

Insights

TAKEOVER PANEL RESPONSE – CONDITIONS TO OFFERS AND THE OFFER TIMETABLE

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SUMMARY

Last year the Takeover Panel (the “Panel”) published a consultation paper proposing a number of amendments to (i) simplify the offer timetable under the Code (ii) provide certainty that once a firm offer has been announced it will not lapse or be withdrawn without good reason and (iii) apply consistent treatment to any official authorisation or regulatory clearance. The Panel has published a response adopting the proposed changes with certain modifications.

The changes will come into force on 5 July 2021 (the “implementation date”) and will apply to all firm offers announced in accordance with Rule 2.7 on or after the implementation date, except where to do so would give the amendments retroactive effect. Any ongoing firm offers which straddle the implementation date and any offers announced on or after the implementation date which are in competition with ongoing offers, will continue to be subject to the current Code.

Many takeover offers take place by way of scheme of arrangement (rather than contractual offers); the changes to the offer timetable will not apply to offers by way of scheme.

KEY CHANGES

The offer timetable

- *Offer open for acceptance until Day 21* - an offer must be open for acceptance until the later of Day 21 and the date on which the offer becomes or is declared unconditional or lapses. Therefore, the unconditional date of an offer cannot be earlier than Day 21.
- *Single date for satisfaction of all conditions* - there will no longer be a distinction between the date by which the acceptance condition needs to be satisfied and the date by which the other conditions to the offer need to be satisfied or waived. So the concept of “unconditional as to acceptances” is largely being abolished.

- *Acceptance condition last to be satisfied* - the acceptance condition will only be capable of being satisfied once all of the other conditions to the offer have been satisfied or waived “except with the consent of the Panel”. Depending on the circumstances of each case, any such condition(s) should be specifically identified in the firm offer announcement and the offer document. For example, specific disclosure may not be necessary if the condition is purely “mechanical” and is expected to be satisfied only very shortly after the satisfaction of the acceptance condition such as an admission to listing condition.
- *“Day 60”* - the Code will stipulate that all of the conditions to an offer must be satisfied by no later than “Day 60” i.e. the 60th day following the publication of the initial offer document (or any later date set by the Panel pursuant to an extension of the offer timetable). There will no longer be a “Day 81” of the offer timetable.
- *Withdrawal rights* - offeree company shareholders who have accepted an offer will be able to withdraw their acceptance at any time prior to the satisfaction of the acceptance condition.

Suspending the offer timetable for official authorisations and regulatory clearances

Currently if an offeror wishes to invoke a condition or pre-condition relating to a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings, it does not need to demonstrate that the circumstances that have arisen are of material significance to it in the context of the offer.

The Code Committee has adopted its previous proposals - the Panel will be able to suspend the offer timetable pending the satisfaction of conditions relating to any official authorisation or regulatory clearance.

The Panel will only suspend the timetable at the joint request of the offeror and the offeree company or provided at least one of the outstanding conditions relates to a “material” authorisation or clearance, at the request of either the offeror or the offeree company. An official authorisation or regulatory clearance will be treated as “material” if the Panel is satisfied that the failure to obtain the authorisation or clearance could give rise to circumstances which are of material significance to the offeror in the context of the offer.

Long-stop dates for contractual offer

The Code Committee has adopted a new rule requiring the offeror to set a long-stop date in the firm offer announcement and in the offer document stating that the offer will not proceed on a specific date (the ‘long-stop date’) if (i) sufficient acceptances have not been received to enable the acceptance condition to be satisfied; or (ii) with the Panel’s consent, if a condition or pre-condition relating to an official authorisation or regulatory clearance has not been satisfied or waived.

If the offer is not recommended, the Panel must be consulted on the proposed long-stop date and except with the Panel's consent, the long-stop date can only be extended by the offeror with the offeree company's agreement.

Mandatory offers

The Code will include a dispensation from the restriction in Rule 9.3 on triggering a mandatory offer where the triggering share purchase would itself be subject to a condition relating to a material official authorisation or regulatory clearance.

[Response Statement 2020/1](#)

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