

# **STATES OF JERSEY**



## **DRAFT COMPANIES (TAKEOVERS AND MERGERS PANEL) (JERSEY) LAW 200**

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**Lodged au Greffe on 3rd June 2008  
by the Minister for Economic Development**

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**STATES GREFFE**





Jersey

## **DRAFT COMPANIES (TAKEOVERS AND MERGERS PANEL) (JERSEY) LAW 200**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Economic Development has made the following statement –

In the view of the Minister for Economic Development the provisions of the Draft Companies (Takeovers and Mergers Panel) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

## REPORT

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Takeovers and mergers in Jersey have for some time been regulated by the Panel for Takeover and Mergers (“**the Panel**”), a body based in the UK. The Panel historically regulated takeovers in both the UK and the Crown Dependencies on an informal basis. Although this is considered to have worked well in practice, the European Union’s Takeover Directive (2004/25/EC) (“**the Directive**”) required that the Panel, as a designated supervisory authority, should be recognised by national law (Article 4(1) of the Directive). The implementation of the Directive in UK national law was included in the Companies Act 2006, as Chapter 1 of Part 28 (“**Chapter 1**”).

Now that the Panel has been placed within a statutory framework in the UK, they do not consider it appropriate to continue to administer takeovers in Jersey unless an equivalent framework applies here.

It is highly desirable that there should be some regulation of takeovers in the interests of shareholders, because this is both likely to encourage investment and also necessary for compliance with international standards. Regulation by the Panel is considered to have worked well in practice in the past. The Panel has considerable expertise in this area which could not be replicated by a specifically Jersey (or even Channel Islands) panel. Also any alternative to the Panel would require significant expenditure, either by industry or government.

This Law will provide a statutory basis for the Panel’s work equivalent to Chapter 1 in the UK. It has been prepared in close consultation with the Panel. The Jersey Financial Services Commission (“**the Commission**”) and industry (through Jersey Finance) have also been given an opportunity to comment. These comments have been incorporated as appropriate and no objections have been received to the substance of the Law.

In order to ensure that the Panel’s functions and powers under Jersey law are equivalent to those under UK law (which is the basis on which the Panel are willing to continue to supervise Jersey takeovers), the Law closely follows Chapter 1, adapted for the Jersey context.

Article 2 of the Draft Law empowers the Minister to appoint a body to oversee takeovers and mergers. It is intended that the Minister will appoint the Panel, although it would be possible to appoint another body at some future date if it was no longer thought desirable to continue the Panel’s role as regulator of Jersey takeovers.

Article 3 requires the Panel to make rules giving effect to the relevant articles of the Directive and enables it to make other rules within its area of competence. It is envisaged that the Panel’s existing rules, forming The City Code on Takeovers and Mergers, which already give effect to the Directive in the UK, will be adopted under the Law and the Code will thus have a statutory basis in Jersey as in the UK.

Articles 8 and 9 ensure that information provided to the Panel will be treated in confidence. It can only be disclosed to certain specified persons or in certain specified circumstances, as set out in the Schedule. Because of the need for identical disclosure gateways to apply in all relevant jurisdictions (i.e. the UK and the Crown Dependencies) the Schedule in the Law cross-refers to the relevant UK Schedule. Article 8 contains provision for the States to amend the Schedule by Regulations and it is intended that this should be done so as to refer to equivalent Guernsey and Isle of Man legislation, which it is anticipated will be introduced in the near future.

Articles 17-19 enable the Panel to raise money either through fees and charges or by the raising of a levy on the Order of the Minister. It is not intended to recommend that any such levy is raised in the foreseeable future. No levy is or has been raised under the equivalent UK provision, and we are not aware that there are any plans to do so. However, if the UK were to raise a levy on UK companies, it is anticipated that Jersey may be expected to do likewise, and this provision has therefore been included.

The Draft Law will put the existing informal arrangements for Jersey takeovers and mergers on a statutory basis. It closely mirrors the equivalent legislation in the UK and will ensure that the Panel has consistent functions and powers across all the jurisdictions regulated by them. It will also allow Jersey to demonstrate equivalence with European requirements for takeover regulation.

There will be no financial or manpower costs to the States.

### **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 2nd June 2008 the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Companies (Takeovers and Mergers Panel) (Jersey) Law 200- are compatible with the Convention Rights.

## Explanatory Note

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This draft Law provides for a body to be appointed to oversee and establish rules for the takeovers and mergers of companies and other corporate bodies. It allows the body to establish rules that give effect to Directive 2004/25/EC of 21st April 2004 on takeover bids as if that Directive applied to Jersey (the “Takeovers Directive”).

### **PART 1 – INTERPRETATION**

*Article 1* is an interpretation provision.

### **PART 2 – TAKEOVER PANEL**

*Article 2* gives the Minister for Economic Development the power to appoint a body to oversee takeovers and mergers. Such a body may be in Jersey or established or recognized under the law of a country or territory outside Jersey and is to be known in this draft Law as the Panel on Takeovers and Mergers (the “Panel”).

*Article 3* requires the Panel to make rules giving effect to specified provisions in the Takeovers Directive and permits the Panel to make other rules.

*Article 4* sets out further provisions relating to rules made by the Panel, in particular various procedural requirements such as that rules must be in writing and publicly available.

*Article 5* allows the Panel to give binding rulings on the interpretation, application or effect of rules.

*Article 6* allows the Panel to make rules enabling it to give directions to any person to secure compliance with rules.

*Article 7* allows the Panel to require any person to produce documents or information if reasonably required by the Panel in exercise of its functions under this draft Law.

*Article 8* prevents information relating to an individual or business that is provided to the Panel under this draft Law from being disclosed without the consent of the individual or person carrying on the business except to specified persons or in specified circumstances. The *Schedule* sets out those specified persons and circumstances.

*Article 9* makes it an offence to disclose information in contravention of Article 8. A person guilty of an offence is liable to imprisonment for up to 2 years and to an unlimited fine.

*Article 10* requires the Panel to take such steps as it considers appropriate to co-operate with the Jersey Financial Services Commission (the “Commission”); a supervisory authority designated under the Takeovers Directive, or any body outside Jersey exercising functions similar to those of the Panel or the Commission.

*Article 11* requires the Commission to take such steps as it considers appropriate for the purpose of enabling or assisting the Panel to discharge its functions. For this purpose, this Article also permits the Commission to disclose to the Panel information it has obtained under any enactment. This Article also permits the Panel to make onward disclosure of such information in accordance with this draft Law.

*Article 12* requires Panel rules to make provision for Panel decisions to be subject to review by a Hearings Committee and for a right of appeal against decisions of the Hearings Committee.

*Article 13* allows the Panel to make rules imposing sanctions for breach of rules or directions. Where a sanction is proposed that is not provided for in the City Code on Takeovers and Mergers issued by the Panel on Takeovers and Mergers of the United Kingdom and in effect immediately before this draft Law comes into effect, the Panel must set out its policy for such a sanction and consult on it.

*Article 14* allows the Panel to make rules to enable it to order a person to pay compensation for breach of a rule requiring the payment of money.

*Article 15* allows the Royal Court to make such order as it thinks fit to secure compliance with a breach of Panel rules.

*Article 16* provides that breach of a Panel rule does not give rise to a right of action for breach of statutory duty or make any transaction void or unenforceable.

*Article 17* allows the Panel to make rules imposing fees or charges payable to the Panel for meeting its expenses under this Law.

*Article 18* gives the Minister power to impose a levy payable by specified persons or bodies or on specified

transactions to meet Panel expenses.

*Article 19* provides that an amount payable under *Article 17* or *18* is a recoverable debt.

*Article 20* provides that the Panel may take or defend proceedings in its own name.

*Article 21* exempts the Panel, or anyone acting on its behalf, from liability for anything done in discharging the Panel's functions except when done in bad faith or where the act would be unlawful under *Article 7(1)* of the Human Rights (Jersey) Law 2000 (acts of public authorities incompatible with Convention rights).

*Article 22* provides that statements made by a person in response to a requirement by the Panel or a court order to secure compliance with a rule may not be used against that person in criminal proceedings for any offence other than perjury.

### **PART 3 – MISCELLANEOUS AND CLOSING**

*Article 23* provides that nothing in this draft Law affects any provision in the Companies (Jersey) Law 1991 or the Competition (Jersey) Law 2005 in relation to takeovers and other transactions that fall within the scope of this Law.

*Article 24* gives the Minister or the States power to include transitional, consequential, incidental or supplementary provisions in any Order or Regulations, as the case may be, made under this Law.

*Article 25* provides for the title of the Law and that it will come into force on such day or days as may be appointed.







Jersey

# DRAFT COMPANIES (TAKEOVERS AND MERGERS PANEL) (JERSEY) LAW 200

## Arrangement

### Article

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#### **PART 1**

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##### INTERPRETATION

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##### TAKEOVER PANEL

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4        Further provisions about rules  
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6        Directions  
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17       Fees and charges  
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PART 1

SPECIFIED PERSONS

PART 2

SPECIFIED DESCRIPTIONS OF DISCLOSURES

PART 3

OVERSEAS REGULATORY BODIES





Jersey

## **DRAFT COMPANIES (TAKEOVERS AND MERGERS PANEL) (JERSEY) LAW 200**

**A LAW** to provide for a body to be appointed to oversee and establish rules for the takeovers and mergers of companies and other corporate bodies.

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| <i>Adopted by the States</i>                         | <i>[date to be inserted]</i> |
| <i>Sanctioned by Order of Her Majesty in Council</i> | <i>[date to be inserted]</i> |
| <i>Registered by the Royal Court</i>                 | <i>[date to be inserted]</i> |

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

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### **PART 1** **INTERPRETATION**

#### **1 Interpretation**

(1) In this Law, unless the context otherwise requires –

“City Code” means the City Code on Takeovers and Mergers issued by the Panel on Takeovers and Mergers of the United Kingdom;

“Commission” means the Jersey Financial Services Commission;

“Companies Act 2006” means the Companies Act 2006 (c.46) of the United Kingdom as amended, extended or applied from time to time;

“company” means any body corporate, whether or not a company within the meaning of the Companies (Jersey) Law 1991<sup>[1]</sup>;

“Court” means the Royal Court;

“disclosure requirement” means a requirement imposed under Article 7;

“Financial Services Authority” means the Authority of that name within the meaning of the Financial Services and Markets Act;

“Financial Services and Markets Act” means the Financial Services and Markets Act 2000 (c.8) of the United Kingdom;

“Minister” means the Minister for Economic Development;

“Panel” means the body described in Article 2(2);

“regulatory Law” has the meaning in Article 11(5);

“rule-based requirement” means a requirement imposed under rules;

“rules” mean rules made under Article 3;

“Takeover Appeal Board” has the meaning in Article 12;

“takeover bid” includes a takeover bid within the meaning of the Takeovers Directive;

“Takeovers Directive” means Directive 2004/25/EC of 21st April 2004 on takeover bids (O.J. No. L142 30.04.2004) as amended from time to time.

- (2) References to the Takeovers Directive in this Law are references to that Directive as if it applied to Jersey.

## **PART 2**

### TAKEOVER PANEL

#### **2 Appointment of body to oversee takeovers**

- (1) The Minister may, by Order, appoint a body, including a body established under, or recognized by, a law of a country or territory outside Jersey, to have the functions set out in Articles 3 to 20.
- (2) The body appointed under paragraph (1) shall be known as the Panel on Takeovers and Mergers (“Panel”).
- (3) The Panel may do anything that it considers necessary or expedient for the purposes of, or in connection with, its functions.
- (4) Subject to Article 3(4) and (5), the Panel may make arrangements for any of its functions to be discharged by a committee or sub-committee of the Panel, or an officer or member of staff of the Panel or a person acting as such.

#### **3 Rule making powers of the Panel**

- (1) The Panel must make rules giving effect to Articles 3.1, 4.2, 5, 6.1 to 6.3, 7 to 9 and 13 of the Takeovers Directive.
- (2) Rules made by the Panel may also make other provision –
  - (a) for or in connection with the regulation of –
    - (i) takeover bids,
    - (ii) merger transactions,
    - (iii) transactions not falling within clause (i) or (ii) that have or may have, directly or indirectly, an effect on the ownership or control of companies;
  - (b) for or in connection with the regulation of things done in consequence of, or otherwise in relation to, any such bid or transaction;
  - (c) about cases where –
    - (i) any such bid or transaction is, or has been, contemplated or apprehended, or
    - (ii) an announcement is made denying that any such bid or transaction is intended.
- (3) The provision that may be made under paragraph (2) includes, in particular, provision for a matter that is, or is similar to, a matter provided for in the City Code as it had effect immediately before 8th November 2006 (being the date when the Companies Act 2006 was passed).
- (4) In relation to rules made by virtue of Article 17 (fees and charges), functions under this Article may be discharged either by the Panel itself or by a committee of the Panel (but not otherwise).

- (5) In relation to rules of any other description, the Panel must discharge its functions under this Article by a committee of the Panel.

#### **4 Further provisions about rules**

- (1) Rules may –
  - (a) make different provision for different purposes;
  - (b) make provision subject to exceptions or exemptions;
  - (c) contain incidental, supplemental, consequential or transitional provision;
  - (d) authorize the Panel to dispense with or modify the application of rules in particular cases and by reference to any circumstances.
- (2) Rules made by virtue of paragraph (1)(d) must require the Panel to give reasons for acting as mentioned in that sub-paragraph.
- (3) Rules must be made by an instrument in writing.
- (4) Immediately after an instrument containing rules is made, the text must be made available to the public, with or without payment, in whatever way the Panel thinks appropriate.
- (5) A person is not to be taken to have contravened a rule if he or she shows that at the time of the alleged contravention the text of the rule had not been made available as required by paragraph (4).
- (6) The production of a printed copy of an instrument purporting to be made by the Panel on which is endorsed a certificate signed by an officer of the Panel authorized by it for that purpose and stating –
  - (a) that the instrument was made by the Panel;
  - (b) that the copy is a true copy of the instrument; and
  - (c) that on a specified date the text of the instrument was made available to the public as required by paragraph (4),is evidence of the facts stated in the certificate.
- (7) A certificate purporting to be signed as mentioned in paragraph (6) is to be treated as having been properly signed unless the contrary is shown.
- (8) A person who wishes in any legal proceedings to rely on an instrument by which rules are made may require the Panel to endorse a copy of the instrument with a certificate of the kind mentioned in paragraph (6).

#### **5 Rulings**

- (1) The Panel may give rulings on the interpretation, application or effect of rules.
- (2) To the extent and in the circumstances specified in rules, subject to any review or appeal, a ruling has binding effect.

#### **6 Directions**

Rules may contain provision conferring power on the Panel to give any direction that appears to the Panel to be necessary in order –

- (a) to restrain a person from acting (or continuing to act) in breach of rules;
- (b) to restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of his or hers is, or would be, a breach of rules;
- (c) otherwise to secure compliance with rules.

## **7 Power to require documents and information**

- (1) The Panel may by notice in writing require a person –
  - (a) to produce any documents that are specified or described in the notice;
  - (b) to provide, in the form and manner specified in the notice, such information as may be specified or described in the notice.
- (2) A requirement under paragraph (1) must be complied with –
  - (a) at a place specified in the notice; and
  - (b) before the end of such reasonable period as may be so specified.
- (3) This paragraph applies only to documents and information reasonably required in connection with the exercise by the Panel of its functions under this Law.
- (4) The Panel may require –
  - (a) any document produced to be authenticated; or
  - (b) any information provided (whether in a document or otherwise) to be verified, in such manner as it may reasonably require.
- (5) The Panel may authorize a person to exercise any of its powers under this Article.
- (6) A person exercising a power by virtue of paragraph (5) must, if required to do so, produce evidence of his or her authority to exercise the power.
- (7) The production of a document in pursuance of this Article does not affect any lien that a person has on the document.
- (8) The Panel may take copies of or extracts from a document produced in pursuance of this Article.
- (9) A reference in this Article to the production of a document includes a reference to the production of –
  - (a) a hard copy of information recorded otherwise than in hard copy form; or
  - (b) information in a form from which a hard copy can be readily obtained.
- (10) A person is not required by this Article to disclose documents or information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

## **8 Restriction on disclosure**

- (1) This Article applies to information (in whatever form) –
  - (a) relating to the private affairs of an individual; or
  - (b) relating to any particular business,that is provided to the Panel in connection with the exercise of its functions under this Law.
- (2) No such information may, during the lifetime of the individual or so long as the business continues to be carried on, be disclosed without the consent of that individual or (as the case may be) the person for the time being carrying on that business.
- (3) Paragraph (2) does not apply to any disclosure of information that –
  - (a) is made for the purpose of facilitating the carrying out by the Panel of any of its functions under this Law;
  - (b) is made to a person specified in Part 1 of the Schedule;
  - (c) is of a description specified in Part 2 of the Schedule; or
  - (d) is made in accordance with Part 3 of the Schedule.
- (4) The States may by Regulations amend the Schedule.

- (5) The States must not –
  - (a) amend Part 1 of the Schedule by specifying a person unless the person exercises functions of a public nature (whether or not he or she exercises any other function);
  - (b) amend Part 2 of the Schedule by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature;
  - (c) amend Part 3 of the Schedule so as to have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a country or territory outside Jersey.
- (6) Paragraph (2) does not apply to –
  - (a) the disclosure by an authority within paragraph (7) of information disclosed to it by the Panel in reliance on paragraph (3);
  - (b) the disclosure of such information by anyone who has obtained it directly or indirectly from an authority within paragraph (7).
- (7) The authorities within this paragraph are –
  - (a) the Commission;
  - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
  - (c) any other person or body that exercises functions of a public nature under legislation in a country or territory outside Jersey that are similar to the Panel’s functions or those of the Commission.
- (8) This Article does not prohibit the disclosure of information if the information is or has been available to the public from any other source.
- (9) Nothing in this Article authorizes the making of a disclosure in contravention of the Data Protection (Jersey) Law 2005<sup>[2]</sup>.

## **9 Offence of disclosure in contravention of Article 8**

- (1) A person who discloses information in contravention of Article 8 is guilty of an offence, unless–
  - (a) he or she did not know, and had no reason to suspect, that the information had been provided as mentioned in Article 8(1); or
  - (b) he or she took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (2) A person guilty of an offence under this Article is liable to imprisonment for a term of 2 years and a fine.
- (3) Where an offence under this Article committed by a limited liability partnership or company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
  - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the company; or
  - (b) any person purporting to act in any such capacity,
 that person shall also be guilty of the offence and liable in the same manner as the partnership or company to the penalty provided for that offence.
- (4) Where the affairs of a company are managed by its members, paragraph (3) shall apply in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the company.



- (5) Any person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.
- (6) Nothing in paragraph (5) affects the operation of paragraph (3) or (4).
- (7) No proceedings for an offence under this Article shall be instituted except by or with the consent of the Attorney General.

## **10 Panel's duty of co-operation**

- (1) The Panel must take such steps as it considers appropriate to co-operate with –
  - (a) the Commission;
  - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
  - (c) any other person or body that exercises functions of a public nature under legislation in any country or territory outside Jersey, that appear to the Panel to be similar to its own functions or those of the Commission.
- (2) Co-operation may include the sharing of information that the Panel is not prevented from disclosing.

## **11 Commission's duty to take appropriate steps to assist Panel**

- (1) The Commission must take such steps as it considers appropriate to co-operate with the Panel for the purpose of assisting the Panel to discharge its functions under this Law.
- (2) For the purpose of assisting the Panel to discharge its functions under this Law, the Commission may exercise its powers under any regulatory Law as if the Panel were a relevant supervisory authority as defined in that Law.
- (3) Nothing in any enactment shall preclude the disclosure of information to which paragraph (4) applies where such disclosure is –
  - (a) by the Commission to the Panel for the purpose of enabling or assisting the Panel to discharge its functions under this Law; or
  - (b) by the Panel if such disclosure is disclosure to which the restriction in Article 8(2) does not apply by virtue of Article 8(3), (6) or (8).
- (4) This paragraph applies to information relating to the business or affairs of any person where such information is received –
  - (a) by the Commission under or for the purposes of any enactment; or
  - (b) by the Commission directly or indirectly from a person who has received it under or for the purposes of any enactment.
- (5) In this Law “regulatory Law” means any of the following –
  - (a) the Collective Investment Funds (Jersey) Law 1988<sup>[3]</sup>;
  - (b) the Banking Business (Jersey) Law 1991<sup>[4]</sup>;
  - (c) the Insurance Business (Jersey) Law 1996<sup>[5]</sup>;
  - (d) the Financial Services (Jersey) Law 1998<sup>[6]</sup>.
- (6) The Minister may by Order –
  - (a) amend the definition of “regulatory Law”; and
  - (b) amend paragraph (2) to make such consequential changes as are necessary to enable the

Commission to exercise its powers as if the Panel were an authority that has functions the same as, or similar to, any functions of an authority referred to in a regulatory Law.

## **12 Hearings and appeals**

- (1) Rules must provide for a decision of the Panel to be subject to review by a committee of the Panel, such committee to be known as the “Hearings Committee”, at the instance of such persons affected by the decision as are specified in the rules.
- (2) Rules may also confer other functions on the Hearings Committee.
- (3) Rules must provide for there to be a right of appeal against a decision of the Hearings Committee to an independent body, such body to be known as the “Takeover Appeal Board”, in such circumstances and subject to such conditions as are specified in the rules.
- (4) Rules may contain –
  - (a) provision as to matters of procedure in relation to proceedings before the Hearings Committee (including provision imposing time limits);
  - (b) provision about evidence in such proceedings;
  - (c) provision as to the powers of the Hearings Committee dealing with a matter referred to it;
  - (d) provision about enforcement of decisions of the Hearings Committee and the Takeover Appeal Board.
- (5) Rules must contain provision –
  - (a) requiring the Panel, when acting in relation to any proceedings before the Hearings Committee or the Takeover Appeal Board, to do so by an officer or member of staff of the Panel (or a person acting as such);
  - (b) preventing a person who is or has been a member of the committee mentioned in Article 3(5) from being a member of the Hearings Committee or the Takeover Appeal Board; and
  - (c) preventing a person who is a member of the committee mentioned in Article 3(5), of the Hearings Committee or of the Takeover Appeal Board from acting as mentioned in subparagraph (a).

## **13 Sanctions**

- (1) Rules may contain provision conferring power on the Panel to impose sanctions on a person who has –
  - (a) acted in breach of rules; or
  - (b) failed to comply with a direction given under Article 6.
- (2) Paragraph (3) applies where rules made by virtue of paragraph (1) confer power on the Panel to impose a sanction of a kind not provided for by the City Code as it had effect immediately before this Law comes into force.
- (3) The Panel must prepare a statement (a “policy statement”) of its policy with respect to –
  - (a) the imposition of the sanction in question; and
  - (b) where the sanction is in the nature of a financial penalty, the amount of the penalty that may be imposed.
- (4) For the purposes of paragraph (3), an element of the policy must be that, in making a decision about any such matter, the Panel has regard to the factors mentioned in paragraph (5).
- (5) The factors are –
  - (a) the seriousness of the breach or failure in question in relation to the nature of the rule or direction contravened;

- (b) the extent to which the breach or failure was deliberate or reckless;
  - (c) whether the person on whom the sanction is to be imposed is an individual.
- (6) The Panel may at any time revise a policy statement.
  - (7) The Panel must prepare a draft of any proposed policy statement (or revised policy statement) and consult such persons about the draft as the Panel considers appropriate.
  - (8) The Panel must publish, in whatever way it considers appropriate, any policy statement (or revised policy statement) that it prepares.
  - (9) In exercising, or deciding whether to exercise, its power to impose a sanction within paragraph (2) in the case of any particular breach or failure, the Panel must have regard to any relevant policy statement published and in force at the time when the breach or failure occurred.

#### **14 Compensation**

- (1) Rules may confer power on the Panel to order a person to pay such compensation as it thinks just and reasonable if he or she is in breach of a rule the effect of which is to require the payment of money.
- (2) Rules made under this Article may include provision for the payment of interest (including compound interest).

#### **15 Enforcement by the Court**

- (1) If, on the application of the Panel, the Court is satisfied –
  - (a) that there is a reasonable likelihood that a person will contravene a rule-based requirement; or
  - (b) that a person has contravened a rule-based requirement or a disclosure requirement,the Court may make any order it thinks fit to secure compliance with the requirement.
- (2) Except as provided by paragraph (1), no person has a right to seek an injunction to prevent a person from contravening (or continuing to contravene) a rule-based requirement or a disclosure requirement.

#### **16 No action for breach of statutory duty etc.**

- (1) Contravention of a rule-based requirement or a disclosure requirement does not give rise to any right of action for breach of statutory duty.
- (2) Contravention of a rule-based requirement does not make any transaction void or unenforceable or (subject to any provision made by rules) affect the validity of any other thing.

#### **17 Fees and charges**

- (1) Rules may provide for fees or charges to be payable to the Panel for the purpose of meeting any part of its expenses under this Law.
- (2) A reference in this Article or Article 18 to expenses of the Panel is to any expenses that have been or are to be incurred by the Panel in, or in connection with, the discharge of its functions under this Law, including, in particular –
  - (a) payments in respect of the expenses of the Takeover Appeal Board;
  - (b) the cost of repaying the principal of, and paying any interest on, any money borrowed by the Panel;
  - (c) the cost of maintaining adequate reserves.

## **18 Levy**

- (1) For the purpose of meeting any part of the expenses of the Panel under this Law, the Minister may by Order provide for a levy to be payable to the Panel –
  - (a) by specified persons or bodies, or persons or bodies of a specified description; or
  - (b) on transactions, of a specified description, in securities on specified markets.
- (2) The power to specify or to specify descriptions of persons or bodies must be exercised in such a way that the levy is payable only by persons or bodies that appear to the Minister –
  - (a) to be capable of being directly affected by the exercise of any of the functions of the Panel under this Law; or
  - (b) otherwise to have a substantial interest in the exercise of any of those functions.
- (3) An Order under this Article may in particular –
  - (a) specify the rate of the levy and the period in respect of which it is payable at that rate; and
  - (b) make provision as to the times when, and the manner in which, payments are to be made in respect of the levy.
- (4) In determining the rate of the levy payable in respect of a particular period, the Minister –
  - (a) must take into account any other income received or expected by the Panel under this Law in respect of that period; and
  - (b) may take into account estimated as well as actual expenses of the Panel under this Law in respect of that period.
- (5) The Panel must –
  - (a) keep proper accounts in respect of any amounts of levy received under this Article; and
  - (b) prepare, in relation to each period in respect of which any such amounts are received, a statement of account relating to those amounts in such form and manner as is specified in the Order.
- (6) The accounts described in paragraph (5) must be audited by auditors appointed by the Minister and qualified for appointment as auditors of a company by virtue of Article 113 of the Companies (Jersey) Law 1991.

## **19 Recovery of fees, charges or levy**

An amount payable by any person or body by virtue of Article 17 or 18 is a debt due from that person or body to the Panel, and is recoverable accordingly.

## **20 Panel as party to proceedings**

The Panel, whether or not it is an unincorporated body, may –

- (a) bring proceedings under this Law in its own name;
- (b) bring or defend any other proceedings in its own name.

## **21 Exemption from liability in damages**

- (1) Neither the Panel, nor any person within paragraph (2) is to be liable in damages for anything done (or omitted to be done) in, or in connection with, the discharge or purported discharge of the Panel's functions.
- (2) A person is within this paragraph if –

- (a) that person is (or is acting as) a member, officer or member of staff of the Panel; or
  - (b) that person is a person authorized under Article 7(5).
- (3) Paragraph (1) does not apply –
- (a) if the act or omission is shown to have been in bad faith; or
  - (b) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000<sup>[7]</sup> (acts of public authorities which are incompatible with Convention rights).

## **22 Privilege against self-incrimination**

- (1) A statement made by a person in response to –
  - (a) a requirement under Article 7(1); or
  - (b) an order made by the Court under Article 15 to secure compliance with such a requirement,may not be used against that person in criminal proceedings in which that person is charged with an offence to which this paragraph applies.
- (2) Paragraph (1) applies to any offence other than the offence of perjury.

## **PART 3**

### **MISCELLANEOUS AND CLOSING**

## **23 Other legislation relating to takeovers and mergers**

Nothing in this Law shall affect the operation of any provision of the Companies (Jersey) Law 1991 or the Competition (Jersey) Law 2005<sup>[8]</sup> in relation to any takeover bid or transaction in respect of which the Panel can make rules under this Law.

## **24 Regulations and Orders**

An Order or Regulations under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister or the States, as the case may be, to be necessary or expedient for the purposes of the Order or Regulations.

## **25 Citation and commencement**

- (1) This Law may be cited as the Companies (Takeovers and Mergers Panel) (Jersey) Law 200-.
- (2) This Law shall come into force on such day or days as the States may by Act appoint and different days may be appointed for different provisions.

## **SCHEDULE**

(Article 8)

### **SPECIFIED PERSONS, DESCRIPTIONS OF DISCLOSURE ETC FOR THE PURPOSES OF ARTICLE 8**

#### **PART 1**

##### **SPECIFIED PERSONS**

1. Minister for Economic Development
2. Minister for Treasury and Resources
3. Commission
4. Comptroller of Income Tax
5. Agent of the Impôts
6. Attorney General
7. Viscount
8. police officer
9. any person specified in Part 1 of Schedule 2 to the Companies Act 2006

#### **PART 2**

##### **SPECIFIED DESCRIPTIONS OF DISCLOSURES**

10. A disclosure for the purpose of enabling or assisting an inspector appointed under Part 19 of the Companies (Jersey) Law 1991 to exercise his or her functions.
11. A disclosure for the purpose of enabling or assisting a person appointed under Article 33 of the Financial Services (Jersey) Law 1998 to exercise his or her functions.
12. A disclosure for the purpose of enabling or assisting an inspector appointed under Article 22 of the Collective Investment Funds (Jersey) Law 1988 to exercise his or her functions.
13. A disclosure for the purpose of enabling or assisting the Minister to exercise his functions under any of the following –  
the Companies (Jersey) Law 1991;  
the Bankruptcy Désastre (Jersey) Law 1990<sup>[9]</sup>;  
the Financial Services (Jersey) Law 1998.
14. A disclosure for the purpose of enabling any of the following to exercise its functions –  
the European Central Bank;  
the central bank of any country or territory outside Jersey.
15. A disclosure for the purpose of enabling or assisting the Comptroller of Income Tax to exercise his or her functions.
16. A disclosure for the purpose of enabling or assisting the Agent of the Impôts to exercise his or her functions.
17. A disclosure for the purpose of enabling or assisting the Jersey Competition Regulatory Authority to exercise its functions.

18. A disclosure for the purpose of enabling or assisting the Attorney General to exercise his or her functions in connection with charities.
19. A disclosure for the purpose of enabling or assisting the Attorney General to exercise his or her functions under the Distance Selling (Jersey) Law 2007<sup>[10]</sup>.
20. A disclosure for the purpose of enabling or assisting the Viscount to exercise his or her functions in relation to désastre or in relation to Part 2 of the Proceeds of Crime (Jersey) Law 1999<sup>[11]</sup>.
21. A disclosure for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions.

In this paragraph “overseas regulatory authority” means an authority in a country or territory outside Jersey which exercises –

- (a) any function corresponding to a function of the Minister under the Companies (Jersey) Law 1991;
- (b) any function corresponding to a function of the Commission under a regulatory Law or the Financial Services Authority under the Financial Services and Markets Act;
- (c) any function in connection with the investigation of, or the enforcement of rules (whether or not having the force of law) relating to, conduct corresponding to conduct of the kind prohibited by Part 3A of the Financial Services (Jersey) Law 1998 (market manipulation misleading information and insider dealing); or
- (d) any function prescribed by the Minister by Order, being a function which, in his or her opinion, relates to companies or financial services.

In this paragraph “regulatory function” means any function described in paragraphs (a) to (c) in the definition of “overseas regulatory authority”.

22. A disclosure with a view to the institution of, or otherwise for the purposes of, criminal proceedings.
23. A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings on an application under Article 78 of the Companies (Jersey) Law 1991.
24. A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance of a solicitor, advocate, foreign lawyer, auditor, accountant, valuer or actuary of his or her professional duties.

In this paragraph “foreign lawyer” means a person who –

- (a) has not –
    - (i) been admitted to the Bar, or
    - (ii) been admitted as a solicitor, under the Advocates and Solicitors (Jersey) Law 1997<sup>[12]</sup>, and
  - (b) is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction outside Jersey.
25. A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance of a public servant of his or her duties.

In this paragraph “public servant” means –

- (a) an individual who holds office under, or is employed by, the Crown;
- (b) a member, officer or employee of the States or an officer or employee in an administration of the States;
- (c) a member, officer or employee of the Commission; or
- (d) any person exercising public functions who is declared by Order by the Minister to be a public servant for the purposes of this paragraph.

26. A disclosure for the purpose of the provision of a summary or collection of information framed in such a way so as not to enable the identity of any person to whom the information relates to be ascertained.
27. A disclosure of any description specified in Part 2 of Schedule 2 to the Companies Act 2006.

### **PART 3**

#### **OVERSEAS REGULATORY BODIES**

28. A disclosure is made in accordance with this Part of the Schedule if –
  - (a) it is made to a person or body within paragraph 29; and
  - (b) it is made for the purpose of enabling or assisting that person or body to exercise the functions mentioned in that paragraph.
29. The person or bodies that are within this paragraph are those exercising functions of a public nature, under legislation in any country or territory outside Jersey, that appear to the Panel to be similar to its own functions or those of the Commission or of the Financial Services Authority.
30. In determining whether to disclose information to a person or body in accordance with this Part of the Schedule, the Panel must have regard to the following considerations –
  - (a) whether the use that the person or body is likely to make of the information is sufficiently important to justify making the disclosure; and
  - (b) whether the person or body has adequate arrangements to prevent the information from being used or further disclosed otherwise than for the purposes of carrying out the functions mentioned in paragraph 29 or any other purposes substantially similar to those for which information disclosed to the Panel could be used or further disclosed.



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- [\[1\]](#) *chapter 13.125*
- [\[2\]](#) *chapter 15.240*
- [\[3\]](#) *chapter 13.100*
- [\[4\]](#) *chapter 13.075*
- [\[5\]](#) *chapter 13.425*
- [\[6\]](#) *chapter 13.225*
- [\[7\]](#) *chapter 15.350*
- [\[8\]](#) *chapter 05.070*
- [\[9\]](#) *chapter 04.160*
- [\[10\]](#) *L.37/2007*
- [\[11\]](#) *chapter 08.780*
- [\[12\]](#) *chapter 07.070*