

Public mergers and acquisitions in Guernsey: overview

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M&A ACTIVITY

1. What is the current status of the M&A market in your jurisdiction?

The public M&A market in Guernsey has been experiencing relatively high levels of activity over the past 18 months, particularly in relation to listed companies in the natural resources sector.

Schemes of arrangement are generally the preferred method of effecting a takeover, mirroring market practice in the UK.

Transactions completed in 2017/2018 include:

- The acquisition of Market Tech Holdings Limited (listed on the Main Market of the LSE) by its majority shareholder, by way of a recommended offer.
- The acquisition of Mariana Resources Limited (listed on AIM and the TSXV) by Sandstorm Gold Ltd by way of a scheme of arrangement.
- The acquisition of Avnel Gold Mining Limited (listed on TSX) by Endeavour Mining Corporation by way of a scheme of arrangement.
- The acquisition of NYX Gaming Group Limited (listed on TSX) by Scientific Games Corporation by way of a scheme of arrangement.
- The acquisition of Mytrah Energy Limited by Raksha Energy Holdings Limited by way of a recommended offer.

2. What are the main means of obtaining control of a public company?

The most common methods of obtaining control of a public company are:

- **Takeover offer.** An offer is made by the bidder to the target's shareholders.
- **Scheme of arrangement.** The target puts a proposal to its shareholders for their approval. This method can take various forms; in public M&A it usually involves an exchange of shares. The target's shares are exchanged for shares in the bidder's capital. This method must be approved by a special resolution passed at a general meeting, with a majority (in number) of shareholders voting at the meeting in favour of that resolution. Once approved by the shareholders, the arrangement must be sanctioned by the Royal Court of Guernsey (Royal Court).

- **Legal merger.** This method involves two or more companies being merged by an order of the Royal Court. The same initial procedure applies as for a scheme of arrangement, including the need for shareholder approval.
- **Amalgamation.** This is a process where two or more companies merge to become one company (either as one of the original companies, or a new company). Each of the merging companies must approve the proposal by passing a special resolution. The consent of the Guernsey Financial Services Commission (GFSC) is also required if a merging company has not been incorporated in Guernsey.

HOSTILE BIDS

3. Are hostile bids allowed? If so, are they common?

Hostile bids are allowed but are generally more difficult than recommended bids. This is because the bidder in a hostile bid will only have access to a limited amount of information that is in the public domain.

However, this difficulty could be less of an issue when the target is a regulated investment fund, as is often the case in Guernsey. This is because the fund's net asset value is assessed and made available on a regular basis, in accordance with the applicable fund regulations. The most recent example of a successful hostile bid acquiring 100% control is the takeover of the Advantage Property Income Trust Limited in August 2009.

REGULATION AND REGULATORY BODIES

4. How are public takeovers and mergers regulated, and by whom?

The UK Takeover Panel (Panel) regulates takeovers and mergers in Guernsey that fall within the ambit of the UK City Code on Takeovers and Mergers (Code).

Code

This has applied to publicly traded companies in Guernsey since its creation. The Code will apply to any company which has its registered office in Guernsey, when either the:

- Company's securities are admitted to trading on a regulated market or a multilateral trading facility in the UK or on any stock exchange in the Channel Islands or the Isle of Man.

- Panel considers the company's place of central management and control to be in the UK, the Channel Islands or the Isle of Man and one or more of the following apply:
 - any of its securities have been admitted to trading on a regulated market or a multilateral trading facility in the UK or on any stock exchange in the Channel Islands or the Isle of Man at any time during the previous ten years;
 - dealings and/or prices at which persons were willing to deal in any of their securities have been published on a regular basis for a continuous period of at least six months in the previous ten years;
 - any of the company's securities have been subject to a marketing arrangement at any time in the previous ten years, as described in section 693(3)(b) of the UK Companies Act 2006;
 - the company has filed a prospectus for the offer, admission to trading or issue of securities with the Registrar of Companies or (if on public record) any other relevant authority in the UK, the Channel Islands or the Isle of Man at any time during the previous ten years.

The Panel will generally take account of the place of residence of the majority of the directors when deciding whether the company's place of central management and control is in the UK, the Channel Islands or the Isle of Man.

The Code applies to all:

- Takeover bids and merger transactions.
- Transactions which have the objective or potential effect of obtaining or consolidating control of the relevant company.
- Partial offers to shareholders for securities in the relevant companies.
- Unitisation proposals (that is, offers) which compete with another transaction to which the Code applies.

The Code does not apply to open-ended investment companies, but does apply to closed-ended investment companies.

If the Code does not apply to the target company, the transaction will not be regulated under Guernsey law and the bidder will merely have to comply with the requirements of the target's articles of incorporation.

This chapter will assume that the Code applies to the takeover.

Panel

This regulates takeovers and mergers in Guernsey if the target company and the transaction fall within the remit of the Code.

The Companies (Guernsey) Law, 2008 as amended (Companies Law) contains statutory provisions enabling the appointment of a body to regulate takeovers and mergers in Guernsey, and authorising that body to issue rules and regulations.

At present, there is insufficient demand or justification for a local regulator and so the Panel has been appointed to perform that role, under the Companies (Appointment of Panel on Takeovers and Mergers) Regulations 2009.

PRE-BID Due diligence

5. What due diligence enquiries does a bidder generally make before making a recommended bid and a hostile bid? What information is in the public domain?

Recommended bid

The bidder will obtain information from public sources and will also approach the target's board of directors with a comprehensive list of legal, financial and operational due diligence questions. Physical assets may be inspected and certain assets, such as real property, may be valued independently.

Hostile bid

The bidder will seek to obtain as much information as possible from public sources or from shareholders who may be sympathetic to the bid. If there are other competing bids in progress (in particular, a recommended bid) the hostile bidder may seek to obtain information provided to other bidders, under Rule 20.2 of the Code. To exercise this right, the hostile bidder must raise specific questions, rather than make a general request for all information provided to competing bidders.

Public domain

The following information is available from the Guernsey Registry (Registry):

- Directors' details.
- Memorandum and articles of incorporation.
- Special resolutions and certain other shareholder resolutions that must be filed.
- Annual validation, revealing the total number of shares in issue as at 31 December of the previous year.

The following information is not available from the Registry:

- Names and addresses of shareholders or beneficial owners.
- Annual accounts.

The company must provide a copy of the shareholder register from the Registry when it is requested for a proper purpose. It is likely that a bidder looking to make a bid could establish that the register is requested for a proper purpose.

Further information will be available from the investment exchange on which the target is listed, such as:

- Annual accounts.
- Interim reports.
- Regulatory News Service announcements.
- Significant interests in shares.

Secrecy

6. Are there any rules on maintaining secrecy until the bid is made?

A potential bid must be kept secret until formally announced and any risk of leaks should be avoided where possible (*Rule 2.1, Code*).

In addition, the provisions of the Code provide rules for:

- The timing of announcements.
- The circumstances in which an announcement must be made.

Agreements with shareholders

7. Is it common to obtain a memorandum of understanding or undertaking from key shareholders to sell their shares? If so, are there any disclosure requirements or other restrictions on the nature or terms of the agreement?

It is common for a bidder to seek irrevocable undertakings from key shareholders when making a recommended bid. This is less common in the case of a hostile bid.

Undertakings sought from non-director shareholders are typically either:

- Soft undertakings, which fall away in the event of a higher competing offer.
- Semi-soft undertakings, which specify a price (higher than the original bid) above which a competing offer would cause the undertaking to fall away.

Director shareholders are usually asked to provide hard undertakings which remain binding in the case of a higher competing offer.

The provisions of the Code apply to such arrangements and govern the:

- Types of shareholder or private individual that can be approached before the bid is announced (*Rule 4.3, Code*).
- Number of shareholders who may be approached before the bid is announced, for confidentiality reasons.
- Timing and detail of disclosure (*Rule 2.11, Code*).
- Details of arrangements that must be included in the offer document.

Stakebuilding

8. If the bidder decides to build a stake in the target (either through a direct shareholding or by using derivatives), before announcing the bid, what disclosure requirements, restrictions or timetables apply?

A bidder intending to build a stake in the target before announcing the bid should consider whether the acquisition would amount to any of the following offences:

- **Insider dealing.** This offence may be committed if an individual controlling or acting for the bidder is in possession of price-sensitive information concerning the target (*The Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law 1996*).
- **Market abuse.** This offence may be committed if an individual controlling or acting for the bidder is in possession of information that is not generally available to the market (*section 41A to 41G, The Protection of Investors (Bailiwick of Guernsey) Law 1987*). The offence of market abuse under Guernsey law is not the same as the equivalent offence under the Market Abuse Regulation in the EU.

The Code also contains a number of restrictions, including:

- Restricting a person who has price-sensitive information about the offer from acquiring securities in the target before the offer is announced, or recommending another person to do so (*Rule 4.1*).

- Restricting the bidder (or parties acting in concert) from acquiring an interest in the target's shares, if this would bring the bidder's voting rights in the target above a 30% threshold (subject to certain exceptions) (*Rule 5*).
- A restriction on purchasing shares on special terms, since these terms have not been made available to all target shareholders (subject to certain exceptions) (*Rule 16*).

In relation to disclosure, if the Takeover Code applies, the bidder must disclose its own and any concert party's opening positions following the start of an offer period or an announcement which first identifies the bidder as the bidder (*Rule 8*).

Agreements in recommended bids

9. If the board of the target company recommends a bid, is it common to have a formal agreement between the bidder and target? If so, what are the main issues that are likely to be covered in the agreement? To what extent can a target board agree not to solicit or recommend other offers?

Issues covered in the agreement

In a transaction that is subject to the Code, the terms of any agreement between the bidder and the target are heavily restricted by Rule 21.2 of the Code. Any such agreement is generally prohibited, except to the extent that it deals with the following points:

- Confidentiality undertakings, as long as these do not prevent the target from making announcements required by the Code.
- A commitment not to solicit employees, customers or suppliers.
- A commitment to provide information or assistance for the purposes of obtaining any official authorisation or regulatory clearance.
- Irrevocable commitments and letters of intent (for example, the shareholder directors of the target may provide an undertaking to accept the offer in respect of their own shares, if the bid is made on the terms indicated).
- Any terms which imposes obligations only on the bidder or its concert party, other than in the context of a reverse takeover (for example, a reverse break fee or a standstill obligation prohibiting the bidder from making market purchases of shares in the target).
- Any agreement relating to any existing employee incentive arrangement.
- Where the Code does not apply (for example, in relation to a company listed on the TSX with a majority of directors outside the UK, Channel Islands and Isle of Man) it is common to have an implementation agreement / arrangement agreement which may include the following:
 - The target board agreeing to take certain steps in relation to the transaction (such as providing information to the bidder, recommending the offer, preparing documentation for a scheme of arrangement and so on) in accordance with a proposed timetable.
- Warranties from the target.
- Undertakings from the target not to solicit a competing offer, and to inform the bidder if a competing offer is received.
- Actions which the target is permitted to take in the event of receipt of a superior competing offer.
- A break fee payable to the bidder in certain circumstances.

- A reverse break fee payable by the bidder if the transaction does not proceed as a result of the bidder's failure to proceed
- The target board can generally agree not to solicit other offers, but the directors need to carefully consider their fiduciary duties in the context of any commitment not to recommend a superior offer. If such a commitment is given it should bind the target only, and not the directors, so that the directors are free to recommend a superior offer in accordance with their fiduciary duties, even if a break fee may then become payable by the target.

Exclusivity and non-solicitation

The target's board of directors are not permitted to agree to not solicit or recommend other offers (*Rule 21.2, Code*).

Break fees

10. Is it common on a recommended bid for the target, or the bidder, to agree to pay a break fee if the bid is not successful?

In most circumstances, the target is not permitted to agree to pay a break fee to the bidder (*Rule 21.2, Code*). Since 19 September 2011, the Code has prohibited a number of deal protection measures, including break fees, which had previously become standard market practice.

Break fees are still permissible, with the consent of the Panel, where the bidder in question is a "white knight" recommended by the target board in the face of a hostile bidder. The fee is only payable if the hostile offer becomes or is declared wholly unconditional.

Break fees may also be paid, with the consent of the Panel, if the target puts itself up for sale by way of a formal auction process prior to any bidder announcing a firm intention to make an offer.

In either case, the maximum amount of a break fee is restricted by the Code and generally cannot be more than 1% of the value of the target, calculated by reference to the offer price (*Rule 21.2, Code*).

In transactions where the Code does not apply, it is common for break fees to be agreed, and in some cases a reverse break fee may also apply.

A break fee payable by the target could constitute financial assistance under the Companies Law. Financial assistance can only be given if the target board certifies that the target will be solvent immediately after giving assistance.

Committed funding

11. Is committed funding required before announcing an offer?

It is possible to make the announcement of an offer subject to the required financing being organised. However, the Panel must be consulted in relation to such a condition.

If the bidder announces a firm intention to make an offer, this must include confirmation from an appropriate third party that sufficient resources are available to the bidder to satisfy any cash element of the offer (*Rule 2.7(d), Code*).

The offer must not be subject to conditions or pre-conditions in relation to financing, save in exceptional circumstances outlined in Rule 13 of the Code.

ANNOUNCING AND MAKING THE OFFER

Making the bid public

12. How (and when) is a bid made public? Is the timetable altered if there is a competing bid?

Announcing the offer

The bidder should first present the offer to the target's board. When the target's board is notified that the bidder intends to make an offer, the bidder must make an announcement that it has made a formal takeover offer (*Rule 2.2(a), Code*).

The requirement to make an announcement can also occur when:

- The acquisition gives rise to a mandatory offer (see *Question 16*).
- The target becomes subject to rumours, speculation or an unusual movement in share price.
- Negotiations are to extend beyond the parties and their immediate advisors.

The Code provides for two types of announcement:

- **2.7 announcement.** If the bidder has a firm intention to make an offer, it can make an announcement pursuant to Rule 2.7 of the Code. This announcement should generally include:
 - the terms of the offer;
 - the identity of the bidder;
 - the conditions of the offer;
 - a cash confirmation (if the offer is for cash, or includes an element of cash).
- **2.4 announcement.** If the bidder cannot present a firm intention to bid (due to finances or otherwise) it may be able to make a temporary holding announcement, under Rule 2.4 of the Code. This is a brief announcement to signify that talks are taking place.

Offer timetable

The basic offer timetable is set out below and applies to both recommended and hostile bids (assuming that no extensions are granted by the Panel):

- **Announcement Day.** Date of announcement of intention to make the offer. This must be no later than 28 days from the announcement in which the bidder is first identified.
- **Day 0.** The bidder must post the offer document to the target's shareholders no later than 28 days from the Announcement Day.
- **Day 14.** This is the latest date the target can post a circular advising its shareholders of its views on a hostile takeover offer (in a recommended offer, this is included in the offer document).
- **Day 21.** The offer can be accepted from this date (although the offer can be extended by the bidder beyond this date).
- **Day 42 (assuming first closing date is Day 21).** The shareholders who have accepted the offer can withdraw their acceptances if the offer has not yet become or been declared unconditional as to acceptances.
- **Day 46.** This is the last date for the bidder to post any revised offer document improving its offer or to publish information which may increase the value of its bid where it is offering securities.

- **Day 60.** This is the last date for acceptances or purchases to be declared unconditional as to acceptances. If the offer has not been declared unconditional as to acceptances by midnight, the offer is deemed to have lapsed.
- **Day 74 (assuming offer became unconditional as to acceptances on Day 60).** This is the earliest date on which the offer can close.
- **Day 81 (assuming offer became unconditional as to acceptances on Day 60).** This is the last date by which all other conditions to the offer must be fulfilled or satisfied.

The bidder must send the compulsory acquisition notices to minority shareholders to activate the squeeze-out procedure within a period of two months from the closing of the offer (see *Question 20*).

Competing offers

If a competing bid is announced, the timetable of the original bid will be extended to match the timetable started by the posting of the competing bid. The timetable for the competing bid will begin on the day the competing offer document is posted.

If a competing bid continues into the later stages of the offer, the Panel can require the bidders to make a final bid by Day 46, or allow them to finalise their bid within a set period from this date.

Offer conditions

13. What conditions are usually attached to a takeover offer? Can an offer be made subject to the satisfaction of pre-conditions (and, if so, are there any restrictions on the content of these pre-conditions)?

UK practice is generally followed. Where the Code applies, the offer must contain a condition that the offer will lapse unless the bidder acquires (or agrees to acquire) more than 50% of the target's voting rights (*Rule 10, Code*).

The Competition (Guernsey) Ordinance, 2012 and related regulations will apply to a takeover offer if the target and the bidder (individually and in aggregate) satisfy a turnover test relating to turnover arising in Guernsey and the Channel Islands. If that is the case, the offer must be notified to the Channel Islands Competition & Regulatory Authorities and approval must be obtained before the offer is declared unconditional. An appropriate condition will need to be included in the terms of the offer.

Bid documents

14. What documents do the target's shareholders receive on a recommended and hostile bid?

Under the Code, the documents issued during an offer must satisfy the highest standards of accuracy and the information given must be adequately and fairly presented (*Rule 19.1, Code*).

Recommended bid

The main documents received by the target's shareholders on a recommended bid are the:

- Circular summarising the terms and conditions of the offer.
- Offer document.
- Acceptance form.
- Prospectus or equivalent document (if required).

Hostile bid

The main documents received by the target's shareholders on a hostile bid are the:

- Circular summarising the terms and conditions of the offer.
- Offer document.
- Acceptance form.
- Prospectus or equivalent document (if required).
- Defence documents.
- Revised offer document.

Employee consultation

15. Are there any requirements for a target's board to inform or consult its employees about the offer?

There is no obligation to consult with employees, but the Code does require certain documents to be made available to an appropriate employee representative, including the:

- Offer announcement.
- Offer document.

If there is no employee representative, the documents should be made available to the employees (*Rule 2.12(b), Code*). The details of the documents can be communicated to the employees through the usual means that the company would use, such as posting the information on the target company's website. In addition, the Code requires the offer document to contain information on the effect that the offer will have on employees (*Rule 24.2(a), Code*).

Mandatory offers

16. Is there a requirement to make a mandatory offer?

A mandatory offer to acquire all of the target's share capital must be made when the bidder (or parties acting in concert) either:

- Acquires an interest that results in the bidder holding a stake of 30% or more of the voting rights in the target. This includes any interest acquired through derivatives.
- Has an interest in shares carrying between 30% and 50% of the target's voting rights and the bidder or any person acting in concert with it acquires an interest in any other of the target's voting shares (*Rule 9, Code*).

CONSIDERATION

17. What form of consideration is commonly offered on a public takeover?

The most common forms of consideration are:

- Cash.
- Listed securities.

Loan notes may also be offered, but are less common.

18. Are there any regulations that provide for a minimum level of consideration?

The bid price must not be less than the highest price that the bidder (or any person acting in concert with the bidder) has paid for any interest in the target's shares during the three months prior to the commencement of the offer period, and during the period until the offer closes to acceptances (*Rule 6, Code*).

For these purposes, the offer period refers to any current offer period relating to the target and not just the bidder's own offer.

19. Are there additional restrictions or requirements on the consideration that a foreign bidder can offer to shareholders?

If a shareholder of the target is a Guernsey resident, the bidder should consider whether offering securities as consideration would involve the promotion of those securities in Guernsey.

Promotion of securities is a restricted activity in Guernsey, which can only be carried out by a person licensed to do so by the GFSC (*The Protection of Investors (Bailiwick of Guernsey) Law 1987*).

As a matter of policy, the GFSC does not wish to exclude Guernsey residents from general offers that are not specifically targeted at Guernsey investors. Therefore, a takeover offer involving a limited number of Guernsey resident shareholders that use securities as consideration would generally not be considered to be a promotion for these purposes. However, each situation must be assessed according to the individual circumstances.

POST-BID

Compulsory purchase of minority shareholdings

20. Can a bidder compulsorily purchase the shares of remaining minority shareholders?

Under the Companies Law, shares can be compulsorily purchased from minority shareholders by using a squeeze-out procedure if the takeover offer satisfies the following requirements (*Part XVIII, Companies Law*):

- The bidder prepares a scheme or contract that relates to the purchase of the shares (Share Purchase Offer). The Share Purchase Offer must be made to all of the shareholders (with certain exceptions).
- Shareholders holding 90% of the value of the shares affected by the offer must accept the Share Purchase Offer within four months of the making of the Share Purchase Offer. Shares acquired outside of the offer will not count towards the 90% threshold.
- The bidder may, within two months following the closing of the Share Purchase Offer, serve a notice to acquire, on any shareholder who has not accepted the Share Purchase Offer. This must explain the bidder's intention to purchase the shares on the same terms and must offer the same choice (if any) of consideration.
- After receiving a notice to acquire, the shareholders have one month to apply to the Royal Court for a cancellation of the notice.
- If the notice to acquire has not been cancelled, the bidder must purchase the shares from these shareholders by paying the consideration due under the Share Purchase Offer to the target company. The consideration is then held on trust for the shareholders by the target company.

Restrictions on new offers

21. If a bidder fails to obtain control of the target, are there any restrictions on it launching a new offer or buying shares in the target?

If the offer is withdrawn or lapses, the Code imposes restrictions on the bidder or its concert parties for the next 12 months. During this time, the bidder or its concert parties are prevented from (*Rule 35.7*):

- Making a new offer for the same shares in the target.
- Acquiring any shares in the target if 30% or more of the target's voting rights would be obtained in aggregate.

Exemptions may be granted in some cases, with the consent of the Panel.

De-listing

22. What action is required to de-list a company?

The usual requirement for de-listing is approval by a special resolution of the shareholders. However, the required action will depend on the rules of the relevant investment exchange.

There are no additional actions required under Guernsey law.

TARGET'S RESPONSE

23. What actions can a target's board take to defend a hostile bid (pre- and post-bid)?

Defences

When faced with a hostile bid, the target may be able to defend its position by various methods, including the white knight defence. There is generally no legal objection to a target's board seeking a third party to make an alternative offer for the target.

Restrictions on defences

Rule 21.1 of the Code prevents the target from taking frustrating action when defending itself, without the approval of the shareholders at a general meeting, including:

- Issuing shares or granting options.
- Selling treasury shares.
- Selling or acquiring assets of a material amount.
- Entering into contracts other than in the ordinary course of business.
- Creating structural defences, such as poison pills, to render the target unattractive.

In addition to the Code's provisions, the following must be considered:

- **Directors' duties.** Directors' fiduciary duties in Guernsey law are based on common law principles and have not been codified in statute. Directors must act in the best interests of the company at all times and must use their powers for a proper purpose.
- **Market abuse.** The offence of market abuse may be committed if the board does any of the following (*section 41A to 41G, The Protection of Investors (Bailiwick of Guernsey) Law, 1987*):
 - acts on information that is not generally available to the market and which may affect the price of the target's shares;

- behaves in a manner likely to create a false impression of the supply or demand for, or the price or value of, the target's shares;
- behaves in a manner generally regarded as distorting, or likely to distort the market in the company's shares.
- **Insider dealing.** If the directors are in the possession of price-sensitive information and seek to block a bid by acquiring shares or encouraging others to do so, the provisions of the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law 1996 will be relevant. A director in breach of these obligations will commit the offence of insider dealing.
- **Investment fund restrictions.** Since most listed companies in Guernsey are regulated investment funds, the constraints arising from regulatory rules or the fund's own investor documents must also be considered.

TAX

24. Are any transfer duties payable on the sale of shares in a company that is incorporated and/or listed in the jurisdiction? Can payment of transfer duties be avoided?

The following duties are not payable in Guernsey for the sale of shares in a Guernsey company:

- Stamp duty.
- Stamp duty reserve tax.
- Transfer duties.

However, such duties may be payable in other jurisdictions if the instruments of transfer are executed in those other jurisdictions.

If the target group owns real estate assets in Guernsey, a change of ultimate ownership may trigger an indirect transfer duty in relation to the Guernsey property. Whether such a duty arises will depend on a number of factors including the nature of the target and the purpose for which the property is used.

OTHER REGULATORY RESTRICTIONS

25. Are any other regulatory approvals required, such as merger control and banking? If so, what is the effect of obtaining these approvals on the public offer timetable?

Guernsey's merger control regime derives from the Competition (Guernsey) Ordinance, 2012 and related regulations. These regulations will apply to a takeover offer if the target and the bidder (individually and in aggregate) satisfy a turnover test relating to turnover arising in Guernsey and the Channel Islands. If that is the case, the offer must be notified to the Channel Islands Competition & Regulatory Authorities and approval must be obtained before the offer is declared unconditional.

The prior consent of the GFSC will be required for any acquisition of a Guernsey company (or its parent) that holds any regulatory licence issued by the GFSC, including:

- Insurance companies.
- Financial services businesses.
- Fiduciary or trust businesses.

- Banking (deposit taking) businesses.

To obtain this consent, the bidder must provide the GFSC with evidence of its suitability as a new controller of the licensed entity. It is normal for the bidder to commence this process before the formal bid is made, but the requirement for GFSC consent may delay the bid becoming unconditional (see *Making the bid public*).

26. Are there restrictions on the foreign ownership of shares (generally and/or in specific sectors)? If so, what approvals are required for foreign ownership and from whom are they obtained?

There are no restrictions on foreign ownership of shares.

27. Are there any restrictions on repatriation of profits or exchange control rules for foreign companies?

There are no restrictions on the repatriation of profits or exchange control rules for foreign companies.

28. Following the announcement of the offer, are there any restrictions or disclosure requirements imposed on persons (whether or not parties to the bid or their associates) who deal in securities of the parties to the bid?

The following persons are prohibited from acquiring shares in the target during the offer period:

- Financial advisers and brokers of the target or other members of the target group and companies that are in control of, controlled by or under common control with, the target's financial advisors and brokers (*Rule 4.4, Code*).
- The target itself, unless approved by target shareholders (*Rule 37.3, Code*).

Rule 8 of the Code imposes obligations to disclose dealings and positions in respect of target shares.

REFORM

29. Are there any proposals for the reform of takeover regulation in your jurisdiction?

A number of possible changes to the Companies Law are being considered, including changes affecting the operation of schemes of arrangement and takeover offers, including:

- In a scheme of arrangement, allowing the Court to dispense with the "majority in number" test when determining whether the scheme has been approved by the target shareholders.
- Permitting an offeror to make acquisitions of shares during the offer period, and for those shares to be counted towards satisfaction of the 90% threshold for operating squeeze out rights.

THE REGULATORY AUTHORITY

The Takeover Panel (Panel)

W www.thetakeoverpanel.org.uk

Main area of responsibility. The Panel has responsibilities that include regulating takeovers and mergers.

Practical Law Contributor profiles



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Professional qualifications. England and Wales, 1998; Guernsey, 2010

Areas of practice. M&A (public and private); investment funds; general corporate advice.

Recent transactions

- Advising NYX Gaming Group Limited on its acquisition by Scientific Games Corporation by way of a scheme of arrangement.
- Advising Market Tech Holdings Limited on its acquisition by its majority shareholder by way of a recommended offer.
- Advising Sandstorm Gold Ltd on its acquisition of Mariana Resources Limited by way of a scheme of arrangement.
- Advising TMF Group on its acquisition of Gentoo Holdings Limited, a fund and corporate administration business operating in Guernsey and Luxembourg.