Takeover panel 1 - Rangers FC chairman 0: Avoiding own goals when buying shares offshore

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Rangers Football Club has been a continual source of material for both the press and the legal profession due to its high-profile financial troubles.

At the end of 2017 Rangers International Football Club Plc, the company which owns the football club, provided for a legal first – with the Takeover Panel successfully obtaining a court order enforcing their own ruling under the City Code on Takeovers and Mergers.

As a result of the order, Mr David King, chairman and a substantial shareholder of Rangers, is now obliged to make a mandatory offer for the remaining shares in Rangers, at a potential cost of c.£11 million. This order being granted despite arguments from Mr King's lawyers that he does not have the financial resources to do so.

To save being placed in Mr King's situation, anyone taking a significant stake in a company registered in the Channel Islands must always keep a close eye on whether the Code applies and, if so, consider their obligations under the Code as failure to do so can have expensive consequences...

The Channel Islands and the Code

By virtue of the Companies (Guernsey) Law, 2008 (and subsidiary ordinance made thereafter) and the Companies (Takeovers and Mergers Panel) (Jersey) Law 2009, the Panel is appointed to carry out certain regulatory functions in relation to takeovers and mergers across the Channel Islands.

The Code applies to Guernsey closed ended companies, and Jersey companies, if either:

1. the company's securities are admitted to trading on a regulated market or a multilateral trading facility in the UK (which includes the AIM Market and Main Market of the London Stock Exchange) or on any stock exchange in the Channel Islands or the Isle of Man, such as The International Stock Exchange, or

2. the Panel considers the company's place of central management and control to be in the UK, the Channel Islands or the Isle of Man and one or more of the following apply:

    - at any time during the previous ten years, any of the company's securities have been admitted to trading on a regulated market or a multilateral trading facility in the UK or on any stock exchange in the Channel Islands or the Isle of Man;

    - for a continuous period of at least six months in the previous ten years, dealings and/or prices at which persons were willing to deal in any of the company's securities have been published on a regular basis;

- at any time in the previous ten years, any of the company's securities have been subject to a marketing arrangement, per section 693(3)(b) of the English Companies Act 2006; or

- at any time during the previous ten years, the company has filed a prospectus for the offer, admission to trading or issue of securities with the Registrar of Companies or (if on public record) any other relevant authority in the UK, the Channel Islands or the Isle of Man, likely to include the respective Companies Registries and Financial Services Commissions in Guernsey and Jersey.

Where a company to which the Code relates (as above) is involved, the Code applies to all of the following transactions:

- Takeover bids and mergers;
- Those which have the objective or potential effect of obtaining or consolidating control of the relevant company;
- Partial offers to shareholders for securities in the relevant companies; and
- Unitisation proposals which compete with another transaction to which the Code applies.

For those targeting the acquisition of the entire share capital of a company, the applicability of the Code will usually be one of the first factors considered. However, as Mr King has recently discovered, minor increases in holdings or simply acting in concert with other shareholders on key company decisions, can often catch out those unaware of the Code and the provisions of Rule 9.

Rule 9 – Mandatory Offers

Rule 9 provides that where a shareholder acquires shares in a company to which the Code applies, and that acquisition either:

1. Takes their shareholding (or their combined shareholding with anyone they are considered to be *acting in concert* with) over 30%; or
2. Increases their shareholding (or their combined shareholding with anyone they are considered to be *acting in concert* with) above an existing holding of between 30% and 50%.

Then that shareholder must make a mandatory offer for the entire issued share capital of the company.

The definition of *acting in concert* under the Code is far reaching, and potentially captures relatively innocuous business relationships or ad hoc agreements made between shareholders.

When enforcing Rule 9, the Panel's most common routes to enforcement are private or public censure, or "cold-shouldering" (i.e. professional advisers regulated by the Financial Conduct Authority will refuse to act). As found with Rangers though, the Panel can enforce the provisions of Rule 9, and use the Scottish/English (or Guernsey/Jersey) Courts to enforce this where necessary.

If you are investing in companies in either Guernsey or Jersey and wish to know how the Code may apply to you, please contact us.

For more information please contact:

Simon Heggs

Group Partner *† // Guernsey

t:+44 (0) 1481 734825 // *e:*simon.heggs@collascrill.com