that could reasonably be expected to be material to the making of a decision by the offerees to accept or reject the offer; and
 - (vi) if there is no information referred to in subparagraph (v), a statement to that effect.
- (2) Subclause (1) does not apply if the issuer is required by the Securities Act 1978 to register a prospectus in relation to the securities offered as consideration under the offer.
- (3) For the purposes of subclause (1),—
- annual report** means the annual report and financial statements (including the auditor’s report on those financial statements) that the issuer is required by the rules of the Stock Exchange to send to equity security holders of the issuer
- half-yearly report** means the half-yearly report and half-yearly financial statements (including the auditor’s report on such financial statements, if any) that the issuer is required by the rules of the Stock Exchange to send to equity security holders of the issuer
- interim report** means any interim report and interim financial statements (including the auditor’s report on such financial statements, if any) that the issuer has sent to equity security holders of the issuer (other than the half-yearly report).

19 Certificate

- (1) A certificate in the following form signed by the persons specified in subclause (2):
- “To the best of our knowledge and belief, after making proper enquiry, the information contained in the offer document is, in all material respects, true and correct and not misleading, whether by omission of any information or otherwise, and includes all the information required to be disclosed by the offeror under the Takeovers Code.”
- (2) The persons referred to in subclause (1) are,—
- (a) if the offeror is an individual, the offeror or the offeror’s agent authorised in writing; or
 - (b) if the offeror is not an individual,—
 - (i) the chief executive officer and the chief financial officer of the offeror, or their respective agents

Schedule 1—*continued*

authorised in writing, or, if there is no chief executive officer or chief financial officer, the person or persons fulfilling those roles respectively, or their respective agents authorised in writing; and

- (ii) 2 directors of the offeror (or the sole director of the offeror), not being the chief executive officer or the chief financial officer unless there is an insufficient number of other directors who must sign on behalf of the board of directors with the authority of a resolution of the board of directors.
-

r 46

Schedule 2

Information required in target company statement

Contents

1	Date	13	Interests of directors and officers of target company in material contracts of offeror
2	Offer	14	Additional information
3	Target company	15	Recommendation
4	Directors of target company	16	Actions of target company
5	Ownership of equity securities of target company	17	Equity securities of target company
6	Trading in target company equity securities	18	Financial information
7	Acceptance of offer	19	Independent advice on merits of offer
8	Ownership of equity securities of offeror	20	Asset valuation
9	Trading in equity securities of offeror	21	Prospective financial information
10	Arrangements between offeror, and target company	22	Sales of unquoted equity securities under offer
11	Relationship between offeror, and directors and officers of target company	23	Market prices of quoted equity securities under offer
12	Agreements between target company, and directors and officers	24	Other information
		25	Approval of target company statement
		26	Certificate

1 **Date**

The date of the target company statement.

2 **Offer**

A brief identification of the offer to which the statement relates.

3 **Target company**

The name of the target company.

4 **Directors of target company**

The names of the directors of the target company.

5 **Ownership of equity securities of target company**

- (1) The number, designation, and the percentage of equity securities of any class of the target company held or controlled by—
- (a) each director or senior officer of the target company and their associates; and
 - (b) any other person holding or controlling more than 5% of the class, to the knowledge of the target company.

Schedule 2—*continued*

- (2) If any of the persons referred to in subclause (1) do not hold or control equity securities of the target company, a statement to that effect.
- (3) The number of equity securities of the target company—
 - (a) that have, during the period specified in subclause (5), been issued to the directors and senior officers of the target company or their associates; or
 - (b) in which the directors and senior officers or their associates have, during the period specified in subclause (5), obtained a beneficial interest under any employee share scheme or other remuneration arrangement.
- (4) The price at which the securities in subclause (3) were issued or provided.
- (5) The period referred to in subclause (3) is the 2-year period that ends with the date of the target company statement.

6 Trading in target company equity securities

- (1) The number and designation of any equity securities of the target company acquired or disposed of by the persons referred to in clause 5(1)(a) during the 6-month period before the latest practicable date before the date of the target company statement, including the consideration for, and the date of, each such transaction.
- (2) If no equity securities were acquired or disposed of, a statement to that effect.

7 Acceptance of offer

The name of every person referred to in clause 5(1)(a) who has accepted, or intends to accept, the offer, and the number of securities in respect of which the person has accepted, or intends to accept, the offer.

8 Ownership of equity securities of offeror

- (1) If the offeror is a company, the number, designation, and percentage of equity securities of any class of the offeror held or controlled by the target company and each director and senior officer of the target company and their associates.

Schedule 2—*continued*

- (2) If none of the persons referred to in subclause (1) hold or control any equity securities of the offeror, a statement to that effect.

9 Trading in equity securities of offeror

- (1) If the offeror is a company,—
- (a) the number and designation of any equity securities of the offeror that were acquired or disposed of by the persons referred to in clause 8 during the 6-month period referred to in clause 6(1); and
 - (b) the consideration for, and the date of, every such transaction.
- (2) If no such securities were acquired or disposed of, a statement to that effect.

10 Arrangements between offeror and target company

Particulars of any agreement or arrangement (whether legally enforceable or not) made, or proposed to be made, between the offeror or any associates of the offeror, and the target company or any related company of the target company, in connection with, in anticipation of, or in response to, the offer.

11 Relationship between offeror, and directors and officers of target company

- (1) Particulars of any agreement or arrangement (whether legally enforceable or not) made, or proposed to be made, between the offeror or any associates of the offeror, and any of the directors or senior officers of the target company or any related company of the target company (including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office, or as to their remaining in or retiring from office) in connection with, in anticipation of, or in response to, the offer.
- (2) A statement as to whether any directors or senior officers of the target company are also directors or senior officers of the offeror, or any related company of the offeror, and to identify those persons.

Schedule 2—*continued***12 Agreement between target company, and directors and officers**

Particulars of any agreement or arrangement (whether legally enforceable or not) made, or proposed to be made, between the target company or any related company of the target company, and any of the directors or senior officers or their associates of the target company or its related companies, under which a payment or other benefit may be made or given by way of compensation for loss of office, or as to their remaining in or retiring from office in connection with, in anticipation of, or in response to, the offer.

13 Interests of directors and officers of target company in material contracts of offeror

A statement as to whether any of the following persons have any interest in any material contract to which the offeror, or any related company of the offeror, is a party, and the particulars of the nature and extent of such interest—

- (a) any director or senior officer of the target company or their associates;
- (b) any person who, to the knowledge of the directors or the senior officers of the target company, holds or controls more than 5% of any class of equity securities of the target company.

14 Additional information

If, in the opinion of the directors of the target company, any information in the offer document is incorrect or misleading, any additional information within the knowledge of the target company that would make the information in the offer document correct or not misleading.

15 Recommendation

(1) Either—

- (a) a recommendation by the directors of the target company to accept or reject the offer and the reasons for such recommendation; or
- (b) a statement that the directors of the target company are unable to make, or are not making, a recommendation and the reasons for not making a recommendation.

Schedule 2—*continued*

- (2) If any of the directors dissent from a recommendation or from any statement under subclause (1)(b) made by the directors or abstain from making a recommendation or any statement under subclause (1)(b), their names and their reasons for dissenting or abstaining.
- (3) If no recommendation is made, but all or any of the directors of the target company propose to make a recommendation, or to reconsider their decision not to make a recommendation, a statement to that effect and, if the directors consider it appropriate, a statement to the effect that offerees should not accept the offer in the meantime.

16 Actions of target company

- (1) Particulars of any material agreement or arrangement (whether legally enforceable or not) of the target company and its related companies entered into as a consequence of, in response to, or in connection with, the offer.
- (2) A statement as to whether there are any negotiations underway as a consequence of, in response to, or in connection with, the offer that relate to or could result in—
 - (a) an extraordinary transaction, such as a merger, amalgamation, or reorganisation, involving the target company or any of its related companies; or
 - (b) the acquisition or disposition of material assets by the target company or any of its related companies; or
 - (c) an acquisition of equity securities by, or of, the target company or any related company of the target company; or
 - (d) any material change in the equity securities on issue, or policy relating to distributions, of the target company.

17 Equity securities of target company

- (1) Details of the issued equity securities in the target company and the rights of the holders in respect of capital, distributions, and voting.
- (2) The material terms of equity securities that are options, or rights to acquire, equity securities.

Schedule 2—*continued***18 Financial information**

- (1) A statement that the offeree is entitled to obtain from the target company a copy of the most recent annual report of the target company.
- (2) A copy of the most recent half-yearly report of the target company, if any, since the annual report referred to in subclause (1).
- (3) A copy of the most recent interim report of the target company, if any, since the annual report referred to in subclause (1), or, if a copy of a half-yearly report has been disclosed under subclause (2), a copy of any interim report of the target company relating to a period after that half-yearly report, if any.
- (4) All material changes in the financial or trading position, or prospects, of the target company since the annual report referred to in subclause (1) or a statement that there are no known material changes.
- (5) Any other information about the assets, liabilities, profitability, and financial affairs of the target company that could reasonably be expected to be material to the making of a decision by the offerees to accept or reject the offer.
- (6) For the purposes of this clause,—

annual report means,—

- (a) if any voting securities of the target company are quoted on the Stock Exchange, the annual report and financial statements (including the auditor's report on those financial statements) that the target company is required by the Stock Exchange to send to the target company's equity security holders; or
- (b) if paragraph (a) does not apply, the annual report prepared in accordance with sections 208(1) and 211(1) of the Companies Act 1993 and sent to shareholders of the target company under section 209 of the Companies Act 1993

half-yearly report means,—

- (a) if any voting securities of the target company are quoted on the Stock Exchange, the half-yearly report and half-yearly financial statements (including the auditor's report on such financial statements, if any) that the

Schedule 2—*continued*

issuer is required by the rules of the Stock Exchange to send to equity security holders of the issuer; or

- (b) if paragraph (a) does not apply, any half-yearly report and half-yearly financial statements (including the auditor's report on those financial statements, if any) that have been sent to the shareholders of the target company

interim report means any interim report and interim financial statements (including the auditor's report on such financial statements, if any) that the issuer has sent to equity security holders of the issuer (other than the half-yearly report).

19 Independent advice on merits of offer

- (1) The identity of the independent adviser who has provided a report under rule 21 and a copy of the adviser's full report or a summary of the full report prepared by the adviser.
- (2) If only a summary of the full report is provided under sub-clause (1),—
 - (a) a statement that the full report is available for inspection at a specified address; and
 - (b) a statement that a copy of the full report will be sent to any offeree on request; and
 - (c) a statement that the summary report is a fair summary and not misleading.
- (3) The full report and summary report must include—
 - (a) a statement of the qualifications and expertise of the adviser; and
 - (b) a statement that the adviser has no conflict of interest that could affect the adviser's ability to provide an unbiased report.

20 Asset valuation

If any information provided in the target company statement refers to a valuation of any asset,—

- (a) the date of the valuation, the identity of the valuer, and a summary of the valuation, that discloses the basis of computation and the key assumptions on which the valuation is based; and

Schedule 2—*continued*

- (b) an address or addresses where copies of the valuation are available for inspection and a statement that a copy of the valuation will be sent to any offeree on request.

21 Prospective financial information

If any information provided in the target company statement refers to prospective financial information, the principal assumptions on which the prospective financial information is based.

22 Sales of unquoted equity securities under offer

If the equity securities that are the subject of the offer are not quoted on a stock exchange, all the information that the target company has as to the number of those equity securities that have been disposed of in the 12 months ending on the latest practicable date before the date on which the target company statement is sent by the target company, and the consideration for those dispositions.

23 Market prices of quoted equity securities under offer

- (1) The closing price on each stock exchange where they are quoted (expressed in the currency in which they are quoted) of the equity securities of the target company that are the subject of the offer—
 - (a) on the latest practicable working day before the date on which the target company statement is sent by the target company; and
 - (b) on the last day on which the exchange was open for business before the date on which the target company received the takeover notice.
- (2) The highest and lowest closing market prices on each exchange, with the relevant date, during the 6 months before the date on which the target company received the takeover notice.
- (3) Particulars of any issue of equity securities, any changes in the equity securities on issue, and any distributions that could have affected the market prices referred to in this clause.

Schedule 2—*continued*

- (4) Any other information about the market price of the securities that would reasonably be expected to be material to the making of a decision by the offerees to accept or reject the offer.

24 Other information

Any other information not required to be disclosed by this schedule that could reasonably be expected to be material to the making of a decision by the offerees to accept or reject the offer.

25 Approval of target company statement

- (1) A statement that the contents of the target company statement have been approved by the board of directors of the target company.
- (2) If any of the directors of the target company do not approve of the statement, their names and their reasons for not approving.

26 Certificate

- (1) A certificate in the following form signed by the persons specified in subclause (2):
- “To the best of our knowledge and belief, after making proper enquiry, the information contained in or accompanying this statement is, in all material respects, true and correct and not misleading, whether by omission of any information or otherwise, and includes all the information required to be disclosed by the target company under the Takeovers Code.”
- (2) The persons referred to in subclause (1) are—
- (a) the chief executive officer and the chief financial officer of the target company, or their respective agents authorised in writing, or, if there is no chief executive officer or chief financial officer, the person or persons fulfilling those roles respectively, or their respective agents authorised in writing; and
 - (b) 2 directors of the target company (or the sole director of the target company), not being the chief executive officer or the chief financial officer unless there is an insufficient number of other directors who must sign on

Schedule 2—*continued*

behalf of the board of directors with the authority of a resolution of the board of directors.

Martin Bell,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order approves under section 28(3) of the Takeovers Act 1993 the takeovers code recommended by the Takeovers Panel to the Minister of Commerce.

In accordance with section 28(4) of the Takeovers Act 1993, the code comes into force on the date in it; that is 1 July 2001.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 19 October 2000.

This order is administered in the Ministry of Economic Development.
