# Corporate Law Update
## 15 - 21 April 2017

### Takeover panel to take action on Rangers F.C Rule 9 offer

In our update for the week ending 17 March 2017 we reported that the Takeover Panel Appeal Board had ordered Mr David King to make a mandatory offer under Rule 9 of the Takeover Code for all of the shares in Rangers International Football Club plc not already owned by him or his concert parties.

The Appeal Board had decided that Mr King acted with three other individuals in 2014 and 2015 to acquire more than 30 percent of the shares in Rangers. It directed him to make a Rule 9 offer by 12 April 2017. As at that date, Mr King had still not made the offer.

On 13 April 2017, the Panel announced that it has now started legal proceedings in Scotland under section 955 of the Companies Act 2006 to require Mr King to comply with its ruling. The Panel's announcement can be found here.

### Takeover Panel amends Practice Statement 20 and Takeover Code

***Practice Statement 20***

The Takeover Panel has made two amendments to its Practice Statement 20 (PS20). PS20 relates to the requirement of secrecy and the circumstances in which a possible offer announcement needs to be made. The amendments, which are more for clarity than substantive, are as follows:

- The Takeover Code requires the Executive to be consulted before more than a total of six parties are approached about an offer or possible offer. The amended PS20 clarifies that this requirement continues to apply during an offer period in relation to a possible offer by a potential offeror that has not yet been identified.
- The amended PS20 also contains a new statement essentially confirming and setting out the circumstances in which a financial adviser or corporate broker is required to attend meetings and to ensure that no material new information or significant new opinion relating to the offer or a party to the offer is provided. This supplements Rule 20.2 of the Takeover Code.

A copy of the announcement can be found here and amended PS20 can be found here. The Takeover Code has been updated to reflect these changes.

***Prospective Code amendments***

The Panel has also announced that it will be further amending the Code on 2 May 2017 to make certain minor changes to the Code as a consequence of changes in legislation or the names of organisations. That announcement can be found here.

Perhaps the principal change of interest is that, where an offer is to be implemented by way of a **scheme of arrangement in a non-UK jurisdiction**, the Panel must be consulted first. This is to enable the Panel to decide how to apply the Takeover Code to any differences between how the non-UK scheme is to be implemented and how a UK scheme would customarily be implemented.

### FRC sends letter to investors ahead of reporting season

The Financial Reporting Council (FRC) has sent a letter to investors ahead of the 2017 annual reporting season. The purpose is to highlight changes and developments in reporting that may be helpful to investors when engaging with companies.

A copy of the letter can be found here. The key recommendations are:

- This is the first year to which the European Securities and Markets Authority's guidelines on alternative performance measures (APMs) apply. Investors should expect disclosures that give a clear and complete understanding of APMs, how they are calculated and why they are useful, as well as reconciliation to amounts presented in the financial statements.
- The FRC is encouraging companies to provide clear disclosure in the longer-term viability statements of why the period selected is appropriate, what qualifications and assumptions were made, and how the underlying analysis was performed.
- Companies should consider the risks and uncertainties in the environment created by Brexit, as well as their impact on the business. As economic and political effects become more certain, boards should provide company-specific disclosures and quantify the impact.
- Where companies do not comply with the UK Corporate Governance Code, they should set out the background, provide a clear rationale and describe any mitigating activities. Investors should challenge companies if they believe explanations given are not sufficiently persuasive.

- Investors should expect audit reporting based on the FRC's [2015 Audit Quality Practice Aid for Audit Committees]. This should extend to the company's business model, strategy and risks, and its perception of the reasonable expectations of the company's investors and other stakeholders.
- Companies should articulate how they account for **material tax uncertainties** by explaining the bases for recognition and measurement and by disclosing the amount of their tax provisions.
- Investors should challenge companies that provide insufficient information in relation to **dividend disclosures.** The FRC refers to its Financial Reporting Lab's 2015 report on best practice.
- Companies are to consider the impact of **low interest rates** on the amounts reported in their financial statements and may need to provide sensitivity analysis to highlight potential impacts.
- When explaining **significant judgements and accounting policy choices**, there should be a clear link between the sources of income described in the business model and revenue recognition policies. Investors should also expect companies to identify the precise nature of the judgements they make, rather than merely repeat the accounting standards.
- Finally, investors should expect progress updates on companies' **transition to new IFRS 15** (*Revenue from Contracts with Customers*), **IFRS 9** (*Financial Instruments*) and **IFRS 16** (*Leases*), including the likely impacts of the new standards once they can be reasonably estimated.

**Meaning of indemnity in a share sale agreement**
In *Wood v Capita Insurance Services Limited* [2017], the Supreme Court interpreted the meaning and scope of an indemnity in a share sale agreement. This was an appeal from a decision of the Court of Appeal, which we covered in detail in our update for the week ending 13 August 2015.

In summary, the parties entered into an agreement for the sale of the shares in an insurance broker. After the deal completed, employees of the broker raised concerns that products had been mis-sold. The buyer and broker contacted the Financial Services Authority (FSA, as it then was) and agreed to set up a compensation scheme. The buyer then claimed the costs associated with this (approximately £2.4m) under an indemnity in the share sale agreement.

The indemnity in question was densely worded. In particular, it was not clear whether it covered all costs and liabilities relating to mis-selling, or merely those that arose out of "claims or complaints" made by customers to the FSA.

In the end, the court sided with the seller and agreed that the indemnity only covered costs arising out of claims and complaints, and so did not extend to the costs of the remediation scheme. The case is fact-specific, but it raises interesting questions about how the court will interpret contracts generally and sale agreements in particular.

Above all, the case emphasises the need for clear drafting. This is particularly so when it comes to indemnities in share sale agreements, which are usually included only for key, identified matters and are an important protection for buyers.

Our litigation colleagues have produced a more detailed note on the case, which can be found here.

## Contact details
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