THE TAKEOVERS CODE

A Quick Guide For Directors

What is the Takeovers Code?

The Takeovers Code is a rule book regulating changes of control of Code companies. 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 Code ensures that all shareholders have an equal opportunity to approve or participate in changes of control, and that shareholders have all of the information they need and adequate time to make their decision.

Is my 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); or
- has 50 or more shareholders with voting rights and 50 or more share parcels,[1] 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

How does the Takeovers Code work?

A person can increase their control to more than 20% in a Code company in a number of ways. For example, a person could make an offer to all other shareholders to acquire their shares, or a person could acquire shares from one person, or be allotted new shares by the company.

In a change of control transaction, all the other shareholders have the opportunity to participate in one way or another. How shareholders participate depends on the type of transaction.

For example:

- If the transaction is an acquisition or allotment of shares, the other shareholders 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 of the shareholders and it must be made on the same terms to all shareholders.

The Takeovers Code at a Glance gives a snapshot view of how increases in the ownership of shares can be made in compliance with the Code. In summary, a person can increase their share ownership above the 20% threshold 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 shares, or to receive an allotment of new shares issued by the Code company;
- obtaining the approval of the Code company's shareholders to increase as a result of the Code company undertaking a buyback of its own shares;
- making 'creeping' acquisitions of up to 5% of the company's shares over any 12-month period;
- compulsorily acquiring the last 10% of the company's shares.

1. Parcels of shares can be owned jointly by two or more shareholders. For example, there could be three trustees of a family trust who jointly own one 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. Then the number share parcels is counted to see whether the company has 50 or more parcels of shares.

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TAKEOVERS PANEL
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Directors' key obligations

Any time there is a Code-regulated transaction, the directors of the Code company, and the company itself, have obligations under the Code. The key obligations are set out in the table below.

Obligation	Description
Set up an independent committee	A company's directors who are independent from the parties to the proposed transaction are required to oversee the Code-regulated transaction and ensure compliance with all of their company's obligations under the Code.
Communicate proactively with shareholders	Directors play a vital role in giving guidance to shareholders during a Code-regulated transaction. Shareholders benefit from a proactive communication with clear and prompt advice from the directors throughout the course of an offer or shareholder meeting process. For example, one of the most helpful communications from directors to shareholders is advice that, before responding to a takeover offer, shareholders should wait to receive the target company statement and the independent adviser's report.
Appoint an independent adviser	A key part of the information for shareholders is a report from an independent adviser on the merits of the transaction. Directors will need to appoint an adviser who is independent of the parties involved in the transaction to prepare the report.
Prepare a target company statement	The principal Code obligation in a takeover is preparing and sending a "target company statement" to shareholders containing detailed information about the takeover offer. This statement includes the directors' recommendation to shareholders to accept or reject the offer. It also includes the independent adviser's report.
If a shareholders meeting is required, prepare a notice of meeting	For an acquisition or allotment to be approved by shareholders, the independent directors are responsible for preparing the notice of meeting for shareholders. The notice of meeting includes the directors' recommendation to vote to approve or reject the transaction and includes the independent adviser's report.

These obligations are discussed in more detail in the **Basic Guide for Directors**.

Have a plan

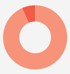
As the timeframes are short in takeovers, directors can be under pressure to oversee a takeover offer, provide advice to shareholders, and to continue to oversee the day-to-day operations of the company. It is important that directors have a plan in place to meet these obligations and responsibilities before a takeover or other Code-regulated transaction needs to be considered.[2]

Seek advice about the Takeovers Code

Directors of Code companies who are, or may soon be, involved in a transaction regulated by the Code should take advice from a law firm experienced in Code transactions.

2. The NZX Corporate Governance Code recommends that listed companies establish appropriate protocols that set out the procedure to be followed if there is a takeover offer for the issuer.

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.

For more information, visit **www.takeovers.govt.nz**
P: +64 4 815 8420
E: takeovers.panel@takeovers.govt.nz