Guidance Note

COMPULSORY ACQUISITION

7 April 2026

TAKEOVERS PANEL
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Contents

1 Introduction

1.1 This Guidance Note explains the compulsory acquisition process, when it applies and how it operates. In particular, this Guidance Note contains details of the various notices that must be sent in accordance with the compulsory acquisition process, the consideration payable for the outstanding securities, and the objection rights which outstanding security holders may have.

1.2 In addition, Appendix A of this Guidance Note includes a flowchart depicting how the consideration payable for outstanding securities is determined.

2 Dominant ownership

2.1 The compulsory acquisition provisions of the Code (set out in Part 7 of the Code) are triggered when a shareholder becomes a "dominant owner" of a Code company.

2.2 The Code defines a dominant owner (see rule 50) as a person, or persons acting jointly or in concert, who becomes the holder or controller of 90% or more of the voting rights in a Code company. Typically, the dominant ownership will be reached through acceptances of an offer, but the Code also allows for other means – for example, through a "creeping" acquisition under rule 7(e).

2.3 Subject to the terms of the offer, dominant ownership will occur on settlement of the relevant acceptances, at which time the offeror becomes the holder of the relevant voting rights.

2.4 However, if, under the terms of the offer, the offeror obtains control of the voting rights attached to the shares prior to becoming the registered holder of the shares, then dominant ownership may occur prior to settlement of the acceptances. For example, the offer terms may include a power of attorney entitling the offeror to exercise control over the voting rights from the time at which the offer becomes unconditional – in this case, the offeror may become the dominant owner on the offer becoming unconditional rather than on settlement of the relevant acceptances.

2.5 Conversely, dominant ownership will not occur where the transaction remains conditional. The offeror will not have become the holder or controller of the relevant voting rights solely by virtue of reaching 90% acceptances.

2.6 All routes to dominant ownership must be Code-compliant. For example, two shareholders (who in aggregate control 90% or more of the voting rights in a Code company) cannot simply agree that they will act in concert and hold or control the voting rights together in order to become a dominant owner. Entering such an arrangement may breach rule 6(1), most likely by the operation of rule 6(2)(b).

2.7 For multiple offerors to become a dominant owner under rule 50, the unincorporated joint venture participants that make up the offeror must be acting jointly or in concert to hold or control shares accepted into the offer by third parties, as well as the shares held by the participants at the time of formation of the unincorporated joint venture. This approach requires that the unincorporated joint venture must become the holder or controller of the voting rights of the participants, either in a manner permitted by the Code before the offer is made, or by the offer being extended to, and accepted by, the participants.

2.8 Once dominant ownership is reached, the dominant owner must elect to either:

(a) require the outstanding security holders to sell all of their equity securities to the dominant owner; or

(b) provide each outstanding security holder with the right to require the dominant owner to purchase all of the outstanding holder's equity securities.

3 Notices

3.1 A dominant owner must send a dominant ownership notice (rule 51) and a compulsory acquisition notice (rule 54).

Dominant ownership notice

3.2 Immediately on reaching dominant ownership, the dominant owner must send written notification of that fact to:

(a) the outstanding security holders;

(b) the Code company;

(c) the Panel; and

(d) the licensed market operator (if applicable).[1]

3.3 The only requirement for the form of the dominant ownership notice is that it is in writing.[2]

Compulsory acquisition notice

3.4 The dominant owner wishing to exercise its compulsory acquisition rights must send a compulsory acquisition notice to the outstanding securities holders (rules 54(2) and 54(3)) within 20 working days of:

(a) the close of the offer, if dominant ownership was achieved by way of acceptances;[3] and

(b) becoming the dominant owner, if this was achieved by another route – for example, through a "creeping" acquisition.

3.5 The dominant owner must deliver a copy of the notice immediately to:

(a) the Registrar of Companies;

(b) the Code company;

(c) the licensed market operator (if applicable); and

(d) the Panel.

3.6 The compulsory acquisition notice (rule 55) must:

(a) state that the dominant owner holds or controls 90% or more of the voting rights in the Code company;

(b) specify whether the dominant owner will either:

(i) acquire the outstanding securities; or

(ii) grant security holders the right to sell their securities to the dominant owner;

(c) specify:

(i) the consideration to be provided to the outstanding security holders for the outstanding securities; or

(ii) if the offer by which dominant ownership was reached provided for alternative consideration options:

(A) the alternative consideration options;

(B) the procedure for nominating an alternative consideration option; and

(C) what happens if an outstanding security holder does not nominate an alternative consideration option;

(d) set out the outstanding security holders' rights under Part 7 of the Code, including any challenge rights (see section 6 below);

(e) specify the date the acquisition notice is sent to the outstanding security holders;

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[1] Generally speaking, this means making an announcement via the NZX Market Announcement Platform.
[2] Written notices under the Code can, and in some cases must, be sent electronically – see rules 5A and 5B.
[3] This applies whether or not the dominant owner has also acquired equity securities under rule 36 of the Code (rule 54(2)).

(f) provide an instrument of transfer for the outstanding securities;[4] and

(g) specify the return address for the instrument of transfer.

4 Consideration

4.1 The consideration (the **Final Consideration**) that must be provided for the outstanding securities is either:

(a) the consideration specified in the acquisition notice (the **Specified Consideration**); or

(b) if challenge rights apply and are exercised, the consideration determined by the expert determination process.

4.2 When determining the Specified Consideration, the key threshold questions to consider are:

(a) Has dominant ownership been obtained through a takeover offer, or by another route (such as using the Code's "creep" provisions)?

(b) Did the offeror receive acceptances for at least 50% of the relevant class of securities, not including any which were already held or controlled by the offeror or its associates (the **50% Acceptance Test**)?

(c) Did the offer include alternative consideration options?

(d) Did the offer include cash or a cash alternative?

4.3 The flowchart in **Appendix A** sets out how the Specified Consideration should be determined and whether it is capable of challenge.

5 Certified Fair and Reasonable Amount

5.1 In certain circumstances, the Specified Consideration must be a cash sum which has been certified as fair and reasonable by an independent adviser (a **Certified Fair and Reasonable Amount**). See the flowchart attached as Appendix A for more information.

5.2 No minority discount can be applied when determining a Certified Fair and Reasonable Amount. In certifying a cash sum as fair and reasonable, the independent adviser must decide the aggregate value of all of the outstanding securities in the relevant class and then allocate that value pro rata across all the securities of that class (rule 57(4)).

5.3 For further information regarding a Certified Fair and Reasonable Amount, see paragraphs 5.3 to 5.7 of the *Guidance Note on Independent Advisers*.

6 Challenge to the Specified Consideration

General

6.1 The compulsory acquisition notice should state clearly whether the outstanding security holders have the right to challenge the Specified Consideration, and how these rights must be exercised.

6.2 Outstanding security holders have the right to challenge the Specified Consideration where the Specified Consideration was set as either:

(a) a Certified Fair and Reasonable Amount (rule 57(1)(a)); or

(b) the cash sum, or cash alternative, under the preceding offer and the 50% Acceptance Test was not met (rule 57(1)(b)).

[4] If the offer by which dominant ownership was reached provided for alternative consideration options, the instrument of transfer must provide a means for the outstanding security holder to nominate an alternative consideration option.

6.3 These challenge rights can be exercised only where, within 10 working days of the acquisition notice being sent, written objections are received by the dominant owner from outstanding security holders holding (in aggregate) the lesser of:

(a) 2% or more of the equity securities in the relevant class; or

(b) 10% or more of the outstanding securities in the relevant class.

6.4 If either limb of this threshold is met, the dominant owner must immediately engage an independent expert appointed by the Panel to determine the Final Consideration to be provided to the outstanding security holders (**Expert Determination**). The independent expert, in making the Expert Determination, is required to specify a point valuation for the cash sum that is equal to the fair and reasonable value for the relevant security. This differs from an independent adviser's task of certifying the specified consideration which is a cash sum as fair and reasonable under rule 57(1)(a).

6.5 An example of where challenge rights arose (and were subsequently exercised) was H&G Limited's (**H&G**) 2024 offer for the equity securities in Rural Equities Limited (**Rural Equities**) which H&G did not already own. H&G at the time of the offer held 85.98% of the Rural Equities voting rights, being just short of the dominant ownership. H&G acquired more than 90% of the voting rights in Rural Equities through its offer, but some acceptances were from its associates which were disregarded for the purpose of the 50% Acceptance Test. As a result, the 50% Acceptance Test was not met, opening the possibility of challenge rights. Sufficient objections were then received such that the consideration was referred to an independent expert for determination.

6.6 The Panel notes the following procedural points regarding independent experts appointed to prepare an Expert Determination:

(a) *Panel's appointment process*: Where an independent expert is to be appointed, the Panel will typically seek proposals from the market, review and evaluate those proposals and then appoint the expert. The Panel retains its discretion as to how it will seek and evaluate proposals. However, the Panel expects to generally apply a similar approach to assessing independence and competence as that set out in the *Guidance Note on Independent Advisers*.

(b) *Agreeing to standard terms:* Once the Panel has appointed an independent expert, the dominant owner should accept the expert's standard contractual terms (including any indemnities, provision of information and confirmations, payment terms and fees).

(c) *Valuation date:* The Expert Determination should be assessed as at the date of the acquisition notice (i.e., the date the compulsory acquisition process formally commences).

(d) *Timeframe:* The Expert Determination must be prepared within the Code timeframe of 20 working days after the independent expert's appointment. Any anticipated or potential delays should be raised with the Panel at the earliest opportunity. While the Panel has the power to grant an exemption from the Code's timing rules, the Panel expects that this power would be exercised only in circumstances which are outside of the expert's control, such as unforeseen events preventing completion within the Code's timeframe.

Relevance of multiple classes (where rule 8(4) applies to an offer)

6.7 If a full offer is made for both voting and non-voting securities, and there is a challenge by outstanding security holders to the specified consideration for non-voting securities, the determination should be made as prescribed by rules 57(1)(a) and (b) – i.e., by setting a fair and reasonable value for each applicable class of securities, as at the date of the acquisition notice. This is the case despite the fact that rule 8(4) only relates to the time at which the offer prices were initially set.

6.8 In addition, the compulsory acquisition price for the voting securities may nonetheless be relevant for determining the fair and reasonable value of the other equity securities. For example, where the 'other' equity securities derive their value from the voting securities as a result of conversion rights, the compulsory acquisition price is likely to

be an appropriate benchmark. In any event, it will be for the independent expert to assess what relevance, if any, to the price for the voting securities in light of all relevant facts.

6.9 This approach may also apply in relation to setting a Certified Fair and Reasonable Amount.

7 Payment of Specified Consideration/Final Consideration

Return of instrument transfer

7.1 As noted at paragraph 3.6(f) above, the acquisition notice must be accompanied by an instrument of transfer for the outstanding securities. Whether the outstanding security holder returns the completed documents within the 15 working day deadline or not makes little difference to the outcome beyond timing:

(a) If they are returned, the dominant owner has 5 working days to send the outstanding security holder the Specified Consideration or, where there are alternative consideration options, the consideration payable under rule 56A.

(b) If they are not returned, and the acquisition notice provides for a compulsory purchase by the dominant owner, the dominant owner must, within 5 working days of the expiry of the timeframe for returning the completed documents:

(i) execute the instrument of transfer and send it to the Code company;[5]

(ii) pay to the Code company any cash component of the Specified Consideration; and

(iii) where the Specified Consideration is, or includes, financial products:

(A) vest the financial products in the outstanding security holder; and

(B) send written confirmation that this has been done to the outstanding security holder and the Code company.

7.2 Where the Code company receives cash consideration (see paragraph 6.2(b)(ii) above), the Code company must:

(a) deposit the cash in an interest-bearing trust account with a registered bank; and

(b) hold the cash on trust for the outstanding security holder.

7.3 The Code does not specify a time at which the Code company may stop holding the funds on trust but the Panel considers that the relevant provisions of the Unclaimed Money Act 1971 would apply. These allow the Code company to pay the money to the Inland Revenue Department (**IRD**) on behalf of the Crown. The former shareholder can then claim the funds from the IRD.

8 Registration of dominant owner as holder of outstanding securities

8.1 The directors of the Code company must register the dominant owner or its nominee as the holder of the outstanding securities (rule 63) when:

(a) **in a compulsory sale**, the Code company receives the instruments of transfer (and any other related documents)[6] and is reasonably satisfied that the consideration:

(i) has been sent to the outstanding security holders in accordance with rule 60; or

(ii) has been dealt with in accordance with rule 61(2) or (3) (whichever applies); and

[5] The instrument of transfer can be executed by the dominant owner or its agent (rule 61(1)(b)).
[6] If these instruments of transfer have not been executed and returned by the outstanding security holder, they must be executed by the dominant owner or its agent on behalf of the outstanding security holder.

(b) **in a voluntary sale**, the Code company receives the instrument of transfer (and any other related documents) in accordance with rule 59, and is reasonably satisfied that the consideration has been sent to the outstanding security holders in accordance with rule 60.

Payment adjustments when the Final Consideration is fixed by independent expert

8.2 The Code requires payment of the Specified Consideration in the usual course, irrespective of whether an independent expert has been appointed to determine the Final Consideration.

8.3 If the independent expert determines the Final Consideration and it differs from the Specified Consideration, rule 62 of Code applies. This provides that:

(a) where the Final Consideration exceeds the Specified Consideration, the dominant owner must immediately pay the balance to the outstanding security holders or the Code company,[7] and

(b) where the Final Consideration is lower than the Specified Consideration, the dominant owner may recover the excess paid from the outstanding security holders or the Code company.

[7] Payment must be made in the same manner as the Specified Consideration stated in the acquisition notice (rule 62(1)).

Schedule: Version control, disclaimer and copyright

Version Control

This version (Panel document reference number #1006707.1) was published on 7 April 2026.

The version history of this Guidance Note is, in summary:

Date of version	Principal changes from previous version	Document reference number
7 April 2026	Clarifying the time at which dominant ownership occurs; inclusion of procedural points regarding determination of compulsory acquisition pricing; inclusion of examples and minor editorial changes.	#1006707.1
9 September 2019	N/A – This was the first version of the Guidance Note.	#379936.1

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APPENDIX A
Compulsory Acquisition Flowchart

Apply this flowchart independently to each class of equity securities to determine the Final Consideration for that class.