

TIMING RULES

Guidance Note



29 October 2018



**TAKEOVERS
PANEL**

TE PAE WHITIMANA

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1 Introduction

- 1.1 A party to a Code-regulated transaction must observe all applicable time limits that are prescribed in the Code. If a party takes some action that is out of time, that action may be invalid or likely to result in a breach of the Code.
- 1.2 All of the timing rules in the Code relate to takeover offers and compulsory acquisitions. The Companies Act 1993 contains the timing rules that relate to the holding of shareholder meetings for rules 7(c) and 7(d) of the Code.
- 1.3 The Code was amended in 2018 to (among other things) simplify its timing rules. The new timing rules are set out below. They apply to all Code-regulated transactions commencing on or after 29 October 2018.¹

2 Definition of working day in the Interpretation Act 1999

- 2.1 All timing rules in the Code are now based on working days as defined in section 29 of the Interpretation Act 1999.

working day means a day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and
- (e) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday

3 General rules of interpretation for timing rules in the Interpretation Act 1999

- 3.1 Section 35 of the Interpretation Act prescribes general rules of interpretation for statutory and regulatory timing provisions. The rules relevant to the Code are:

...

- (2) A period of time described as beginning from or after a specified day, act, or event does not include that day or the day of the act or event.
- (3) A period of time described as ending by, on, at or with, or as continuing to or until, a specified day, act, or event includes that day or the day of the act or event.

...

- 3.2 In *T v J*, a full High Court decision, Robertson and Potter JJ gave guidance on the interpretation of statutory timing provisions.² The Court noted that, as a general rule, fractions of a day ought to be disregarded from the calculation of timing provisions, to avoid uncertainty. Accordingly, the Court considered that in relation to a time period specified in a statute the whole of the first day of the specified period should be either included or it should be excluded. The Court also observed that the general rule (i.e. disregarding fractions of a day) applies at the end of a specified time period: “*the period ends at the termination of the day on which the terminating event occurs*”.³

¹ Under clause 4(a) of Schedule 1AA of the Takeovers Code, a transaction commences when a takeover notice has been sent to a target company, for the purpose of determining which timing rules apply. For guidance on the timing rules applicable to transactions that commenced before 29 October 2018, please see the Panel's previous Guidance Note on Timing Rules.

² [2000] 2 NZLR 236 (HC).

³ At [20].

4 The Panel's approach to the timing rules in the Code

- 4.1 The timing rules in the Code must be interpreted and applied in accordance with sections 29 and 35 of the Interpretation Act and in light of any relevant case law.
- 4.2 For the purpose of counting days under the Code, all time periods specified in the Code are now counted in the same way. The counting method is summarised as follows:
- All time periods specified in the Code can be expressed as beginning with *x* (a day, act or event) and ending with *y* (a day on which something may, must, or must not occur).
 - When counting the days in the specified time period, the day of *x* is excluded; the day of *y* is included.
 - This counting method applies regardless of whether *y* is before or after *x*, i.e., whether the time period is counted forwards or backwards from *x*.
- 4.3 Previously the Code required multiple ways of counting days. Therefore, the Panel's previous Guidance Note on Timing Rules contained multiple tables providing examples of each counting method. Now the Code has been simplified so that all time periods refer to working days, and are counted in the same way. Accordingly, rather than providing a comprehensive guide to each specified time period in the Code, some examples illustrating the counting method are provided below.
- 4.4 Additionally, the Panel provides a [timing rules calculator](#) on its website to assist parties in complying with the Code's prescribed time limits. All care has been taken to ensure that the calculator works properly, but compliance with the Code's time limits remains strictly the responsibility of persons who are bound by the Code.

5 Illustrations of the application of timing rules

5.1 Example – rule 10(2):

*A target company, or its agent, that receives an approval or objection before the expiration of the offer period must, if requested by the offeror, send a copy of the approval or objection to the offeror **within 2 working days after** its receipt.*

- 5.2 The target company must, before the completion of two working days after it receives the request from the offeror, send a copy of the approval or objection. The application of the rule may be illustrated in Table A:

Table A

Day request is received	Working day 1	Working day 2
Target company receives request at some time on this day		Target company must send copy of votes by the end of this day

5.3 Example – rule 24(2):

The offer period must-

- commence with the date of the offer; and**
- be not shorter than 20 working days from that date, and not longer than 60 working days from that date.**

- 5.4 The specified time period begins on the date of the offer; the offer opens on that date. However, for the purposes of *counting* the minimum number of days until the offer period may end, the date of the offer

is excluded from the specified time period. The offer period must be no shorter than 20 working days, and no longer than 60 working days, from the date of the offer. The application of the rule may be illustrated in Table B:

Table B

Date of offer	Working day 1	Working day 20	Working day 60
Date of the offer Offer period begins on this day		Offer period must run until at least the end of this day	Offer period must not run any longer than the end of this day

5.5 Example – rule 43B(b):

The offeror must send the offer in accordance with rule 43(1) on a date that is-

...

(b) *during the period **beginning on the day that is 10 working days, and ending 20 working days, after the takeover notice relating to the offer has been sent to the target company.***

5.6 The offeror cannot send the offer to the offerees until the 10th working day after the day on which the takeover notice was sent. The offer must be sent by the end of the 20th working day after the takeover notice was sent. The application of the rule may be illustrated in Table C:

Table C

Mon	Tue	Wed	Thu	Fri	Sat	Sun
Takeover notice sent on this day	Day 1	Day 2	Day 3	Day 4		
Day 5	Day 6	Day 7	Day 8	Day 9		
Day 10 - Offer can be sent on or after this day	Day 11	Day 12	Day 13	Day 14		
Day 15	Day 16	Day 17	Day 18	Day 19		
Day 20 - Offer must be sent by end of this day						

5.7 Example – rule 24C:

- (1) *This rule applies if –*
- (a) *the offer is subject to a minimum acceptance condition; and*
- (b) *that condition is satisfied or waived in the period that begins **5 working days before** the end of the offer period.*
- (2) *If this rule applies, the offer period is extended for **10 working days from the day** on which the condition referred to in subclause (1) is satisfied or waived.*

...

5.8 There are two specified time periods in rule 24C. The first specified period of time begins 5 working days before the end of the offer period. The second specified period of time provides for an extension for 10 working days from the date that the condition is satisfied or waived. This is shown in Table D below, which for the sake of the example chooses the third working day before the end of the offer period as the date on which the minimum acceptance condition is satisfied or waived.

Table D

Mon	Tue	Wed	Thu	Fri	Sat	Sun
Rule applies if condition is satisfied on or after this day < Day 5	< Day 4	Date minimum acceptance condition is waived or satisfied < Day 3	Day 1 > Extension period begins on this day < Day 2	Day 2 > < Day 1		
Day 3 > Original closing date of offer	Day 4 >	Day 5 >	Day 6 >	Day 7 >		
Day 8 >	Day 9 >	Day 10 > Extension period ends at the end of this day				

5.9 Example – rule 29(1):

*An offer may not be varied, and a variation notice may not be sent, **later than the tenth working day before** the end of the offer period.*

5.10 The specified period of time is the 10 days before the day that the offer period ends. The application of the rule may be illustrated in Table E:

Table E

Mon	Tue	Wed	Thu	Fri	Sat	Sun
The last day to vary the offer						
< Day 10	< Day 9	< Day 8	< Day 7	< Day 6		
< Day 5	< Day 4	< Day 3	< Day 2	Good Friday		
Easter Monday	< Day 1	Offer period ends on this day				

5.11 Example – rule 49C(1A) (notice of conditions to which offer is subject):

*In subclause (1), **relevant day** means a day that is–*

- (a) **on or after the tenth working day before** the end of the offer period; but
- (b) **on or before the fifth working day before** the end of the offer period.

5.12 The specified period of time begins on the first working day before the end of the offer period, and ends on a day between the fifth and tenth working day (inclusive) before the end of the offer period. The application of this rule may be illustrated in Table F:

Table F

Mon	Tue	Wed	Thu	Fri	Sat	Sun
Earliest day to send written notice						
< Day 10	< Day 9	< Day 8	< Day 7	< Day 6		
Latest day to send written notice						
< Day 5	< Day 4	< Day 3	< Day 2	< Day 1		
Offer period ends on this day						

5.13 Example – rule 10(1A):

...

voting period is a period that commences with the date of the offer and ends with a date that is –

- (a) **on or before the fifth working day before** the date first specified in the offer (under rule 24(2)) as the end of the offer period; and
- (b) **on or after the tenth working day after** the date on which the offer document is sent in accordance with rule 43B.

5.14 The voting period begins on the date of the offer. The rule specifies earliest and latest closing dates for the voting period:

- (a) The earliest closing date is the tenth working day after the date on which the offer document is sent.
- (b) The latest closing date is the fifth working day before the date first specified in the offer as the end of the offer period.

The application of rule 10(1A) may be illustrated in Table G:

Table G

Mon	Tue	Wed	Thu	Fri	Sat	Sun
Date of offer (voting period commences this day)		Offer document sent	Day 1 >	Day 2 >		
Day 3 >	Day 4 >	Day 5 >	Day 6 >	Day 7 >		
Day 8 >	Day 9 >	Day 10 > Earliest possible voting closing date				
				Latest possible voting closing date < Day 5		
< Day 4	< Day 3	< Day 2	< Day 1	Date first specified as end of offer period under rule 24(2)		