

Schemes of arrangement under Jersey law

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What is a scheme of arrangement?

A scheme of arrangement (a **Scheme**) is a court-sanctioned compromise or arrangement between a company and its creditors or members (or any class of them) in accordance with Part 18A of the Companies (Jersey) Law 1991 (the **Law**), specifically sections 125 to 127 (inclusive). The Jersey provisions on Schemes are largely similar to those in England.

Whilst the scope for using a Scheme is wide, this guide only considers Schemes between a company and its members in the context of a takeover bid.

Statutory requirements

A Scheme has to be approved by the members of the company (or of the relevant class concerned) at a special meeting convened at the direction of the court. At that meeting, the Scheme must be approved by a majority in number representing 75 per cent of the voting rights of the members (or class of members) present and voting in person or by proxy.

After the Scheme has been approved by the requisite majority of members, it must then be sanctioned by the court. The Scheme becomes effective when the relevant act of court is delivered to the Jersey registrar of companies for registration.

Once effective, the Scheme is binding on all members (or all members of the relevant class) and a copy of the relevant act of court must be annexed to every copy of the memorandum of association of the company issued after the order has been made.

Why use a Scheme?

The biggest advantage of a Scheme (over other takeover alternatives) is the certainty around acquiring 100 per cent of the target company. If the court has sanctioned a Scheme, all the members of the class concerned are bound whether they voted in favour of the Scheme or not.

Although under a traditional takeover offer (as opposed to a Scheme) only a holding of shares carrying over 50 per cent of the voting rights is required to obtain control, in order to acquire 100 per cent of the target, the bidder needs acceptances into the bid of not less than 90 per cent in value or number of the shares to which the offer relates in order for the bidder to exercise its statutory squeeze out rights for the remaining outstanding shares. This is in contrast to a Scheme where, subject to receiving a vote in favour of the proposal by a majority in number representing at least 75 per cent of the voting rights of the members present and voting in person or by proxy, all members of that class will be forced into the bid.

Another potential advantage of using a Scheme over a traditional takeover bid is that the period for acquiring 100 per cent control can, in circumstances, be shorter under a Scheme than a takeover offer because of the time limits imposed by the statutory squeeze-out procedures.

The Law also permits two Jersey companies to merge, or a Jersey company to merge with a non-Jersey company. The merger provisions of the Law could be used to give effect to a takeover of a Jersey

company, although they are relatively untested in this context. The shareholder approval threshold for a merger is a special resolution of the members (which, unless the articles of association of that company state otherwise, requires two-thirds or more of the voting rights of the members voting on that resolution). Under the Law, members and creditors have a right to object to a merger.

Though flexible, a Scheme is not suitable for every eventuality. Although there are comparatively few, the disadvantages are worth being conscious of when considering if your strategic aim is best met by deploying a Scheme, or some other takeover method. Disadvantages include, among other things:

1. the inability of a bidder to control the process such that the target and its directors control the timetable and ultimately the implementation of the Scheme;
2. the consideration of differing class rights in that there may be a requirement for different Scheme meetings to account for different classes; and
3. procedural complexities that stem from involving the courts in the takeover process.

The Scheme procedure

There are four main steps involved in undertaking a Scheme which broadly mirror the process in the UK. These are: application to the court for an order to call a Scheme meeting of members; Scheme meeting notification (including the despatch of Scheme documentation); the Scheme meeting itself; and the application to the court for sanction of the Scheme. Expanded, these are as follows:

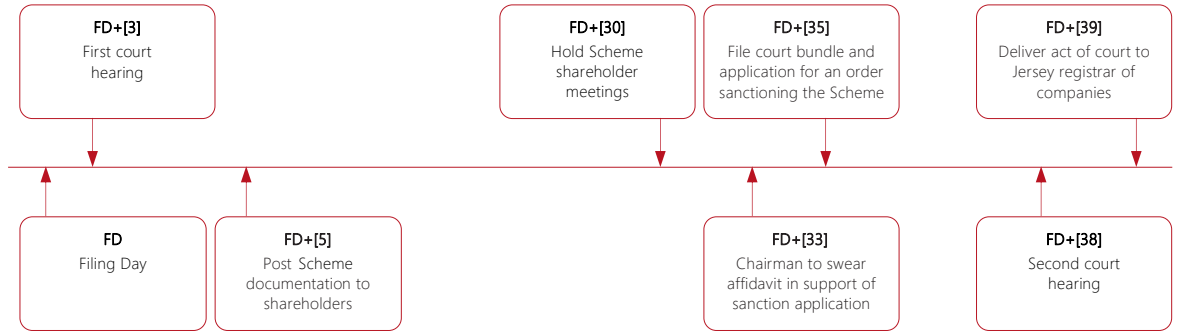
1. The company will file an application with the court for an order requisitioning a meeting of members (or class of members, as the case may be) to consider and vote on the proposed Scheme. The application will also request for any directions to be given by the court.
2. Every notice summoning the court meeting that is sent to members must be accompanied by a statement complying with the Law. The disclosure requirements are comprised in the Scheme circular to members and, among other things, include information on: the effects of implementation of the Scheme; the consideration payable (being cash, shares or a combination of both); the disclosure of any material interests of the directors (whether in their capacity as directors or otherwise) and the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and generally must, as far as possible, give all information reasonably necessary to enable the members to decide how to vote at the meeting.
3. At the convened court meeting, a majority in number representing 75 per cent of the voting rights of the members (or class of members) present and voting, in person or by proxy must agree to and approve the Scheme. Usually, immediately following the court meeting, a general meeting of the company is held to approve certain amendments to the company's articles of association to help facilitate the Scheme.
4. A second court application is then made to the court for it to sanction the Scheme. The court has stated that in exercising its discretion, it will follow the settled approach of the English courts. It is therefore necessary to consider whether:
 - the statutory requirements set out in the Law have been complied with;
 - each relevant class of member was fairly represented by those who attended the meeting(s) ordered by the court the statutory majority are acting in good faith and are not coercing the minority in order to promote interests adverse to those whom they purport to represent; and
 - the Scheme is such that an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve.

Timing to implement a Scheme

The court timetable for a scheme is established upfront. Recent practice suggests that the overall time from the commencement of proceedings to implementation of the Scheme will be a minimum of four to six weeks (dependent on notice requirements and any non-Jersey regulatory and competition clearances required). An indicative timetable is set out below:

Filing Day (FD)	Company finalises Scheme documents and files court bundle and application for an order requisitioning the proposed Scheme meeting (filing of documentation must be two clear business days before the first hearing).
FD+[3]	First court hearing. Directions made by the court.

FD+[5]	Post Scheme documentation to shareholders. ¹
FD+[30]	Scheme shareholder meetings held (court meeting and EGM). ²
FD+[33]	Chairman to swear affidavit verifying that, amongst other things, notice was duly sent; that the meeting was duly held; and giving particulars of the result of the meetings.
FD+[35]	File court bundle and application for an order sanctioning the Scheme (filing of documentation must be two clear business days before the sanction hearing).
FD+[38]	Second court hearing. Order sanctioning the Scheme is given.
FD+[39]	Deliver act of court to Jersey registrar of companies for registration (usually a day or two after the second court hearing).



Note: the dates given are indicative only and will ultimately be determined by each company's articles of incorporation, court availability and any listing rule requirements.

UK Takeovers Code and JFSC regulated/TISE listed companies

When a Scheme or other proposal is designed to affect a takeover, subject to the status of the target, the Takeover Panel (the **Panel**) and the City Code on Takeovers and Mergers (the **Code**) may have a role to play. The Panel's role will mainly be concerned to ensure the documentation complies with the Code, but consideration needs to be given to these regulations prior to launching a Scheme.

In addition to the standard court process, companies regulated by the Jersey Financial Services Commission (the **JFSC**) or listed on The International Stock Exchange (**TISE**) will need to liaise with the JFSC or TISE (as the case may be) regarding the Scheme in accordance with applicable rules.

¹ This will depend on length of time taken to print the shareholder circulars and Scheme documentation for posting. In this timetable we have allowed two days.

² Typically at least 21 clear days notice is given, although this will depend on notice provisions in the company's articles of association and any applicable listing rules requirements. The length of time between posting of the scheme circular and shareholder meetings will also need to account for provisions in the company's articles of association relating to deemed receipt of communications and clear days.

Contacts

For further information, please get in touch with your usual Mourant contact or, alternatively, a list of contacts can be found [here](#).

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