



UK Takeover Panel Proposes Narrowing the Scope of Companies Subject to the Takeover Code

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On 24 April 2024, the UK Takeover Panel (the Panel) published [Public Consultation Paper 2024/1](#) (the PCP), which proposes a significant change to the applicability of the UK Takeover Code (the Code), by narrowing the scope of companies to which the Code applies.

The amendments proposed by the PCP would, if adopted, result in a significantly reduced number of companies subject to the Code and impact those that are incorporated in the UK but listed on the NYSE or NASDAQ. The consultation period for the PCP is open until 31 July 2024, and the Panel expects to publish a response statement in autumn 2024, with changes to the Code expected to be implemented one month later.

Proposals

The PCP proposes that the Code only apply to companies that have their registered offices in the UK, Channel Islands or Isle of Man and that have (or had in the previous three years) their securities admitted to trading on a:

- UK regulated market (e.g., the Main Market of the London Stock Exchange),
- UK multilateral trading facility (e.g., AIM), or
- stock exchange in the Channel Islands or the Isle of Man (e.g., The International Stock Exchange).

These are referred to for these purposes as being “UK-listed.”

Under the proposals, the Code would cease to apply to all unlisted plcs and private companies (unless they have been UK-listed within the previous three years). The Code would continue not to apply to a company that has its registered office outside of the UK, the Channel Islands or the Isle of Man.

NYSE- and NASDAQ-Listed Companies

Currently, the Code applies to certain companies listed on the NYSE or NASDAQ if their registered office is in the UK, Channel Islands or Isle of Man and they are considered by the Panel to have their place of central management and control in any of these jurisdictions. This is known as the “Residency Test”, and the primary factor the Panel takes into consideration in its assessment is whether a majority of the company’s board of directors are resident in the UK, Channel Islands or Isle of Man.

The PCP proposes abolishing the Residency Test so that any companies that are only listed on the NYSE or NASDAQ markets would no longer be subject to the Code, even if they have their place of central management and control in the UK, Channel Islands or Isle of Man.

In recent years there has been a steady rise in this type of company, known as a foreign private issuer (FPI) — a non-US company that has chosen the NYSE or NASDAQ as its primary listing. If the Panel’s proposals are adopted, the previous “gray zone” in relation to these FPIs will no longer exist, and FPIs will have greater certainty around the perimeter of regulatory oversight where the Code is concerned.

Transitional Arrangements

The PCP proposes that a three-year transition period apply from the date the changes are implemented, to allow companies to adjust to the new regime. For NYSE- and NASDAQ-listed companies that satisfy the Residency Test, the Code would continue to apply for this transition period.

During this time, an impacted company may wish to consider whether it and its shareholders want to continue benefiting from Code protections by replicating them in the company’s constitutional documents or by otherwise making itself subject to the jurisdiction of the Panel or an alternative takeovers regulator.

At the end of the three years, such impacted companies would no longer be subject to the Code.

Other Markets

The PCP also confirms that the Code does not apply to companies whose securities are only traded on platforms such as to the Private Intermittent Securities and Capital Exchange System (PISCES), private markets (e.g., TISE Private Markets) or secondary/crowdfunding platforms (e.g., Seedrs).