

# The Takeover Code in Jersey

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## HISTORICAL BACKGROUND

Takeovers and mergers in Jersey have, for some time, been regulated by the Panel for Takeovers and Mergers (the “**Panel**”), an independent body based in the UK. The Panel was established in 1968 and historically regulated takeovers in both the UK and the Crown Dependencies (including Jersey) on an informal basis through the application of its prescribed rules – the City Code on Takeovers and Mergers (the “**Code**”). The Code is designed principally to ensure that shareholders in listed companies are treated fairly and are not denied an opportunity to decide on the merits of a takeover and that shareholders of the same class are afforded equivalent treatment by an offeror. The Code also provides an orderly framework within which such takeovers are conducted.

Whilst this has worked well in practice, the EU Takeover Directive (2004/25/EU) (the “**Takeovers Directive**”) required the Panel, as a designated supervisory authority, to be recognised by statute. Statutory implementation of the Directive in UK law occurred with the enactment of the Companies Act 2006, in particular, Chapter 1 of Part 28.

Once the Panel was placed within a statutory framework in the UK, they no longer thought it appropriate to continue to administer takeovers in Jersey unless an equivalent framework applied in the Island.

## JERSEY’S LEGISLATIVE RESPONSE

Jersey’s legislators recognise that the regulation of takeovers and mergers is desirable to ensure that shareholder interests are protected when those activities occur. A well regulated market provides investors with confidence about the regime and therefore encourages investment which, given the present economic climate, is vital to maintain.

Consequently, the Companies (Takeovers and Mergers Panel) (Jersey) Law 2008 (the “**Law**”) closely follows Chapter 1 of the UK Companies Act 2006, adapted for the Jersey context. The Law was adopted by the States of Jersey in July 2008, was approved by the Privy Council in mid December 2008 and registered in the Royal Court on 2 January 2009. An Appointed Day Act due to be debated by the States in mid March should bring the Law into effect on 1 June 2009.

## **APPLYING THE LEGISLATION**

As in previous years, when the Panel acted in a non-statutory capacity, the Law will apply to offers made for public companies incorporated in Jersey if either their shares are listed on a regulated market in the UK or on any stock exchange in the Isle of Man or on the Channel Islands Stock Exchange ("**CISX**") or if they are considered by the Panel to have their place of central management and control in the UK, the Channel Islands or the Isle of Man. Application to private companies is also possible in very limited circumstances.

Article 2 of the Law empowers the Minister for Economic Development in Jersey to appoint a body to oversee takeovers and mergers. The Minister intends to appoint the Panel as the appropriate overseer, but the Minister does have the power to appoint an alternative regulator if the need ever arose.

Article 3 of the Law requires the Panel to make rules to give effect to the Takeovers Directive as if it were applied to Jersey. It is envisaged by Jersey's legislators that the Panel's existing rules will be adopted, giving the Code the same statutory basis in Jersey as in the UK.

The Law also formally grants the Panel powers to issue directions and give binding rulings on the application of its rules; as well as the power to request documents and information from relevant bodies; and impose sanctions for the breach of its rules or procedures. Ultimately, Article 15 of the Law allows the Royal Court of Jersey to make such order as it thinks fit in order to secure compliance with any breach of the Panel rules. In addition to punitive sanctions that the Panel may levy against those found to be in breach of its rules, the Panel is also able to make rules imposing fees

or charges payable to the Panel for meeting its expenses under the Law.

Although the Panel remains an independent body with the power to make rulings and to take or defend proceedings in its own name, Article 10 of the Law requires the Panel to take appropriate steps of co-operation with the Jersey Financial Services Commission (the "**Commission**") or any similar body when considering a takeover relevant to a Jersey entity.

For practitioners trying to assess the impact of the new statutory regime, it is important to note that Article 23 states that nothing in the Law shall affect the operation of any provision of the Companies (Jersey) Law 1991 or the Competition (Jersey) Law 2005 in relation to any takeover bid or transaction in respect of which the Panel can make rules under the Law. Obviously, if the target company in question is also listed on an exchange like the CISX then the relevant Listing Rules will also have to be considered.

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