

1 December 2016

Takeovers Panel
PO Box 1171
Wellington 6011

By email: communications@takeovers.govt.nz

Attention: Rebecca McAllum

Dear Ms McAllum

Proposed Amendments to the Takeovers Code – October 2016

The New Zealand Law Society welcomes the opportunity to comment on the *Takeovers Panel Consultation Paper: Proposed Amendments to the Takeovers Code: October 2016* (consultation paper). The Law Society's responses to the consultation questions are set out below.

Q1: What are your views on whether the Code prevents small companies from raising capital or undertaking other share transactions?

As a consequence of the Takeovers Code (Small Code Companies) Exemption Notice 2015, the Law Society does not consider the Code is an ongoing problem for small companies raising new capital. The question of share transactions (e.g. the acquisition of shares by one shareholder from another) is a different proposition and the company will often not be a party to such transactions. For this reason, the Law Society does not consider narrowing the definition of Code company will assist the company itself 'surviving, thriving or growing' (as indicated at [7] of the consultation paper).

Q2: Do you agree with the Panel's estimates of the costs of transactions under the Code?

Yes, the Law Society considers the estimates are broadly accurate.

Q4: Given the current policy settings for the capital markets, do you agree that the costs outweigh the benefits of Code compliance for small unlisted Code companies?

The Law Society agrees that the costs can outweigh the benefits of Code compliance of small unlisted Code companies. However, where a company makes an offer of financial products (as per the Financial Markets Conduct Act 2013) the consequences of becoming a Code company need to be understood both by the company itself and investors.

If a separate regime is to be adopted for small Code companies, the differences need to be identified to companies and investors at the time. For this reason, the Law Society recommends that the Takeovers Panel engages with the Financial Markets Authority in relation to the disclosure obligations on companies making a regulated offer, to ensure proper disclosure is required relating to the Takeovers Code.

Q5: Do you agree with the Panel’s view that Option 2 would increase the overall complexity of the Code for small Code companies?

As detailed in the Panel’s paper, the Law Society does not consider that Option 2 increases the overall complexity of the Code. To the contrary, it appears that it simplifies the application of the Code to the extent it applies to small Code companies. Provided the definition of small Code companies is clear (and the Law Society considers that it is), then applying a “Code light” regime simplifies the application of the Code.

Q7: Do you agree with Option 3?

The Law Society agrees that Option 3 achieves a number of the objectives of the Code in the manner set out by the Panel.

Q8: Do you agree with the proposed transactional arrangements for the preferred option set out in paragraph 41 above?

Yes.

Q9: Do you have a proposal that the Panel has not included, that would better reduce compliances costs and also meet the Panel’s other Policy Objectives?

No.

Q9: Do you have experience of detrimental effects being caused by takeovers or compulsory acquisitions occurring over a holiday period? If yes, please describe the detriment caused, and to whom, and give your views as to how the Code’s timing rules caused this detriment?

The Law Society does not have any specific experience although it is aware that lawyers have had difficulty in interpreting the Code’s timing requirements.

Q10 and 11:

The Law Society has no comment.

Q12: Do you agree with the preferred Option?

The Law Society agrees that amending the Code to refer to “working days” in a manner consistent with the Companies Act 1993 would clarify the timing provisions under the Code for the benefit of all.

Q13: Do you agree that there is a problem regarding low usage or electronic communications under the Code?

The Law Society encourages amendments to the Code to accommodate emailing communications to shareholders where shareholders are accustomed to receiving company information via email.

Q14: Do you agree with the Panel’s preferred options?

Yes.

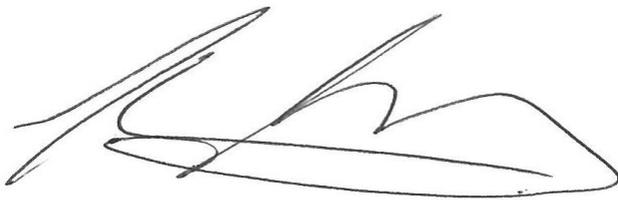
Q15: Do you agree with the Panel's suggested resolutions of the low policy content amendments?

The Law Society has no comment.

Conclusion

This submission has been prepared by the Law Society's Commercial and Business Law Committee. If further information or discussion would assist, the committee convenor Rebecca Sellers can be contacted through the committee secretary Karen Yates (ph 04 463 2962 / karen.yates@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kathryn Beck', with a large, sweeping flourish underneath.

Kathryn Beck
President