



The Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
London , EC4M 7DY
By e-mail: supportgroup@thetakeoverpanel.org.uk

11 November 2014

Dear Sir/Madam,

**GC100: Takeover Code: *consultation on post-offer undertakings and intention statements*
(Consultation paper PCP 2014/2)**

We welcome the opportunity to comment on the consultation paper.

In general, we fully support the proposed changes. We believe it is helpful to distinguish between post-offer undertakings and post-offer intention statements, and for the Panel to exercise its statutory powers to ensure that the former are complied with. We believe that this will assist offeree company boards in exercising their duties in considering the merits of an offer and provide clarity for other stakeholders, such as employees and pensioners.

We have one main observation, which relates to Q2 and the proposed new Rule 19.7. Whilst we agree with the criteria for a post-offer undertaking set out in the proposed Rule 19.7 (c), including that it must be specific and precise, the paper suggests that a reference to “*force majeure*” or matters beyond the parties control would not be regarded as sufficiently precise and that the nature of the relevant acts, events or circumstances would need to be described with precision. Our concern is that if every conceivable circumstance had to be set out it would result in so many carve-outs that it could run to many pages. It would no doubt be fiercely negotiated by each party, and subjected to detailed and technical drafting by their lawyers. The result is would be far from understandable by most stakeholders or capable of objective assessment. *Force majeure* is a term which is readily understandable, and if a matter is genuinely beyond a party’s control, how can that party be expected to comply?

GC100 Group

The Association of General Counsel and Company Secretaries of the FTSE 100

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Secretary: Mary Mullally - GC100 c/o Thomson Reuters Legal UK & Ireland, 160 Friars House, Blackfriars Road, London SE1 8EZ - T: 44 (0)20 7542 7194
E: mary.mullally@thomsonreuters.com

We suggest that, since the Panel must be consulted in advance both when any party wishes to make a post-offer undertaking and when that party wishes to rely on a qualification to excuse itself from acting in accordance with its undertaking, the Panel should be able to exercise sufficient discretion to decide whether something amounts to *force majeure* or is otherwise beyond the control of the party.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Mary Mullally', with a horizontal line drawn through the signature.

Mary Mullally
Secretary, GC100
+44 (0)20 7542 7194