

## ■ TAKEOVER'S PROTOCOL

### 1. Background and Purpose

- 1.1. Consistent with the requirements of Recommendation 3.6 of the NZX Corporate Governance Code, this Takeover's Protocol (**Protocol**) has been adopted by Investore Property Limited (**Investore**).
- 1.2. This Protocol outlines the procedure to be followed if there is a takeover offer of Investore under the Takeovers Code Approval Order 2000 (**Takeovers Code**). It is anticipated that Investore's compliance with the requirements of the Takeovers Code and oversight of the process will be supervised by a committee of independent Directors, with support from legal and other advisors.
- 1.3. Investore recognises that Directors play a vital role in giving guidance to shareholders during a takeover, and this Protocol seeks to ensure that Directors fulfil this role appropriately.
- 1.4. A control-change transaction involves an increase above 20% in the ownership of voting rights by a shareholder and/or its associates in a "Code Company" (i.e., crossing the 20% threshold or, if already above 20%, increasing their ownership further). The rules of the Takeovers Code are intended to ensure that shareholders will have all of the information they need and plenty of time to make their decision about the control-change transaction.

A key theme of the Takeovers Code is its 'fundamental rule' (rule 6), which prohibits the holding or controlling of more than 20% of a Code Company's voting rights, except for transactions that are undertaken in accordance with the rules of the Takeovers Code.

- 1.5. For additional information refer to the Directors Guide for takeovers at: [www.takeovers.govt.nz/assets/Assets-2/Takeovers-Directors-booklet-linked2a.pdf](http://www.takeovers.govt.nz/assets/Assets-2/Takeovers-Directors-booklet-linked2a.pdf)

### 2. Before Formal Communications are Made

#### On Receipt of a Communication that a Takeover Offer is Likely

- 2.1. The Directors should consider the continuous disclosure obligations of Investore under NZX Main Board Listing Rule 10.1, and determine whether there is any need to make an announcement to the market. If a reasonable person would not expect the information to be disclosed, and the information is confidential, confidentiality is maintained, and the proposal is incomplete or insufficiently definite to warrant disclosure, then there is likely to be no legal obligation to make a disclosure.

2.2. The Board of Directors of Investore may establish an independent takeover committee (**Takeover Committee**) to oversee the process, ensure compliance with all of Investore's obligations under the Takeovers Code, and appoint a nominated independent Director as a spokesperson through the bidding process. All communications between Investore and any offeror (or potential offeror) will only take place through the Takeover Committee nominated spokesperson and only if appropriate confidentiality arrangements have been entered into. The Takeover Committee should take legal advice around the entry into any confidentiality arrangement.

2.3. The Takeover Committee will be comprised of Independent Directors of Investore (as defined in the Board Charter). While this is not a legal requirement, it is market practice and recommended by the Takeovers Panel.<sup>1</sup>

2.4. The Takeover Committee should consider who to approach to be the "independent adviser" if a takeover offer is made. The independent adviser will be required to prepare a report on the merits of the takeover offer for Investore's shareholders not associated with the offeror. The Takeovers Panel needs to approve the independent adviser but the Takeover Committee may wish to consider who the preferred adviser would be at this stage.

2.5. The Takeover Committee should also consider engaging external legal advisers at this stage, to provide legal advice on responding to any potential or actual takeover offer and ensure compliance with Investore's continuous disclosure obligations. In addition, the Directors may choose to obtain independent financial and strategic advice in connection with dealing with the offer.

### If Due Diligence is Requested by the Offeror

2.6. If the offeror requests the opportunity to conduct due diligence on Investore, the Takeover Committee needs to consider whether to grant the request or not and make a recommendation to the Board accordingly. In forming a decision, the duty of the Directors is to act in Investore's best interests.

2.7. Investore notes that the Takeovers Code prohibits "defensive tactics" by a board. Rule 38 provides that: *"If a code company has received a takeover notice or has reason to believe that a bona fide offer is imminent, the directors of the company must not take or permit any action, in relation to the affairs of the code company, that could effectively result in: (a) an offer being frustrated; or (b) the holders of the equity securities of the code company being denied an opportunity to decide on the merits of the offer. ... [This] does not prevent the directors of a code company taking steps to encourage competing bona fide offers from other persons."*

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<sup>1</sup> The Takeovers Panel is a specialist group with expertise in takeovers. Information about the panel members is available on the Takeovers Panel's website [www.takeovers.govt.nz](http://www.takeovers.govt.nz).

- 2.8. However, the Takeovers Panel acknowledges that because due diligence includes the release of confidential financial and other information to a third party, a target company (being a company that has received a takeover offer under the Takeovers Code) may choose to refuse to allow due diligence, particularly if the offeror is a potential competitor of the target company.

### 3. Formal Communication is Made

#### Notice of Intention and Takeover Offer

- 3.1. Upon receipt of a notice of intention to make a takeover offer (**Takeover Notice**), Investore must immediately notify NZX and provide NZX with a copy of the Takeover Notice, and begin the process of appointing an independent adviser. Investore is also required to send a copy of the Takeover Notice to any person who requests it within one day of the request
- 3.2. Under the Takeovers Code, Investore is required to engage an independent adviser to prepare a report on the merits of the offer. In this way shareholders will have an expert opinion from an independent source to assist them in deciding whether to accept or reject the offer. The Takeovers Panel notes that the Takeover Committee needs to ensure the adviser is given all information necessary to provide a comprehensive report. Further, in reviewing the report, Directors need to satisfy themselves that it is sufficiently comprehensive, factually accurate, and covers all the relevant issues.

- 3.3. The Takeover Committee should advise shareholders as early as possible that, before taking any action in respect of any takeover offer, they should wait to receive the target company statement which Investore will prepare, as well as the independent adviser's report (as recommended by the Takeovers Panel).

- 3.4. Not later than two days after receiving the Takeover Notice, Investore must send the offeror a class notice containing details of its equity securities. Care will need to be taken to make sure any equity securities the subject of any share plan are correctly identified in the class notice, as the definition is broader than merely shares.

- 3.5. Not later than two days after the "record date" for the offer, Investore must send the offeror a copy of its financial products register as at the record date. The record date is a date nominated by the offeror (who must advise Investore) but cannot be more than 10 days before the date of the offeror's offer.

- 3.6. Shareholders benefit from a proactive communications plan established by the Directors, along with clear and prompt advice to shareholders through the course of the offer.

#### Target Company Statement

- 3.7. If Investore (as the target company) receives a takeover offer, Investore will send detailed information to all shareholders about the takeover offer in a 'target company statement'. The target company statement must be clear, concise and effective.

3.8. Schedule 2 of the Takeovers Code sets out what the target company statement needs to contain. The target company statement covers such information as follows:

- The number of shares held by all Directors and senior officers in Investore;
- Recent trading by these people in Investore shares;
- Which of these people intend to accept the offer;
- Any relationships between the offeror and Investore;
- Any information Investore has which would correct any misleading or incorrect information in the takeover offer;
- Any material changes planned by Investore in response to the takeover offer;
- Any material changes in Investore's financial or trading position or prospects since its most recent Annual Report;
- Other information that could reasonably be expected to be material to a decision by shareholders whether to accept the takeover offer or not and a recommendation by the Directors whether or not to accept the bid or, if they are unable to make a recommendation, why not.

3.9. In preparing the target company statement, the Takeover Committee should have regard to the Takeovers Panel's Guidance Note on Target Company Statements dated March 2018 (and any subsequent update).

3.10. The target company statement needs to be prepared and sent to shareholders either:

- With the offer; or

- Within 14 days of Investore receiving notice that the offer has been despatched to shareholders.

3.11. Investore must also provide a copy of the target company statement to NZX and to the Companies Office.

3.12. The Takeovers Panel encourages Directors to form their own opinions of the offer and reminds Directors that when making recommendations to shareholders, Directors should be making their own recommendation in the best interests of the shareholders. In some instances, the Directors' recommendation might differ from the conclusion of the independent adviser. In that case, the reasons for those differences should be clearly explained by the Directors.

3.13. It is acceptable for the Independent Directors only to approve the contents of the target company statement.

3.14. For all takeover offers, Investore's Directors must either make a recommendation to the shareholders about what they should do regarding the transaction or give their reasons for not making a recommendation to the shareholders. If any of Investore's Directors disagree with the recommendation made or if they abstain from making a recommendation, their names and the reasons for this must be included in the information provided to shareholders.

### **Additional Obligations of Notification to NZX and Takeovers Panel**

3.15. When Investstore makes any announcement or sends to any shareholder any information about the offer, it will send a copy of this to the Takeovers Panel and NZX.

#### **4. Target company costs**

4.1 Target companies can incur considerable costs in relation to dealing with takeover offers. Rule 49 of the Takeovers Code allows target companies to obtain reimbursement from the offeror of all properly incurred costs and expenses related to a takeover offer. This can be contentious, particularly regarding financial adviser fees, and should be managed by the Takeover Committee on behalf of the company.