

# THE TAKEOVER PANEL

The attached Note is the first of what is expected to become, over a period, a series of Notes on various aspects of the City Code where experience has shown that it would be useful to set down administrative practices and interpretations of the Code adopted by the Panel, which are of general interest and applicability. These Notes should be read in conjunction with the particular section of the Code to which they refer. They are intended to serve as a guide only and are subject to amendment in the light of experience. If these Notes in themselves or in conjunction with the Code give rise to difficulties, the Panel should be consulted. The Panel welcomes comment from interested parties and representations for clarifications or changes to these Notes to take account of particular situations not envisaged when they were drafted.

1st August, 1969

## City Code on Take-overs and Mergers

### *Panel Memoranda of Interpretation and Practice*

#### PRIVATE COMPANIES AND UNQUOTED PUBLIC COMPANIES

The Introduction to the City Code states (Paragraph 5): —

"Although the Code was drafted with quoted public companies particularly in view, the spirit of the Rules and, except where inappropriate, the letter, should be observed where unquoted public companies are concerned. The Rules and their spirit may also be relevant to transactions in the shares of private companies."

This Note sets out the Panel's current views on the application of this paragraph in take-over and merger transactions.

1. A company is considered for the purpose of this Note as being a private company if it complies with S.28 Companies Act, 1948, that is to say, it restricts the right to transfer its shares, limits the number of its members to 50 (excluding employees) and prohibits any invitation to the public to subscribe for any of its shares or debentures. But in the rare cases of private companies which have a quotation for any of their issued securities the Code applies to them as if they were public companies, and for the purpose of this Note they are treated as if they were public companies.
2. For the purposes of the Code, public companies having no quotation are treated in the same way as those having a quotation. References in Rule 24 of the Code to information to be given to and action to be taken by the Stock Exchange should be disregarded where these are inappropriate.
3. The Panel would not normally expect to be informed, or to have documents submitted, in the case of a merger or take-over transaction between two private companies. In such cases the parties are enjoined to have regard to such provisions of the Code as may be applicable to the transaction. The Panel's advice is available on request.
4. Where the offeror is a public company (quoted or un-quoted) and the offeree a private company, the offeror is expected to conduct the operation in accordance with the General Principles of the Code. The Panel, however, would not normally require to be informed of such transactions or to

have documents submitted; an exception would be where, for instance, the relative sizes of the two companies and other circumstances are such that the transaction effectively constitutes a reverse take-over and where a change in effective control of the offeror would result. Dealings in the shares of the public company during the offer period should, however, be disclosed in all cases in accordance with Rule 29.

5. Where the offeror is a private company and the offeree is a public company the Code applies to the offeror in the same way as if it were a public company and also applies to the offeree.

6. The foregoing provisions apply whether the transaction involves all or part only of the capital of the company concerned.

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Further copies of this Note may be obtained from The Secretary, Panel on Take-overs and Mergers, Bank of England Building, New Change, London, E.C.4.

1st August, 1969