

The Takeovers Code and Compulsory Acquisition

A 90% Shareholder can buy the last 10%



The Takeovers Code applies to **Code Companies** – these are New Zealand registered companies that have:

- listed shares trading on the NZX, or
- 50 or more Shareholders and 50 or more Parcels of shares

Compulsory Acquisition of your Shares

When a Shareholder (or two or more Shareholders acting together) reaches 90% or more of the shares in the company they are called a Dominant Owner. Under the Takeovers Code a Dominant Owner has the right, and in some circumstances the obligation, to buy the remaining shares from the rest of the Shareholders. This is called Compulsory Acquisition.

How does this affect you?

The Dominant Owner must send the other Shareholders a notice (called an “acquisition notice”) about the Compulsory Acquisition. The Dominant Owner has to make a choice:

EITHER:

- a “compulsory sale” – to require the remaining Shareholders to sell their shares to the Dominant Owner

OR

- a “voluntary sale” – to let the remaining shareholders require the Dominant Owner to buy their shares

The acquisition notice will tell you whether the Dominant Owner has chosen a compulsory sale or a voluntary sale. A compulsory sale is usually chosen and it means you have to sell your shares.

If the Dominant Owner reached 90% by making a Takeover Offer, the price you will be paid for your shares will usually be the same as the price that was paid to the Shareholders who accepted the Takeover Offer. In some cases an independent adviser is appointed to determine the Compulsory Acquisition price.

If the Dominant Owner reached 90% by a Transaction that was not a Takeover Offer then you will be paid a fair and reasonable cash price for your shares.

The cash price is determined by an independent adviser. The independent adviser will have been approved by the Takeovers Panel as being independent from the Code Company and from the Dominant Owner.

What if you think you should get paid more for your shares?

In some circumstances you might have the right to object to the Compulsory Acquisition price. The acquisition notice that the Dominant Owner sends to you will tell you if you have the right to object to the price.

What if you do nothing at all?

If you do not respond to the acquisition notice from the Dominant Owner (if it requires you to sell your shares) within 21 days, the Code Company will transfer your shares to the Dominant Owner anyway. Then the Code Company will hold the payment on trust until you claim it.

Although some Shareholders may feel disappointed by a Compulsory Acquisition, without it small Shareholders might have no opportunity to sell their shares at a fair price.

This Fact-Sheet explains the Takeovers Code in a simplified way. It should not be relied upon as providing a legal explanation. It does not give financial advice. Investors should not rely on it for understanding all of their rights and obligations under the Takeovers Code. Investors should take their own legal and financial advice from a qualified professional.



TAKEOVERS PANEL