

## **2 Cheap Cars Group - Board Protocols (for takeover offers and schemes of arrangement)**

### **1. Introduction**

- 1.1 This document outlines the protocols and procedures to be followed if:
- 1.2 There is an approach for a potential takeover or merger (including by way of a scheme of arrangement under Part 15 of the Companies Act 1993).
- 1.3 It is expected that 2 Cheap Cars Group's compliance with the requirements of the Takeovers Code and the relevant provisions of the Companies Act and oversight of any takeover/merger process will be supervised by a sub-committee of independent directors (Takeover Committee). The appointment of the Takeover Committee will be considered at the time of offer based on any conflicts of interest.<sup>1</sup> In the absence of any such conflicts it is expected that the sub-committee will include the chairperson of the Board (Chair) and the Chair of the Audit, Finance and Risk Management Committee
- 1.4 All announcements by the Company in relation to any takeover/merger offer under these protocols (including the scheduled market announcement) and all information provided by the Company to its shareholders about the offer, must in each case be sent to the Takeovers Panel as well as NZX

### **2. Confidential Potential Takeover Approaches / Proposals**

- 2.1 The Board (and senior managers) will apply this Protocol on receipt of an approach or correspondence regarding a potential takeover or merger, whether by way of an offer under the Takeovers Code or a scheme of arrangement under the Companies Act 1993. This could be, for example, where a potential acquirer wishes to obtain an agreement to allow due diligence in advance of issuing a takeover notice, to engage the Board's appetite or response to a potential takeover or to propose a scheme of arrangement
- 2.2 If 2 Cheap Cars Group is approached by a potential offeror on the above basis, the Board must do the following:
  - 2.2.1 Treat all discussions and correspondence confidentially.
  - 2.2.2 Contact the Company's lawyers to seek advice on confidentiality and continuous disclosure obligations regarding the incomplete proposal.
  - 2.2.3 Call a Board meeting to:
    - a) consider any proposal;
    - b) consider the Company's continuous disclosure obligations in relation to the proposal, including determining whether the proposal is incomplete and confidential;
    - c) put in place confidentiality arrangements to ensure any ongoing consideration remains confidential (assuming confidentiality has been maintained to date and the board wishes to consider the proposal further);
    - d) identify any conflicts of interest that any board members may have;
    - e) establish a Takeover Committee to oversee the correspondence regarding the proposal to ensure compliance with all of 2 Cheap Cars Group's obligations under law and the Listing Rules;
    - f) consider appointing a financial adviser to advise it on the proposal; and
    - g) consider who it might appoint as an independent adviser in the event that the appointment of such an adviser becomes necessary

It is advisable that the Board invite the Company's lawyers join this Board meeting.

2.3 If the potential offeror requests to conduct due diligence on 2 Cheap Cars Group:

- 2.3.1 The Takeover Committee needs to consider whether to grant the request or not and make a recommendation to the Board accordingly.
- 2.3.2 In forming a decision, the duty of the directors is to act in 2 Cheap Cars Group's best interests, which includes the interests of all shareholders. The market practice on whether or not to grant due diligence is mixed reflecting the fact that each company subject to an approach by a potential offeror has its own unique set of circumstances.
- 2.3.3 Directors should note that the Takeovers Code prohibits "defensive tactics" by the Board. Rule 38 provides that:

*"If a code company has received a takeover notice or has reason to believe that a bona fide offer is imminent, the directors of the company must not take or permit any action, in relation to the affairs of the code company, that could effectively result in:*

*(a) an offer being frustrated; or*

*(b) the holders of the equity securities of the code company being denied an opportunity to decide on the merits of the offer.*

*... [This] does not prevent the directors of a code company taking steps to encourage competing bona fide offers from other persons."*

The Takeovers Panel acknowledges that in general, rule 38 does not require (and cannot be used to require) target companies to provide information to an offeror, even if the offeror requests the information. If an offeror requests due diligence-type information or confirmations from a target company, or includes conditions in its offer that require the target to provide such information or confirmations, the target will generally not breach rule 38 by refusing to provide that information or those confirmations.<sup>1</sup>

### 3. **Review**

- 3.1 The board is responsible for reviewing these Takeover Protocols and any amendments to them. The protocols shall be reviewed on a biennial basis:

Date Approved: November 2023

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<sup>1</sup> Despite the general position set out above, the case law and the Panel's view is that refusing to provide, or unreasonably delaying the provision of, information to an offeror that the offeror cannot otherwise reasonably obtain, which is required for the offeror to assess the need for, or obtain, consent to acquire a relevant interest in "sensitive land" under the OIA may be a prohibited defensive tactic.