



The Secretary to the Code Committee  
The Takeover Panel  
10 Paternoster Square  
London  
EC4M 7DY

**Grant Thornton UK LLP**  
30 Finsbury Square  
London EC2P 2YU

T +44 (0)20 7383 5100  
F +44 (0)20 7184 4301  
[www.grant-thornton.co.uk](http://www.grant-thornton.co.uk)

31 October 2017

Dear Sir/Madam

We set out below our responses in respect of the current Panel Consultation Paper.

## **PCP 2017/2 – Post offer undertakings and intention statements**

### **Q1 Should Rule 24.2(a) be amended so as to require an offeror to make specific statements of intention with regard to the offeree company’s research and development functions, the balance of the skills and functions of the offeree company’s employees and management, and the location of the offeree company’s headquarters and headquarters functions?**

We agree with the principle of what the Panel is proposing. It would, however, be helpful to get a better understanding of how the Panel interprets or defines ‘the balance of skills and functions’ in this context as well as the nature of disclosure that is expected when a statement of intention is made on this matter.

It would also be useful to get a better understanding of the premise behind the proposed changes so that the relevant stakeholders and market participants in M&A transactions can bear in mind the key principles that form the basis of such changes. We believe that this is likely to result in more meaningful disclosures being provided as part of takeover transactions.

### **Q2 Do you have any comments on the proposed amendments to Rules 24.2(a) and (b)?**

We do not have any comments on the proposed amendments.

### **Q3 Should Rule 2.7 be amended so as to bring forward to the firm offer announcement the requirement for an offeror to state its intentions with regard to the business, employees and pension scheme(s) of the offeree company and, where appropriate, the offeror?**

Whilst, in principle, the proposed amendment seems reasonable, we do envisage scenarios where information set out in a Rule 2.7 announcement may have to be subsequently updated to provide further information as a result of access to new information that may not have been available to offerors at the time of the release of such an announcement.

For example, there could be a situation where a hostile offer is made at which point the

offeror may not have a full picture of the balance of the skills and functions of an offeree company as well as its R&D function. As a result, the statements of intention in the Rule 2.7 announcement will have to be predicated on the offeror's understanding of publicly available information. However, it is possible that the hostile offer may subsequently be recommended. As more information becomes available to the offeror as part of the due diligence exercise, its views on the business, employees and pension scheme(s) may change. As such, the intention statements may have to be altered to reflect this updated information in the offer document.

It would be helpful to understand the Panel's views on the approach that it would expect the offeror and its advisers to take in situations where the relevant intention statements in the Rule 2.7 announcement need to be significantly updated in the offer document.

**Q4 Do you have any comments on the proposed amendments to Rule 2.7 and Rule 25.9?**

We do not have any comments on the proposed amendments.

**Q5 Should an offeror be obliged to seek the consent of the board of the offeree company in order to publish an offer document within the 14 days following its firm offer announcement?**

We are of the view that the Code timetable currently in place is sufficient and effective. Inevitably, the implication of the proposed amendment will be to potentially prolong the offer timetable which may provide a relatively longer period of uncertainty to the offeree company's shareholders as well as other stakeholders, including the offeror. The Panel has also noted the potential increased cost burden on the offeror (e.g. as a result of increased financing costs) which, when combined with the timing implications to complete a transaction, may be perceived as a change with the unintended consequence of discouraging investments into companies subject to the Takeover Code.

One could argue that allowing more time to offeree boards in assessing a takeover offer may be seen as beneficial to offeree shareholders as it would give target boards more time to set out their views on the offer and arguably may enable a higher competitive bidder to come into the fray, if the Code timetable is extended as proposed. However, we believe that this issue, where relevant, can be addressed by the Panel granting a dispensation from the 14 days requirement under Rule 25.1 of the Code, should the target board need more time to respond to publish the initial circular. We would welcome the Panel's views on this matter.

**Q6 Do you have any comments on the proposed amendments to Rule 24.1 and Rule 25.1?**

We do not have any comments on the proposed amendments.

**Q7 Should an offeror or offeree company which has made a post-offer undertaking always be required to publish, in whole or in part, any report submitted to the Panel under Rule 19.5(h)?**

We agree that such reports should be published.

**Q8 Do you have any comments on the proposed amendments to Rule 19.5(h)?**

We do not have any comments on the proposed amendments.

**Q9 Should an offeror or offeree company which has made a post-offer intention statement be required, at the end of the period of 12 months from the date on which the offer period ends, or such other period of time as was specified in the statement, to confirm in writing to the Panel whether it has taken, or not taken, the course of action described in the post-offer intention statement and publish that confirmation via a RIS?**

We are supportive of such confirmations to be published via a RIS. However, we do think that it would be helpful if the Panel sets out the responsibilities of parties in relation to post-offer intention statements should it transpire sooner, during the relevant period that the statement is subject to, that the course of action is unlikely to complete within the previously disclosed timeframe and the ramifications of this on the company.

Additionally, we continue to work on the basis that advisers would not be assumed to be responsible for monitoring the progress of the post-offer intention statements and we would like the Panel to confirm that our understanding on this matter is accurate.

**Q10 Do you have any comments on the proposed new Rule 19.6(c)?**

We do not have any comments on the proposed amendments.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Salmaan Khawaja', with a long horizontal stroke extending to the right.

Salmaan Khawaja  
Director  
For Grant Thornton UK LLP  
T 020 7728 2053  
E salmaan.a.khawaja@uk.gt.com