

UK Takeovers: Panel proposes to narrow scope of companies subject to the Code

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On April 24, 2024, the Takeover Panel published consultation PCP 2024/1, in which it proposes to narrow the scope of companies to which the Takeover Code applies. The proposed amendments are intended to refocus the application of the Takeover Code on those companies which expect to be subject to UK takeover regulation and to provide clarity and certainty about whether a company is subject to the Takeover Panel's jurisdiction.

Proposed amendments

The Takeover Panel (the Panel) has proposed that the Takeover Code (the Code) should only apply to:

- 'UK registered' companies which are 'UK listed'; and
- 'UK registered' companies which at any time during the three prior years were 'UK listed'.

Companies with registered offices in the UK, the Channel Islands or the Isle of Man will be 'UK registered' companies and will be 'UK listed' if admitted to trading on:

- a UK regulated market (i.e., the London Stock Exchange's Main Market or the Aquis Main Market);
- a UK multilateral trading facility (i.e., the AIM market operated by the London Stock Exchange or the Aquis Growth Market); or
- a stock exchange in the Channel Islands or the Isle of Man (i.e., TISE).

The 'residency test', the test currently applied by the Panel to determine application of the Code by reference to the location of a company's central management and control, will be removed from the Code. Presently, a company satisfies the 'residency test' and is subject to the Code if the Panel determines a majority of its directors are ordinarily resident in the UK, the Channel Islands or the Isle of Man. This means that whether a company is subject to the Code can alter from time to time with changes to the composition of a company's board.

Subject to transitional arrangements, the proposed amendments will mean that the following companies will cease to be subject to the Code:

- public and private companies which were UK listed more than three years prior to the relevant date;
- public and private companies whose securities are, or were previously, traded only on an overseas market;
- public or private companies whose securities are, or were previously, traded using a matched bargain facility (such as JP Jenkins or Asset Match);
- any other public company that is not UK listed; and
- a private company which filed a prospectus at any time during the previous 10 years.

Transitional arrangements

It is proposed that there will be a three-year transitional period during which the Code will continue to apply to 'transition companies' comprising:

- companies that are subject to the Code on the implementation date of the amendments other than because they are UK listed; and
- companies that would be subject to the Code on the implementation date of the amendments but for the fact that they do not satisfy the residency test at that time.

The intention of the transitional arrangements is to allow relevant companies and their shareholders to make suitable arrangements in response to the amended regime including changing the company's circumstances to remain subject to takeover regulation or exiting investments in companies that will cease to be subject to the protections afforded by the Code.

Impact of the proposed amendments

If the proposed amendments are implemented as proposed by the Panel, the scope of companies to which the Code applies will be narrowed and clarified.

It will be clear that the Code will not apply to companies with securities traded on a Private Intermittent Securities and Capital Exchange System (PISCES), private markets (such as TISE Private Markets) or crowdfunding platforms (such as Seedrs and Crowdcube).

There will also cease to be the possibility that companies solely listed overseas may drift into, and out of, the Panel's jurisdiction, depending on the residency of their directors.

However, that may not have a substantial impact in practice with respect to UK incorporated companies listed in the United States.

Based on a review of the disclosures made by a sample of 40 UK incorporated public companies with only a listing of either shares or American Depositary Shares on the NYSE or Nasdaq, fewer than 20% satisfied the residency test at or around the time of their listing. This may reflect that companies redomiciling to the UK in connection with a merger or group reconstruction and seeking an overseas listing typically have an existing board comprised of overseas directors and that, in respect of those companies completing an initial public offering in the United States, the composition of their board of directors may reflect their pre-offering investor base or market focus. However, as more UK companies look to the US markets as their sole listing venue, it will be helpful to have a clear and objective basis for determining whether a company is subject to the jurisdiction of the Panel.

Companies that cease to have a UK listing (for example, following completion of a take-private) will be subject to the jurisdiction of the Panel for a much shorter run-off period, consistent with the Panel's principal role being the regulation of takeover bids for companies which are listed on UK regulated markets. This will apply to companies that migrate their listing to an overseas market, as well as to those which cease to have a UK listing for other reasons.

By removing the burden of compliance with the Code, more unlisted companies and private companies may make use of matched bargain facilities and trade securities on other platforms such as PISCES, TISE Private Markets and the Seedrs Secondary Market.

Timeline

The Panel's consultation is due to close on July 31, 2024. The Panel anticipates publishing a response statement during Autumn 2024, with the proposed amendments coming into effect approximately one month later.

The full consultation paper can be found here: [PCP 2024/1](#)

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