

# Expansion of Takeovers Code

December 2007



**Paul Hubbard is a partner in the commercial team and has advised in relation to several takeovers under the Code since its inception.**

Most investors in companies will know that the Takeovers Code<sup>1</sup> applies to major acquisitions of shares in publicly listed or widely held companies of a certain size. The Code originally applied to companies with 50 or more shareholders and \$20 million or more of assets, but from 24 October 2006 the \$20 million asset threshold was removed. The Code now applies to all companies which have 50 or more shareholders.

This has important implications for companies that have 50 or more shareholders but which are too small to be formally listed. This may occur, for example, because of an initial public offering, or on the issue of shares to employees. The Code prohibits a shareholder from acquiring more than 20% of the voting rights in a Code company unless it follows the procedures prescribed in the Code. The Code sets out how shares may be obtained above the 20% voting threshold by methods such as a full takeover offer, a partial takeover offer or an allotment or transfer of shares approved by shareholders. Each of these alternatives requires either the offeror or the target company to obtain a report from an independent adviser on the value and merits of the offer. The documents which must be prepared and submitted by both the offeror

and the target company are substantial, complicated and costly to prepare.

Companies cannot “contract out” of the Code but there are mechanisms for avoiding the application of the Code to unlisted companies that consider it undesirable to be subject to the Code. Whilst care needs to be taken, the Takeovers Panel recognises that it can be appropriate for companies to avoid the application of the Code by structuring their shareholder arrangements so as to have fewer than 50 shareholders.

Companies that are likely to exceed the 50 shareholder threshold and are concerned about the cost and inconvenience of the compliance issues associated with the Takeovers Code should consult their legal advisers as to whether it is desirable for the company to be subject to the Code, and if not, to explore the structuring options potentially available to them to lawfully avoid becoming subject to the Code.



**PAUL HUBBARD**

Partner

Phone: 03 471 5440

Email: paul.hubbard@andersonlloyd.co.nz

---

<sup>1</sup> The Takeovers Act 1993 provides for the Governor-General to make orders under the Act establishing rules which any entity undertaking a corporate takeover must observe in the process. These rules are called the Takeovers Code.