

# THE TAKEOVER PANEL

## **Instrument 2009/3**

### **Amendments relating to the Companies Act 2006 and other minor and consequential amendments to the Code**

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, the Panel and, in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee, hereby make this instrument containing rules.

The Takeover Code is amended, with effect from 1 October 2009, in accordance with the Appendix to this instrument.

In the Appendix, underlining indicates new text and striking through indicates deleted text.

**Peter Scott**  
**Chairman of the Panel**  
**for and on behalf of the Panel**

**Lindsay Tomlinson**  
**Chairman of the Code Committee**  
**for and on behalf of the Code Committee**

**23 September 2009**

## APPENDIX

### INTRODUCTION

#### **3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE**

...

##### **(a) Companies**

...

##### **(ii) Other companies**

The Code also applies to all offers (not falling within paragraph (i) above or paragraph (iii) below) for public and private companies<sup>†</sup> and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices<sup>\*</sup> in the United Kingdom, the Channel Islands or the Isle of Man and which are considered by the Panel to have their place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man, but in relation to private companies only when:—

...

- (C) any of their securities have been subject to a marketing arrangement as described in section ~~163(2)(b)-693(3)(b)~~ of the ~~Companies Act 1985~~ at any time during the 10 years prior to the relevant date; or

...

#### **4 THE PANEL AND ITS COMMITTEES**

...

##### **(a) The Panel**

...

The Panel comprises up to ~~34~~35 members:

...

- (ii) up to ~~two~~three Deputy Chairmen, who are appointed by the Panel;

...

##### **(b) The Code Committee**

...

The Code Committee carries out the rule-making functions of the Panel and is solely responsible for keeping the Code (other than those matters set out in sections 1, 2(a) and (b), 4(a), (b) and (c), 5, 7, 8, 13, 14, 15 and 16 of the Introduction, which are the responsibility of the Panel) under review and for proposing, consulting on, making and issuing amendments to those parts of the Code. The Code Committee's consultation procedures are set out in its Terms of Reference. Amendments to those matters set out in sections 1, 2(a) and (b), 4(a), (b) and (c), 5, 7, 13, 14, 15 and 16 of the Introduction will usually be issued by the Panel. Amendments to those matters set out in section 8 of the Introduction will be agreed by the Takeover Appeal Board and will be issued by the Panel with immediate effect.

...

**(c) The Hearings Committee**

The Hearings Committee of the Panel comprises the Chairman, up to ~~two~~ three Deputy Chairmen, up to eight other members designated by the Panel and the individuals appointed by the bodies listed at paragraph (a)(iv) above. Its membership from time to time, Terms of Reference and Rules of Procedure are available on the Panel's website.

...

**7 HEARINGS COMMITTEE**

...

**(c) Conduct of hearings before the Hearings Committee**

The quorum for Hearings Committee proceedings is five. The Chairman or, where he is unavailable, one of the Deputy Chairmen will usually preside as chairman of the proceedings in question ("chairman of the hearing"), although if the Chairman and ~~both~~ all of the Deputy Chairmen are unavailable, another member of the Hearings Committee will be appointed by the Chairman (or, failing that, by the other members of the Hearings Committee) to act as chairman of the hearing.

...

## **DEFINITIONS**

**Scheme of arrangement or scheme**

A transaction effected by means of a scheme of arrangement under ~~the Companies Act 1985~~, the Companies Act 2006 or similar statutory provisions in the Channel Islands or the Isle of Man.

## Rule 14

### 14.1 COMPARABLE OFFERS

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#### NOTES ON RULE 14.1

...

#### 3. *Treatment of certain classes of share capital*

*For the purpose of this Rule, the Panel may not regard as equity share capital certain classes of shares which, although equity share capital under the Companies Act ~~2006~~ 1985, have in practice very limited equity rights. In appropriate cases, the Panel should be consulted.*

## Rule 21

### 21.1 WHEN SHAREHOLDERS' CONSENT IS REQUIRED

**During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, the board must not, without the approval of the shareholders in general meeting:—**

...

**(b) (i) issue any ~~authorised but unissued~~ shares or transfer or sell, or agree to transfer or sell, any shares out of treasury;**

...

### 21.2 INDUCEMENT FEES

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#### NOTES ON RULE 21.2

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#### 2. *Statutory provisions*

*Any view expressed by the Panel in relation to such fees or arrangements can only relate to the Code and must not be taken to extend to any requirements of the Companies Act ~~2006~~ 1985, e.g. ~~Section 151~~ Chapter 2 of Part 18 of the Act, or any other relevant law or regulation.*

**Rule 24.2****24.2 FINANCIAL AND OTHER INFORMATION ON THE OFFEROR, THE OFFEREE COMPANY AND THE OFFER**

Except with the consent of the Panel:—

(a) where the consideration includes securities and the offeror is a company incorporated under the Companies Act ~~1985~~2006 (or its predecessors) and its shares are admitted to the Official List or to trading on AIM, the offer document must contain:

...

(b) where the consideration is cash only and the offeror is a company incorporated under the Companies Act ~~1985~~2006 (or its predecessors) and its shares are admitted to the Official List or to trading on AIM, the offer document must contain:

...

**Rule 37.1****37.1 POSSIBLE REQUIREMENT TO MAKE A MANDATORY OFFER**

...

*NOTES ON RULE 37.1*

...

6. *Renewals*

*Any waiver previously obtained under this Rule will expire at the same time as the relevant shareholders' authority under ~~Sections 164 to 166~~ Chapter 4 of Part 18 of the Companies Act ~~1985~~2006 (whether or not voting shares have in fact been redeemed or purchased). Accordingly, waivers will normally need to be renewed at the same time as the relevant shareholders' authority is renewed.*

**Appendix 1****APPENDIX 1****WHITEWASH GUIDANCE NOTE**

...

#### 4 WHITEWASH CIRCULAR

The circular must contain the following information and statements and comply appropriately with the Rules of the Code as set out below:—

...

(b) full details of the maximum potential controlling position:

...

(ii) where convertible securities, options or securities with subscription rights are to be issued, the potential ~~controller~~ controlling position must be indicated on the assumption that only the controllers will convert or exercise the subscription rights, and will do so in full and at the earliest opportunity (the date of which must also be given);

### Appendix 7

#### APPENDIX 7

#### SCHEMES OF ARRANGEMENT

#### DEFINITIONS AND INTERPRETATION

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#### Effective date

Effective date means:

(a) the date on which the order of the court sanctioning the scheme is delivered to the registrar of companies for registration; or;

(b) if later, the date on which the order of the court confirming ~~the any associated~~ reduction of capital and ~~minute of the reduction~~ statement of capital are delivered to the registrar of companies for registration and or, if the court so orders, the date on which they are registered ~~by him.~~