



THE UK'S WITHDRAWAL FROM THE EUROPEAN UNION

Issued 19 December 2018

ICAEW welcomes the opportunity to comment on the public consultation paper *The UK's withdrawal from the European Union*, published by The Takeover Panel on 5 November 2018, a copy of which is available from this [link](#).

It would be helpful to understand the Panel's evaluation of any potential liability it could face towards investors of companies with registered offices in other EEA countries, that the Panel has supervised under the shared jurisdiction regime.

In connection with the references in the Code to Phase 2 EC proceedings, we agree with the pragmatic approach that has been taken but we believe a wider review of Rules 12 and 13 should be undertaken in due course.

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KEY POINTS

1. It would be helpful to understand the Panel's evaluation of any potential liability it could face towards investors of companies with registered offices in other EEA countries, that the Panel has supervised under the shared jurisdiction regime.
2. In connection with the references in the Code to Phase 2 EC proceedings, we agree with the pragmatic approach that has been taken but we believe a wider review of Rules 12 and 13 should be undertaken in due course.

ANSWERS TO SPECIFIC QUESTIONS

Q1 Should the shared jurisdiction rules in section 3(a)(iii) of the Introduction to the Code be deleted as proposed?

Q2 Do you have any other comments on the matters discussed in Section 3 of the PCP?

3. Yes, we agree that the shared jurisdiction rules should be deleted as proposed.
4. We note the Panel's efforts to notify the companies in Appendix C to the PCP of the consequences of deletion of the shared jurisdiction rules and its discussions with the supervisory authorities in the EEA states where the companies have their registered office. Until it is clear how those authorities propose to respond to the Panel's position, such companies will be 'orphan' companies and it will be helpful to understand how the Panel has evaluated the risk of being found to have abdicated its duty to those companies. Specifically, to what extent could the Panel face any potential liability towards investors who invested in a company on the understanding that it would be subject to certain takeover protections, only to find them removed?

Q3 Do you have any comments on the amendments to the Introduction to the Code, and the related amendments to other provisions of the Code, proposed in Section 4 of the PCP?

5. We have no comments.

Q4 Do you have any comments on the amendments to the General Principles of the Code proposed in Section 5 of the PCP?

6. We agree with the proposed amendments to the General Principles of the Code; however, we think the Panel could elaborate on its reasoning not to revert to the General Principles that applied before giving effect to the Takeovers Directive.

Q5 Should the references to Phase 2 European Commission proceedings be retained in the Code following the UK's withdrawal from the EU?

Q6 Do you have any comments on the proposed amendments to Rules 12.1(b) and 12.1(c)?

7. We support the proposed approach, for the reasons stated in paragraph 6.8, albeit we note that the effect of those changes will be to treat EC competition rules differently compared to those of other regulators outside of the EU – a result which might seem anomalous or imbalanced in a post-Brexit takeovers regime.
8. We strongly agree that the treatment of Phase 2 EC proceedings should be kept under review, as stated in paragraph 6.9 – presumably alongside a wider ranging review of the Panel's treatment of offer conditions and pre-conditions relating to regulatory clearances.

Q7 Do you have any comments on the amendments to Note 19 on Rule 9.1, Rule 24.3(d)(xiv), Rule 30.4 and Appendix 6, or the related amendments to other provisions of the Code, proposed in Section 6 of the PCP?

9. It would be helpful to understand the purpose of, and the breadth of, the offer document/ response document offence, on its replacement by requirements of new Schedule 1C to the Companies Act. Perhaps these are mainly matters for the UK government and Parliament to resolve and/or explain – with the Code Committee's primary responsibility here being to ensure that the Takeover Code, as updated, complies with updated UK law.
10. It would be helpful, however, for the Code Committee to explain:
 - a) as they see it, the purpose of retaining these offences at all (if the Takeovers Directive will no longer apply);
 - b) whether any UK authority has taken action against any person under, or come close to taking action under, these rules; and
 - c) how the new provisions would apply to a takeover bid, whether (i) by contractual offer or (ii) by scheme of arrangement and whether for a target company (A) traded on the Main Market of the London Stock Exchange, on AIM or on another multilateral trading facility or (B) not publicly traded at all.