Chris Robinson

Legal Consultant
Clarity & experience
in corporate law

The Takeover Code and unquoted companies

A nasty surprise for the vanity PLC

Changes to the Takeover Code take effect in September. The Code regulates merger and takeover activity, largely between quoted companies. But many people (including many lawyers) do not realise that the Code also applies to some unquoted companies. Complying with it can be onerous: it involves a formal process and detailed documents, as well as large fees to the Takeover Panel. For small companies it is sometimes possible to get a waiver from the Panel with shareholder agreement, but that can be time-consuming and expensive. Otherwise, anyone contemplating buying or selling and unquoted PLC should be aware of the Code and the extra costs and delays it will involve.

Many companies think being a PLC gives them extra kudos. It can make the company seem bigger and more substantial than it is – in reality there may be only £12,500 of share capital paid up. A PLC may find it easier to get trade credit or to avoid needing personal guarantees from its shareholders. That status comes at an expense, because a number of Companies Act exemptions and relaxations do not apply to public companies, but it also brings the company within the scope of the Takeover Code. It applies to takeovers of all public companies (PLCs) whether or not their shares have been traded on a public market.

The Code also applies to a private company which has filed a prospectus, had its shares quoted on a market or had a dealing arrangement for its shares within the last 10 years. An unquoted PLC which has never had a share dealing arrangement can always escape the Code by re-registering as a private company, but any company that falls within the 10-year rule is within the Code for the full 10 year period.

What are the consequences if the Code's application is missed? First and most likely, it will disrupt a transaction if the Code is raised part way through a deal. It gives minority shareholders in the target company extra rights, so they are the most likely to complain. Failing to comply with the Code is a serious disciplinary offence for parties or advisers in the financial services sector, and can also lead to unregulated companies or individuals being publicly reprimanded or banned from activity in the financial markets. A complaint could be made some time after a transaction. The extra rights conferred on minority shareholders may come as a surprise to a controlling majority, and the extra costs of acquisition could have an effect on potential sale price for the company.

+44 (0)7770 601840 – chris@cirobinson.co.uk – www.clarityincorporatelaw.co.uk – 58 Augusta Avenue, Northampton NN4 0XP

Finally, there is that the dreaded Rule 9: anyone acquiring shares in a company subject to the Code which take him (with his associates) over 30% has to make a cash offer for all the remaining shares. That can come as an enormous shock!

Any unquoted company subject to the Code, and its major shareholders, should be aware of their Code obligations, and perhaps consider whether PLC status is worth it. Do not be caught out when a 29% shareholder buys another 2%, or when the quick and easy takeover deal gets bogged down in process and cost.

Chris Robinson

May 2013

Please comment or discuss this article using the links below.

+44 (0)7770 601840 – chris@cirobinson.co.uk – www.clarityincorporatelaw.co.uk –
Blog: www.clarityincorporatelaw.blogspot.com – Facebook: www.facebook.com/ClarityinCorporateLaw
LinkedIn: http://uk.linkedin.com/in/chrisrobinsonlawyer – Twitter: https://twitter.com/#!/ChrisRobinson58