

Extension of UK Takeover Code Jurisdiction

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On 15 May, the U.K. Takeover Panel (the Panel) published its response to a consultation paper proposing to extend the jurisdiction of the U.K. Takeover Code (the Code). The Panel has concluded that the Code's jurisdiction should be extended to cover all companies that have their registered office in the U.K., the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a multilateral trading facility in the U.K., such as AIM. The amendments are to come into effect on 30 September 2013.

The effect of these amendments is to remove the residency test for such companies, which had provided that companies whose securities were not traded on a "regulated market" were only subject to the Code if they had their registered office in, and were centrally managed and controlled in, the U.K., the Channel Islands or the Isle of Man. This means that, regardless of its location of central management and control, the Code will now apply to all companies which have their registered offices in the U.K., the Channel Islands or the Isle of Man if they are listed on a multilateral trading facility in the U.K., such as AIM.

The jurisdiction of the Code will be extended to cover all transactions with effect from 30 September 2013, including transactions that straddle that date. Certain other minor and consequential changes to the Code will also be made, including with respect to the "ten year rule," which brings certain private companies which previously were public in nature into the Code net.

- **Many companies that will be affected by the changes have Code-like protections built into their constitutional documents, including most commonly the requirement to make a mandatory bid to all shareholders upon certain acquisitions of shares.** Such provisions typically afford directors significant discretion as to when and how the Code-like protections are enforced, although in some case such provisions may be mandatory. On 30 September, directors will lose that element of discretion. Such provisions should be reviewed to determine whether they (and indeed other aspects of their constitutional documents) are consistent with the Code. Public statements about Code applicability also should be considered. Recognising that most companies will wish to remove constitutional provisions which replicate or conflict with the Code, the effective date of the changes has been pushed back to 30 September, rather than the one month following publication of the Response Statement, as originally envisaged.
- **Bidders contemplating offers for such companies will need to consider the impact the Code will have on their transaction.**
- **Persons with interests in the shares of such companies approaching the mandatory bid threshold of 30 percent (or who are interested in between 30 percent and 50 percent, such that the acquisition of any further interests would trigger a mandatory bid) should be prepared to put safeguards in place to ensure dealings do not occur inadvertently.** In particular, companies and shareholders should consider the position if convertible securities, warrants or options to subscribe for new shares are currently held, the exercise

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of which might trigger an obligation to make a mandatory bid. There are no grandfathering provisions for the exercise of such rights, except where: (i) shareholders approved the original issuance of the securities; (ii) approval of shareholders is obtained after 30 September for the exercise of such rights; or (iii) the shareholder undertakes to reduce its shareholding to below 30 percent within a reasonable time of exercising its rights.

Readers should note that on the afternoon of 16 May the Panel made minor clarificatory revisions to the response so the current version of the response on the Panel website should be referred to rather than any versions printed prior to that point.

Panel consultation papers and responses can be found at <http://www.thetakeoverpanel.org.uk>.