

COLLAS DAY | COMMERCIAL

Guernsey to Adopt City Code on Takeovers and Mergers

June 2009

The Companies (Guernsey) Law, 2008 which came into force on 1 July 2008, provided the basis for the introduction of secondary legislation conferring functions on the Panel on Takeovers and Mergers (Panel) in the supervision of takeover and merger activity in Guernsey. The Companies (Panel on Takeovers and Mergers) Ordinance, 2009 (Ordinance) will come into force on 1 July 2009.

The Panel on Takeovers and Mergers

The Panel, a UK body (originally formed to regulate takeovers and mergers in the City of London), has supervised takeovers and mergers involving Guernsey companies since its formation, on an informal, extra-statutory basis. The instances in which it has intervened in takeovers and mergers involving Guernsey companies have been rare.

In due course a local panel may be constituted, but at present the number of takeovers and mergers of Guernsey companies would not justify the resources required to operate a panel.

Fair and Equal Treatment of Shareholders

Skeptics have in the past alluded to the possibility that the formal adoption of the City Code on Takeovers and Mergers (Code) by Guernsey would simply be a means of regulating competition by the 'back door'. However, the States of Guernsey (the Island's Government) has emphasised that the Panel's supervision of takeovers and mergers will relate primarily to ensuring the fair and equal treatment of all shareholders during a takeover or merger and not to address any competition issues.

Consistency of Regulation

The Ordinance draws heavily on Chapter 1 of Part 28 of the UK Companies Act 2006. This is in line with Jersey and the Isle of Man. As the Panel will be supervising takeovers and mergers in those jurisdictions also, it is necessary to ensure that the legislation in each jurisdiction is consistent so that the Panel can apply the same operational procedures across the board.

The Panel regulates takeovers and mergers by administering the Code. The Panel is an independent body formed in 1968. Its composition and powers have evolved as circumstances have changed in a developing marketplace. The Panel's statutory functions in the UK are now set out in Chapter 1 of Part 28 of the Companies Act 2006.

Applicability

The Code will apply to:

- offers for all companies, other than open-ended investment companies, registered (and having their registered office) in the UK, the Channel Islands and the Isle of Man, where those companies have any of their securities admitted to trading on a regulated market in the UK or on any stock exchange in the Channel Islands or the Isle of Man. LSE, AIM or CISX-listed, closed-ended Guernsey funds would be caught;
- all other offers for public and, in certain limited circumstances (relating to previous listings, marketing arrangements and issue of prospectuses), private companies, which have their registered offices in the UK, Channel Islands or the Isle of Man and which are considered by the Panel to have their place of central management and control in those jurisdictions;
- where appropriate, to statutory and chartered companies.

Funding of the Panel

As the Panel is self-financing by imposing fees and charges for its services, the States has affirmed that its operations will not impose any additional cost on Guernsey taxpayers.

Status Quo Unchanged

Irrespective of the fact that the Code will now be placed on a statutory footing, as the Panel has already been enforcing the Code in relation to Guernsey takeovers on an informal basis, in reality the status quo will remain unchanged.

Collas Day's Commercial Team is available to assist you with all aspects of mergers and acquisitions, including in relation to the Companies (Panel on Takeovers and Mergers) Ordinance, 2009.

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