

GUIDANCE NOTE 10: PUBLIC CONSULTATION

Overview

The Panel has power to make rules clarifying and supplementing Chapter 6 of the Corporations Act and for its own procedures. It also issues guidance notes on how it will exercise its powers under Chapter 6 and on related issues.

The Panel has a procedure which it generally follows when developing Chapter 6 rules or guidance notes. This involves the appointment of a subcommittee (which may consist of members and non-members of the Panel) to prepare a proposal which is then circulated to all Panel members for comment. Informal consultation with relevant third parties, including ASIC, may also occur.

Following development of a draft rule or guidance note, the relevant document will be published as a consultation draft for public consideration with an appropriate time (usually at least six weeks) being allowed for responses.

The Panel will then, as soon as possible, publish its final document on its website together with its reasons for any material amendments to the public consultation draft and explaining material views expressed during the consultation process.

Introduction

- 10.1 Under section 658C of the Corporations Act 2001 (Cth) (**Corporations Act**),¹ the Takeovers Panel (**Panel**) has power to make rules that clarify and supplement the operation of Chapter 6, so long as those rules are not inconsistent with the Corporations Act or the Corporations Regulations 2001 and the purposes of section 602 have been considered. It also has power to make its own procedural rules under section 195 of the Australian Securities and Investments Commission Act 2001 (**ASIC Act**). The Panel also considers that it will assist market practitioners if the Panel publishes guidance notes on how it will exercise its powers under Chapter 6, and other relevant issues.
- 10.2 The Panel wishes to remind readers of its Guidance Notes that they are necessarily general in nature, and cannot provide detailed rules for any individual case. Each application before a sitting Panel will be considered in light of the Panel's published Guidance Notes (where applicable), but will also be considered carefully in light of the particular circumstances and facts of the case.
- 10.3 This Guidance Note sets out the process the Panel will usually adopt in consulting with the public and the market in developing and finalising its rules under section 658C (**Substantive Rules**) and Guidance Notes. The Panel believes this is good public policy and is consistent with the approach taken by other public bodies in Australia and overseas including the Australian Securities and Investments Commission (**ASIC**), Australian Stock Exchange Limited, and the Parliamentary Joint Committee on Corporations and Securities.

Sources for Guidance Note/Rule Initiatives

- 10.4 The Panel will consider amendments to its existing Substantive Rules and Guidance Notes, or proposals for new guidance notes or Substantive Rules from members of the Panel, third parties or from the Panel Executive (**Executive**). Proposals may arise from issues dealt with or touched on in matters which come before the Panel or as issues which arise independently, perhaps relating to changes in takeover practice or the law. The Panel endeavours to adapt its Guidance Notes and rules so that they are kept as current and as relevant as possible. The Panel welcomes submissions from market participants about current issues on which they consider the Panel would assist the market by providing guidance.

Purpose

- 10.5 The Panel considers that a transparent consultation process and clear commitment by the Panel to be responsive to submissions will mean that its guidance and Substantive Rules will:

¹ In this Guidance Note, statutory references are to the Corporations Act, unless it is otherwise indicated.

- (a) receive better acceptance and support from the market;
- (b) restrict the efficiency of the market as little as possible;
- (c) cause fewer unwanted costs and frictions in the market;
- (d) achieve their aims more efficiently and effectively;
- (e) contain fewer loopholes; and
- (f) be more responsive to changing circumstances.

Development and Consultation Process

- 10.6 The Panel generally appoints a sub-committee to consider each proposal relating to a Substantive Rule² or Guidance Note (**Proposal**). Sub-committees may include non-Panel members. The sub-committee works with the Executive to research and prepare a recommendation on a Proposal.
- 10.7 The sub-committee and the Executive then take the recommendation (and, if appropriate, a draft document) to all the Panel members for approval prior to public consultation.³ In the development phase, the Executive will consult as appropriate with third parties, including ASIC, on an informal basis.
- 10.8 The Panel seeks to notify the widest group of people and stakeholders who it believes will be interested in the issues raised in its Substantive Rules and Guidance Notes. It will normally publish the consultation draft on its website for public consideration, with an appropriate period for responses (usually at least six weeks). It also advises those people who have joined its mailing list, and any other specific people or groups relevant to the issue.
- 10.9 In inviting comments from interested parties and the wider public on a proposed Substantive Rule, Guidance Note or an amendment to an existing Substantive Rule or Guidance Note, the Panel may identify specific issues (without restricting the matters that may be raised) upon which the Panel seeks views.
- 10.10 The Panel will, as soon as practicable, publish its final document (or its conclusion that no amendments are necessary) on its website. If appropriate, bearing in mind the comments made following public consultation and the changes made by the Panel as a consequence, it will also publish its reasons for any material amendments to the published consultation draft and an

² The Panel's procedures set out in this Guidance Note are in addition to the statutory requirements in the Corporations Act, for example in section 658C. See also the matters discussed in Guidance Note 3 "Making Rules".

³ At the request of the judges who are members of the Panel, the Panel does not ask them to sit on subcommittees which are developing Panel Guidance Notes as it is possible that cases in which those Guidance Notes are relevant might come before them in their judicial duties. Generally the judges also refrain from comment on Guidance Notes when they come before the wider Panel.

explanation of any material conflicting views expressed by parties consulted informally or respondents to the public consultation.

Publication History

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| First Issue | 7 March 2002 |
| Reformatted | 16 September 2003 |
| Second Issue | 12 July 2004 |