

# WILLIAM FRY

## A Summary Guide to the Irish Takeover Rules

### Introduction

Where the target in a public takeover is an Irish incorporated public company with a listing on a recognised securities exchange (**TargetCo**), the acquisition process is regulated by the Irish Takeover Panel Act 1997, Takeover Rules, 2022 (**the Takeover Rules**).

This is a broad summary of selected areas of the Takeover Rules. A more detailed explanation of any aspect of the takeover process under Irish law will be provided on request, *contact details below*.

### Methods of Acquisition

The two principal ways of acquiring an Irish-listed public company are by (i) a court-approved **scheme of arrangement** or (ii) **general offer**.<sup>1</sup> It is also possible to use the European Cross-Border Merger Regulations to effect the acquisition by **merger** of an Irish-listed public company, although to date the only announced transaction, the proposed merger of Northern Foods plc and Greencore Group plc, which sought to use the merger procedure did not ultimately close.

A scheme of arrangement requires cooperation of the TargetCo's board and at least 75% in value of the TargetCo shares voted at the shareholder meeting to consider the scheme.<sup>2</sup>

A general offer comprises an offer to all shareholders of TargetCo to acquire all their shares on the same terms for shares of the same class.

To acquire 100% control of TargetCo, the company making the offer (**BidCo**) may use a statutory 'squeeze out' procedure to compulsorily acquire the shares of dissenting shareholders. The acceptance threshold to trigger squeeze out is generally 90% of the issued share capital of TargetCo, reducing to 80% where TargetCo's listing is on a non-regulated market such as AIM on the London Stock Exchange or Euronext Growth on Euronext Dublin.

All such takeovers are regulated by the Takeover Rules.<sup>3</sup> These provide a form, structure and timetable for takeovers and are administered by the Irish Takeover Panel (the **Panel**) which is the statutory body with responsibility for supervising takeovers in Ireland. The Panel is comprised of representatives of financial, legal and other professional bodies.

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<sup>1</sup> Stamp duty at a rate of 1% of total purchase price applies to acquisitions by either scheme of arrangement or general offer.

<sup>2</sup> If TargetCo's shares are traded via the Euroclear Bank system, at least 33% in nominal value of its share must be voted on the scheme resolution.

<sup>3</sup> The Takeover Rules apply to any transaction where a person acquires control of a listed company, "control" means an interest of 30% or more of the voting rights of TargetCo.

## Takeover Rules – General Principles

The basis of the Takeover Rules is a set of guiding principles in relation to any offer, as set out in the Irish Takeover Panel Act 1997, as amended (the **Takeover Act**). The following provides a summary of the principles applicable to the conduct of a takeover:

- TargetCo shareholders of the same class must be afforded equivalent treatment.
- TargetCo shareholders must have sufficient time and information to enable them to reach a properly informed decision on the merits of an offer.
- All parties to an offer must use every endeavour to avoid the creation of false/artificial market for TargetCo's securities.
- A BidCo must announce an offer only after ensuring that it can discharge in full any cash consideration offered.
- A TargetCo must not be hindered in the conduct of its affairs for longer than is reasonable by the offer.
- Any substantial acquisition of securities shall take place only at an acceptable speed and shall be subject to adequate and timely disclosure.

## Principal Rules of Relevance during an Offer Period

### Director Responsibility

The directors of TargetCo/BidCo will be responsible for all documents (including announcements, presentations and briefings) issued by their respective company in connection with the offer to acquire TargetCo (**Offer**). Directors should disclose all relevant information relating to themselves and all other relevant facts and opinions they hold in relation to the Offer to the relevant board of directors and financial adviser.

The financial advisers to TargetCo and BidCo are responsible for ensuring that each of TargetCo, BidCo and their respective directors are aware of, and comply with, the responsibilities imposed on them by the Takeover Rules.

### Acting in concert

Many provisions of the Takeover Rules can be triggered as a result of actions taken by two or more persons "acting in concert", where pursuant to an agreement or understanding between them (whether formal or informal) they co-operate to acquire securities in TargetCo or to frustrate the successful outcome of the Offer (**concert parties**). For example, in the case of BidCo, each of its affiliates, directors, advisers and any co-investors for the Offer will be deemed to be concert parties of BidCo.

## Strict Confidentiality

Once an approach has been made by BidCo to directors of TargetCo, the obligation to make an announcement rests with TargetCo's directors. Strict confidentiality concerning the potential offer must be maintained before the announcement of a firm intention to make an Offer (**Rule 2.7 announcement**). Prior to this, the existence of the initial approach must only be disclosed on a "need to know" basis in circumstances where the recipient understands the need for strict confidentiality.

## Leak Announcement & Put Up or Shut Up

Any market rumour, speculation or untoward movement in the TargetCo share price will trigger an obligation to make a preliminary announcement which must identify all parties that have made an approach expressing interest in acquiring control of TargetCo (**Rule 2.4 announcement**). This will impose a 42-day time limit within which each such potential BidCo must either make a Rule 2.7 announcement of its firm intention to make an Offer or confirm that it does not intend to make an Offer, in which case it will ordinarily be barred from making an Offer in respect of TargetCo for a 6-month period.

## Engagement with Funding Banks

Before the Rule 2.7 announcement, the Panel will generally not permit BidCo to approach more than one funding bank/funding source at a time. Panel consent can be obtained to approach further banks on an instalment basis; however, this will be strictly monitored by the Panel for leaks. Unlike in the UK, there is no accepted practice of being able to approach up to six funding sources at a time prior to a Rule 2.4 announcement or 2.7 announcement.

## Insider dealing

Arrangements must be put in place to ensure that no person in possession of price-sensitive information in relation to the Offer deals (or recommends others to deal) in TargetCo shares during the offer period other than BidCo. This includes the directors and the executive team of BidCo and TargetCo involved in the Offer, their close family members, controlled companies and family trusts.

## Dealings in shares by BidCo

Any dealings by BidCo or its concert parties could have adverse consequences for the Offer under the Takeover Rules. Such dealings may either be prohibited or may have to be disclosed under the Takeover Rules and may also affect the amount and nature of the consideration which BidCo will be required to provide under the Offer.

## Mandatory Bid

If any person, including BidCo (either alone or with its concert parties), acquires 30% or more of the voting rights in the shares of a TargetCo, that person/entity must make a mandatory cash offer for the TargetCo. The price of such offer must not be less than the highest price paid for shares in TargetCo by that person/entity or its concert parties in the preceding 12 months.

## Cash Confirmation

Where the Offer includes cash consideration, the Rule 2.7 announcement must include confirmation by BidCo's financial adviser that resources are available to BidCo to implement the Offer in full. Consequently, the takeover of an Irish-listed public company cannot be subject to a financing condition.

## Break Fees

While break fees are permitted under the Takeover Rules, they are subject to Panel consent and must be limited to specific quantifiable third-party costs and capped at 1% of the value of the Offer.

## Frustrating Action

The board of TargetCo is prohibited from taking actions which would be likely to frustrate an Offer or which may result in TargetCo's shareholders being denied an opportunity to decide on the merits of an Offer. For example, unless it has prior shareholder approval<sup>4</sup> to do so, the TargetCo board must not, without Panel consent, issue any shares, grant share options, dispose of or acquire material assets or enter non-ordinary course contracts.

## Profit Forecasts/Asset Valuations

Before making statements regarding future profits and prospects (including earnings guidance and any unaudited results figures), merger benefits (such as on synergies or earnings enhancement statements) or asset valuations advice should be obtained from the relevant party's financial and legal advisers. Profit forecasts (other than those made by a pure cash Offer) and benefit statements will generally need to be reported on by the reporting accountants and financial adviser or reconfirmed/updated by the party who made it.

## Fair presentation of information

TargetCo shareholders must be given sufficient information to enable them to reach a properly informed decision as to the merits of the Offer. All documents, statements, announcements and permitted advertisements made during the offer period must be prepared with the highest standards of care and accuracy and the information contained in them must be true, fairly presented and not misleading.

## Equal treatment of TargetCo shareholders

All TargetCo shareholders must be treated equally. For example, there must be no "special deals" entered into with any TargetCo shareholders regarding TargetCo shares which is not offered to all TargetCo shareholders. These arrangements are colloquially referred to as "Rule 16 Arrangements", and the most common example is in a management buyout where management is given the opportunity to roll-over their shares into BidCo even though this is not offered to other selling shareholders. In such a scenario, Panel and independent<sup>5</sup> shareholder consent will be required.

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<sup>4</sup> A simple majority vote is required.

<sup>5</sup> The "connected" party could not vote its shares on this resolution. The vote would require a simple majority for approval and would be held on a poll.

## Meetings

No meetings with TargetCo shareholders, brokers or analysts in relation to the Offer may be held without a representative of the relevant party's financial adviser being present (unless the Panel consents otherwise). No material new information or significant new opinions should be provided at such meetings. In media interviews no new information bearing on the Offer should be released.

## Stake-building

There are a series of technical rules called the Substantial Acquisition Rules (the **SARs**), which govern the speed at which a 29.9% stake can be acquired (outside of an offer). Subject to certain exceptions, the SARs provide that a party may not, in any seven-day period, acquire shares (or rights over shares) in a TargetCo carrying 10% or more of its voting rights if, following the acquisition, the party would hold securities (or rights over securities) carrying 15% or more, but less than 30%, of the voting rights in the TargetCo. The main aim of these rules is to give the TargetCo adequate warning of stake building.

## Takeover Timetable

The put-up-or-shut-up regime under the Takeover Rules places a 42-day period on BidCo to make its intentions publicly known. An indicative takeover timeline is attached below.

## Social Media

Social media, including X, LinkedIn, Facebook and Instagram, must not be used to publish information relating to the Offer other than the publication of the full text of an announcement after it has been published elsewhere in accordance with the Takeover Rules.

## More Details Available on Request

This Memorandum deals with the takeover laws in force in Ireland on 18 March 2025. The matters covered in this Memorandum are complex and are addressed in high-level form in this document. More details are available on the takeover process from our public takeovers team, which is vastly experienced with plenty of takeover deal experience. [Here](#)



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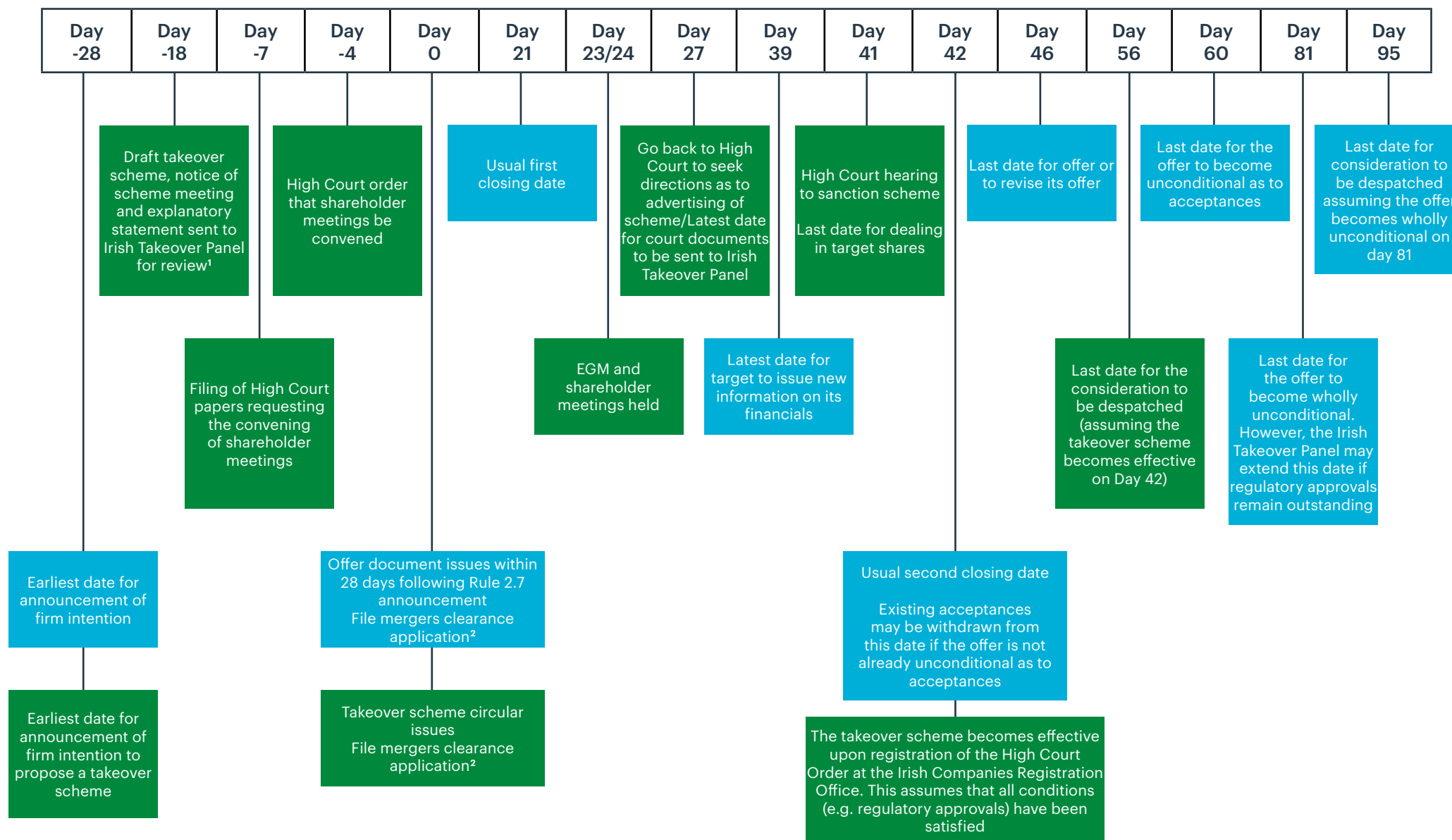


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### Indicative timeline - General Offer (blue) and Scheme of Arrangement (green)



<sup>1</sup> Copies of any other documents to be furnished to the High Court must be received by the Irish Takeover Panel in advance.

<sup>2</sup> An Irish mergers clearance application cannot be filed prior to Day 0, although pre-filing consultation is possible. An EU mergers clearance application can be filed before Day 0.