

THE TAKEOVER PANEL

CODE COMMITTEE

PROCEDURES FOR AMENDING THE TAKEOVER CODE

1. Introduction

1.1 The Code Committee has adopted the following procedures for considering and consulting on proposals for amendments to the Takeover Code (the “**Code**”) and the Rules of Procedure of the Hearings Committee in carrying out its rule-making functions as set out in its Terms of Reference.

1.2 In the remainder of these Procedures, references to the Code should be taken to include the Rules of Procedure of the Hearings Committee.

1.3 Possible amendments to the Code tend to fall into three general categories:

(a) first, non-urgent amendments, which may arise from:

(i) specific cases regulated by the Panel Executive (the “**Executive**”);

(ii) non time-critical market developments;

(iii) a request from the Panel (or one of its members) or the Hearings Committee;

(iv) an initiative of the Code Committee; or

(v) representations from third parties (such as shareholders).

Such amendments will be subject to prior formal consultation (see section 2 below);

(b) secondly, urgent amendments which may arise in certain exceptional cases, for example, in the event that:

(i) market developments;

(ii) representations received; or

(iii) the facts of a particular case,

give rise to the need for the Code to be amended on an expedited basis. Such amendments will usually be published and made with immediate effect but will be subject to subsequent formal consultation (see section 3 below); and

(c) thirdly, minor amendments or amendments which are a consequence of changes to relevant legislation or regulatory requirements. Such amendments may be published and made without formal consultation (see section 4 below).

2. Non-urgent amendments to the Code

(a) Introduction

2.1 The Executive, in the course of its work, keeps the Code continually under review and is alert to the need to identify provisions of the Code where it believes there may be a case for amendment. Such a case might arise, for example, as a result of developments in market practice rendering existing provisions redundant or in need of amendment or requiring new Code provisions. Alternatively, it may become apparent, as a result of case history, that there may be a need for the relaxation or tightening of a particular provision of the Code. In addition, a possible amendment might arise from a request for review from the Panel, the Hearings Committee or the Code Committee itself or at the request of third parties.

(b) Consultation procedure

2.2 The typical consultation procedure for proposed amendments is described below.

2.3 Whenever an issue which might possibly lead to a Code amendment is identified, it will first be the subject of a discussion between the Code Committee and the Executive. If the issue is approved by the Code Committee for specific review, the Executive will be given the task of considering it in detail, with a view to establishing whether there is a case for amendment and to preparing a paper to enable a full discussion of the issue with the Code Committee.

2.4 As part of this exercise, the Executive may consult informally those persons who have a particular interest in the possible amendment including, where appropriate, Panel members and other bodies with relevant professional expertise, in order to assist the review process and the preparation of the paper for discussion with the Code Committee. This informal consultation will, if appropriate, continue throughout the process of review by the Code Committee and preparation of the relevant draft amendments.

2.5 The discussion paper prepared by the Executive for the Code Committee will typically include:

- (a) an analysis of the Executive's existing policy on the relevant issue;
- (b) a report on the findings of any informal consultation;

- (c) the Executive’s recommendations regarding the case for change, including its assessment of the negative consequences of rule change and the likely result of doing nothing; and
 - (d) consideration of alternative solutions (if any) taking note of their advantages, possible disadvantages and proportionality and including, where appropriate, an assessment of the impact of implementation of the proposed solutions.
- 2.6 If, following consideration of any discussion paper prepared by the Executive under paragraphs 2.3 to 2.5 above, the Code Committee concludes that there is a case for amending the Code, it will normally ask the Executive to prepare a draft public consultation paper (“**PCP**”). The PCP will take account of any views received as a result of the informal consultation described in paragraph 2.4 above.
- 2.7 PCPs will normally have a standard format setting out the following information:
- (a) an executive summary;
 - (b) the background to and reasons for the proposed amendments, including, if appropriate, a discussion of any alternative solutions considered;
 - (c) the effect of the proposed amendments;
 - (d) the text of the proposed amendments (together with any consequential amendments);
 - (e) the questions on which the Code Committee is seeking views;
 - (f) the deadline for responses and to whom the responses should be sent;
 - (g) a description of the perceived advantages and (if any) disadvantages of the proposed amendments (including their proportionality, and, where appropriate, an assessment of the impact of implementation of the proposals); and
 - (h) a list of persons involved in informal pre-consultation (unless they request otherwise).
- 2.8 In some circumstances, the Code Committee may decide that it would prefer to consult publicly on the question in hand before drafting possible amendments to the Code. In such cases, the format of the PCP will not strictly follow that described in paragraph 2.7. The Code Committee will subsequently publish a further PCP including the text of the proposed amendments, formulated in the light of the responses to the first PCP on the subject.

- 2.9 Once approved by the Code Committee, the PCP will be published.
- 2.10 Upon publication of the PCP, the Code Committee will:
- (a) make the PCP available on the Panel's website;
 - (b) make a public statement to the effect that the PCP has been published, stating the length of the consultation period and that copies of the PCP are available, upon request, to any person who expresses an interest. This statement will also refer to the availability of the PCP on the Panel's website; and
 - (c) make the PCP available, either in electronic form or as a hard copy, to each Panel member and to any person with whom informal consultation has been held under paragraph 2.4 above.
- 2.11 The consultation period for amendments will vary depending on the complexity of the subject but will usually be between one and two months. Where re-consultation takes place in relation to amendments proposed in or made as a result of an earlier consultation, the Code Committee may adopt a shorter period for consultation.
- 2.12 It is the Code Committee's policy to publish individual responses which it receives to PCPs on the Panel's website, unless the respondent explicitly requests otherwise or disclosure would prejudice third parties.
- 2.13 The Code Committee will consider the responses to the PCP following the expiry of the consultation period. Where the Executive or the Code Committee considers it appropriate, comments received will be discussed with the relevant respondents. For example, discussions with respondents might be considered appropriate where the responses are unclear or where the proposed amendment has given rise to conflicting views in the consultation process.
- 2.14 Once the Code Committee has completed its consideration of the responses to the consultation (normally within two months of the end of the consultation period), it will, with the assistance of the Executive, prepare a Response Statement ("**RS**") and approve the final text of the amendments to the Code (or, in relation to any proposed amendment, decide that it is not needed).
- 2.15 The RS will include the following information:
- (a) the number of responses received;
 - (b) a summary of the responses, highlighting any significant conflicts of views and giving the Code Committee's response, where relevant;
 - (c) the final text of the amendments (if any);

(d) in respect of the substantive amendments, the rationale for the final position adopted by the Code Committee (including proportionality);

(e) the date on which the amendments will take effect; and

(f) a list of respondents (other than those who wish their responses to remain confidential).

2.16 The RS will be published on the Panel's website and the Code Committee will make a public statement to the effect that it has been published and that copies are available on request. Copies will also be made available, either in electronic or hard copy form, to each Panel member and to respondents to the PCP. In the public statement announcing publication of the RS, the Code Committee will specify when the amendments will take effect.

2.17 Revised pages of the Code incorporating the final form of the amendments will be issued shortly before the amendments are due to come into effect. These new pages will be accompanied by a hard copy note summarising the amendments.

3. Urgent amendments to the Code

3.1 In certain exceptional cases, the Code Committee may consider it necessary to amend the Code on an expedited basis and without prior formal consultation. For example, this might be because it appears to the Code Committee that a particular market development, the market sensitivity of the proposed change or the need to rectify a loophole in the Code requires that an amendment should be made more quickly than a prior formal consultation would allow.

3.2 In the event that the need for an urgent amendment of the Code is identified, the Executive will normally prepare a briefing paper for the Code Committee which will, typically, explain the issue which has arisen under the Code, any relevant background including the practical consequences arising and will put forward the arguments for and against making such an amendment, including, where appropriate, an assessment of the impact of the amendment. Following discussion by the Code Committee, the Executive may be instructed to undertake further research and analysis and to report back to the Code Committee at a later meeting.

3.3 Once the issues have been fully discussed, the Code Committee will decide whether or not the relevant rule change is to be implemented and, if an amendment is approved, what form it will take. If a change to the Code is to be made on an expedited basis, the Code Committee will issue a public statement explaining the rationale for the amendment and its effect and stating when the amendment will come into effect (normally immediately). The statement and the amendment will be published on the Panel's website.

3.4 Publication of a Code amendment on such an expedited basis will be followed in due course by a formal consultation on the amendment as described in section 2. The amendment may be modified as a result, or removed altogether, depending on the outcome of the consultation. New pages to the Code will be issued, if appropriate, following this consultation.

4. Minor and consequential amendments to the Code

4.1 The Code Committee may also make amendments to the Code without formal consultation where, in the opinion of the Code Committee, the amendment either does not materially alter the effect of the provision in question or is a consequence of changes to relevant legislation or regulatory requirements.

4.2 In these circumstances, the procedures set out in paragraphs 3.2 and 3.3 above will be followed by the Code Committee, save that no PCP will be prepared subsequently. However, wherever practicable, the amendments will be made public before the date on which they will come into effect and new pages to the Code will be issued shortly before the amendments take effect.

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