

Irish Takeover Panel publishes two consultation papers on changes to the Irish Takeover Rules

The Irish Takeover Panel published two consultation papers on July 7, 2011, which propose a number of changes to the Irish Takeover Rules. The Irish Takeover Panel regulates takeovers and certain other transactions in Irish companies quoted on all markets in Ireland, on regulated markets in the EEA and on NYSE and NASDAQ. The proposals continue an evolutionary process which continues to widen the gap in detail between the Irish Takeover Rules and the UK City Code on Takeovers and Mergers.

Key points

The papers do not, at this stage, incorporate any proposal to introduce the substance of the reforms proposed in the UK to its Takeover Code following public comment and publicity surrounding the Cadbury/Kraft offer. In particular, while some amendments have been proposed to tighten the rules surrounding a “put up or shut up” deadline, they are not as restrictive as comparable proposals in the UK.

No proposal has been made to eliminate transaction agreements in relation to takeover schemes of arrangement or the practice of seeking expense reimbursement payments. As further consultations in relation to changes to the Rules are contemplated later in 2011, we do expect expense reimbursement to come under the spotlight, but we do not expect a proposal to eliminate transaction agreements, as they have not proven to be problematic in the Irish context

Included in the papers’ proposals is a Rule which would for the first time apply a direct responsibility on legal as well as financial advisers to bidders and targets to ensure that announcements and publications by parties to offers are pre-vetted by their advisers. This proposal reflects particular Panel concern to ensure that parties to offers, when making public statements, do so only in compliance with the Rules.

Summary of proposals

- 1 An extension of the ability to incorporate certain documents by reference into offer documents, obligations to include certain information on a website, including documents required to be placed on display by Rule 26 and changes to the requirements to place documents on display in Rule 26.
- 2 A clarifying amendment of Rule 2.4 to enable the Panel to issue a timetable to either “put up or shut up” on the request of an target board where the target has been publicly named.
3. An extension of the Rule 35 restrictions affecting offerors whose offer has lapsed or been withdrawn in relation, among other things, to making statements or taking certain steps in relation to possible offers.
- 4 An obligation to ensure that formal announcements of offers under Rule 2.5 are consistent with non-binding preliminary statements under Rule 2.4.
- 5 More detailed requirements in relation to conditions precedent in offers.



- 6 A Rule regulating when joint interviews and debates can be conducted. This was the subject of some controversy most recently in the 2009 second Ryanair bid for Aer Lingus.
- 7 A Rule imposing specific responsibilities on advisers in relation to certain conduct of offerors and targets.

The consultation closes on October 7, 2011 and updated Rules can be expected to come into effect shortly thereafter.

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