

Takeover Response Policy

1 Introduction

Mercury NZ Limited (Company) has adopted this Takeover Response Policy (Policy) to guide the Board and management if the Company receives a takeover notice or the Company becomes aware that a takeover offer in respect of the Company (or an analogous scheme of arrangement) is, or is likely to be, proposed by another person.

2 Ownership restrictions

The Public Finance Act 1989 includes restrictions on the ownership of certain types of securities issued by the Company. Additionally, the Company's constitution incorporates these restrictions and mechanisms for monitoring and enforcing them. For so long as the Company remains a mixed ownership model company (as defined under the Public Finance Act 1989), the Crown must hold at least 51% of the Company's shares on issue and no person (other than the Crown) may have a 'relevant interest' in more than 10% of the Company's shares on issue.

The Company should ensure that it takes legal and financial advice immediately upon receipt of any offer or approach by a potential acquirer (including the Crown).

If the Company ceases to be a mixed ownership model company, or the ownership restrictions in the Public Finance Act 1989 are amended, the Company will reassess whether this Policy remains fit for purpose.

3 Policy application

This Policy sets out guidance for directors, the Chief Executive (CE), the Chief Financial Officer (CFO), and the General Counsel and Company Secretary, as well as other employees who may be involved in the response process. If an offer or approach occurs, the material contained in this Policy would be supplemented by the Company's management and external advisers at the time. The Board may modify any aspect of this Policy if the Board considers it appropriate following receipt of an offer or approach by a potential acquirer.

The Interested Director Protocol set out in the Appendix may apply at the Board's discretion to any directors involved with, or otherwise associated with, a bidder (or likely bidder), subject to any modifications which the Board considers appropriate in the circumstances.

4 Objectives of this Policy

The overarching objective of this Policy is to ensure that any approach is properly managed in the best interests of the Company and all of its shareholders. The specific objectives of this strategy and the Policy are to ensure that:

- > the Company is well prepared for any takeover or similar approach;
- > the Company is able to respond in a professional, timely and co-ordinated manner;
- > the Company's shareholders are fully informed with respect to the value and prospects of the Company, the value of the offer and the offer process;
- > all credible alternatives are pursued and, if appropriate, made available to shareholders; and
- > the Company complies with all of its legal, regulatory and NZX Listing Rules requirements (noting the Company's foreign exempt company status in respect of its ASX listing).

5 Policy detail

5.1 Immediate steps

If the Company receives a takeover notice or any director becomes aware that a takeover notice or scheme of arrangement proposal is imminent:

- > all directors, the CE, CFO and Company Secretary should be advised immediately in confidence.
- > the Company should immediately seek legal and financial advice to guide its response, given the ownership restrictions outlined above.



5.2 High-level guidance

The Company and the Board will comply with all legal and regulatory obligations, including the NZX Listing Rules, the Companies Act 1993, the Financial Markets Conduct Act 2013 and the Takeovers Code. Subject to the advice received and all other circumstances, the Company will follow the process set out below as a high-level guide to the steps to be taken:

- > The Company should consider releasing to NZX and ASX an appropriate announcement reflecting the circumstances (and will promptly make such release if required to do so by law or the NZX Listing Rules). The Board will consider seeking a trading halt if considered necessary to ensure an orderly market pending release of an announcement.
- > Before engaging with any offeror or potential offeror, the Company may enter into a confidentiality agreement with that party.
- > The Board will establish a committee (the Takeovers Committee) comprised of non-interested directors (see Appendix) so the Takeovers Committee is in a position to make a recommendation to shareholders as to whether the offer should be accepted. The Takeovers Committee will have authority to make binding decisions in respect of the process, including but not limited to:
 - retaining legal and financial advisers;
 - appointing an independent adviser for the purposes of the Takeovers Code; and
 - approving any announcements or communications relating to the potential transaction.
- > The Chair of the Takeovers Committee, or their nominee, will be the only person authorised to speak publicly on behalf of the Company in relation to the bid.
- > The Company should ensure that any internal valuation model is refreshed, and that external research about the Company is monitored.
- > Any market announcement in relation to the Company's financial performance, financial position, or prospective financial performance or financial position after the Takeovers Committee has been established, shall be approved by the Takeovers Committee. If such an announcement is necessary on short notice the announcement may be made by approval of those members of the Takeovers Committee available, meaning that some members of the Takeovers Committee may not have the opportunity to participate in the decision making.
- > The Takeovers Committee should consider engaging in full communication with all shareholders with updated information provided as soon as practical and in accordance with the Company's Market Disclosure Policy.

6 Policy review

The Nominations and Corporate Governance Committee will review this policy as required and at least once every two years and recommend any proposed changes to the Board for approval.



Appendix: “Interested Director” Protocol

This Appendix sets out a protocol for any directors involved with, or otherwise associated with (such as a potential party to a lock-up agreement with), a bidder (or likely bidder) in the event of a takeover offer for the Company.

Directors have various obligations (including both disclosure and confidentiality obligations) under the Companies Act 1993 and the NZX Listing Rules. This protocol sets out additional principles for regulating the role of, and flow of information to, interested directors.

- > Any director who is involved with, or who is associated in any other way with, a bidder (or a person likely to become a bidder), subject to any legal restrictions, must make prompt disclosure to the Board (initially via the Chairperson) as soon as he or she becomes aware of a potential bid.
- > This disclosure should be sufficient to ensure that the directors not associated with any bidder (“non-interested directors”) can satisfy their legal obligations and properly assess what steps to take to prevent (or minimise) any prejudice to the Company and non-bidding shareholders as a result of the conflict.
- > The non-interested directors, after consulting the Company’s legal adviser (if required), will:
 - confirm whether that director should be regarded as interested; and
 - take such steps as they shall reasonably consider necessary or desirable to prevent (or minimise) any prejudice to the Company and non-bidding shareholders as a result of the conflict.
- > Any interested director will not be entitled to receive any information, report or other material provided to, or prepared by, the non-interested directors concerning the bid, the Company’s response to the bid, or any other matter the non-interested directors consider should not, in the circumstances, be disclosed to that director in view of their interest, except to the extent that access is necessary for a interested director to fulfil their obligations under applicable law in respect of the offer or if the non-interested directors determine otherwise. The Company’s management should be instructed accordingly.
- > No interested director will make any request or demand for any bid response materials to any person other than the non-interested directors, who will be entitled to refuse access to that information or grant access on such terms and conditions as they consider appropriate. The Company’s management should be instructed accordingly.
- > An interested director will not be entitled to attend meetings of the Board (or committees of the Board, including the Takeovers Committee) called to discuss the bid, any related issues, or any other matters the non-interested directors consider should not be discussed with the interested director in view of that director’s conflict. An interested director will leave any meeting at which any such matter is discussed unless the non-interested directors agree to them remaining.
- > At the request of any interested director, or at any other time the non-interested directors consider appropriate, the non-interested directors will consider whether circumstances have altered sufficiently (e.g. a bidder has withdrawn) for an interested director to no longer be regarded as interested.
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