

THE TAKEOVER PANEL

NOTE TO ADVISERS IN RELATION TO CODE WAIVERS

The Panel Executive (the “Executive”) has established a procedure pursuant to which it will agree not to apply the Takeover Code (the “Code”) to a particular transaction where the company subject to the Code has very few shareholders and it would be inappropriate or unduly onerous to apply the Code – a so-called “Code waiver”. A Code waiver will only be granted following consultation with the Executive so that the Executive can ensure that certain safeguards are observed. These safeguards include written confirmations from each of the shareholders in the Code company that their rights under the Code have been explained to them and that they consent to the Code being disapplied in respect of the transaction in question. A copy of the Executive’s pro forma Code waiver letter is attached.

Circumstances in which a Code waiver will be granted

A Code waiver will generally only be available for companies with ten shareholders or fewer. If the company in question has more than one class of share capital in issue to which the Code applies, or has granted options, warrants or other rights to subscribe for equity share capital to which Rule 15 of the Code would normally apply, then the number of holders of such securities will also need to be taken into account for these purposes. Accordingly, a Code waiver will either need to be obtained from such persons or they must receive an offer or proposal in compliance with the Code.

The Executive will only consent to a Code waiver in respect of a specific transaction. It will not, for example, be possible to obtain a waiver of the Code in respect of all future transactions relating to a particular company, in the same way that it is not permissible for a company and its shareholders to agree to disapply the Code by including a provision to that effect in the company’s articles of association.

A Code waiver will only be granted with the consent of the Executive. Accordingly, where advisers are involved in transactions in respect of which a Code waiver may be appropriate, they should consult with the Executive at the earliest possible opportunity.

The Executive may request a company seeking a Code waiver to satisfy such other conditions as it may consider appropriate. **Advisers should in no circumstances despatch Code waiver letters for signature without consulting the Executive.**

Procedure to be followed

1. The advisers to the company to which the Code applies should contact the Executive to inform the Executive of the transaction and seek the consent of the Executive for a Code waiver.
2. If the Executive agrees that it is appropriate for a Code waiver to be granted, the advisers to the Code company should amend the pro forma Code waiver letter to take account of the particular facts of the transaction in question. The pro forma Code waiver letter explains the relevant information which should be included. Once amended, the form of the Code waiver letter should then be sent to the Executive for approval prior to its despatch to the shareholders in the Code company.
3. Once approved, the Code waiver may be sent to the shareholders in the Code company. The shareholders must be given sufficient time to consider the terms of the letter and to seek independent financial or legal advice prior to signing it – seven days will normally be considered to be sufficient for these purposes.
4. The advisers to the Code company should collate the Code waiver letters and, once all the signed originals have been received, they should be returned in their entirety to the Executive. The Code waiver will only be granted if **all** shareholders agree. Once the Executive has received all the original letters and confirmed that they are in order, a member of the Executive will contact the advisers to the Code company by telephone to confirm that the Code waiver has been granted.

Further details of the Code waiver procedure are set out in the [pro forma Code waiver letter](#).