A BASIC GUIDE FOR DIRECTORS

about the Takeovers Code

October 2020

TAKEOVERS PANEL
TE PAE WHITIMANA

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Disclaimer
This guide explains the Takeovers Code in a simplified way. The guide avoids technical detail in order to provide a conceptual understanding of the Code for directors. The guide should not be relied upon as providing a legal explanation of the Code. It does not give legal or financial advice. Directors should not rely on it for understanding their precise obligations under the Takeovers Code, and should seek legal advice from a qualified professional.

Transactions under the Takeovers Code

The Code's purpose is to ensure that shareholders in Code companies can participate in changes of control in their company on an equal basis and with the benefit of all the information they need to decide what to do. The flowcharts below describe the major steps of the Code's processes for three types of Code-regulated transactions and for a scheme of arrangement.

Full Takeover of a Code Company

OFFER PROCESS

Takeover notice to Code company
Offeror gives takeover notice to Code company (now called a target company) stating intention to make a takeover offer

10 – 20 working days

Takeover offer sent to shareholders
Offeror sends takeover offer to all target company shareholders

10 working days

Target company statement sent to shareholders
Target company statement and the report from independent adviser is sent to all shareholders

Compulsory Acquisition
If offeror reaches 90% level
– See flowchart of a compulsory acquisition

Appointment of independent adviser
Target company appoints an independent adviser approved by the Panel to prepare advice for the shareholders on the merits of the takeover offer

Offer period is 20 – 60 working days (can be up to 100 working days in some circumstances)

Shareholders can accept offer at any time up to the close of the offer period (or reject offer by doing nothing)

End of offer period

Going unconditional
Offer must go unconditional by 10 working days after end of offer period (or 20 working days in some circumstances) at the latest

WHEN DO SHAREHOLDERS GET PAID?

Did offeror reach more than 50% (and go unconditional)?

- **No** → Takeover fails
- **Yes** → Takeover succeeds → Did offer go unconditional before the end of the offer period?
  - **No** → Payment is 5 working days after offer goes unconditional
  - **Yes** → Payment is on the **latest** of these dates:
    - 5 working days after offer goes unconditional
    - 5 working days after shareholder accepted the offer
    - 5 working days after offer closing date

Compulsory Acquisition

COMPULSORY ACQUISITION PROCESS

Offeror reaches 90% level (now called a dominant owner)

↓ **Immediately**

Dominant owner sends notice of dominant ownership to target company

↓ **Up to 20 working days after end of takeover offer period**

Dominant owner sends acquisition notice to shareholders who did not accept the takeover offer. The notice typically requires shareholders to sell their shares

WHEN DO SHAREHOLDERS GET PAID?

Did shareholder sign and return to dominant owner the documents provided with the acquisition notice?

↓ **Yes**

Payment is sent to the shareholder 5 working days after dominant owner receives the signed documents

→ **No**

20 working days after dominant owner sent the acquisition notice, payment is given to the target company to hold on trust for the shareholder

↓

Dominant owner acquires the shareholder's shares

Shareholder Meeting to approve an acquisition or allotment

SHAREHOLDER MEETING PROCESS

Code company appoints an independent adviser approved by the Panel to prepare advice for shareholders on the merits of the transaction

↓

Code company sends a notice of meeting and the independent adviser's report to all shareholders

↓ **At least 10 working days later**

Code company holds a meeting for the shareholders to vote on the resolution about the person who wants to increase their control of the company

→ **Shareholders vote NO:** Transaction does not proceed

→ **Shareholders vote YES:** Transaction proceeds and person increases their control of the company

Code Company Scheme (assumes scheme is approved)

Panel considers application from scheme's promoter for a 'No Objection Statement':

- Is information for shareholders adequate?
- Have interest classes of shareholders been properly identified?

↓

Scheme's promoter appoints an independent adviser approved by the Takeovers Panel to prepare advice for the shareholders on the merits of the scheme

↓

Panel notifies scheme promoter that Panel intends to issue a No Objection Statement for the second Court hearing

↓

First Court hearing:
Court considers draft scheme documents and makes orders regarding the holding of shareholder meetings

↓

Scheme's promoter sends the scheme documents (including the report from the independent adviser) to shareholders

Within timeframe ordered by the Court

↓

Meeting of shareholders held (voting in interest classes); shareholders vote for or against the resolution to approve the scheme

↓

Panel issues No Objection Statement for scheme's promoter to give to Court for second hearing

↓

Second Court hearing:
Court approves scheme and makes orders to implement the scheme

High Court process for Code company schemes

There are two Court hearings in the scheme process:

- the first hearing is where the Court makes orders regarding the holding of shareholder meetings;
- the second hearing is where the Court approves (or rejects) the scheme

Court can only approve a Code company scheme if:

- Code company shareholders approve the scheme by:
  - 75% of the votes that are cast in each interest class; and
  - more than 50% of the total voting rights of the company; and
- the Court is satisfied the shareholders will not be adversely affected by the use of a scheme rather than the Takeovers Code for the transaction; or
- the Takeovers Panel has stated it has no objection to the scheme (i.e., has provided a no objection statement)

Introduction

This guide explains how takeovers and other kinds of transactions are regulated by the Takeovers Code in New Zealand. This guide explains the types of companies to which the Code applies, how the Code works, and the role of the Panel.

In particular, this guide will help directors of Code companies understand about:

- their obligations to shareholders under the Code when a change of control occurs; and
- the Code's rules when a person wants to increase their level of ownership of the company, for example, by making a takeover offer or by acquiring control of the company with shareholder approval.

What is the Takeovers Code?

In a nutshell, the Takeovers Code is a rule book regulating changes of control of Code companies. The Code ensures that all shareholders have the opportunity to participate in changes of control, and that all of the parties to the transaction have a level playing field.

A change of control involves a person increasing their ownership of voting rights in a Code company above 20% (i.e., crossing the 20% threshold or, if already above 20%, increasing ownership further). The rules of the Code are intended to allow shareholders to approve or participate in the change of control and to ensure that shareholders have all of the information they need about the transaction and adequate time to make their decision.

What is a scheme of arrangement?

A scheme of arrangement is an alternative way of increasing ownership of voting rights in a Code company above 20%. Essentially, when a person wants to increase ownership of voting rights in a Code company, they can do so under the Takeovers Code or they can undertake a scheme of arrangement under the Companies Act.

Under a scheme, shareholders will receive comprehensive information, including a report from an independent adviser, and the proposal must be approved by the shareholders. The Panel and the High Court help ensure that shareholders get the information they need to decide whether to approve the proposal and that shareholder approval thresholds are set appropriately and are met. If the approval thresholds are not met, then the scheme will fail.

What is a Code company? Is our company a Code company?

A Code company is a New Zealand-registered company, that:

- has quoted voting securities (e.g., ordinary shares) on a licensed market's trading market (e.g., the NZX Main Board); [1] or
- has 50 or more shareholders with voting rights and 50 or more share parcels, and has either:
    - total assets of at least $30 million at the end of the most recent accounting period; or
    - total revenue of at least $15 million in the most recent accounting period.

For companies that are not listed on an NZX market, counting the number of shareholders and share parcels is important. A shareholder is any person recorded in a company's share register. Shares can be owned jointly by two or more shareholders.

For example, there could be three trustees of a family trust who jointly own a parcel of shares for the trust. Each of the trustees is counted when calculating the number of shareholders to see whether the company has 50 or more shareholders. However, those joint shareholders together hold one parcel of shares. The number of parcels of shares is then counted to see whether the company has 50 or more parcels of shares. If the company has 50 or more shareholders *and* 50 or more parcels of shares, it is a Code company.

Finally, the Code applies only to New Zealand companies; overseas companies carrying on business in New Zealand are not Code companies. In addition, other types of entities, like unit trusts and limited partnerships, are not Code companies and are not regulated by the Code.

How does the Takeovers Code work?

The Code is designed to apply to changes of control of a Code company. Any increase in ownership above the 20% threshold must be carried out in accordance with the Code.

On page 15, **Takeovers Code at a Glance** provides a snapshot of how increases in the ownership of shares can be made in compliance with the Code. In summary, increases in control under the Code can be carried out by:

- making a takeover offer for some or all of the Code company's shares;
- obtaining the approval of the Code company's shareholders to make an acquisition of one of the shareholder's shares, or to receive an allotment of new shares issued by the Code company;
- making 'creeping' acquisitions of up to 5% of the company's shares, provided the person already holds or controls more than 50% of the company's shares; or
- compulsorily acquiring the last 10% of the company's shares.

The flowcharts at the beginning of this guide depict the processes for these Code-regulated transactions.

For directors, it is important to recognise that anytime a person makes a Code-regulated increase in their shareholding, the directors of the Code company, and the company itself, have obligations under the Code.

Under the Code, all shareholders have the opportunity to participate in a control-change transaction. The way they participate depends on the type of control-change transaction. If, for example, the control-change transaction is an acquisition or allotment to be approved by shareholders, then the shareholders not involved in the transaction will have an opportunity to vote on whether the acquisition or allotment should be made. If the transaction is a takeover offer, the offer must be made to all shareholders on the same terms.

These rights and obligations are discussed in a later section of this guide.

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1. Under the Code there is a 12-month 'look-back' period from when a company de-lists, so a listed Code company will remain a Code company for 12 months after de-listing.

THE FUNDAMENTAL RULE APPLIES TO THE 20% THRESHOLD

The core of the Code is its ‘fundamental rule’ (rule 6). The fundamental rule prohibits shareholding increases above 20% of a Code company’s voting rights, except for increases that are made under the Code’s rules.

A person who wants to increase their shareholding above the 20% level has to consider their own share ownership percentage as well as any shareholding of their associates. These percentages have to be added together when calculating whether the 20% threshold might be crossed.

This means that a shareholder with even a very small percentage of the shares might have to comply with the Code if that shareholder has associates who own large parcels of shares in the Code company.

THE 50% THRESHOLD: TAKEOVERS AND ‘CREEPING’

Another important threshold in the Takeovers Code is 50% of the company’s voting rights. This threshold is important in takeovers because takeovers generally must achieve 50% minimum acceptance in order to succeed. In addition, shareholders who already have more than 50% of the company’s voting rights to have the ability to ‘creep’ higher. This is explained in more detail below.

TAKEOVERS

In a full takeover, an offeror makes a takeover offer to all of the company’s shareholders for all of the company’s shares. A takeover offer can also be made to all shareholders for just a portion of their shares. This is called a partial takeover offer.

Full takeover
In a full takeover offer, the offeror has to get a minimum level of acceptances (which must be more than 50%, but can be up to 90%) for the takeover to succeed. If the offeror does not reach more than 50% of the company’s voting rights (or any higher percentage required under the terms of the offer) before the offer period ends, then the takeover fails. That means that the offeror cannot take up any of the shares from the acceptances. Shareholders get to keep their shares, and everyone stays at the shareholding level they held before the takeover offer was made.

Partial takeover
An offeror can make a partial takeover offer for a portion of the company’s shares (the specified percentage) that would get the offeror’s shareholding to a specified percentage that is more than 50% of the voting rights (it is possible to specify less than 50%, but an additional shareholder approval to do so is required). The rules for this are quite similar to a full takeover offer. The offeror has to get enough acceptances to satisfy the minimum acceptance conditions for the partial offer to succeed.

If the offeror gets more acceptances than are needed to get to the specified percentage, the acceptances will be scaled back proportionately across all shareholders who accepted the offer. The rules of the Code ensure that the scaling is done equitably across the acceptances.[2]

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2. Scaling works as follows: A shareholder can accept the partial offer for as many of their shares as they wish. If the offer succeeds, the offeror must take up (and, consequently, the shareholder will sell) the lesser of either:

(a) the number of the shareholder’s voting rights that equates to the specified percentage as stated in the offer; or

(b) the number of voting rights that the shareholder accepted into the offer.

To the extent that the offeror does not receive, under the above formula, sufficient acceptances to reach the specified percentage of voting rights sought under the offer, the offeror must take up the further voting rights that it requires from shareholders with “excess” acceptances. Shareholders with excess acceptances are those who accepted more of their shares into the offer than the specified percentage that was stated in the offer document. The offeror takes up the required number of voting rights from this ‘pool’ of excess acceptances, proportionately across the excess acceptances in the ‘pool’.

A partial takeover offer does not fail simply because the offeror does not receive enough acceptances to get to the specified percentage (although it will fail if it does not meet the minimum acceptance condition). Just like in a full offer, if a partial offer fails, the offeror cannot take up any shares, and everyone stays at the shareholding level they held before the offer was made.

THE CREEP RULE

The Code has some built-in flexibility for shareholders who own more than 50% of the Code company's shares. A shareholder with more than 50% can buy more shares without having to comply with the Code's rules. But they must not buy more than 5% of the company's shares over any 12-month period.

THE 90% THRESHOLD: COMPULSORY ACQUISITION OF SHARES

The Code includes rules for the compulsory acquisition of shareholders' shares.

Compulsory acquisition means that a shareholder, who reaches the 90% threshold in a Code company (a dominant owner), can (or must) buy all of the remaining shares. The Code has rules about the price that has to be paid for these shares.

The dominant owner has to make a choice to either undertake:

- a "compulsory sale", where the dominant owner requires the remaining shareholders to sell their shares to the dominant owner. This is what usually happens, and it means that all remaining shareholders have to sell their shares to the dominant owner; or
- a "voluntary sale", where the remaining shareholders are asked if they want to sell their shares, and if they do want to sell their shares then the dominant owner must buy them. Voluntary sales are very rare.

If the 90% threshold is crossed during an offer, the compulsory acquisition price for the remaining shareholders' shares is usually the same as the price that was paid to the shareholders who accepted the offer.

For other types of transactions that get a shareholder to the 90% threshold, the compulsory acquisition price has to be a "fair and reasonable" cash price. An independent expert who has been approved by the Panel must certify that the price is fair and reasonable.

The shareholders whose shares are compulsorily acquired can sometimes object to the price they are paid. In those cases, an independent expert who has been approved by the Panel is then appointed to determine the price.

Although some shareholders might feel disappointed if they are subject to a compulsory sale, these rules also benefit shareholders by ensuring that they do not have their share investment locked into a company with a 90% owner. Without the compulsory acquisition rules, small shareholders might have no opportunity to sell their shares at a fair price.

Scheme of arrangement voting thresholds

Although a scheme of arrangement for a Code company does not need to comply with the Code, any change of control of a Code company under a scheme must be approved by shareholders. The scheme voting thresholds are different from the Code thresholds.

First, a scheme must be approved by resolution of a majority of 75% or more of the votes of the shareholders in each interest class entitled to vote and voting on the question. If, for example, one group of shareholders was going to receive different consideration for their shares, then they would likely be a separate interest class.

Secondly, the resolution must also be approved by a simple majority of all of the company's voting rights. This means that the number of valid votes cast approving the scheme must equate to more than 50% of the Code company's total voting rights.

What types of transactions have to comply with the Takeovers Code?

The 20% threshold is the key to working out whether a transaction has to be carried out in compliance with the Takeovers Code. If a person (together with their associates) crosses the 20% threshold, or if a shareholder is already over that threshold, the Code probably applies to the transaction.

Here are some examples of transactions that require compliance with the Code (assuming that increases occur above the 20% threshold):

- **A capital raising:** for example through a rights issue: Even if a rights issue is offered to all shareholders in the company, not all shareholders will take up their rights to buy more shares. That means that some shareholders' voting rights percentage will increase and some shareholders' percentage will decrease.
- **A buyback by the Code company of some of its own shares from just one or two shareholders, or an offer to buy back some shares from all shareholders:** This can cause some shareholders' percentage of voting rights to increase. The increase happens because the shares bought by the company get cancelled or lose their voting rights, leaving fewer voting rights in existence. This increases the voting rights percentage of the shares that are still owned by shareholders.
- **An acquisition of shares from a Code company shareholder:** The person who acquires the parcel of shares will increase their percentage of voting rights in the company.
- **An allotment of new shares by the Code company:** (for example, as payment to a person for some goods or services, or under a dividend reinvestment scheme) The person who has the new shares issued to them under the allotment will increase their percentage of voting rights in the company.
- **Setting up a family trust and transferring Code company shares to the trustees of the trust:** The trustees will acquire the shares, so their percentage of voting rights in the company will increase.

Who are associates?

Shareholders in a Code company who have a relationship with each other may be regarded as being associates. For example, if the relationship means that one of the shareholders has some level of influence about how the other shareholder's shares might be voted at a meeting of the company's shareholders, then these two shareholders might be associates.

Associates always need to be taken into account when making calculations about the 20% threshold in the Code.

The definition of associate in the Code is very wide. For example, it covers situations where people act very closely together, or where one person acts in accordance with another person's wishes. A company and its subsidiary companies will always be associates of each other.

The associate rule can also apply to people who have some kind of business, personal or ownership relationship. The Panel ultimately decides if the circumstances of a transaction and the nature of the relationship makes these people associates or not.

The Panel has published guidance about the associate rule on its website.

There are some exemptions from having to comply with the Takeovers Code

The Panel has granted some class exemptions from compliance with the Code. Some of these class exemptions are subject to conditions that have to be complied with.

The Panel can also grant exemptions from compliance with the Code for individuals. Individual exemptions usually are granted where the circumstances of a transaction mean that compliance with the Code would be impossible or unreasonable. Individual exemptions are often subject to conditions that the exempted person has to comply with. Some exemptions require the company to hold a shareholders' meeting.

What responsibilities do directors and Code companies owe to their shareholders?

Where the Code applies, takeover offers, acquisitions and allotments must be undertaken in compliance with the Code. In each case, the Code imposes obligations on the Code company which must be overseen by the company's directors.

TAKEOVERS

Directors play a vital role in giving guidance to shareholders during a takeover. Shareholders benefit from a proactive communications with clear and prompt advice from the directors throughout the course of a takeover offer.

Independent committee

It is not uncommon for a potential offeror to have contact on a confidential basis with the directors of a Code company in advance of issuing a notice of an intention to make a takeover offer (a takeover notice). This could be for a number of reasons, for example, to gauge the directors' response to a takeover, or to obtain an agreement to allow due diligence.

When a Code company becomes aware that a takeover offer may be made for the company, it is normal practice that a committee of independent directors of the Code company is formed.[3] The independent directors are required to oversee the takeover offer and ensure compliance with all of the target company's obligations under the Code.

Early and helpful communication for shareholders

One of the earliest and most helpful communications from directors to the shareholders is advice that, before responding to the takeover offer, shareholders should wait to receive the target company statement and the independent adviser's report.

This advice is important because shareholders usually receive the takeover offer two weeks before the target company statement and independent adviser's report are sent to them.

Preparation of target company statement

The principal Code compliance obligation is preparing and sending a "target company statement" to shareholders containing detailed information about the takeover offer.

The Panel has published guidance on disclosure obligations and target company statements on its website.

A key part of the target company statement is independent advice to shareholders on the merits of the takeover offer prepared by an independent adviser. The timeframes are short in takeovers, so directors need to act quickly to appoint the independent adviser to prepare this advice.

3. This is not a requirement of the Takeovers Code. Directors need to comply with their normal duties under the Companies Act 1993 and with the principles of sound governance practice in addition to complying with the Takeovers Code. Principally this means that conflicted directors should not participate in the committee of directors responsible for overseeing the takeover offer.

Independent advice for directors

The independent directors should seek legal advice to help them to comply with their Code obligations (and their continuous disclosure obligations if the company is listed on the NZX). The directors of target companies often also take their own independent financial and strategic advice for dealing with a takeover offer.

Target company costs

Target companies may incur significant costs in relation to dealing with a takeover offer. The Takeovers Act allows target companies to obtain reimbursement from the offeror of all properly incurred expenses related to a takeover offer.

The Panel has published guidance on the recovery of expenses on its website.

DEFENSIVE TACTICS ARE PROHIBITED

Not all takeover offers are expected or welcomed by the company. Directors need to take great care in the lead up to, and during, a takeover offer. The Code prohibits "defensive tactics" by the target company if the company has received a takeover notice or if a takeover offer is "imminent".

The threshold for actions taken by the directors to be regarded as being "defensive" is relatively low.

The Panel has published guidance about defensive tactics on its website.

ACQUISITIONS AND ALLOTMENTS

For an acquisition or an allotment that requires the approval of a Code company's shareholders at a shareholders' meeting, the directors of the company have to ensure that detailed information about the transaction, as required by the Code, is included in the notice of meeting.

INDEPENDENT ADVISERS

For takeover offers, and for shareholders' meetings to approve acquisitions and allotments, the information that is sent to shareholders must always include the advice of an independent adviser on the merits of the transaction.

The independent adviser is appointed by the Code company. However, before the appointed adviser can act for the Code company, the adviser must obtain the approval of the Panel for the appointment. The adviser applies directly to the Panel for approval to act.

The Panel will satisfy itself that the adviser is competent to act and is independent of all of the parties involved in the transaction (including being independent from the Code company and from its directors), before giving its approval to the adviser to act for that transaction.

DIRECTORS' RECOMMENDATIONS FOR SHAREHOLDERS

For all transactions that are regulated by the Code, the directors of the Code company must either:

- make a recommendation to the shareholders about what the shareholders should do regarding the transaction; or
- give their reasons for not making a recommendation to the shareholders.

If any of the company's directors disagree with the recommendation or if they abstain from making a recommendation, their names and reasons for taking this position have to be included in the information provided to the shareholders. Non-independent directors would normally abstain from making a recommendation due to their conflict of interest.

What should directors advise shareholders to do?

The Panel encourages directors of Code companies to form their own opinions about the merits of the transaction. Directors should consider the company's internal management advice, any independent advice they have obtained to assist them in dealing with the transaction, as well as the report from the independent adviser appointed under the Code.

As noted above, it is especially important when faced with a takeover offer that directors advise shareholders to wait for the information from the target company and the independent adviser before responding to the offer.

Equally important is advice from the directors to shareholders to carefully read all of the information sent to them before taking any action.

The Code seeks to ensure that shareholders have time to read all of the information prior to deciding how to respond. The directors need to reinforce this message, as shareholders may not understand the benefits of taking time to make a considered response to a takeover offer.

What is the Takeovers Panel and what does it do?

The Takeovers Panel is an independent Crown entity which regulates New Zealand's corporate takeovers market.

Its mandate is to strengthen investor confidence in New Zealand's capital markets by enforcing the Takeovers Code. The Code is aimed at ensuring that all shareholders, no matter their size or influence, have equal opportunity to participate in transactions involving Code companies.

As a specialist regulator, the Panel:

- enforces the Takeovers Code to ensure that Code-regulated transactions are transparent and equitable;
- assists participants in complying with their Code obligations;
- reviews market practice and undertakes policy development;
- considers applications for exemptions from the Code;
- recommends reform to takeovers law; and
- promotes public understanding of takeovers law.

If someone breaches the Code, the Panel can convene an enforcement hearing very quickly, especially when a takeover is involved. The Panel acts as a judicial tribunal at an enforcement hearing, and can issue summonses as well as take evidence on oath.

If the Panel finds that a person has breached the Code, it can make restraining orders to temporarily prevent certain actions from being taken. If necessary, the Panel can ask the High Court to make permanent orders against a person.

After an enforcement hearing, the Panel can make costs orders. If the Panel finds that a person has breached the Code, it can make costs orders against that person. If the Panel finds that the Code has not been breached, it can make costs orders against the person who requested the Panel to hold the enforcement hearing. These orders require the person to reimburse the Panel for all of the expenses for holding the enforcement hearing.

As well as enforcing compliance with the Code, the Panel approves the firms that act as independent advisers on Code-regulated transactions. The Panel ensures that the independent adviser is competent and is independent from the Code company and independent from any person who is involved in the transaction. This ensures that the independent adviser provides genuinely unbiased and informed advice to shareholders.

The Panel can also grant exemptions from compliance with the Takeovers Code in appropriate circumstances.

What is the process for making a complaint to the Panel?

There is no formal process required for making a complaint. Any person may phone or write to the Panel executive (written complaints are preferred) about a person who might not be complying with the Code.

The Panel is more likely to be able to investigate and take action if the person making the complaint can provide some evidence. The identity of the complainant may be kept confidential.

There is also a formal process under the Takeovers Act that has to be followed to request that the Panel holds an enforcement hearing. Legal advice should always be taken before doing this.

What the Takeovers Code and the Takeovers Panel do not do

Neither the Takeovers Code nor the Takeovers Panel has any role in deciding on the merits of a transaction. The Panel does not have a role in determining what price should be offered by a person wanting to buy a parcel of shares or making a takeover offer. It is only in a compulsory acquisition that the Code has pricing rules.

Shareholders must decide for themselves whether to accept or reject an offer, or whether to vote for or against a resolution about a transaction at a shareholders' meeting.

The Code is a rule book on processes that must be followed, and on information that must be provided to shareholders to assist their decision-making. The Code ensures a level playing field with transparent processes.

The Code does not tell shareholders what decision they should make, or stop low or 'opportunistic' offers from being made.

The Panel does not take sides. It is impartial and it acts only to ensure compliance with the Code. The Panel's staff are available to help with general information about the Code and to receive and investigate complaints about breaches of the Code.

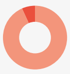
SEEK ADVICE ABOUT THE CODE

Directors of Code companies should seek expert advice about the costs and benefits of becoming a Code company from a law firm experienced with the Takeovers Code.

WHERE TO GO FOR MORE INFORMATION

More information on the Takeovers Code and the Takeovers Panel is available on **www.takeovers.govt.nz.**

The Takeovers Code at a Glance

Level of Voting rights owned	Code compliant methods of increase
 Up to 20%	• No restrictions, increase by any means.
 More than 20%, up to 50%	• A takeover offer, being: › a full offer conditional on reaching more than 50%; or › a partial offer conditional on reaching more than 50%; or › a partial offer to go to a lower percentage approved by shareholders. • An allotment of new shares, with shareholders' approval. • An acquisition of an existing parcel of shares, with shareholders' approval. • A buyback by the Code company of some of its own shares, with shareholders' approval.
 More than 50%, but less than 90%	• A takeover offer, being: › a full offer; or › a partial offer. • An allotment of new shares, with shareholders' approval. • An acquisition of an existing parcel of shares, with shareholders' approval. • Acquisitions of up to 5% of the Code company's shares over any 12-month period ("creeping"). • A buyback by the Code company of some of its own shares, with shareholders' approval.
 90% or more	• If a person becomes a dominant owner through a transaction under the Code, they must either: › compulsorily acquire all remaining shares; or › voluntarily acquire any shares the remaining shareholders. • If already at 90% or more, by any means.

Glossary of Terms

Acquisition when someone buys some shares from a shareholder in a company

Allotment when the company issues new shares to someone

Associate a person who has some kind of relationship with a shareholder in the Code company, and the relationship likely involves some kind of influence over how their shares could be voted

Change of control or **control-change** when someone increases their level of ownership to any level above 20% of the company's shares. A control-change transaction could be a takeover offer, acquisition or allotment, etc

Code company a company that falls within the definition as set out in rule 3A of Takeovers Regulations 2000

Compulsory acquisition when a shareholder with 90% of the company's voting rights can or must buy the shares from the remaining shareholders

Dominant owner a shareholder (or two or more shareholders acting together) with 90% or more of the company's voting rights

Offeror a person who makes a takeover offer

Parcel of shares the shares that a shareholder owns, as recorded in a company's share register

Resolution the topic or question that the company's shareholders are asked to vote on at a meeting of the company's shareholders

Scheme of arrangement a Court-approved procedure that allows the reorganisation of the rights and obligations of shareholders and companies. Schemes involving Code companies are regulated by the Companies Act and, if approved by the Court, the Code does not apply.

Shareholder a person who holds shares in the company. In this guide, "shareholder" means a person who holds or controls voting rights

Transaction when people buy or sell something. In this guide, "transaction" is used to describe when people are buying or selling shares (i.e., buying or selling voting rights – this can be by way of a takeover offer, an acquisition or allotment or when a company buys back its own shares)

Takeover offer when someone wants to buy all of a Code company's shares (full takeover offer) or wants to buy a proportion of a Code company's shares (partial takeover offer)

Voting right the right to vote that is attached to a share. Shareholders with shares that have voting rights can vote at meetings of a company's shareholders. This guide often calls voting rights "shares", but the Code actually applies to the "voting rights" that attach to shares.

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