

# THE TAKEOVER PANEL

## XSTRATA PLC

1. On 18 March 2002, the Panel heard an appeal by Xstrata plc ("Xstrata") against a ruling of the Executive that Xstrata, the proposed new holding company of the Xstrata Group, which has applied for listing on the London Stock Exchange, should not be subject to the jurisdiction of the Panel.
2. Xstrata is a company incorporated in the United Kingdom but there was no dispute that its place of central management will be in Switzerland. Accordingly its residence for the purposes of paragraph 4(a) of the Introduction to the City Code will not be the United Kingdom.
3. Normally, the Code does not apply to companies which are not so resident but Xstrata requested the Panel to accept jurisdiction in view of Xstrata's United Kingdom connections and its objective to be a major constituent of the London stock market.
4. The Panel considered that the test to be applied to such a fundamental question as its jurisdiction must be objective, clear and certain and should be applied consistently. The Panel would therefore be reluctant to depart from the normal dual test, as set out in the Code, which requires that both the place of incorporation and the place of central management be in the United Kingdom, the Channel Islands or the Isle of Man. The discretion to depart from this test should be exercised very rarely.

5. The Panel has long regarded the place of central management as a critical test of jurisdiction since in general it is the Panel's view that those companies whose place of central management is not in the United Kingdom may feel less able readily to respond to the authority and requirements of the Panel.
6. The Panel concluded that, notwithstanding the connections with the United Kingdom and other matters relied upon by Xstrata, there was no sufficient reason in this case for departing from the normal outcome. Accordingly, the Panel dismissed the appeal.
7. The Panel noted that this conclusion confirmed the position on jurisdiction that Xstrata had already, duly and properly, communicated to the market in its Listing Particulars.

22 March 2002

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Panel Statement 2002/7 accompanies this note. Any enquiries in relation to the Statement should be directed to the Secretary to the Panel Hearing in this matter:

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