



RESPONSE FROM LAWRENCE GRAHAM LLP TO

PCP 2012/3-COMPANIES SUBJECT TO THE TAKEOVER CODE OF 5 JULY 2012

We welcome the opportunity to provide our comments on the consultation paper. In this response we have not sought to comment on every question in the consultation paper but have concentrated on those questions which we consider relevant to us and our clients.

Our responses

In response to questions 1 and 2. We agree that the "residency test" should be removed from the Code in its entirety and agree that at present the "residency test" can create uncertainty for all stakeholders as to when (and if) the Code applies. We consider that retaining the "residency test" for certain categories of companies as opposed to others, would add a further layer of complexity to the Code and in our opinion there would be no particular basis for this.

In response to question 4. The proposed amendments to the "ten year rule" and the introduction of a new definition of "multilateral trading facility", we support both the proposed amendment to 3(a)(ii)(A) and 3(a)(ii)(D) and agree that both these amendments assist in the clarification of when the "ten year rule" applies.

Our only comment in response to question 5 and the proposed consequential amendments to the Code as set out in Appendix B to the consultation paper, would be to consider whether the amendment to 3(a)(ii) should be re-worded to read as follows:

"...but in relation to private companies only where:

(D) they have filed...."

Further observations

In addition to our responses above, we have the following observations as to the consequences of the proposed amendments, were they to be accepted in the form currently intended:

1. As you may be aware certain companies which at present fall outside the Code (or may only come within the Code from time to time due to the application of the "residency test"), have included within their constitutional documents wording which seeks to include the intention of certain of the Code's provisions, particularly Rule 9. In some cases, these provisions state that they cease to apply in the event that the Code becomes applicable to the company; however other companies constitutional documents contain wording which is less flexible.

If the "residency test" was to be removed from the Code, these companies would need to co-ordinate the removal of these provisions from their constitution in conjunction with the date for the implementation of the removal of the "residency test", to avoid any conflict arising between the then new provisions of the Code and their constitutional documents. Such amendments would require shareholder approval, which may take companies time to obtain.

2. Shareholders of companies which are not currently subject to the Code (because of the exclusion which results from applying the "residency test"), which currently hold between 30 per cent. and 50 per cent. of the securities in issue, will need to be made aware of and consider the implications of the Code becoming strictly applicable, as a result of the removal of the "residency test" being implemented.



3. Has it been considered what the position will be of those investors who currently hold securities (such as options or warrants) which are convertible into shares of a company to which the Code does not currently apply, due to the application of the "residency test"; given that these convertibles may have been granted in the context of the "residency test" resulting in the Code being excluded and in circumstances where it would have been reasonable for an investor to believe that the Code was unlikely to ever apply.

This is especially relevant for those investors whose current shareholdings, when matched with their convertibles, (or those of others who may be "acting in concert") would, or are close to, imposing upon them obligations under Rule 9 of the Code. While the whitewash procedure could be used to remove the mandatory bid obligations under Rule 9, it is unlikely that there will be any legal obligation on a company to propose a whitewash resolution to shareholders, or indeed for shareholders to vote in favour of such resolution.

In our view it is unlikely that the removal of the "residency test" from the Code will result in a significant amount of companies becoming subject to the provisions of the Code; however we support the removal of the "residency test", as it will provide greater certainty for investors as to the Code's applicability and also provide greater and more certain investor protection.

Lawrence Graham LLP

13 September 2012