Preliminary Observations Regarding Recent Changes to the UK Takeover Regime

BY RONAN O’SULLIVAN, MATTHEW POXON & REBECCA BROWN

The outcomes of The Takeover Panel’s (the “Panel”) review of the regulation of takeover bids were implemented and came into effect on 19 September 2011. With the possible exception of the prohibition of deal protections (such as break fees), the most significant change to the UK takeover regime is the new requirement that an announcement of a possible offer released by a target must, subject to limited exceptions, identify all offerors who have made an approach and not been rejected. Such named offerors must make a bid or walk away within 28 days unless the target and the Panel agree to an extension of that deadline.

The preliminary impact of the new “put up or shut up” deadline

The Panel will consider extensions to the 28 day deadline depending upon the status of the negotiations and the anticipated timetable for completion. At the end of the first 28 day “put up or shut up” period, which expired at 5.00pm on Monday 17 October, nine of the eleven companies subject to the deadline sought and obtained extensions. Of the nine extensions granted by the Panel:

- three were granted 14 day extensions where the parties were “finalising terms” or “at an advanced stage of negotiations”,
- five were granted 28 day extensions to allow completion of pre-conditions or allow more time for discussions to continue; and
- one was granted a 5 day extension, followed immediately by a further 1 day extension.

The shortest extension period (a total of six days) was granted in relation to Rami Cassis’ offer for Parseq plc, which was close to being finalised after the 28 day period and subsequently proceeded to the firm-intention offer stage during the extension period. It is notable that no discussions managed to advance to firm-intention offers within the initial 28 day period, in fact three-quarters of potential offers requiring an extension that in effect doubled the initial 28 day period.

Since the expiry of the first 28 day “put up or shut up” period on 17 October 2011 offer periods have commenced in respect of a further 14 companies.

Of these companies:

- two were granted a 28 day extension – in the case of Harvard International Plc to give the offeror, Chengdu Geeya Technology Co Ltd, further time to seek regulatory clearances in China;
- four were not subject to the “put-up-or-shut-up” deadline since they were recommended by the target company boards and implemented by way of scheme of arrangement;
- four were subject to mandatory cash offers required by Rule 9 of the Takeover Code where the offeror acquires shares carrying 30% or more of the voting rights of a target company;
- three were granted Panel dispensations from the deadline as they were seeking a formal sale process with no identified offeror as yet; and
- one remains in offer period with a “put-up-or-shut-up” deadline of 21 November 2011.

An interesting trend, which we are continuing to monitor, is the relatively rapid publication of scheme documents in the examples of takeovers being implemented by schemes of arrangement. Of the examples listed above half of the companies implementing by scheme posted the scheme circular to shareholders on the same day as the offer announcement.

**Redressing the imbalance of power in favour of the target board, or an inhibition on deal activity in the UK?**

In two cases extensions to the initial 28 day period were not sought and potential offer talks were abandoned. Ladbrokes plc abandoned its approach for Sportingbet plc on 10 October 2011 because of the questions around the legality of Sportingbet’s operations in Turkey and other concerns about legacy risks involved in the takeover. It is open to question whether more negotiation time would have increased the prospect of resolutions to these issues and whether the 28 day deadline forced a rushed decision.

The potential offer for Mitchells & Butler plc, a UK pub and restaurant company, by it largest shareholder, Piedmont (the investment vehicle of billionaire Joe Lewis) was withdrawn shortly before the expiry of the 28 day period. The target board of Mitchells & Butler did not welcome the bid, which may have led to the breakdown in talks, but some market commentators believe that given more time other major shareholders might have driven the offer price per share closer to the 300p benchmark the board had been encouraging.

However, in light of the stated aim of the changes to the takeover rules (i.e. to minimise the disruption to a target company under siege) the above two examples are evidence of the new regime’s success in clamping down on time-wasting hostile approaches. The rule changes appear to be forcing offerors to be more prepared before making their approaches, which may have the unintended consequence of catching potential targets unaware, but does support the stated objective – to prevent target companies being under siege for long periods.

Whilst it is arguable that the brevity of the 28 day period has been prohibitive and will lead to the abandoning of more potential offers, it is difficult to predict whether this will actually be the case and whether the offers in question would have in fact proceeded given more time. The rule that offerors must be identified introduces a new degree of transparency to takeover discussions. Increased transparency means we may observe more bids ‘failing’, where in the past these discussions would have taken place behind closed doors without identification of the offeror or scrutiny from the market.

On a practical level, the Panel’s granting of extensions is the most significant upshot in the first month following the rule changes, and we are likely to see such extensions becoming a pertinent feature of the takeover code timetable in the future. The length of extensions being granted (and the low success rate during the initial period) suggests that the new 28 day period is not long enough to allow offers to successfully proceed to the firm-intention stage. If the Panel continue to grant additional 28 day extensions it may undermine the new regime entirely and increase the pressure on target boards to obtain such extensions. The Panel intends to review how the amendments to the Code work in practice over the next 12 months, subject to the level of bid activity.
Summary status of the 11 offer periods commenced pursuant to announcements made on 19 September 2011 as at 01 November 2011:

**Parseq Plc**  
Board of Parseq 'not in a position to recommend the potential offer'. Offeror (Rami Cassis) is approaching major shareholders to obtain their views.  
5 day extension granted (to 21 October 2011), further 1 day extension granted (to 24 October 2011), offer made 24 October 2011.

**CareTech Holdings Plc**  
CareTech are actively seeking an offer with a view to a potential MBO. Caretech Board has been granted an extension by the Panel to enable it to finalise the strategic review (with a view to making an offer).  
28 day extension granted (to 14 November 2011).

**DTZ Holdings Plc**  
Talks regarding potential offer were supported by the board of DTZ but subsequently broke down.  
Did not seek extension from the Panel, offer terminated.

**Invista Foundation Property Trust**  
Offeror (Picton Property Income Limited) in talks with shareholders, requested further time to allow finalization of the terms.  
14 day extension granted (to 31 October 2011), rule 2.8 announcement made, offer terminated.

**Merchant Securities Group Plc**  
Discussions with offeror (Sanlam UK Limited) are at an advanced stage but certain aspects of the possible transaction need to be concluded before Sanlam can announce a firm intention to make an offer.  
14 day extension granted (to 31 October 2011), rule 2.7 announcement and cash offer made.

**Coolabi Plc**  
Discussions with offeror (North Promotions Limited) require time to complete due diligence and seek further taxation advice.  
14 day extension granted (to 31 October 2011), rule 2.7 announcement and cash offer made.

**MWB Business Exchange Plc**  
Offer by MWB Group Holdings Plc recommended by board of MWB Business Exchange Plc. Requested more time to seek clarification on certain aspects of MWB's proposals, to further consider the merits of the proposed offer and to consult with minority shareholders.  
28 day extension granted (to 14 November 2011).

**Sportingbet Plc**  
Parties were unable to agree either a suitable structure or one that delivered sufficient value to shareholders in a meaningful timeframe.  
Did not seek extension, offer terminated.

**THB Group Plc**  
Certain pre-conditions still remained outstanding. It is anticipated that the negotiations with Offeror (AmWINS Group Inc) will be completed by mid-November.  
28 day extension granted (to 14 November 2011).

**Mitchells & Butler Plc**  
Board of Mitchells & Butler indicated it would not support a potential offer on the terms proposed by the Offeror (Piedmont Inc.)  
Did not seek extension, offer terminated.

**Probability Plc**  
Talks regarding potential offer were supported by the board of Probability but subsequently broke down.  
28 day extension granted (to 14 November 2011) but talks terminated on 2 November 2011 by Offeror (William Hill plc).

**Travelzest Plc**  
Discussions with Offeror (Red Label Vacations Inc.) are at an advanced stage but certain aspects of the possible transaction need to be concluded before Red Label can announce a firm intention to make an offer.  
28 day extension granted (to 14 November 2011).
If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings London lawyers:

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